

31-Jul-24

REGISTRY

Amended Pursuant to Rule 6-1(a)
~~in the Supreme Court Civil Rules~~
Original Reply filed on February 28, 2024

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 REPLY

Filed by: The Plaintiffs

In reply to: The Responses to Civil Claim of the Defendants

Unless otherwise stated, capitalized terms that are not defined in this Reply have the definitions assigned to them in the Notice of Civil Claim.

There is a Duty of Care

1. In reply to the defence that the Municipalities do not owe a duty of care to the Plaintiffs,¹ the Plaintiffs reply that:
 - a) each Municipality is not immune from damage caused by their *own* negligence. Municipal operations can give rise to a private law duty of care. The Municipalities' tortious acts are not immune from this duty by being "core policy" government decisions;
 - b) each Municipality, and Minister of Public Safety, are vicariously liable for the torts committed by Officers while in the performance of their duties or intended performance of the person's duty;
 - c) each Municipality is vicariously liable for the tortious acts of its agents, including the Municipal Police Boards; and
 - d) the employer of the Representative Plaintiffs and other Class Members owes a duty of care to the Representative Plaintiffs and other Class Members.

Employment Relationship

2. In reply to the defence that Municipal Police Officers are not employees of the Municipalities,² the Plaintiffs say:
 - a) a Municipal Police Board established under part 5 of the *Police Act*, RSBC, c. 367, (i) is a governing body, (ii) or in the alternative is not a legal entity, and/or (iii) is not the employer of municipal Officers for the purpose of this Class Action, which alleges systemic discrimination, harassment, and bullying;
 - b) the common law characterization of a legal relationship (contract) does not necessarily apply for human rights purposes, and does not restrict the analysis of the relationship in accordance with factors looking beyond a relationship not customarily considered that of employment;

¹ See the following paragraphs of the Defendants' Responses to Civil Claim: Central Saanich para. 15; Delta para. 28; New West and Saanich para. 9; Vancouver para. 9; Surrey para. 10; Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver paras 15 and 40.

² See the following paragraphs of the Defendants' Responses to Civil Claim: Delta paras. 7 and 10; Vancouver para. 6(f); Surrey para. 23; New West, Saanich, Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver para. 10.

- c) each Plaintiff received pay statements directly from the municipality and not from the police board; and
 - d) the Plaintiffs received tax and federal employment records, such as Records of Employment, listing the municipality, not a police board, as the employer.
3. The Plaintiffs ~~will seek to amend~~ have amended the Notice of Civil Claim to name each Municipal Police Board as a defendant to this Class Action.
 4. Because the Municipal Police Boards are wholly financially dependant on the Municipalities in which they are located, there is no actual distinction between these entities for the purpose of determining liability in this Class Action.

Direct Cause of Action

5. In reply to the defence that there is no named plaintiff with a direct cause of action against each particular defendant,³ the Plaintiffs say that there does not need to be representative plaintiff for each defendant. The legislation simply requires that there be a cause of action against each defendant. The causes of action against each defendant need to be held by members of the class, and not a specific representative plaintiff. The Notice of Civil Claim discloses causes of action held by members of the Class against each defendant and, accordingly, section 4(1)(e) of the *Class Proceedings Act*, RSBC, c. 50 is satisfied.

Section 127 of *Workers Compensation Act*

6. In reply to the defence that the claims of the Representative Plaintiffs are statute barred by operation of section 127 of the *Workers Compensation Act*,⁴ RSBC 2019, c. 1, the Representative Plaintiffs say that section does not bar the Representative Plaintiffs' claims because that section only applies to injuries which arose out of and in the course of employment, within the scope of the compensation provisions. Actions outside of the course of employment, or outside the scope of the compensation provisions are not barred from the court's jurisdiction. Even where there are some claims which may fall within the scope of section 127, it remains an open question as to whether the court retains jurisdiction of the entirety of the claim, when a claim deals with more than just personal injury, disablement, or death.
7. In any event, the court retains its inherent jurisdiction, or residual discretion, where the consequences of not dealing with a claim are such that the Plaintiffs could be left with no forum in which to advance their claim.

Notice under *Local Government Act*

³ See the following paragraphs of the Defendants' Responses to Civil Claim: Abbotsford para. 13; Surrey paras. 5 and 9; Victoria and Esquimalt para. 66; Port Moody, Oak Bay, Nelson, and West Vancouver paras. 12 and 66.

⁴ See the following paragraphs of the Defendants' Responses to Civil Claim: Delta para. 27; Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver para. 38; New Westminster, Saanich para. 7; Vancouver paras. 5 and 6; Surrey para. 8.

8. In reply to the defence that the claims of the Representative Plaintiffs are statute barred by operation of section 294 of the *Vancouver Charter*, SBC 1953, c. 55 and section 736 of the *Local Government Act*, RSBC 2015, c. 1,⁵ the Plaintiffs say that the want or insufficiency of the notice required by this subsection is not a bar to the maintenance of an action if the Court or Judge presiding over the action is of the opinion that there was reasonable excuse for the want or insufficiency of notice, and that the Municipality has not been prejudiced in its defence.

Limitation Act

9. In reply to the defence that the claims of the Representative Plaintiffs are statute barred by operation of the *Limitation Act*, SBC 2012, c. 13,⁶ the Representative Plaintiffs say that claims set out in the Notice of Civil Claim fall within the exception at section 3(1)(j) of the *Limitation Act* or are actions related to claims falling within that exception.

Breach of Privacy

10. In reply to the defence that a breach of privacy claim is not suitable for determination in a class action,⁷ such defence has no basis in law and the Representative Plaintiffs say there are many class actions in British Columbia which resolve allegations of breach of privacy.

Costs

11. British Columbia is a “no costs” jurisdiction pursuant to section 37 of the *Class Proceedings Act*.⁸

Dated: ~~February 28, 2024~~ July 31, 2024



Signature of Lawyer for filing party
J. Kyle Bienvenu

⁵ See the following paragraphs of the Defendants’ Responses to Civil Claim: Surrey para. 12; Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver para. 38; New Westminster and Saanich para. 11; Vancouver para. 7.

⁶ See the following paragraphs of the Defendants’ Responses to Civil Claim: Victoria and Esquimalt, Central Saanich, Nelson, Oak Bay, Port Moody, and West Vancouver paras. 31 and 38(b); New Westminster and Saanich paras. 9, 10, and 12; Delta paras. 56 and 58; Surrey paras. 10 and 11; Vancouver para. 8; His Majesty the King in right of the Province of British Columbia, the Attorney General of British Columbia, and the Minister of Public Safety and Solicitor General para. 46.

⁷ In reply to Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver para. 19.

⁸ In reply to Victoria and Esquimalt, Port Moody, Oak Bay, Nelson, and West Vancouver para. 33.

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.