IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Weeks v. Abbotsford (City),* 2025 BCSC 2120

Date: 20251028
Docket: S236918
Registry: Vancouver

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, 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 under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

Before: The Honourable Justice Elwood

Reasons for Judgment

Counsel for the Plaintiffs, Cheryl Weeks, Anja Bergler, Helen Irvine, Cary Ryan, Lauren Phillips, and Ann-Sue Piper:	J.K.R. Bienvenu A.K. Hall
Counsel for the Defendants, City of Surrey and Surrey Police Board	J.S. Yates J. Ruttle

Counsel for the Defendants, City of Abbotsford and the Abbotsford Police Board:	M.T. Hoogstraten K. Sandulescu
Counsel for the Defendant, Police Complaint Commissioner of British Columbia:	A.K. Harlingten
Counsel for the Defendant, City of Vancouver:	K.F.W. Liang M. Jeftic
Counsel for the Defendants, City of Delta and Delta Police Board:	R.J. Robb A.B. Richards
Counsel for the Defendants, Township of Esquimalt, City of Victoria, District of West Vancouver, City of Nelson, City of Port Moody, District of Oak Bay, District of Central Saanich, Port Moody Police Board, West Vancouver Police Board, Oak Bay Police Board, Central Saanich Police Board, Nelson Police Board, and Victoria and Esquimalt Police Board:	D.G. Butcher, K.C. A.D. Srivastava
Counsel for the City of New Westminster, Corporation of The District of Saanich, Vancouver Police Board, New Westminster Police Board, and Saanich Police Board:	D.T. Mcknight N. Krueger A. Nel
Counsel for the Defendants, 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:	A. Lewis
Place and Date of Hearing:	Vancouver, B.C. May 12–14, 2025
Written Submissions of the Defendants:	September 29, 2025
Written Submissions of the Plaintiffs:	October 3, 2025
Place and Date of Judgment:	Vancouver, B.C. October 28, 2025

Table of Contents

I. INTRODUCTION

[1] This is a proposed class action. The plaintiffs are current or former female police officers who allege that they were subjected to gender or sexual orientation-based discrimination, harassment, and bullying by officers and management of British Columbia's municipal police forces.

[2] The defendants include the City of Surrey and the Surrey Police Board (together, the "Surrey Defendants"). The Surrey Defendants apply with leave of the court prior to the certification hearing for an order under R. 9-5(1)(d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, striking out the claims against them on jurisdictional grounds.

[3] The Surrey Defendants submit that the plaintiffs' allegations are all claims about working conditions that arise from two collective agreements. They argue that the plaintiffs must proceed by way of labour arbitration, citing the exclusive jurisdiction of an arbitrator under *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929 [*Weber*].

[4] The plaintiffs acknowledge that the *Weber* analysis applies to claims arising after the date on which an applicable collective agreement took effect. However, in applying that analysis, they argue that the essential character of this dispute is not employment-related and does not arise from any one collective agreement. Further, the plaintiffs say the collective agreements do not address harassment or discrimination and do not provide effective redress for systemic claims or a reliable remedy for former employees.

[5] I find that this dispute is fundamentally about the working conditions of female police officers and claims which are within the ambit of the collective agreements. I conclude that the Court does not have jurisdiction over claims against the Surrey Defendants arising after the date on which the applicable collective agreement took effect. However, I am unable to determine whether the Court should retain jurisdiction over claims by former employees who may not be able to grieve their

complaints under the collective agreements. That issue is adjourned to the certification hearing.

II. BACKGROUND

A. The Claim Against the Surrey Defendants

[6] The amended notice of civil claim alleges systemic gender and sexual orientation-based discrimination, harassment, and bullying within multiple municipal police forces; a wide-spread institutional failure by those responsible to investigate complaints and protect complainants; and a workplace culture that enabled and protected perpetrators.

[7] The defendants are 13 municipalities, 13 police boards, the Office of the Police Complaint Commissioner, the Attorney General of British Columbia, the Minister of Public Safety, and the Province.

[8] The plaintiffs allege negligence, breach of fiduciary duty, intentional infliction of mental suffering, harassment, civil conspiracy, breach of privacy, and violation of their rights under s. 15 of the *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 [*Charter*].

[9] The plaintiffs seek to represent a class comprised of all persons who have been employed by the municipal police forces and who are female or were living or presenting as women at the time of their employment.

[10] On behalf of the proposed class, the plaintiffs seek a declaration that the defendants breached their s. 15 *Charter* rights, general damages, damages for lost income, aggravated and punitive damages, and damages pursuant to s. 24(1) of the *Charter.*

[11] None of the named plaintiffs is or was employed by the Surrey Defendants. There are no factual allegations in the amended notice of civil claim of any acts or omissions by any officers or supervisors of the Surrey police force. Instead, the

Surrey Defendants are captured by the plaintiffs' general allegations of wrongdoing against all the "Municipal Police Defendants" and all "the Defendants".

[12] The Surrey Defendants acknowledge that, because this action is brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*Act*], the plaintiffs are not required to plead material facts in support of a cause of action against them by a named plaintiff. This is because, while the *Act* requires a cause of action against each defendant, that cause of action may be held by class members, not necessarily the representative plaintiffs: *MacKinnon v. Instaloans Financial Solution Centres (Kelowna) Ltd.*, 2004 BCCA 472 at para. 51.

[13] In effect, the claim against the Surrey Defendants is the same claim that the plaintiffs propose to advance on behalf of the class members against all the defendants. It is, as Justice Saunders once described a proposed class action prior to the certification hearing, "an action with ambition": *MacKinnon* at para. 33.

B. The Surrey Police Force

[14] On November 5, 2018, the Surrey City Council voted to transition from a policing contract with the Royal Canadian Mounted Police (the "RCMP") to a municipal police force, the Surrey Police Service (the "SPS").

[15] On June 29, 2020, the Government of British Columbia appointed the Surrey Police Board. On August 6, 2020, the Surrey Police Board established the SPS.

[16] The SPS did not become the police of jurisdiction in the City of Surrey immediately. Instead, the municipality transitioned from the RCMP to the SPS over several phases spanning several years. The SPS ultimately became the police of jurisdiction on November 29, 2024.

[17] The SPS began recruiting officers and civilian staff in March 2021. The officers and staff became employees of the Surrey Police Board. Initially, SPS officers were integrated into the Surrey RCMP, under the operational command of the RCMP.

[18] Although no date range is alleged in the notice of civil claim, plaintiffs' counsel says the discrimination, harassment, and bullying of female SPS officers began in March 2021 and continues to present day. In other words, the proposed class action covers the entire period from initial hiring, including pre-unionization, collective bargaining, working under RCMP command, and ultimately serving as officers of the police of jurisdiction.

C. The Collective Agreements

[19] Plaintiffs' counsel confirms that the proposed class includes police officers of all ranks, but not civilian staff. As a result, it is necessary to consider the effect of two collective agreements between the Surrey Police Board and the unions representing the police officers, but not the separate collective agreement with Canadian Union of Public Employees ("CUPE") representing the civilian staff.

[20] On July 30, 2021, the Labour Relations Board ("LRB") certified the Surrey Police Union as the collective bargaining unit for SPS officers below the rank of inspector.

[21] On March 10, 2022, the Surrey Police Board and the Surrey Police Union entered into a collective agreement covering SPS officers below the rank of inspector (the "SPU Collective Agreement").

[22] On November 30, 2022, the LRB certified the Surrey Police Inspectors Union as the collective bargaining unit for SPS officers at the rank of inspector.

[23] On September 26, 2024, the Surrey Police Board and the Surrey Police Inspectors Union entered into a collective agreement covering SPS officers at the rank of inspector (the "SPIA Collective Agreement", or together the "Collective Agreements").

[24] The SPU Collective Agreement was initially effective from March 10, 2022, to December 24, 2024, but remains in full force and effect. In its preamble, the SPU Collective Agreement states that it constitutes the salaries, benefits, entitlements

and working conditions for the employees within the bargaining unit (officers below the rank of inspector).

[25] The SPU Collective Agreement includes articles covering working conditions, seniority and probationary periods, promotions and lateral transfers, remuneration, special allowances, court time compensation, overtime, employee benefits, maternity and parental leave, vacation and statutory leave and survivors' benefits. It does not contain a specific provision against harassment or sexual harassment.

[26] The SPU Collective Agreement includes in Article 5, Management Rights, a provision that:

> The Employer retains all rights and responsibilities to manage and direct the workforce except as specifically varied or abrogated by this Agreement.

[27] As required by s. 84(2) of the *Labour Relations Code,* R.S.B.C. 1996, c. 244 [*Code*]*,* the SPU Collective Agreement contains a mandatory grievance procedure in Article 19 to resolve:

> Any differences concerning the dismissal, discipline, or suspension of an Employee, or the interpretation, application, or operation of this Agreement, or concerning an alleged violation of this Agreement…

[28] The final step of the grievance procedure under Article 19 is final and binding arbitration in accordance with the *Code*.

[29] The SPIA Collective Agreement is effective from September 26, 2024, to December 31, 2025, and will remain in full force and effect unless it is terminated in accordance with the *Code*. It contains similar provisions to the SPU Collective Agreement, and constitutes the salaries, benefits, entitlements and working conditions for officers at the rank of inspector.

[30] Like the SPU Collective Agreement, the SPIA Collective Agreement contains many provisions covering working conditions, pay and benefits, but no specific provision against harassment or sexual harassment. It also contains a management

rights provision and, as required by s. 84(2) of the *Code*, a mandatory grievance procedure.

D. The Workplace Policies

[31] The Surrey Police Board has adopted workplace policies that apply to all employees, including the unionized police officers. Two of these policies are relevant to the issues on this application.

[32] Policy AD 1.1, "Ensuring Inclusivity and Diversity in the Surrey Police Service", states that its purposes are:

> To ensure that SPS maintains a gender and diversity-inclusive workplace by embedding ethical systems into SPS administrative and operational processes and policies.
>
> To ensure SPS policies incorporate fair inclusive, safe and transparent hiring, training, and promotional processes.

[33] Under the heading "Policy", Policy AD 1.1 provides that:

> These policies follow the B.C. Human Rights Code, applicable Collective Agreements, the BC Provincial Policing Standards, and directives concerning policy and program development.

[34] Under the heading "Grievances and Discipline" Policy AD 1.1 states:

> SPS has created an effective process for Employees to report, investigate, make findings and imposed [sic] sanctions involving any Employee who commits discrimination, harassment, or disrespectful behaviour (see A.D. 5.7 *Human Rights and Respectful Workplace).*

[35] The stated purposes of Policy A.D. 5.7 "Human Rights and Respectful Workplace" include:

> To ensure the SPS provides a Respectful Workplace that is free from Discrimination, Disrespectful Behaviour (including bullying), and Harassment.

[36] Policy AD 5.7 addresses three categories of inappropriate behaviour: discrimination and harassment based on prohibited grounds under the *Human Rights Code*, R.S.B.C. 1996, c. 210; and disrespectful behaviour, as defined in

Policy AD 5.7 and as dealt with under the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, and the *Occupational Health and Safety Regulations*, B.C. Reg. 296/97.

[37] Under the heading “Human Rights Code” Policy AD 5.7 states:

> An individual within the scope of this policy who believes they may have been subjected to Harassment or Discrimination based on prohibited grounds has the right to file a complaint under the *Human Rights Code.* Nothing in this policy precludes the individual from also pursuing such a complaint.

[38] Policy AD 5.7 sets out a procedure for an employee who believes they have been subject to discrimination, harassment or disrespectful behaviour to make their concerns known, request assistance, and report the occurrence.

[39] If the complaint is against a member officer, Policy AD 5.7 provides that it will be reported to the Office of the Police Complaint Commissioner, which will determine whether it will be investigated under Part 11, Division 6 (Internal Discipline) or Division 3 (Public Trust) of the *Police Act*, R.S.B.C. 1996, c. 367. Where a complaint may constitute misconduct under the *Police Act,* AD 5.7 provides that it must be handled by way of a formal investigation under Part 11 of the *Police Act.*

III. ANALYSIS

A. The Test for Abuse of Process

[40] The Surrey Defendants apply under R. 9-5(1)(d), which provides that the court may strike a pleading if it is an abuse of process.

[41] The "plain and obvious" test applies to all branches of R. 9-5(1) but different evidentiary rules apply: *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289 at paras. 56. Evidence is admissible on an application under R. 9-5(1)(d).

[42] Claims that are subject to the exclusive jurisdiction of another decision maker should be struck as an abuse of process: *Nagra v. Coast Mountain Bus Company (TransLink),* 2023 BCSC 2312 [*Nagra*] at paras. 19, 36–37, 63; *Ferreira v. Richmond (City)*, 2007 BCCA 131 at paras. 4, 74.

[43] No special consideration or leeway should be given to proposed class proceedings: *British Columbia v. McKinsey*, 2023 BCSC 1762 at para. 56; aff'd on other grounds: *McKinsey & Company, Inc. United States v. British Columbia*, 2024 BCCA 277.

B. The *Weber* Framework

[44] The *Weber* decision by the Supreme Court of Canada establishes that mandatory arbitration clauses such as s. 84(2) of the *Code* generally confer exclusive jurisdiction on the arbitrator to deal with all disputes arising from the collective agreement. The question in each case is whether the dispute, "viewed with an eye to its essential character", arises from the collective agreement: *Weber* at para. 67. This extends to *Charter* remedies, provided that the legislation empowers the arbitrator to hear the dispute and grant the remedies claimed. This exclusive jurisdiction is subject to a residual discretionary power of the courts to grant remedies not possessed by the labour tribunal: *Weber* at para. 67; *Masjoody v. Trotignon*, 2022 BCCA 135 at para. 30.

[45] The exclusive jurisdiction model adopted by the Court in *Weber* represents a critical policy choice. Labour arbitrators are administrative decision makers with specialized expertise in adjudicating workplace disputes and interpreting collective agreements in the context of long term and ongoing relationships. An objective of this scheme is to "minimize, if not eliminate entirely", the involvement of the courts as first instance decision-makers in workplace disputes: *Rivers v. Waterloo Regional Police Services Board*, 2018 ONSC 4307 at para. 27, aff'd 2019 ONCA 267, leave to appeal to SCC ref'd, 38707 (24 October 2019).

[46] The essential framework of the analysis is set out at paras. 50–57 of *Weber.* To determine whether a dispute is within the exclusive jurisdiction of an arbitrator to decide, the court considers:

a) *The nature of the dispute*: The court must attempt to define the "essential character" of the dispute. This determination is based on the facts and context

of the dispute, and not the legal characterization of the wrong (e.g. tort, *Charter* breach). The court asks: *Fundamentally, what is the dispute about*?

b) *The ambit of the collective agreement*: The court must determine whether the collective agreement covers the subject matter at issue. The agreement need not contemplate the dispute explicitly. The court asks: *Does the dispute arise expressly or inferentially from the interpretation, application, administration or violation of the collective agreement?*

c) *The availability of an effective remedy*: The court must determine whether an arbitrator is empowered to grant an effective remedy for the alleged wrong. This is to ensure that precluding a civil claim does not cause a "real deprivation of ultimate remedy". The arbitrator need not be empowered to order every head of damage or grant every remedy sought, but there must be access to justice. The court asks: *Does the labour scheme provide "a solution to the problem"?*

[47] The *Weber* framework applies to potential class actions. The prospect of multiple arbitration proceedings or potential conflicts amongst separate arbitration awards does not mean that the claims must be referred to a superior court for class proceedings: *Bisaillon v. Concordia University*, 2006 SCC 19 at paras. 48–49, 58.

[48] Where there is an "intervening statutory regime", the Court must confirm whether the legislature intended for the dispute to be governed by that regime or the labour regime: *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 at para. 26.

[49] For example, the *Police Act* does not displace collective agreement grievance procedures. Section 175 of the *Police Act* requires municipal forces to establish procedures for dealing with internal discipline matters. Section 175(3) expressly provides that "any arbitrator that may be appointed under the grievance procedure of the collective agreement may use, but [is] not restricted by," the standards of conduct and disciplinary measures in the *Police Act*.

C. Which Event Triggers the Weber Analysis?

[50] The Surrey Defendants argue that the exclusive jurisdiction of an arbitrator to resolve disputes begins from the date on which the unions were certified as the exclusive collective bargaining agents for the SPS officers.

[51] The plaintiffs submit that the exclusive jurisdiction model, if it applies, only arises on the date on which the relevant collective agreement came into effect.

[52] The answer is found in the decision by the Federal Court of Appeal in *Canada v. Greenwood*, 2021 FCA 186 [*Greenwood*]. The plaintiffs in that case were RCMP officers. They initiated a class action alleging systemic negligence by the RCMP, including non-sexual bullying, intimidation, and harassment. They sought to represent a class that included, with certain exceptions, virtually everyone who had ever worked for or with the RCMP.

[53] The Federal Court certified the class action. The government appealed, arguing that internal RCMP processes were sufficient and the claim lacked a cause of action. The Federal Court of Appeal upheld the certification order, finding that it was not plain and obvious there was no cause of action in negligence for workplace harassment; however, the Court narrowed the class to exclude unionized and temporary employees.

[54] In doing so, the Court of Appeal found that 2019 marked a “sea change” in the RCMP members’ vulnerability to workplace harassment because they were granted the right to collectively bargain, and a trade union could seek to have anti-harassment provisions included in their collective agreements. However, the lower court’s error was described by the Court of Appeal as “assuming jurisdiction over a class period extending beyond the date a collective agreement comes or came into force for class members”: *Greenwood* at para. 135. The Court of Appeal explained:

> [136] In the circumstance of the present case, once a collective agreement comes into force, the principles from *Weber* are applicable and the exception mentioned in *Vaughan* can no longer obtain. At such point, an effective means of redress will be available to RCMP Members as their union may seek to have anti-harassment provisions included in the collective agreement.

> And, third party adjudication is available to remedy employer breaches of the collective agreement under the FPSLRA…
>
> [Emphasis added.]

[55] It is only when a collective agreement comes into force that members gain access to the grievance procedure and the corresponding obligation on the union of fair representation. It makes sense, therefore, that the exclusive jurisdiction of an arbitrator, if it applies, only takes effect once the collective agreement is signed, and not during the negotiations preceding its ratification. If *Weber* is applied before the collective agreement takes effect, there is a risk claimants could fall through the gap before they are entitled to grieve their complaints.

[56] The Surrey Defendants argue that this case is different from *Greenwood* because SPS did not become the police of jurisdiction until some time after the unions were certified and the collective agreements took effect. They argue that the working conditions of the SPS officers prior to that date were the responsibility of the RCMP. In other words, as I understand it, the Surrey Defendants say there is no gap in this case during which SPS officers may have had a claim against Surrey but no right to grieve their complaint under a collective agreement.

[57] This may be an argument at the certification hearing. However, it does not distinguish *Greenwood* on the timing of when the *Weber* principles become applicable.

[58] The Surrey Defendants alternatively argue that if there is a gap, the Court should not be concerned if some complainants may fall through that gap. They cite *Bisaillon.*

[59] *Bisaillon* involved a proposed class action relating to the administration of a pension plan for employees of Concordia University. The pension plan had over 4,100 members. The vast majority—over 80 percent—were unionized employees covered by nine different collective agreements. The Quebec Court of Appeal rejected arbitration as an adequate remedy because it found that a grievance

arbitrator would not have jurisdiction to rule on all the issues raised by all the members covered by the class.

[60] A majority of the justices of the Supreme Court of Canada found that the Court of Appeal erred. They held that the Court should have begun by determining whether an arbitrator had jurisdiction to rule on the individual proceeding between Mr. Bisaillon and Concordia, and then enquired into the nature of the individual claims of the "majority of the other members" and the jurisdiction of the arbitrator regarding those claims: *Bisaillon* at paras. 48–49.

[61] The Surrey Defendants argue that *Bisaillon* stands for the proposition that arbitration need only provide a remedy for a majority of the potential claimants. I do not agree. In my view, the decision in *Bisaillon* turned primarily on the subject-matter of the dispute. The majority ruled that since the pension plan was negotiated and incorporated into the collective agreements, it became a condition of employment. As a result, Mr. Bisaillon lost the right to initiate a class action on behalf of the membership. Only the union could file a grievance on behalf of its members. See *Bisaillon* at paras. 50–55.

[62] In this case, the police unions could not file grievances on behalf of their members until the collective agreements were ratified. Once a collective agreement came into force, the principles from *Weber* became applicable, but not before.

D. What is the Essential Character of the Dispute?

[63] The Surrey Defendants argue that the plaintiffs' claims are all about working conditions. The essential character of the dispute, they argue, is the allegation that the defendants failed to ensure that the plaintiffs could work in an environment free from harassment, discrimination and bullying. The Surrey Defendants note that the amended notice of civil claim is rife with references to "work", "working" and "workplace" (for example, paras. 37, 51, 54–55).

[64] The plaintiffs argue that the claims are not merely about working conditions. They say the essential character of the dispute is an institutional failure throughout

British Columbia—spanning across all police boards, municipal employers, and levels of government—to keep the municipal police forces free from gender-based discrimination. The plaintiffs submit that the issues they seek to address are so pervasively embedded in police culture that this case is about something completely different than a dispute over working conditions.

[65] Aspirational as they may be, the plaintiffs' claims are analogous to prior proposed class actions that have been struck or narrowed based on the *Weber* principles.

[66] In *Rivers*, the Ontario Superior Court determined that it had no jurisdiction over a dispute between female police officers and the Waterloo Regional Police Services Board. Like the plaintiffs in this case, the plaintiffs in *Rivers* alleged systemic gender-based discrimination, breach of s. 15 of the *Charter*, and the tort of harassment. They conceded that a labour arbitrator would have jurisdiction to adjudicate their claims. However, they argued that a class proceeding would provide a better forum for their systemic claims, in large part because female police officers could shelter behind the representative plaintiffs to avoid ridicule and reprisals from male officers and supervisors.

[67] Justice Baltman found that "however compelling the plaintiffs' cause may be", there was "no jurisdictional gap" that would allow the claim to proceed in the Superior Court. Justice Baltman held that the governing labour legislation set out a mandatory arbitration process that required workplace disputes, including those alleged by the plaintiffs and other class members, to be arbitrated. See *Rivers* at paras. 5, 33–35.

[68] In *Greenwood*, as discussed, the Federal Court of Appeal held that the lower court erred in assuming jurisdiction over claims by RCMP members of systemic bullying, intimidation and harassment that arose after they became subject to a collective agreement.

[69] In *Thompson v. Canada*, 2025 FC 476, the Federal Court struck claims by unionized employees that were part of an expansive certification application by current and former employees of 11 federal government departments, including the RCMP. The plaintiffs in that case alleged a widespread practice of Black employee exclusion with respect to hiring and promotion. Citing *Ebadi v. Canada*, 2024 FCA 39, Justice Gagné observed that, regardless of the labels applied, if a claim arises out of workplace conduct, the matter may be the subject of a grievance: *Thompson* at para. 118. Justice Gagné described the essential character of the dispute as "systemic discrimination against Black employees, across the entire public service that resulted in a failure to hire, failure to promote and the underrepresentation of Black employees in all departments": *Thompson* at para. 122. Applying *Weber*, Gagné J. concluded that the Federal Court did not have jurisdiction over the claims by the unionized employees: *Thompson* at para. 146(b).

[70] Although not binding on me, these decisions are persuasive at the first stage of the *Weber* framework. Each found that the essential character of an analogous set of claims was a dispute over working conditions under a collective agreement, despite their framing as systemic claims, tort claims or complex class proceedings.

[71] The plaintiffs rely on *Sulz v. Minister of Public Safety and Solicitor General*, 2006 BCCA 582. In that case, our Court of Appeal characterized a claim by a female RCMP officer who was harassed by her superior officer as a "real tort claim for injuries suffered", and not a dispute over employment benefits: para. 32.

[72] I do not read this statement in *Sulz* to be an application of the first stage of the *Weber* framework. Rather, the Court of Appeal was distinguishing *Vaughan v. Canada,* 2005 SCC 11, where the Supreme Court of Canada declined jurisdiction over a denial of retirement benefits. While the Court of Appeal referred to *Weber, Sulz* did not concern a mandatory arbitration clause prescribed by s. 84(2) of the *Code* or analogous federal labour legislation. In other words, *Sulz* was not a case that concerned the exclusive jurisdiction of a labour arbitrator.

[73] When assessing a case under the *Weber* framework, a "real tort claim" may be within the exclusive jurisdiction of a labour arbitrator if its essential character is a dispute over working conditions under a collective agreement.

[74] Describing the dispute in this case as a tort claim, a systemic claim or an institutional failure does not change its essential character. One cannot escape the conclusion that, at a basic level, this case is about how the plaintiffs and the class members were treated at work. The plaintiffs' claims are all intrinsically linked to their employment as police officers. The gravamen of this proceeding is a challenge to the working conditions of female officers serving on British Columbia's municipal police forces.

[75] Regardless of how the claims are framed, therefore, the dispute is fundamentally about the working conditions of female police officers. The next question is whether, characterized in this way, the dispute is within the ambit of the Collective Agreements.

E. Do the Collective Agreements Cover the Subject Matter at Issue?

[76] The plaintiffs argue that the dispute does not fall within the ambit of the Collective Agreements because, while the preambles say they constitute the "working conditions" of the employees of the bargaining unit, the Collective Agreements do not contemplate the substantive issues in this case. The plaintiffs argue that the various working conditions enumerated in the Collective Agreements are more in the nature of "employment logistics", rather than workplace conduct or human relations.

[77] Importantly from the plaintiffs' perspective, the Collective Agreements do not expressly prohibit gender or sexual orientation-based discrimination, harassment, or bullying. This is unlike the collective agreements at issue in *Rivers*, for example, which expressly prohibited discrimination based on sex, and by extension precluded sexual harassment.

[78] The Surrey Defendants argue that the Collective Agreements govern working conditions and therefore contemplate the dispute in this case, despite the absence of express anti-discrimination or harassment provisions.

[79] The Surrey Defendants also argue that the workplace policies aimed at ensuring that the SPS provides a respectful workplace free from discrimination, harassment and bullying are incorporated into the Collective Agreements through the Management Rights clause. In other words, the Surrey Defendants argue that management rights under the Collective Agreement are subject to the employer's workplace policies, including the policies on discrimination, harassment and bullying.

[80] In *Ferreira v. Richmond (City)*, 2007 BCCA 131, the Court of Appeal held that that a harassment tort claim was within the ambit of a collective agreement that did not contain an express provision against harassment. The Court found that the dispute in that case arose "inferentially" out of the collective agreement because the alleged harassment would constitute a human rights violation, and human rights legislation is "inferentially incorporated into every collective agreement in this Province": para. 67.

[81] In other words, *Ferreira* holds that a violation of the *Human Rights Code* is a breach of an implied term of the Collective Agreements.

[82] The torts alleged in this case against the Municipal Police Defendants are grounds for complaints under the *Human Rights Code*. Indeed, the plaintiffs have commenced a similar proceeding with the BC Human Rights Tribunal.

[83] In my view, it is plain and obvious that a female officer who experienced gender-based discrimination, harassment or bullying on the job could grieve her treatment under the Collective Agreements, regardless of whether the conduct was a violation of an express provision of the Collective Agreements.

[84] Accordingly, the dispute about the working conditions of female police officers is a workplace grievance that falls impliedly under the terms of the Collective Agreements: *Ferreira* at para. 74.

[85] I am less persuaded that the workplace policies are incorporated into the Collective Agreements. The workplace policies do not make rules or set standards for workplace conduct. Instead, they provide a process for reporting and investigating complaints, potentially culminating in a formal investigation under the *Police Act*. Alternatively, a complainant may file a complaint with the BC Human Rights Tribunal. These processes are separate and apart from grievances under the Collective Agreements.

[86] What the workplace policies do illustrate is that the normative standards of the *Human Rights Code* infuse the SPS workplace. In this way, the policies support the conclusion that a human rights violation in the workplace is a breach of an implied term of the Collective Agreements. I find that a dispute about discrimination, harassment or bullying of a female officer is a workplace grievance that falls impliedly under the terms of the relevant Collective Agreement.

F. Does Labour Arbitration Provide an Effective Remedy?

[87] The plaintiffs argue that labour arbitration under the Collective Agreements does not provide an adequate remedy. They argue that this case is about something much bigger than a series of workplace grievances. The plaintiffs say they seek to expose and redress the institutional and systemic gender discrimination embedded in British Columbia's municipal policing culture. That claim, they submit—by its nature, its scope, and its remedies—transcends the jurisdiction of a labour arbitrator.

[88] Labour arbitration provides an effective remedy for current union members.

[89] Section 89 of the *Code* provides an arbitrator with authority to provide a final and conclusive settlement of a dispute arising under a collective agreement. This authority includes in subsection (a) the authority to make an order of compensation for an injury or loss suffered by a person because of a contravention of a collective agreement. It also includes in subsection (g) the authority to interpret and apply any Act intended to regulate the employment relationship, including the *Human Rights Code* and the *Charter*: *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42; *Weber* at para. 61.

[90] Exercising this authority, a labour arbitrator can award common law damages and *Charter* damages: *Weber* at paras. 61–67.

[91] Labour arbitrators have broad procedural discretion and experience managing multiple grievances against multiple employers. They are experts at fashioning remedies to resolve disputes across multiple workplaces.

[92] The plaintiffs may have reasonable grounds to prefer class proceedings in B.C. Supreme Court. However, as held by the majority in *Bisaillon,* the superior courts cannot take jurisdiction over a class proceeding in which they would not have jurisdiction over the individual claims. Policy arguments cannot confer a jurisdiction on the courts they do not have: *Bisaillon* at para. 58; *Rivers* at para. 35.

[93] More to the point in my view, the plaintiffs argue that labour arbitration does not provide an effective remedy for members of the class who are no longer members of the unions, many of whom, the plaintiffs say, suffered loss or damages after they left their employment, including lasting psychological harm and lost income.

[94] The plaintiffs rely on *Sulz.* In that decision*,* the Court of Appeal found that the plaintiff's income loss occurred after she was discharged from the RCMP, when she was no longer governed by, or could claim any benefit from, the grievance procedure under the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10. The internal process was spent and could not provide compensation for her loss. In these circumstances, the Court of Appeal held, the statutory scheme did not provide effective redress: *Sulz* at para. 32.

[95] The Court of Appeal distinguished *Sulz* in *Ferreira*, noting that it concerned an Act that contained "a weaker arbitration clause than is found in the *Labour Relations Code*": para. 26. *Sulz* therefore provides limited guidance in this case.

[96] The Surrey defendants rely on *Greenwood.* As discussed, in that decision, the Federal Court of Appeal found that the class definition ought to have excluded union members who worked for the RCMP after the date on which a collective

agreement became applicable to them: *Greenwood* at paras. 135, 202. This would have excluded former members who claimed post-employment compensation for "physical and psychological injuries, and financial losses," part of the original class definition: *Greenwood v. Canada*, 2020 FC 119 at para. 8.

[97] The Federal Court of Appeal did not engage in a lengthy *Weber* analysis in *Greenwood*. The Court did not specifically address the question of whether labour arbitration provided an effective remedy for former members of the union. Likewise, the issue was not addressed directly in *Rivers* or *Thompson.*

[98] The Surrey Defendants argue that an arbitrator has jurisdiction under the Collective Agreements to resolve a complaint by a former employee, and authority under s. 89 of the *Code* to award compensation for loss or damage she suffered after she left her employment.

[99] The plaintiffs respond that s. 89 of the *Code* does not create jurisdiction; it only empowers arbitrators to grant remedies in disputes they are authorized to resolve. The plaintiffs argue that arbitrators do not have jurisdiction to resolve complaints by former employees unless the individual remains a "party" to the Collective Agreement, or all parties (employer, union, and former employee) expressly consent to arbitration.

[100] The jurisdiction of a labour arbitrator is derived primarily from the collective agreement and the submission to arbitration: Donald J.M. Brown, K.C., David M. Beatty & Adam Beatty, *Canadian Labour Arbitration*, 5th ed. (Toronto: Thomson Reuters, 2025) (updated August 2025, release 6), § 2:1.

[101] In *Bisaillon,* Justice LeBel for the majority held that an arbitrator's jurisdiction depends on two factors. The first has to do with the subject or the nature of the dispute - the subject-matter aspect of the arbitrator's jurisdiction. In this case, I have found that the dispute in its essential character arises from the Collective Agreements, thus satisfying the subject matter requirement. The second

jurisdictional factor relates to the persons who are parties to the dispute – the "personal aspect of the arbitrator's jurisdiction" (para. 29).

[102] The Collective Agreements define an "Employee" as an employee employed by the Employer within the bargaining unit represented by the Union. They define the "Employer" as the Surrey Police Board.

[103] These definitions suggest that access to the grievance procedures is limited to police officers who are "employed" by the Surrey Police Board, i.e., current employees. However, the full language of the provisions indicates that at least some complaints may be grieved by former employees. As stated, Article 19 provides that:

> Any differences concerning the dismissal, discipline, or suspension of an Employee, or the interpretation, application, or operation of this Agreement, or concerning [sic] alleged violation of this agreement, will be finally and conclusively settled without stoppage of work in the following manner: […]

[104] Article 19 allows a former employee to grieve her dismissal. A dismissed employee may allege that the manner of her dismissal was a violation of the collective agreement. She may also allege that the conduct of the employer in violation of the collective agreement forced her to resign—in other words, she was constructively dismissed.

[105] A dismissal grievance may include allegations of discrimination, harassment or bullying. As a matter of common sense, dismissal grievances are brought after the grievor has left her employment, and often include claims for post-employment damages, including compensation for psychological injuries or financial losses.

[106] It is well-established that labour arbitration provides an effective remedy for wrongful dismissal claims by unionized employees. In *Nagra*, for example, Justice Bronger denied an application by the plaintiff to amend his claim to advance a wrongful dismissal claim because it was plain and obvious the court had no jurisdiction over a claim that was subject to labour arbitration.

[107] The plaintiffs argue that arbitrators have jurisdiction in the wrongful dismissal cases only because the issue is whether the employee was actually dismissed. I

cannot accept this submission. An arbitrator's jurisdiction to determine "differences concerning the dismissal …of an Employee" should not depend on whether the arbitrator first finds that the employee was not dismissed.

[108] In my view, it is plain and obvious that a former police officer is entitled to grieve her dismissal without the pretense that she is still employed by the Surrey Police Board. To this extent at least, an arbitrator has both subject matter and personal jurisdiction over disputes involving some former employees.

[109] It is less clear whether a former police officer is entitled to grieve a violation of the Collective Agreement that arose during her employment, but unrelated to a dismissal.

[110] A commonsense interpretation of the grievance provisions of the Collective Agreements suggests that former employees should be entitled to proceed by way of arbitration so long as the subject matter of the grievance arose during her employment.

[111] However, former employees are dependent on their former union to advance the grievance on their behalf. As non-parties, their ability to grieve a violation of the Collective Agreement is subject to a determination that the arbitrator has jurisdiction over the particular dispute: *Bennett v. British Columbia*, 2007 BCCA 5 at paras. 48–49.

[112] The Surrey Defendants note that s. 89 of the *Code* authorises arbitrators "without limitation" to award compensation to "an employer, trade union or other person". They argue that this broad grant of authority authorizes an award of compensation to a former employee. They also argue that, to the extent the Collective Agreements place any limits on a person's ability to seek compensation, an arbitrator may under s. 89(e) of the *Code* relieve against any breach of a time limit or procedural requirement.

[113] I agree with the plaintiffs that s. 89 does not expand the jurisdiction of an arbitrator beyond their jurisdiction under the Collective Agreements. Instead, s. 89

sets out the breadth of remedies that may be awarded by an arbitrator with jurisdiction to resolve a dispute.

[114] Labour arbitration is primarily concerned with disputes arising under a collective agreement between the employer, the union, and employees within the bargaining unit. When the dispute concerns a former employee, the union or the employer may take the position it is not subject to arbitration, and the arbitrator may agree. While the Surrey Defendants cite numerous arbitration decisions involving former employees, each case depends to some extent on its facts.

[115] The Surrey Defendants acknowledge that the Court retains an inherent, residual jurisdiction "if a remedy is required which an arbitrator is not empowered to grant, or the remedy granted would otherwise be inadequate": *Weber* at para. 33.

[116] In other words, *Weber* ensures access to an "effective remedy".

[117] In my view, it is not plain and obvious that the Collective Agreements provide access to an effective remedy for all former employees of the Surrey Police Board who allege that they were subject to gender-based discrimination, harassment or bullying on the job.

[118] The difficulty is that the plaintiffs have not pleaded any claims by any former members of the SPS. They have not pleaded the material facts on which a court could find that a former employee suffered gender-based discrimination, harassment or bullying that she cannot grieve under the applicable Collective Agreement. At this stage of the proceedings, there is no evidence of any claims by any former employees.

[119] In the circumstances, a decision on this issue must await the certification hearing and submissions on the criteria in s. 4 of the *Class Proceedings Act*.

IV. CONCLUSION

[120] This Court does not have jurisdiction over claims against the Surrey Defendants that arose after the date on which a collective agreement became applicable to the bargaining unit to which the class members belonged.

[121] The question of whether, notwithstanding this conclusion, the Court should retain jurisdiction over claims by former employees of the Surrey Police Board is adjourned to the certification hearing.

"Elwood J."