



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:

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

Defendants

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

Filed by: City of Port Moody ("Port Moody")

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 Amended Notice of Civil Claim ("ANOCC") are admitted.
2. The facts alleged in paragraphs 1-4, 17 20, 26-29, ~~32-24~~ 35-37, 48-49 51-52, and ~~51-56~~ 54-59 of Part 1 of the ANOCC are denied.

3. The facts alleged in paragraphs 5-16 19, ~~18~~ 21-25, ~~27-31~~ 30-34, ~~35-47~~ 38-50, and ~~50~~ 53 of Part 1 of the ANOCC are outside the knowledge of Port Moody.
4. To the extent that facts are alleged in Parts 2 and 3 of the ANOCC, those facts are denied.

Division 2 – Defendant’s Version of Facts

5. Port Moody is a municipality incorporated pursuant to the provisions of the *Local Government Act*, R.S.B.C. 2015, c. 1. (LGA).
6. Pursuant to s. 15 of the *Police Act*, R.S.B.C. 1996, c. 367 (*Police Act*) Port Moody is obliged to pay the expenses necessary to provide policing and law enforcement services in the City of Port Moody. Since 1913, those services have been provided by municipal constables.
7. Section 3(2) of the *Police Act* now authorizes each municipality with a population of more than 5,000 persons to establish and maintain an independent municipal police department, subject to the approval of the Minister.
8. Port Moody has, pursuant to that authority, elected to continue to provide policing and law enforcement services through the Port Moody Police Department (“PMPD”). The PMPD is independent from Port Moody, and from any other police department or government agency.
9. Pursuant to Part 5 of the *Police Act*, the PMPD was established and is governed by the Port Moody Police Board (“PMPB”). The PMPB was not appointed by Port Moody, and is independent from Port Moody and from the PMPD, and from any other police department or government agency. The PMPB is not an agent of Port Moody. The Chief Constable of the PMPD is responsible for general supervision and command of the PMPD, under the direction of the PMPB.
10. Port Moody is not the employer of the municipal constables who are members of the PMPD. PMPD’s members are employed by the PMPB, either pursuant to the terms of collective agreements negotiated on their behalf by the Port Moody Police Services Union (“PMPSU”), or, in the case of certain senior police officers, individual contracts.
11. Port Moody is not responsible at common law for the actions or omissions of any member of the PMPD, but admits that it is statutorily jointly and severally liable, pursuant to s. 20 of the *Police Act*, for any torts committed in the performance of their duties by any PMPD members or other employees of the PMPB. The PMPB is not legally responsible, at common law or by statute, for any torts committed by PMPD members or its employees.

12. The ANOCC does not allege any facts that identify any torts or acts of discrimination, harassment, or bullying committed by any member of the PMPD or any other employee of the PMPB.
13. Port Moody has no independent knowledge of the torts alleged to have been committed against any proposed representative plaintiffs or proposed class members.
14. The ANOCC alleges no facts that:
 - a) constitute a cause of action of any kind against Port Moody;
 - b) support a finding that a class of plaintiffs exists;
 - c) support a finding that the plaintiffs are proper representatives of any such class of plaintiffs that would include members or former members of the PMPD; or, in the alternative, that any such class of plaintiffs includes members or former members of the PMPD; and
 - d) justify a certification of a class proceeding against Port Moody, as required by, *inter alia*, s. 4 of the *Class Proceedings Act*, R.S.B.C. 1996 c. 50 (CPA)
15. Port Moody denies that it owed a duty of care at common law, under contract, under statute, or otherwise, to the proposed representative plaintiffs or any proposed class members.
16. Alternatively, Port Moody denies that it breached any such duty, as alleged or at all, and puts the proposed representative plaintiffs and any proposed class members to the strict proof thereof.
17. In response to the whole of the ANOCC and in specific response to paragraphs 1, ~~34~~ 37 and ~~48~~ 51 to ~~53~~ 56 of Part 1, Port Moody denies that any proposed representative plaintiff or proposed class member, including any current or former member of the PMPD, has suffered any discrimination, harassment, or bullying, as alleged or at all. Port Moody further denies the existence of a “systemic culture of gender and sexual orientation-based harassment and discrimination” in the PMPD.
18. Alternatively, Port Moody denies that it, or any of its staff, employees, agents, or others for whom it is responsible, were complicit in any such discrimination, harassment, or bullying, or any such culture, as alleged or at all.
19. The ANOCC pleads no material facts in support of a breach of privacy claim by any proposed representative plaintiff or any proposed class member against Port Moody. Port Moody denies that any such breach occurred. Further, a breach of privacy claim is not suitable for determination in a class action.
20. None of the proposed representative plaintiffs or proposed class members have suffered any injury, loss, damage, or expense (collectively, “Damage”), as alleged or at all.

21. If any proposed representative plaintiffs or proposed class members have suffered Damage, such Damage was not caused or contributed to by any act, omission, negligence, fault, or breach of duty of Port Moody, but was caused or contributed to by the acts, omissions, negligence, fault or breach of duty of:
 - a) other proposed representative plaintiffs or proposed class members;
 - b) other defendants; or
 - c) other parties currently unknown to Port Moody and for which Port Moody is not responsible or liable.
22. If any proposed representative plaintiffs or proposed class members suffered Damage, such Damage is attributable to previous or subsequent injuries, conditions, congenital defects, or events.
23. If any proposed representative plaintiffs or proposed class members suffered Damage, they failed to follow medical or other advice, or failed to return to work or education as soon as reasonably practicable, and have generally failed to mitigate their Damage.
24. Further, the ANOCC discloses no basis for the claims for special, aggravated, exemplary, or punitive damages. Port Moody denies that any such basis exists.
25. Alternatively, if there is a basis for the claims of punitive damages, Port Moody is not liable for punitive damages in the absence of reprehensible conduct directly attributable to Port Moody.
26. Further, none of the proposed representative plaintiffs or proposed class members can benefit from double recovery. Any Damages awarded in respect of claims made in the ANOCC must be reduced by the amounts any of them have received or are or were entitled to receive from other sources or through other means.

Division 3 – Additional Facts

Collective agreements

27. The essential character of the dispute in this action arises from the interpretation, application, operation, or alleged violation of a collective agreement.
28. Such disputes fall within the exclusive jurisdiction of a labour arbitration board because at all material times:
 - a) any proposed representative plaintiffs or proposed class members were members of the PMPSU;
 - b) the PMPSU was certified as the exclusive bargaining agent to represent members of the PMPSU, including any putative PMPD class members, pursuant to the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (“LRC”);

- c) the PMPB and the PMPSU entered into collective agreements that were renewed or replaced from time to time (collectively, “Collective Agreements”), that set out the terms and conditions of employment that apply to members of the PMPSU. The employment of any putative PMPD class members was governed by and subject to the collective agreements;
- d) by their express terms, or by operation of s. 84(3) of the *LRC*, the Collective Agreements provided for the final and conclusive resolution of all disputes arising from the interpretation, application, operation, or alleged violation of the Collective Agreements, including a dispute as to whether a matter is arbitrable; and
- e) pursuant to s. 89 of the *LRC*, an arbitration board had the authority to provide a final and conclusive settlement of a dispute arising under the Collective Agreements.

Worker and employer status

29. At all material times:
- a) the proposed representative plaintiffs and proposed class members were “workers” within the meaning of s. 1 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (“WCA”);
 - b) any non-plaintiff PMPD members were also “workers”;
 - c) the PMPB was an “employer” within the same provision;
 - d) Port Moody was an “employer engaged in an industry” within the same provision;
 - e) the action or conduct of either the employer or another worker, that caused any alleged breach of a duty of care, or any other cause of action pleaded in the ANOCC, arose out of and in the course of employment within the scope of the WCA compensation provisions; and
 - f) the determination of the statuses asserted in sub-paragraphs (a)-(e) above is within the exclusive jurisdiction of the Workers Compensation Appeals Tribunal, pursuant to ss. 308 and 311 of the WCA.

Limitation periods

30. The NOCC was filed on October 11, 2023. Port Moody received no written notice of a potential or actual claim from any proposed representative plaintiff or proposed class member as required by s. 736 of the *LGA* or the applicable provisions of its predecessor statutes.
31. Any claims discovered within the meaning of ss. 6 and 8 of the *Limitation Act* S.B.C. 2012 c. 13 (*Limitation Act*) occurred long before October 2021.

Part 2: RESPONSE TO RELIEF SOUGHT

32. Port Moody opposes all of the relief sought against it in paras. ~~57-59~~ 60-62 Part 2 of the ANOCC.
33. Port Moody seeks a dismissal of all claims against it, with costs payable to Port Moody.

Part 3: LEGAL BASIS

34. The ANOCC discloses no factual or legal basis for any of the claims against Port Moody, and the entire ANOCC is frivolous, scandalous, vexatious, and an abuse of process.

Jurisdiction

35. The Court has no jurisdiction over the action because of the facts and legislative facts set out in para. 28 above.
36. Further, or in the alternative, the claims of discrimination, harassment, or bullying based on gender and sexual orientation, or both, fall within the jurisdiction of the British Columbia Human Rights Tribunal (“HRT”) pursuant to the *Human Rights Code*, R.S.B.C. 1996, c. 210. (HRC)
37. This court should decline jurisdiction over all claims of discrimination, harassment, or bullying in favour of the HRT, which has specialized expertise and a specialized process and is thus is the more appropriate forum.

Statutory bars

38. All claims made by the proposed representative plaintiffs and proposed class members are statute-barred pursuant to:
 - a) section 127 of the WCA;
 - b) section 6 of the *Limitation Act*; and
 - c) sections 735 and 736 and of the LGA.

No contract or breach of “contractual duties”

39. There is no breach of “contractual duties” because of the facts and legislative facts set out in paras. 10 above. There is, and was, no contract between Port Moody and any of the proposed representative plaintiffs or proposed class members. The PMPB has not breached any contractual duties.

No breach of duty of care

40. Port Moody denies that it owed a duty of care to the proposed representative plaintiffs or proposed class members, as alleged or at all.

41. Alternatively, if Port Moody owed a duty of care to the proposed representative plaintiffs or proposed class members by statute, common law or otherwise, as alleged or at all, Port Moody acted at all material times in accordance with the standard of care expected of a reasonably prudent municipal government, and in accordance with all policies, statutory requirements, and common law duties.
42. In the further alternative, if Port Moody breached any duty of care owed to any proposed representative plaintiff or proposed class member, that breach did not cause any Damage.
43. Alternatively, if Port Moody owed a duty of care to any proposed representative plaintiff or proposed class member, and breached the applicable standard of care, such breaches were not systemic or common to all members of the proposed class.

No Charter breach

44. Port Moody denies that the rights of any proposed representative plaintiffs or proposed class members, as guaranteed by the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) were breached by Port Moody, as alleged, or at all.
45. Alternatively, if any Charter rights were breached, any such breach is saved by section 1 of the *Charter*.
46. Alternatively, if there were any *Charter* breaches not saved by section 1, Port Moody denies that monetary relief pursuant to s. 24(1) of the *Charter* is payable by Port Moody.
47. Alternatively, if there has been an unjustified infringement of *Charter* rights, a damage award under s. 24(1) of the *Charter* is not a just and appropriate remedy.
48. Further, the proposed representative plaintiffs and proposed class members are not entitled to *Charter* damages that would duplicate of any award of damages premised upon other compensatory claims.
49. In the further alternative, Port Moody is not statutorily liable for *Charter* breaches arising from the conduct of PMPD members.

No breach of fiduciary duty

50. Port Moody denies that it was in a fiduciary relationship with, or owed a fiduciary duty to, any proposed representative plaintiffs or proposed class members.
51. Alternatively, if Port Moody owed any fiduciary duty to any proposed representative plaintiff or proposed class member, Port Moody did not breach any such duty, as alleged or at all.

No tort of harassment; no intentional infliction of mental suffering

52. There is no recognized tort of harassment in British Columbia.

53. Further, if any proposed representative plaintiffs or proposed class members were subjected to harassment or intentional infliction of mental suffering in the context of their employment, as alleged or at all, any such claim falls within the jurisdiction of the HRT and must be pursued in accordance with the *Code* or the *WCA*.
54. The ANOCC pleads no material facts that could support a claim of harassment or intentional infliction of mental suffering against Port Moody.
55. Further, or in the alternative:
 - a) Port Moody did not engage in any conduct that could constitute harassment or discrimination on the basis of gender or sexual orientation; and
 - b) Port Moody did not and could not have knowledge of individual acts that could constitute harassment, intentional infliction of mental suffering, or discrimination on the basis of gender or sexual orientation, because of the independence of Port Moody from PMPB and PMPD as pleaded above at paras 7-9 above.

No breach of privacy

56. The ANOCC pleads no material facts that could support a claim against Port Moody for breach of privacy.
57. Alternatively, Port Moody denies that it breached the *Privacy Act*, R.S.B.C. 1996, c. 373, (*Privacy Act*) as alleged or at all.
58. Alternatively, if Port Moody breached the *Privacy Act*, none of the proposed representative plaintiffs or proposed class members suffered Damage as a result of any such breaches.

No conspiracy

59. The ANOCC pleads no material facts that could support either predominant purpose or unlawful means conspiracy. To the extent that para. 97 100 purports to plead material facts in support, those facts are incomprehensible.
60. For greater clarity, Port Moody denies that:
 - a) it acted by agreement or concerted action with any of the other defendants;
 - b) with the predominant purpose of causing injury or harm to any proposed representative plaintiff or proposed class member; and
 - c) if any such conduct and purpose existed, it caused actual Damage to any proposed representative plaintiff or proposed class member.
61. For greater clarity, Port Moody denies that:
 - a) it acted by agreement or concerted action with any of the other defendants;

- b) such conduct was unlawful and was directed towards any proposed representative plaintiffs or proposed class member; and
- c) it knew or ought to have known that any of its conduct or actions would cause actual Damage to any proposed representative plaintiff or proposed class member.

Family Compensation Act does not apply

- 62. The ANOCC discloses no cause of action against Port Moody pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126 (“FCA”).
- 63. No family compensation claim is available to any representative plaintiff or any proposed class member.

Damages

- 64. Port Moody relies upon paras. 20-26 above. Further, Port Moody states that:
 - a) the proposed representative plaintiffs and proposed class members have not received health care services as defined in the *Health Care Costs Recovery Act S.B. C.2008 c. 27 (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 proposed representative plaintiffs and proposed class members are not “beneficiaries” for the purpose of the *HCCRA*;
 - c) Port Moody 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 proposed representative plaintiffs and 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 Port Moody is not liable for same.

Not suitable for class certification

- 65. The claims of the proposed representative plaintiffs and proposed representative class members are not suitable for certification because neither the proposed claims nor the proposed class meet the conditions for certification set out in s. 4 of the *CPA*.
- 66. Specifically, the pleadings do not disclose a cause of action against Port Moody. There are no common issues or questions of fact between any of the proposed representative class members and proposed class members. The assessment of every aspect of all of the claims for each of the proposed representative plaintiffs and proposed class members, will require a fact-specific assessment that is highly individualized. Therefore, a class proceeding would not provide for a fair and efficient resolution of the claims. A class proceeding would create unnecessary difficulties for the orderly litigation of those claims.

Enactments

67. Port Moody pleads and relies upon the following statutes, including amended or previous versions in effect at any material time:
- a) *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
 - b) *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
 - c) *Family Compensation Act*, R.S.B.C. 1996, c. 126;
 - d) *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27;
 - e) *Human Rights Code*, R.S.B.C. 1996, c. 210;
 - f) *Labour Relations Code*, R.S.B.C. 1996, c. 244;
 - g) *Limitation Act*, S.B.C. 2012, c. 12;
 - h) *Local Government Act*, R.S.B.C. 2015, c. 1;
 - i) *Negligence Act*, R.S.B.C. 1996, c. 333;
 - j) *Police Act*, R.S.B.C. 1996, c. 367;
 - k) *Privacy Act*, R.S.B.C. 1996, c. 373; and
 - l) *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

Address for service:

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**Attention: David G. Butcher, K.C. and
Anila Srivastava**

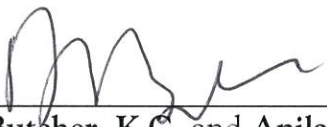
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Dated: ~~February 14~~ September 5, 2024



**David G. Butcher, K.C. and Anila
Srivastava**, lawyers for the Defendant Port
Moody

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.