

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tan v. Community Living British Columbia*,
2026 BCSC 1006

Date: 20260602
Docket: S260169
Registry: New Westminster

Between:

Li Wen Tan

Plaintiff

And

Community Living British Columbia

Defendant

Before: The Honourable Justice Loo

Reasons for Judgment

The Plaintiff, appearing in person:

L.W. Tan

Counsel for the Defendant:

E.J.A. Stanger

Place and Dates of Hearing:

New Westminster, B.C.
May 6, 7, 2026

Place and Date of Judgment:

New Westminster, B.C.
June 2, 2026

Table of Contents

INTRODUCTION	3
CHRONOLOGY AND LEGISLATIVE REGIME.....	3
ISSUES.....	7
LEGAL PRINCIPLES	8
ANALYSIS AND DISCUSSION.....	8
Is there a reasonable claim or a genuine issue to be tried?	9
The limitation issues.....	12
Legal pleas and prayers for relief	13
CONCLUSION AND COSTS.....	15

Introduction

[1] The defendant, Community Living British Columbia (“CLBC”) seeks to have a further amended notice of civil claim filed by the plaintiff, Li Wen Tan, struck out pursuant to R. 9-5(1) or dismissed pursuant to R. 9-6(5) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [Rules].

[2] At this hearing, CLBC also sought a vexatious litigant order against the plaintiff under s. 18 of the *Supreme Court Act*, R.S.B.C. 1996 c. 443 and pursuant to the inherent jurisdiction of this Court. There was insufficient time to hear that application and so it was adjourned generally, and I am not seized of it. I direct the parties to consult with Justice Lamb who is case managing this action and other actions involving the plaintiff, so that she can determine when and by whom that application will be heard.

Chronology and legislative regime

[3] CLBC is a governmental service provider established under the *Community Living Authority Act*, S.B.C. 2004, c. 60 [Act]. CLBC is required by the Act to provide for the delivery in British Columbia of “community living support”, which is defined to include “support and services to children and adults with developmental disabilities”: ss. 1 and 11(a).

[4] The question at the core of this case is whether the plaintiff was, at various times, an adult with a developmental disability under the Act and the *Community Living Authority Regulation*, B.C. Reg. 231/2005 [Regulation].

[5] Section 1 of the Act defines:

“**developmental disability**” means significantly impaired intellectual functioning that

- (a) manifests before the age of 18 years,
- (b) exists concurrently with impaired adaptive functioning, and
- (c) meets other prescribed criteria.

[6] The plaintiff reached adulthood on June 4, 2008. Prior to this time, he was receiving support services through the Ministry of Children and Family Development.

[7] In May 2007, in anticipation of his attaining adulthood, a representative of the plaintiff applied for CLBC services on his behalf.

[8] The plaintiff's application was denied on the basis that he did not have a developmental disability. At this time, CLBC's policy was that a developmental disability required a determination that the applicant's IQ was 70 or below (the "70 IQ requirement"), although this requirement was found only in CLBC's Provisional Policy Manual and not in the legislation.

[9] In March 2008, the plaintiff's representative initiated a dispute resolution procedure with CLBC. On April 24, 2008, CLBC confirmed that the plaintiff did not meet the eligibility criteria.

[10] Later in 2008, the plaintiff initiated judicial review proceedings regarding CLBC's decision to deny services to him in 2007 (the "2007 denial"). The judicial review proceeding was settled by a consent order (the "Consent Order") which required services to be provided to the plaintiff until July 28, 2009.

[11] In 2008, the *Regulation* was amended to expressly incorporate the 70 IQ requirement. Section 2.1 of the *Regulation* was added as follows:

Developmental disability

2.1 For the purposes of the definition of "developmental disability" in section 1 of the Act, intellectual functioning that, when tested according to one or more standardized intelligence tests by a qualifying practitioner, attains a score of 70 or less is a prescribed criterion.

[12] The plaintiff applied again to CLBC for funding and services, and Dr. Joseph Klancnik of West Coast Psychological Services prepared a report dated May 11, 2009. He concluded that the plaintiff's Full Scale IQ score was 91. Accordingly, the plaintiff's further claim was denied (the "2009 denial").

[13] In October 2009, further amendments were made to the *Regulation* which created a “new stream of eligibility” for patients, referred to as the “Personalized Supports Initiative” stream (the “PSI stream”). Section 2.2 of the *Regulation* was added as follows:

Community living support

2.2 For the purposes of paragraph (d) of the definition of “**community living support**” in section 1 of the Act, the following persons are prescribed:

- (a) persons with fetal alcohol spectrum disorder as described in section 2.3;
- (b) persons with pervasive developmental disorder as described in section 2.4;
- (c) persons with autism spectrum disorder as described in section 2.41.

[14] The plaintiff has been diagnosed with pervasive development disorder. Section 2.4 of the *Regulation* stated that:

Persons with pervasive developmental disorder

2.4 A person with pervasive developmental disorder is a person who

- (a) has been diagnosed with pervasive developmental disorder
 - (i) in accordance with DSM-IV-TR, and
 - (ii) by a psychologist, pediatrician or psychiatrist,
- (b) has significant limitations in adaptive functioning, and
- (c) does not have a developmental disability.

[15] The primary issue with respect to the plaintiff under the PSI stream was whether he had “significant limitations in adaptive functioning” within the meaning of s. 2.4(b). In this regard, s. 2.5 stated:

Significant limitations in adaptive functioning

2.5 For the purposes of sections 2.3(b), 2.4(b) and 2.41(b), a person has significant limitations in adaptive functioning if the person has a combined score for all adaptive skill areas that is at least three standard deviations below the mean when tested with one of the following adaptive functioning measuring tools by a psychologist or school psychologist ...

[16] Thereafter, the *Regulation* listed several psychological tests.

[17] Dr. Klancnik reviewed information provided by the plaintiff as well as assessments of the plaintiff available from 2007 and 2008. He concluded that the plaintiff did not meet the criteria under the PSI stream, and in particular that his combined score for all adaptive skill areas fell only 2.5 standard deviations below the mean. The plaintiff was advised of this result on February 9, 2010 (the “2010 denial”).

[18] The eligibility criteria for developmental disability changed again in 2018. Section 2.1(b) was added to the *Regulation* as follows:

Developmental disability

2.1 For the purposes of the definition of "developmental disability" in section 1 of the Act, the prescribed criteria are

...

(b) intellectual functioning that, when tested by a psychologist according to one or more standardized intelligence tests, results in a score of more than 70, if the psychologist determines in accordance with DSM-5 that adaptive behaviour problems in social judgment, social understanding and other areas of adaptive functioning are so severe that actual intellectual functioning is comparable to that of persons who attain a score of 70 or less.

[19] As is evident, this amendment (the “2018 amendment”) provided for a less objectively measurable way in which an applicant could be found to have a developmental disability. Currently, developmental disability can be determined in three ways: by the 2018 amendment, the 70 IQ criterion in s. 2.1 of the *Act*, and the PSI stream (collectively, the “Current Criteria”).

[20] CLBC asserts that it received no contact from the plaintiff from 2010 onwards, but this assertion is disputed. The plaintiff has sworn affidavits and has filed affidavits from his mother and a friend that he was calling CLBC and asking for assistance during this time period.

[21] It is common ground between the parties that the plaintiff was reassessed by CLBC in early 2024 and was determined to be eligible for services starting later that year.

[22] The plaintiff commenced this action by filing a Notice of Civil Claim on November 10, 2025.

[23] On November 12, 2025, the plaintiff filed an amended Notice of Civil Claim.

[24] On February 6, 2026, the plaintiff sought leave to file a further amended Notice of Civil Claim (“FANOCC”). Leave was granted by Justice Lamb on February 12, 2026. A pleading purporting to be the FANOCC (the “February 23 pleading”) was filed by the plaintiff on February 23, 2026.

[25] On April 9, 2026, Justice Lamb issued reasons for judgment in which she held that the February 23 pleading did not comply with her order made February 12. She struck the February 23 pleading in its entirety, but granted leave to the plaintiff to file a FANOCC that complied with her February 12 order.

[26] On April 14, 2026, the plaintiff filed a third amended notice of civil claim (the “TANOCC”). Counsel for CLBC advised that although there remained some issues with this pleading in light of Justice Lamb’s February 12 order, he was prepared to argue CLBC’s motions to strike and to dismiss the plaintiff’s claims on the basis of the TANOCC, and so we proceeded on that basis.

Issues

[27] The issue to be determined on this application is whether the TANOCC ought to be struck or dismissed under R. 9-5(1) or R. 9-6(5), in whole or in part.

[28] CLBC also submitted that certain parts of the TANOCC ought to be struck because they are, in various ways, deficient under the principles governing pleadings. However, I advised CLBC that I was reluctant to make these orders because Justice Lamb, who has been case management judge since November 2025, allowed the plaintiff to proceed with the February 23 pleading, subject to certain specific revisions and deletions required by her, and subject to this application by the defendants to strike or dismiss under R. 9-5 or R. 9-6. I infer that

any disputes regarding the plaintiff's compliance with the rules of pleadings have already been determined or will be dealt with at a future date.

Legal principles

[29] A pleading may be struck under R. 9-5(1), which provides:

Scandalous, frivolous or vexatious matters

(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,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[30] Further, an action may be dismissed under R. 9-6(5), which provides:

Power of court

(5) On hearing an application under subrule (2) or (4), the court,

- (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly ...

[31] The questions to be asked on this application are whether the plaintiff's claims ought to be struck or dismissed in whole or in part because the TANOCC discloses no reasonable claim or is otherwise an abuse of process of the court, or because the claim fails to raise a genuine issue for trial.

Analysis and discussion

[32] Although I am advised that the plaintiff's pleadings were previously prolix and difficult to understand, it is my view that the TANOCC, while far from perfect, adequately communicates the substance of the plaintiff's claim.

[33] The plaintiff's core claim, as I understand it, is that CLBC was negligent in failing to reassess him "before, during and after the consent order". The plaintiff pleads, and deposes, that from approximately 2007 through 2024, the plaintiff made repeated requests to CLBC for reassessment and assistance, which did not result in reassessment or services.

[34] There are no pleas in the TANOCC that the 2007 denial, the 2009 denial or the 2010 denial ought to be set aside. Indeed, at p. 11 of the TANOCC, the plaintiff pleads that he "does not seek an order quashing, suspending or substituting any administrative decision". The plaintiff advised the Court that any references to those denials are included in the pleading by way of "context".

[35] Broadly speaking, CLBC advances three arguments:

- a) there is no reasonable claim and no genuine issue to be tried;
- b) the plaintiff's claims ought to be dismissed on the basis that it is "plain and obvious that they are time barred"; and
- c) certain legal pleas and prayers for the relief sought by the plaintiff in his pleading are bound to fail or otherwise improper.

[36] I will address each of these arguments in turn.

Is there a reasonable claim or a genuine issue to be tried?

[37] CLBC submits that the statutory criteria applied to the assessment of Mr. Tan's eligibility were objectively measurable, and that the plaintiff's claims are "based on a misunderstanding of the legislative criterion that existed at the time".

[38] I understand one of its submissions to be that since the assessments were the result of objective tests, any attack on the assessments is bound to fail. However, as discussed above, the plaintiff is not attacking the assessments themselves.

[39] Further, CLBC asserts that “the plaintiff had not asked to be reassessed at any time between 2010 and 2018”. CLBC submits that it does not have any record of such communications. However, the plaintiff pleads, and deposes, that from approximately 2007 through 2024, the plaintiff made repeated requests to CLBC for reassessment and assistance. Whether those requests were made is clearly a triable issue that cannot be determined on this application.

[40] Finally, I understand CLBC to submit that since the assessments were the result of objective tests, any reassessments would not or could not have changed the result. This argument requires more detailed analysis.

[41] In my view, the plaintiff’s claim that CLBC failed to reassess him, and that reassessment would have made a difference must be evaluated in relation to four separate time periods: prior to the Consent Order; between the Consent Order and the 2010 denial; between the 2010 denial and 2018; and from 2018 to present.

[42] For the reasons to follow, it is my view that there is no genuine issue to be tried in respect of the first two of these time periods.

[43] First, in my view, there cannot be any claims for any events up to the Consent Order, because any disputes regarding those events were settled by the Consent Order. This Court may strike or dismiss claims which have been advanced contrary to a previous settlement agreement or release under two rules: either under R. 9-6 as not raising a genuine issue for trial or under R. 9-5(1)(d) as an abuse of process: *Wang v. Grace Canada Inc.*, 2018 BCCA 255 at para. 24; *Keida v. Canco Cranes and Equipment Ltd.*, 2021 BCSC 2112 at para. 41.

[44] Second, concerning the short time period between the Consent Order and the 2010 denial, I am satisfied that there is no genuine issue to be tried. Services were provided to the plaintiff under the Consent Order until July 28, 2009. As discussed, the plaintiff’s claim is that when the PSI stream criteria came into effect in October 2009, CLBC failed to reassess him. However, the undisputed fact is that he was

reassessed, and that he was advised of the result of this reassessment by way of the 2010 denial on February 9, 2010.

[45] For these reasons, the plaintiff's claims in respect of the period up to the 2010 denial are struck.

[46] The next period—between 2010 and 2018—was the focus of most of the submissions during the hearing. I am unable to find that there is no reasonable claim or no genuine issue to be tried in respect of this period.

[47] As stated, the only assessment of the plaintiff under the PSI stream was conducted in 2010 by Dr. Klancnik. He appears to have performed his assessment by reviewing earlier assessments made in 2007 and 2008. On the basis of his assessment, he concluded that the plaintiff did not fall three standard deviations below the mean as required by s. 2.5 of the *Regulation*.

[48] The plaintiff argues that after 2010, his own behavior demonstrated that he had significant limitations in adaptive functioning within the meaning of s. 2.4 of the *Regulation*, and that he ought to have been reassessed. He points to numerous challenges that he faced, including incidents involving violence between him and his parents, incarceration by police, and disputes with landlords and others.

[49] The plaintiff submits that if he had been reassessed, he may have met the criteria which required a combined score for all adaptive skill areas at least three standard deviations below the mean. As stated above, there is a live factual issue as to whether the plaintiff made repeated requests to CLBC for reassessment and assistance during that period.

[50] In my view, it is possible that the plaintiff has a claim for some of the period following the 2010 denial on the basis that the plaintiff did sought reassessments and was ignored or unlawfully refused and his level of adaptive functioning had declined since 2008. It cannot be said that there is no genuine issue to be tried with respect to his claim that he ought to have been reassessed between 2010 and 2018.

[51] The defendant did not press its argument in respect of the events following the 2018 amendment. As noted above, the 2018 amendment required a determination by a psychologist, not based solely on an objective test. In my view, the plaintiff's claim that he sought reassessment after 2018, and that he would have received services or funding if reassessed is not a claim that is bound to fail. Indeed, the fact that he was approved to receive services in 2024 under the Current Criteria is some evidence that he may have been approved if he had been reassessed at any time after the 2018 amendment.

The limitation issues

[52] The defendant submits that the TANOCC should be struck because it is plain and obvious that some or all of the claims are time-barred by the *Limitation Act*, S.B.C. 2012, c. 13.

[53] In response, the plaintiff raises issues of discoverability and relies on the provisions in the *Limitation Act* which apply to persons under a disability. Under s. 6(1) of the *Limitation Act*, "a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered." Under s. 19, a claim of a person under a disability is discovered on the later of the day on which the person ceases to be a person under a disability or when the claim is discovered under other sections of the *Limitation Act*. Section 1 defines a "person under a disability" as an adult who is "incapable of or substantially impeded in managing the adult's affairs".

[54] In light of the foregoing, the discoverability question requires the court to determine whether the plaintiff was a person under a disability until the date two years before this action was commenced.

[55] CLBC has, with some justification, pointed out difficulties with the plaintiff's evidence: in particular, it is not clear why he appears to have been capable of advancing this claim and other claims in this Court since 2024 but was not able to do so earlier. Assuming he does not regard himself as a person under a disability now, it is unclear when the plaintiff alleges that his incapacity ended.

[56] That said, Dr. Todd Mason, a clinical psychologist, has written a letter dated November 17, 2025, opining that the plaintiff's longstanding neurodevelopmental and psychiatric conducts "rendered him incapable or substantially impeded in managing his personal legal affairs". Dr. Mason further opines that "Mr. Tan's functional limitations persisted for many years and would have materially prevented him from recognizing or pursuing legal remedies on his own initiative."

[57] In *Rooney v. Galloway v. A.B.*, at para. 164, the Court of Appeal held that assessing a limitation defence, including when a limitation period begins to run, is "inherently a factual exercise" that generally requires "a full evidentiary foundation". The Court also held that determining discoverability "is not a relatively straightforward factual issue" given that discoverability cases "tend to be contentious and complex". For these reasons, the Court stated that limitations defences will rarely be decided on an application to strike brought under R. 9-5(1) nor on a summary judgment application brought under R. 9-6(5).

[58] In light of this evidence and authority, I am unable to conclude that Mr. Tan's pleadings disclose no reasonable claim in law or constitute an abuse of process under R. 9-5, or that they disclose no genuine issue to be tried under R. 9-6.

[59] I note that in addition to making arguments regarding discoverability, the plaintiff argues that his claims are not statute-barred because there was a continuing breach of duty by CLBC. I regard the continuing breach argument as having less merit than the discoverability argument, but since I have found that there is a genuine issue to be tried with respect to the discoverability issue, it is not necessary to address the continuing breach argument further.

Legal pleas and prayers for relief

[60] In Part 3 (Legal Basis) of the TANOCC, the plaintiff purports to rely on the doctrines of "administrative unlawfulness", "fiduciary or fiduciary-like obligations", and "equality and disability accommodation". For the following reasons, I have concluded that these pleas must be struck under R. 9(5)(1) or dismissed under R. 9(6).

[61] It appears that the plaintiff's plea of "administrative unlawfulness" is intended to be a plea that CLBC's conduct was unreasonable or procedurally unfair. Similarly, in the text under his plea of breach of duty, the plaintiff pleads that the CLBC failed "to provide intelligible reasons for prolonged denial of services". Further, in his prayers for relief, the plaintiff seeks "a declaration that CLBC failed to provide adequate reasons and procedural fairness in relation to the denial and non-reassessment of the plaintiff's eligibility for services".

[62] There is no action in law for damages for breach of the duty of fairness or for a breach of the rules of natural justice. Remedies for such breaches are found only in judicial reviews under administrative law and not in civil liability: *Roeder v. Lang Michener Lawrence & Shaw*, 2007 BCCA 152 at para. 19.

[63] The text in the TANOCC under the heading "fiduciary or fiduciary-like obligations" states that "by repeatedly denying reassessment, CLBC acted in negligence or in bad faith, breaching the duty of care it owed to a vulnerable person in its charge". The plaintiff also pleads that he was vulnerable and that the exercise of CLBC's statutory powers directly impacted his needs.

[64] However, the law is clear that vulnerability alone is insufficient to support a fiduciary claim. The party asserting the duty must be able to point to an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary: *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at paras. 28–36. Further, "[i]f the undertaking is alleged to flow from a statute, the language in the legislation must clearly support it": para. 45. "[T]he requirement of an undertaking to act in the alleged beneficiary's interest will typically be lacking where what is at issue is the exercise of a government power or discretion: para. 42.

[65] The plaintiff has not pled any aspect of the *Act* or *Regulation* that creates a fiduciary type of duty owed by CLBC to applicants for services. It is clear, in my view, that the plaintiff's claim is properly characterized as a claim in negligence or breach of duty. There is no triable issue in respect of the claim of breach of fiduciary duty and so that plea must be dismissed.

[66] The intention and meaning behind the plea of “equality and disability accommodation” are unclear. To the extent that the plaintiff is pleading that he was owed and was denied disability accommodation by the Court or the CLBC, these are matters to be dealt with under the *Human Rights Code*, R.S.B.C. 1996, c. 210 and not in a civil action such as this one.

[67] For the foregoing reasons, the pleas of “administrative unlawfulness” and “equality and disability accommodation” are struck under R. 9-5(1). The plea of “fiduciary or fiduciary-like obligations” is dismissed under R. 9-6(5).

[68] I note that there are arguments raised in CLBC’s submissions regarding the declaratory relief sought and the prayers for relief that I have not specifically addressed in these reasons. In my view, these arguments involve the application of the rules regarding pleadings and particulars, and they do not raise matters that must be dealt with under R. 9-5 or R. 9-6.

Conclusion and costs

[69] For the reasons set out above:

- a) The plaintiff’s claims that CLBC failed to reassess him in the period up to the 2010 denial are dismissed pursuant to R. 9-6. As a result:
 - i. In Part I of the TANOCC, the year “2007” in the following paragraphs shall be replaced with the year “2010”: 5A, 17E, 17O, 17P, and 17U.
 - ii. In Part II of the TANOCC, the last ten words of para. 3 shall be struck and shall be replaced by “after February 9, 2010”.
- b) The plaintiff’s pleas of “administrative unlawfulness” and “equality and disability accommodation” are struck under R. 9-5(1), and his plea of “fiduciary or fiduciary-like obligations” is dismissed under R. 9-6. In particular, para. 5 of Part II and parts B, C, D and F of Part III of the TANOCC must be deleted.

- c) Except as set out above, CLBC's application to strike or dismiss the plaintiff's claims in the TANOCC is dismissed.

"Loo J."