

Amended Pursuant to Rule 6-2(7)  
of the Supreme Court Civil Rules  
Original Notice of Civil Claim filed  
on October 11, 2023

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 TOWNSHIP OF ESQUIMALT,  
THE CITY OF NELSON, THE CITY OF NEW  
WESTMINSTER, THE DISTRICT MUNICIPALITY  
DISTRICT OF OAK BAY, THE CITY OF PORT MOODY,  
THE DISTRICT MUNICIPALITY OF CORPORATION OF  
THE DISTRICT OF SAANICH, THE CITY OF SURREY,  
THE CITY OF VANCOUVER, THE CITY OF VICTORIA,  
THE DISTRICT MUNICIPALITY DISTRICT OF WEST  
VANCOUVER, ABBOTSFORD POLICE BOARD,  
CENTRAL SAANICH POLICE BOARD, DELTA POLICE  
BOARD, VICTORIA AND ESQUIMALT POLICE BOARD,  
NELSON POLICE BOARD, NEW WESTMINSTER  
POLICE BOARD, OAK BAY POLICE BOARD, PORT  
MOODY POLICE BOARD, SAANICH POLICE BOARD,  
SURREY POLICE BOARD, VANCOUVER POLICE  
BOARD, WEST VANCOUVER POLICE BOARD, THE  
OFFICE OF THE POLICE COMPLAINT COMMISSIONER  
OF BRITISH COLUMBIA, HIS MAJESTY THE KING IN  
RIGHT OF THE PROVINCE 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.

**AMENDED NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff(s).

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff(s) and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

1. This action concerns the discrimination against, harassment of, and bullying of current and former female municipal police Officers on the basis of their gender and/or sexual orientation.
2. "Officer" in this claim is as defined in the *Police Act*, RSBC 1996 c. 367.
3. The Representative Plaintiffs (defined below) allege that they, and fellow female Officers, were subject to gender and sexual orientation-based discrimination, harassment, and bullying by other Officers and management of municipal police forces in British Columbia. The Representative Plaintiffs allege that the Municipal municipal Police police Forces-forces and the government authorities responsible for their management failed to fulfill statutory, common law, and contractual duties to provide the Representative Plaintiffs and Class Members (defined below) with a work environment free of gender and sexual orientation-based discrimination, harassment and bullying.

4. As a result of the discrimination, harassment and bullying, the Representative Plaintiffs and Class Members have suffered serious physical and psychological damages, out-of-pocket expenses and loss of income.

#### The Representative Plaintiffs

5. The representative plaintiff, Cheryl Weeks, is a police officer, and former Constable of the Vancouver Police Department (the “**VPD**”) from 2007 to 2023, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.
6. The representative plaintiff, Anja Bergler, is a police Officer, and Constable with the VPD since August 30, 2001, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.
7. The representative plaintiff, Helen Irvine, is a former police Officer, and Constable with the Delta Police Department (the “**DPD**”) from March 10, 2014 to April 12, 2022, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.
8. The representative plaintiff, Cary Ryan, is a former police Officer, and Constable with the West Vancouver Police Department (the “**WVPD**”) from February 23, 2004 to October 28, 2009, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.
9. The representative plaintiff, Lauren Phillips, is a police officer, and former Constable with the Victoria Police Department (the “**VicPD**”) from September 10, 2015 to September 10, 2017, with the New Westminster Police Department (the “**NWPD**”) from September 11, 2017 to July 7, 2023, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.
10. The representative plaintiff, Ann-Sue Piper, is a police Officer, and Constable with the Central Saanich Police Services (the “**CSPS**”) since September 11, 2008, with an address for service in this proceeding at ~~700~~1500 - 570 Granville Street, Vancouver, BC.

#### The Class

11. The Representative Plaintiffs bring this action on their own behalf and on behalf of all persons who have been employed by the Abbotsford Police Department (the “**APD**”), CSPS, DPD, VicPD, Nelson Police Department (the “**NPD**”), NWPD, Oak Bay Police Department (the “**OBPD**”), Port Moody Police Department (the “**PMPD**”), Saanich Police Department (the “**SPD**”), Surrey Police Service (the “**SPS**”), VPD, and WVPD who:
  - a. are female;
  - b. were, at the time of their employment with any of the above police departments, female; or
  - c. were, at the time of their employment with any of the above police departments, living as or presenting as women.

(the “**Class Members**”).

12. Additionally, the Representative Plaintiffs seek to maintain this action on behalf of all individuals who are entitled to assert a derivative claim pursuant to the *Family Compensation Act*, RSBC 1996, c 126 (the “**SubClass Members**”).

### The Defendants

13. The defendant, ~~the~~ City of Abbotsford (“**Abbotsford**”), is a municipality that employs the Officers of the municipal police force, the APD.
14. The defendant, ~~the~~ District of Central Saanich (“**Central Saanich**”), is a municipality that employs the Officers of the municipal police force, the CSPS.
15. The defendant, ~~the~~ City of Delta (“**Delta**”), is a municipality that employs the Officers of the municipal police force, the DPD.
16. The defendant, ~~the District Municipality~~ Township of Esquimalt (“**Esquimalt**”), is a municipality that employs the Officers of the municipal police force, the VicPD.
17. The defendant, ~~the~~ City of Nelson (“**Nelson**”), is a municipality that employs the Officers of the municipal police force, the NPD.
18. The defendant, ~~the~~ City of New Westminster (“**New Westminster**”), is a municipality that employs the Officers of the municipal police force, the NWPD.
19. The defendant, ~~the~~ District of Oak Bay (“**Oak Bay**”), is a municipality that employs the Officers of the municipal police force, the OBPD.
20. The defendant, ~~the~~ City of Port Moody (“**Port Moody**”), is a municipality that employs the Officers of the municipal police force, the PMPD.
21. The defendant, ~~the District Municipality of~~ Corporation of the District of Saanich (“**Saanich**”), is a municipality that employs the Officers of the municipal police force, the SPD.
22. The defendant, ~~the~~ City of Surrey (“**Surrey**”), is a municipality that employs the Officers of the municipal police force, the SPS.
23. The defendant, ~~the~~ City of Vancouver (“**Vancouver**”), is a municipality that employs the Officers of the municipal police force, the VPD.
24. The defendant, ~~the~~ City of Victoria (“**Victoria**”), is a municipality that employs the Officers of the VicPD.
25. The defendant, ~~the District Municipality~~ District of West Vancouver (“**West Vancouver**”), is a municipality that employs the Officers of the municipal police force, the WVPD.
26. Abbotsford, Central Saanich, Delta, Esquimalt, Nelson, New Westminster, Oak Bay, Port Moody, Saanich, Surrey, Vancouver, Victoria, and West Vancouver are municipalities subject

to the *Local Government Act*, *Community Charter*, and/or *Vancouver Charter* (the “**Municipalities**”), and APD, CSPS, DPD, NPD, NRPD, OBPD, PMPD, SPD, SPS, VPD, VicPD, and WVPD are municipal police departments (the “**Municipal Police Defendants**”) subject to the *Police Act*.

27. The Municipalities have, pursuant to the *Police Act*, each appointed a municipal police board, being Abbotsford Police Board, Central Saanich Police Board, Delta Police Board, Victoria and Esquimalt Police Board, Nelson Police Board, New Westminster Police Board, Oak Bay Police Board, Port Moody Police Board, Saanich Police Board, Surrey Police Board, Vancouver Police Board, West Vancouver Police Board (the “**Municipal Police Boards**”, and collectively with the Municipalities the “**Municipal Police Defendants**”).
28. The Municipal Police Defendants in turn have established the respective municipal police departments APD, CSPS, DPD, NPD, NRPD, OBPD, PMPD, SPD, SPS, VPD, VicPD, and WVPD (the “**Municipal Police Departments**”) subject to the *Police Act*.
29. In the alternative to paragraphs 13 - 25, the Municipal Police Boards employ the Officers of the municipal police forces.
- ~~27.~~ 30. The defendant, ~~the Office of the~~ Police Complaint Commissioner of British Columbia (the “**Commissioner**”), is a statutory authority which is responsible for the investigation of complaints by the public involving municipal police forces and their Officers in British Columbia.
- ~~28.~~ 31. The defendant, His Majesty the King in right of the Province of British Columbia (the “**Crown**”), is known.
- ~~29.~~ 32. The defendant, ~~the~~ Attorney General of British Columbia (the “**Attorney General**”), is the Minister responsible for justice issues for the government of British Columbia.
- ~~30.~~ 33. The defendant, ~~the~~ Minister of Public Safety and Solicitor General (the “**Minister of Public Safety**”), is the Minister who, per the *Police Act*, must ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia.
- ~~31.~~ 34. The Crown, Attorney General and Minister of Public Safety are jointly and severally liable for various torts committed by police Officers in British Columbia.

#### Municipal Jurisdiction

- ~~32.~~ 35. While working ~~with~~ for the Municipal Police Defendants, the Representative Plaintiffs and other Class Members were located within Municipal premises and integrated into the Municipal Police Department work environment.
- ~~33.~~ 36. The Representative Plaintiffs used Municipal Police Department property and resources to perform their jobs and worked with and reported directly to Municipal Police Department Officers and Management.

- ~~34.~~ 37. While working with the Municipal Police Department, the Representative Plaintiffs and other Class Members were each subjected to systemic and persistent gender-based harassment and discrimination by Municipal Police Department Officers and Management. All of this behaviour has had the effect of demeaning the Representative Plaintiffs and other Class Members and limiting their careers.
- ~~35.~~ 38. While working with the VPD, Ms. Weeks was subject to harassing behaviours including receiving an email from a fellow Officer containing an explicit video (unrelated to any police investigation) involving a woman engaged in a sexual act with a horse. Ms. Weeks was routinely “fined” for minor (or perceived) infractions which included demeaning domestic tasks like waiting on other Officers and stocking a cooler with alcoholic beverages. Ms. Weeks complained to sergeants and others in VPD management about the gender-based harassment that she was experiencing, but these complaints were never addressed and led to retaliatory abuse, often including being publicly identified as not being a “team player”.
- ~~36.~~ 39. While working with the VPD, Ms. Bergler was subject to unwanted sexual comments in the workplace. From on or about August 11 to August 23, 2023 a framed wall poster (the “**Poster**”) appeared in the VPD Forensic Identification Unit (the “**FIU**”) classroom that is a parody of an official poster. The Poster contains 20 Officer portrait photographs, including Ms. Bergler’s and at least 7 Class Members. The photographs are either official photographs of members in dress uniform or Ceremonial uniform; and at least one of them has been photoshopped, as the member does not have an official photograph on file. The tag line below the title is “swabbing penises for over 100 years”. Although male FIU Officers will, under certain circumstances, obtain penile swabs from sexual assault suspects, female FIU Officers do not.
- ~~37.~~ 40. Displaying the poster breached Ms. Bergler’s and other Class Members privacy.
- ~~38.~~ 41. While working with the DPD, Ms. Irvine experienced, among other things, unwanted sexual touching and comments in the workplace. Fellow Officers drew a penis in Ms. Irvine police notebook, with the caption “next time it won’t be on a sticky note”. Ms. Irvine was also frequently compelled to play a game of “would you rather” where questions of a sexual nature were asked of her.
- ~~39.~~ 42. Ms. Irvine complained to sergeants and others in DPD management about the gender-based harassment that she was experiencing, but these complaints were never addressed and led to retaliatory abuse, often at the hands of DPD management.
- ~~40.~~ 43. Ms. Irvine's complaints often led to retaliatory abuse from DPD Officers and Management, which prevented her from effectively performing her job.
- ~~41.~~ 44. As a consequence of the ongoing harassment that she experienced while working with the DPD, Ms. Irvine was diagnosed with Major Depressive Disorder.
- ~~42.~~ 45. While working with the WVPD, Ms. Ryan experienced, among other things, unwanted sexual touching and comments in the workplace. Ms. Ryan was exposed to graphic, misogynistic photographs of a woman on her period, and was routinely exposed to unwanted physical contact and invitations for sex with coworkers. On several occasions, Ms. Ryan complained

to the WVPD about the harassment that she was experiencing at the hands of WVPD Officers and Management. On some occasions, Ms. Ryan was told to drop her complaints. On other occasions, Ms. Ryan was asked to sign a document which described her complaints as “emotional”.

- ~~43.~~ 46. As a consequence of the ongoing harassment that she experienced while working with the WVPD, Ms. Ryan was diagnosed with Clinical Depression.
44. 47. While working with the CSPA, Ms. Piper experienced, among other things, unwanted sexual touching and comments in the workplace. Ms. Piper was exposed to routine “jokes” about oral sex (blow jobs), frequently was touched on her buttocks by fellow Officers, and was threatened to be penetrated with a service rifle by a male Officer. On several occasions, Ms. Piper complained to CSPA about the harassment that she was experiencing at the hands of other Officers, but these complaints were not, or insufficiently, addressed and led to retaliatory abuse, often at the hands of CSPA management.
45. 48. As a consequence of the ongoing harassment that she experienced while working with the CSPA, Ms. Piper was diagnosed with Severe Complex Post Traumatic Stress Disorder.
46. 49. While working with the NWPD, Ms. Phillips experienced, among other things, unwanted sexual comments in the workplace. Ms. Phillips was called a “hot mama”, and had other comments about her “child bearing hips” made by a male Officer. On several occasions, Ms. Phillips complained to NWPD about the harassment that she was experiencing at the hands of other Officers but these complaints were not, or insufficiently, addressed and led to retaliatory abuse, often at the hands of NWPD management.
47. 50. As a consequence of the ongoing harassment that she experienced while working with the NWPD, Ms. Phillips was diagnosed with Situational Depression.
48. 51. At all material times in each Municipal Police Department in which they worked, the Representative Plaintiffs and other Class Members were treated differently than their male colleagues, particulars of which include but are not limited to:
- a. sexually explicit comments were frequently made to, or about, the Representative Plaintiffs and other Class Members by Municipal Police Department Officers and Management;
  - b. comments dismissing the Representative Plaintiffs and other Class Members' ability to carry out the tasks and duties of their jobs were frequently made by Municipal Police Department Officers and Management;
  - c. The Representative Plaintiffs and other Class Members were subjected to unwanted physical and sexual touching by Municipal Police Department Officers and Management;
  - d. Class Members were subjected to demeaning comments about sexual orientation and lesbian relationships, which were frequently made to, or about, them by Municipal Police Department Officers and Management;



- e. as between, Ms. Weeks, Ms. Irvine, Ms. Phillips and Ms. Piper and other Class Members, and their male colleagues of equivalent experience and seniority, the female Officers were harassed, denied promotion opportunities, transfers to more desirable policing units, shifts or positions, and precluded from pay increases because of pregnancy;
- f. as between Class Members and their male colleagues of equivalent experience and seniority, the men were assigned to more complex files and tasks; and
- g. as between Class Members and their male colleagues of equivalent experience and seniority, the men generally received more positive feedback on their performance reviews.

~~49.~~ 52. Due to the systemic culture of gender and sexual orientation-based harassment and discrimination in the Municipal Police Departments, the Representative Plaintiffs and other Class Members were ostracized, belittled, and humiliated and their career advancement prospects limited.

~~50.~~ 53. Each of the following sub-paragraphs are systemic and gendered forms of Gendered Discrimination (as defined below):

- a. While working with the VPD, Ms. Weeks was a victim, among other things, of a sexual assault perpetrated by another VPD officer, "RB". Ms. Weeks reported the assault to another police authority, who arrested RB. While RB was in custody, the VPD arranged for RB to be visited by other VPD Officers, provided RB legal representation, and otherwise interfered with, and injected the VPD into, a criminal proceeding the VPD was not involved in.
- b. In the days leading up to and weeks following RB's arrest, the VPD held a number of meetings to plan and organize support for RB, but not for Ms. Weeks.
- c. VPD also provided legal representation to other Officers who were deemed "witnesses" to the assault. However, VPD did not provide any legal representation to Ms. Weeks because she was "just the complainant".
- d. Ms. Weeks did not report the assault to the VPD (and the assault did not occur in VPD's jurisdiction) but VPD used its position of authority to compel an interview with Ms. Weeks about the assault. Although Ms. Weeks was uncomfortable with the interview, she felt compelled to do so by the VPD, her employer.
- e. RB's assault was referred to the OPCC Commissioner for investigation (the "**Assault Investigation**"). The OPCC Commissioner referred the investigation back to VPD (i.e., RB's own department) for investigation.
- f. Ms. Weeks was named as a "witness" to the Assault Investigation, and not the complainant (which named the VPD). Because of section 182 of the *Police Act*, and because Ms. Weeks was not the complainant, she was denied access to information about the Assault Investigation, including her own information provided to the



investigation. However, Officers of the VPD, including Ms. Weeks' supervisors, were given access to Ms. Weeks' information in the course of their investigation. In short, the VPD controlled the investigation, was in a position to "protect" RB, and did not acknowledge Ms. Weeks' victimization.

- g. RB was convicted of assault on October 6, 2021. It was revealed that RB had previously been credibly accused of sexual assault (on a civilian police employee), but VPD had failed to have in place, or failed to properly enforce, reasonable policies with respect to the prevention of assault and battery, failed to warn Ms. Weeks or other female VPD Officers of the risk of injury arising from RB; failed to take any, or any reasonable, steps to protect Ms. Weeks or other female Officers from RB, and/or failing to adequately investigate the credible allegation of assault.
- h. The VPD authorized Officers to attend RB's criminal trial (Ms. Weeks was the complainant) to support RB and to report to VPD management on Ms. Weeks' testimony. VPD's attendance at the trial was intended to harass and intimidate Ms. Weeks.
- i. The VPD breached Ms. Weeks' privacy by disclosing information about her assault, which was not publicly known, to her colleagues and other Officers, including to police departments in other jurisdictions in Canada. VPD disclosed this information in a reckless and intentional manner intending to harass and intimidate Ms. Weeks.
- j. Ms. Weeks reported the breach of her privacy to her superiors (the "**Privacy Complaint**"), who referred the complaint to the OPCC Commissioner for investigation. The OPCC Commissioner referred the investigation to the APD who found there was no "discreditable conduct" in accordance with the relevant Respectful Workplace Policy. The VPD was not required to refer the Privacy Complaint to the OPCC Commissioner but conspired with the OPCC Commissioner and/or APD to harass and intimidate Ms. Weeks. In so investigating, APD interviewed approximately 20 VPD officers, further breaching Ms. Weeks' privacy, and retaliating against Ms. Weeks for reporting the harassment.

~~51.~~ 54. At all material times, the Municipalities, Municipal Police Defendants, the Crown, the Attorney General, and the Minister of Public Safety owed a duty of care to the Representative Plaintiffs and other Class Members to ensure they could work in an environment free from:

- a. discrimination;
- b. sexualized or gendered violence;
- c. systemic mishandling of accountability processes;
- d. bullying or harassment of a gendered or sexualized nature;
- e. a culture of pervasive privacy violation; and
- f. intimidation

(the “**Gendered Discrimination**”).

~~52-~~ 55. Specifically, the Municipal Police Defendants, ~~Municipalities~~, the Crown, the Attorney General, and the Minister of Public Safety had a duty to:

- a. use reasonable care to ensure the safety and well-being of the Representative Plaintiffs and other Class Members;
- b. provide safe workplace environments free from gender-and-sexual orientation-based harassment and discrimination;
- c. provide the Representative Plaintiffs and other Class Members with equal access to files and tasks as compared to their male colleagues;
- d. establish and enforce appropriate policies, procedures, codes of conduct and guidelines to ensure that the Representative Plaintiffs and other Class Members would be free from gender-and-sexual orientation-based harassment and discrimination in the workplace; and
- e. educate and train Municipal Police Officers and Management to promote a universal understanding that gender and sexual orientation-based harassment and discrimination in the workplace are harmful and will not be tolerated.

~~53-~~ 56. The Municipal Police Defendants, ~~Municipalities~~, the Crown, the Attorney General, and the Minister of Public Safety negligently breached this duty of care owed to the Representative Plaintiffs and other Class Members by, among other things:

- a. failing to properly supervise Police Officers and Management so as to prevent and minimize the risk of the Representative Plaintiffs and other Class Members being subjected to gender and sexual orientation-based harassment and discrimination;
- b. failing to have or, alternatively, failing to enforce adequate policies, procedures, codes of conduct and guidelines to minimize the risk of the Representative Plaintiffs and Class Members being subjected to gender and sexual orientation-based harassment and discrimination;
- c. failing to properly investigate allegations of gender and sexual orientation-based harassment and discrimination in the workplace in a thorough, timely, and impartial manner, or at all;
- d. failing to provide adequate, or any, training and educational programs to Municipal Police Officers and Management regarding the dangerous and harmful effects of gender-and-sexual orientation-based harassment and discrimination;
- e. failing to make sufficient efforts to promote the universal understanding among Municipal Police Officers and Management that gender-and-sexual orientation-based harassment and discrimination are harmful and will not be tolerated;

- f. permitting a workplace environment and culture that normalized the occurrence of gender-and-sexual orientation-based harassment and discrimination;
- g. failing to act in a timely fashion to stop incidents of gender-and-sexual orientation-based harassment and discrimination;
- h. failing to ensure that perpetrators of gender-and-sexual orientation-based harassment and discrimination were appropriately disciplined; and
- i. failing to protect the Representative Plaintiffs and other Class Members from the continuation or re-occurrence of gender-and-sexual orientation-based harassment and discrimination, and failing to protect them from retaliation after reporting such behaviour.

~~54- 57.~~ 54- 57. The Municipal Police Defendants~~Municipalities~~, the Crown, the Attorney General, and the Minister of Public Safety knew, or ought to have known, that the negligent acts described above were of a kind reasonably capable of traumatizing a normal Officer and that the Representative Plaintiffs and other Class Members would suffer damages as a result.

~~55- 58.~~ 55- 58. The Municipal Police Defendants~~Municipalities~~, the Crown, the Attorney General, and the Minister of Public Safety breached the Representative Plaintiffs and other Class Members' right to be free from discrimination on the basis of sex, pursuant to section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 by, among other things:

- a. failing to properly supervise Municipal Police Officers and Management so as to prevent and minimize the risk of the Representative Plaintiffs and other Class Members being subjected to gender-and-sexual orientation-based harassment and discrimination;
- b. failing to have or, alternatively, failing to enforce adequate policies, procedures, codes of conduct and guidelines to minimize the risk of the Representative Plaintiffs and Class Members being subjected to gender-and-sexual orientation-based harassment and discrimination;
- c. failing to properly investigate allegations of gender-and-sexual orientation-based harassment and discrimination in the workplace in a thorough, timely, and impartial manner, or at all;
- d. failing to provide adequate, or any, training and educational programs to Municipal Police Officers and Management regarding the dangerous and harmful effects of gender-and-sexual orientation-based harassment and discrimination;
- e. failing to make sufficient efforts to promote the universal understanding among Municipal Police Officers and Management that gender-and-sexual orientation-based harassment and discrimination are harmful and will not be tolerated;

- f. permitting a workplace environment and culture that normalized the occurrence of gender-and-sexual orientation-based harassment and discrimination;
- g. failing to act in a timely fashion to stop incidents of gender-and-sexual orientation-based harassment and discrimination;
- h. failing to ensure that perpetrators of gender-and-sexual orientation-based harassment and discrimination were appropriately disciplined; and
- i. failing to protect the Representative Plaintiffs and other Class Members from the continuation or re-occurrence of gender-and-sexual orientation-based harassment and discrimination and failing to protect them from retaliation after reporting such behaviour.

~~56-~~ 59. At least one suicide has been contributed to Gendered Discrimination by one or more of the Defendants.

## Part 2: RELIEF SOUGHT

~~57-~~ 60. The Representative Plaintiffs claim, on their own behalf and on behalf of the Class Members, against all the Defendants for:

- a. an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 (the “**CPA**”);
- b. an order appointing the plaintiffs as the Representative Plaintiffs for the Class;
- c. an order sealing the names of the Class Members (other than the Representative Plaintiffs);
- d. an order staying the HRT Claim (as defined below) pending certification of this action;
- e. a declaration that the Defendants infringed the Representative Plaintiffs’ and Class Members’ rights and freedoms guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 (the “**Charter**”);
- f. general damages plus damages equal to the cost of administering the plan of distribution of the recovery in this action;
- g. damages for loss of income including for loss of past income, loss of future income, loss of promotional opportunities, early resignation, and losses to pension;
- h. special damages in an amount to be determined, including but not limited to past and future medical expenses, on behalf of the Representative Plaintiffs and the other Class Members, and out-of-pocket expenses, including as may be incurred from the date hereof until the trial of the common issues, or final disposition of this action, particulars of which will be provided to the defendant;

- i. aggravated damages;
- j. exemplary and punitive damages;
- k. damages pursuant to the *Charter*, section 24(1);
- l. recovery of health care costs incurred by the Ministry of Health Services on behalf of the Plaintiff and Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27;
- m. pre- and post-judgment interest;
- n. costs of this action, as solicitor-client costs, or alternatively costs including special costs, pursuant to the *Supreme Court Civil Rules*; and
- o. such further and other relief as this Honourable Court may deem just.

~~58-~~ 61. The Representative Plaintiffs claim on behalf of the SubClass Members against all the Defendants for damages pursuant to the *Family Compensation Act*.

~~59-~~ 62. The Representative Plaintiffs claim on their own behalf and on behalf of the Class Members, against the Municipal Police Defendants for a declaration that each of the Municipal Police Defendants failed to fulfil or breached their common law, contractual, or statutory duties to provide the Plaintiffs and other Class Members with a workplace free from Gendered Discrimination.

~~60-~~ 63. The Representative Plaintiffs claim, on their own behalf and on behalf of the Class Members against the Defendant the OPCC Commissioner for: a declaration that the OPCC Commissioner failed to fulfil or breached its common law or statutory duties to protect the privacy of the Plaintiffs and other Class Members from violations, including, but not limited to, violations which facilitated or exacerbated Gendered Discrimination.

~~61-~~ 64. The Representative Plaintiffs claim, on their own behalf and on behalf of the Class Members, against the Defendants the Crown, the Attorney General, and the Minister of Public Safety (the “**Ministerial Defendants**”) for:

- a. a declaration that each of the Ministerial Defendants failed to fulfil or breached their common law, contractual, or statutory duties to ensure that the police departments affiliated with the Municipal Police Defendants would provide the Plaintiffs and other Class Members with workplaces free from Gendered Discrimination; and
- b. a declaration that each of the Ministerial Defendants failed to fulfil or breached their common law, contractual, or statutory duties to ensure that the OPCC Commissioner would protect the privacy of the Plaintiffs and other Class Members from violations, including but not limited to violations which facilitated or exacerbated Gendered Discrimination.

### Part 3: LEGAL BASIS

#### A Class Action is The Most Suitable Process for Adjudicating these Claims

- ~~62.~~ 65. The proposed class action meets all the requirements for the certification of a class action under the *Class Proceedings Act*, and is thus eligible to be tried as a class action.
- ~~63.~~ 66. Furthermore, the additional factors explicated in the *Class Proceedings Act* to be considered in determining whether a class proceeding would be preferable for the fair and efficient resolution of the common issues favour conducting the proceedings as a class action.
- ~~64.~~ 67. The systemic nature of the harms committed by most or all of the Defendants against the Class Members is such that the questions of fact and law arising from these common issues overshadows the individual issues.
- ~~65.~~ 68. The interest of all but an insignificant number of the Class Members in controlling the prosecution of separate actions individually would be secondary to their interest in being able to pursue their claims without the expense of legal costs that could more efficiently be handled as a class action, substantial payment in advance, or, in some cases, whatsoever.
- ~~66.~~ 69. There are few, if any, ongoing proceedings where the claims might fall within the scope of the proposed claims in this action.
- ~~67.~~ 70. Other means of resolving the claims would be less practical and efficient. The breadth of the wrongful acts and resultant harms, both in terms of the size of the Class affected and the range of acts and omissions which caused these harms, is such that efficiency and judicial economy would be favoured by avoiding unnecessary duplication of these proceedings.
- ~~68.~~ 71. The administration of the class proceeding would ultimately create less difficulty than the seeking of relief by other means.

#### Other Dispute Resolution Methods

- ~~69.~~ 72. Adjudicating the common issues in the form of a class action is necessary due to the fact that part of the harmful acts and omissions alleged, all other channels for dispute resolution are systemically incapable of appropriately handling issues such as the common issues.
- ~~70.~~ 73. The common issues do not arise from the interpretation, application, administration or violation of a collective agreement. An arbitrator's exclusive jurisdiction extends only to disputes that expressly or inferentially arise out of the collective agreement, and not every workplace dispute will fall within this scope.
- ~~74.~~ 74. Furthermore, the lack of an effective remedy may justify the exercise of this court's jurisdiction. In *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), McLachlin J. noted, at para. 57, that even in cases where a labour arbitrator has exclusive jurisdiction over the dispute, the court may exercise its inherent remedial jurisdiction where the arbitrator does not have the power to grant a required remedy. McLachlin J. adopted Estey J.'s statement from *St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219*, 1986 CanLII 71 (SCC),

[1986] 1 S.C.R. 704, p. 723 (S.C.R.) that: “[w]hat must be avoided, to use the language of Estey J. . . . is a 'real deprivation of ultimate remedy'”.

~~72.~~ 75. Here, the common issues of the Class—and the remedies sought by the Representative Plaintiffs—extend beyond a single collective bargaining unit’s ability to remedy. The ultimate remedy sought here is a province-wide change to systemic Gendered Discrimination.

~~73.~~ 76. In the event this court does not exercise its inherent remedial jurisdiction, the Representative Plaintiffs have, at the same time as this action, commenced a similar action in the Human Right Tribunal (the “**HRT Claim**”). In *Northern Regional Health Authority v. Horrocks* 2021 SCC 42 the Supreme Court of Canada considered the issue of which legal regime had jurisdiction over a human rights complaint that occurred in an employment/labour relations context. The Court softened *Weber’s* exclusivity to allow for as yet undefined exceptions where 'concurrent jurisdiction' exists:

[41] Where two tribunals have concurrent jurisdiction over a dispute, the decision-maker must consider whether to exercise its jurisdiction in the circumstances of a particular case [...]

[56] [...] “[D]espite the Weber line of cases and despite the authority of [labour] arbitrators to apply human rights ... statutes” (Pickel, at p.199), human rights tribunals have not only regularly held that they have concurrent jurisdiction, but have exercised it, even where there exists or has existed a parallel labour arbitration proceeding dealing with the substance of the complaint (pp.187-200).

~~74.~~ 77. The Representative Plaintiffs will stay or abate the HRT Claim pending certification of the common issues in this action. If this court does exercise its jurisdiction and certify this action as a class proceeding, the Representative Plaintiffs will discontinue the HRT Claim, and will not proceed with concurrent litigation.

### Negligence

~~75.~~ 78. At all material times, the Municipal Police Defendants and the Ministerial Defendants owed a duty of care to the Representative Plaintiffs and other Class Members to ensure they could work in an environment free from discrimination, sexualized or gendered violence, systemic mishandling of accountability processes, bullying and harassment of a gendered or sexualized nature, and intimidation. Specifically, the Municipal Police Defendants and the Ministerial Defendants have a duty to:

- a. use reasonable care to ensure the safety and well-being of the Representative Plaintiffs and other Class Members;
- b. provide safe workplace environments free from Gendered Discrimination.
- c. provide the Representative Plaintiffs and other Class Members with accountability processes that would be resistant to institutional biases that favour the retention of officers and employees who engage in Gendered Discrimination over the safety of officers and employees subjected to such conduct;



- d. establish and enforce appropriate policies, procedures, codes of conduct, and guidelines to ensure that the Representative Plaintiffs and other Class Members are not subjected to Gendered Discrimination in the workplace;
- e. educate and train municipal police force employees and leadership to promote a universal understanding that Gendered Discrimination in the workplace is harmful and will not be tolerated;
- f. properly supervise the conduct of municipal police force employees and leadership to ensure that the Representative Plaintiffs and other Class Members would not be exposed to Gendered Discrimination in the workplace;
- g. investigate complaints of Gendered Discrimination fairly and with due diligence;
- h. make efforts to prevent retaliation for, or in relation to, complaints;
- i. ensure that procedures for handling complaints would not make achieving recourse impractical or needlessly difficult on a procedural level; and
- j. act in a timely manner to resolve situations of Gendered Discrimination.

~~76-~~ 79. The Municipal Police Defendants and the Ministerial Defendants negligently breached this duty of care owed to the Representative Plaintiffs and other Class Members by, among other things, failing to:

- a. use reasonable care to ensure the safety and well-being of the Representative Plaintiffs and other Class Members;
- b. provide safe workplace environments free from Gendered Discrimination;
- c. prevent the formation and perpetuation of a workplace culture in which Gendered Discrimination was routinely deployed against the Representative Plaintiffs and other Class Members;
- d. provide the Representative Plaintiffs and other Class Members with accountability processes that would be resistant to institutional biases that favour the retention of officers and employees who engage in over the safety of officers and employees subjected to such conduct;
- e. establish and enforce appropriate policies, procedures, codes of conduct, or guidelines to ensure that the Representative Plaintiffs and other Class Members would not be subjected to Gendered Discrimination in the workplace;
- f. educate and train municipal police force employees and leadership to promote a universal understanding that Gendered Discrimination is harmful and will not be tolerated;

- g. properly supervise the conduct of municipal police force employees and leadership to ensure that the Representative Plaintiffs and other Class Members would not be subjected to Gendered Discrimination in the workplace;
- h. prevent the formation of an institutional and cultural attitude toward accountability processes that had the effect of defending employees and leadership of municipal police departments from any criticisms or complaints by the Representative Plaintiffs and other Class Members by positioning Gendered Discrimination as being more acceptable than attempts to seek accountability therefor;
- i. investigate complaints of Gendered Discrimination fairly and with due diligence;
- j. make efforts to prevent retaliation;
- k. ensure that procedures for handling complaints would not make achieving recourse impractical or needlessly difficult on a procedural level; and
- l. act in a timely manner to resolve situations of Gendered Discrimination.

~~77.~~ 80. The Municipal Police Defendants and the Ministerial Defendants knew, or ought to have known, that the negligent acts described above were reasonably capable of traumatizing a normal Officer and that the Representative Plaintiffs and other Class Members would suffer damages as a result.

#### Breach of Fiduciary Duty

~~78.~~ 81. The relationship between the Class Members and the Ministerial Defendants and the Municipal Police Defendants is, or was, one of trust, reliance, and dependency. At all material times, the Municipal Police Defendants have, or had, significant control and discretion over the Class Members. These individuals are, or were, by virtue of the nature of their work, subject to frequent if not constant contact with, supervision by, and direction from, the Municipal Police Defendants.

~~79.~~ 82. Ultimately, the relationship between the Municipal Police Defendants and the Class Members goes, or went, well beyond the kind that normally arises between an employer and its employees. As a result, the Municipal Police Defendants owe the Class Members a fiduciary duty.

~~80.~~ 83. The existence of this fiduciary duty gives or gave rise to a reasonable expectation on the part of the Class Members that the Municipal Police Defendants will or would act in their best interest, ensuring that they are or were treated respectfully, fairly, and safely. At the very least, the Class Members can or could reasonably expect that the Municipal Police Defendants would not permit the establishment of a work environment where their colleagues would, on a systemic level, act in a manner directly hostile to their safety.

~~84.~~ 84. Rather than protecting the Class Members, the Municipal Police Defendants permit and enable institutional structures throughout police departments that consistently protect other employees and leadership who harmed the Class Members.

Breach of the Charter

~~82-~~ 85. The Defendants breached the Representative Plaintiffs' and other Class Members' right to be free from discrimination on the basis of sex, pursuant to section 15 of the *Charter*, by, among other things, failing to:

- a. Legislate, regulate, or establish policy for effective complaint or grievance processes; including by failing to provide for meaningful reporting processes under sections 182 of the *Police Act*, and sections 736 of the *Local Government Act* and section 294 of the *Vancouver Charter* which are systemic forms of Gendered Discrimination;
- b. properly supervise police department employees and leadership so as to prevent and minimize the risk of the Representative Plaintiffs and other Class Members being subjected to Gendered Discrimination;
- c. have or enforce adequate policies, procedures, codes of conduct, and guidelines to minimize the risk of the Representative Plaintiffs and other Class Members being subjected to Gendered Discrimination;
- d. properly investigate allegations of Gendered Discrimination in a thorough, timely, and impartial manner, or at all;
- e. provide adequate, or any, training and educational programs to police department employees and leadership regarding the dangerous and harmful effects of Gendered Discrimination;
- f. make sufficient efforts to promote the universal understanding among police department employees and leadership that Gendered Discrimination is harmful and will not be tolerated;
- g. maintain a workplace environment and culture that did not normalize the occurrence of Gendered Discrimination;
- h. act in a timely fashion to stop incidents of Gendered Discrimination;
- i. ensure that perpetrators of Gendered Discrimination were appropriately disciplined; and
- j. protect the Representative Plaintiffs and other Class Members from the continuation or re-occurrence of: Gendered Discrimination and retaliation after reporting such behaviour.

~~83-~~ 86. Since a *Charter* breach has occurred, the Representative Plaintiffs and other Class Members are entitled to remedies pursuant to section 24(1) of the *Charter*.

### Intentional Infliction of Mental Suffering

- 84- 87. The Municipalities, the Crown, the Attorney General, and the Minister of Public Safety, both personally and via their statutory vicarious liability for individual police officers' tortious conduct under the *Police Act*, are liable for intentionally inflicting mental suffering upon the Representative Plaintiffs and the other Class Members.
- 85- 88. Intentional infliction of mental suffering requires flagrant or outrageous conduct, calculated to produce harm (in the sense that harm was either intended or known to be almost certain to occur), which results in a visible and provable illness (which must be both beyond "mere anguish and fright" and the natural and probable result of a given act). This must be done without legal justification, but true *intent* toward inducing psychiatric illness is not required. Evidence of foreseeability and reckless disregard, however, is necessary.
- 86- 89. The systemic decisions and priorities which created the specific culture of the police departments as it regarded the Class Members were, in total, a flagrant and vexatious pattern of behaviour on an institutional level. This was calculated to ensure that, in cases where it was inevitable that either the individual perpetrators of Gendered Discrimination, the harm would fall upon the victims. Alternatively, it was known by the Defendants making the decisions that such harm would occur, regardless of intent. This resulted in visible and provable illness for the Representative Plaintiffs and other Class Members.
- 87- 90. Some of the actions of the individual Defendants were of a similarly flagrant and outrageous nature. These decisions were either calculated to, or reckless toward, harm against the Representative Plaintiffs and other Class Members. These actions resulted in visible and provable illness for the Representative Plaintiffs and other Class Members.

### Breach of Privacy

- 88- 91. The Defendants violated the privacy of the Representative Plaintiffs and other Class Members.
- 89- 92. The *Privacy Act*, RSBC 1996, c. 373 makes the violation of privacy, wilfully and without a claim of right, actionable, regardless of proof of damage.
- 90- 93. None of the exceptions apply to the Defendants' handling of information produced in the investigation of complaints from the Representative Plaintiffs and other Class Members. The conduct was not incidental to the exercise of any lawful right. The conduct was not authorized or required by law. The conduct was not for the purpose of any investigation in the course of an officer's duty.

### Harassment

- 91- 94. The Defendants, either personally or via their statutory vicarious liability, are liable for the harassment of the Representative Plaintiffs and the other Class Members.
- 92- 95. Harassment, as brought into Canadian law in *Caplan v Atas*, 2021 ONSC 670, and *Alberta Health Services v Johnston*, 2023 ABKB 209 is a means of facilitating adequate remedies

where existing torts cannot provide sufficient remedies for some given degree of repugnant conduct combined with some given degree of harm.

- ~~93.~~ 96. Harassment, per *Caplan*, is “where the defendant maliciously or recklessly engages in communications or conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm”.
- ~~94.~~ 97. The sum total of the conduct of the Defendants, was sufficiently extreme in nature, duration and severity to completely exit the bounds of decency and tolerability. This conduct was, on a systemic level, engaged in to cause fear, anxiety, or emotional upset, or to impugn the dignity of the Class Members. The Class Members, in turn, suffered harm.

### Civil Conspiracy

- ~~95.~~ 98. The Defendants, both personally and via their statutory vicarious liability for individual police officers’ tortious conduct, are liable for conspiracy against Representative Plaintiffs and the other Class Members.
- ~~96.~~ 99. The tort of conspiracy is made out when the predominant purpose of some given conduct conspired toward is to injure the plaintiff, whether the means are lawful or not; or, where the conduct is unlawful, where that conduct is directed toward a plaintiff and the defendants at least *should* know in the circumstances that injury to the plaintiff is likely or inevitable. Actual damage must be suffered by the plaintiff *as a result of* the defendants’ conduct.
- ~~97.~~ 100. The steps taken by the Defendants to cultivate cultures at police departments where complaints of Gendered Discrimination would be:
- a. formally or effectively prevented from proceeding;
  - b. substantively prevented from being handled fairly; or
  - c. retaliated against

in service of, or with the effect of, protecting the perpetrators of such actions were unlawful, where harm would be foreseeable in the circumstances, or were, where lawful, performed with the primary purpose of injuring any specific plaintiff who was identified as “a threat”.

- ~~98.~~ 101. The Representative Plaintiffs and other Class Members were harmed by the aforementioned steps. As such, conspiracy has occurred.

### Liability of Municipalities

102. It remains a question of law whether the Municipal Police Boards are legal entities, capable of being sued independently from the Municipalities.

103. If so, the Municipal Police Boards are agents of the Municipalities. The Representative Plaintiffs rely on the law of agency.

104. In the alternative, the Municipalities are vicariously liable for the tortious conduct of the Municipal Police Boards.

Family Compensation Act Damages

~~99.~~ 105. The Defendants, either personally or through statutory vicarious liability, are, wherever their harms against the Class Members have brought about the death of any Class Member, liable to certain people among the SubClass Members pursuant to the *Family Compensation Act*.

~~400.~~ 106. At least one suicide has been contributed to by conduct related to the common issues of the Class Members. SubClass Members are eligible for recovery against the Defendants under the *Family Compensation Act*.

Plaintiffs' address for service: Hira Rowan LLP  
7001500 - 570 Granville Street  
Vancouver, BC V6C 3P1

**Attention: J. Kyle Bienvenu**


Fax number address for service (if any): N/A

E-mail address for service (if any): kbienvenu@hirarowan.com  
lawyers@hirarowan.com [ALL]

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia

Date: ~~October 11, 2023~~ July 31, 2024

  
\_\_\_\_\_  
Signature of **J. Kyle Bienvenu**  
 plaintiff     lawyer for plaintiff

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.

## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claims against municipal and provincial governments, and municipal police forces for systemic, gendered discrimination.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

*[Check **one** box below for the case type that **best** describes this case. ]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

*[Check all boxes below that apply to this case.]*

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4: