



No. 123986
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA,
MINISTER OF JUSTICE OF BRITISH COLUMBIA and CPL. KENNETH HALL

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: The Defendant, Cpl. Kenneth Hall ("Cpl. Hall")

Part 1: **RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 5 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 7-39 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1-4, the unnumbered paragraph after paragraph 6, of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendants.

Division 2 – Defendant's Version of Facts

1. The Defendant, Cpl. Hall denies each and every allegation of fact contained in the Notice of Civil Claim except where expressly admitted herein.
2. Cpl. Hall specifically denies that he was negligent either as alleged or at all, or that he engaged in any intentional tortious conduct.
3. In answer to the whole of the Notice of Civil Claim, Cpl. Hall denies that the Plaintiff suffered any injury, loss, damage or expense as alleged in the Notice of Civil Claim, or at all.
4. In the alternative, and in further answer to the whole of the Notice of Civil Claim, if the Plaintiff was the subject of a tortious behaviour, and if the Plaintiff suffered resultant injury, loss, damage, or expense as alleged, or at all, none of which is admitted but is specifically denied, then the allegedly resultant injury, loss, damage, or expense was not caused or contributed to by any act, omission negligence breach of duty, statutory or otherwise, on the part of Cpl. Hall.

5. In the further alternative, and in further answer to the whole of the Notice of Civil Claim, Cpl. Hall says that the damages sought in the Notice of Civil Claim were not reasonably foreseeable, are too remote, and are not recoverable in law.

Division 3 – Additional Facts

6. Cpl. Kent Hall is a Corporal with the RCMP. He is currently located at the Kelowna detachment at 1190 Richter Street, Kelowna, British Columbia.
7. On March 5, 2012, the Plaintiff attended an interview conducted by Cpl. Hall (the “Interview”). The Interview was in relation to a sexual assault complaint.
8. Cpl. Hall conducted the Interview in a proper manner. As he was entitled to do, Cpl. Hall asked questions to help him advance the RCMP investigation into the complaint filed by the Plaintiff. The Interview was conducted for proper investigatory purposes.
9. The Interview was for investigatory purposes. The Plaintiff was never detained, nor was the Plaintiff ever facing any legal jeopardy during the course of the Interview. During the interview, the Plaintiff was told she was allowed to leave at any time. Put simply, the Plaintiff’s section 9 and section 10 *Charter* rights were never engaged.
10. Cpl. Hall’s conduct in the Interview was not improper. Cpl. Hall did not engage in any tortious action either intentionally or negligently during the Interview.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of relief sought in NONE of the paragraphs of Part 1 of the Notice of Civil Claim.
2. The Defendant opposes the granting all of the of relief sought in Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

Limitation Period

1. The Interview occurred on March 5, 2012. This claim was filed on June 14, 2019. Pursuant to section 6(1) of the *Limitation Act*, SBC 2012 Ch. 13, the limitation period for an action is two years from the date of discovery. Section 18(a)(i) of the *Limitation Act* provides that a claim is discovered two years from the date a minor attains the age of 19 years. The interview occurred in 2012, when the Plaintiff was 17. The Plaintiff turned 19 by 2014 at the latest. The limitation period expired sometime in 2015 or 2016. Pursuant to the *Limitation Act*, this claim cannot be brought.

No Tort or Cause of Action Pled

2. The Plaintiff has failed to plead a tort or cause of action. It is alleged that Cpl. Hall’s conduct of the Interview caused injury and damage to the Plaintiff. There is no tort pled in relation

to Cpl. Hall's conduct of the Interview. Furthermore, it is unclear if the Plaintiff is alleging negligence on the part of Cpl. Hall or an intentional tort in relation to the conduct of the Interview.

3. In the Legal Basis portion of the Notice of Civil Claim, the Plaintiff relies on sections 3 and 36 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and presumably sections 11 and 21 of the *Police Act*, RSBC 1996, c 367. Both statutes indicate that a police officer may be held liable in tort, but as noted above, no tort(s) has been pled in relation to these causes of action.
4. The Plaintiff also alleges several breaches of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (the "**RCMP Act**"). There is no tort of breach of statutory duty in Canada. Courts may only use breaches of a statute as evidence towards an already established tort. No such tort has been identified.

R v Saskatchewan Wheat Pool, [1983] 1 S.C.R. 205

5. Finally, the Plaintiff relies on sections 38-58.7 of the "RCMP Regulations" as set out in the RCMP Act. It is unclear what the Plaintiff is referring to. There are twelve different sets of regulations in force and effect that relate to the RCMP Act. The *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281, one of these twelve sets of regulations, does not contain all of the sections relied upon in the "RCMP Regulations" as set out in paragraph 25 of the Plaintiff's Notice of Civil Claim. In any event, a breach of a statutory duty does not give rise to a cause of action, unless the statute provides for one. No cause of action is provided for in the RCMP Act or the "RCMP Regulations".

Punitive Damages

6. There is no basis for punitive damages. Punitive damages are only awarded in exceptional circumstances for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency". The proper conducting of a police interview for investigatory purposes does not meet this high threshold.

Hill v. Church of Scientology of Toronto, [1995] 2 SCR 1130 at para 190

7. In the event the Plaintiff is actually alleging a tort in negligence, punitive damages, are rarely, if ever, available in negligence claims.

Whiten v. Pilot Insurance Co., 2002 SCC 18 at para 67

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Date: July 8, 2019



Signature of lawyer for the Defendant
F. Mark Rowan

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.