

Merlo v. Attorney General of Canada et al., BCSC Action No. S122255

The Plaintiff proposes the following common issues:

Negligence

1. Did Canada and its servants owe a duty of care to Primary Class Members or to any sub-group of the Primary Class to ensure that they could work in an environment free of gender-based discrimination and harassment? [Original Question 1]
2. If the answer to common issue (1) is yes, did Canada or any of its servants breach this duty? [Original Question 2]
3. Did British Columbia or any provincial constable owe a duty of care to Primary Class Members or to any sub-group of the Primary Class to ensure that they could work in an environment free of gender-based discrimination and harassment?
4. If the answer to common issue (3) is yes, did British Columbia or any provincial constable breach this duty? [Modified Original Question 3]

Contract

5. Did Canada have a contractual relationship with Primary Class Members or any sub-group of the Primary Class? [Original Question 6]
6. If the answer to common issue (5) is yes, was it a term of the contract that Canada would provide the Primary Class Members with a work environment free of gender-based discrimination and harassment? [Original Question 7]
7. If the answers to common issues (5) and (6) are yes, did Canada breach this term of the contractual relationship? [Original Question 8]

Charter

8. Did Canada breach the right of the Primary Class Members or any sub-group of the Primary Class to be free from discrimination on the basis of sex, pursuant to s. 15 of the *Canadian Charter of Rights and Freedoms*? [Original Question 9]

Quebec

9. With respect to actions which took place in Quebec, did Canada or any of its servants commit fault giving rise to extra-contractual liability to Class Members? [Modified Original Question 4]
10. With respect to actions which took place in Quebec, did Canada or any of its servants interfere with the Class Members' rights under the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12? [Modified Original Question 4]

Punitive Damages

11. If Canada or any of its servants breached a duty of care owed to Primary Class Members, does the conduct justify punishment? [Original Question 10]
12. If British Columbia or any provincial constable breached a duty of care owed to Primary Class Members, does the conduct justify punishment?
13. If the answer to common issues (11) or (12) is yes, and if the aggregate compensatory damages awarded to Class Members does not achieve the objectives of retribution, deterrence and denunciation in respect of such conduct, what amount of punitive damages should be awarded against each Defendant? [Modified Original Question 11]
14. With respect to actions which took place in Quebec, did Canada or any of its servants unlawfully and intentionally interfere with the rights of Primary Class Members under the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, ss. 1, 4, 10, 10.1 and 16, thereby giving rise to the liability to pay punitive damages pursuant to the Charter, s. 49 and the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1621? [Original Question 12]
15. If the answer to common issue (14) is yes, what amount of punitive damages should be awarded against Canada? [Original Question 13]