



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*, R.S.B.C. 1996, c. 50

RESPONSE TO CIVIL CLAIM

Filed by: The City of Surrey ("Surrey")

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, 22, 26, and 32-56 of Part 1 of the Notice of Civil Claim are denied insofar as they relate to the claims against Surrey. The facts alleged in these paragraphs are outside the knowledge of Surrey insofar as they relate to the other Defendants.
3. The facts alleged in paragraphs 5-10, 13-21, 23-25, and 27-31 of Part 1 of the Notice of Civil Claim are outside the knowledge of Surrey.

Division 2 – Defendant’s Version of Facts

4. Unless expressly admitted herein, Surrey 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 Representative Plaintiffs

5. In response to the whole of the Notice of Civil Claim, and in specific response to paragraphs 5 – 10 of Part 1 of the Notice of Civil Claim, at no time were any of the Plaintiffs employed by Surrey or the Surrey Police Board (the "Board").

The City of Surrey

6. In response to the Notice of Civil Claim as a whole, Surrey's legal name is "City of Surrey".
7. Surrey provides policing and law enforcement in the City of Surrey pursuant to section 15 of the *Police Act*, R.S.B.C. 1996, c. 367 (the "*Police Act*").
8. Pursuant to section 3(2)(b) of the *Police Act*, Surrey provides policing and law enforcement services through the Royal Canadian Mounted Police (the "RCMP") pursuant to the Municipal Police Unit Agreement between the RCMP, the Province of British Columbia (the "Province") and Surrey.
9. In or around November 2018, Surrey Council voted to transition Surrey's police of jurisdiction from the RCMP to a municipal police force (the "Transition").
10. In or around June 2020, the Province established the Board.
11. On or about August 6, 2020, the Board established the Surrey Police Service (the "SPS").
12. The Board provides oversight and direction to the SPS pursuant to Part 5 of the *Police Act*. The Board is independent from Surrey and from the SPS, and from any other police department or agency.
13. The SPS is independent from Surrey and from any other police department or agency. Surrey exercises no discernible direction or control over the SPS.
14. The SPS commenced operations in or around November 2021 with deployment of the first SPS officers alongside Surrey RCMP officers.
15. In or around December 2022, Surrey Council voted to cancel the Transition and for the Surrey RCMP to continue providing policing and law enforcement services to Surrey as the police of jurisdiction.
16. On or about April 28, 2023, the Province recommended that Surrey complete the Transition.
17. On or about June 16, 2023, Surrey Council again voted to cancel the Transition.
18. On or about July 19, 2023, the Province ordered Surrey to continue the Transition (the "July 19 Decision").
19. On or about October 13, 2023, Surrey filed a Petition in the Supreme Court of British Columbia seeking judicial review of the July 19 Decision (the "Petition").

20. On or about October 16, 2023, the Province passed the *Police Amendment Act, 2023*, amending the *Police Act* to the effect that the Province could require Surrey to complete the Transition.
21. On or about November 16, 2023, the Province suspended the authority of the Board pursuant the powers granted by the *Police Amendment Act, 2023*.
22. On or about November 20, 2023, Surrey announced that it would be amending the Petition to challenge the constitutionality of the Province's amendments to the *Police Act*.
23. In specific response to paragraph 22 of Part 1 of the Notice of Civil Claim, Surrey is not the employer of municipal constables or any other person employed by the SPS.
24. All municipal constables of the SPS are employed by the Board, either pursuant to collective agreements negotiated on their behalf by the Surrey Police Union (the "Union"), or pursuant to individual contracts in respect of certain senior officers.
25. The Board is an employer within the meaning of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (the "*Workers Compensation Act*").
26. In further and specific response to paragraphs 22, 26, and 32 to 34 of Part 1 of the Notice of Civil Claim, the relationship between Surrey and any employees of the Board, including municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers, and 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*.
27. In further response to paragraph 22 of Part 1 of the Notice of Civil Claim, the Board and its employees are excluded from any tort liability pursuant to sections 20 and 21 of the *Police Act*.

The Plaintiffs' Claims

28. The Notice of Civil Claim does not allege any facts that identify any torts or acts of discrimination, harassment, or bullying committed by any member of the SPS or any other employee of the Board.
29. The Notice of Civil Claim does not allege any facts that could constitute a cause of action of any kind against Surrey and alleges no facts that could support a finding that a class of plaintiffs exists, or, in alternative, any finding that any such class of plaintiffs includes members or former members of the SPS, or any finding that the Plaintiffs are proper representatives of any such class of plaintiffs that would include members or former members of the SPS.
30. Further and in the alternative, Surrey denies it owed a duty of care, contractual, statutory, or otherwise, to the Plaintiffs and/or the proposed class of plaintiffs.
31. In the further alternative, if Surrey owed any duty to the Plaintiffs or to the proposed class of plaintiffs, as alleged or at all, all of which is denied, Surrey 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.

32. In response to the whole of the Notice of Civil Claim and in specific response to paragraphs 34 and 48 to 53 of Part 1 of the Notice of Civil Claim, Surrey denies the existence of a "systemic culture of gender and sexual orientation-based harassment and discrimination" in the SPS. In the alternative, if such a culture exists, Surrey 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.
33. In response to paragraph 55 of Part 1 of the Notice of Civil Claim, Surrey expressly denies that the *Charter* rights of the Plaintiffs and/or other putative members of the proposed class were breached, as alleged or at all.
34. Surrey denies that the Plaintiffs and/or the proposed class of plaintiffs suffered injuries, loss, damage, or expense, as alleged or at all.
35. In the alternative, if the 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 Surrey.
36. 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.
37. 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.

Division 3 – Additional Facts

38. At all material times, Surrey 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 Agreement and Policies

39. At all material times, the proposed class members who were or are officers below the rank of Inspector with the SPS (the "SPS Officers") were each members of the Union and the Union was, at all material times, certified as the exclusive bargaining agent to represent members of the Union, including the SPS Officers, pursuant to the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (the "*Labour Relations Code*").
40. On or about March 10, 2022, the Board and the Union entered into a collective agreement (the "Collective Agreement") that sets out the terms and conditions of employment that apply to members of the Union, including the SPS Officers.
41. The employment of the SPS Officers was and is covered and governed by the Collective Agreement.
42. The Collective Agreement provides that it is effective from March 10, 2022 to December 31, 2024 and will remain in full force and effect thereafter from year to year unless either party gives to the other party written notice of its desire to terminate or amend the Collective Agreement pursuant to the *Labour Relations Code*.

43. The Collective Agreement provides, *inter alia*:
- (a) a grievance procedure with escalating stages to resolve any difference concerning the interpretation, application, operation, or alleged violation of the Collective Agreement: Article 19; and
 - (b) if satisfactory settlement cannot be reached through the grievance procedure prescribed under the Collective Agreement, 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: Article 19(b)(iii).
44. In the alternative, the employment of the SPS Officers was and is covered and governed by prior and/or subsequent collective agreements, all of which contain provisions that are substantively the same or similar to the terms in the Collective Agreement.
45. The SPS has and at all material times had in place Policy AD 5.7 Human Rights and Respectful Workplace Conduct ("**Policy AD 5.7**"), which provides, *inter alia*:
- (a) Policy AD 5.7 applies to all SPS Employees, Applicants, Volunteers, Contractors, Practicum Students and Seconded Employees;
 - (b) individuals within the scope of Policy AD 5.7:
 - (i) have a responsibility to create and maintain a workplace that is free from Discrimination, Disrespectful Behaviour (including bullying), and Harassment; and
 - (ii) have the right to seek the assistance of a Supervisor, union representative, or the Employee Services Section in the resolution process, if they face behaviour inconsistent with Policy AD 5.7, and they believe that it is not possible or appropriate to resolve an issue on an individual;
 - (c) any Employee who violates Policy AD 5.7 is subject to corrective and/or disciplinary action;
 - (d) a process for reporting, mediating, and investigating concerns and complaints of Discrimination, Harassment, and Disrespectful Behaviour; and
 - (e) provides that any disciplinary action under the policy will be carried out in accordance with any collective agreement and/or Internal Discipline Rules.
46. The SPS has and at all material times had in place Policy AD 2.4 Internal Discipline which provides for internal disciplinary procedures with respect to the investigation of complaints against members of the SPS.
47. The SPS has and at all material times had in place Policy AD 5.8.1 Occupational Health and Safety – Governance which sets out the responsibilities of the SPS and its members in promoting and sustaining a healthy and safe work environment.
48. 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 Agreement. Such disputes fall within the exclusive jurisdiction of an arbitrator under the Collective Agreement and the *Labour Relations Code* on the following basis:

- (a) the SPS Officers were each members of the Union at all material times;
 - (b) the Union was the SPS Officers' exclusive bargaining agent certified pursuant to the *Labour Relations Code*;
 - (c) the SPS Officers were covered by and subject to the terms and conditions of the Collective Agreement which includes provision for the final and conclusive resolution of all disputes by arbitration; and
 - (d) section 89 of the *Labour Relations Code* allows an arbitration board to provide a final and conclusive settlement of a dispute arising under the Collective Agreement.
49. Further and in the alternative, the SPS 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 *Labour Relations Code*, the *Workers Compensation Act*, the *Police Act* and the *Human Rights Code*, R.S.B.C. 1996, c. 210 (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.

No Jurisdiction of this Court

50. The Notice of Civil Claim fails to allege facts which, if true, would establish that this court has jurisdiction over Surrey in relation to the claims made against it. By filing this Response to Civil Claim, Surrey does not submit to the jurisdiction of this court.

Part 2: RESPONSE TO RELIEF SOUGHT

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

Part 3: LEGAL BASIS

1. Surrey denies each and every allegation in the Notice of Civil Claim.
2. In answer to the whole of the Notice of Civil Claim, Surrey says that the Notice of Civil Claim does not disclose a factual basis or legal basis for the Plaintiffs' claims against Surrey, and further says that the allegations in the Notice of Civil Claim are an abuse of process as detailed below or are otherwise inappropriate to be litigated in this forum.

Employer/Employee Relationship

3. In answer to the whole of the Notice of Civil Claim, Surrey says it is not a proper defendant in this proceeding. The Plaintiffs and proposed class members have no possible claim against Surrey.

4. Surrey is not responsible for implementing, supervising, or enforcing policies, procedures, codes of conduct and/or guidelines, or otherwise governing the conduct of SPS 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

5. In full answer to the Notice of Civil Claim, Surrey 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 *Labour Relations Code* and the Collective Agreement; and
 - (b) the concurrent jurisdiction of the BC Human Rights Tribunal.
6. The allegations raised in the Notice of Civil Claim, in their essential character, arise from the interpretation, application, operation and alleged violation of the Collective Agreement.
7. Pursuant to section 89 of the *Labour Relations 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*. The Plaintiffs and/or proposed class members are not without remedy or precluded from effective redress should the Plaintiffs' claims be dismissed on a jurisdictional basis.
8. 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 SPS are claims outside the jurisdiction of the Court, statute barred pursuant to the provisions of the *Workers Compensation Act*, and fall within the exclusive jurisdiction of the British Columbia Workers' Compensation Board.
9. 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 is a claim outside the jurisdiction of the Court and falls within the exclusive jurisdiction of the British Columbia Human Rights Tribunal pursuant to the *Human Rights Code*.

Action Statute Barred

10. The Plaintiffs' and/or other putative members of the proposed class's claims are statute-barred, in whole or in part, under the *Limitation Act*, S.B.C. 2012, c. 13, as the claims were brought outside of the limitations or prescribed periods in the provincial legislation applicable to their claims.

11. 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.
12. Further, pursuant to section 735 and 736 of the *Local Government Act*, R.S.B.C. 2015, c. 1, the claims against Surrey are statutorily barred by the operation of time and failure to provide written notice.

Abuse of Process

13. The within action and the matters raised herein are an abuse of process as a multiplicity of proceedings and the action should be dismissed accordingly.
14. The matters raised in this action concern the same subject matter as a proceeding commenced by the Plaintiffs in the British Columbia Human Rights Tribunal.

No Breach of Contract

15. Surrey denies that any contract, expressed or implied, exists between them and the Plaintiffs and/or other putative members of the proposed class.
16. Further, even if such contract, express or implied, exists between Surrey and the Plaintiffs and/or other putative members of the proposed class, there has been no breach of contract by Surrey.
17. Further, Surrey denies that the Plaintiffs and/or other putative members of the proposed class have suffered any harm due to any breach of contract by Surrey, as alleged or at all.
18. 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 Surrey.

No Breach of Duty of Care

19. Surrey 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.
20. In the alternative, if Surrey 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, Surrey 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.
21. If Surrey 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.
22. If Surrey 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

23. Surrey denies that the rights of the Plaintiffs and/or proposed class members 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*.
24. In the further alternative, if any infringement of the Plaintiffs' and/or proposed class members' rights under the *Charter* which is not justified by section 1 occurred, which is denied, Surrey denies that the Plaintiffs and/or 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 Surrey infringes the rights conferred on the Plaintiffs and proposed class members 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, Surrey's powers are limited to those which it is granted by statute. Surrey is not empowered by any statute to perform anything that would constitute the inactions or omissions alleged in the Notice of Civil Claim to have infringed the *Charter* rights of the Plaintiffs and/or proposed class members.
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. Surrey denies that it had a fiduciary relationship with the Plaintiffs and/or the proposed class members. Surrey 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 Surrey owed any fiduciary duties to the Plaintiffs and/or proposed class members, which is not admitted but specifically denied, Surrey did not breach any such duty, as alleged or at all.
30. At all material times, Surrey acted reasonably, in good faith, and in the interests of the community it serves.

Intentional Infliction of Mental Suffering

31. The Plaintiffs have failed to plead material facts to support the Plaintiffs' claim for intentional infliction of mental suffering.
32. Further, or in the alternative, if the Plaintiffs suffered from any severe or extreme emotional illness or distress, as alleged or at all, which is not admitted but expressly denied, Surrey says such illness or distress was not caused or contributed to by Surrey, intentionally or otherwise.

Alleged Breach of Privacy

33. The Plaintiffs have failed to plead material facts to support a claim against Surrey for breach of privacy.
34. In the alternative, denies that it breached the *Privacy Act*, R.S.B.C. 1996, c. 373 ("*Privacy Act*") as alleged or at all.
35. In the alternative, if Surrey breached the *Privacy Act*, which is specifically denied, Surrey denies the Plaintiffs and the proposed class members suffered any damage, loss or expense as a result thereof, as alleged or at all.

Alleged Harassment

36. There is no recognized tort of harassment in British Columbia.
37. 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 exclusive jurisdiction of the British Columbia Human Rights Tribunal and must be pursued in accordance with the *Labour Relations Code*, the *Workers Compensation Act* and/or the *Human Rights Code*.
38. 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.
39. In the further alternative, Surrey denies that it is liable for the harassment of the Plaintiffs and/or members of the proposed class, as alleged in the Notice of Civil Claim, or at all.

Alleged Conspiracy

40. Surrey states that the Plaintiffs' ambiguous and undefined claim of conspiracy does not disclose a sustainable cause of action.
41. Surrey denies that it committed the tort of conspiracy, as alleged or at all.
42. Surrey 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.
43. Further, or in the alternative, Surrey denies that it intended to harm the Plaintiffs as alleged or at all.

Family Compensation Act

44. Surrey says that the Notice of Civil Claim discloses no cause of action or, in the alternative, no cause of action against Surrey pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126 (the "*Family Compensation Act*").
45. Surrey denies liability for any damages pursuant to the *Family Compensation Act*.
46. Surrey denies that the Plaintiffs, specifically the SubClass Members, have suffered compensable damages pursuant to the *Family Compensation Act* and amendments thereto.

47. Surrey says the availability of compensation for the proposed SubClass Members, as alleged, is not known at law.
48. Surrey 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

49. Surrey denies that the Plaintiffs and proposed class members suffered any injury, loss, damage and/or expense as alleged or at all.
50. 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 same was not caused or contributed to by any act, omission, negligence, fault and/or breach of duty of Surrey or for which Surrey may be statutorily or vicariously liable.
51. In the further alternative, if the Plaintiffs and/or proposed class members did suffer any injury, loss, damage or expense, which is denied, the same was caused or contributed to by the acts, omissions, fault and/or breach of duty of other proposed class members and/or other parties currently unknown to Surrey and for which Surrey is not responsible or legally liable.
52. Surrey claims apportionment of liability for damages and costs against other responsible parties and pleads and relies upon the *Negligence Act*, R.S.B.C. 1996, c. 333.
53. 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 Surrey is not responsible or legally liable.
54. 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/or proposed class members failed to take reasonable steps to mitigate their harm, loss, or expense.
55. Surrey further states that there is no basis for the Plaintiffs' claim for:
 - (a) special damages;
 - (b) aggravated damages; and
 - (c) exemplary and punitive damages.
56. In relation to the Plaintiffs' claim for recovery of health care costs pursuant to the *Health Care Costs Recovery Act* ("HCCRA"), Surrey 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) Surrey 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 Surrey is not liable for same.

Not Suitable for Certification

- 57. 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.
- 58. The pleadings disclose no cause of action.
- 59. The Plaintiffs have failed to provide an identifiable class.
- 60. The claims of the proposed class members do not raise common issues.
- 61. 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.
- 62. The proposed representative Plaintiffs are not appropriate representatives as they do not fairly and adequately represent the proposed class of plaintiffs.
- 63. The Notice of Civil Claim does not plead any sustainable or proper basis for alleging that Surrey is properly named as a defendant in a class action brought by representative Plaintiffs who have no nexus in fact or law with Saanich.
- 64. Alternatively, even if any plaintiff had any nexus to Surrey, there is no legal basis for any claim against Surrey.
- 65. Further particulars and defences will be raised should the Plaintiffs present an application to have their action certified as a class proceeding.

Legislation

- 66. Surrey 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*, R.S.B.C. 1996, c. 50;
 - (c) *Community Charter*, S.B.C. 2003, c. 26;

- (d) *Family Compensation Act*, R.S.B.C. 1996, c. 126;
- (e) *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27;
- (f) *Human Rights Code*, R.S.B.C. 1996, c. 210;
- (g) *Labour Relations Code*, R.S.B.C. 1996, c. 244;
- (h) *Limitation Act*, R.S.B.C. 1996, c. 266;
- (i) *Local Government Act*, R.S.B.C. 2015, c. 1;
- (j) *Municipal Act*, R.S.B.C. 1979, c. 290;
- (k) *Negligence Act*, R.S.B.C. 1996, c. 333;
- (l) *Police Act*, R.S.B.C. 1996, c. 367;
- (m) *Privacy Act*, R.S.B.C. 1996, c. 373;
- (n) *Workers Compensation Act*, R.S.B.C. 2019, c. 1; and
- (o) such further and other enactments as Surrey may advise.

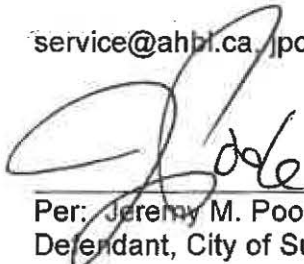
WHEREFORE Surrey seeks an order that this action against it be dismissed with costs.

Surrey's address for service: Alexander Holburn Beaudin + Lang LLP
Barristers and Solicitors
2700 - 700 West Georgia Street
Vancouver, BC V7Y 1B8
Attention: Jeremy M. Poole

Fax number address for service: 604-484-9722

E-mail address for service: service@ahbl.ca, jpoole@ahbl.ca

Dated: February 14, 2024


Per: Jeremy M. Poole, lawyer for the
Defendant, City of Surrey

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.