



FORM 32 (RULE 8-1 (4))

FORCE FILED

Registry No: **VLC-S-S-238708**

**Vancouver Registry**

*In the Supreme Court of British Columbia*

Between

ROBERT DAVID BARKER

Plaintiff

and

CONSTRUCTION & SPECIALIZED WORKERS' UNION,  
LOCAL 1611

Defendant

**NOTICE OF APPLICATION**

**Name of applicant:** CONSTRUCTION & SPECIALIZED WORKERS' UNION,  
LOCAL 1611

To: NAZEER T. MITHA, KC  
Mitha Law Group  
570 Granville Street  
Vancouver, B.C. V6C 3P1

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at **800 Smithe Street, Vancouver, British Columbia V6Z 2E1**

On **February 13, 2025** at 9:45 AM for the order(s) set out in Part 1 below.

The applicant(s) estimate(s) that the application will take: **45 minutes**

This matter is within the jurisdiction of an associate judge.

This matter is not within the jurisdiction of an associate judge.

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## **PART 1: ORDER(S) SOUGHT**

1. The trial scheduled for March 31 – April 4, 2025 is adjourned.
2. Costs of this application.

## **PART 2: FACTUAL BASIS**

1. This is the first application for an adjournment of the trial.
2. The Notice of Civil Claim was initially filed as a wrongful dismissal claim.
3. The Plaintiff filed an Amended Notice of Civil Claim in May 2024. The Amended pleadings seek various damages for intention of infliction of mental suffering arising out of an affair involving the Plaintiff's spouse and the Plaintiff's boss.
4. On June 21, 2024 the Defendant notified Plaintiff's counsel of its intention to seek a summary trial on two issues:
  - i. Does a valid Contract of Employment containing a severance provision exist?
  - ii. Do the pleadings relating to the affair support a cause of action?
5. The Defendant proceeded to seek dates for summary trial and coordinated availability with Plaintiff's office each month beginning with the July trial booking opening.
6. On July 29, 2024, Plaintiff's counsel requested availability for a trial including dates in March, July or October.
7. The Defendant's counsel indicated availability in July or October but objected to dates in March on the basis that the parties were unlikely to be ready to proceed due to documents production issues. The Plaintiff indicated on August 1, 2024 that it would proceed to seek a trial commencing March 31, 2025.
8. On September 5, 2024, Plaintiff's counsel served a Notice of Trial for March 31 – April 4, 2025.
9. The Defendant tried each month to secure a summary trial but was not successful until November 2024.

10. The summary trial was scheduled for January 30 and 31, 2025. A judge was not available and the summary trial did not proceed.
11. Trial scheduling has offered February 11 and 12, 2025 summary trial dates but has not assured the parties of a judge's availability.
12. The Defendant produced its list of documents on April 5, 2024, within 35 days, as specified in the Rules. The Plaintiff did not produce its first list of documents until September 25, 2024.
13. There were numerous demands by the Plaintiff for the Defendant's documents prior to the Plaintiff having produced its own list of documents. There were numerous written requests by the Defendant for the Plaintiff's list of documents.
14. The Plaintiff's list of documents produced September 25, 2024 contained no medical records. The Plaintiff expressed numerous claims of mental suffering in the Amended Notice of Civil Claim.
15. The Plaintiff's September 25, 2024 list did not contain any reference to a known surreptitious recording taken by the Plaintiff of a meeting with his boss just prior to the Plaintiff's termination.
16. Certain surreptitious recordings were listed and made available November 12, 2024.
17. The Plaintiff requested clinical records from a Clinical Psychologist, beginning October 10, 2024 but did not obtain a production order until December 3, 2024, the production order was uncontested. The clinical notes were listed on January 7, 2025.
18. The Plaintiff served an expert psychiatric report on January 3, 2025.
19. As of the day of this application, discoveries have not been undertaken.

### **PART 3: LEGAL BASIS**

1. An application for the adjournment of a trial should be granted where it is in the interest of securing a fair trial.

**PART 4: MATERIAL TO BE RELIED ON**

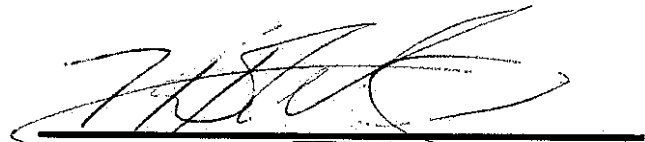
Affidavit #3 of JENNY TAY made January 23, 2025

Affidavit #3 of MAE FERNANDEZ made January 20, 2025

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

Date:



Signature of KEVIN BLAKELY

Kevin  
Blakely

Lawyer for filing party

