



COURT OF APPEAL FILE NO. CA51167
 Weeks v. City of Abbotsford
 Appellant's Factum

COURT OF APPEAL

ON APPEAL FROM the order of The Honourable Justice Elwood of the Supreme Court
 of British Columbia pronounced on the 28th of October, 2025

BETWEEN:

**Cheryl Weeks, Anja Bergler, Helen Irvine, Cary Ryan, Lauren Phillips,
 and Ann-Sue Piper**

APPELLANTS
 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, 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**

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CHRONOLOGY

Date	Event	Reference
July 30, 2021	The Labour Relations Board certified the Surrey Police Union as the collective bargaining unit for Surrey Police Service officers below the rank of inspector.	Reasons for Judgment, at para. 20
March 10, 2022	The Surrey Police Board and the Surrey Police Union entered into a collective agreement covering Surrey Police Service officers below the rank of inspector.	Reasons for Judgment, at para. 21
November 30, 2022	The Labour Relations Board certified the Surrey Police Inspectors Union as the collective bargaining unit for Surrey Police Service officers at the rank of inspector.	Reasons for Judgment, at para. 22
October 11, 2023	Notice of Civil Claim filed by Appellant-Plaintiffs.	Appeal Record, Tab 1
February 14, 2024	Response to Civil Claim filed by City of Surrey.	Appeal Record, Tab 9
April 25, 2024	WCAT Section 311 Application initiated by City of New Westminster and New Westminster Police Board.	WCAT Decision A2402066 at para. 4
July 31, 2024	Amended Notice of Civil Claim and Amended Reply filed by Appellant-Plaintiffs.	Appeal Record, Tabs 11-12

September 10, 2024	Response to Amended Notice of Civil Claim filed by City of Surrey and Surrey Police Board.	Appeal Record, Tab 30
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	Reasons for Judgment at para. 23
March 14, 2025	Notice of Application filed by City of Surrey and Surrey Police Board.	Appeal Record, Tab 32
April 28, 2025	Application Response filed by the Appellant-Plaintiffs.	Appeal Record, Tab 39
May 1, 2025	Reply to Application Response filed by City of Surrey and Surrey Police Board.	Appeal Record, Tab 40
May 12-14, 2025	Application of City of Surrey and Surrey Police Board heard before The Honourable Justice Elwood.	Reasons for Judgment, at page 2
October 28, 2025	Reasons for Judgment of The Honourable Justice Elwood released.	Appeal Record, Tab 43
November 27, 2025	Notice of Appeal filed by the Appellant-Plaintiffs.	Appeal Record, Tab 44
February 5, 2026	Decision of the Workers' Compensation Appeal Tribunal released.	WCAT Decision A2402066

OPENING STATEMENT

The medium is the message

-Marshall McLuhan

The *Weber* analysis requires the court to determine the “essential character” of the dispute. In doing so, the Supreme Court of Canada has cautioned the court is not to look at the form of the case, nor the specific words pleaded, but rather, the court must consider what the *disagreement* is really about.

If the essential character of the disagreement “expressly or inferentially arises out of the collective agreement” then *Weber* says the legislature intended that most cases will fall within the exclusive jurisdiction of a labour arbitrator.

The chambers judge erred in finding *this* class action is a dispute that expressly or inferentially arises out of a collective agreement. The chambers judge was led into error when he refused to consider the distinct nature of class actions and fact this case is a prospective class proceeding. The fact the dispute is pleaded and structured as a class action alleging systemic institutional negligence is part of the factual context. Ignoring that context distorts the characterization exercise.

The chambers judge relied on *McKinsey* to ignore the nature of class actions in his essential character analysis. However, *McKinsey* does not say that courts must blind themselves to the true nature of the dispute in determining jurisdiction under *Weber*.

The fact this dispute is a class action, brought by a number of representative plaintiffs previously employed across multiple municipalities, is fundamental to its true nature. Its “aspiration” or objective as a class action is foundational to its purpose—in this case the medium of the class action is the message.

As a result of ignoring, or minimizing, the significance of this case as a class proceeding, the chambers judge erred in finding this dispute is fundamentally about the working conditions of female police officers.

PART 1 – STATEMENT OF FACTS

1. The appellants, Weeks et al., are representative plaintiffs in a proposed class proceeding commenced in the Supreme Court of British Columbia. They are female former municipal police officers employed by various municipal police departments in British Columbia. They bring this action on their own behalf and on behalf of all persons employed by the named municipal police departments in British Columbia who are, were, or living or presenting as women during their employment (the “**Class**”).
2. The defendants include multiple municipalities and their respective police boards (the “**Municipal Police Defendants**”). In these proceedings, “Surrey” refers to the City of Surrey and the Surrey Police Board.
3. The Amended Notice of Civil Claim (“**ANOCC**”) pleads that the Municipal Police Defendants, together with provincial actors, owed duties to provide a workplace free from gender-based discrimination, harassment, and bullying, and that those duties were systemically breached across municipal policing in British Columbia.¹
4. The ANOCC defines the plaintiffs’ claims as discrimination, harassment, and bullying of current and former female municipal police officers on the basis of gender and/or sexual orientation.²
5. The plaintiffs allege that they, and other members of the Class, were subjected to systemic and persistent gender-based discrimination and harassment by officers and management within municipal police departments, and that institutional actors failed to prevent, investigate, or remedy that conduct.
6. The ANOCC particularizes incidents experienced by the plaintiffs across different municipalities, including unwanted sexual comments, sexualized conduct,

¹ Amended Notice of Civil Claim, Appeal Record, Tab 11

² Amended Notice of Civil Claim, Appeal Record, Tab 11

retaliatory treatment following complaints, and failures of internal investigative processes.³

7. Beyond individual incidents, the ANOCC alleges these events occurred within a broader institutional culture that normalized gender-based discrimination and that the defendants failed to implement and enforce adequate management and operational safeguards.

8. In 2018, Surrey City Council resolved to transition from RCMP policing to a municipal police service. In 2020, the Province appointed the Surrey Police Board, and the Surrey Police Service was formally established. Recruitment of sworn officers began in 2021.

9. The allegations include claims that harassment and discrimination affecting female officers occurred within the Surrey Police Service from its inception.⁴

10. During the relevant period, collective agreements were entered into between the Surrey Police Board and the Surrey Police Union (“**SPU**”), and later with the Surrey Police Inspectors’ Association (“**SPIA**”) (collectively, the “**Collective Agreements**”), as introduced by Surrey and referred to in Justice Elwood’s decision.

11. Surrey relied on those Collective Agreements in bringing a jurisdictional application under Rule 9-5 of the *Supreme Court Civil Rules*, asserting that the plaintiffs’ claims, insofar as they relate to Surrey, fall within the exclusive jurisdiction of a labour arbitrator pursuant to *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC) (“**Weber**”). Surrey applied to strike the claims asserting that the dispute, in its essential character, concerns working conditions governed by the Collective Agreements and must therefore be resolved through labour arbitration.

12. The plaintiffs opposed that application, maintaining that the action advances systemic tort and *Charter* claims that transcend any single collective agreement and

³ Amended Notice of Civil Claim, Appeal Record, Tab 11

⁴ Lower Court Transcript, at page 48, lines 7-9

cannot be reduced to a dispute over the interpretation, application, administration, or violation of a collective agreement.

13. Justice Elwood allowed Surrey's jurisdictional application, concluding that the dispute is fundamentally about the working conditions of female police officers and falls within the exclusive jurisdiction of a labour arbitrator under *Weber*.⁵

14. This appeal arises from that determination.

⁵ Reasons for Judgment, Appeal Record, Tab 43, at para. 75

PART 2 – ISSUE ON APPEAL

15. The chambers judge erred by:
- a. Treating the fact that the proceeding is a proposed class action as legally irrelevant to the essential character inquiry, including by relying on *McKinsey* for that proposition;
 - b. Mischaracterizing the essential character of the dispute as one concerning “working conditions” under a collective agreement, rather than as a systemic claim alleging institutional negligence and structural discrimination; and
 - c. Failing to consider the collective and systemic nature of the pleaded allegations when applying the essential character analysis under *Weber*.
16. These errors resulted in an order that was fundamentally incorrect for the reasons described below.

PART 3 – ARGUMENT

The Standard of Review Is Correctness

17. The standard of review on this appeal is correctness.

18. This appeal arises out of an alleged error by the chambers judge to properly characterize the “essential character” of the dispute.

19. The question of a dispute’s “essential character” or “substance” is a matter of law to be reviewed on a standard of correctness.⁶ The characterization determines which adjudicative body has authority to hear the dispute. That determination must be right.

Weber Requires Identification of the “Difference” Between the Parties

20. It is well established that a disagreement between an employer and an employee that arises in its essential character from the *interpretation, application, administration or violation* of a collective agreement is to be determined not in the courts but according to the arbitration provisions of the collective agreement.⁷

21. The *Weber* analysis, however, is not as ‘simple’ as it seems. This is because it is not intended to exclude the court’s jurisdiction from all workplace disputes. Indeed, Justice McLachlin observed in *Weber* that it is “impossible to categorize” the kinds of cases that will fall within the exclusive jurisdiction of an arbitrator, and outside the jurisdiction of the court.⁸

22. To determine if a claim falls within the “exclusive jurisdiction” of a labour arbitrator, the court will engage in a two-step process:

⁶ *Sarao v. Fraser Health Authority*, 2025 BCCA 267 at para. 31 citing *Masjoody v. Trotignon*, 2022 BCCA 135 at para. 26; *Bruce v. Cohon*, 2017 BCCA 186 at paras. 76-80

⁷ *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC) (“**Weber**”) at paras. 43-46 and 51-55

⁸ *Weber* at para. 53

[51] To determine whether a dispute arises out of the collective agreement, we must therefore consider two elements: the nature of the dispute and the ambit of the collective agreement.⁹

23. Each part of this two-step analysis is driven by the particular facts of the dispute.

24. Because the analysis is factually driven, there is considerable scope for the court to decide whether the facts of any particular case warrant, or require, the court to decline jurisdiction over the dispute.

25. The first stage of the *Weber* analysis requires the court to consider the “essential character” of the disagreement.

26. As the Supreme Court cautioned, the essential character inquiry does not turn on the labels applied in the pleadings or the mere existence of a collective agreement in proximity to the parties.¹⁰ Rather, it requires consideration of the totality of the circumstances—including the nature of the duty alleged, the scope of the wrongdoing, the identity of the parties, and the remedies sought—in order to determine whether, in its true substance, the dispute arises from the interpretation, application, administration, or violation of a collective agreement. A characterization that isolates one contextual feature while disregarding the broader institutional and structural allegations risks distorting the *Weber* analysis.

27. The Supreme Court further warned that reliance on pleadings-based characterization would permit “innovative pleaders to evade the legislative prohibition on parallel court actions by raising new and imaginative causes of action,” thereby undermining the statutory scheme.¹¹

28. It is significant to this appeal that the plaintiffs emphasise that *Weber* does not stand for the proposition that just because there is a collective agreement in

⁹ *Weber* at para. 51; *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 at para. 25

¹⁰ *Weber* at para. 49

¹¹ *Weber* at para. 49

proximity to the parties, the court lacks jurisdiction. Rather, the Supreme Court was very clear that the court must look to the whole factual context of the dispute to understand its true nature.¹²

29. The nature of the dispute does not turn solely on whether the dispute arises between employee and employer; nor does it depend on the form(s) of action being advanced by the claimant. Only disputes which, in their “essential character”, expressly or inferentially arise out of the collective agreement are foreclosed to the courts.¹³

30. The plaintiffs emphasize this point: *Weber* applies to “differences” which, in their true nature, arise or relate to the *interpretation, application, administration or violation of* a collective agreement. The word “differences” denotes the dispute between the parties, not the legal actions which one may be entitled to bring against the other.¹⁴ It is not the specific words of the pleadings—it is the nature of the dispute that is to be examined.

31. The plaintiffs submit this means this Court must consider the totality of the circumstances surrounding the dispute—in its full form—when assessing what is the “essential character” of the dispute.

The Chambers Judge Ignored the Dispute as a Class Action

32. In the present case, the chambers judge erred by failing to consider the whole context of the dispute between the representative plaintiffs and the defendants. This includes, specifically, by failing to consider the principal goals of class proceedings as they effect the “essential character” of this dispute.

33. The chambers judge found, incorrectly, that:

[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.

¹² *Weber* at para. 43

¹³ *Weber* at paras. 52 and 54

¹⁴ *Weber* at paras. 45, 50, and 51

34. In so doing he failed to consider the totality of the circumstances of the dispute—as is required under the *Weber* analysis.

35. *British Columbia v. McKinsey*, 2023 BCSC 1762 (“*McKinsey*”) was a pleadings motion under Rule 9-5(1)(a). The issue was whether the province’s amended notice of civil claim disclosed a reasonable cause of action. Justice Brundrett held that class proceedings receive no relaxed pleading standard and that each cause of action must stand or fall on the pleadings.

36. That principle is not disputed. The appellants do not assert that the existence of a proposed class proceeding alters the Rule 9-5 test. Nor do they contend that class proceedings receive any “leeway” in establishing jurisdiction.

37. However, under *Weber*, a court must determine whether the “difference” between the parties arises from the collective agreement. *Weber* expressly cautions that courts must not focus on the legal characterization of the wrong or the specific words of the pleadings. It is submitted that the Supreme Court’s emphasis was not on the formality of the pleadings.¹⁵

38. The plaintiffs submit the essential character analysis is deliberately distinct from the pleadings formalism at issue in *McKinsey*.

39. The statement in *McKinsey* that class proceedings receive no special consideration was made in the context of assessing whether causes of action were adequately pleaded. It was not directed to—and did not purport to govern—how a court must conduct the contextual inquiry required under *Weber*.

40. By relying on *McKinsey* in the present case, the chambers judge treated the representative nature of the proceeding as irrelevant to the “essential character” analysis. In so doing, he imported a principle from Rule 9-5 jurisprudence into the fact-driven jurisdictional inquiry—with the result of excluding a significant circumstance.

¹⁵ *Weber* at para. 49; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 20

41. The *Weber* framework requires the court to determine the “essential character” of the dispute by examining its factual context. Nothing in *McKinsey* suggests that a court must disregard the structural or representative features of a proceeding when identifying the true nature of the dispute. To treat the class character as irrelevant overly (and incorrectly) narrows the contextual inquiry mandated by *Weber*.

42. By failing to address at all that the present case is a proposed class action, the chambers judge did not consider the principal advantages of class proceedings which may fundamentally, and inextricably, affect the “essential character” of the particular case.

43. Had he done so, the plaintiffs submit, the chambers judge would have found the essential character of the dispute was not about “working conditions of female police officers”.

Class Actions Have Three Principal Goals

44. The policy advantages of class proceedings are now well-settled.

45. The purpose of class action legislation such as the *Class Proceedings Act*, RSBC 1996, c. 50 is to ensure that courts have a “procedural tool sufficiently refined to allow them to deal efficiently, and on a principled rather than *ad hoc* basis, with the increasingly complicated cases of the modern era.”¹⁶

46. That purpose is served by three principal goals: judicial economy, access to justice, and behaviour modification.¹⁷

47. Those goals are not confined to application at the certification stage. Rather, case law, including law from this Court, demonstrates that courts consider how the class action structure facilitates the principal goals throughout the life cycle of the litigation.

¹⁶ *MacKinnon* at paras. 16 and 17 citing *Hollick v. Toronto (City)*, 2001 SCC 68 at para.14; *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46

¹⁷ *AIC Limited v. Fischer*, 2013 SCC 69 (“**AIC Limited v. Fischer**”) at paras. 22–23, and 48; *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46

48. The principal goals are inextricably connected to the nature of class proceedings themselves. In contexts involving systemic or diffuse harm, without the collective mechanism, some litigation simply cannot exist. As this Court recognized in *MacKinnon v. National Money Mart Company et al.*, 2006 BCCA 148 (“**MacKinnon**”), without class proceedings, “the doors of justice remain closed to some plaintiffs, however strong their legal claims.”¹⁸

49. The Supreme Court of Canada has also emphasized that the class action is *not* an “exceptional remedy” that must be interpreted narrowly. On the contrary, it is “an ordinary remedy whose purpose is to foster social justice”.¹⁹

50. The class action is highly appropriate in sexual abuse cases, given the great vulnerability of the victims.²⁰

51. Put simply, for certain types of claims, the class action mechanism is the only economically viable method for claimants to pursue their rights and for defendants to be held accountable for their conduct. For these types of claims, the class proceeding is a defining feature of the dispute.

52. This is one of those claims.

Access to Justice – Substantive and Procedural

53. Access to justice has both procedural and substantive dimensions. As the Supreme Court explained in *AIC Limited*, class proceedings overcome barriers to litigation by providing “a procedural means to a substantive end.” The Supreme Court went on to emphasise the substantive advantages:

[34] [...] As one author put it in a memorable phrase, a class procedure has the potential to “breath[e] new life into substantive rights”: M. Good, “Access to

¹⁸ *MacKinnon* at para. 16, citing *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46

¹⁹ *L’Oratoire Saint Joseph du Mont Royal v. J.J.*, 2019 SCC 35 at para. 8; *Bisailon v. Concordia University*, 2006 SCC 19 at para. 16

²⁰ *L’Oratoire Saint Joseph du Mont Royal v. J.J.*, 2019 SCC 35 at para. 8; *Rumley v. British Columbia*, 2001 SCC 69 at para. 39; *Griffith v. Winter*, 2002 BCSC 1219 at para. 38, aff’d 2003 BCCA 367

Justice, Judicial Economy, and Behaviour Modification: Exploring the Goals of Canadian Class Actions” (2009), 47 *Alta. L. Rev.* 185, at p. 188. Even though a class action is a procedural tool, achieving substantive results is one of its underlying goals. Consideration of its capacity to overcome barriers to access to justice should take account of both the procedural and substantive dimensions of access to justice.²¹

54. Procedurally, class actions mitigate economic barriers by spreading litigation costs across many claimants. Substantively, they provide meaningful relief where individual actions would be economically irrational. Class Actions also reduce psychological and social barriers by allowing individuals to participate through a representative plaintiff. This is particularly true, it is submitted, where the prospective class are vulnerable, due to gender discrimination, sexual abuse, or bullying. Substantively, class proceedings provide meaningful relief where individual actions would be economically irrational, socially prohibitive, or practically impossible.²²

55. Accordingly, the Supreme Court of Canada has indicated that class action legislation is to be construed “generously” and in a manner that is not “overly restrictive” but that “gives full effect to the benefits foreseen by the drafters.”²³ This factum will return to this point when it argues the comparative merits of the policy underlying class actions and the policy underlying the exclusive jurisdiction of labour arbitrators.

Judicial Economy

56. Judicial economy is a structural principle embedded in the *Class Proceedings Act*, and allows for procedural efficiency. The goal seeks to avoid duplication of fact-finding, inconsistent determinations, fragmented adjudication, and the institutional waste that results when the same issues are litigated repeatedly in different forums.²⁴

57. The present procedural landscape of this case illustrates precisely the mischief that judicial economy is designed to prevent.

²¹ *AIC Limited v. Fischer* at para. 34

²² *AIC Limited v. Fischer* at para. 29

²³ *MacKinnon* at para. 16

²⁴ *AIC Limited v. Fischer*

58. The chambers judge held that the Court lacks jurisdiction because the dispute falls within the exclusive jurisdiction of a labour arbitrator.

59. In other cases, however, labour arbitrators have held that bullying and harassment grievances (at least where their essential character does concern a failure to provide a workplace free from bullying and harassment) fall within the exclusive jurisdiction of WorkSafeBC, not arbitration.

60. In *Kamloops (City) v. Canadian Union of Public Employees, Local 900*, the arbitrator held:

[95] [...] any aspects of the grievance that deal with the alleged failure of the Employer to provide a workplace free of bullying and harassment are within the exclusive jurisdiction of WorkSafeBC and are, therefore, matters over which this arbitration board has no jurisdiction.²⁵

61. The arbitrator further emphasized that this allocation of jurisdiction is a legislative policy choice and that parties cannot bargain away WorkSafeBC's exclusive jurisdiction. That issue was, of course, not before the chambers judge; Surrey's application only sought a determination that a labour arbitrator has exclusive jurisdiction of this case.

62. On its face, the labour arbitrator's reasoning is consistent with WCAT Decision No. A2402066, which proceeded on the basis that it had jurisdiction to make determinations under s. 311 of the *Workers Compensation Act* in this very dispute.²⁶

63. The result, however, is a jurisdictional conundrum:

- a. The Supreme Court declines jurisdiction in favour of labour arbitration;
- b. A labour arbitrator declines jurisdiction in favour of WorkSafeBC;
- c. WorkSafeBC's mandate is limited to "personal injury", and has no mechanism for resolving matters on a class-wide basis; and

²⁵ *Kamloops (City) v. Canadian Union of Public Employees, Local 900*, 2025 CanLII 27096 (BC LA) at para. 95

²⁶ WCAT Decision Number A2402066, dated February 5, 2026

- d. WCAT's jurisdiction under s. 311 depends upon the existence of a valid "court action."

64. This fourth point is significant because, Section 311 empowers WCAT only to determine those matters that are both (a) relevant to a "court action" and (b) within the Board's jurisdiction under the *Workers Compensation Act*. However, if the proceeding is no longer a "court action" because it lies within the exclusive jurisdiction of a labour arbitrator, then WCAT's jurisdiction under s. 311 is extinguished.²⁷

65. As Justice Cumming observed in *Canadian Pacific Ltd. v. Jones Estate*, the *Workers Compensation Act* provisions do more than provide a defence; they go to the standing of plaintiffs to maintain their action. Jurisdictional determinations therefore shape whether a dispute may be heard at all.²⁸

66. The cumulative effect of these competing assertions of jurisdiction is procedural fragmentation. Each forum disclaims authority in favour of another. None seek to address the plaintiffs' claims on their merits.

67. The current action likewise risks being shuttled between decision-makers without ever being adjudicated on its merits.

68. This is precisely the social and institutional problem that the principle of judicial economy is designed to address. Class proceedings aggregate common issues into a single coordinated adjudication, preventing duplicative processes and inconsistent rulings. They provide a forum capable of resolving overlapping statutory regimes in one coherent proceeding, rather than through piecemeal determinations.

69. Judicial economy, as a core objective of class proceedings, exists to ensure that common questions are resolved once, in one forum, with binding effect across the class. It avoids the spectre of mutually exclusive jurisdictional findings that leave litigants without an effective forum.

²⁷ *Dr Aref Tabarsi Inc v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2025 BCSC 1115 at paras. 79- 83

²⁸ *Canadian Pacific Ltd. v. Jones Estate* (1989), B.C.J. No. 1241

70. In that sense, judicial economy is the legislative answer to the fragmentation and inconsistency that can arise when disputes of broad scope are forced into narrow, individualized procedural channels.

71. The plaintiffs submit *Weber* was never intended to displace this goal.

Behaviour Modification

72. Behaviour modification is the third principal goal of class actions. Class proceedings ensure that those whose conduct causes widespread harm internalize the full costs of that conduct.²⁹

73. Behaviour modification deters widespread wrongdoing by internalizing costs of misconduct that impact a great number of victims. The Supreme Court has emphasized the importance of this goal where regulatory bodies failed to act.³⁰

74. The value of behaviour modification was succinctly set out by Rosenberg J.A. of the Ontario Court of Appeal:

[87] In my view, the motion judge took too narrow a view of the goal of behaviour modification. In *Abdool v. Anaheim Management Ltd.* (1995), 121 D.L.R. (4th) 496 (Ont. Div. Ct.), at 514, Moldaver J. adopted the following description of this goal: “modifying the defendants’ behaviour so as to inhibit misconduct by those who might ignore their obligations to the public”. In a similar vein, McLachlin C.J.C. at para. 29 of *Western Canadian Shopping Centres Inc.*, *supra* described how class actions serve efficiency and justice by ensuring that actual and potential wrongdoers do not ignore their obligations to the public. Without class actions, those who cause widespread but individually minimal harm might not take into account the full costs of their conduct, because for any one plaintiff the expense of bringing suit would far exceed the likely recovery.³¹

75. Class actions serve to incentivize positive changes which can benefit society as a whole. Therefore, behaviour modification is achieved by the private prosecution of

²⁹ *AIC Limited v. Fischer* at paras. 22–23

³⁰ *Chief Derek Nepinak and Chief Bonny Lynn Acoose v. Canada*, 2025 FC 925 at para. 27 citing *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 141; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para. 169; and *Rumley v. British Columbia*, 2001 SCC 69 at para. 34

³¹ *Pearson v. Inco Ltd.*, 2005 CanLII 42474 (ON CA) at paras. 86-88

claims that inhere to “the benefit of society as a whole. In this way, private litigation yields public benefits.”³²

76. The means by which an unmotivated defendant might change its behaviour are not fixed, and behaviour modification “may also be achieved through an award of damages, or by the agreement of a defendant to reform its conduct, or by a combination of both.”³³ Non-monetary relief, obtained through settlement or after the economic impacts of trial, accords with a central policy goal of class actions: to promote behaviour modification.

77. In short, the *existence* of a class action on its own—even without a judgment for damages—can affect meaningful benefit to society as a whole. It is this point in particular that highlights that the medium of class proceedings may affect the dispute’s essential character.

Class Action Purposes and the Connection to a Dispute’s “Essential Character”

78. In sum, the three goals—access to justice, judicial economy, and behaviour modification—are more than just well-intended attributes of class proceedings. The goals are the defining features of the legislative scheme.

79. The plaintiffs submit that, where a proceeding is brought as a class action, it is ultimately brought in that form because of these defining features. For that reason, the goals are intrinsic to the identity and nature of the dispute.

80. It is therefore impossible to assess the “essential character” of a proposed class action by ignoring its nature as a class proceeding. Disregarding the collective form strips away the very features that give the dispute its public, systemic, and structural dimension. It takes away its very identity.

81. It is therefore an error to find the “essential character” of this claim without considering how the three goals of class actions define the disagreement between the class and the defendants.

³² *Wheadon v. Bayer Inc.*, 2004 NLSCTD 72 at para. 149

³³ *Rideout v. Health Labrador Corp.*, 2007 NLTD 150 at para. 115

The Disagreement Is Systemic Negligence Within the Meaning of *Rumley*

82. As a result of that fundamental error, the chambers judge concluded that “the dispute is fundamentally about the working conditions of female police officers”.³⁴

83. With respect, that conclusion reflects a mischaracterization of the essential character of the claim. It prioritizes the setting of the harm (the workplace) over the nature of the alleged wrongdoing (systemic institutional failure). That approach is inconsistent with binding authority from the Supreme Court of Canada.

84. The proper starting point is *Rumley v. British Columbia*, 2001 SCC 69 (“*Rumley*”).

85. In *Rumley*, the Supreme Court of Canada addressed claims arising from abuse at a provincially operated residential school. The plaintiffs limited their allegations to “systemic” negligence, defined in this Court by K. MacKenzie JA as “the failure to have in place management and operations procedures that would reasonably have prevented the abuse.”³⁵

86. The Supreme Court held that, where the claim is confined to systemic negligence, (a) the central issues become the nature of the duty owed by the institution to the class as a whole; and (b) whether that duty was breached at the level of institutional policy and management. Those questions, the Court held, are amenable to collective resolution because they do not depend on the circumstances of any particular claimant. The Court acknowledged that individual issues of injury and causation would remain to be determined. However, it characterized those issues as “a relatively minor aspect” of the case because the “essential question” was whether the institution should have prevented or responded differently to the abuse.³⁶

³⁴ Reasons for Judgment, Appeal Record, Tab 43, at para. 75

³⁵ *Rumley* at paras. 18 and 30

³⁶ *Rumley* at paras. 19 and 36

87. Since *Rumley*, case law has supported the appropriateness of class actions for allegations of systemic liability for abuse of vulnerable groups (e.g., young students, and survivors of sexual abuse).³⁷

88. Justice Brown, writing for the majority in *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, noted that class actions are often seen as highly appropriate in sexual abuse cases given the difficulty of the litigation process and the vulnerability of the survivors.³⁸

89. The Supreme Court's conclusion in *Rumley* regarding collective claims did not depend on a finding that the alleged harms occurred within a particular relational context (a residential school). Rather, the Supreme Court examined the substance of the allegations and identified the gravamen as a systemic failure.

90. The same analytical discipline is required here.

91. The essential character inquiry under *Weber* seeks to determine the true nature of the "difference" between the parties. It does not ask for a limited consideration of where the impugned conduct occurred or the relationship between the parties.

92. Here, the plaintiffs have raised allegations of failures of governance, oversight, and institutional culture. The claims target management structures, policy failures, and systemic discrimination affecting the defined class. The claims do not rest on individualized disciplinary disputes, promotions, or specific workplace incidents. Although specifics of individuals' experiences are provided, they are examples of the systemic failures.³⁹

93. The questions the plaintiffs are asking the Court to resolve can be answered without examining the particulars of any individual plaintiff's employment relationship. In

³⁷ *Liptrot v. Vancouver College Limited*, 2023 BCSC 346

³⁸ *L'Oratoire Saint Joseph du Mont Royal v. J.J.*, 2019 SCC 35 at para. 8, citing, among other cases, *Rumley* and *Griffiths v. Winter*, 2003 BCCA 367

³⁹ Amended Notice of Civil Claim, Appeal Record, Tab 11, at para. 53

fact, the plaintiffs do not raise in the pleadings any terms of the collective agreement, or multiple collective agreements.⁴⁰

94. If the mere fact that plaintiffs are employees suffices to define the essential character of a claim as a workplace dispute, then systemic negligence in employment settings can never exist. That result cannot be reconciled with *Rumley*, or in fact with *Weber*.

95. *Weber* specifically contemplates that there will be examples of workplace disputes which do not fall within the exclusive jurisdiction of a labour arbitrator. *Weber* is clear that the court always retains some jurisdiction.

96. The plaintiffs submit this is because in determining the “essential character” of a claim, there will be cases which, by their nature and factual circumstances, contain elements of both collective *systemic* issues and address workplace conflict. The plaintiffs submit *Weber* was never intended to exclude the court’s jurisdiction where there is simply the mere existence of workplace disputes—only where the claim “arises out of” a collective agreement.

97. Recall, Justice McLachlin is careful in *Weber* to expressly state that the exclusive jurisdiction model “does not preclude *all* actions in the courts between [a unionized] employer and employee”. This is because an arbitrator’s exclusive jurisdiction extends only to “disputes which expressly or inferentially arise out of the collective agreement”. Not every workplace dispute will fall within this scope.⁴¹

98. This conclusion is grounded in two ways: first, in the policy underlying *Weber*’s preference for exclusive jurisdiction with the labour arbitrator, and second, in circumstances where there is no effective remedy. Both those circumstances ought to be considered here.

⁴⁰ Amended Notice of Civil Claim, Appeal Record, Tab 11; Lower Court Transcript, at page 70, lines 29-45

⁴¹ *Weber* at para. 54; see also *Bisaillon* at paras. 30-33; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 22

Weber Policy Considerations Do Not Require Ousting of Jurisdiction in This Case

99. Although the Supreme Court in *Weber* adopted the exclusive jurisdiction model for labour arbitration based on several interconnected policy purposes, it focused and emphasized three key policy points: efficiency, avoiding duplication and multiplicity of proceedings, and acknowledgment of the specialization of labour arbitrators to issues of labour relations.

100. The plaintiffs submit none of these key policy purposes conflict with or outweigh the principal goals of class actions. Therefore, these policy purposes must be considered alongside the policy purposes of class actions in making the nuanced and contextual analysis necessary to determine the “essential character” of a dispute.

Efficiency and Minimizing Disruption

101. The Supreme Court emphasized it is important that disputes be resolved quickly and economically, with a minimum of disruption to the parties and the economy.⁴²

102. This efficiency objective formed a core rationale for the exclusive jurisdiction model. The Supreme Court noted that permitting concurrent court actions whenever a cause of action stands independent of the collective agreement undermines the goal of quick and economical resolution, and undercuts the purpose of the regime of exclusive arbitration which lies at the heart of all Canadian labour statutes.

103. In the present case, there is no efficiency advantage in having the matter arbitrated before a labour arbitrator. There is no disruption to the parties or to the economy by having the representative plaintiffs bring their claim on behalf of current and former policewomen to the court.

Avoiding Duplication and Multiplicity of Proceedings

104. The second policy rationale underlying the exclusive jurisdiction model arose from concerns that the dispute resolution process of the various labour statutes should

⁴² *Weber* at para. 46

not be duplicated and undermined by concurrent actions. The Supreme Court observed that labour relations legislation provides a code governing all aspects of labour relations, and it would offend the legislative scheme to permit the parties to a collective agreement, or the employees on whose behalf it was negotiated, to have recourse to the ordinary courts which are, in the circumstances, a duplicative forum to which the legislature has not assigned these tasks.⁴³

105. However, as argued above in the context of judicial economy, in this particular case, the exclusion of the court has created a multiplicity of cases, and the real risk of inconsistent decisions.

106. That this apparent problem could arise was exactly what was contemplated by Justice Bastarach, in dissent, in *Bisaillon v. Concordia University*, 2006 SCC 19 (“*Bisaillon*”). His suggested resolution was to apply *Weber* cautiously, with a nuanced look at the factual circumstances.

107. In *Bisaillon*, a unionized employee of Concordia University applied to institute a class action, over which the Superior Court has exclusive jurisdiction under article 1000 of the *Code of Civil Procedure*, RSQ, c. C-25, to contest the administration and use of the defendant university’s pension fund. He was supported by eight of the nine unions with which the university had collective agreements, but was opposed by the ninth union, which sought to have the motion dismissed on the basis that the Superior Court lacked jurisdiction.

108. The minority (Chief Justice McLachlin, Bastarache, and Binnie JJ.) in *Bisaillon* took the view that the plaintiff’s claim was not one over which the labour arbitrator could “enjoy exclusive jurisdiction”, but instead, the essential character of the dispute transcended the collective agreement.⁴⁴

109. Justice Bastarache, in particular, was concerned that, where the true nature of the claim is too broadly characterized, or where the characterization results in too

⁴³ *Weber* at para. 41

⁴⁴ *Bisaillon* at para. 88

many forums with jurisdiction over a collective claim, the parties would suffer from inconsistent decisions:

[69] [...] With respect, however, I believe the risk of inconsistent decisions is symptomatic of a misapplication of *Weber*. I cannot agree that *Weber* allows for the same party to be bound by inconsistent directions from different courts and arbitrators, all claiming — rightfully, according to my colleague — to have jurisdiction over the essential character of the dispute. The fact that this possibility exists here confirms that the essential character of this appeal arises out of something other than the collective agreement: the Plan itself.

[70] In my reasons I will follow this Court's jurisprudence suggesting that employees can have employment-related rights that do not give rise to a labour arbitrator's exclusive jurisdiction. I will then apply the *Weber* framework to determine that the present dispute is one of those situations. Finally, I will conclude by discussing the implications of adopting an approach that does not conform to the principles of *Weber*.⁴⁵

110. The plaintiffs urged this analysis on the chambers judge in the present case.⁴⁶

No Specialized Expertise

111. Finally, the last key policy underlying the exclusive jurisdiction model is the deference given to specialized expertise.

112. The specialized expertise rationale is indeed part of the general administrative law framework of deference to tribunals. In *I.L.W.U., Local 514 v. Prince Rupert Grain Ltd.*, the Supreme Court explained that courts should exercise deference when reviewing specialized tribunals because labour boards are called upon not only to find facts and decide questions of law, but also to exercise their understanding of the body of jurisprudence around collective bargaining and their labour relations sense acquired from accumulated experience.⁴⁷

113. Here, the plaintiffs submit, expertise regarding collective bargaining and labour relations offers no benefit in determining the systemic issues the plaintiffs raise.

⁴⁵ *Bisaillon* at paras. 69 - 70

⁴⁶ Lower Court Transcript, at page 67-70

⁴⁷ *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.*, 1996 CanLII 210 (SCC) at paras. 21 - 26

114. Significantly, the Supreme Court in *Weber* acknowledged that arbitrators may lack expertise in areas like tort or *Charter* law—the two legal issues which fundamentally underpin the prospective class claims against the Municipal Police Departments.⁴⁸

115. It is ironic, and revealing given the nature of the plaintiffs' claims—which engage tort and *Charter* issues, but do not seek to define any rights arising out of a collective agreement—that the expertise of the labour arbitrator is never engaged.

116. The plaintiffs submit it is significant to the consideration of the essential character of this case that this dispute entirely engages the issues in which the Supreme Court acknowledges a labour arbitrator has no experience, and does not raise any of the issues in which a labour arbitrator would have expertise.

Not Exclusive Jurisdiction

117. In the alternative, even if this Court were to conclude that aspects of the dispute engage matters addressed by collective agreements, it does not follow that arbitral jurisdiction is necessarily exclusive in all respects.

118. In *St. Anne Nackawic Pulp & Paper Co. v. C.P.W., Local 219*, [1986] 1 SCR 704 (“**St. Anne**”) the Supreme Court emphasized the primacy of arbitration in matters arising from a collective agreement, while preserving a residual role for courts of inherent jurisdiction. The rationale was to prevent what Justice Estey described as a “real deprivation of ultimate remedy”.⁴⁹

119. The present proceeding advances allegations that transcend any single collective agreement and involve multiple institutional defendants and systemic governance failures. Labour arbitration is, by design, a bilateral mechanism between an employer and a bargaining unit. It is not ordinarily structured to adjudicate class-wide institutional negligence claims spanning multiple employers, police boards, and municipalities, nor to grant structural or declaratory remedies of the kind sought here.

⁴⁸ *Weber* at paras. 16 and 60

⁴⁹ *St. Anne* cited in *Weber* at para. 46

The plaintiffs submit that, where a dispute extends beyond the scope of any one collective agreement and beyond the bilateral architecture of arbitration, rigid exclusivity risks creating a remedial gap.

120. The Supreme Court cautioned against interpretations of arbitration regimes that would effectively deny meaningful access to adjudication. Although arising in a different context, *Uber Technologies Inc. v. Heller* underscores the principle that arbitration cannot be used as a shield where it renders dispute resolution practically inaccessible or illusory.⁵⁰ The same rule-of-law concern arises if neither the courts nor arbitrators are positioned to resolve the systemic dimensions of a claim.

121. Accordingly, even if elements of the dispute touch upon matters addressed in collective agreements, this Court should be cautious before concluding that arbitral jurisdiction wholly displaces the Court's authority. Especially where it denies a real remedy.

Conclusion

122. *Weber* requires the court to identify the true "difference" between the parties by examining the dispute in its full factual context. That inquiry cannot be confined to the employment setting, nor to the proximity of collective agreements. The plaintiffs argue it requires consideration of the nature of the duty alleged, the scope of the wrongdoing, the identity of the defendants, the remedies sought, and the collective structure in which the claim is advanced.

123. Properly characterized, this proceeding is not a bilateral dispute over the interpretation, application, or administration of any collective agreement. It is a systemic claim alleging institutional failures in governance and oversight affecting a defined class across multiple municipal police services. The plaintiffs raised allegations of systemic negligence and institutional breach. Under *Rumley*, such claims are directed at management structures and operational systems, not at individualized employment grievances.

⁵⁰ *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at para. 97

124. By isolating the workplace context and disregarding the collective and systemic nature of the dispute, the chambers judge misapplied the *Weber* inquiry. When the totality of the circumstances are considered, the essential character of the dispute is institutional and systemic, not “working conditions”.

125. The Supreme Court of British Columbia therefore has jurisdiction to hear the claims.

PART 4 – NATURE OF ORDER SOUGHT

126. The appellants seek an order allowing the appeal, setting aside the order in the court below, and ordering that:

- a. The Supreme Court of British Columbia has jurisdiction over claims which arose on or after March 10, 2022 against the Surrey Defendants brought by current Surrey Police Service officers below the Rank of inspector; and
- b. The Supreme Court of British Columbia has jurisdiction over claims which arose on or after September 26, 2024 against the Surrey Defendants brought by current Surrey Police Service officers at the Rank of inspector.

127. All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this 20th day of February, 2026.



J. Kyle Bienvenu and Ashleigh K. Hall
Counsel for the Appellants

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