



No. S231039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE NARWHAL NEWS SOCIETY and AMBER BRACKEN

PLAINTIFFS

AND:

**ATTORNEY GENERAL OF CANADA,
MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL FOR
BRITISH COLUMBIA, HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, RCMP CHIEF
SUPERINTENDENT JOHN BREWER, UNKNOWN RCMP OFFICER #1
and UNKNOWN RCMP OFFICER #2**

DEFENDANTS

REPLY

Filed by: The plaintiffs

In reply to: Response to Civil Claim of the Defendants Attorney General of Canada, Minister of Public Safety and Solicitor General of British Columbia), and RCMP Chief Superintendent John Brewer filed October 5, 2023 (the "**RTCC**")

1. In reply to Part 1, paragraphs 8-10, 30-32, 41-42, 49-52, 55, 57-58, 68, 70, 72, and Part 3, paragraphs 21-24, 26-30, 33 of the RTCC, the defendants interchange the ordinary meaning of a person technically "occupying" (i.e. being present in) a building with an "occupation" of a place as an act of protest. This rhetorical approach inaccurately collapses the distinction between Ms. Bracken's journalistic purposes for being present in the Tiny House on November 19, 2021 with the intention of persons who were in the Tiny House for protest or land defence purposes. In the circumstances, her attendance in the Tiny House as a member of the media is properly characterized as a visitor, not an occupier.
2. In reply to Part 1, paragraphs 23 and 87 of the RTCC, the recitation of paragraphs from reasons for judgment is an improper pleading of evidence (and the evidence may well be inadmissible). The paragraphs should be struck.
3. In reply to Part 1, paragraph 28 of the RTCC, the plaintiffs deny the location, placement or existence of the Tiny House was contrary to the terms of the Injunction.

4. In reply to Part 1, paragraph 93 of the RTCC, the RCMP permitted no other journalists to be near the arrest locations on November 19, 2021. Several journalists attempted to report on the arrests but were denied access and were kept some 40 kilometers away from where the arrests took place at Coyote Camp.
5. In reply to part 3, paragraphs 5 - 7 of the RTCC, the exceptions identified in s.21(3)(a) of the *Police Act* deprive the individual officers of their immunity as they committed wilful misconduct. Wilful misconduct “includes not only intentional wrongdoing but also other misconduct committed with reckless indifference in the face of a duty to know”: *Peracomo Inc. v TELUS Communications Co.*, 2014 SCC 29 at para 61. The officers were recklessly indifferent to Ms. Bracken’s status as a member of the media despite her assertion as such to the arresting officers, the visibility of her media notification tag and her Canadian Association of Journalists membership card, The Narwhal’s identification of her to the RCMP as a photojournalist on assignment for The Narwhal, her letter of assignment from The Narwhal kept on her person, and her public presence and identity as a journalist in the media, on the internet and on social media. In all the circumstances, the officers had a duty to know and committed wilful misconduct in failing to assess, and reassess as needed, Ms. Bracken’s presence in the Tiny House in light of all of the evidence that she was in fact a member of the media acting as such.
6. In reply to part 3, paragraph 31 of the RTCC, the arrest of Ms. Bracken was stated by police, on multiple occasions, to be for breaching the Injunction and a contempt citation was later initiated against her. At no time was she arrested for obstruction of justice. The pleading in the RTCC alleging obstruction of justice is an after-the-fact attempt to justify the arrest and is no defence to the claim for wrongful arrest and breach of *Charter* rights. When the police have wrongfully arrested someone, their actions cannot be defended on the basis that they could have detained the person on some other basis; *R v. Whitaker*, 2008 BCCA 174 at para 65.
7. In reply to part 3, paragraph 36 of the RTCC, apart from the factual context of Ms. Bracken’s actual release date, the secondary arrest is irrelevant as no claim is advanced for the additional day of incarceration following the purported assault. The paragraph should be struck. In any event, the allegation of a purported assault had no merit whatsoever and was not pursued.

October 10, 2023
Date


Counsel for the Plaintiffs

THIS REPLY is filed and delivered by Sean Hern, K.C. and Alison Latimer, K.C., c/o 1111 Melville St #1200, Vancouver, BC V6E 3V6; sean@seanhernlaw.com and alison@alatimer.ca.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.