



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, 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, POLICE COMPLAINT COMMISSIONER OF BRITISH COLUMBIA, HIS MAJESTY KING IN RIGHT OF PROVINCE OF BRITISH COLUMBIA, ATTORNEY GENERAL OF BRITISH COLUMBIA, MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

Filed by: Vancouver Police Board ("VPB")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – VPB's Response to Facts

1. Unless expressly admitted herein, VPB denies each and every allegation of fact contained in Part 1 of the Amended Notice of Civil Claim ("ANOCC"), 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.
2. None of the facts alleged in Part 1 of the ANOCC are admitted.

3. The facts alleged in paragraphs 1 - 4, 11, 12, 23, 27 - 29 and 35 - 59 of Part 1 of the ANOCC are denied insofar as they relate to the claims against VPB. The facts alleged in these paragraphs are outside the knowledge of VPB insofar as they relate to the claims of the other Defendants.
4. The facts alleged in paragraphs 5 - 10, 13 - 22, 24 - 26, 30 - 34 of Part 1 of the ANOCC are outside the knowledge of VPB.

Division 2 – VPB’s Version of Facts

5. The VPB provides oversight and direction to the Vancouver Police Department (“VPD”) pursuant to Part 5 of the *Police Act*, RSBC 1996, c. 367 (the “*Police Act*”).
6. The VPB is independent from the City of Vancouver (“Vancouver”) and from the VPD, and from any other police department or agency.
7. In specific response to paragraphs 23 and 29 of Part 1 of the ANOCC, all VPD constables are employed by the VPB, either pursuant to collective agreements negotiated on their behalf by the Vancouver Police Union (the “Association”), or pursuant to individual contracts.
8. The VPB is an employer within the meaning of the *Workers Compensation Act*, RSBC 2019, c. 1 (“*Workers Compensation Act*”).
9. In specific response to paragraphs 5, 23 and 29 of Part 1 of the ANOCC, Cheryl Weeks was employed by the VPB as a police constable from 2007 to 2023.
10. In specific response to paragraphs 6, 23 and 29 of Part 1 of the ANOCC, Anja Bergler has been employed by the VPB as a police constable since August 30, 2001.
11. Cheryl Weeks and Anja Bergler were, at all material times, workers within the meaning of the *Workers Compensation Act* and employees within the meaning of the *Labour Relations Code*, RSBC 1996, c. 244 (the “Code”).
12. In specific response to paragraphs 27 - 29 of Part 1 of the ANOCC, the VPB was established in accordance with Part 5 of the *Police Act*.
13. In response to the whole of the ANOCC, the VPB and its employees are excluded from any tort liability pursuant to section 20 of the *Police Act*.

Division 3 – Additional Facts

14. At all material times, VPB 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, including but not limited to the *Police Act*, the *Workers Compensation Act* and the *Code*.

Applicable Collective Agreements and Policies

15. At all material times, Cheryl Weeks and Anja Bergler and any other proposed class members who were or are officers with the VPD (the "VPD Officers") were and/or are members of the Association.
16. At all material times, the VPB and the Association had in place a collective agreement, which has been renewed or replaced from time to time (the "Collective Agreements").
17. At all material times, the Collective Agreements have set out the terms and conditions of employment that apply to all members of the Association, including the VPD Officers.
18. At all material times, the Association was certified as the exclusive bargaining agent to represent members of the Association, including the VPD Officers, pursuant to the *Code*.
19. At all material times, the Collective Agreements included provisions relating to workplace equity (the "Workplace Equity Provisions"):

20. EMPLOYMENT EQUITY

While the Employer and the Union are committed to maintaining the highest possible standards for the recruitment of new members, they also support employment equity programs (promoting equality of access to employment and advancement) which will assist visible minorities, persons with disabilities, First Nations peoples, and women in gaining entry into employment and which will provide equality of opportunity for advancement. It is understood that this section shall not supersede any other provision of this Agreement.

25. NO DISCRIMINATION

The Employer and the Union agree that there shall be no discrimination or coercion exercised or practiced with respect to any employee by reason of legal activity in the Union.

20. At all material times, the Collective Agreements included a mandatory grievance procedure, which requires all disputes about the interpretation, application or operation of the Collective Agreements, or any alleged violation of its terms, be resolved as follows:

14. GRIEVANCE PROCEDURE

14.1 Other Disputes

Any dispute as the same is defined in the *Labour Relations Code* with respect to any matter not covered by the terms of this Agreement shall, during the term of this Agreement, be the subject of collective

bargaining between the parties hereto, it being understood that the bargaining representatives of the Union may meet in the first instance with the Chief Constable.

14.2 Grievances

Any differences concerning the dismissal, discipline, or suspension of a member, including issues concerning the expungement of records from a member's service record of discipline, or the interpretation, application or operation of this Agreement or concerning any alleged violation of this Agreement shall be finally and conclusively settled without stoppage of work in the following manner:

- a. The grievance shall be stated in writing and submitted to the Chief Constable or a representative. Should the Chief Constable or representative be unable to settle the matter within 7 days after receipt of the grievance, the Chief Constable or representative shall submit the grievance to the Employer.
- b. The Employer and the aggrieved member, the Grievance Committee of the Union and/or the Bargaining Representatives of the Union shall meet within 14 days after receipt of the grievance from the Chief Constable and make every effort to settle the grievance.
- c. Should no settlement be reached under Section 14.2(b) within 10 days, or within such further period as may be mutually agreed upon, the grievance shall be submitted to a Board of Arbitration composed of a single arbitrator to be chosen by the parties. In the event either party wants a three (3) member Board of Arbitration each party shall choose one member of the Board and the third, who shall be Chair, will be chosen by the other two. The findings of such Board of Arbitration shall be final and binding upon both parties.

(the "Grievance Procedure")

21. At all material times, the VPD had in place Policy 4.1.11 Respectful Workplace Policy, which, *inter alia*:
 - (a) applies to all employees of the VPD, regardless of their rank, and all work-related activities at any location at which VPD business is conducted;
 - (b) provides that discrimination, harassment and bullying are neither accepted nor tolerated; and
 - (c) establishes procedures for reporting, mediating and investigating discrimination and harassment complaints.

22. In the alternative, at all material times, the VPD had in place policies that are substantively the same or similar to Policy 4.1.11 Respectful Workplace Policy.
23. In response to the whole of the ANOCC, the essential character of the claims raised are in respect of a dispute or disputes concerning the interpretation, application, operation, or alleged violation of the Collective Agreements. Such disputes fall within the exclusive jurisdiction of an arbitrator under the Collective Agreements and the *Code* on the following basis:
 - (a) the VPD Officers were each members of the Association at all material times;
 - (b) the Association was the VPD Officers' exclusive bargaining agent certified pursuant to the *Code*;
 - (c) the VPD Officers were covered by and subject to the terms and conditions of the Collective Agreements which includes provisions for the final and conclusive resolution of all disputes by arbitration; and
 - (d) section 89 of the *Code* allows an arbitration board to provide a final and conclusive settlement of a dispute arising under the Collective Agreements, including with respect to alleged violations of the *Human Rights Code*, RSBC 1996, c. 210 (the "*Human Rights Code*").
24. Further, and in the alternative, the VPD Officers have pursued, may pursue and/or are pursuing remedies in respect of the claims set out in the ANOCC pursuant to the *Code*, the *Workers Compensation Act*, the *Police Act* and the *Human Rights Code* and determinations of fact and law have been made and/or will be made in respect of the claims set out in the ANOCC in those forums.

The Plaintiffs' Claims

25. Further and in the alternative, VPB denies it owed a duty of care, contractual, statutory, or otherwise, to the Plaintiffs and/or the proposed class of plaintiffs.
26. In the further alternative, VPB 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.
27. In response to the whole of the ANOCC and in specific response to paragraphs 1, 3, 37, 38 and 51 - 56 of Part 1 of the ANOCC, VPB denies the existence of a "systemic culture of gender and sexual orientation-based harassment and discrimination" in the VPD.
28. In the alternative, VPB 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.
29. In response to paragraph 58 of Part 1 of the ANOCC, VPB expressly denies that the *Charter* rights of the Plaintiffs and/or the proposed class of plaintiffs were breached as alleged or at all.

30. In response to paragraph 59 of Part 1 of the ANOCC, VPB denies that Gendered Discrimination, as defined in paragraph 54 of Part 1 of the ANOCC, caused or contributed to any suicides.
31. In the alternative, VPB denies that it, or any of its staff, employees, agents, or others for whom it is responsible, were complicit in such Gendered Discrimination, as alleged or at all.
32. VPB denies that the Plaintiffs and/or the proposed class of plaintiffs suffered injuries, loss, damage, or expense, as alleged or at all.
33. In the alternative, if the Plaintiffs and/or the proposed class of plaintiffs did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, the same was not caused or contributed to by any act, omission, negligence, fault and/or breach of duty of VPB.
34. Further, or in the alternative, if the Plaintiffs and/or the proposed class of plaintiffs did suffer any injury, loss, damage and/or expense as alleged or at all, which is denied, such injury, loss, damage and/or expense is attributable to their previous and/or subsequent injuries, traumas, congenital defects, medical conditions, or events.
35. 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.
36. In answer to the whole of the ANOCC, and in specific response to paragraphs 103 and 104 of the ANOCC, VPB denies it is an agent of Vancouver and further denies it is liable to the Plaintiffs by statute, common law or otherwise.

Part 2: RESPONSE TO RELIEF SOUGHT

1. VPB consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the ANOCC.
2. VPB opposes the granting of the relief sought in paragraphs 60 - 64 of Part 2 of the ANOCC.
3. VPB seeks an order that the Plaintiffs' claims against it be dismissed with costs payable to VPB.

Part 3: LEGAL BASIS

1. VPB adopts and relies upon the Legal Basis set out in paragraphs 1 - 26, 31 - 34, and 36 of Part 3 of the Amended Response to Civil Claim filed by Vancouver and says that no claim lies against it for the reasons set out therein.
2. If VPB owed a duty of care to the Plaintiffs by statute, common law or otherwise which is not admitted but specifically denied, VPB says that at all material times it acted in accordance with the standard of care expected of a reasonably prudent municipal

police board, and that VPB discharged its duty in a competent, reasonable and prudent manner and in accordance with all policies, statutory requirements and common law duties.

3. VPB denies that the Plaintiffs suffered loss, damage, injury or expense, either as alleged, or at all, and in the alternative VPB says that if the Plaintiffs suffered loss, damage, injury or expense, all of which is denied, then such loss, damage, injury or expense will not result in health care services and VPB says that it is not responsible for future costs of health care services under the *Health Care Costs Recovery Act*, SBC 2008, c. 27 (“*HCCRA*”).
4. In relation to the Plaintiffs’ claim for recovery of health care costs pursuant to the *HCCRA*, VPB says 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 the proposed class of plaintiffs under the *HCCRA*;
 - (b) the Plaintiffs and/or the proposed class of plaintiffs are not “beneficiaries” for the purpose of the *HCCRA*;
 - (c) VPB 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 VPB is not liable for the same.
5. VPB pleads and relies on the following enactments, including amended or previous versions of such enactments in effect at any material time:
 - (a) *Canadian Charter of Rights and Freedoms*, Schedule B to the Canada Act 1982 (UK), 1982, c. 11
 - (b) *Class Proceedings Act*, RSBC 1996, c. 50;
 - (c) *Family Compensation Act*, RSBC 1996, c. 126;
 - (d) *Health Care Costs Recovery Act*, SBC 2008, c. 27;
 - (e) *Human Rights Code*, RSBC 1996, c. 210;
 - (f) *Labour Relations Code*, RSBC 1996, c. 244;
 - (g) *Limitation Act*, RSBC 1996, c. 266;
 - (h) *Limitation Act*, SBC 2012, c. 13;
 - (i) *Negligence Act*, RSBC 1996, c. 333;
 - (j) *Police Act*, RSBC 1996, c. 367;
 - (k) *Police Amendment Act, 2023*, S.B.C. 2023, c. 30
 - (l) *Police Amendment Act, 2024*, S.B.C. 2024, c. 16;
 - (m) *Privacy Act*, RSBC 1996, c. 373;

- (n) *Vancouver Charter*, SBC 1953, c. 55;
- (o) *Workers Compensation Act*, RSBC 2019, c. 1; and
- (p) Such further and other enactments as VPB may advise.

VPB's address for service: Alexander Holburn Beaudin + Lang LLP
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Dated: September 6, 2024

Per: David T. McKnight, and Naomi J. Krueger, lawyers
for the Defendant, Vancouver Police Board

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.