IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chatterton v. British Columbia (Minister of Public Safety and Solicitor General),* 2025 BCSC 1367

Date: 20250718
Docket: S219270
Registry: Vancouver

Between:

Melanie Chatterton

Plaintiff

And

Minister of Public Safety and Solicitor General of British Columbia and The Attorney General of Canada

Defendant

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Plaintiff:	J.B. Carter
Counsel for the Defendants:	C.N. Landsiedel A.J. Scott
Place and Date of Hearing:	Vancouver, B.C. June 30, 2025
Place and Date of Judgment:	Vancouver, B.C. July 18, 2025

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Introduction

[1] The defendant the Minister of Public Safety and the Solicitor General of British Columbia (the "Minister") brings an application for summary judgment pursuant to R. 9-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*SCCR*]. The Minister argues there is no genuine issue for trial and the plaintiff Melanie Chatterton's claim for damages ought to be dismissed. In the alternative, the Minister seeks an order striking the Notice of Civil Claim ("NOCC") and dismissing the action, pursuant to R. 9-5(1)(a) of the *SCCR*. The Minister argues the pleadings do not disclose a reasonable claim and the NOCC ought to be dismissed in its entirety.

Notice of Civil Claim

[2] I take the following from the NOCC, filed on October 5, 2021.

[3] The plaintiff was a civilian member of the Royal Canadian Mounted Police ("RCMP"). In 2015, the plaintiff started working as a dispatcher at the RCMP Operational Call Centre located at Kelowna. She was sworn in as a civilian member of the RCMP on May 7, 2015.

[4] On October 10, 2019, the plaintiff was dispatching for the Kootenay region. She worked closely on that date with a reserve constable. Near the end of her shift, there was a complaint of a possible squatter. The reserve constable and another officer were dispatched by the plaintiff to the address of the complaint. After her shift ended, the plaintiff was advised later that evening that one of the two officers attending the incident had been shot.

[5] On October 11, 2019, the plaintiff reported to work. She was advised the situation was ongoing and she took over dispatching duties with respect to the incident. The plaintiff sat at her desk for 11 hours until the incident was resolved.

[6] The plaintiff found the incident very stressful. She reported the matter to her immediate supervisor, and they discussed the plaintiff attending at the scheduled debrief of the incident and postponing her attendance at an upcoming training day on

October 15, 2019. The topic of the training was to be focussed on “active shooter protocol”.

[7] However, the plaintiff did not receive any response from Tracy Arnold, the district manager of the Operational Call Centre, about her attendance at the debrief. On October 15, 2019, the plaintiff attended at the Kelowna detachment and spoke with Ms. Arnold. The plaintiff advised she was having nightmares about the incident and believed she would benefit from attending the debrief. The plaintiff alleges Ms. Arnold advised her the debrief “was not a social event” and stated “the members would be uncomfortable” if the plaintiff attended. The plaintiff was directed to attend her scheduled training day.

[8] The plaintiff was only able to attend the training for one hour. She alleges she suffered severe anxiety and panic. The plaintiff has not been able to report to work after October 15, 2019. She has been diagnosed with post-traumatic stress disorder and generalized anxiety disorder and as unfit to return to work at the RCMP. She was medically discharged on June 30, 2021.

[9] The plaintiff alleges the conduct of Ms. Arnold was “belittling and humiliated and embarrassed” her. The plaintiff alleges Ms. Arnold did not follow RCMP policies with respect to responding to psychologically traumatic incidents. The plaintiff pleads “it was a direct and foreseeable consequence of the negligent conduct of civilian member T.A. in a position of authority over the Plaintiff that the Plaintiff’s career with the RCMP would be compromised, and her psychological and physical health would be adversely impacted”. The pleadings state:

> The conduct of the RCMP, and in particular civilian member T.A., constitutes harassment contrary to the National Administration Manual of the RCMP including abuse of authority, and/or a breach and/or violation of the core values of the RCMP, and/or a breach or breaches of the duties expressed to provide a safe and suitable work environment, and/or negligent and/or intentional infliction of mental suffering.
>
> It was a direct and foreseeable consequence of the negligent conduct of the civilian member T.A., that the Plaintiff would sustain severe psychological and physical damages, and resultant loss and damage.

Rule 9-6 Summary Judgment Application

Legal Framework

[10] The legal framework that governs this proceeding is set out in R. 9-6(4) of the *SCCR*, which permits the defendant to apply for summary judgment on all or part of the claim.

[11] Rule 9-6(5) sets out the powers of the court in a summary judgment application. It provides as follows:

> **Power of court**
>
> (5) On hearing an application under subrule (2) or (4), the court
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> (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly;
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> (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount;
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> (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly; and
>
> (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[12] The test under R. 9-6 is whether it is clear on the relevant facts and law that there is no genuine issue for trial.

[13] The purpose of the summary judgment rule is to promptly and inexpensively determine matters to prevent meritless claims or defences from proceeding to trial. The threshold for dismissing a claim under summary judgment is very high. The onus is on the applicant to prove "beyond a reasonable doubt" that there is "no genuine issue for trial" or that the other party is "bound to lose": *Beach Estate v. Beach*, 2019 BCCA 277 at paras. 48, 65. Rule 9-6(5)(a) is mandatory. In other words, where the court finds that there is no genuine issue to be tried, it must dismiss the claim pursuant to R. 9 6(5)(a): *Aubichon v. British Columbia (Attorney General)*, 2021 BCSC 1183 at

para. 21 [*Aubichon BCSC*], citing *Drummond v. Moore*, 2012 BCSC 496 at para. 25, aff'd *Aubichon v. Grafton*, 2022 BCCA 77 at para. 18 [*Aubichon BCCA*].

[14] The party seeking summary judgment must show there is no genuine issue of material fact that requires a trial for determination: *Balfour v. Tarasenko*, 2016 BCCA 438 at para. 41, citing *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at paras. 10–11 [*Lameman*]. On a summary judgment application, each side must "put its best foot forward" with respect to the existence or non-existence of a genuine issue of material fact to be tried, and they bear the evidentiary burden accordingly: *Balfour* at para. 43, citing *Lameman* at para. 11.

[15] In determining a R. 9-6 application, the court must: (1) assume that the uncontested material facts as pled by the responding party are true; (2) refrain from weighing the facts; and (3) view inferences from the facts in a light most favourable to the responding party: *Aubichon BCSC* at para. 21, aff'd *Aubichon BCCA* at para. 18.

[16] The judge's function on a summary judgment application is limited to determining "whether a bona fide triable issue arises on the material before the court in the context of the applicable law": *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at para. 12, cited with approval in *Kerfoot v. Richter*, 2018 BCCA 238 at para. 29.

[17] In considering the evidence, "the court must not weigh it, but is limited to assessing whether it establishes a triable issue": *Kerfoot* at para. 29. Assuming the uncontested facts are true, a judge must only dismiss an action when they are satisfied that "it is beyond a doubt" that the action will not succeed: *Aubichon BCCA* at para. 27, citing *Skybridge Investments Ltd.* at paras. 11–12.

[18] The R. 9-6 procedure "engages evidence but does not assume the character of a summary trial": *Century Services Inc. v. LeRoy*, 2015 BCCA 120 at para. 32.

[19] If the court hearing a R. 9-6 application needs to weigh and assess the evidence, then the test of 'plain and obvious' or 'beyond a reasonable doubt' will not

have been satisfied, and the R. 9-6 application should be dismissed: *Aubichon BCCA* at para. 30, citing *Beach Estate* at para. 67.

Additional Affidavits

[20] Both sides have filed additional affidavits to be considered in this R. 9-6 application.

[21] There are two affidavits from Superintendent Mike Bhatti of the RCMP. Superintendent Bhatti provides evidence of the structure and organization of the RCMP.

[22] Tracey Arnold, the unit commander of the Operational Communications Centre for the RCMP South East District in Kelowna, provides evidence of the duties of call-takers and dispatchers, shift supervisors, team leaders and the unit commander. Ms. Arnold provides evidence of critical incident stress debriefs, describing what these debriefs are, how they are held, and who attends. Ms. Arnold provides evidence of her interaction with the plaintiff on October 15, 2019.

[23] The plaintiff filed an affidavit. She describes in greater detail the events of October 10 and 11, 2019, and her meeting with Ms. Arnold on October 15, 2019. She describes in greater detail her ongoing symptoms.

[24] There is an affidavit from Meghan Clark, the acting national consultant of the disability benefits program with Veteran Affairs Canada. Ms. Clark provides evidence on the disability benefits and allowances being paid to the plaintiff.

Analysis

[25] As I understand it, the Minister argues there is no genuine issue for trial as pursuant to the statutory scheme, the plaintiff's allegations do not engage the liability of the Minister. The Minister argues the nature of the conduct of Ms. Arnold that is alleged to have caused harm to the plaintiff is management conduct, for which the provincial Crown is not liable.

[26] The RCMP and the province (the "Province") can enter into agreements for the provision of policing services in British Columbia: *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 20(1); *Police Act*, R.S.B.C. 1996, c. 367, s. 14. Such an agreement was entered into by the government of Canada and the government of British Columbia in 2012, effective for 20 years (the "Provincial Police Service Agreement" or "PPSA"). Members of the RCMP are, subject to the PPSA, deemed provincial constables. Pursuant to s. 11(1)(a) of the *Police Act*, the provincial government is liable for torts committed by provincial constables in the performance of their duties.

[27] The Minister argues the PPSA limits the extent of the liability of the provincial government by the following paragraphs in the recital and article 6.2:

> The Parties recognize that:
>
> i. the Province has the constitutional jurisdiction over the administration of justice which includes the responsibility for policing;
>
> ii. the RCMP is a federal entity and matters relating to the control, management, and administration of the RCMP are within exclusive federal jurisdiction; and
>
> iii. the Commissioner of the Royal Canadian Mounted Police, under the direction of the Federal Minister, has the control and management of the RCMP and all matters connected therewith.
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> …
>
> Article 6.0 Management of the Provincial Police Service
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> ….
>
> 6.2 The internal management of the Provincial Police Service, including its administration and the determination and application of professional police standards and procedures, will remain under the control of Canada.

[28] In effect, the Minister argues the liability of the province is limited to circumstances where RCMP members commit torts in the performance of duties that are not related to internal management. The Minister argues the PPSA (in particular article 6.2) makes clear that internal management of the provincial police force remains with the federal government.

[29] The Minister relies on *Ilic v. British Columbia (Justice)*, 2023 BCSC 167 at para. 182:

> [182] I accept that when it comes to matters of management of the provincial police force, Canada does not outsource internal RCMP matters to the province of BC. That rests solely as a matter under federal jurisdiction.

[30] The plaintiff argues *Sulz v. Minister of Public Safety and Solicitor General,* 2006 BCCA 582 decided this issue against the Minister. In *Sulz* at para. 23, the court noted that the trial judge awarded the plaintiff, an officer with the RCMP, damages for negligent infliction of mental suffering. The evidence was the plaintiff was harassed by her superior officer. On appeal, the Minister argued the ruling was in error, as the PPSA limits the liability of the province to torts committed by RCMP members in operational, and not managerial, actions. This argument, while not raised at trial, was allowed to be raised on appeal. The Court of Appeal subsequently dismissed it, holding:

> [50] The Province seeks to limit the interpretation of the clear words of the *Police Act*, though there is nothing in those words or their context that suggests such a limitation. The descriptions of the duties of police officers do not limit their duties to their "operational" work. Police officers are also charged with carrying out all duties, functions, and instructions that are imposed on them by their office and the organization of which they are members. The *Police Act* contemplates that police officers may commit torts in carrying out their duties – operational or managerial, and does not limit the Province's liability for torts committed by police officers to those committed only by inferior officers.

[31] In my view, it cannot be said the issue at bar is so clear that the plaintiff is bound to lose such that summary judgment must be granted to the Minister. The decision of *Sulz* appears not to have been subsequently overtaken by another Court of Appeal decision. While the Minister argues the recitals in the current PPSA were not in existence at the time the claim in *Sulz* arose, there is no suggestion the wording has changed in the *Police Act*. Until the Court of Appeal rules differently, this court is bound by *Sulz*. The court at trial may come to a different conclusion based on the evidence and arguments made at that time, but for the purposes of an application for summary judgment, I do not find the action ought to be dismissed.

[32] Bearing in mind the high threshold in a summary judgment application, I find it cannot be said that there is no genuine issue for trial. It cannot be said the plaintiff is bound to lose. It has not been shown beyond a reasonable doubt that there is no viable claim.

[33] The Minister's application for summary judgment is dismissed.

Rule 9-5(1)(a) Application

[34] Rule 9-5 of the *SCCR* states:

> **Rule 9-5 – Striking Pleadings**
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> **Scandalous, frivolous or vexatious matters**
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> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.
>
> **Admissibility of evidence**
>
> (2) No evidence is admissible on an application under subrule (1) (a).
>
> …

[35] The well-established test on an application to strike under R. 9-5(1)(a) is whether, assuming the truth of the pleaded facts, it is plain and obvious that it discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 15, citing *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at 980. Evidence is not admissible on such an application: R. 9-5(2).

[36] A claim will only be struck if it cannot be amended to cure the defect: *Strohmaier v. British Columbia (Attorney General)*, 2015 BCSC 1189 at para. 17. Further, the fact that a claim is novel does not mean it should be struck. A

novel but arguable claim ought to be permitted to proceed to trial: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 21. This means that the defendant faces a high bar to succeed in their application to strike under R. 9-5 of the *SCCR*.

[37] Rule 3-1(2) of the *SCCR* states that a claimant must set out each of the following:

a) "a concise statement of the material facts giving rise to the claim";

b) "the relief sought by the plaintiff against each named defendant"; and

c) "a concise summary of the legal basis for the relief sought".

[38] The Minister argues the plaintiff has pleaded a claim in negligence, harassment, misfeasance in public office, and intentional infliction of mental suffering. The Minister argues the plaintiff has failed to plead facts to support the basic elements of these torts.

[39] As I understand it, the plaintiff's main claim is in negligence. Counsel for the plaintiff confirmed this during oral argument. The references to harassment and abuse of authority in the NOCC, along with passages from RCMP policies, are pleadings to support the claim of negligence. The elements of a claim in negligence are the defendant owed to the plaintiff a duty of care, the defendant's conduct breached that duty, the plaintiff suffered damages and the damages were caused in fact and in law by the breach: *Saadati v. Moorhead*, 2017 SCC 28 at para. 13, citing *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3.

[40] The Minister argues this claim in negligence is not a reasonable cause of action, as statutory duty does not create a private law duty of care. The Minister argues the jurisprudence is clear the law does not recognize a tort of breach of statutory duty: *Wu v. Vancouver (City),* 2019 BCCA 23 at para. 43, citing *The Queen (Can.) v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, and *Holland v. Saskatchewan*, 2008 SCC 42. Justice Harris in *Wu* concluded the City of Vancouver did not owe the

homeowners a duty of care when it opted to delay its decision on a development permit:

> [58] What I take from these broad principles is that, as a general proposition subject only to arguably rare exceptions, statutory duties owed by public authorities are insufficient to ground private law duties arising out of interactions that are inherent in the exercise of the public law duty. Indeed, it is difficult to convert public law duties into private law duties where those public law duties exist to promote a public good. Generally, discharging public law duties does not give rise to a private law duty of care to particular individuals.

[41] However, I note that *Wu* was a case of members of the public (homeowners seeking a development permit) who unsuccessfully argued that city officials owed them a duty of care to process applications for permits in a timely manner. In this case, the relationship between the plaintiff and Ms. Arnold is an employment relationship between a supervisor and a subordinate. It is unclear if *Wu* applies. Further, this type of claim—negligent infliction of mental distress in the workplace—was determined to be a viable claim for negligence in *Sulz* at paras. 3, 69. The Minister agrees reasonable foreseeability and proximity were considered by the trial judge in *Sulz*.

[42] In the pleadings, the plaintiff did set out the duty of care she alleges were owed to her, the breach of that duty, and the foreseeability and proximate cause of damages suffered by the plaintiff. In these circumstances, I do not find the plaintiff's NOCC ought to be struck as disclosing no reasonable cause of action.

[43] The Minister's application to strike the entirety of the NOCC pursuant to R. 9-5(1)(a) is dismissed.

Conclusion

[44] The Minister's two applications are dismissed.

[45] The plaintiff shall have her costs of these applications at the ordinary scale in the cause.

"Chan J."