



No. 236918
Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN:

CHERYL WEEKS, ANJA BERGLER, HELEN IRVINE,
CARY RYAN, LAUREN PHILLIPS, and ANN-SUE PIPER

PLAINTIFFS

AND:

THE CITY OF ABBOTSFORD, THE DISTRICT OF
CENTRAL SAANICH, THE CITY OF DELTA, THE
DISTRICT MUNICIPALITY OF ESQUIMALT, THE
CITY OF NELSON, THE CITY OF NEW
WESTMINSTER, THE DISTRICT MUNICIPALITY OF
OAK BAY, THE CITY OF PORT MOODY, THE
DISTRICT MUNICIPALITY OF SAANICH, THE CITY
OF SURREY, THE CITY OF VANCOUVER, THE
CITY OF VICTORIA, THE DISTRICT MUNICIPALITY
OF WEST VANCOUVER, THE OFFICE OF THE
POLICE COMPLAINT COMMISSIONER OF BRITISH
COLUMBIA, HIS MAJESTY THE KING IN RIGHT OF
BRITISH COLUMBIA, THE ATTORNEY GENERAL
OF BRITISH COLUMBIA, THE MINISTER OF
PUBLIC SAFETY AND SOLICITOR GENERAL OF
BRITISH COLUMBIA

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

RESPONSE TO NOTICE OF CIVIL CLAIM

Filed by: His Majesty the King in right of the Province of British Columbia, the Attorney General of British Columbia and the Minister of Public Safety and Solicitor General

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in paragraph 30 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 28, 29, 31, 51 – 55 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 1 – 27, 32 – 50 and 56 of Part 1 of the notice of civil claim are outside the knowledge of the defendants.
4. To the extent there are facts alleged in Part 3 of the notice of civil claim, such facts are denied.

Division 2 – Defendants’ Version of Facts

5. The defendant His Majesty the King in right of British Columbia is properly designated as “His Majesty the King in right of the Province of British Columbia” per section 7 of the *Crown Proceeding Act*, RSBC 1996, c. 89 (“HMK”).
6. The defendant The Attorney General of British Columbia is properly known and described as Attorney General of British Columbia (“Attorney General”).
7. The defendant The Minister of Public Safety and Solicitor General of British Columbia is properly known and described as Minister of Public Safety and Solicitor General (“PSSG”).
8. Unless expressly admitted, these defendants deny each and every allegation of fact or law made in the notice of claim filed October 11, 2023 (the “Claim”), including that the plaintiff or any proposed class members are entitled to the relief sought out in Part 2 of the Claim, or that the criteria for certification of this action as a class proceeding pursuant to s. 4 of the *Class Proceeding Act*, RSBC 1996, c. 50, can be met.

9. The City of Abbotsford, District Of Central Saanich, City Of Delta, City Of Nelson, City Of New Westminster, District Municipality Of Oak Bay, District Municipality of Esquimalt, City Of Port Moody, District Municipality Of Saanich, City Of Surrey, City Of Vancouver, City Of Victoria, and District Municipality Of West Vancouver (collectively, the “Municipal Defendants”) provide policing within their respective municipal boundaries through municipal police departments (the “Municipal PDs”).

10. The Municipal PDs are entities created pursuant to the *Police Act*, R.S.B.C. 1996, c. 367, (the “*Police Act*”), each of which is governed by a municipal police board.

11. The Municipal PDs operate independently of the Attorney General, PSSG and HMK, and their police officers (collectively, “Municipal Officers”) and managers (collectively, “Municipal Managers”) are not employees, servants, contractors, volunteers or agents of the Attorney General, PSSG or HMK. Municipal Officers and Municipal Managers are not directed or supervised by the Attorney General, PSSG or HMK. Municipal Officers exercise original ministerial authority and not delegated authority.

12. At all material times, Municipal Officers were employed and supervised as police officers by their respective Municipal PDs, Municipal Manager and Municipal Defendant.

13. At no time were Municipal PDs, Municipal Officers or Municipal Managers employees, agents, servants, contractors or volunteers for the Attorney General, PSSG or HMK, nor seconded to or under the direct supervision of the Attorney General, PSSG or HMK.

14. If Municipal Officers and/or Municipal Managers harassed, bullied and/or discriminated against the plaintiffs or purported class members as alleged or otherwise (the “Alleged Conduct”), which the Attorney General, PSSG and HMK do not admit, they did so in the performance of their duties with the Municipal PDs.

15. Neither the Attorney General, PSSG or HMK, nor any of their employees, agents, servants, volunteers or contractors knew or ought to have known Municipal Officers and/or Municipal Managers had or would engage in, or were engaging in, the Alleged Conduct.

16. Neither the Attorney General, PSSG or HMK, nor any of their employees, agents, servants, volunteers or contractors knew or ought to have known that Municipal Officers, Municipal Managers or Municipal PDs would or did breach or violate any policies or standard practices applicable to police officer conduct, as alleged or at all.

17. At all material times, the Attorney General, PSSG and HMK and their employees, agents, servants, volunteers and contractors performed their duties in accordance with the applicable laws and policies and acted in good faith.

Division 3 – Additional Facts

18. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

19. The Attorney General, PSSG and HMK consent to the granting of the relief sought in **NONE** of the paragraphs of Part 2 of the notice of civil claim.

20. The Attorney General, PSSG and HMK oppose the granting of the relief sought in **ALL** paragraphs of Part 2 of the notice of civil claim.

21. The Attorney General, PSSG and HMK take no position on the granting of relief sought in **NONE** of the paragraphs of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

22. The Claim does not disclose proper causes of action against the Attorney General, PSSG or HMK in:

- a. negligence;

- b. breach of fiduciary duty;
- c. breach of s. 15 of the *Charter*;
- d. intentional infliction of mental suffering;
- e. breach of privacy;
- f. harassment;
- g. civil conspiracy;
- h. vicarious liability; or
- i. joint and several liability

as it does not set out the material facts to support such claims.

23. Pursuant to section 20 of the *Police Act*, the Municipal Defendants are jointly and severally liable for the tortious actions of Municipal Officers and/or Municipal Managers, including the Alleged Conduct.

24. PSSG, pursuant to section 11(1) of the *Police Act* is only jointly and severally liable for torts committed by municipal constables and special municipal constables, including Municipal Officers and Municipal Managers, in the performance of their duties when acting other than in the municipality where they normally perform their duties.

25. The Claim does not allege that the Alleged Conduct occurred while any or all of the Municipal Officers and/or Municipal Managers were acting other than in the municipality where they normally performs their duties.

26. The Attorney General, PSSG and HMK are not vicariously liable for the actions of the Defendant Municipalities, Municipal PDs, Municipal Officers, Municipal Managers or other employees, servants, volunteers, contractors or agents employed or contracted by the Defendant Municipalities.

27. The Claim does not disclose a reasonable cause of action against the Attorney General, PSSG or HMK, and so does not meet the requirements of section 4(1) of the *Class Proceedings Act*, RSBC 1996, c. 50.

28. The Claim discloses no cause of action against the Attorney General, PSSG or HMK and ought to be dismissed as against each of these defendants.

Negligence

29. The Attorney General, PSSG and HMK deny they owed the plaintiffs or the purported class members a duty of care, as alleged or at all.

30. In the alternative, if the Attorney General, PSSG or HMK owed the plaintiffs or the purported class members a duty of care, which is denied, the Attorney General, PSSG or HMK met the requisite standard of care.

31. If the alleged torts did occur, which is denied, such torts were unknown to the Attorney General, PSSG and HMK and not foreseeable by the Attorney General, PSSG and HMK.

32. There was no basis on which the Attorney General, PSSG and HMK, nor any of their employees, agents, servants, volunteers or contractors knew or ought to have known that Municipal Officers and/or Municipal Managers were engaging in the Alleged Conduct.

33. The Attorney General, PSSG and HMK plead and rely upon the *Negligence Act*, R.S.B.C. 1996 c.

Fiduciary Duty

34. The Attorney General, PSSG and HMK do not have a fiduciary relationship with the plaintiffs or purported class members.

35. The Attorney General, PSSG and HMK deny it owed the plaintiffs or the purported class members a fiduciary duty, as alleged or at all.

36. In the alternative, if the Attorney General, PSSG or HMK owed the plaintiffs or the purported class members a fiduciary duty, which is denied, the Attorney General, PSSG and HMK did not breach that fiduciary duty.

Charter of Rights and Freedoms

37. The Attorney General, PSSG and HMK deny that they breached the *Charter* rights of the plaintiffs or of the purported class members, as alleged or at all.

38. In the further alternative, if the *Charter* rights of the plaintiffs or of the purported class members were infringed by the Attorney General, PSSG or HMK, which is denied, then any such infringement was justified under s. 1 of the *Charter*.

39. In the further alternative, if there has been an unjustified infringement of the *Charter* rights of the plaintiff or purported class members by the Attorney General, PSSG or HMK, which is denied, then an award of damages under s. 24(1) of the *Charter* is not a just and appropriate remedy. At all material times, the Attorney General, PSSG and HMK acted reasonably, in good faith, and with appropriate regard for the *Charter* rights of the plaintiffs and purported class members.

40. The Attorney General, PSSG and HMK deny that *Charter* damages are functionally required to fulfill the objectives of compensation, vindication of rights, or deterrence, and says that countervailing policy considerations render an award of Charter damages inappropriate.

Intentional Infliction of Mental Suffering

41. The Attorney General, PSSG and HMK deny acting in a manner intended or known to likely cause harm to the plaintiffs or the purported class members, or with reckless disregard to the plaintiffs or purported class members, or that the plaintiffs or purported class members have suffered harm as a result of any conduct or inaction by the Attorney General, PSSG or HMK , as alleged or at all.

In the alternative, any such harm was not foreseeable to the Attorney General, PSSG or HMK.

Harassment

42. Harassment is not a recognized cause of action within British Columbia.

43. In the alternative, the Attorney General, PSSG and HMK deny that their actions or inactions, or those of their employees, agents, servants, volunteers or contractors harassed the plaintiffs or proposed class members, as alleged or at all.

Health Care Costs Recovery and Family Compensation Act

44. The Attorney General, PSSG and HMK are not liable to the plaintiffs or proposed class members. They did not cause the plaintiffs or proposed class members any injury, loss or damage, and are not liable for any health care costs and plead the provisions of the *Health Care Costs Recovery Act*.

45. The Attorney General, PSSG and HMK are not liable to the proposed class members did not cause the proposed class members any injury, loss or damage, and cannot be liable under the *Family Compensation Act*, R.S.B.C. 1996, c. 126.

Limitation Act

46. The Attorney General, PSSG and HMK plead and rely on the *Limitation Act*, S.B.C. 2012, c. 13, and says all or part of the plaintiffs' and proposed class members' claims are barred due to the passage of time.

Damages

47. If the plaintiffs or proposed class members, or each of them, suffered any injuries, losses, or expenses (collectively "Loss"), which is denied, the Attorney General, PSSG and HMK says such Loss was not caused by the Attorney General, PSSG or HMK, or any employees, agents, servants, volunteers or contractors of the Attorney General, PSSG or HMK.

48. If the plaintiffs or proposed class members suffered Loss, which is denied, the Attorney General, PSSG and HMK say that the plaintiffs or proposed class members, or each of them, has failed to take any or any reasonable steps to mitigate their Loss.

49. If the plaintiffs or proposed class members suffered any Loss, which is denied, the Attorney General, PSSG and HMK say that such Loss is too remote in law to sustain the action of the plaintiffs because the Attorney General, PSSG and HMK did not and could not reasonably have been expected to foresee that Loss could have resulted from the actions of the Attorney General, PSSG or HMK, or those of their employees, agents, servants, volunteers or contractors.

50. The Attorney General, PSSG and HMK say if the plaintiffs or proposed class members suffered Loss, which is not admitted but specifically denied, then the Loss was not caused or contributed to by the Attorney General, PSSG or HMK, their employees, agents, servants, volunteers or contractors, but was caused by pre-existing or subsequent incidents or ailments.

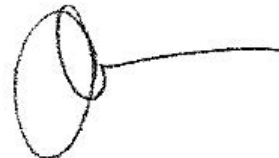
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Date: February 14, 2024



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right of the Province of British Columbia,
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Stephen King and June Ling

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.