

**FORM CC1**  
[Rules 4, 12]

COURT FILE NUMBER      16085006101

COURT                      COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE        EDMONTON

CROWN                    HER MAJESTY THE QUEEN

ACCUSED(S)             Allen Nelson Boisjoli

DOCUMENT               **APPLICATION BY Allen-Nelson Boisjoli, a private individual**

ADDRESS FOR SERVICE AND CONTACT    %: Allen Boisjoli Holdings  
INFORMATION OF PARTY FILING THIS    #1-12959-97 St.  
DOCUMENT                                    Edmonton, Alberta  
                                                         T5E 4C2

**NOTICE TO RESPONDENT(S)** Crown, namely Photini Popadapu

This application is made against you. You are the respondent. You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date:    Friday, April 28, 2017

Time:    9:30 am

Where:   Edmonton - Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2

Before whom:    the presiding justice of Queen's Bench court

Go to the end of this document to see what else you can do and when you must do it.

**Remedy sought or claimed:**

Comes now, Allen-Nelson Boisjoli, by special appearance, attending under threat of violence, duress and coercion, not submitting to the court's assumed jurisdiction, and hereby moves that the court dismiss/quash the complaints filed by the Crown for a lack of standing, no cause of action and a lack of jurisdiction.

**Grounds for making this application:**

1. Complaint does not set forth a cause of action. The complaint does not provide evidence of injury and damage; therefore, no cause of action. Without a cause of action there is no standing to complain.

The court is undoubtedly aware of the legal phrase *injuria absque damnum*; the complaint is not sufficient to be considered *injuria absque damnum*. The complaint instead is *non injuria et damnum*. The complaint filed against the accused fails to allege essential elements of a cause of action i.e., the violation of a legal right:

"The violation of any legal right, committed knowingly, constitutes, prima facie, a "cause of action. *Sleuter v. Scott* [1914] 6 W.W.R. 451.

This is required whether the complaint is civil or criminal in nature:

"The word "action" according to the legal term, is a proceeding by which one party seeks in a court of justice to enforce some right against, or to restrain the commission of some wrong by, another party. It includes both civil and criminal proceedings." *Dorosh v. Bentwood Chair & Table Co.*, [1939] 3 DLR 344; [1939] 2 VVWR 150; 47 Man R 133.

This has long been recognized in English jurisprudence:

"NOW, as all wrong may be considered as merely a privation of right, the one natural remedy for every species of wrong is the being put in possession of that right, whereof the party injured is deprived." Blackstone's Commentaries, Book 3, Chapter 8, Of Wrongs, And Their Remedies, Respecting the Rights of Persons.

2. Court lacks jurisdiction, presumption of facts not in evidence. The court's jurisdiction is limited to hearing cases, or causes of actions; to have jurisdiction, there must be true adversaries. This means a plaintiff or accuser must allege the violation of a legal right and provide facts to support:

"A tribunal that dispenses justice i.e., every judicial tribunal, is concerned with legal rights and liabilities, which means rights and liabilities conferred or imposed by "law"; and "law" means statute or long-settled principles." *Re Ashby*, [1934] OR 421; [1934] OWR 335; [1934] 3 DLR 565; 62 CCC 132

"The distinguishing mark of an administrative tribunal is that it possesses a complete, absolute and unfettered discretion and, having no fixed standard to follow, it is guided by its own ideas of policy and expediency. Hence, acting within its proper province and observing any procedural formalities prescribed, it cannot err in substantive matters because there is no standard for it to follow and hence no standard to judge or correct it by." *Re Ashby* [1934] CanLII 87 (ON CA), [1934] OR 421, 62 CCC 132, Masten, J.A. p. 135.

The court is required to presume the accused innocent:

"Any person charged with an offence has the right: d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal..." Constitution Act, 1982, Schedule B, Part 1, Legal Rights, Canadian Charter of Rights and Freedoms Section 11.

Unless the Accuser has brought forth evidence of a cause of action i.e., *injuria et damnum*, the court is obligated to presume innocence and dismiss the complaint.

3. No true adversary. The Canadian system, based on the English system, is adversarial:

"The first rationale for the policy with respect to mootness in that a court's competence to resolve legal disputes is rooted in the adversary system. A full adversarial context, in which both parties have a full stake in the outcome, is fundamental to our legal system." *Borowski v. Canada* (Attorney General), [1989] 1 S.C.R. 342.

For the court to have jurisdiction, there must be a valid cause of action between two true adversaries. Because the complaint is non *injuria et damnum*, there is no cause of action and therefore, no real adversaries.

4. No facts that presence within the province creates an obligation. There has been no facts pled to prove the accused's presence within the province and the codes of the province are applicable to the accused. Such evidence is essential to prove jurisdiction. The complaint contains only an allegation that the law was violated; no allegation and no facts are presented proving the laws apply in the first place.

*A province is political at best, not geographic:* "province...a political subdivision comparable to a state in the United States." Ballentine's Law Dictionary, page 1016.

*FICTION OF LAW - The assumption that a certain thing is true, and which gives to a person or thing a quality which is not natural to it, and consequently establishes, a certain disposition, which, without the fiction, would be repugnant to reason and to truth. It is an order of things which does not exist, but which the law prescribes or authorizes. It differs from presumption because it establishes as true, something which is false; whereas presumption supplies the proof of something true. The law never feigns what is impossible. Fiction is like art; it imitates nature, but never disfigures it. It aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which does not exist; but it will never feign that what was impossible actually is. -* Lectlaw online legal dictionary.

In a criminal proceeding, the assigned adjudicator is obligated to presume the accused innocent until guilt is proven beyond a reasonable doubt. The judge may not assume the code is applicable at this time as it is an essential element of the alleged crime.

Furthermore, the argument that the laws apply to the accused because he is physically on the landmass commonly known as Alberta, Canada has no factual support. All the prosecution has at this point is an allegation that he has violated the code. An allegation is not evidence the codes apply. No facts have been

offered establishing the codes apply to the accused, and the accused believes there will be none forthcoming.

The purpose of this section is to make it clear that the Charter only applies to governments, and not to private individuals, businesses or other organizations. — Your Guide to the Canadian Charter of Rights and Freedoms,

Canadian Heritage Foundation

#### 5. Prosecutor has failed to provide full disclosure.

No facts have been presented proving the constitution, laws and codes apply and that there is any obligation created upon the accused. The Prosecutor has failed to present two essential elements of a cause of action viz., injury and damage.

Prosecutor has failed to respond to any correspondences of accused requesting evidence of the applicability of the constitution, laws, rules and codes that the prosecution is claiming have been violated.

"The Crown has a legal duty to disclose all relevant information to the defense. The fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done." *R v Stinchcombe*, [1991] 3 S.C.R. 326

The prosecution's failure to provide the evidence they are relying on reduces the accused's ability to investigate and find flaws in the prosecution's case, severely limiting his ability to construct a defense.

*Non habetur quod oblatum non est* - evidence not offered is deemed not to exist.

pursuant to Corpus Juris Secundum Volume 7, Section 4:

"The attorney's first duty is to the courts and the public, not to the client, and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter. Clients are also called "wards" of the court in regard to their relationship with their attorneys."

"Corpus Juris Secundum assumes courts will operate in a lawful manner. If the accused makes this assumption, he may learn, to his detriment, through experience, that certain questions of law, including the question of personal jurisdiction, may never be raised and addressed, especially when the accused is represented by the bar. (Sometimes licensed counsel appears to take on the characteristics of a fox guarding the hen house.)"

6. Prosecutorial misconduct/malicious prosecution. The Prosecutor has continually refused to answer or provide evidence to questions of applicability of the Canadian Constitution, laws and codes to the accused, but is merely assuming they apply, and relies on collusion from the court to do the same. The Prosecutor also claims that they will not be calling upon, or are required to provide such evidence, a clear breach of "The *Stinchcombe* Principles", and therefore misconduct.

Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. See, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936).

The origins of this doctrine of law may be found in *MAXFIELD v. LEVY*, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424

Logic & reason dictates the accused cannot defend against that which is being willfully and deliberately withheld from the accused.

Merely alleging and arguing that the laws apply is not a prima facie showing of anything but misconduct:  
"argument is limited to the facts in evidence".

LSA Code of Ethics 5.1-2 pg. 74

A lawyer must not:

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
- (b) take any step in the representation of a client that is clearly without merit;
- (g) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;
- (h) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;
- (i) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;
- (j) introduce or otherwise bring to the tribunal's attention facts or evidence that the lawyer knows to be inadmissible;

7. Burden of proof and standing does not shift.

- a.) Prosecutors have the burden of proof regarding the elements of jurisdiction and standing. Even if this burden could be shifted, Prosecutors have provided no evidence, only allegations and arguments.
- b.) Until they provide evidence, no burden shifts. Prosecutors act as if they have met their burden already, they haven't. Prosecutors haven't presented any facts proving the constitution and code apply and there is any jurisdiction over the accused.
- c.) The prosecutor has failed to present two essential elements of a cause of action viz., injury and damage.
- d.) The prosecution makes arguments, yet, supports them with nothing of substance. Despite ample opportunity to do so, they have yet to substantiate their allegations with any evidence.
- e.) The prosecutor is not only argue outside the evidence, but is arguing their complaint is evidence.

"By going outside the evidence, the prosecutor "violated a fundamental rule, known to every lawyer, that argument is limited to the facts in evidence." *United States ex rel. Shaw v. De Robertis*, 755 F.2d 1279, 1281 (7th Cir.1985)

- f.) While this tactic is quite common, it's dishonest, and the prosecutor should be sanctioned for not only filing a groundless complaint, but also continuing to proceed willfully and knowingly without a valid cause of action.

A complaint is not evidence and they know it:

"We risk stating the obvious here: a complaint is merely an accusation of conduct and not, of course, proof that the conduct occurred. The prosecution did not introduce evidence that Bailey misused the SEC rules - rather, the prosecution offered only the complaint, which is far from evidence of anything." *U.S. v. Bailey*, 696 F.3d 794, 801 (2012)

- g.) Ethics and jurisprudence does not permit attorneys to argue without evidence.

8. Pattern of withholding and/or suppressing evidence. The Prosecutor has continually claimed disclosure when there was none, and/or has provided disclosure with no time for accused to review said disclosure. i.e. Prosecutor has claimed to have provided disclosure electronically when there is no proof of this, and ignores the fact the prosecutor is in possession of accused's computer where any electronically provided disclosure could be received.

## **Conclusion**

The complaint does not present a cause of action between true adversaries, the accuser lacks standing to complain and the court lacks jurisdiction to hear the complaint. Therefore the court has a duty to dismiss/quash the complaint filed against the accused, with prejudice.

## **Material being relied on:**

Logic, reason, ethics, references to UK and US law to evidence certain principals, Canadian Charter of rights and freedoms, LSA code of ethics, Canadian Heritage foundation publications

## **Applicable rules:**

see grounds

## **Applicable Acts and regulations:**

see grounds

### **WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the

beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must rely by giving reasonable notice of the material to the applicant.