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Suit No.

A.D. 19

In the Court of Queen's Bench of Alberta

Judicial District of Wetaskawin

NOTICE

To The Defendant

J Wilton Littlechild M.P.

BETWEEN: Erin Wall, Pieter Broere,
Irene Lovell, Joe Kurta, James Mann,
Keith Beebe, Lyle Link, and Dale
Dale Hatala.

Plaintiff

and

J Wilton Littlechild M.P.

Defendant

Statement of Claim

This Statement of Claim is issued by

~~XXXXXX~~ the Plaintiff

whose address for service is

Box 679 Rimbey Alberta T0C 2J0

The Plaintiff reside at

Box 679 Rimbey, Alberta

The Defendant (so far as known to the

Plaintiff) reside at Hobbema, Alberta.

Solicitor's File No.

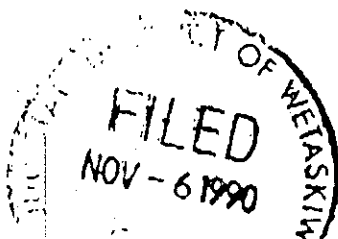
You are hereby notified that the Plaintiff may
obtain judgment in accordance with this Statement
of Claim or such judgment as, according to the
order of the Court, he is entitled to, without
any further notice to you unless within

Fifteen (15) days

For service hereof upon you, you cause to be
delivered in the office of the Clerk of this Court from
the date the Statement of Claim has issued either:

- (1) A Statement of Defence; or
- (2) A Demand that notice of any application
made in the action be given to you;

Unless within the same time a copy of your
Statement of Defence or Demand of Notice is
delivered upon the Plaintiff or his Solicitor at his
address for service.



In the Court of Queens Bench of Alberta Judicial District
of Wetaskiwin

Between: Erin Wall, Pieter Broere, Irene Lovell, Joe Kurta,
James Mann, Keith Beebe, Lyle Link, and Dale Hatala
as and for the constituency of Wetaskawin and the
Citizens of Canada.

Plaintiffs

and

J Wilton Littlechild M.P.

Defendant

Statement of Claim


1. The Plaintiffs are all residents of the area of Rimbey in the Province of Alberta, and the Defendant is a resident of Hobbema in the Province of Alberta.
2. The Defendant is an elected Member of the Parliament of Canada, elected by the Plaintiffs and others to represent them and their views in the said Parliament.
3. The Plaintiffs state, and the fact is, that the Defendant failed in his duty to consult with and account to them and to his constituency members, to ascertain and adequately represent their majority views in voting in favor of the Governments Goods and Services Tax Legislation.
4. The Plaintiffs propose that trial of this action be held at the Court House in the city of Wetaskawin, in the Province of Alberta, wherefore the Plaintiffs claim:
 - a) an Order of this Honourable Court recalling the Defendant to account to the Plaintiffs and his constituents for his actions in Parliament.
 - b) such other relief as this Court shall deem just.

This Statement of Claim is Dated this sixth day of November, 1990. and delivered by the Plaintiffs, whose address for service is P.O. Box 679, Rimbey, Alberta.

Issued out of the office of the Clerk of the Honourable Court in the Judicial District of Wetaskawin this sixth day of November, 1990.



Clerk of the Court *st*



SEAL

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF WETASKIWIN

BETWEEN:

ERIN WALL, PIETER BROER, IRENE LOVELL, JOE KURTA
JAMES MANN, KEITH BEEBE, LYLE LINK, and DALE HATALA
as and for the constituency of Wetaskiwin and the
Citizens of Canada

PLAINTIFFS

- and -

J. WILTON LITTLECHILD, M.P.

DEFENDANT

R E A S O N S F O R J U D G M E N T

Wetaskiwin, Alberta
10th December, A.D. 1990

1 Proceedings taken in The Court of Queen's Bench, Law Courts,
2 Wetaskiwin, Alberta.

3 -----

4 10th December, 1990

5 The Honourable Justice of The Court of
6 Mr. Justice, Queen's Bench of Alberta
E.A. Marshall

7 E. Molstad, Esq. For the Defendant

8 E. Wall For the Plaintiffs

9 Official Court Recorder

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11 THE COURT: Thank you. Well as you suggested and
12 conceded Ms. Wall, it appears clear to me that the
13 Statement of Claim must be struck out -- that legal
14 proceedings are not the correct forum to seek the relief
15 which has been sought. Counsel for Mr. Littlechild have
16 outlined the law. The Statement of Claim alleges a
17 failure on the part of Mr. Littlechild to consult with the
18 constituency members and a failure on his part to account
19 to them, further failing to ascertain their views in
20 voting for the government's goods and services tax and
21 failing to adequately represent their views in his voting
22 for the government's goods and services tax. It appears
23 that the action is a claim of a breach of duty on the part
24 of the M.P. of the Plaintiffs. It seems clear on the
25 authorities and I note in Roman Corporation which has been
26 cited, that if I have any doubt on this application, as to
27 whether the Plaintiffs have a cause of action, I must give

1 the benefit of that doubt to the Plaintiffs and refuse the
2 application and leave the matter to be decided at a trial.
3 However I am satisfied the Plaintiffs have no cause of
4 action against the Defendant. I know of no legal duty on
5 an elected representative at any level of government to
6 consult with his constituents or determine their views.
7 While such an obligation may generally be considered
8 desirable, there is no legal requirement. I adopt the
9 quotation from the trial in the Roman Corporation case,
10 where he said

11 "It is of the essence of our parliament system of
12 government that our elected representatives should
13 be able to perform their duties courageously and
14 resolutely in what they consider to be the best
interests of Canada, free from any worry of being
called to account anywhere except in parliament."

15 So it appears to me that the only remedy existing for the
16 Plaintiffs is the remedy provided by our Constitution in
17 the right to vote in a future election. I note also that
18 the prayer for relief gives some difficulty. They request
19 an Order of the Court recalling the Defendant to account
20 to the Plaintiffs in his constituency for his actions in
21 parliament. I would be inclined to strike the Statement
22 of Claim on that paragraph as well. But I note they do
23 make a prayer for such other relief as the Court shall
24 deem just which probably is general enough that the action
25 could not be struck out on that account alone. So I am
26 satisfied that no court can compel the Defendant to
27 account to his constituents and just to show you what

1 really occurs in this application, Ms. Wall, what I am
2 really assuming for the moment is that everything you have
3 said in the Statement of Claim is correct. Even if that
4 is all true the Court can't give you assistance because in
5 the drafting and the exercise in the use of our
6 constitution through the decades, it has been the wisdom
7 of our Fathers of Confederation and others that M.P.'s
8 must be given a right to carry out their duties without
9 any worry about being called to account during their term
10 of office. That is the way our constitution was drafted
11 and I must take judicial notice of the Act -- which
12 relates to Members of Parliament, the Parliament of Canada
13 Act, that the members of the House of Commons enjoy all
14 the privileges and immunities of Members of Parliament,
15 Parliament of the United Kingdom. So under the
16 circumstances I am dismissing -- or I am allowing the
17 application to strike out the Statement of Claim and it
18 will be struck out accordingly. You want to address costs
19 further Mr. Molstad?

20 MR. MOLSTAD: Yes My Lord, I have a decision before
21 you Sir, which I have also provided to Ms. Wall. It's a
22 decision of the Attorney General of Manitoba et al versus
23 Campbell, a decision of the Manitoba Court of Appeal,
24 reported 1985, for Western Weekly Reports, at page 334.
25 Mr. Justice O'Sullivan in dealing with Solicitor Client
26 costs, at page 345, states the following about half way
27 down the page:

1 "This Court has considered the question of
2 solicitor and client costs on a number of
3 occasions. Most recently Bjornan (PHONETIC) and
4 McCready. They are to be awarded rarely. Usually
5 there is some misconduct in connection with the
6 loss or there is an unproved allegation of fraud.
7 It appears from some of the cases that a court is
8 not restricted in awarding solicitor and client
9 costs to matters arising out of the conduct of a
10 suit. On the other hand solicitor and client
11 costs are not to be used as a substitute for
12 damages. In the case before us the case for
13 damages was in effect discontinued. The learned
14 Trial Judge seems to have based his award on the
15 finding that the defendant was motivated by malice
16 and lack of good faith. Counsel for the
17 defendant, disputes the finding of malice pointing
18 out that it is not right to say the defendant had
19 no purpose in building his tower. I agree with
20 counsel on this point. I have difficulty in
21 seeing malice in a situation where a defendant
22 legally advised, erects a structure with the
23 purpose of diminishing, if possible, a source of
24 annoyance to him. In any event the learned Trial
25 Judge seems to have overlooked entirely the very
26 substantial body of law which indicates that
27 malice is irrelevant in nuisance claims. It is
not necessary for us to decide the extent to which
malice may be taken into account. On the issue of
costs we have to ... "

or, pardon me ...

"... on the issue of costs all we have to consider
is whether the defendant acted reasonably."

It is our submission My Lord, that the Court should look
at whether the plaintiffs acted reasonably in issuing this
Statement of Claim. They have commenced an action in
their own names, all eight of them, and on behalf of the
constituents of Wetaskiwin and the citizens of Canada. We
suggest that that is not reasonable. They have named an
elected M.P. and no cause of action has been set out in
the Statement of Claim. We submit Sir that that is not

1 reasonable. We submit Sir that the fact that the hearing
2 today was heard broadcast on a radio while travelling out
3 by myself and knowing Sir, that we did not advise anyone
4 of the hearing, suggests that the conduct of the
5 Plaintiffs in relation to this matter, as a motivation
6 which is certainly not reasonable. Taking all those
7 factors into consideration, we ask this Court to consider
8 awarding to Mr. Littlechild, costs on a solicitor and
9 client basis. In the alternative Sir, we would ask that
10 you consider fixing costs in a certain amount and in a
11 third alternative, we would ask for at least costs on a
12 party and party basis.

13 THE COURT: What about the allegation of Ms. Wall
14 that she offered to withdraw the claim before this
15 hearing?

16 MR. MOLSTAD: Well Sir, the allegation that Ms. Wall
17 has made, dealt with -- without prejudice discussions,
18 that if you so wish I can deal with it this time. I leave
19 that to your ...

20 THE COURT: Well I suppose it foundered on the
21 question of costs, that is what she said too really.

22 MR. MOLSTAD: Well ...

23 THE COURT: As a settlement in the discussions.

24 MR. MOLSTAD: ... the proposition that the party
25 discontinue without paying any costs Sir, is not a
26 proposition that we would accede to today.

27 THE COURT: I agree. I can see that it wasn't an

1 unequivocal offer to discontinue.

2 MR. MOLSTAD: That's correct Sir.

3 THE COURT: May I see your Rules of Court please?

4 I would be happy to hear from you further on the matter of
5 costs Ms. Wall.

6 MS. WALL: Well Your Honour, I'm not a lawyer, as
7 you know. I don't really see that we've been
8 unreasonable. We are constituents of Wetaskiwin and
9 citizens of Canada. Having taken our own surveys in our
10 own area, we felt that this was -- I don't know --
11 accurate representation of what we are. And as I said we
12 have offered to drop our claim after being told that there
13 was no cause of action, but still being held for \$700. is
14 the number that came to me. And at that point nothing had
15 happened other than filing a statement -- or Notice of
16 Motion, which I believe costs \$75. and it could have been
17 done long ago. So that's the only reason that we're here
18 today is that big number. I don't know what else to say
19 about it.

20 MR. MOLSTAD: If I may just respond briefly to what
21 Ms. Wall has stated.

22 THE COURT: Yes.

23 MR. MOLSTAD: We requested of one of the Plaintiffs,
24 an extension of time with respect to filing a defence in
25 relation to this matter. Because without the Plaintiffs
26 being represented Sir, it would be open to them to note in
27 default upon the expiration of 15 days notwithstanding

1 that we made by way of Notice of Motion to make
2 application to this Court. There was an indication that
3 there would be no extension granted in relation to the
4 filing of the Statement of Defence. In terms of work that
5 was done, we can advise the Court Sir, that upon receipt
6 of this file considerable work was done in order to
7 prepare and file a Notice of Motion that you have before
8 you today.

9 THE COURT: It is my view that solicitor client
10 costs should only be given where there is an allegation of
11 fraud which is unsubstantiated or some compelling
12 circumstances perhaps the impecuniosity of a party.
13 Otherwise it would appear to be a proper penalty only
14 where there is an extreme recklessness on the part of the
15 party. I believe from what I have heard that the
16 Plaintiffs did not consult legal counsel before issuing
17 the claim. But I am not sure they are obliged to do that.
18 It appears to me a case where they felt there was a moral
19 basis for the claim and they sought legal relief without
20 considering legal advise. For this mistake on their part
21 I am not satisfied they should be penalized by solicitor
22 client costs. I am going to award what I believe are
23 party and party costs. I am following what I perceive to
24 be item 15 of the Schedule of Costs. Although it does
25 refer to a chambers application where notice is required
26 but the application is opposed in the present situation I
27 am going to give that relief on column two which amounts

1 to \$200. What about disbursements? Perhaps we should
2 deal with those now. I don't believe you are entitled to
3 disbursements in travelling from Edmonton Mr. ...

4 MR. MOLSTAD: I'm not concerned about recovering
5 those disbursements. We would just ask Sir, for all
6 reasonable disbursements in addition to the taxable fee.

7 THE COURT: Well you just may have to have your
8 disbursements reviewed though if I don't deal with them
9 now. Do you want to just leave ...

10 MR. MOLSTAD: Well that's fine Sir.

11 THE COURT: Two hundred dollars plus reasonable
12 disbursements will be payable by the Plaintiffs.

13 MR. MOLSTAD: Sir with respect to the signing of the
14 Order, I do not have an Order prepared and I am concerned
15 that the Plaintiffs ...

16 THE COURT: Yes I will dispense with Rule 323,
17 which means that you won't have a look at the Order before
18 it is signed but it will be reviewed by the Clerk and the
19 Clerk may sign that Order. I am not going to require them
20 to show you the Order before it is entered. I am
21 confident the Clerk will review that to see that it
22 complies with the Order I have given.

23 MR. MOLSTAD: Thank you Sir.

24 THE COURT: Thank you.

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26 PROCEEDINGS CONCLUDED

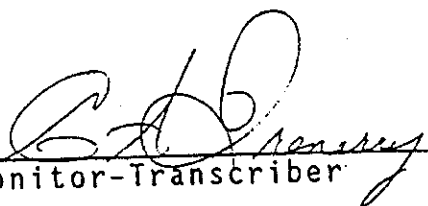
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1 Certificate of Transcript

2 I, Colleen Trenerry, hereby certify that the foregoing pages,
3 are a true and faithful transcript of the contents of the
4 record in this action on Tape QB 1, at Wetaskiwin, Alberta.

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/ct
11th January, 1991



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