



NO. S-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, and THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL OF BRITISH COLUMBIA

DEFENDANTS

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

RESPONSE TO CIVIL CLAIM

Filed by: The City of New Westminister (“New Westminister”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. None of the facts alleged in Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 1-4, 11, 12, 18, 26, and 32-56 of Part 1 of the Notice of Civil Claim are denied insofar as they relate to the claims against New Westminister. The facts alleged in these paragraphs are outside the knowledge of New Westminister insofar as they relate to the other Defendants.
3. The facts alleged in paragraphs 5-10, 13-17, 19-25, and 27-31 of Part 1 of the Notice of Civil Claim are outside the knowledge of New Westminister.

Division 2 – Defendant’s Version of Facts

4. Unless expressly admitted herein, New Westminister denies each and every allegation of fact and law made in the Notice of Civil Claim, including that the criteria for

certification of this action as a class proceeding pursuant to s. 4 of the *Class Proceedings Act*, RSBC 1996, c. 50 (the “CPA”), can be met in the circumstances.

The City of New Westminster

5. In response to the Notice of Civil Claim as a whole, New Westminster’s legal name is City of New Westminster.
6. New Westminster provides policing and law enforcement in the City of New Westminster pursuant to section 15 of the *Police Act*, RSBC 1996, c. 367 (the “*Police Act*”).
7. New Westminster provides policing and law enforcement services through the New Westminster Police Department (the “NWPD”) pursuant to section 3(2)(a) of the *Police Act*.
8. The NWPD is independent from New Westminster and from any other police department or agency.
9. The New Westminster Police Board (the “Board”) provides oversight and direction to the NWPD pursuant to Part 5 of the *Police Act*. The Board is independent from New Westminster and from the NWPD, and from any other police department or agency.
10. In specific response to paragraph 18 of Part 1 of the Notice of Civil Claim, New Westminster is not the employer of municipal constables of the NWPD.
11. All municipal constables of the NWPD are employed by the Board, either pursuant to collective agreements negotiated on their behalf by the New Westminster Police Officers Association (the “Association”), or pursuant to individual contracts.
12. The Board is an employer within the meaning of the *Workers Compensation Act*, RSBC 2019, c. 1 (“*Workers Compensation Act*”).
13. In further and specific response to paragraphs 18, 26, and 32 to 34 of Part 1 of the Notice of Civil Claim, the relationship between New Westminster and any employees of the Board, including municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers or other employees of the Board, is limited to tort liability if the tort is committed in the performance of that person’s duties, as provided under section 20 of the *Police Act*.
14. In further response to paragraph 18 of Part 1 of the Notice of Civil Claim, the Board and its employees are excluded from any tort liability pursuant to section 20 of the *Police Act*.
15. In response to paragraph 9 of Part 1 of the Notice of Civil Claim, Lauren Phillips was, at all material times, a worker within the meaning of the *Workers Compensation Act* and an employee within the meaning of the *Labour Relations Code*, RSBC 1996, c. 244 (the “Code”).

Division 3 – Additional Facts

16. At all material times, New Westminster had in place protocols, policies, systems, procedures, and standards that were reasonable and proper, in accordance with the applicable standard of care and all applicable legislative schemes.

Applicable Collective Agreements and Policies

17. At all material times, Lauren Phillips and/or any other proposed class members who were or are officers with the NWPD (the "NWPD Officers") were and/or are each members of the Association.
18. At all material times, the Board and the Association had in place a collective agreement, which has been renewed or replaced from time to time (the "Collective Agreements").
19. At all material times, the Collective Agreements have set out the terms and conditions of employment that apply to members of the Association, including the NWPD Officers.
20. At all material times, the Association was certified as the exclusive bargaining agent to represent members of the Association, including the NWPD Officers, pursuant to the *Code*.
21. At all material times, the Collective Agreements provided and continue to provide, *inter alia*:
 - (a) a grievance procedure with escalating stages to resolve any difference concerning the interpretation, application, operation, or alleged violation of the Collective Agreements;
 - (b) if satisfactory settlement cannot be reached through the grievance procedure prescribed under the Collective Agreements, the matter will be submitted to arbitration, where the finding of the arbitrator or arbitration board will be final and binding upon the parties to the grievance; and
 - (c) that the Board and the Association agree there will be no discrimination or coercion exercised or practiced with respect to any employee by reason of legal activity in the Association.
22. The NWPD has and at all material times had in place Policy AB100 Respectful Conduct in the Workplace Policy, which:
 - (a) provides that the NWPD will not tolerate discrimination or harassment of any employee or volunteer (page 1);
 - (b) applies to all employees of the NWPD, regardless of their rank, and all work-related activities at any location at which NWPD business is conducted (page 2); and
 - (c) provides a process for reporting, mediating, and investigating discrimination and harassment complaints (pages 6 to 11).

23. Further, the NWPDP has and at all material times had in place Policy AB100.01 Workplace Violence, which provides a framework for defining violence, eliminating, or minimizing the risk of violence and defining responsibilities of employees.
24. In the alternative, at all material times, the NWPDP had in place policies that are substantively the same or similar to Policy AB100 and Policy AB100.01.
25. In response to the whole of the Notice of Civil Claim, the essential character of the claims raised in the Notice of Civil Claim are in respect of a dispute or disputes concerning the interpretation, application, operation, or alleged violation of the Collective Agreements. Such disputes fall within the exclusive jurisdiction of an arbitrator under the Collective Agreements and the *Code* on the following basis:
 - (a) the NWPDP Officers were each members of the Association at all material times;
 - (b) the Association was the NWPDP Officers' exclusive bargaining agent certified pursuant to the *Code*;
 - (c) the NWPDP Officers were covered by and subject to the terms and conditions of the Collective Agreements which includes provisions for the final and conclusive resolution of all disputes by arbitration; and
 - (d) section 89 of the *Code* allows an arbitration board to provide a final and conclusive settlement of a dispute arising under the Collective Agreements, including with respect to alleged violations of the *Human Rights Code*, RSBC 1996, c. 210 (the "*Human Rights Code*").
26. Further, and in the alternative, the NWPDP Officers have pursued, may pursue and/or are pursuing remedies in respect of the claims set out in the Notice of Civil Claim pursuant to the *Code*, the *Workers Compensation Act*, the *Police Act* and the *Human Rights Code* and determinations of fact and law have been made and/or will be made in respect of the claims set out in the Notice of Civil Claim in those forums.

The Plaintiffs' Claims

27. Further and in the alternative, New Westminster denies it owed a duty of care, contractual, statutory, or otherwise, to the Plaintiffs and/or the proposed class of plaintiffs.
28. In the further alternative, New Westminster denies that it breached any such duty, contractual, statutory, or otherwise, as alleged or at all, and puts the Plaintiffs to the strict proof thereof.
29. In response to the whole of the Notice of Civil Claim and in specific response to paragraphs 1, 34 and 48 to 53 of Part 1 of the Notice of Civil Claim, New Westminster denies the existence of a "systemic culture of gender and sexual orientation-based harassment and discrimination" in the NWPDP. In the alternative, New Westminster denies that it, or any of its staff, employees, agents, or others for whom it is responsible, were complicit in such a culture, as alleged or at all.

30. In response to paragraph 55 of Part 1 of the Notice of Civil Claim, New Westminster expressly denies that the *Charter* rights of the Plaintiffs and/or the proposed class of plaintiffs were breached as alleged or at all.
31. New Westminster denies that the Plaintiffs and/or the proposed class of plaintiffs suffered injuries, loss, damage, or expense, as alleged or at all.
32. In the alternative, if the Plaintiffs and/or the proposed class of plaintiffs did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, the same was not caused or contributed to by any act, omission, negligence, fault and/or breach of duty of New Westminster.
33. Further, or in the alternative, if the Plaintiffs and/or the proposed class of plaintiffs did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, such injury, loss, damage and/or expense is attributable to their previous and/or subsequent injuries, traumas, congenital defects, medical conditions, or events.
34. Further, or in the alternative, if the Plaintiffs and/or the proposed class of plaintiffs did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, they failed to take reasonable steps to mitigate their harm, loss, or expense.

Part 2: RESPONSE TO RELIEF SOUGHT

1. New Westminster opposes all relief sought in Part 2 of the Notice of Civil Claim as against New Westminster.
2. New Westminster seeks an order dismissing the Plaintiffs' claims against it, with costs payable to New Westminster.

Part 3: LEGAL BASIS

1. New Westminster denies each and every allegation in the Notice of Civil Claim.

Employer/Employee Relationship

2. In answer to the whole of the Notice of Civil Claim, New Westminster says it is not a proper defendant in this proceeding. The Plaintiffs and proposed class members have no possible claim against New Westminster.
3. New Westminster is not responsible for implementing, supervising, or enforcing policies, procedures, codes of conduct and/or guidelines, or otherwise governing the conduct of the NRPD Officers, including with respect to education and training, safe workplace environments, harassment, and discrimination, and/or access to files and tasks, pursuant to sections 15, 23, 26, 28 and 34 of the *Police Act*.

No Jurisdiction

4. In full answer to the Notice of Civil Claim, New Westminster says the Court is without jurisdiction or, in the alternative, should decline jurisdiction with respect to the Plaintiffs' claims by reason of:
 - (a) the mandatory arbitration provisions created by the *Code* and the Collective Agreements; and

- (b) the concurrent jurisdiction of the BC Human Rights Tribunal.
5. The allegations set out in the Notice of Civil Claim, in their essential character, arise from the interpretation, application, operation and alleged violation of the Collective Agreements.
 6. Pursuant to section 89 of the *Code*, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and, without limitation, may interpret, apply, and award remedies under any statute intended to regulate the employment relationship of the persons bound by a collective agreement, including but not limited to the *Human Rights Code*.
 7. Further, or in the alternative, any and all claims made by the Plaintiffs and/or proposed class members for damages or other remedies arising out of any alleged personal injuries suffered in the course of work or alleged employment with the NRPD are claims outside the jurisdiction of the Court, are statute barred pursuant to the provisions of the *Workers Compensation Act*, and fall within the exclusive jurisdiction of the British Columbia Workers' Compensation Board.
 8. Further, or in the alternative, any and all claims by the Plaintiffs and/or other putative members of the proposed class for damages or other remedies related to discrimination, harassment or sexual harassment are claims outside the jurisdiction of the Court and fall within the jurisdiction of the British Columbia Human Rights Tribunal pursuant to the *Human Rights Code*.

Action Statute Barred

9. The Plaintiffs' claims and the claims of other putative members of the proposed class are statute-barred, in whole or in part, pursuant to the *Limitation Act*, SBC 2012, c. 13 (the "*Limitation Act*"), as the claims were brought outside of the limitations or prescribed periods in the provincial legislation applicable to their claims.
10. In particular, any claim by the Plaintiffs and/or other putative members of the proposed class which occurred more than two years prior to the filing of the Notice of Civil Claim on October 11, 2023 has expired, pursuant to any and all applicable limitation periods.
11. Further, pursuant to sections 735 and 736 of the *Local Government Act*, RSBC 2015, c. 1, the claims against New Westminster are statutorily barred by the passage of time and failure to provide written notice.
12. New Westminster relies on the *Limitation Act*, and to the extent applicable, the former *Limitation Act*, RSBC 1996, c. 266.

No Breach of Contract

13. The Plaintiffs have failed to plead material facts to support a claim for breach of contract.
14. In the alternative, New Westminster denies that any contract, expressed or implied, exists between them and the Plaintiffs and/or other putative members of the proposed class.

15. Further, even if such contract, express or implied, exists between New Westminster and the Plaintiffs and/or other putative members of the proposed class, there has been no breach of contract by New Westminster.
16. Further, New Westminster denies that the Plaintiffs and/or other putative members of the proposed class have suffered any harm due to any breach of contract by New Westminster, as alleged or at all.
17. Further, or in the alternative, if the Plaintiffs and/or other putative members of the proposed class have suffered harm, such harm was not caused by New Westminster.

No Breach of Duty of Care

18. New Westminster denies that it owed a duty of care to the Plaintiffs or any of the putative members of the proposed class, as alleged or at all.
19. In the alternative, if New Westminster owed a duty of care to the Plaintiffs and/or proposed class members by statute, common law or otherwise, which is not admitted but specifically denied, New Westminster says that at all material times it acted in accordance with the standard of care expected of a reasonably prudent municipal authority, and in accordance with all policies, statutory requirements, and common law duties.
20. If New Westminster owed a duty of care to the Plaintiffs and/or proposed class members by statute, common law or otherwise, and breached the applicable standard of care, which is not admitted but specifically denied, any such breaches did not cause or contribute to any injury, damage or loss to the Plaintiffs and/or proposed class members.
21. If New Westminster owed a duty of care to the Plaintiffs and/or proposed class members by statute, common law or otherwise, and breached the applicable standard of care, which is not admitted but specifically denied, such breaches were not systemic or common to all members of the proposed class.

Alleged Breach of the Charter

22. New Westminster denies that the rights of the Plaintiffs under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") were violated, or in the alternative, that any infringement, which is denied, is justified by section 1 of the *Charter*.
23. In the further alternative, any infringement of the Plaintiffs' and/or proposed class members' rights under the *Charter* is a result of individual circumstances and is not systemic or common to the Plaintiffs and the proposed class members.
24. In the further alternative, if there was a breach of the Plaintiffs' and/or proposed class members' rights under the *Charter* which is not justified by section 1, which is denied, New Westminster denies that the Plaintiffs and the proposed class members are entitled to monetary compensation for same.
25. In the further alternative, the Notice of Civil Claim fails to allege that any action, law, regulation, or policy on the part of New Westminster infringes the rights conferred on the Plaintiffs by section 15(1) of the *Charter*. The *Charter* does not impose a positive

obligation on the state or a municipality to remedy social inequalities or enact remedial legislation or policies.

26. Further, or in the further alternative, New Westminster's powers are limited to those which it is granted by statute. New Westminster is not empowered by any statute to perform any of the inactions or omissions alleged in the Notice of Civil Claim to have infringed the *Charter* rights of the Plaintiffs.
27. In the further alternative, if there has been an unjustified infringement of *Charter* rights, which is denied, then a damage award under s. 24(1) of the *Charter* is not a just and appropriate remedy.

Alleged Breach of Fiduciary Duty

28. New Westminster denies that it had a fiduciary relationship with the Plaintiffs and/or the proposed class members. New Westminster further denies that it owed any fiduciary duties to the Plaintiffs and/or proposed class members, as alleged or at all.
29. Further and in the alternative, if New Westminster owed any fiduciary duties to the Plaintiffs, which is not admitted and specifically denied, New Westminster did not breach any such duty, as alleged or at all.
30. At all material times, New Westminster acted reasonably, in good faith and in the interests of the community it serves.

Alleged Intentional Infliction of Mental Suffering

31. The Plaintiffs have failed to plead material facts to support the claim for intentional infliction of mental suffering.
32. If the Plaintiffs and/or proposed class members suffer or have suffered from any severe or extreme emotional illness or distress, as alleged or at all, which is not admitted but expressly denied, New Westminster says such illness or distress was not caused or contributed to by New Westminster, intentionally or otherwise.

Alleged Breach of Privacy

33. The Plaintiffs have failed to plead material facts to support a claim against New Westminster for breach of privacy. Further, New Westminster denies that it breached the *Privacy Act*, RSBC 1996, c. 373 ("*Privacy Act*") as alleged or at all.

Alleged Harassment

34. There is no recognized tort of harassment in British Columbia.
35. If the Plaintiffs and/or members of the proposed class were subjected to harassment or sexual harassment in the context of their employment, as alleged or at all, all of which is denied, any such claim falls within the jurisdiction of the British Columbia Human Rights Tribunal and must be pursued in accordance with the Collective Agreements, the *Code*, the *Workers Compensation Act* and/or the *Human Rights Code*.

36. In the alternative, the alleged impugned conduct, which is not admitted but is specifically denied, is not capable of sustaining the hypothetical tort of harassment in any event.
37. In the further alternative, New Westminster denies that it is liable for the harassment of the Plaintiffs, as alleged in the Notice of Civil Claim, or at all.

Alleged Conspiracy

38. New Westminster states that the Plaintiffs' ambiguous and undefined claim of conspiracy does not disclose a sustainable cause of action.
39. New Westminster denies that it committed the tort of conspiracy, as alleged or at all.
40. New Westminster denies there was any agreement between it, or any of the other Defendants, as alleged or at all, to engage in any form of concerted action to harm the Plaintiffs.
41. Further, or in the alternative, New Westminster denies that it intended to harm the Plaintiffs, as alleged or at all.

Family Compensation Act

42. New Westminster says that the Notice of Civil Claim discloses no cause of action or, in the alternative, no cause of action against New Westminster pursuant to the *Family Compensation Act*, RSBC 1996, c. 126 (the "*Family Compensation Act*").
43. New Westminster denies liability for any damages pursuant to the *Family Compensation Act*.
44. New Westminster denies that the Plaintiffs, specifically the SubClass Members, have suffered compensable damages pursuant to the *Family Compensation Act* and amendments thereto.
45. New Westminster says the availability of compensation for the proposed SubClass Members, as alleged, is not known at law.
46. New Westminster further says that damages under the *Family Compensation Act* are restricted to pecuniary loss and the loss of benefits sustained by a spouse, parent or child of the deceased. Claims for aggravated or punitive damages are not available to the Plaintiffs and/or proposed class members under the *Family Compensation Act*.

No Loss or Damage

47. New Westminster denies that the Plaintiffs and proposed class members suffered any injury, loss, damage and/or expense as alleged or at all.
48. In the alternative, if the Plaintiffs and proposed class members did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, the same was not caused or contributed to by any act, omission, negligence, fault and/or breach of duty of New Westminster.
49. In the further alternative, if the Plaintiffs and proposed class members did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, the same

was caused or contributed to by the acts, omissions, negligence, fault and/or breach of duty of other proposed class members, and/or parties currently unknown to New Westminster and for which New Westminster is not responsible or legally liable.

50. New Westminster claims apportionment of liability for damages and costs against other responsible parties pursuant to the *Negligence Act*, RSBC 1996, c. 333.
51. Further, or in the alternative, if the Plaintiffs and/or proposed class members did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, such injury, loss, damage and/or expense is attributable to their previous and/or subsequent injuries, traumas, congenital defects, medical conditions, or unrelated events for which New Westminster is not responsible or legally liable.
52. Further, or in the alternative, if the Plaintiffs and/or proposed class members did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, the Plaintiffs and proposed class members failed to take reasonable steps to mitigate their harm, loss, or expense.
53. New Westminster further states there is no basis for the Plaintiffs' claim for:
 - (a) special damages;
 - (b) aggravated damages; and
 - (c) exemplary and punitive damages.
54. In relation to the Plaintiffs' claim for recovery of health care costs pursuant to the *Health Care Costs Recovery Act* ("HCCRA"), New Westminster states that:
 - (a) the Plaintiffs and/or proposed class of plaintiffs have not received health care services as defined in the *HCCRA* and the government of British Columbia has not made payments for health care services on behalf of the Plaintiffs and/or proposed class of plaintiffs under the *HCCRA*;
 - (b) the Plaintiffs and/or proposed class of plaintiffs are not "beneficiaries" for the purpose of the *HCCRA*;
 - (c) New Westminster is not a "wrongdoer" for the purpose of the *HCCRA*, and therefore it is not liable for any past or future health care costs of the Plaintiffs or the proposed class members; and
 - (d) the amounts being claimed by virtue of the *HCCRA*, are costs that would have arisen in any event, and therefore New Westminster is not liable for same.

Not Suitable for Certification

55. The criteria for certification of this action as a class proceeding pursuant to s. 4 of the *Class Proceedings Act*, RSBC 1996, c. 50, is not met in the circumstances.
56. The pleadings disclose no cause of action.
57. The Plaintiffs have failed to provide an identifiable class.

58. The claims of the proposed class members do not raise common issues.
59. A class proceeding is not the appropriate procedure for the prosecution of the claims in this action. The assessment of the claims, including with respect to causation, for each of the Plaintiffs and putative members of the proposed class, will require a fact-specific assessment that is highly individualized and, therefore, a class proceeding would not provide for a fair and efficient resolution of the claims.
60. The proposed representative Plaintiffs are not appropriate representatives as they do not fairly and adequately represent the proposed class of plaintiffs.
61. Further particulars and defences will be raised should the Plaintiffs present an application to have their action certified as a class proceeding.

Conclusion

62. New Westminster pleads and relies upon the past and current provisions of the following enactments including with respect to any statutory defences set out therein:
 - (a) *Canadian Charter of Rights and Freedoms*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11
 - (b) *Class Proceedings Act*, RSBC 1996, c. 50;
 - (c) *Community Charter*, SBC 2003, c. 26;
 - (d) *Family Compensation Act*, RSBC 1996, c. 126;
 - (e) *Health Care Costs Recovery Act*, SBC 2008, c. 27;
 - (f) *Human Rights Code*, RSBC 1996, c. 210;
 - (g) *Labour Relations Code*, RSBC 1996, c. 244;
 - (h) *Limitation Act*, RSBC 1996, c. 266;
 - (i) *Limitation Act*, SBC 2012, c. 13;
 - (j) *Local Government Act*, RSBC 2015, c. 1;
 - (k) *Negligence Act*, RSBC 1996, c. 333;
 - (l) *Police Act*, RSBC 1996, c. 367;
 - (m) *Privacy Act*, RSBC 1996, c. 373;
 - (n) *Workers Compensation Act*, RSBC 2019, c. 1; and
 - (o) Such further and other enactments as New Westminster may advise.

WHEREFORE New Westminster seeks an order that this action against it be dismissed with costs.

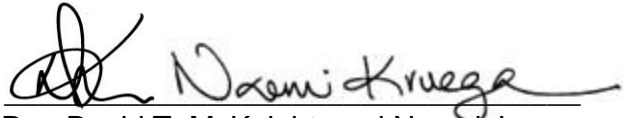
New Westminster's address for service: Alexander Holburn Beaudin + Lang LLP
Barristers and Solicitors

2700 - 700 West Georgia Street
Vancouver, BC V7Y 1B8
**Attention: David T. McKnight and Naomi
J. Krueger**

Fax number address for service: 604-484-9700

E-mail address for service: dmcknight@ahbl.ca and nkrueger@ahbl.ca

Dated: February 14, 2024

A handwritten signature in black ink, appearing to read "Naomi Krueger", written over a horizontal line.

Per: David T. McKnight, and Naomi J.
Krueger, lawyers for the Defendant,
The City of New Westminster

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.