



Court File No. **KEL-S-S-138152**
No.
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHELLE MCISAAC

PLAINTIFF

AND:

CITY OF TRAIL

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) File a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) Serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) File a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) Serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim with the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) If you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) If the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Michelle McIsaac, is unemployed and resides in Trail, British Columbia. The Plaintiff has an address for service c/o Kent Employment Law, #501 1630 Pandosy Street, Kelowna, B.C. V1Y 1P7.

2. The Defendant, City of Trail is a municipality in the province of British Columbia with a business office at 1394 Pine Avenue, Trail, British Columbia, V1R 4E6.

The Plaintiff's Employment with the Defendant

3. In May 2002, the Plaintiff entered into a written contract of employment with the Defendant pursuant to which the Plaintiff agreed to serve the Defendant and the Defendant agreed to employ the Plaintiff at the Defendant's premises in Trail, British Columbia.

4. The Plaintiff was continuously employed by the Defendant, in a number of different positions and entered into a series of employment agreements the last of which was dated June 4, 2020 (the "Contract").

5. The Plaintiff's last position with the Defendant was as Corporate Administrator.

6. The Contract was for a fixed term ending April 30, 2025, subject to the early termination provisions in the Contract.

7. The Contract contained a termination clause that provided that the Defendant could terminate the Plaintiff's employment on giving notice, pay in lieu of notice, or a combination thereof in an amount equal to 18 months plus 20% of the Plaintiff's salary in lieu of benefits (the "Severance Clause").

8. At all material times, the following were express or alternatively implied terms of the Contract:

- a) that the Plaintiff would not be dismissed from her employment without just cause, reasonable notice, or pay in lieu of reasonable notice;

- b) that the Defendant would not conduct itself in a manner which would, or which was likely to, breach its obligation of trust and confidence owed to the Plaintiff; and
- c) that the Plaintiff would be treated fairly, honestly, civilly, in good faith and with respect at all times by the Defendant.

(collectively, the “Terms”).

9. In mid 2021 the Defendant appointed the Plaintiff as interim Chief Administrative Officer. This interim appointment lasted until June 2022 when a new Chief Administrative Officer was hired at which time the Plaintiff’s role reverted to Corporate Administrator pursuant to the Contract.

10. As a Corporate Administrator the Plaintiff was a “corporate officer” as defined in s. 148 of the *Community Charter* [SBC 2003] Ch. 26 and was responsible for:

- a) ensuring that accurate minutes of the meetings of the council and council committees are prepared and that the minutes, bylaws and other records of the business of the council and council committees are maintained and kept safe;
- b) ensuring that access is provided to records of the council and council committees, as required by law or authorized by the council;
- c) administering oaths and taking affirmations, affidavits and declarations required to be taken under this Act or any other Act relating to municipalities;
- d) certifying copies of bylaws and other documents, as required or requested;
- e) accepting, on behalf of the council or municipality, notices and documents that are required or permitted to be given to, served on, filed with or otherwise provided to the council or municipality;
- f) keeping the corporate seal, if any, and having it affixed to documents as required;
- g) supervision of bylaw enforcement personnel and clerical staff;

- h) acting as the Defendant's freedom of information coordinator and privacy officer;
- i) providing planning advice and acting as Approving Officer on planning matters;
- j) maintenance of the Defendant's Council Policy Manual; and
- k) providing general support to the Defendant's Council and its members.

11. The Plaintiff was successful in her role as Corporate Administrator and had not received any form of discipline from the Defendant or any indication that her performance was not acceptable.

12. The Plaintiff faithfully and diligently performed her duties on behalf of the Defendant and throughout her employment proved to be a valuable and reliable employee.

Constructive Dismissal

13. In February 2022 the Plaintiff filed a bullying and harassment complaint (the "Complaint") against four members of the Defendant's City Council (the "Four Councilors").

14. There had been a previous complaint of substantially the same nature made against the Defendant's City Council filed by the former Chief Administrative Officer of the Defendant, the result of which was a finding that the allegations of bullying and harassment were substantiated.

15. The Defendant engaged an external investigator to investigate the Complaint (the "Investigator").

16. Despite the Complaint filed and the investigation that had commenced, the bullying and harassment of the Plaintiff continued unabated, prompting the Plaintiff to submit a supplemental complaint in April 2022.

17. The bullying and harassment which continued unabated created a toxic and intolerable work environment for the Plaintiff to the point where the Plaintiff was required to take a medical leave of absence from work commencing in mid July 2022.

18. In September 2022, the Investigator concluded that a number of the allegations in the Complaint were substantiated in whole or in part and made recommendations to prevent further occurrences of misconduct.

19. The Defendant reported to the Plaintiff in late September 2022 that it was committed to maintaining a safe work environment and would address the bullying and harassment that had occurred in the past to ensure that it did not continue and indicated its interest in returning the Plaintiff to work.

20. In early October 2022, the Plaintiff believed that there would be no improvement in the toxic working conditions and as a result approached the Defendant to negotiate a severance of her employment.

21. The Defendant's City Council agreed with the proposal put forward by the Plaintiff and instructed the Chief Administrative Officer to negotiate the terms of the settlement with the Plaintiff but the Chief Administrative Officer refused or neglected to do so.

22. On October 15, 2022 one of the Four Councilors, Colleen Jones, was elected mayor of the Defendant.

23. Despite the findings and recommendations of the Investigator, the bullying and harassment of the Plaintiff continued, and in particular Mayor Jones and the Defendant's Chief Administrative Officer, bullied and harassed the Plaintiff the particulars of which are as follows:

- a) the Plaintiff was deliberately excluded from meetings that her role as Corporate Administrator and the corresponding statutory obligations required her attendance;
- b) failure of Mayor Jones to abide by the decision that she was not to contact the Plaintiff directly;
- c) inappropriately blaming and scapegoating of the Plaintiff and other staff by the Defendant's Chief Administrative Officer;
- d) exclusion from strategic decision making sessions with Council and the Chief Administrative Officer;

- e) the Defendant sought but then ignored the Plaintiff's input on a press release relating to the outcome of the Complaint investigation;
- f) Mayor Jones misrepresenting publicly whether there had been an apology to the Plaintiff;
- g) Interference by the Defendant's Chief Administrative Officer in the Plaintiff's role as the freedom of information coordinator and privacy officer; and
- h) Refusal of the Chief Administrative Officer to ensure a safe and healthy workplace for the Plaintiff (collectively the "Harassment").

24. The Harassment was in breach of the Defendant's Violence in the Workplace Policy, the Defendant's Council Code of Conduct, and the *Community Charter*.

25. The Harassment created a toxic and intolerable work environment for the Plaintiff to the point where the Plaintiff was required to take a medical leave of absence from work.

26. When the Plaintiff returned from her medical leave in December 2022, she attempted to continue working despite the toxic work environment by working remotely and limiting her contact with Mayor Jones.

27. On or about June 23, 2023, the Plaintiff elected to treat the conduct of the Defendant described above as a repudiation of the Contract of employment and notified the Defendant that she accepted the repudiation of the Contract by the Defendant.

28. The Harassment amounted to a dismissal of the Plaintiff from her employment with the Defendant. That dismissal was effected without just cause and without any notice and constituted an arbitrary and willful breach of the contract of employment.

Damages for Breach of Contract

29. At the time of her dismissal, the Plaintiff was entitled to a compensation package which included, but was not necessarily limited to, the following:

- a) annual income of \$123,967;

- b) employer pension contributions;
- c) annual vacation of 35 days ;
- d) a comprehensive benefits package which included life insurance, dependent life coverage, accidental death and dismemberment coverage, short term and long term disability coverage, basic medical insurance, extended health care coverage and a dental health care plan; and
- e) a “Retirement Benefit” in accordance with the Defendant’s Retirement Benefit for Non-Union Staff Policy

(collectively the “Compensation Package”).

30. At the time of dismissal the Plaintiff was 54 years old.

31. The Plaintiff has taken all reasonable steps to mitigate her loss by seeking alternative, similar employment but has been unsuccessful in mitigating her loss.

32. The Plaintiff will incur losses and expenses with respect to her efforts to mitigate her damages and find other employment, the particulars of which will be provided at trial.

33. As a result of the Defendant’s breach of the Contract and wrongful dismissal of the Plaintiff, the Plaintiff has lost the Compensation Package for the period of reasonable notice.

34. The Plaintiff has suffered and will continue to suffer damages as a result of the foregoing.

Aggravated Damages

35. The Defendant failed to discharge its obligation of good faith and fair dealing during the course of the Plaintiff’s employment by failing to properly address and stop the Harassment, the result of which was that a toxic and intolerable work environment was created and persisted until the constructive dismissal of the Plaintiff.

36. The Plaintiff claims aggravated damages resulting from the Harassment.

Punitive Damages

37. The Plaintiff claims punitive damages because the actions of the Defendant as set out in this Notice of Civil Claim were harsh, vindictive, reprehensible, and malicious all of which constituted an arbitrary and willful breach of the Contract by the Defendant.

Special Damages

38. As a result of the Defendant's wrongful dismissal, the Plaintiff has suffered special damages including expenses incurred in attempting to find new employment *particulars* of which will be provided at trial.

Part 2: RELIEF SOUGHT

1. The Plaintiff seeks from the Defendant:
 - a) damages for breach of contract for wrongful dismissal;
 - b) damages for breach of contract for unpaid accrued vacation pay;
 - c) special damages;
 - d) general damages for bad faith conduct;
 - e) aggravated and punitive damages;
 - f) Interest pursuant to the *Court Order Interest Act* R.S.B.C. 1996, c. 79;
 - g) The costs of this action; and
 - h) Such further and other relief as this honourable Court deems just.

Part 3: LEGAL BASIS

Breach of Contract

1. In the absence of a binding agreement otherwise, the common law implies into every employment contract that it can only be terminated by the employer if there is just cause or if there is no just cause, on the employer providing reasonable notice or pay in lieu of reasonable notice.

2. As a matter of law, the Contract contained an implied term that in the absence of just cause or an enforceable severance limiting clause, it was terminable only upon provision of reasonable notice.

3. The Defendant cannot rely on the Severance Clause because it repudiated the Contract.

4. The Defendant did not have just cause to terminate the Contract and failed to provide reasonable notice of termination which constituted a breach of the Contract and is a wrongful dismissal.

5. As a result of this breach of the Contract, the Plaintiff suffered damages.

Bad Faith Damages

6. The Contract was subject to the express or implied term that the Defendant owed the Plaintiff a duty of good faith and fair dealing. This duty of good faith requires adherence to standards of honest conduct.

7. In breach of this duty of good faith, the Defendant allowed the Harassment to continue unabated to the point that the work environment became so toxic that it was intolerable for the Plaintiff to continue working for the Defendant.

8. In further breach of the duty of good faith, the Defendant's Chief Administrative Officer refused or neglected to implement the settlement with the Plaintiff as instructed to do so by the Defendant's Council, which the Defendant is vicariously liable for given that the Chief Administrative Officer was operating on the Defendant's behalf and within the course and scope of his employment.

9. The Defendant's breach of its duty of good faith and fair dealing in the manner of dismissal is an actionable wrong unto itself the result of which caused the Plaintiff to suffer mental distress and embarrassment for which the Plaintiff is entitled to be compensated by an award of damages for bad faith conduct or aggravated or punitive damages.

Costs and Interest

10. Costs are payable pursuant to the Supreme Court Rules and the inherent jurisdiction of the court.

11. Interest is payable pursuant to the Supreme Court Rules, the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, the inherent jurisdiction of the court, and common law principles.

Plaintiff's address for service: c/o Kent Employment Law
#501 1630 Pandosy Street
Kelowna, B.C. V1Y 1P7
Attn: Kimberly D. Darling

Fax number address for service: 604-734-7006

Email address for service: kimberly@kentemploymentlaw.com

Place of trial: Kelowna, BC

The address of the registry is: 1355 Water Street
Kelowna, B.C. V1Y 9R3



Dated: August 24, 2023

Plaintiff's Lawyer
KIMBERLY D. DARLING

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 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.

Appendix

Part 1: Concise summary of nature of claim:

A claim for damages arising from the wrongful dismissal of the Plaintiff from her employment with the Defendant.

Part 2: This claim arises from the following:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issue concerning the probate of an estate

- a matter not listed here

Part 3: This claim involves:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: Statutes

None.