

THE SUPREME COURT OF BRITISH COLUMBIA

# CATHERINE GALLIFORD

**PLAINTIFF** 

AND:

MARVIN WAWIA, MIKE BERGERMAN, DOUG HENDERSON, PHIL LITTLE, DR. IAN MACDONALD, THE ATTORNEY GENERAL OF CANADA and THE MINISTER OF JUSTICE OF THE PROVINCE OF BRITISH COLUMBIA

**DEFENDANTS** 

#### RESPONSE TO CIVIL CLAIM

Filed by: The Defendants, the Attorney General of Canada and the Minister of Justice of the Province of British Columbia ("these defendants")

# Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

# Division 1-Defendants' Response to Facts

- 1. Except where expressly admitted herein, these defendants deny each and every allegation contained in Part 1 of the Notice of Civil Claim and put the plaintiff to the strict proof thereof.
- 2. The facts alleged in paragraphs 1, 4 to 7, 9, 10, 18, 19, 27, 49, 121, 126, and 145 of Part 1 of the Notice of Civil Claim are admitted.
- 3. The facts alleged in paragraphs 2, 3, 8, 11 to 17, 20 to 23, 25, 26, 28 to 39, 41 to 47, 50 to 61, 63 to 110, 117 to 120, 122 to 125, 127 to 144, and 146 to 153 of Part 1 of the Notice of Civil Claim are denied.
- 4. The facts alleged in paragraphs 24, 40, 48, 62, 111 to 116 of Part 1 of the Notice of Civil Claim are outside the knowledge of these defendants.

5. To the extent there are facts alleged in Part 3 of the Notice of Civil Claim, the facts alleged therein are denied.

# Division 2—Defendants' Version of Facts

- 1. The Royal Canadian Mounted Police ("RCMP") is the national police force for Canada, constituted under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 ("*RCMP Act*"). The RCMP has Divisions throughout Canada, one of which is "E" Division, which covers British Columbia.
- 2. The defendant, the Attorney General of Canada ("Canada"), is a defendant pursuant to the *RCMP Act*, and the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, all arising from the alleged acts or omissions on behalf of the RCMP and/or members of the RCMP.
- 3. The defendant, the Minister of Justice of the Province of British Columbia (the "BC Minister") is the provincial minister currently responsible for administering the *Police Act*, RSBC 1996 c 367, pursuant to B.C. Order in Council 51/2012 dated February 8, 2012. The BC Minister is a defendant pursuant to the provisions of the *RCMP Act*, and s 11(1)(a) of the *Police Act*, which makes the BC Minister jointly and severally liable for torts committed by provincial constables in the performance of their duties within B.C. The BC Minister is a defendant as a result of the alleged acts or omission by or on behalf of the named RCMP defendants.
- 4. The defendant Marvin Wawia was at all material times a peace officer, police constable and a member of the RCMP holding the rank of Constable and posted to the detachments of the RCMP listed below, and is referred to herein as "Constable Wawia".
- 5. Constable Wawia was posted as follows at all material times: Richmond Detachment, 1987-08-13 to 1991-11-29; Deas Island Hwy Patrol, 1992-11-30 to 2000-03-04; Lower Mainland Field Unit, 2000-03-05 to 2002-05-17; Staffing and Personnel "E" Div, 2002-05-18 to 2004-02-11; LMD Traffic North Central, 2004-02-12 to 2006-07-05; Port Mann Hwy Patrol Burnaby, 2006-07-06 to 2006-08-06; LMD Traffic Port Mann, 2006-08-07 to current.

- 6. The defendant Mike Bergerman, also known as Michael Bergerman, was at all material times a peace officer, police constable and a member of the RCMP holding the rank of Inspector. He was posted to the Staffing and Personnel Unit in "E" Division of the RCMP. He retired from the RCMP on or about November 11, 2004 holding the rank of Superintendent. He is referred to herein as "Superintendent Bergerman".
- 7. At all material times, Superintendant Bergerman considered the plaintiff to be a friend. He was not her supervisor at any material time. At no time prior to 2011 did the plaintiff make the RCMP aware of the allegations of wrongdoing against Superintendant Bergerman, either those alleged in the Notice of Civil Claim or otherwise.
- 8. The defendant Doug Henderson, also known as Douglas Henderson, was at all material times a peace officer, police constable and a member of the RCMP holding the rank of Staff Sergeant. He was posted to the Major Crime Unit in "E" Division of the RCMP. He retired from the RCMP on or about April 15, 2004 holding the rank of Inspector. He is referred to herein as "Inspector Henderson."
- 9. Inspector Henderson was not the plaintiff's supervisor at any material time. At no time prior to 2011 did the plaintiff make the RCMP aware of the allegations of wrongdoing against Inspector Henderson, either those alleged in the Notice of Civil Claim or otherwise.
- 10. The defendant Phil Little was at all material times a member of the Vancouver Police Department, holding the rank of Constable. He is referred to herein as "Constable Little." At no time prior to 2011 did the plaintiff make the RCMP aware of allegations of wrongdoing against Constable Little, either as alleged in the Notice of Civil Claim or otherwise.
- 11. In answer to paragraphs 8 and 124, the defendant Dr. Ian MacDonald was at all material times a public service employee of the Government of Canada stationed in "E" Division Health Services, and is referred to herein as "Dr. MacDonald". Dr. MacDonald was at all material times a licensed physician within the Province of British Columbia.
- 12. The plaintiff did not file a grievance or otherwise complain to the RCMP about the matters alleged in the Notice of Civil Claim, other than with respect to Constable Wawia as described in

paragraph 15 below, until making complaints in or about April 2011 and then in the Notice of Civil Claim.

- 13. In the alternative, if complaints were made by the plaintiff prior to April 2011, the responsible member or officer reviewed all relevant material and available information, other than with respect to Constable Wawia as set out in paragraphs 15 and 18 below, and determined that the substance of the plaintiff's complaints did not support a finding of harassment, bullying or intimidation.
- 14. When the plaintiff made complaints to the RCMP in April 2011 a statement(s) was taken, investigation commenced and proceeded with due diligence.
- 15. With respect to Constable Wawia, the plaintiff made complaints in the early 1990s regarding activity by him in relation to her. Those complaints were investigated with due diligence and in a timely way by the RCMP and others, and timely and appropriate remedial and disciplinary action was taken against Constable Wawia.
- 16. The plaintiff met Constable Wawia in or about the fall of 1990, when she attended at the RCMP Detachment in Richmond, B.C. and made a public complaint about a family matter. Thereafter, the plaintiff and Constable Wawia developed a personal relationship unconnected with the RCMP.
- 17. On or about December 8, 1990, the plaintiff and Constable Wawia began cohabiting. Their cohabitation ended on or about March 27, 1991.
- 18. On or about March 27, 1991, Constable Wawia was denied access to the plaintiff when he appeared at Depot. He was confined to a room for the one night that he stayed in Regina, Saskatchewan. These defendants have no knowledge of any events that may have transpired at a bar as alleged in the Notice of Civil Claim.
- 19. On or about June 28, 1991, upon graduation from RCMP depot, the plaintiff requested a transfer to "E" Division as her initial placement. This was not supported by the RCMP as Constable Wawia was posted to "E" Division and there were prior difficulties between the two of them. The plaintiff was thereupon posted to "K" Division, being Alberta. On or about June

- 1992, the plaintiff again requested that she be posted to "E" Division. "K" Division did not support the plaintiff's transfer to "E" Division due to Constable Wawia being there.
- 20. On or about August 11, 1992, it was reported to the RCMP that the plaintiff had married a member posted in "E" Division. As a result, the plaintiff was posted to "E" Division but not to the same detachment as Constable Wawia. The plaintiff was posted to the North Vancouver Detachment in "E" Division.
- 21. On or about September 13, 2004, the RCMP Occupational Health Services received initial concerns of the plaintiff having a problem with alcohol. On or about January 20, 2005, the RCMP Occupational Health Services received a full report documenting the concerns. As a result of the concerns regarding the plaintiff's dependency and abuse of alcohol, the plaintiff agreed to and signed a Relapse Prevention Agreement in March 2005 and again in 2006. A Relapse Prevention Agreement is a common tool used by RCMP Health Services to assist a member who is suffering from a dependency disorder.
- 22. Notwithstanding such Agreement, the plaintiff continued to, among other things, abuse alcohol and failed to attend alcohol treatment in contravention of the Relapse Prevention Agreement. As a result, the plaintiff was hampering her treatment and RCMP Health Services became of the view that the plaintiff's case was now one of discipline and/or conduct, rather than medical, and referred the matter to a line officer or supervisor of the plaintiff.
- 23. Dr. MacDonald did not release any confidential information to third parties at any time, except and unless the plaintiff consented to or he was otherwise authorized by law to release information.
- 24. In answer to paragraph 125 of Part 1 of the Notice of Civil Claim, Dr. MacDonald was assigned as case manager to the plaintiff's file as a result of the RCMP receiving information regarding the plaintiff's health and abuse of alcohol. The report by Dr. Hedges referred to in the Notice of Civil Claim did not conclude that the plaintiff had PTSD rather, he queried whether she may have it.

# Division 3 – Additional Facts

- 1. At all material times there was an agreement between the Province of British Columbia and the Government of Canada pursuant to s 14 of the *Police Act*, and s 20 of the *RCMP Act*, authorizing the RCMP to carry out the powers and duties of a provincial police force (the "BC Agreement").
- 2. Under the BC Agreement, the internal management and administration of the provincial police service remains under the control of Canada.
- 3. Constable Wawia, Inspector Henderson and Superintendant Bergerman (collectively, the "defendant RCMP members") and other RCMP members referred to the Notice of Civil Claim ("other RCMP members") were at all material times deemed to be provincial constables pursuant to s 14(2) of the *Police Act*.
- 4. The defendant RCMP members and other RCMP members were appointed pursuant to s 7 of the RCMP Act, and the terms and conditions of their service are governed by the RCMP Act and Royal Canadian Mounted Police Regulations 1988, SOR/88-361 ("RCMP Regulations 1988") thereto, as amended from time to time, and by Commissioner's Standing Orders, which are defined in s 2(2) of the RCMP Act.
- 5. The defendant RCMP members were also responsible for the exercise of any powers, duties or functions assigned or delegated to them by the Commissioner of the RCMP ("the Commissioner") pursuant to s 5(2) of the RCMP Act.
- 6. At no time was there a contract of employment between BC or Canada and the plaintiff or the defendant RCMP members or other RCMP members referred to in the Notice of Civil Claim.
- 7. Pursuant to s 36 of the *Crown Liability and Proceedings Act*, the plaintiff and the defendant RCMP members and all members of the RCMP are servants of Canada for purposes of determining liability in this proceeding.

- 8. At all material times, Dr. MacDonald was acting in performance or intended performance or in the course and scope of the execution of his duties as a fdederal public service employee.
- 9. These defendants deny that the plaintiff or any RCMP member have a contract of employment with the Crown and say that the plaintiff was appointed pursuant to s 7 of the RCMP Act, and that the terms and conditions of service are governed by the RCMP Act, the RCMP Regulations 1988 and the Commissioner's Standing Orders which are defined in s 2(2) of the RCMP Act.
- 10. Alternatively, if there was an employment contract as between the plaintiff and the Crown or any of the defendants, which is denied, then these defendants deny that they or anyone for whom they are responsible, breached any term, express or implied, of such employment contract.
- 11. Pursuant to s 31 of the RCMP Act, any RCMP member aggrieved by a decision, act, or omission in the administration of the work, including internal dealings of the RCMP, is entitled to present a grievance. The availability of the ability to grieve and the process is made well known to members.
- 12. If the plaintiff was dissatisfied with any administrative decisions or actions of a RCMP member or a responsible officer, the plaintiff was obliged and had opportunities to grieve those in a timely way pursuant to Part III of the RCMP Act and Part II of the RCMP Regulations 1988. The applicable limitation period for filing a grievance is 30 days under s 31(2) of the RCMP Act. All of the plaintiff's allegations are outside this time period and her claims are beyond the permissible period to complain of or claim for.
- 13. If the plaintiff had concerns about conflict, harassment or intimidation in the workplace or by other members or officers at any time, she was obliged and had opportunities to make a complaint pursuant to c. XII.I (in effect January 31, 2005) and/or XII.17 and XII.15 (in effect prior to January 31, 2005) of the RCMP Administration Manual, and/or a grievance pursuant to s 31 and Part III of the RCMP Act.
- 14. These defendants deny that the acts or omissions by these defendants, the individual RCMP defendants, or anyone for whom these defendants are liable, occurred as alleged or at all.

- 15. These defendants say that the individual RCMP defendants and those other RCMP members referred to in the Notice of Civil Claim acted properly in the performance or intended performance, or in the course and scope of the execution, of his or her duties as a provincial constable and member of the RCMP.
- 16. In the alternative, if any of the alleged acts or omissions set out in the Notice of Civil Claim occurred, all of which are denied, then the acts or omissions by any of the individual defendants and/or members referred to in the Notice of Civil Claim were acts or omissions that were outside the performance or scope and course of his or her duties as members of the RCMP and these defendants (Canada and the BC Minister) are not liable for those acts or omissions.
- 17. If the plaintiff suffered any injury, loss or damage as alleged or at all, which is not admitted but is denied, they were not as a result of any acts or omissions by these defendants or anyone for whom these defendants are liable.
- 18. In the alternative, if these defendants or anyone for whom they are responsible did any of the alleged acts or omissions as set out in the Notice of Civil Claim, all of which are denied, then these defendants say that none of the said acts or omissions were the proximate cause of the resulting injury, loss, damage or expense allegedly suffered by the plaintiff.
- 19. In the further alternative, these defendants say that if the acts or omissions as set out in the Notice of Civil Claim occurred as alleged, or at all, and if the plaintiff suffered any injury, loss, damage, or expense, which is denied, any injury, loss, damage, or expense was caused, or significantly contributed to, by the negligence of the plaintiff.
- 20. In the further alternative, these defendants say that if any of the alleged acts occurred, which is denied, one or more of them were consensual as between the plaintiff and the other participant(s).
- 21. These defendants deny that the plaintiff suffered any injury, loss or damage as a result of the acts, statements or omissions set out in the Notice of Civil Claim, or at all.
- 22. In the alternative, if the plaintiff suffered any injury, loss or damage as alleged or at all, which is denied, these defendants say that the plaintiff could, by the exercise of due diligence,

have reduced the amount of any such injury, loss, damage, or expense, and these defendants say that the plaintiff failed to mitigate her damages.

- 23. In the further alternative, these defendant say that if the plaintiff has suffered any injury, loss or damage, which is denied, such injury, loss, damage or expense was not caused by the acts, statements or omissions set out in the Notice of Civil Claim, but are attributable to previous and/or subsequent events, injuries, or conditions involving or affecting the plaintiff or congenital defects and/or pre-existing injuries or conditions, and these defendants say further that the acts or omissions set out in the Notice of Civil Claim did not aggravate any pre-existing and/or subsequent injury or condition.
- 24. In the further alternative, if the plaintiff suffered any injury, loss, damage or expense as alleged or at all, which is denied, then any loss, damage and expense, or some of them, were or are too remote and not a reasonably foreseeable consequence of any act, statement or omission on the part of these defendants or anyone for whom they are legally responsible.
- 25. The plaintiff has failed to follow medical advice in respect to treatment, and in this way caused or contributed to any medical conditions or problems she had or now has.
- 26. In the alternative, if the plaintiff suffered any injury, loss or damage as alleged or at all, which is denied, the plaintiff caused or contributed to her own injury, loss or expense by failing to take proper or any steps to resolve employment related complaints, including to grive her complaints in a timely way or at all.
- 27. These defendants deny that the plaintiff has suffered any income loss, loss of benefits or loss of earning capacity, or medical expense or disbursement, and puts the plaintiff to the strict proof of such claims.
- 28. At all material times the plaintiff has received and continues to receive full salary and benefits from the defendant Canada in her capacity as a member of the RCMP.
- 29. The plaintiff has received and will in the future receive compensation from the Consolidated Revenue Fund and/or compensation from the RCMP and/or a federal pension, including disability pension, under the *Pension Act*, RSC 1985 c P. 16 s 111, or otherwise, in respect of the

claimed injuries that the plaintiff says she has suffered, in the form of salary, medical expenses and other payments.

- 30. As of October 2007, the plaintiff had retained counsel with respect to her interests in these matters. She instructed the RCMP to communicate with her lawyer.
- 31. The plaintiff brought her action after the expiration of two years or alternatively, six years, after the date on which her right to do so arose. These defendants say that the plaintiff's claim is barred by s 3(2) and 9 of the *Limitation Act*, RSBC 1996, c 266, and laches.

### Part 2: RESPONSE TO RELIEF SOUGHT

- 1. These defendants DO NOT CONSENT to the granting of the relief sought in any of the paragraphs of Part 2 of the Notice of Civil Claim.
- 2. These defendants OPPOSE the granting of the relief sought in all paragraphs of Part 2 of the Notice of Civil Claim.
- 3. These defendants take no position on the granting of the relief sought in NIL paragraphs of Part 2 of the Notice of Civil Claim.
- 4. These defendants say that the plaintiff's actions should be dismissed with costs.

## Part 3: LEGAL BASIS

- 1. These defendants deny each and every allegation contained in the Notice of Civil Claim and put the plaintiff to the strict proof thereof.
- 2. These defendants plead s 21 of the *Police Act*, which provides that there is no basis for an action for damages against the defendant RCMP Members personally in so far as they were acting in the performance or intended performance on the course and scope of his or her duties as provincial constables.

- 3. Pursuant to s 11 of the *Police Act*, the Minister is jointly and severally liable for torts committed by provincial constables in the performance of their duties within BC.
- 4. Pursuant to Order in Council 51/2012, the Minister of Justice is currently the minister responsible for policing and law enforcement in the Province of British Columbia.
- 5. Pursuant to ss 3 and 10 of the *Crown Liability and Proceedings Act*, no proceedings lie against the defendant the Attorney General of Canada or the federal Crown unless there is a cause of action in tort against the federal Crown servant or where the federal Crown servant is excused from liability pursuant to s 21 of the *Police Act*.
- 6. Pursuant to s 9 of the Crown Liability and Proceedings Act and s 111 of the Pension Act, RSC 1985, c P-16, no proceedings lie against the defendant the Attorney General of Canada or the federal Crown as the plaintiff has received or is or will be entitled to receive a pension or compensation payable out of the Consolidated Revenue Fund or out of funds administered by an agency of the Crown, including the RCMP, in respect of injury, damage or loss in respect of which the claim is made.
- 7. To the extent that the plaintiff suffered any injury, loss, or damage as alleged or at all, which is denied, as a result of activities that were not those of a provincial constable, there is no cause of action against the BC Minister and those claims should be struck out against her.
- 8. To the extent that the plaintiff suffered any injury, loss or damage as alleged or at all, which is denied, as a result of activities that occurred outside the Province of British Columbia, there is no cause of action against the BC Minister and those claims should be struck out against her.
- 9. Any injury, loss, damage or expense allegedly sustained by the plaintiff, which is denied, could have been prevented, or the severity reduced, if the plaintiff had not been negligent in respect to her own personal safety and well being. These defendants plead the provisions of the *Negligence Act*, RSBC 1996, c 333.
- 10. The plaintiff could, by the exercise of due diligence, have reduced the amount of any alleged injury, loss, damage or expense, and these defendants say that the plaintiff failed to take all reasonable steps to minimize or avoid such, or otherwise to mitigate her injury, loss or damage.

- 11. These defendants say that any negligence or other wrongdoing by the RCMP or members, which is denied, was not the proximate cause of, or did not contribute to, any injury, loss or damage allegedly suffered by the plaintiff, was not reasonably foreseeable, or is too remote to support a claim in law.
- 12. In the alternative, the alleged acts or omissions and claims made by the plaintiff do not warrant or justify punitive or exemplary damages against these defendants or anyone for whom these defendants are responsible.
- 13. These defendants say that this Court does not have jurisdiction, or alternatively should decline jurisdiction, to determine matters that ought to have been the subject of grievances.
- 14. All of the acts and omissions alleged in the Notice of Civil Claim occurred over two years or, alternatively, six years prior to the filing of the Notice of Civil Claim on May 9, 2012 and are statute barred by the passage of time pursuant to limitation laws and laches. Further, the plaintiff's claims have been extinguished by the passage of time and s 9 of the *Limitation Act*. These defendants rely on the *Limitation Act*, including ss 3 and 9, and the doctrine of laches.

# 15. These defendants plead and rely on:

- a. Negligence Act, RSBC 1996, c 333;
- b. Canadian Human Rights Act, RSC 1985, c H-6;
- c. Crown Liability and Proceedings Act, RSC 1985, c C-50
- d. *Police Act*, RSBC 1996, c 367;
- e. Royal Canadian Mounted Police Act, RSC 1985, c R-10;
- f. Royal Canadian Mounted Police Regulations 1988, SOR/88-361;
- g. Limitation Act, RSBC 1996, c 266;

- h. Pension Act, RSC 1985, c P-16.
- 14. The plaintiff's action should be dismissed with costs.

Defendants' address for service:

Department of Justice 900 – 840 Howe Street Vancouver, BC V6Z 2S9 Attention: Mitchell Taylor, QC

Fax number address for service (if any): 604-666-2710

E-mail address for service (if any): Not applicable

Dated: 16, 2012

Signature of Mitchell Taylor QC

defendant | lawyer for Defendant(s)

Jasvinder S. Basran,

Solicitor for the defendants Attorney General of Canada and the Minister of Justice of the Province

of British Columbia

Per: Mitchell Taylor, QC

Department of Justice

British Columbia Regional Office

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.

THIS RESPONSE TO CIVIL CLAIM is prepared and served by Jasvinder S. Basran, Regional Director General, British Columbia Regional Office, Department of Justice (Canada), whose place of business and address for service is the Department of Justice, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Telephone: 604-666-2324, Facsimile: 604-666-2710, Attention: Mitchell Taylor, QC.