

**THE KING'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BETWEEN:

"IGLESIA NI CRISTO" CHURCH OF CHRIST, IGLESIA NI CRISTO (CHURCH OF CHRIST) IN ALBERTA, IGLESIA NI CRISTO CHURCH OF CHRIST INC., "IGLESIA NI CRISTO" CHURCH OF CHRIST, MANITOBA INC., IGLESIA NI CRISTO, AND EGLISE DU CHRIST (MONTREAL) / IGLESIA NI CRISTO (MONTREAL), all carrying on religious activities as IGLESIA NI CRISTO,

plaintiffs,

- and -

CANADIAN BROADCASTING CORPORATION, TIMOTHY SAWA, LYNETTE FORTUNE, ROBERT MCKEOWN, LOWELL II ROBOSA MENORCA, ROLANDO DIZON, and LIEZL DE OCAMPO,

defendants.

ENDORSEMENT SHEET

JUSTICE: CHAMPAGNE J.

SITTING DATE: October 16, 2024

COUNSEL:

Dave G. Hill
(Hill Sokalski LLP)
Jay Prober
(Prober Law Offices)
Cory A.M. Tokar
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for the plaintiffs

Jonathan B. Kroft, K.C., Carter Liebrezeit
and Devan Vercaigne (articling student)
(MLT Aikins LLP)
for the defendants, Canadian Broadcasting Corporation,
Timothy Sawa, Lynette Fortune and Robert McKeown

Ryan R. Ewasiuk
(Brownlee LLP – Edmonton, Alberta)
for defendant Rolando Dizon

Lowell II Robosa Menorca (Did not appear)
defendant, acting on their own behalf

Liezl De Ocampo (Did not appear)
defendant, acting on their own behalf

INTRODUCTION

[1] This is my decision dismissing the plaintiffs' claim for defamation. I will only provide a brief description of the parties then summarize the history of this litigation to demonstrate the plaintiffs' persistent non-compliance with the court rules and explain why the conduct of the plaintiffs is an abuse of the process of the court.

THE PARTIES

[2] Iglesia Ni Cristo is a Christian religious organization whose primary purpose is to serve, worship and share the gospel of salvation with all people. The head office for this organization is in Quezon City, Philippines. The six plaintiffs, located in six different provinces, including Manitoba, are part of the religious organization's worldwide network and will be referred to as INC in this decision.

[3] Timothy Sawa, Lynette Fortune, and Robert McKeown are employees of the Canadian Broadcasting Corporation (the "CBC"). These four parties make up the CBC defendants.

[4] The remaining defendants are Lowell II Robosa Menorca ("Menorca"), an Evangelical worker previously employed by INC, Rolando Dizon ("Dizon"), a minister previously employed by INC and Liezl De Ocampo ("De Ocampo"), a former member of INC.

[5] In October and November 2018, the CBC released a series of publications related to the activities of INC. The programs and articles referred to INC as the "Church of Secrets". The publications disclosed allegations of financial corruption, kidnapping and murder. Menorca, Dizon and De Ocampo provided information and appeared in the CBC publications.

HISTORY OF THE LITIGATION

[6] On February 11, 2019, the plaintiffs filed a statement of claim for defamation seeking a permanent injunction to prevent CBC from continuing to publish the defamatory statements, general damages, aggravated, punitive or exemplary damages, pre-judgment and post-judgment interest and costs on a solicitor and client basis.

[7] In response to the claim for defamation, the defendants assert the publications are true; the information provided to the public was fair commentary on matters of public interest and the information was responsible communication. The CBC defendants asserts a claim of privilege for its confidential sources and the named individual defendants rely on the *Charter*.

[8] De Ocampo is no longer part of this litigation as she was bankrupt and did not defend the action. She was noted in default and the plaintiffs obtained judgment against her on February 1, 2021.

[9] Prior to this hearing, I had four meetings with counsel to prepare this matter for trial.

May 4, 2023

[10] This matter first appeared before me for a pre-trial conference on May 4, 2023. The plaintiffs wished to set trial dates and would not waive their right to a civil jury trial. For several reasons, I concluded the matter was not ready to be set for trial:

- a) Counsel for Dizon was not available due to a family emergency.
- b) Menorca had entered bankruptcy in July 2022 and the plaintiffs could not confirm if they would move to lift the stay of proceedings. Therefore, it was unknown if Menorca would be part of the trial.
- c) The pleadings were closed but there was little evidence of any meaningful discovery. The plaintiffs had provided only an unsworn affidavit of documents. The CBC defendants noted it would expect many more documents given the nature of the claim and the multiple plaintiffs. The plaintiffs had not disclosed the name of the individual who would be produced for examination.
- d) I determined this was going to be a complicated matter as the plaintiffs were in six different provinces and the head office for INC was in the Philippines. It was unclear who was providing instructions on behalf of the plaintiffs.

[11] At the conclusion of the conference, I provided several directions. First, the plaintiffs were to disclose a sworn affidavit of documents no later than May 12, 2023. Second, the plaintiffs were to disclose the name of the individual(s) they would produce for discovery no later than May 19, 2023. Third, the plaintiffs were to advise the defendants of their decision about proceeding against Menorca no later than June 5, 2023.

[12] I advised I would request to be assigned as case management judge for this matter.

June 8, 2023

[13] This matter appeared before me as case management judge on June 8, 2023. The plaintiffs requested a five-week civil jury trial. The defendants continued to raise concerns about the disclosure of documents and the individual, namely Rvy Medicielo ("Brother Rvy"), whom the plaintiffs proposed to produce for examination for discovery. Counsel indicated Brother Rvy

occupies a senior position for INC in Alberta and would be a knowledgeable person for discovery. The examination would take place in September 2023. The defendants voiced serious concerns about Brother Rvy being an appropriate person to be examined for discovery. To address those concerns, I noted that the examination of Brother Rvy would not limit the right of the defendants to seek other representatives of the plaintiffs for examination.

[14] As the plaintiffs had not yet determined if they would move to lift the stay of proceedings for Menorca, I declined to set trial dates.

October 23, 2023

[15] The second case management conference took place on October 23, 2023. The plaintiffs still had not come to a decision about whether they were going to proceed against Menorca.

[16] The defendants continued to voice serious concerns about the affidavit of documents from the plaintiffs. Brother Rvy was examined over two days in September of 2023. As a result, the CBC defendants filed a supplementary brief on October 20, 2023 detailing serious deficiencies with Brother Rvy's general knowledge of this litigation and his lack of understanding for document production.

[17] The plaintiffs and defendants disagreed on the quality, substance and completeness of discovery provided by the plaintiffs. Due to this, the plaintiffs requested trial dates be set. I again declined the request as the concerns identified by the defendants appeared substantiated in the transcript from Brother Rvy's examination.

[18] I set April 3, 2024 for a full-day motion to address the defendants' concerns about discovery. I directed the plaintiffs to file any further materials 30 days in advance of the hearing.

June 3, 2024

[19] The parties and I met on June 3, 2024 for the third case management conference. Unfortunately, the motions set for April 3, 2024 were scheduled without Mr. Hill's involvement and he was unavailable, so the hearing did not proceed. The defendants confirmed they had not received any answers to undertakings or any new documentary disclosure from the plaintiffs.

[20] The motions were rescheduled to October 16, 2024. It was made clear that the CBC defendants and Dizon were asking to strike or dismiss the plaintiffs' claim. In the alternative, they sought orders to compel answers to undertaking, fulsome documentary disclosure and an order to compel information about appropriate witnesses for examination for discovery. The plaintiffs had still not decided about proceeding against Menorca.

[21] To ensure the motions proceeded as scheduled, I ordered:

- a) Mr. Ewasiuk to file his motion and brief no later than June 30, 2024.
- b) The plaintiffs to provide their affidavit of documents and answers to undertakings no later than July 31, 2024.
- c) The plaintiffs to advise the defendants if they are proceeding against Menorca no later than July 31, 2024.
- d) The defendants to file any additional evidence for the motions no later than August 29, 2024.
- e) The plaintiffs to file any evidence for the motions no later than September 13, 2024.
- f) The defendants to file any further motion brief no later than September 30, 2024.
- g) The plaintiffs to file any further motion brief no later than October 10, 2024.
- h) To ensure there was no confusion about their concerns and remedy being sought, the CBC defendants filed an amended comprehensive notice of motion on September 26, 2024.

THE MOTION

[22] On October 16, 2024 the hearing proceeded as scheduled. The only evidence for the motions came from the affidavit of Karla Ibarra ("Ibarra affidavit"), filed by the CBC defendants on September 16, 2024.

[23] The motions filed by the CBC defendants and Dizon provided numerous detailed concerns about the insufficient information provided by the plaintiffs during the discovery process. The CBC defendants and Dizon submit the plaintiffs have failed to comply with the directions of the court, the written rules of the court and the spirit of those rules which were enacted to ensure the orderly and fair determination of disputes before the court.

[24] The CBC defendants and INC provided lengthy briefs in support of their respective positions. In their written materials, the plaintiffs contested every concern raised by the CBC defendants and Dizon, taking the position that they have met their disclosure obligations.

[25] I find it unnecessary to provide a detailed account of the parties' respective positions on the facts or the law as the plaintiffs conceded most of the concerns raised by the CBC defendants and Dizon at the hearing.

[26] Counsel for the plaintiffs agreed it would be appropriate for the court to order INC to produce a fulsome and proper affidavit of documents. Counsel agreed I could make an order to

make it clear to INC that the undertakings must be answered. Counsel also agreed that I could order INC to provide proper and knowledgeable representatives from each of the six corporate plaintiffs and any other knowledgeable representative of INC to be produced for examination. Counsel for the plaintiffs also suggested that a further available remedy is an order of solicitor and client costs in favor of the defendants for attending the examination for discovery of Brother Rvy.

[27] The plaintiffs submit this is not the clearest of cases to dismiss their claim on the grounds of abuse of the court process, rather, any concerns about the conduct of INC can be fairly addressed by further orders of the court and an award of costs to the defendants. Counsel for the plaintiffs provided an analogy for the process of the court to rules in baseball. The plaintiffs acknowledge they missed the mark in fulfilling their discovery obligations, but this is only the first formal application to dismiss the claim. Essentially the plaintiffs submit they should be given a couple of more chances or three strikes to meet their obligations. I disagree.

[28] The plaintiffs have continuously failed to meet their discovery obligations. They have ignored the requests of the defendants and the directions and orders from the court. Simply put, they have struck out. The request to provide another chance to fulfill their basic discovery obligations is simply an invitation for further abuse of the court process.

ANALYSIS

[29] There is no dispute that civil litigation is expensive. The cost of litigation is often a barrier to justice. In light of this, comprehensive amendments to the *Court of King's Bench Rules*, M.R. 553/88 (the "*Rules*"), came into force on January 1, 2018. The amendments were made to meet the overriding objectives of timely and affordable access to justice and the principle of proportionality. Judicial involvement in the management of cases is pervasive throughout the *Rules*. Failure to adhere to the letter and the spirit of the *Rules* will have consequences. The persistent failure to follow the *Rules* and the directions and orders of the court will usually result in serious consequences for the guilty party.

[30] The *Rules* describe the type of consequences available for failure to comply. For example, rule 30.08 set out available remedies for failure to disclose or produce documents for discovery and rule 34.14 provides possible sanctions for default or misconduct during examinations for discovery.

[31] Factors to consider in assessing an appropriate sanction include:

- a) The determination and imposition of available sanctions must be consistent with general principles set out in the *Rules*. In particular, rule 1.04(1) mandates that the *Rules* be interpreted "to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits".
- b) The court is to strike an appropriate balance between the right of the plaintiffs to have its action determined on the merits and the right of the defendants to insist on compliance with the *Rules* and court orders with a view to facilitating the "flow" of a case.
- c) Striking a pleading is an exceptional remedy which is reserved for extreme cases of non-compliance with the *Rules*. This sanction would be rarely used for an isolated incident of non-compliance. It is more likely to arise where there has been a course of conduct which indicates that a court order giving a party a "second chance" is unlikely to be complied with.
- d) Explanations for non-compliance are to be assessed to determine if the breach was deliberate or inadvertent as that assessment will assist with the determination of likelihood of compliance with further court orders.
- e) The court is to consider the prejudice caused by the failure to comply with the *Rules*. Can the aggrieved party be remedied by imposing a sanction short of dismissing the claim, such as an award of costs?

[32] The evidence from the Ibarra affidavit provides a comprehensive history of this litigation and many examples of the failure of the plaintiffs. I will only highlight a few. I begin with the history of documentary disclosure provided by the plaintiffs since filing the statement of claim on February 11, 2019.

[33] On May 5, 2021 the plaintiffs provided the unsworn affidavit of documents from Brother Jose P. Razon II ("Brother Razon"). It contained 58 documents in Schedule "A". A sworn copy of Brother Razon's affidavit has never been provided.

[34] On June 11, 2021 CBC counsel sent a letter to the plaintiffs outlining 19 categories of documents they believed should exist and be disclosed. On July 8, 2021 the plaintiffs responded that all relevant documents had been disclosed and they would produce Brother Razon as the discovery representative for all six plaintiffs. On July 31, 2021, the CBC's counsel advised the

plaintiffs they would bring a motion for further and better production of documents. The CBC counsel also questioned whether Brother Razon would be an acceptable discovery representative.

[35] For the next two years further correspondence went on between the CBC and the plaintiffs about fulsome discovery until the first pre-trial conference on May 4, 2023 when I directed the plaintiffs to disclose their sworn affidavit of documents no later than May 12, 2023.

[36] On May 18, 2023, the plaintiffs' provided a supplementary affidavit of documents from Brother Rvy. The affidavit was sworn on May 25, 2023. The affidavit contained 19 documents, however it did not include the prior 58 documents from the unsworn affidavit of Brother Razon. The plaintiffs also indicated that Brother Rvy would be produced for examination for discovery.

[37] On June 7, 2023, the CBC counsel sent correspondence to plaintiffs' counsel asking questions about Brother Rvy being a knowledgeable representative for discovery. In the correspondence, the CBC also raised questions about the sufficiency of Brother Rvy's affidavit of documents, as he attested to documents in his personal control and not the possession or control of the plaintiffs. The CBC did not receive a response to its inquiry.

[38] Concerns about the sufficiency of the document disclosure and suitability of Brother Rvy as the representative of the plaintiffs for discovery were discussed at the case management conference on June 8, 2023. I was assured by counsel for the plaintiffs that Brother Rvy was an appropriate individual to examine because he occupied a senior position with INC in Alberta.

[39] Counsel for the CBC had doubts about Brother Rvy. The CBC contacted counsel for the plaintiffs on July 31, 2023 to reiterate the two points of focus for Brother Rvy would be documentary production and the identities of individuals within INC that have knowledge of the events at issue. On August 18, 2023 the plaintiffs sent an email to the defendants advising they had produced an additional two documents which were attached. On September 7, 2023 counsel for the plaintiffs advised the defendants they did not expect to produce any further documents prior to the discovery of Brother Rvy.

[40] On September 12, 2023 CBC counsel wrote to counsel for the plaintiffs in advance of the examination dates to seek assurances that it was worth bringing Brother Rvy to Manitoba to be examined. No response was received.

[41] Brother Rvy was examined on September 20 and 21, 2023. I read the transcript and concluded Brother Rvy was nothing more than a sacrificial lamb. He knew little, if anything, about matters in this litigation. His knowledge was based on what had been publicly reported. He had

no knowledge about the six corporate plaintiffs, was unable to identify individuals who held leadership roles within INC and he had no knowledge of the individuals identified in the CBC publications.

[42] As for documentary disclosure, Brother Rvy could not explain the financial structure or financial policies of INC. He confirmed that the plaintiffs did not take the necessary steps to comply with the *Rules* governing documentary discovery when he provided his initial affidavit of documents. He did confirm INC keeps comprehensive records in a registry at the head office, but he did not make any efforts to access the records or request a systematic search for the records. The examination resulted with over 50 undertakings given by Brother Rvy.

[43] On October 23, 2023, I met with the parties. The defendants voiced their concerns about insufficient production of documents and Brother Rvy's lack of knowledge. I set April 3, 2024 for the defendants' disclosure motion.

[44] Two days after the case management meeting on October 25, 2023, CBC's counsel wrote to plaintiffs' counsel to ask when they could expect to receive the answers to undertakings. Plaintiffs' counsel responded they were meeting with their client the next day to discuss and then they would respond. On November 15, 2023 CBC's counsel followed up with the plaintiffs' counsel and were advised they were working on answers. On February 20, 2024 CBC's counsel followed up again with respect to answers to the undertakings and again received no response.

[45] Three weeks later, on March 11, 2024, plaintiffs' counsel responded. They advised counsel for the CBC that they still did not have answers and requested an adjournment of the April 3, 2024 motions. On March 18, 2024, plaintiffs' counsel explained that they had a scheduling conflict on April 3, 2024. They advised that the plaintiffs were working on providing answers and further documentary production that would make the motions unnecessary.

[46] My case management memorandum from June 3, 2024 confirms the plaintiffs were working on answers to undertakings and fulsome documentary disclosure. I directed the plaintiffs to provide the defendants with their answers to undertakings and affidavit of documents no later than July 31, 2024. I rescheduled the defendants' disclosure motion to October 16, 2024.

[47] On July 31, 2024 the plaintiffs provided some but not all of their answers to undertakings as well as a second supplementary affidavit of documents from Brother Rvy that was unsworn. The sworn version of the affidavit of documents was provided on August 14, 2024.

[48] The defendants are entitled to the production of all relevant documents in possession or control of the plaintiffs. The defendants have been requesting the production of all relevant documents from the plaintiffs since June 2021. The requests have been ignored. I have directed the plaintiffs to produce all relevant documents and my directions have been ignored. Counsel for the plaintiffs submit a further clear and straightforward order directing the plaintiffs to produce all relevant documents can remedy the problem. I disagree. It has been almost six years since the statement of claim has been filed. The defendant Dizon was a member of INC for 13 years and INC has failed to produce one document that specifically relates to him. That is unacceptable and it speak volumes about the intentions of the plaintiffs to abide by the court rules for documentary disclosure. I do not hesitate in concluding the plaintiffs have undertaken a deliberate course of conduct designed to thwart the rules of documentary disclosure.

[49] I reached the same conclusion for the rules of examination for discovery. As previously noted, Brother Rvy was nothing more than a sacrificial lamb. A few questions to him by counsel for the plaintiffs prior to producing him as the representative for the plaintiffs would have demonstrated his lack of knowledge.

[50] There was no such inquiry. The lack of knowledge resulted in many undertakings. Although the undertakings were made in September 2023, and plaintiffs' counsel assured the defendants they were working on answers, no answers were forthcoming. On June 3, 2024 I ordered the plaintiffs to provide the answers to undertaking no later than July 31, 2024.

[51] The plaintiffs did provide some but not all answers to undertakings on July 31, 2024. Although the motion brief of the plaintiffs, filed on October 10, 2024, attempts to explain and justify their position on answers to undertakings and the provision of documents, I do not hesitate in concluding the answers and documents provided were woefully inadequate.

[52] In part, the focus of the CBC publications were on members of INC that raised concerns or criticized the operations of the INC and were expelled from INC or suffered some other tragedy. The plaintiffs failed to produce the documentation detailing the expulsion of those individuals. Brother Rvy confirmed there was a comprehensive procedure to have a member expelled from INC that included written documentation that is reviewed by the chain of command. The documents are known as the "R210 forms". After reviewing his transcript, I conclude Brother Rvy gave an undertaking to provide the R210 forms for several individuals who were expelled from INC, who were also connected to the CBC publications and this litigation. The plaintiffs refused

to provide the R210 forms claiming they were not relevant. This position is unacceptable. Once the undertaking is given, it must be answered. The question of relevance does not arise. In any event, the documented reasons for expelling these individuals are clearly relevant to this litigation.

[53] On this issue involving the R210 forms, the plaintiffs went further and raised privacy concerns in their written motion brief. Under the heading "B. Privacy/Confidentiality and the Deemed Undertaking Rule", the plaintiffs went on for nine pages attempting to justify that the documents requested by the CBC are private and confidential and ought not to be disclosed. To support their position, the plaintiffs relied on *Sherman Estate v. Donovan*, 2021 SCC 25, and *Juman v. Doucette*, 2008 SCC 8. The motion brief made it clear the plaintiffs did not want to disclose the R210 forms.

[54] The plaintiffs' materials on privacy, confidentiality and the deemed undertaking rule is troubling. I will be brief in my comments as counsel conceded the principles from these two cases do not apply to the issues before me.

[55] First, the plaintiffs misinterpreted the protections of the deemed undertaking rule and its application to these motions. Further, the plaintiffs only provided a portion of the *Juman* case to me and highlighted paragraph four of the decision in support of their position, which is misleading. A careful reading of the entire *Juman* decision reveals that it has no application to the motions before me.

[56] Second, the plaintiffs rely on the *Sherman Estate* case to support their position that privacy plays a role on limiting the open court principle. Privacy concerns that would limit the open court principle are exceptional and only apply to core biographical information that would become part of the public record. The exchange of information and documents during the discovery process are not part of the public record.

[57] Mis-stating the law or raising irrelevant issues is at best unhelpful and at worse, deliberately misleading. This type of advocacy is to be discouraged. When I asked for an explanation, counsel for the plaintiffs confirmed he understood the *Sherman Estate* decision as he argued it during an unrelated hearing. Counsel explained the *Sherman Estate* case and written submissions were included to ensure awareness of the privacy concerns should this matter proceed to trial. I find the explanation offered for its inclusion in this motion disingenuous.

[58] The defendants also requested information about the effects of the CBC publications on INC. The defendants sought financial information, information about fundraising and membership

numbers of INC both before and after the CBC publications to determine if they had any effect on operations of INC. The plaintiffs refused to provide the information claiming it was irrelevant as they were no longer pursuing a claim for financial loss. I became aware of the plaintiffs' position when reading their brief for these motions. Paragraph 57 of their motion brief notes the plaintiffs are not seeking damages for financial loss, rather, they are seeking punitive damages and an apology. The statement of claim has never been amended to reflect this position. The claim has never sought an apology. Further, the claim alleges the publications were defamatory, in part, for suggesting financial corruption within the religious organization. Clearly, financial information of the plaintiffs is relevant to the defendants as their defence to the claim for defamation is that the CBC publications are true. The financial records of INC must be disclosed to allow the defendants to pursue their defense by searching for evidence of financial corruption.

[59] Another brief example of unacceptable conduct by the plaintiffs relates to Menorca. I directed the plaintiffs to provide a decision about their intention to proceed against Menorca during the first pre-trial conference on May 4, 2023. The plaintiffs were to provide their decision on Menorca no later than June 5, 2023. I finally learned of the plaintiffs' position on October 16, 2024 during this motion. The plaintiffs indicated they were discontinuing the action against Menorca. However, no notice of discontinuance has been filed. The plaintiffs suggest that information related to Menorca is not relevant and they do not need to provide it because they are no longer proceeding against him. This position is nonsense. This is an action for defamation. The plaintiffs are claiming the CBC publications are untrue and defamatory. Menorca contributed information to these publications, so clearly information about Menorca is relevant.

[60] The defendants spent considerable time examining Brother Rvy to identify the individuals within INC who could provide direct information about this litigation. Brother Rvy did not have the information but gave undertakings to get it. The answers to many undertakings were not given and in most cases the answers given were generic and unhelpful. As previously noted, I do not intend on reviewing every undertaking. For the most part, the plaintiffs concede fulsome answers are required.

[61] Brother Rvy was examined for discovery on September 20 and 21, 2023. The defendants have repeatedly requested the plaintiffs provide their answers to undertakings. The defendants were held at bay by promises from the plaintiffs that they were working on them and working on fulsome documentary production. Neither have been forthcoming.

[62] On June 3, 2024 I ordered the plaintiffs to provide the answers to undertaking no later than July 31, 2024. They were partially provided. Counsel for the plaintiffs submit a further order of the court will be sufficient to achieve compliance. I disagree. Based on the totality of the evidence, I conclude the plaintiffs have deliberately failed to comply with the court rules and my directions. This is an extreme case of repeated non-compliance with the *Rules*. I have concluded there is no likelihood that the plaintiffs would comply with further court orders. Therefore, the extraordinary but appropriate remedy is to dismiss the action.

[63] In addition, I strike the plaintiffs' claim without leave to amend as the claim is an abuse of the process of the court. The focus of an abuse of the process inquiry is on the court's integrity and its interest in maintaining confidence in the administration of justice.

[64] Arbour J. explains the concept of the abuse of court process in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 35:

35 Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, 1994 CanLII 126 (S.C.C.), [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, 1989 CanLII 66 (S.C.C.), [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, 1990 CanLII 27 (S.C.C.), [1990] 3 S.C.R. 979, at p. 1007:

... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.

[65] The continuous non-compliance with the court rules and non-compliance with my directions are factors to consider in assessing the motivations of the plaintiffs. Other relevant factors to consider include the litigation history of the plaintiffs which demonstrates a concerted strategy to use the courts and other institutions to silence critics of the INC. The Ibarra affidavit details prior examples of the plaintiffs determined efforts to do so. I will only provide brief examples to demonstrate this pattern of conduct.

[66] INC filed a separate action for defamation against former INC member, Rovic Canono ("Canono") (King's Bench File CI 23-01-39138). In addition to the defamation claim filed in the Manitoba Court of King's Bench, INC has provided documents listing 13 criminal cases filed against Canono in the Philippines. It is noteworthy that five of the criminal cases have already been dismissed.

[67] In California, INC previously filed libel actions against De Ocampo and Dizon along with 10 other individuals. The claims against all 12 individuals in California have been dismissed. A further claim by an INC member against De Ocampo in California has also been dismissed.

[68] INC also targeted Menorca with legal proceedings in the Philippines. It is hardly surprising Menorca and De Ocampo are bankrupt.

[69] At some point, Menorca and Canono made refugee claims with the Immigration and Refugee Board of Canada (the "IRB"). INC inserted themselves into those matters by writing letters to the IRB arguing Menorca and Canono should not be granted refugee protection in Canada. The IRB granted both refugee claims concluding that Menorca and Canono had credibly established they would likely face persecution by INC if they were returned to the Philippines.

[70] The totality of the evidence demonstrates that INC has employed the courts for an improper purpose and that purpose is to simply silence the critics of INC. February 11, 2025 will mark six years since this action was filed. Little has been accomplished. INC has deliberately employed a litigation strategy designed to waste resources. Nowhere is it more evident than the treatment of Menorca. It was only on October 16, 2024, after INC satisfied themselves that Menorca was truly bankrupt, that they indicated through counsel that they will no longer proceed against him. This action is not about damages or an apology, it is about punishing and silencing the critics of INC.

[71] I do not hesitate in concluding this claim is an abuse of the process of the court.

CONCLUSION

[72] The six plaintiffs in this case are a small part of the worldwide network of INC. It is clear none of the six plaintiffs are calling the shots in this litigation. For years, the defendants have requested production of documents they are entitled to pursuant to the *Rules*. INC has persistently refused to comply with the *Rules* and my directions about documentary disclosure. Pursuant to rule 30.08(2)(b), I dismiss their claim for that conduct.

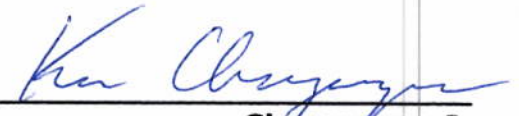
[73] The defendants sought to examine a knowledgeable representative of INC. They raised concerns about the INC's representative with the court. I was assured Brother Rvy was knowledgeable about INC and the events that give rise to this litigation. Brother Rvy was a sacrificial lamb. His knowledge on important matters was virtually non-existent. Brother Rvy provided many undertakings to obtain the information and documents that are relevant to this matter. Then he refused to answer many undertakings and gave generic and unhelpful answers

to others. Based on the totality of the evidence, I conclude this was a deliberate litigation strategy employed by INC. It is unacceptable. Therefore, I dismiss the action pursuant to rule 34.14.

[74] Whoever is calling the shots for INC has previously made a determined effort to use the court process to silence their critics. The totality of the evidence supports one conclusion: INC continues to engage in this litigation strategy. This conduct is unacceptable and reprehensible as it diminishes the court's integrity and undermines confidence in the administration of justice. I dismiss the plaintiffs' claim pursuant to rule 25.11(1)(c).

[75] The active defendants to the claim are entitled to costs. If the parties are unable to settle the issue of costs within 30 days of this decision, they are to contact the trial coordinator to arrange a time before me.

DATE February 7, 2025


Champagne J.

Copies of this Endorsement have been sent to counsel on the 7th day of February 2025.