



No. KEL-S-S-138152
Kelowna Registry

THE SUPREME COURT OF BRITISH COLUMBIA

Between

MICHELLE MCISAAC

Plaintiff

and

CITY OF TRAIL

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: The Defendant, City of Trail

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in paragraph 2, 4, 5, 6, 7, 9, 10, 13, 15, 22, 27, 30 of Part 1 the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 3, 8, 11, 12, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 31, 32, 33, 34, 35, 36, 37, and 38 of Part 1 the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1 of Part 1 of the Notice of Civil Claim are outside the knowledge of the defendant.

Division 2 – Defendants’ Version of Facts

1. Except where expressly admitted in this Response to the Civil Claim, the Defendant denies each and every allegation of fact made in the Notice of Civil Claim and puts the Plaintiff to the strict proof thereof.

The Plaintiff’s Respectful Workplace Complaint and Medical Leave of Absence

2. On or about April 22, 2022, the Defendant appointed a new Chief Administrative Officer (“CAO”). The CAO’s first day of work with the Defendant was June 6, 2022.
3. In or around July 2022, the Plaintiff commenced a medical leave of absence.

4. On or about September 1, 2022, an independent investigator concluded the Investigation into the Plaintiff's complaint of bullying and harassment against four City Councilors (the "Complaint").
5. On September 26, 2022, the Defendant wrote the Plaintiff to advise her of the conclusion of the investigation and its findings with respect to her allegations in the Complaint, including that certain of her allegations had been substantiated, either in whole in part
6. On September 28, 2022, the CAO wrote the Complainant to advise that he would be providing a copy of the final report from the investigation into her Complaint to the Defendant's Council and an in-camera Council meeting would be held to discuss the report and consider the recommendations from the Investigator.
7. The Defendant received a letter dated October 5, 2022 from the Plaintiff's legal counsel, presenting an offer to the Defendant to mutually terminate her employment.
8. The Defendant held an in-camera meeting on October 6, 2022. This meeting occurred virtually over Zoom and was recorded in light of the ongoing COVID-19 pandemic and the Defendant's practice in place at the time.
9. Municipal elections were held in British Columbia on October 15, 2022. The election results significantly changed the make-up of the Defendant's City Council. One of the four Respondent Councilors against whom the Plaintiff had made allegations in the Complaint ran for re-election and was elected as Mayor. The other Councilors who were the subject of the Complaint either did not run for re-election or were not re-elected.
10. Through discussions between legal counsel and between the Plaintiff and the CAO, the parties agreed to the terms and conditions on which the Plaintiff would return to her position with the Defendant at the conclusion of her medical leave, namely that the Plaintiff would:
 - a) Work remotely;
 - b) Have a flexible schedule to allow time for personal wellness;
 - c) Participate in meetings virtually and with her camera off;
 - d) Have no "direct interaction with the Mayor"; and
 - e) Have no requirement to lead projects or strategic priorities (collectively, the "Accommodations").
11. On November 24, 2024, the Plaintiff met with the CAO to discuss her return to work. During this meeting, the CAO affirmed the Defendant's agreement to implement the Accommodations for at least three months and agreed to present a request from the Plaintiff to be reimbursed for a portion of her legal fees to Council for approval.
12. On November 29, 2022, the Defendant advised the Plaintiff that Council had agreed to her request for reimbursement of her legal fees subject to her returning to work by

Thursday, December 1, 2022. In response, on November 30, 2022 the Plaintiff advised that she would commence her return to work.

13. The CAO at all times acted in accordance with the mandate provided by Council and the legal advice the Defendant received respecting the Plaintiff's employment.

The Plaintiff's Return to Work and Resignation

14. On December 1, 2022, the Plaintiff returned to work with the Accommodations in place.
15. Despite the Accommodations providing that the Plaintiff would work remotely and attend any meetings virtually with her camera off, on or about January 9, 2023, the Plaintiff unilaterally chose to return to attending Council meetings in-person.
16. At the same time the Plaintiff returned to work, the Defendant was continuing to address the outcomes of the Investigation, including preparing a press release to advise the public of same (the "Press Release").
17. In response to paragraph 23 of the Notice of Civil Claim, the Defendant says that many of the allegations contained therein are insufficiently particularized for the Defendant to meaningfully respond.
18. In specific response to paragraph 23(a) of the Notice of Civil Claim, at no time did the Defendant deliberately exclude the Plaintiff from meetings that she was otherwise required to attend, as alleged or at all. However, the Defendant acknowledges that the Plaintiff was properly excluded from certain in-camera portions of Council meetings, where she, the Complaint or the Investigation were being discussed. At no time did the Plaintiff raise any concern about being excluded from the in-camera meetings.
19. In response to paragraph 23(b) of the Notice of Civil Claim, the Mayor did not initiate direct interaction with the Plaintiff, however, the Plaintiff did, on occasion, initiate direct interaction with the Mayor. The Accommodations precluded direct forms of communication between the Plaintiff and the Mayor, but did not preclude all forms of communication.
20. Contrary to paragraph 23(d) of the Notice of Civil Claim, at no time did the Defendant exclude the Plaintiff from "strategic decision-making sessions with Council and the Chief Administrative Officer" as alleged. In fact, at no time following the Plaintiff's return to work on December 1, 2022 until the Plaintiff resigned from her employment did the Defendant engage in strategic decision-making sessions.
21. In response to paragraph 23(e), the Defendant agrees that in February 2023, it provided the Plaintiff with an opportunity to review a draft Press Release so that she had an opportunity to raise any privacy concerns she may have had with the draft. The Defendant does not agree that it had any broader obligations to seek the Plaintiff's input into any Press Release that flowed from the Investigation.
22. In further response to the whole of paragraph 23 of the Notice of Civil Claim, when the Plaintiff first raised her concern that she had been subject to workplace harassment, the Defendant, through its legal counsel, sought particulars of her complaint. Although some details were provided, neither the information provided, nor the allegations in the Notice

of Civil Claim provide sufficient particulars for the Defendant to meaningfully respond. Despite the lack of clarity regarding her allegations, the Defendant engaged a neutral third-party investigator (the "Second Investigator") to investigate the Plaintiff's allegations of workplace harassment. The Plaintiff refused to participate in the investigation.

23. The Defendant also learned in or around May 2023 that the Plaintiff had accessed and viewed the video recording of an in-camera Council meeting wherein the Council members discussed the October 5, 2022 letter from the Plaintiff's legal counsel. Although the Plaintiff, through her legal counsel, provided an explanation for her actions in viewing the recording of the in-camera Council meeting, the Defendant did not accept the explanation as providing a reasonable basis for her to have done so. The Defendant also sought to have the Second Investigator investigate the Plaintiff's conduct to assess whether her actions constituted a breach of her employment obligations, but the Plaintiff refused to participate in the investigation.
24. The Plaintiff's actions as described in paragraph 24 above may have constituted a fundamental breach of her employment contract, but the Defendant was not in a position to determine whether the Plaintiff has a legally justifiable explanation for her actions in light of her refusal to participate in the investigation.
25. The Defendant agrees with the Plaintiff's assertion at paragraph 27 of the Notice of Civil Claim, that that Plaintiff, through her counsel, notified the Defendant that she accepted the repudiation of her contract. Counsel also confirmed that the Plaintiff's employment had ended for all purposes. Despite that position, the Defendant maintained the Plaintiff's pay and benefits while it sought to retain an investigator to investigate her new complaints of bullying and harassment. The payment of wages and benefits to the Plaintiff ended on August 3, 2023 when the Plaintiff indicated, through her counsel, that she would not participate in the Second Investigator's investigation.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant opposes all the granting of the relief sought by the plaintiff in Part 2, paragraph 1 in the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Defendant denies that it repudiated the Contract or breached the Contract, as alleged or at all.
2. The Defendant did not unlawfully dismiss or, alternatively constructively dismiss the Plaintiff from her employment, as alleged or at all.
3. The Defendant did not breach its duty to act honestly and in good faith towards the Plaintiff, as alleged or at all. The Defendant at all times governed itself in a manner reflective of the intention to continue to be bound by the terms of the Contract.
4. The Plaintiff resigned from her employment on June 23, 2023 and was paid all wages owing to her until that date. No notice or payment in lieu thereof is due and owing to her by the Defendant, as alleged or at all.

5. In the alternative, if the Defendant's actions constituted a constructive dismissal, which is specifically denied, then the Contract limits the Plaintiff's entitlement to the termination notice set out in her employment contract with the Defendant.
6. Further, the Plaintiff did not suffer any loss or damages as alleged at all and puts the Plaintiff to the strictest proof thereof. If this Court should find that the Plaintiff did suffer any loss or damage, the amount of loss or damage should be reduced by the value of the wages and benefits paid by the Defendant to the Plaintiff from June 24, 2023 until August 3, 2023.
7. Alternatively, if the Plaintiff suffered any loss or damage, the Defendant denies any legal responsibility for such damage. The Plaintiff by her conduct caused or contributed to any loss or damage by resigning from or abandoning her employment, and by failing to mitigate her damages.
8. Further, and alternatively, if the Defendant is responsible for any loss or damage of the Plaintiff, which is not admitted and is expressly denied, any earnings arising from the Plaintiff's mitigation over a reasonable notice period must be deducted from such damages.
9. In the event the Plaintiff earns any income by way of mitigation efforts, such income must be set off against any claimed damages, which damages are not admitted, but expressly denied.

Defendants' address for service:

Pulver Crawford Munroe LLP
204 – 388 Harbour Road
Victoria, BC V9A 3S1
Attention: Marcia McNeil
Tel: 778-433-1166

Fax number for service (if any):

Email address for service (if any):

mmcneil@pcmlawyers.ca


Place of trial:

Kelowna, British Columbia

The address of the registry is:

1255 Water Street
Kelowna, BC V1Y 9R3

Date: September 13, 2023



Signature of Lawyer for the Named Defendant,
Marcia McNeil

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.