



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: District of West Vancouver (“West Vancouver”)

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, ~~26~~ 25-29, ~~32-34~~ 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~~ 24, ~~18-25, 27-31~~ 30-34, ~~35-47~~ 38-50 and ~~50~~ 53 of Part 1 of the ANOCC are outside the knowledge of West Vancouver.
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. The District of West Vancouver (not the “District Municipality of West Vancouver”) is a municipality incorporated pursuant to the provisions of the *Local Government Act*, R.S.B.C. 2015, c. 1 (“LGA”). It is correctly named “District of West Vancouver”.
6. Pursuant to s. 15 of the *Police Act*, R.S.B.C. 1996, c. 367, West Vancouver is obliged to pay the expenses necessary to provide policing and law enforcement services in the District of West Vancouver.
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. West Vancouver has, pursuant to that authority, elected to continue to provide policing and law enforcement services through the West Vancouver Police Department (“WVPD”). The WVPD is independent from West Vancouver, and from any other police department or government agency.
9. Pursuant to Part 5 of the *Police Act*, the WVPD was established and is governed by the West Vancouver Police Board (“WVPB”). The WVPB was not appointed by West Vancouver, and is independent from West Vancouver and from the WVPD, and from any other police department or government agency. The WVPB is not an agent of West Vancouver. The Chief Constable of the WVPD is responsible for general supervision and command of the WVPD, under the direction of the WVPB.
10. West Vancouver is not the employer of the municipal constables who are members of the WVPD. WVPD’s members are employed by the WVPB, either pursuant to the terms of collective agreements negotiated on their behalf by the West Vancouver Police Association (“WVPA”), or, in the case of certain senior police officers, individual contracts.
11. West Vancouver is not responsible at common law for the actions or omissions of any member of the WVPD, 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 WVPD members or other employees of the WVPB. The WVPB is not legally responsible, at common law or by statute, for any torts committed by WVPD members or its employees.

12. West Vancouver admits that the plaintiff Cary Ryan (“Ryan”) was a member of the WVPD, employee of the WVPB, and member of the WVPA, from 2004 to 2009.
13. West Vancouver has no independent knowledge of any of the torts alleged to have been committed against Ryan or any proposed representative plaintiffs or proposed class members. West Vancouver denies the allegations made in paras. ~~42 and 43~~ 45 and 46 of Part 1 of the ANOCC.
14. The ANOCC alleges no facts that:
 - a) constitute a cause of action of any kind against West Vancouver;
 - 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 WVPD; or, in the alternative, that any such class of plaintiffs includes members or former members of the WVPD; and
 - d) justify a certification of a class proceeding against West Vancouver, as required by, *inter alia*, s. 4 of the *Class Proceedings Act*, R.S.B.C. 1996, c.50 (“CPA”).
15. West Vancouver denies that it owed a duty of care at common law, under contract, under statute, or otherwise, to Ryan or any proposed representative plaintiffs or proposed class members.
16. Alternatively, West Vancouver denies that it breached any such duty, as alleged or at all, and puts Ryan and the proposed representative plaintiffs and 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, West Vancouver denies that Ryan or any proposed representative plaintiff or proposed class member, including other current or former member of the WVPD, has suffered any discrimination, harassment, or bullying, as alleged or at all. West Vancouver further denies the existence of a “systemic culture of gender and sexual orientation-based harassment and discrimination” in the WVPD.
18. Alternatively, West Vancouver 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 Ryan or any proposed representative plaintiffs or proposed class members against West Vancouver. West Vancouver denies that any such breach occurred. Further, a breach of privacy claim is not suitable for determination in a class action.

20. Neither Ryan nor any proposed representative plaintiff or proposed class member suffered any injury, loss, damage, or expense (collectively, "Damage"), as alleged or at all.
21. If Ryan or any proposed representative plaintiff or proposed class member suffered Damage, such Damage was not caused or contributed to by any act, omission, negligence, fault, or breach of duty of West Vancouver, but was caused or contributed to by the acts, omissions, negligence, fault, or breach of duty of:
 - a) Ryan or other proposed representative plaintiffs or proposed class members;
 - b) other defendants; or
 - c) other parties currently unknown to West Vancouver and for which West Vancouver is not responsible or liable.
22. If Ryan or any proposed representative plaintiff or proposed class member suffered Damage, such Damage is attributable to previous or subsequent injuries, conditions, congenital defects, or events.
23. If Ryan or any proposed representative plaintiff or proposed class member 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.
25. Alternatively, if there is a basis for the claims of punitive damages, West Vancouver is not liable for punitive damages in the absence of reprehensible conduct directly attributable to West Vancouver.
26. Further, neither Ryan nor any proposed representative plaintiff or proposed class member may benefit from double recovery. Any Damages awarded in respect of the 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 processes.

Division 3 – Additional Facts

Collective agreements

27. Ryan is not an appropriate representative plaintiff because she has commenced, or commenced and completed, duplicative proceedings on her own behalf and for her own benefit. She would therefore not adequately and fairly represent the interests of any proposed class members.

28. The essential character of Ryan's claim arises from the interpretation, application, operation, or alleged violation of a collective agreement. Such disputes fall within the exclusive jurisdiction of a labour arbitration board because at all material times:
- a) Ryan and any putative WVPD class members were members of the WVPA;
 - b) the WVPA was certified as the exclusive bargaining agent to represent members of the WVPD, including Ryan and any putative WVPD class members, pursuant to the *Labour Relations Code*, R.S.B.C. 1996, c. 244 ("LRC");
 - c) the WVPB and the WVPA 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 WVPA. The employment of Ryan and any putative WVPD 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) Ryan and any putative WVPD 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 WVPD members were also "workers";
 - c) the WVPB was an "employer" within the same provision;
 - d) West Vancouver 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. West Vancouver received no written notice of a potential or actual claim from Ryan or any proposed representative plaintiff or proposed class member as required by s. 736 of the *Local Government Act* or the applicable provisions of its predecessor statutes.
31. Ryan discovered the claim, within the meaning of ss. 6 and 8 of the *Limitation Act*, S.B.C. 2012, c. 13, long before October 2021.

Part 2: RESPONSE TO RELIEF SOUGHT

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

Part 3: LEGAL BASIS

34. The ANOCC discloses no factual or legal basis for any of the claims against West Vancouver, 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, any and all 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 Ryan and the proposed representative plaintiffs and proposed class member 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 para. 10 above. There is, and was, no contract between West Vancouver and Ryan or any proposed representative plaintiff or proposed class member. The WVPB has not breached any contractual duties.

No breach of duty of care

40. West Vancouver denies that it owed a duty of care to Ryan or any proposed representative plaintiff or proposed class member, as alleged or at all.
41. Alternatively, if West Vancouver owed a duty of care to Ryan or any proposed representative plaintiff or proposed class member by statute, common law or otherwise, as alleged or at all, West Vancouver 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 West Vancouver breached any duty of care owed to Ryan or any proposed representative plaintiff or proposed class member, that breach did not cause any Damage.
43. Alternatively, if West Vancouver owed a duty of care to Ryan or any proposed representative plaintiff or proposed class member, and breached the applicable standard of care, any such breaches were not systemic or common to all members of the proposed class.

No Charter breach

44. West Vancouver denies that the rights of Ryan or any proposed representative plaintiff or proposed class member, as guaranteed by the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) were breached by West Vancouver, as alleged or at all.
45. Alternatively, if any *Charter* rights were breached, any breach is saved by section 1 of the *Charter*.
46. Alternatively, if there were any *Charter* breaches not saved by section 1, West Vancouver denies that monetary relief pursuant to s. 24(1) of the *Charter* is payable by West Vancouver.
47. Alternatively, if there has been an unjustified breach of *Charter* rights, a damage award under s. 24(1) of the *Charter* is not a just and appropriate remedy.
48. Further, Ryan and the proposed representative plaintiffs and proposed class members are not entitled to *Charter* damages that would duplicate any award of damages premised upon other compensatory claims.

49. In the further alternative, West Vancouver is not statutorily liable for *Charter* breaches arising from the conduct of WVPD members.

No breach of fiduciary duty

50. West Vancouver denies that it was in a fiduciary relationship with, or owed a fiduciary duty to, Ryan or any proposed representative plaintiff or proposed class member.
51. Alternatively, if West Vancouver owed any fiduciary duty to Ryan or any proposed representative plaintiff or proposed class member, West Vancouver 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 Ryan or any proposed representative plaintiff or proposed class member was 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 ANOC pleads no material facts that could support a claim of harassment or intentional infliction of mental suffering against West Vancouver.
55. Further, or in the alternative:
- a) West Vancouver did not engage in any conduct that could constitute harassment or discrimination on the basis of gender or sexual orientation; and
 - b) West Vancouver 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 West Vancouver from WVPB and CSPD as pleaded at paras. 7-9 above.

No breach of privacy

56. Neither Ryan nor any proposed representative plaintiffs or proposed class members have pleaded any material facts that could support a claim against West Vancouver for breach of privacy.
57. Alternatively, West Vancouver denies that it breached the *Privacy Act*, R.S.B.C. 1996, c. 373, as alleged or at all.
58. Alternatively, if West Vancouver breached the *Privacy Act*, neither Ryan nor any proposed representative plaintiffs or proposed class members suffered any 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, West Vancouver 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 Ryan or the proposed representative plaintiffs or proposed class members; and
 - c) if any such conduct and purpose existed, it caused actual Damage to Ryan or the proposed representative plaintiffs or proposed class members.
61. For greater clarity, West Vancouver 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 Ryan or the proposed representative plaintiffs or proposed class members; and
 - c) it knew or ought to have known that any of its conduct or actions would cause actual Damage to Ryan or the proposed representative plaintiffs or proposed class members.

Family Compensation Act does not apply

62. The ANOCC discloses no cause of action against West Vancouver pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126.
63. No family compensation claim is available to Ryan or any proposed representative plaintiff or proposed class member.

Damages

64. West Vancouver relies upon paras. 20-26 above. Further, West Vancouver says that:
- (a) Ryan and 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 any of them under the *HCCRA*;
 - (b) Ryan and the proposed representative plaintiffs and proposed class members are not “beneficiaries” for the purpose of the *HCCRA*;

- (c) West Vancouver 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 Ryan and 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 West Vancouver is not liable for same.

Not suitable for class certification

- 65. The claims of Ryan and the proposed representative plaintiffs and proposed 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 West Vancouver. There are no common issues or questions of fact between Ryan and the proposed representative plaintiffs and proposed class members. The assessment of every aspect of all of the claims of Ryan and 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. The representative plaintiffs do not adequately represent the interests of the proposed class.

Enactments

- 67. West Vancouver 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; and

Address for service:

Wilson | Butcher
507 – 815 Hornby Street
Vancouver, BC V6Z 2E6
**Attention: David G. Butcher, K.C. and
Anila Srivastava**

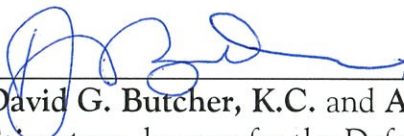
Fax number for service:

604-684-8319

E-mail address for service:

firm@wilsonbutcher.com

Dated: ~~February 14~~ September 4, 2024



**David G. Butcher, K.C. and Anila
Srivastava**, lawyers for the Defendant West
Vancouver

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.