

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Miller v. Thompson Rivers University*,
2013 BCSC 2138

Date: 20131125
Docket: 44021
Registry: Kamloops

Between:

Adrian Stephen Miller

Plaintiff

And

**Thompson Rivers University, Roger H. Barnsley, Michael Gorman,
Ulrich Scheck, Katherine (Kate) Sutherland, Jenna Woodrow, Catherine Ortner
and Nancy Twynam**

Defendants

Before: The Honourable Mr. Justice Joyce

Reasons for Judgment

The Plaintiff appearing on his own behalf:

A.S. Miller

Counsel for the Defendants:

J.M. Hogg, Q.C.; and
K.N. Schymon

Place and Date of Hearing:

Kamloops, B.C.
July 2, 2013

Place and Date of Judgment:

Kamloops, B.C.
November 25, 2013

Introduction and Procedural Background

[1] The plaintiff is a student, or former student, of the defendant Thompson Rivers University (“TRU”). The other defendants are or were teachers or administrators at TRU during the times material to the matters giving rise to this action.

[2] The defendants apply, pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], to strike the plaintiff’s notice of civil claim on the ground that it does not disclose a reasonable claim. The defendants apply, in the alternative, pursuant to Rule 9-5(1)(b) of the *Rules* to strike the plaintiff’s notice of civil claim and particulars served pursuant to a demand for particulars, on the ground that they are unnecessary, scandalous, frivolous or vexatious.

[3] In March 2010, the plaintiff commenced this action against TRU and the other defendants, based upon breach of contract as well as a number of torts and other alleged wrongs, seeking damages and various types of injunctive relief. The original statement of claim was prolix, but in essence the plaintiff alleged that the defendants had subjected him to harassment, discrimination and retaliation, which “destroyed a promising academic career, future successes and a previously happy life”. The plaintiff alleged that the defendants had failed to make reasonable accommodation for an illness he was suffering from by granting extensions of time to complete course assignments and write examinations and that, as a result, he received no credit for the courses he enrolled in and incurred student loan expenses.

[4] On March 23, 2010, the defendants filed a statement of defence in the action.

[5] On March 22, 2011, at a case planning conference, Mr. Justice Burnyeat made an order that the plaintiff file and serve a notice of civil claim under the new *Rules*. On June 8, 2011, Mr. Justice Rogers made a further order that the plaintiff file and serve his notice of civil claim by June 30, 2011.

[6] On June 30, 2011, the plaintiff filed his notice of civil claim in which he added a number of defendants in addition to those named in the writ and statement of claim (“Additional Defendants”).

[7] On July 21, 2011, the defendants filed their response to civil claim.

[8] On August 2, 2011, the defendants served the plaintiff with a demand for particulars of the notice of civil claim.

[9] On September 8, 2011, the Additional Defendants applied for an order that they be struck from the action on the ground that the plaintiff had failed to obtain leave to add them as defendants. On September 21, 2011, I made that order without prejudice to the plaintiff’s right to apply to add the Additional Defendants to the action. The plaintiff has not brought such an application.

[10] On January 17, 2012, after the deadline for doing so, the plaintiff delivered to the defendants a document entitled “Particulars Part 1”.

[11] On April 4, 2013, the defendants filed their notice of application together with an affidavit of their lawyer, Karen Schymon, the sole purpose of which was to attach and put before the court the particulars delivered by the plaintiff.

Law

The Applicable Rules

[12] The applicable rules that are engaged on this application are set out below:

Rule 3-1

- (2) A notice of civil claim must do the following:
 - (a) set out a concise statement of the material facts giving rise to the claim;
 - (b) set out the relief sought by the plaintiff against each named defendant;
 - (c) set out a concise summary of the legal basis for the relief sought;

...

Rule 9-5

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
- (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
- ...
- (2) No evidence is admissible on an application under subrule (1)(a).

The Test for Striking a Pleading under Rule 9-5

[13] The test that is to be applied on an application to strike a notice of civil claim on the ground that it discloses no cause of action remains the same under Rule 9-5(1)(a) as under its predecessor rule as was concisely stated by Mr. Justice Cullen, as he then was, in *Woolsey v. Dawson Creek (City)*, 2011 BCSC 751 at para. 29:

[29] It is apparent that the test for dismissing an action under Rule 9-5 or its predecessor is not one easily met, however. In *Poirier v. Community Futures Development Corp.*, [2005] B.C.J. No. 763 (B.C.C.A.), the court addressed the principles applicable on having pleadings struck or a case dismissed at paragraphs 8 and 9 as follows:

[8] The principles that ought to be applied in relation to an application under Rule 19(24), particularly under Rule 19(24)(a), upon which this application principally rests, are set out in a number of decisions of the Supreme Court of Canada and perhaps the most useful thing is to quote from the judgment of Madam Justice Wilson, speaking on behalf of the unanimous Supreme Court of Canada, in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, where Madam Justice Wilson, in addressing Rule 19(24)(a), said this at pp. 21-22:

"Thus, the test in Canada governing the application of provisions like Rule 19(24)(a) of the British Columbia Rules of Court is the same as the one that governs an application under R.S.C.O. 18, r. 19: assuming that the facts as stated in the statement of claim can be proved, it is 'plain and obvious' that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be 'driven from the judgment seat'. Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect ranking with the others listed in Rule 19(24) of the British Columbia Rules of Court should the relevant portions of a plaintiff's statement of claim be struck out under Rule 19(24)(a)."

[9] The only thing that I would like to add to that summary of the principles to be applied in considering the rule is set out in a judgment of Mr. Justice Romilly in *Wayneroy Holdings Ltd. v. Sideen*, [2002] B.C.J. No. 2472 (B.C.S.C.); 2002 BCSC 1510, where Mr. Justice Romilly quoted from his judgment in *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (B.C.S.C.) at para. 34:

... In other words, as long as the pleadings disclose a triable issue, either as it exists, or as it may be amended, then the issue should go to trial. The mere fact that the case is weak or not likely to succeed is no ground for striking it out under the provisions of Rule 19(24).

[14] Pleadings may be struck under Rule 9-5(1)(b) on the ground that they are “irrelevant or embarrassing” if they are so prolix or confusing that it is difficult to understand what is being pleaded and it is impossible for the defendant to respond to it (*Citizens for Foreign Aid Reform* at para. 47).

The Notice of Civil Claim

[15] The first 20 paragraphs of Part 1 of the notice of civil claim, in which the plaintiff is required to set out his statement of facts, contain descriptions of the defendants. Paragraphs 10 through 20 describe defendants who were struck from the action by the order of September 21, 2011 and should be struck. Likewise, paragraphs 9 through 19 of Part 2 of the notice of civil claim, which claim relief against those defendants who have been removed from the action, should also be struck.

[16] The balance of the paragraphs in Part 1 of the notice of civil claim read as follows:

21. Defendants wrongdoing was well-known to Thompson Rivers University's upper most senior officials. Thompson Rivers University and its officials simply waited and watched, confident in their belief that the victim of Thompson Rivers University's culture of harassment, discrimination, fraud and retaliation would be ignored or squelched;
22. Thompson Rivers University's customary response to valid complaints of discrimination and abusive treatment include either (i) ignoring the pleas for help of the victim, or (ii) conducting an abusive internal investigation - designed in totality to protect the university and intimidate the victim;

23. Officially, Thompson Rivers University has Human Rights Policies. In practice, the policies are selectively and discriminately applied. The policy, like others is not applied even handedly or fairly but is applied illegally and discriminately;
24. As a result of Plaintiffs detrimental reliance on the promises made in the contract between students, faculty and Thompson Rivers University, Plaintiff was and continues to be damaged by defendants discrimination against him including but not limited to lost wages and benefits, lost opportunities, diminishment in lifetime earning capacity, loss and damage to his reputation and mental, physical, sociological, economical and financial pain and anguish.
25. Thompson Rivers University maintains formal, written, disclaimed institutional policies. By virtue of being a student or faculty member one is binded by the senate by-laws and policies and procedures of the institution;
26. Thompson Rivers University policies, including but not limited to the equal opportunity, non discrimination and non retaliation policies form an enforceable and binding contract with its student's and staff, including Plaintiff and impose upon the institution and its employees certain duties and obligations;
27. By the conduct alleged in this complaint, Defendants breached their contractual duties and obligations to Plaintiff by, [among] other things, to abide by, uphold and refrain from violating Thompson Rivers University policies. Including, but not limited to, investigating complaints impartially and thoroughly, maintain an environment free from hostility, effectively discipline or dismiss partners who violate the policies and refrain from retaliation, harassment and discrimination;
28. Defendants sought to make Plaintiff miserable so that he would voluntarily leave Thompson Rivers University and later additionally intended the distressing comments and actions to intimidate Plaintiff from pursuing any legal action against Thompson Rivers University. Defendants conduct is heinous and intolerable because among other things, (i) Defendants knew Plaintiff was psychologically, socially, emotionally, physically and financially vulnerable (ii) defendants were acting according to a long-time pattern of illegal behaviour (iii) Defendants were in positions of power over Plaintiff (iv) defendants owed certain duties to Plaintiff, including but not limited to duties to refrain from such conduct and (v) Defendants actions and statements were public;
29. The Plaintiff states that the conduct of Thompson Rivers University was entirely without care, deliberate, callous, wilful and in intentional disregard of the individual rights and circumstances of Plaintiff and indifferent to the consequences;
30. Plaintiff was at all material times vulnerable to Thompson Rivers University considering the unequal bargaining position between the parties;

31. Thompson Rivers University behaved in bad faith, deceit and with complete insensitivity to the Plaintiff;

[17] In Part 2 of the notice of civil claim, that portion in which Mr. Miller sets out the relief sought, he claims general, special and punitive damages as well as a letter of apology from each of the defendants. In addition, as against TRU he claims injunctive relief enjoining it from engaging in harassment, discrimination and retaliation. He also claims all his costs for attendance at TRU and unconditional acceptance to TRU's Faculty of Law at no cost.

[18] In Part 3 of the notice of civil claim, in which the plaintiff is required to set out the legal bases for the relief sought, Mr. Miller simply lists a large number of statutes, including the *Apology Act*, S.B.C. 2006, c. 19; the *Human Rights Code*, R.S.B.C. 1996, c. 210; the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* (U.K.), c. 11 [*Charter*], as well as referring to breach of contract, breach of trust and a variety of torts, including conspiracy, deceit and fraud.

Analysis

[19] The defendants submit, and I agree, that paragraphs 21 to 31 of the notice of civil claim do not set out, by themselves, a factual basis that would give rise to a cause of action. Paragraphs 24 to 28 hint at a contract or contracts between the plaintiff and the defendants or some of them, and breaches of the contract. However, those statements fail to set out facts that, if proven, would establish the contract or contracts or the breach or breaches of such contracts. The paragraphs are bald conclusory statements without any factual foundation.

[20] There is nothing else in the body of Part 2 of the notice of civil claim that sets out any factual basis for relief under any of the other heads of relief set out in Part 2 of the document.

[21] It is my view, however, that the notice of civil claim should not be viewed alone but should be considered together with the Particulars delivered by the plaintiff.

[22] The Particulars are contained in a 22-page, single-spaced document, which begins with the following general statements of the plaintiff's complaint about the defendants and the alleged effect of their actions on him:

This is a complaint about harassment, discrimination and retaliation perpetrated by senior employees of Thompson Rivers University, whose patently false and perverted belief that they are above the law are matched on by their ridiculous belief that discriminating against a disabled, financially indigent person will go unchallenged, unchecked, and unpunished. The individuals, whose actions are complained of herein, destroyed a promising career, future successes and a previously ebullient life. Over the course of numerous years, repulsive harassment and discrimination intertwined with vicious retaliation has led the plaintiff to clinical depression. Innumerable ethics, laws and precepts were shattered along the way. It will be now be put before thus Honorable Court for justice. Below, find the manifold reasons why exactly that should happen.

Based on information and belief, Plaintiff alleges that each and every defendant in this matter was responsible for the events referred to herein, and in some manner caused the injuries to Plaintiff as hereinafter alleged. Defendants are sued as agents, contractors or employees of: Thompson Rivers University, and all of the acts performed by them as agents and employees were performed within the course and scope of their authority.

Plaintiff is informed and believes, and thereon alleges, that each of the Defendants herein was, at all times relevant to these actions an agent, contractor or employee of Thompson Rivers University "TRU". Further, the Plaintiff is informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining Defendants.

Plaintiff engaged in legally protected activities, resulting in retaliation by defendants. As set forth below; Plaintiff engaged in legally protected activities, including: 1) Opposing discrimination based on disability 2) opposing ethical violations as set forth in the Thompson Rivers University Polices and Procedures. 3) Refusing to provide information of a private medical nature concerning his illness;

Plaintiff had an agreement with the defendants. Defendant breached their duties by illegally interfering with Plaintiffs financial aid, and telling outright fabrications to BC Student Aid and the National Student Loan Service. As a proximate result of Defendants breach of contract, Plaintiff has lost the usage of student loans, enjoyment of money owed to him, investment opportunities, all to his damage in an amount to be established by trial.

Said Defendants are sued as instructors, professors, administrators, agents, employers, the President and as an entity (Thompson Rivers University). All of the employers actions were performed within the course and scope of their authority and employment. Based on information and belief, Plaintiff alleges that each and every defendant was responsible for the events referred to herein and in some manner caused the injuries to Plaintiff as hereinafter alleged. Below find the manner in which each defendant is so responsible.

[23] What follows these general statements are descriptions, under separate headings, of various events concerning the plaintiff's attendance at TRU and his dealings with its instructors and administrators, as well as his dealings with the provincial and federal student loan authorities. These lengthy descriptions often assert matters that, if under oath or affirmation, would be considered evidence rather than statements of material facts. Other statements contain argument, which again have no place in pleadings.

[24] When I review the whole of the notice of civil claim and the Particulars, it appears to me that the real underpinning for Mr. Miller's action seems to be an allegation that:

- He and the defendants were parties to a contract with regard to the delivery of educational services;
- The contract had a term, implied or express, that he would be afforded reasonable accommodation on account of his medical difficulties or learning disability, that were known to the defendants;
- The contract also had a term that the defendants would provide correct information to the student loan authorities;
- The defendants breached that contract by not providing reasonable accommodation and by not providing correct information to the student loan authorities concerning his attendance and enrolment;
- As a result of the breaches he was prevented from completing his courses, thereby causing him to waste money on tuition and fees, and become indebted to the student loan authorities, for which he seeks damages;

- Alternatively, the defendants owed him a common law duty of care to provide reasonable accommodation and to provide correct information to the student loan authorities and that they breached that duty of care; and
- The defendants acted wilfully and maliciously in their conduct towards and concerning him.

[25] Indeed, during the course of submissions, I had the following discourse with Mr. Miller:

THE COURT: Sir, it's almost lunch time but before we stand down for lunch --

ADRIAN MILLER: Sure.

THE COURT: -- you said that the -- that you and TRU --

ADRIAN MILLER: Yeah.

THE COURT: -- entered into a contract.

ADRIAN MILLER: That's correct.

THE COURT: You said that that's one of the contracts at issue.

ADRIAN MILLER: That's correct.

THE COURT: What are the other -- can you just tell me -

ADRIAN MILLER: Yes.

THE COURT: -- what are the other contracts at issue?

ADRIAN MILLER: The contract between myself and Student ABC with TRU. And then the contract between each of my professors to make sure that they report to B.C. Student Loan and National Student Loan correct -- correct information regarding how often I'm attending class. Because if they fail in their duty to do that, then I am marked as withdrawn or did not complete or an over award is given. So it's almost --

THE COURT: And you say that you -- you entered into contracts not only with the university but with each individual professor from whom you enrolled in -- or each professor who was teaching --

ADRIAN MILLER: That's correct.

THE COURT: -- the courses you enrolled in.

ADRIAN MILLER: That's correct.

THE COURT: And --

ADRIAN MILLER: Because they --

THE COURT: Does your claim come down to this then, sir, if I can -- if I can -- if I can summarize it. That you entered into a contract with the university. That contract was that you would pay your tuition and they would accept you as a student --

ADRIAN MILLER: Mm-hmm.

THE COURT: -- and provide you with the courses?

ADRIAN MILLER: Yeah.

THE COURT: You entered into contracts with the professors. You would enroll in their courses and they would teach you those courses.

ADRIAN MILLER: Yeah.

THE COURT: Is it your -- is it your position in your claim that these contracts were -- had terms, whether explicit or implied, that if you paid the university and did what was required, the university would do what it was required which included reporting your status to the funding agencies.

ADRIAN MILLER: Perfect.

THE COURT: If you did what was required in your course load your professors would do what was required which is to deliver the courses, to allow you to complete the courses and to give you the grades or to give you the opportunity to complete the courses and give you the grades that you obtained.

ADRIAN MILLER: Perfect.

THE COURT: And report those grades to the funding agencies.

ADRIAN MILLER: Perfect.

THE COURT: Is it your claim then that -- that is essentially one of breach of those contracts in that the university failed to maintain you as a student, the professors failed to provide you -- sorry, also a part of your claim that there was also an implied term of the contracts that the university and the professors would give you accommodation for your physical and/or mental disabilities so as to enable you to complete the course work.

ADRIAN MILLER: Mm-hmm.

THE COURT: And you -- you're saying yes, that that is part of your claim?

ADRIAN MILLER: Yes. But the --

THE COURT: And is it -- and is then a part of your -- is it a fundamental aspect of your claim that a breach of those terms of the contracts, the university and the professors failed to give you that accommodation, failed to keep you enrolled as a student, failed to do what was required of them to enable you to complete the courses, failed in some instances to recognize your -- the work that you had done, failed to recognize you as being a student enrolled at the university, which had the consequence of your denied financial aid through the funding agencies?

ADRIAN MILLER: Perfect.

THE COURT: Is that -- have I summarized it?

ADRIAN MILLER: I might as well sit down now. With the exception of accommodation, not being that I wanted them to do anything extra for me. What I wanted was if I handed in a sick note, that it was going to be -- that I was going to be able to do the -- the work. Because I handed in a sick note, that I would be --

THE COURT: But you -- but part of the accommodation that you are seeking as I understand reading your particulars, is that -- is that if you missed an assignment, that you were not able to complete an assignment in time --

ADRIAN MILLER: Yeah.

THE COURT: -- or if you missed an examination because of your illness --

ADRIAN MILLER: Yeah.

THE COURT: -- and provided to the university and its [indiscernible] teachers --

ADRIAN MILLER: Yeah.

THE COURT: -- the note from your medical doctors --

ADRIAN MILLER: Yeah.

THE COURT: -- confirming that the reason that you missed the assignment or missed the examination was because of your health --

ADRIAN MILLER: Yeah.

THE COURT: -- that they were required to give you accommodation by way of extending the deadline or completing the examination or allowing you to sit the examination -- complete the assignment at a later date or sit the examination at a later date.

ADRIAN MILLER: That's exactly it.

THE COURT: And is that --

ADRIAN MILLER: That's it.

THE COURT: Is that essence of your claim?

ADRIAN MILLER: That's it.

THE COURT: And that -- and that this was -- the result of this was -- was to -- that you were declared to be, by the university, no longer a student, you were denied funding, you were denied the opportunity to continue with your university education which had a myriad of financial consequences for you?

ADRIAN MILLER: Yeah.

THE COURT: Is that -- have I summarized it accurately?

ADRIAN MILLER: Exactly. With the -- with two points and that just being in the statement of response, he -- Mr. Hogg says, "If and when medical excuses and notes were provided for non-attendance, they were often vague, short, skimpy or lacking in appropriate detail." So the university got mad that it would say, "Mr. Miller missed January 1st because of health issues," and they wanted to know like, "What is the health issue. I want to know specifically the health issue." It was that I would not give them and therefore they would not -- therefore they would not allow me to retake the exam.

And the other part being that there is a difference between a DNC and an F. An F means that you failed the course, did not complete means you never showed up for it, you never showed up for school, you took the money from student loan and you went partying. And they gave me DNC's when I can prove that --

THE COURT: I would have -- I would have thought that the ordinary meaning of a did not complete is just that, a person started a course and then dropped out.

ADRIAN MILLER: No.

THE COURT: I mean, I --

ADRIAN MILLER: I can give you --

THE COURT: It's been a long time since I've been at university. So I was at university but I can remember one or two courses where I started the course, I was registered in the course and then I dropped out of the course. I didn't get an F, I don't think. I -- I simply withdrew from the course voluntarily.

ADRIAN MILLER: DNC -- and that's another part of the claim, is that DNC to TRU is different than DNC to the Student Loans. So when they report a DNC to Student Loans, DNC to Student Loans is you never showed up, period. And I can prove that I showed up.

THE COURT: And you -- and you say that because of the way in which --

ADRIAN MILLER: They reported it.

THE COURT: -- the university reported it to the funding agency, the funding agency denied you any further funding. Have I got it right?

ADRIAN MILLER: That's correct.

[26] After the lunch break, Mr. Miller went on to say that the causes of action he was relying on included interference with economic relations, defamation, slander, breach of trust, conspiracy, deceit and fraud. However, he referred to no further facts in support of his claims other than those that I had summarized and with which he agreed, nor can I discern any facts from his pleadings that might support those causes of action.

[27] In my view, the real question is whether the pleadings allege facts, which for the purpose of this application are to be taken as true, that could give rise to a claim in contract or in negligence or whether his claim is bound to fail.

[28] In response to the plaintiff's claims, the defendants refer to s. 69 of the *University Act*, R.S.B.C. 1996, c. 468, which provides:

69 (1) An action or proceeding must not be brought against a member of a board, senate or faculties, or against an officer or employee of a university, in respect of an act or omission of a member of a board, senate or faculties, or officer or employee, of the university done or omitted in good faith in the course of the execution of the person's duties on behalf of the university.

(2) In an action against a university, if it appears that the university acted under the authority of this Act or any other Act, the court must dismiss the action against the university.

[29] However, it appears to me that those statutory protections would not shield the defendants from liability if the plaintiff can prove, as he alleges, that the defendants acted with malice. Whether they did nor not is not something to be assessed on this application.

[30] I have come to the conclusion that, with considerable effort, one can extract, as I attempted to do during the hearing of this application, sufficient allegations of fact from the notice of civil claim and Particulars that could found a cause of action in

contract or negligence. In my view, it is not plain and obvious that, if the facts the plaintiff alleges are proven to be true, the plaintiff will not be able to establish a duty upon the defendants, arising out of contract or based on principles of negligence, and a breach thereof, from which the defendants are not shielded from liability under the *University Act*, for which the plaintiff may be entitled to damages. The plaintiff's claim may be novel and his case may not be strong, but it is my view that his notice of civil claim should not be struck out at this stage under Rule 9-5.

[31] The application to strike the plaintiff's claim is therefore dismissed.

[32] While I have not dismissed the plaintiff's claim, it does not conform to the requirements of Rule 3-1 in several respects. It does not set out a concise statement of material facts. It is long and at times, rambling. It contains evidence and argument. It does not set out a concise statement of the legal basis for his claim and it contains reference to statutes and torts that, in my view, are completely unsupported by any alleged facts.

[33] I might have ordered the plaintiff to file an amended notice of civil claim that complies with the *Rules* and that properly sets out the foundation for the claim that, with considerable difficulty I have determined and he has agreed, he intends to have tried. However, in the end, I have decided that to do so would simply result in further unnecessary delay and costs to all parties. It makes more sense, in my view, to have the matter proceed limited to claims in contract and negligence, which, I am unable to conclude, are claims that are bound to fail even if the plaintiff proves all of the allegations of fact set out in the pleadings he has filed.

[34] In order to assist the defendants in responding to the claim and to ensure that the trial proceeds as efficiently as possible, the portions of the plaintiff's claim alleging violations of human rights legislation and the *Charter* will be struck. It is well established that a plaintiff who alleges a breach of human rights legislation has no cause of action in the courts: *Moore v British Columbia* (1988), 23 B.C.L.R. (2d) 105 (C.A.). If Mr. Miller would like to pursue his allegation of a human rights violation he may do so in the proper forum - the British Columbia Human Rights Tribunal. In

addition, the plaintiff does not identify a law or government action which could be subject to the *Charter*.

[35] Accordingly, the following references to human rights legislation and the *Charter* are struck from Part 3 of the plaintiff's notice of civil claim:

Para. 1, items 5., 6., and 10.

Para. 3, items B) and C)

Para. 4, items D) and E)

Para. 5, items D), E), and I)

Para. 6, items B) and C)

Para. 7, items C), D), and E)

Para. 8, items B) and C)

[36] The following portions of the claim as set out in the document entitled "Particulars Part 1:" are struck:

Under the heading (S) Additional Facts:

Page: Paras.:

13-14 40

14 44, 46

14 the sentence "Plaintiff reasonably relied on Defendants agreement to legal treatment owned under their stated agreement to accommodate him and be consistent with the BC Human Rights Code, The Human Rights Act, The Charter of Rights and Freedoms." found in para. 47

16-17 59

17 60, 64, 65

18 70

Under the heading (V) Negligence On The Part Of Thompson Rivers University:

Page: Paras.:

20 the words “Human Rights Act” found in para. 5

20 6

[37] Furthermore, any remaining references to discrimination or failure to accommodate based on disability in the plaintiff’s claim should be taken as an allegation of a breach of contract to provide education and accommodation, not as an allegation of human rights legislation or *Charter* violation.

[38] Given the significant shortcomings of the notice of civil claim that I have identified, I do not think it appropriate to award the plaintiff the costs of this application, even though it has been dismissed. I believe that the appropriate order with respect to costs is that the defendants have their costs in the cause. For greater clarity, and for the benefit of the plaintiff, this means that if the defendants are successful in the action they will be entitled to the costs of this application, but if the plaintiff is successful in the action, he will not be entitled to the costs of this application.

“B.M. Joyce J.”