



No. **S-12 2255**
Vancouver Registry

In the Supreme Court of British Columbia

Between

Janet Merlo

Plaintiff

and

The Attorney General of Canada and the Minister of
Justice of British Columbia

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) 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 within 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(s),

- (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(S)

Part 1: STATEMENT OF FACTS

Overview

1. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class of similarly situated persons (“Class Members”) to be defined in the Plaintiff’s application for class certification.
2. The Plaintiff also brings this action on behalf of each person who, by reason of his or her relationship to a Class Member is entitled to make claims under any of the Dependent Statutes as a result of injury to the Class Member (the “Family Class”);
3. “Member” and “Civilian Member” in this Notice of Civil Claim are as defined in the *Royal Canadian Mounted Police Act*, R.S.C., c. R-9 (“RCMP Act”) and *Royal Canadian Mounted Police Regulations, 1988*, S.O.R./88-361 (“RCMP Regulations”). “Public Service Employees” are members of the federal public service hired under s. 10 of the *RCMP Act* for support within the Royal Canadian Mounted Police (“RCMP”).
4. “Dependants Statutes” in this Notice of Civil Claim means the: *Fatal Accidents Act*, R.S.A. 2000, c. F-8; *Tort-Feasors Act*, R.S.A. 2000, c. T-5; *Fatal Accidents Act*, R.S.S. 1978, c. F-11; *Fatal Accidents Act*, C.C.S.M. c. F50; *Family Law Act*, R.S.O. 1990, c. F.3; *Civil Code of Québec*, S.Q. 1991, c. 64; *Fatal Accidents Act*, R.S.N.B. 1973, c. F-7; *Fatal Accidents Act*, R.S.P.E.I. 1988, c. F-5; *Fatal Injuries Act*, R.S.N.S. 1989, c. 163; *Fatal Accidents Act*, R.S.N.L. 1990, c. F-6; *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c. F-3; *Fatal Accidents Act*, R.S.N.W.T. 1988, c. F-3); and the *Fatal Accidents Act*, R.S.Y. 2002, c. 86.
5. This action concerns discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees, because they are

women. The Plaintiff alleges that she and fellow female Members, Civilian Members and Public Service Employees were subject to gender-based discrimination, bullying and harassment. She further alleges that the RCMP failed to exercise the duty to women in the RCMP to ensure that they could work in an environment free of gender-based discrimination, bullying and harassment.

The Parties

6. The Plaintiff, Janet Merlo, was at all material times a peace officer, servant and employee of the RCMP pursuant to s. 7(1) of the *RCMP Act*. At all material times, Ms. Merlo held the rank of Constable and resided in the Province of British Columbia. Ms. Merlo currently resides in British Columbia.

7. The Defendant, the Attorney-General of Canada, represents the Crown and RCMP in this proceeding pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 s. 23 (the "*Crown Liability Act*"). The Crown's liability arises from the conduct, negligence, malfeasance and vicarious liability of the RCMP and individuals who were at all material times Crown employees, agents and servants.

8. The Defendant Minister of Justice (the "Minister") is named in this proceeding pursuant to the *Police Act*, R.S.B.C. 1996, c. 367, s. 11 and 21 and O.I.C. 51/2012. The Minister's liability arises from the conduct, negligence, malfeasance and vicarious liability of individual provincial constables in the course of their duties in British Columbia.

The Plaintiff, Janet Merlo

9. Janet Merlo served in the RCMP as a Constable from March 1, 1991 to March 24, 2010. Ms. Merlo was stationed at the Nanaimo Detachment from September 1991 through March 2010.

10. Ms. Merlo was subject to persistent and ongoing gender-based discrimination and harassment by individual male Members during the time she served as a Constable. Non-exhaustive examples of such discrimination and harassment are described in paragraphs

11 through 26 herein.

11. Ms. Merlo arrived at the Nanaimo RCMP Detachment in or about September 1991.

12. Starting in or about 1992, male Members at the Nanaimo Detachment began to make false statements to Ms. Merlo's boyfriend, and later spouse, Wayne Merlo, that the male Members had engaged in sexual relations with Ms. Merlo. The supervising Corporal on Ms. Merlo's night shift watch commented to Wayne Merlo words to the effect "Janet is perfect... Janet is the right height because you can lay a six-pack of beer on her head while she gives you a blow job."

13. Starting in or about late 1991 it became common for the supervising Corporal on Ms. Merlo's night shift watch to position an inflatable naked female doll next to his desk at the Detachment while on duty. On more than one occasion, the supervising Corporal invited Ms. Merlo to stand next to the doll. The Corporal's supervisor was aware of the doll and the comments, but did not reprimand the Corporal.

14. In the Spring of 1992, Ms. Merlo became pregnant with her first child. When Ms. Merlo advised the RCMP that she was pregnant she was called into the office of her supervising Operations Non-Commissioned Officer. He displayed his anger with her and repeatedly yelled at Ms. Merlo words to the effect: "What the hell am I supposed to do with you now?" He yelled at her across his desk words to the effect: "You had better get your priorities straight. You are either going to have a career in the RCMP, or you are going to pop out kids your whole life." He continued: "I have a suggestion for you: next time, keep your fucking legs closed." Ms. Merlo left the detachment in tears, feeling sick to her stomach.

15. In or about August 1992, while still pregnant, Ms. Merlo began to work in the Crime Prevention Office of the Nanaimo Detachment. It was very common for Ms. Merlo to receive comments from male Members who were her supervisors and peers that targeted Ms. Merlo as a woman. On one occasion, a male Member spoke words to the effect: "It's busy today out there. Janet could take some calls if she wasn't knocked up."

16. After Ms. Merlo returned from maternity leave in or about July 1993, she continued to receive comments from male Members who were her supervisors and peers that targeted Ms. Merlo as a woman. On one occasion, a male Member spoke words to the effect: "Janet, can you take that call, or are you pregnant again?" The targeted comments from her male supervisors and peers were so pervasive and came from so many male Members that Ms. Merlo tried to numb herself to them because she felt resistance to be futile.

17. In or about April 1995 two male Members in the Nanaimo Detachment, a Sergeant and Constable discussed female applicants for the newly formed bicycle patrol unit within obvious earshot of Ms. Merlo. The Constable spoke words to the effect: "yeah, like there are any of the ugly fat assed female members in this building that can peddle a bike around all day."

18. In or about February 1997, a document was left in Ms. Merlo's Detachment mail slot entitled "Training Courses Now Available for Women". The list comprised thirty-four fictional courses that were derogatory to women.

19. Starting in June 2000, Ms. Merlo and other female Members of the Nanaimo Detachment were subject to overtly sexual comments by the Sergeant of "B" Watch. On one occasion, the Sergeant brandished a dildo that had been seized as evidence in a criminal investigation and yelled across the Nanaimo Detachment office words to the effect: "Merlo, what the hell happened? This thing was brand new yesterday. Now it's almost worn out. Did you take it home last night?"

20. On a separate occasion, the Sergeant of "B" Watch publicly targeted Ms. Merlo as a woman. At a watch briefing where a male Member arrived late the Member explained that he was waiting for his babysitter to arrive before he could leave home. The Sergeant replied with words to the effect: "Send Merlo out to the house and do the women's work so that men could be on time and do the real work."

21. While Ms. Merlo was assisting the Sergeant of "B" Watch with a prisoner in the Detachment cell block, the Sergeant cut his thumb on handcuffs. The Sergeant then pointed

to his genital area and said to Ms. Merlo words to the effect: "When I cut my finger, my hand was down there in my pocket. Would you like to go down there and kiss all of that better while you're at it?"

22. On a separate occasion, the Sergeant of "B" Watch removed a section of hose from the Detachment vacuum cleaner and left it in Ms. Merlo's RCMP file cubby. The Sergeant said to Ms. Merlo words to the effect: "It's long, black and thick, and you can take it home and have fun with it." Shortly thereafter, Ms. Merlo found a black rubber dildo in her files at the Detachment.

23. On various separate occasions, the Sergeant of "B" Watch made overtly sexual comments to Ms. Merlo, including offers to rub Ms. Merlo's breast, offering to search Ms. Merlo's front pocket to search for change while putting his own hands near his groin, offering to give Ms. Merlo his "big Italian salami", and asking if she "like(s) it on top?"

24. On numerous occasions Ms. Merlo was witness to male Members loudly commenting on the breasts of female prisoners held at the Detachment.

25. On more than one occasion, Ms. Merlo's supervisors falsely advised Ms. Merlo that she was ineligible to collect acting pay for times she served as Acting Corporal at the Detachment. Ms. Merlo was out of time to apply for this extra pay when she later learned that she was entitled to it.

26. At all material times, men and women were treated differently within the Nanaimo Detachment. Examples include:

- (a) Men were permitted to leave on night shifts to play three-hour hockey games while still on shift while, in contrast, female Members were denied the opportunity to participate in aerobics classes during their lunch breaks;
- (b) Male Members were more easily accommodated with shift changes and transfers; and
- (c) Male Members were more easily accommodated when requesting sick leave while, in contrast, female Members were routinely questioned over their state

of health when requesting sick leave.

27. On many occasions Ms. Merlo would take sick days because she was upset about the ongoing discrimination and harassment she faced. She felt too physically ill to attend work. On other occasions, Ms. Merlo would start work early in order to give herself time to prepare for dealing with the ongoing harassment.

28. On many occasions Ms. Merlo complained to Members, including her superiors and the Commissioner of the RCMP, that she was suffering gender-based discrimination and harassment by individual male Members. On occasion, the Members to whom she complained advised Ms. Merlo to “forget about it” or to “walk away.” On other occasions, Ms. Merlo’s complaints were investigated and dismissed.

29. Ms. Merlo was discharged from the RCMP on or about March 24, 2010.

30. Ms. Merlo was unable to bring an action in respect of her injury, damage or loss as a consequence of the symptoms of depression and post-traumatic stress disorder that she suffered as a result of ongoing discrimination and harassment by individual male Members of the RCMP. Ms. Merlo’s interests and circumstances were so serious that she could not reasonably bring an action until December 2011.

RCMP Negligence

31. At all material times, the RCMP owed a duty of care to the Plaintiff and Class Members to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment.

32. The RCMP breached the aforementioned duty by, among other things:

- (a) failing to properly supervise its employees, agents or servants;
- (b) failing to have and implement adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff’s and Class Members’ safety, health and welfare and to minimize the risk of her being subjected to gender-based discrimination and harassment; and

- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

33. In the alternative, if RCMP policies, procedures, codes of conduct and guidelines were adequate to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment, which is not admitted but is specifically denied, then the RCMP breached its duties to the Plaintiff and Class Members by failing or neglecting to implement those policies, procedures, codes of conduct and guidelines.

Breach of Contract

34. The RCMP entered into a contract in writing, or in the alternative, a contract made orally or partly in writing, or in the further alternative, a contract made orally, for the purposes of employing the Plaintiff and Class Members under the *RCMP Act*.

35. It was an express or implied term of the employment contract that the RCMP would provide the Plaintiff and Class Members with a work environment free of gender-based discrimination and harassment and that any such conduct would be investigated, and the safety of the workplace for the Plaintiff and Class Members be provided in accordance with applicable legislation, policies, procedures, codes of conduct and guidelines.

36. The RCMP breached the aforementioned contractual term by, among other things:

- (a) failing to have and implement adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff's and Class Members' safety, health and welfare and to minimize the risk of their being subjected to gender-based discrimination and harassment; and
- (b) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

Breach of *Canadian Charter of Rights and Freedoms*

37. The RCMP has breached the Plaintiff's and Class Members' right to be free from discrimination on the basis of sex, pursuant to s. 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 by, among other things:

- (a) failing to properly supervise its employees, agents or servants;
- (b) failing to have adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff's and Class Members' safety, health and welfare and to minimize the risk of her being subjected to gender-based discrimination and harassment; and
- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

38. In the alternative, if RCMP policies, procedures, codes of conduct and guidelines were adequate to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment, which is not admitted but is specifically denied, then the RCMP breached the Plaintiff's and Class Members' *Charter* rights by failing or neglecting to implement those policies, procedures, codes of conduct and guidelines.

RCMP Member and Employee Negligence

39. At all material times, certain individuals who were Members, Civilian Members and Public Service Employees and who were each Crown employees, agents and servants (the "Negligent Individuals") owed a duty of care to the Plaintiff and Class Members to ensure that they could work in an environment free of gender-based discrimination and harassment.

40. Section 37 of the *RCMP Act* makes it incumbent on every Member and Civilian Member to, among other things:

- (a) respect the rights of all persons;
- (b) to maintain the integrity of the law, law enforcement and the administration of justice;
- (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
- (d) to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;
- (e) to act at all times in a courteous, respectful and honourable manner; and
- (f) to maintain the honour of the RCMP and its principles and purposes.

41. The Code of Conduct established by regulation under s. 38 of the *RCMP Act* requires Members and Civilian Members to, among other things, respect the rights of every person. The Plaintiff pleads and relies upon the *RCMP Regulations*, ss. 38 to 58.7.

42. The Negligent Individuals breached the aforementioned duties by, among other things:

- (a) pursuing practices that deprived or tended to deprive the Plaintiff and Class Members of employment opportunities on the basis that the Plaintiff and Class Members are women;
- (b) failing or neglecting to adhere to the appropriate legislation, policies, procedures, codes of conduct and guidelines in respect of gender-based workplace discrimination and harassment;
- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment in a thorough, timely and impartial manner;
- (d) failing or neglecting to exercise their authority to put an end to the conduct of gender-based discrimination and harassment;

- (e) failing to adhere to s. 37 of the *RCMP Act*;
- (f) failing to hold accountable those found to be in breach of the applicable legislation, policies, procedures, codes of conduct and guidelines;
- (g) failing to properly supervise Members, Civilian Members and Public Service Employees; and,
- (h) harassing the Plaintiff and Class Members because they are woman.

43. The conduct that the Negligent Individuals directed toward the Plaintiff and Class Members was repetitive and extreme and calculated to harass the Plaintiff and Class Members. As a result of the conduct the Plaintiff and Class Members suffered mental and physical injury particularized in paragraph 46.

44. The Negligent Individuals knew or ought to have known that the conduct was of a kind reasonably capable of terrifying a normal person. In particular, the Negligent Individuals knew or ought to have known that their conduct would:

- (a) harm;
- (b) offend;
- (c) demean;
- (d) belittle;
- (e) humiliate;
- (f) embarrass;
- (g) petrify;
- (h) terrify;
- (i) intimidate; and/or

(j) threaten;

another person or persons in the workplace.

45. In the alternative, the Negligent Individuals knew or ought to have known that the Plaintiff and Class Members are especially sensitive, susceptible and vulnerable to injury through mental distress and their conduct.

Injury and Damage

46. As a result of the breach of contract by the RCMP and the fault and negligence of the RCMP and the Negligent Individuals, the Plaintiff and Class Members have sustained serious injuries and consequences, including:

- (a) post-traumatic stress disorder;
- (b) diminished self-worth;
- (c) diminished ability to concentrate;
- (d) repeated and ongoing nightmares;
- (e) depression;
- (f) anxiety;
- (g) difficulty in coping with emotional stress;
- (h) suicidal ideation;
- (i) attempted suicide;
- (j) feelings of guilt, responsibility, and self-blame;
- (k) nervous shock;
- (l) emotional anguish;

- (m) insomnia;
- (n) irritable bowel syndrome;
- (o) failed relationships;
- (p) loss of consortium; and
- (q) loss of enjoyment of life.

47. These injuries have caused and continue to cause the Plaintiff and Class Members pain, suffering, loss of enjoyment of life, permanent disability, loss of physical, mental and emotional health, and loss of earnings, past and prospective.

48. These injuries aggravated or exacerbated earlier injuries such that they are impossible to separate.

49. As a further result of the breach of contract by the RCMP and the negligence of the RCMP and the Negligent Individuals, the Plaintiff and Class Members have sustained certain special damages and loss and expenses for medical and psychological treatment. The Plaintiff and Class Members continue to undergo medical and psychological care and treatment and to incur loss and expense.

50. As a result of the breach of contract by the RCMP and the negligence of the RCMP and the Negligent Individuals, members of the Family Class have sustained injury, loss and damages as described in paragraphs 46 to 49 above.

Part 2: RELIEF SOUGHT

51. The Plaintiff claims, on her own behalf and on behalf of a class of similarly situated persons, as follows:

- (a) an order certifying this action as a class proceeding and appointing her as representative plaintiff under the *Class Proceedings Act*;
- (b) general damages and special damages;

- (c) exemplary and punitive damages;
- (d) damages pursuant to the *Canadian Charter of Rights and Freedoms*, s. 24(1);
- (e) pre-judgment interest;
- (f) recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c.27, and comparable legislation in the other provinces and territories;
- (g) costs; and
- (h) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

52. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

Standard of Care

53. The standard of care owed by the “Negligent Individuals” to the Plaintiff and Class Members is informed by, among other things, the *RCMP Act* and the Code of Conduct established by regulation under s. 38 of the *RCMP Act*.

Punitive Damages

54. The actions of the RCMP and the Negligent Individuals were reckless, arrogant, high-handed and abusive and showed a callous disregard for the Plaintiff’s and other Class Members’ rights. The RCMP and the Negligent Individuals have engaged in conduct that is reprehensible and deserves punishment. The Plaintiff, therefore, seeks punitive and exemplary damages against the Defendants.

Family Class

55. As a result of the negligence of the RCMP and the Negligent Individuals, members of the Family Class have suffered and will continue to suffer loss and damage.

Such loss and damage was foreseeable by the Defendants. Particulars of the loss and damage include loss of guidance, care and companionship, loss of income and loss of value of services as a result of the injury to the primary claimant, and expenses incurred as a result of the injury to the primary claimant.

Government Liability for Negligence of RCMP Members

56. The Crown is vicariously liable for torts committed by Members, Civilian Members and Public Service Employees in the course of their duties. The Plaintiff pleads and relies upon the *Crown Liability and Proceedings Act*, ss. 3 and 36.

57. The Minister is jointly and severally liable for torts committed by Members in the course of their duties in British Columbia. The Plaintiff pleads and relies upon the *Police Act*, ss. 11 and 21.

Quebec Law

58. Where the actions of the RCMP and the Negligent Individuals took place in Quebec, they constitute:

- (a) fault giving rise to the extra-contractual liability of the Negligent Individuals towards the Plaintiff, Class Members, and Family Class, pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1457, and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (the “*Quebec Charter*”), ss. 1, 4, 10, 10.1 and 16;
- (b) fault giving rise to the extra-contractual liability of the RCMP pursuant to the *Crown Liability and Proceedings Act*, s.3, and the *Interpretation Act*, R.S.C. 1985, c. I-16, s. 8.1; and
- (c) unlawful and intentional interference with the rights of the Plaintiff and Class Members under the *Quebec Charter*, ss. 1, 4, 10, 10.1 and 16, giving rise to the liability of the RCMP to pay punitive damages to the Plaintiff and Class Members, pursuant to the *Quebec Charter*, s. 49 and the *Civil Code of Québec*, Art. 1621.

59. Where the actions of the RCMP and the Negligent Individuals took place in Quebec, the Plaintiff and Class Members have been unable to act within the meaning of the *Civil Code of Québec*, Art. 2904.

Plaintiffs' address for service: c/o Klein Lyons
400 - 1385 West 8th Avenue
Vancouver, BC V6H 3V9

Fax number address for service (if any): (604) 874-7180

E-mail address for service (if any):

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: March 26, 2012



Signature of
 plaintiff lawyer for plaintiffs

David A. Klein
Sandy Alexander Zaitzeff

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.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action concerns discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees, because they are women. The Plaintiff alleges that she and fellow female Members, Civilian Members and Public Service Employees were subject to gender-based discrimination and harassment. She further alleges that the RCMP failed to exercise the duty to the women in the RCMP to ensure that they could work in an environment free of gender-based discrimination and harassment.

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 issues 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:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
2. *Royal Canadian Mounted Police Act*, R.S.C., c. R-9.
3. *Royal Canadian Mounted Police Regulations, 1988*, S.O.R./88-361.