



No. S1811960
Vancouver Registry

In the Supreme Court of British Columbia

Between

R.O., an infant by his/her litigation guardian the Public Guardian and Trustee of British Columbia

Plaintiff

and

Her Majesty the Queen in right of the Province of British Columbia (Ministry of Children and Family Development and Director of Child Welfare), Robert Riley Saunders and Interior Savings Financial Services Ltd.

Defendants

RESPONSE TO CIVIL CLAIM

Filed by: Her Majesty the Queen in right of the Province of British Columbia (Ministry of Children and Family Development and Director of Child Welfare) ("the Province")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1, 2, 3, 4, 8, 10, 11, 13, 18, 19, 20, 21 of part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 5, 6, 9, 12, 14, 16, 22, 23, 24, 25 of part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 7, 15, 17, 27, 28, 29 of part 1 of the notice of civil claim are outside the knowledge of the defendant.

Division 2 – Defendant's Version of Facts

4. Unless otherwise indicated, references to expressions are to expressions defined in the notice of civil claim and references to paragraphs are references to paragraphs in the notice of civil claim.

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5. Mr. Saunders was delegated the rights, duties, powers and responsibilities of the Director appointed under s. 91 of the *CFCSA* in regards to the Plaintiff.
6. The Province admits Mr. Saunders was negligent, defalcated and converted the Plaintiff's funds, committed misfeasance in public office, fraud and breached fiduciary duties owed to the Plaintiff and further admits the Plaintiff suffered harm as a result. The Province admits vicarious liability for the acts and omissions of Mr. Saunders.
7. In response to paragraph 9 of part 1, the Province admits this paragraph except that the fiduciary obligation at law is to avoid harmful actions that constitute a betrayal of trust or disloyalty, not to act at all times in the plaintiff's best interest.
8. In further response to paragraph 12 of part 1, the Plaintiff's home situation was not stable as alleged, but the Province admits that Mr. Saunders' alleged wrongful acts or omissions caused or substantially contributed to the Plaintiff living in unstable situations, and admits the remainder of the allegations in paragraph 12.
9. In further response to paragraph 14 of part 1, the Province admits the allegations except that Mr. Saunders documented a plan of care; however it failed to meet the requisite standard of care.
10. In further response to paragraph 15 of part 1, the Province has no direct knowledge of the extent of the alleged verbal and emotional abuse of the Plaintiff, or of Mr. Saunders' alleged state of mind, but admits there was at least some verbal and emotional abuse of the Plaintiff by Mr. Saunders which harmed the Plaintiff.
11. In further response to paragraph 16 of part 1, the Province admits the allegations except that the Plaintiff continued to access family members on the Plaintiff's own volition.
12. In further response to paragraph 17 of part 1, the Plaintiff was in a vulnerable position and Mr. Saunders exercised parental control over the Plaintiff; however, the extent of the Plaintiff's trust and confidence in Mr. Saunders is not known.
13. In further response to paragraph 21 of part 1, the Province has no knowledge of the full nature and extent of that harm to the Plaintiff, but admits the alleged acts or omissions of Mr. Saunders caused or substantially contributed to harm to the Plaintiff.
14. In response to paragraph 25 of part 1 and in response to the claim for punitive damages:
 - a. MCFD detected financial irregularities involving Mr. Saunders in December 2017 shortly before Mr. Saunders' scheduled vacation.
 - b. Following his return from vacation, Mr. Saunders was suspended from his employment on January 8, 2018 and was no longer working with the children, youth or families served by MCFD.

- c. In January 2018:
 - i. steps were taken under the direction of the local MCFD office to ensure the immediate safety and well-being of the children, youth and young adults on the caseload of Mr. Saunders; and
 - ii. a forensic financial audit was initiated.
- d. The Plaintiff was offered services and housing. The Plaintiff was stabilized in the Plaintiff's current housing in July 2018.
- e. In March 2018:
 - i. Mr. Saunders admitted to the conversion of funds;
 - ii. the forensic auditor confirmed Mr. Saunders had committed fraud;
 - iii. the Public Guardian and Trustee was provided with the audit report and a list of affected minors, including the Plaintiff;
 - iv. the Representative for Children and Youth was provided with information as reportable circumstances;
 - v. the matter was reported to the Royal Canadian Mounted Police; and
 - vi. the Director launched a special review to ensure that appropriate services and planning were provided for affected children and young adults, including the Plaintiff.
- f. In May 2018, Mr. Saunders' employment with the Province was terminated.
- g. In September 2018, the Director sought and obtained six-month protective intervention orders to prevent Mr. Saunders from contacting the Plaintiff and other minors.
- h. MCFD engaged a financial consulting firm to conduct a review of financial and internal controls and has implemented recommendations.
- i. MCFD will be launching a separate review of the ministry's contracting and payment processes.

Part 2: RESPONSE TO RELIEF SOUGHT

- 15. The Province consents to the granting of the relief sought in paragraphs 30 (b), 30 (i) of Part 2 of the notice of civil claim.
- 16. The defendant opposes the granting of the relief sought in paragraphs 30 (c), 30(d), 30 (e), 30 (f), 30 (h) of Part 2 of the notice of civil claim.

17. The defendant takes no position on the granting of the relief sought in paragraph 30 (g) of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

18. Injunctions and the form of relief sought in paragraph 30 (e) of part 2 are not available against the Province: *Crown Proceeding Act*, [R.S.B.C. 1996] c. 89, s. 11. However, the Province is currently providing supports to the Plaintiff and other purported class members and agrees that the Plaintiff may be entitled to compensation for future costs of the Plaintiff's care.
19. In response to paragraph 2 of part 3, the Province admits vicarious liability for any torts committed by Mr. Saunders but denies but denies the remainder of the paragraph.
20. In response to paragraph 3 of part 3, the Province denies the failure to inform or respond to the situation in a timely way and says the Province's actions were not reprehensible or outrageous and do not warrant an award of punitive damages.
21. The Province agrees that general damages and interest under the *Court Order Interest Act* are appropriate relief for the Plaintiff.


Defendants' address for service:

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Date: December 13, 2018



Solicitor for Her Majesty the Queen in
right of the Province of British Columbia
Darcie Suntjens
for:

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.