



No. *Court File No. VLC-S-S-229641*
Vancouver Registry

In the Supreme Court of British Columbia

Between

Brydon Wardel

Plaintiff

and

Fraser Health Authority, Interior Health Authority, Northern Health Authority,
Vancouver Coastal Health Authority, Vancouver Island Health Authority, Providence Health
Care Society, and Community Living 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 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,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, 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

Overview

1. This proposed class action concerns the unlawful detention of vulnerable individuals in British Columbia by the defendants. The defendants involuntarily detain vulnerable individuals pursuant to emergency assistance provisions of the *Adult Guardianship Act*, R.S.B.C. 1996, c. 6 (the “*AGA*” or the “*Act*”) and fail to take the appropriate steps to ensure that the detentions are properly authorized and that minimal infringement of an individual’s rights occurs during the detentions. The detentions are illegal and constitute a gross breach of the proposed class members’ rights.

2. The plaintiff seeks damages for himself and for a class of individuals who were detained under the emergency assistance provisions of the *AGA*. These detentions breached the defendants’ fiduciary and common law duties, constituted the tort of false imprisonment, and breached the proposed class members’ *Charter* rights. The involuntary detentions led to psychological and physical damage to vulnerable individuals, in many instances aggravating their preexisting traumas and disabilities.

The Parties

3. The plaintiff, Mr. Brydon Wardel, is a 52-year-old man who resides in Surrey, British Columbia, Canada. He lives independently in a home he rents along with his long-time friends. As stated above, Mr. Wardel brings this action on behalf of individuals who were detained by the defendants under the emergency assistance provisions of the *AGA* (the “Class Members”).

4. The defendant, Fraser Health Authority, is a regional health board constituted under the *Health Authorities Act*, R.S.B.C. 1996, c. 180 (the “*HAA*”). It serves the Fraser Valley including Coquitlam, Port Coquitlam, Port Moody, New Westminster, and Surrey and is responsible for governing, planning, and delivering health-care services within those geographic areas.

5. The defendant, Interior Health Authority, is a regional health board constituted under the *HAA*. It serves communities in the interior of British Columbia including the Thompson, Cariboo, Shuswap, Okanagan, Kootenay Boundary and East Kootenay regions and is responsible for governing, planning, and delivering health-care services within those geographic areas.

6. The defendant, Northern Health Authority, is a regional health board constituted under the *HAA*, which serves communities in northern British Columbia, including the Northern Interior, Northeast and Northwest regions and is responsible for governing, planning, and delivering health-care services within those geographic areas.

7. The defendant, Vancouver Coastal Health Authority, is a regional health board constituted under the *HAA*, which serves communities on the Pacific Coast of British Columbia, including the cities of Vancouver, Richmond and the North Shore/Garibaldi areas and is responsible for governing, planning, and delivering health-care services within those geographic areas.

8. The defendant, Vancouver Island Health Authority, is a regional health board constituted under the *HAA*, which serves the communities of North, Central and South Vancouver Island and is responsible for governing, planning, and delivering health care services, within those geographic areas.

9. The defendant, Providence Health Care Society, is a charitable organization in the Vancouver Coastal Health region that provides healthcare services to individuals in several hospitals and facilities owned and operated by it in British Columbia.

10. The defendant, Community Living British Columbia (“CLBC”), is a provincial crown agency which is mandated under the *Community Living Authority Act*, S.B.C. 2004, c. 60 to provide a range of supports and services for adults with various disabilities in British Columbia.

11. All of the defendants are “Designated Agencies” pursuant to sections 2, 3, and 4 of the *Designated Agencies Regulation*, B.C. Reg. 19/2002 of the *AGA* and have roles and responsibilities under the *AGA*.

AGA and the Protection of Vulnerable Adults

12. Part 3 of the *AGA* grants the defendants statutory powers and duties to intervene in the care of adults where there is self-neglect or there is neglect or abuse by others. The purpose is to provide support and assistance to adults who are abused or neglected and who are unable to seek support and assistance because of physical restraint, a physical handicap that limits their ability to seek help, or an illness, disease, injury, or other condition that affects their ability to make decisions about the abuse or neglect.

13. If an adult requires support and assistance, the defendants may refer the adult to services and assist the adult in obtaining those services, inform the Public Guardian and Trustee (“PGT”), or investigate if the adult is abused or neglected.

14. After conducting an investigation, the defendants are authorized to take several different actions, including referring the adult to services, reporting the case to the PGT, or preparing a support and assistance plan for the adult. If an adult decides not to accept the services, the defendants are prohibited from providing those services in the absence of a court order. To obtain such an order, the designated agency may ask the PGT to arrange for an assessment to determine whether the adult is incapable of decision-making and, if the person is found not to be capable, the defendants may then apply for a court order.

15. The *AGA* provides the defendants with circumscribed emergency powers where they believe an adult is apparently abused or neglected, and it is necessary to act without delay to preserve the adult's life, prevent serious physical or mental harm to the adult, or protect the adult's property from significant damage or loss, if the adult is apparently incapable of giving or refusing consent. In such situations, the defendants may take limited emergency steps that include removing the adult and conveying them to a safe space, and taking any other emergency measure that is necessary to protect the adult from harm.

16. The *AGA* expressly requires that the "designated agency must involve the adult, to the greatest extent possible" in decisions about the support and assistance it believes the adult requires. The *AGA* prioritizes self-determination and autonomy for adults with disabilities and imposes involuntary measures only as a last resort, in a manner as minimally intrusive as possible, and by court order. These principles and presumptions are expressed in ss. 2 and 3 of the *AGA*:

Guiding principles

2 This Act is to be administered and interpreted in accordance with the following principles:

- (a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;
- (b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs;
- (c) the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

Presumption of capability

3(1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

The Defendants' Conduct and Detention Practices

17. Despite the limited nature of the defendants' emergency powers, the defendants developed and implemented a systemic practice whereby they detain individuals under their purported emergency assistance powers without the individual's consent – even where the individual has capacity to refuse – and without promptly seeking court orders authorizing the detentions.

18. The defendants have continuously and purposefully:

- a. failed to provide the most effective, but the least restrictive and intrusive form of support, assistance, service, protection, or intervention to Class Members;
- b. used their emergency powers under *AGA* to detain Class Members in a manner that is not brief or minimally intrusive, and goes beyond the reasonable use of the emergency measure to address any imminent and serious risk;
- c. detained Class Members without lawful authority;
- d. failed to ensure Class Members were given appropriate procedural fairness and due process rights;
- e. failed to promptly provide Class Members with written reasons for their detention;
- f. failed to promptly inform Class Members of their right to retain and instruct counsel without delay and ensure the facilitation and exercise of that right;
- g. placed detained Class Members in living conditions that deprived them of their residual liberties, or otherwise unnecessarily infringed their rights, freedoms and quality of life, including but not limited to denying Class Members access to information, means of communication (e.g. phone and internet), visitors, grounds privileges, day passes, clothing and counsel; and using or threatening to use mechanical restraints (e.g. being tied to a bed) and seclusion (e.g. being solitarily confined in a small room with no exits);

- h. failed to implement an appropriate mechanism to review the detention of Class Members and end their detention as quickly as possible;
- i. failed to adequately train and supervise the activities and decisions of facilities, staff, contractors, and service providers fulfilling duties pursuant to the *AGA*; and
- j. failed to adequately find, create and fund alternatives to detention that would provide support and assistance services to Class Members in a manner that does not infringe their rights.

19. During these detentions, the Class Members were under the power and control of the defendants pursuant to the *AGA*. The defendants knew or ought to have known that the adults they were charged with providing assistance and support to were physically and/or psychologically vulnerable people and were individuals who were particularly at risk of having their rights infringed.

20. As a result of these actions, the Class Members have suffered psychological and physical damage, in many instances aggravating these vulnerable adults' preexisting traumas and disabilities.

Involuntary Detention of the Plaintiff

21. As noted above, the plaintiff has lived independently in a home in Surrey, British Columbia. The house is rented by himself and his long-time friends who are essentially his adopted family. He lived there without incident until the events of the summer of 2020.

22. On or about July 9, 2020, several members of the RCMP and a community health worker from the Fraser Health Authority (the "FHA") arrived, unannounced, at the plaintiff's residence. On arrival, the RCMP members asked the plaintiff to identify himself and then told him that the FHA health worker had to ask him several questions privately.

23. The RCMP members removed the plaintiff from the premises to an alley beside the house. The FHA health worker explained that they had received a report that the plaintiff was being abused by his housemates. The allegations included that he was being raped, that he was being

prostituted to earn money for the family, and that he was being physically abused. The plaintiff denied that any of this had occurred.

24. During the questioning, the RCMP members kept the other residents in the home and refused to disclose what was happening. No questions were asked of them.

25. The RCMP and FHA health worker attended the plaintiff's residence unannounced again on or about July 10, 2020. The plaintiff again denied any allegations.

26. Several days later, on or about July 13, 2020, the same RCMP members and FHA health worker arrived at the plaintiff's home unannounced. The plaintiff was alone. On answering the door, the RCMP members told the plaintiff that he was being detained. He was asked to put his hands out, was handcuffed, and placed in a black unmarked SUV. He was then driven to Surrey Memorial Hospital.

27. After arriving at the hospital, the plaintiff was taken to the emergency department where he was placed in a room alone overnight. No one at the hospital explained why he was there or spoke to him throughout the night; he was not allowed to contact or speak to anyone.

28. The next day, the plaintiff was transferred to another floor of the hospital to a room with other patients. During the transfer, he was told that he was not allowed to leave and would be under constant monitoring. He was told that he was not permitted visitors.

29. On the third day, the plaintiff was allowed to leave his room and walk around the ward. This was his first opportunity to access a telephone. He called his housemates and they explained that they had contacted a lawyer for him and that they would reach out to the lawyer. He shared with them that he was not allowed to leave the hospital, and that he was extremely upset and nervous about what would happen next.

30. Unknown to the plaintiff, he was being detained under a "do not acknowledge" status, which means hospital staff were not allowed to acknowledge his presence if anyone attempted to contact him by phone or in person. When the plaintiff's lawyer called, the hospital staff refused to acknowledge that he was there.

31. On or about the fourth day, the plaintiff was finally able to connect with a lawyer. The lawyer said they were trying to get him released but that it might take some time.

32. On or about July 16, 2020, the plaintiff was examined by a doctor who assessed him as not being certifiable under the *Mental Health Act*, R.S.B.C. 1996, c 288, and as competent to make his own health care decisions. Despite this and his repeated requests to leave, the plaintiff was not permitted to do so.

33. On July 21, 2020, eight days after his initial detention, the plaintiff was finally released from the hospital and returned to his home.

34. At all material times, the plaintiff had sufficient capacity and was capable of refusing and in fact did refuse the actions taken by the FHA.

35. The experience was extremely traumatic for the plaintiff. This was further exacerbated by the fact that during his detention, a close friend of the plaintiff and his housemates passed away. Despite repeated requests by the plaintiff and his friends, the hospital would not permit him to leave to attend the funeral.

36. During and as a result of these events, the plaintiff suffered and continues to suffer from extreme distress, and a fear and anxiety that he will again be apprehended by authorities and detained. He has suffered emotional and psychological harm from the incident, violations of his liberty and security of the person, and harm to his dignity.

Part 2: RELIEF SOUGHT

37. The plaintiff, on behalf of the Class Members, claims:
- a. an order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the class under the *Class Proceedings Act*;
 - b. a declaration that the defendants breached their fiduciary duties to the plaintiff and the Class Members by wrongfully detaining persons under the purported authority of the *AGA* in the manner described herein;

- c. a declaration pursuant to section 24(1) of the *Charter* that the defendants have violated the plaintiff and Class Members' sections 7, 9, and 10 *Charter* rights;
- d. general damages;
- e. special damages;
- f. punitive damages;
- g. damages under section 24(1) of the *Charter*;
- h. costs;
- i. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- j. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breach of the Charter

38. The defendants breached the plaintiff's and Class Members' rights under ss. 7, 9, and 10 (a) and (b) of the *Charter* to be free from arbitrary detentions, to be informed promptly of the reasons for detention, to have a meaningful opportunity to retain and instruct counsel without delay, and to not have any deprivation of their residual liberties.

Arbitrary Detention

39. Section 9 of the *Charter* guarantees a "right not to be arbitrarily detained or imprisoned". A detention that is not authorized by law is arbitrary and therefore violates s. 9.

40. The defendants breached the plaintiff's and Class Members' s. 9 rights by, among other things, detaining individuals who had capacity to refuse consent, failing to immediately seek the appropriate court orders to authorize detentions of individuals who were incapable of refusing consent, and failing to provide opportunities to have the validity of the detentions promptly reviewed. Such actions made the detentions illegal and arbitrary.

Reasons and Right to Counsel

41. Section 7 and 10 of the *Charter* create procedural protections when an individual is detained.

42. Sections 10(a) and (b) guarantee a right on detention to be informed promptly of the reasons for detention, and the right to retain and instruct counsel without delay and to be informed of that right. Detaining authorities have a duty to inform a detainee of the right to retain and instruct counsel, and a duty to facilitate that right immediately upon detention. The rights in ss. 10(a) and 10(b) of the *Charter* are linked. A primary purpose of requiring that an individual be informed of the reasons for his or her detention is so that the person may make an informed decision on whether to exercise the right to counsel, and if so, obtain sound advice based on an understanding of the extent of his or her jeopardy.

43. Further, section 7 of the *Charter* guarantees the right not to be deprived of liberty except in accordance with the principles of fundamental justice. This has been interpreted to include compliance with common law requirements of procedural fairness such as the provision of reasons and, when the consequences are serious, the provision of written reasons for the detention. Given the vulnerability of these Class Members, written reasons for the detentions would be required.

44. The defendants breached the plaintiff's and Class Members' ss.7 and 10(a) and (b) rights by, among other things, failing to promptly notify them of their right to counsel, failing to promptly provide them an opportunity to retain counsel, and by failing to promptly provide written reasons for the detentions.

Deprivations of Residual Liberty and Security of the Person

45. Section 7 of the *Charter* also protects a residual liberty interest and security of a person throughout a detention, which can, among other things, restrict changes to the form of the detention.

46. The defendants breached the plaintiff's and Class Members' s. 7 rights by, among other things, employing various interventions to subdue and restrain individuals such as using mechanical restraints, prohibiting and restricting visitors and phone and internet use, denying

temporary passes to leave the facilities, and administering medication without consent or substitute consent.

False Imprisonment

47. The tort of false imprisonment occurs where there has been a total deprivation of liberty, against an individual's will by a defendant. If this occurs, the defendant must show that the detention was justified and authorized.

48. As described above, the defendants detained individuals who had capacity to refuse consent and failed to seek appropriate court orders to authorize detentions of individuals who were incapable of refusing consent. The detentions were unjustified and unauthorized. The defendants are liable for the tort of false imprisonment of the plaintiff and Class Members.

Breach of the Defendants' Common Law and Fiduciary Duties

The Defendants' Duties

49. The defendants owed fiduciary duties to the plaintiff and Class Members based on the trust, reliance and dependence in the defendants' administration of services to the plaintiff and Class Members under the *AGA*. The fiduciary nature of the relationship is comparable to the established category of guardian and ward.

50. The defendants owed common law duties of care to the plaintiff and Class Members due to the close and proximate relationship between them.

51. The defendants' duties to the plaintiff and Class Members include but are not limited to:

- a. providing the most effective, but least restrictive and intrusive form of support, assistance, service, protection, or intervention;
- b. ensuring that the Class Members could exercise their right to counsel when taking steps to propose, apply for, or implement non-consensual measures under the *AGA*;

- c. ensuring that involuntary interventions taken as an emergency measure under the *AGA* were as brief and minimally intrusive as necessary to address an imminent and serious risk;
- d. ensuring that any detention was compliant with constitutional and other legal requirements, including:
 - i. promptly providing detained Class Members with written reasons for their detentions;
 - ii. promptly informing detained Class Members of their right to counsel and facilitating the exercise of that right without delay; and
 - iii. ensuring that detained Class Members were made aware of the grounds for their detention, that they had the ability to challenge the validity the detention, and to be released if the detention was not lawful; and
- e. ensuring that daily conditions at the facilities in which Class Members were detained infringed rights and freedoms as minimally as necessary to ensure safety.

Breach of the Defendants' Duties

52. The defendants' breached their fiduciary and common law duties through the failure to perform their duties in a manner consistent with the common law standard of care and the fiduciary relationship, and in a manner detailed above.

Causation and Damages

53. The Class Members suffered injuries as a result of the actions of the defendants as set out above and should be awarded damages.

54. Further, section 24(1) of the *Charter* confers a broad discretion on courts to craft remedies that are appropriate and just in the circumstances where an individual's *Charter* rights have been breached. This includes the authority to award *Charter* damages.

55. A declaration should be granted that the defendants have breached the plaintiff's and Class Members' ss. 7, 9, 10(a) and (b) rights under the *Charter*. Damages should be awarded pursuant to s. 24 of the *Charter* as they are just and appropriate (i) to provide compensation that might not otherwise be awarded to the plaintiff and to the Class Members, (ii) to vindicate the plaintiff, the Class Members and society at large for the harm caused by the defendants' violations of the *Charter* and (iii) to deter future breaches.

Punitive Damages

56. The conduct of the defendants warrants an award of punitive damages. The defendants have conducted themselves in a high-handed, wanton, and reckless manner, without regard to the rights of the plaintiff and Class Members. Particularly egregious is the defendants' use of such draconian measures on an already vulnerable class of individuals. Further, the defendants have continued to employ the measures as detailed above notwithstanding the fact that the British Columbia Supreme Court in *AH v Fraser Health Authority*, 2019 BCSC 227 has found them to be tortious and unconstitutional. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of such conduct, to advance public safety and to achieve the goal of both specific and general deterrence.

Limitation Periods

57. The plaintiff pleads and relies on the postponement provisions in the *Limitation Act*, S.B.C. 2012, c. 13 and the *Limitation Act*, R.S.B.C. 1996, c. 266.

58. Many of the Class Members did not have the requisite capacity at the relevant times to understand that a court proceeding would be an appropriate means to seek to remedy their injuries, losses or damages. The plaintiff pleads that limitation periods were temporarily suspended due to COVID-19 pursuant to Order of the Minister of Public Safety and the Solicitor General, Ministerial Order, dated March 26, 2020, made under the *Emergency Program Act*, R.S.B.C., c.111, s. 10.

Plaintiff's address for service: Klein Lawyers LLP
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Fax number address for service (if any): 604-874-7180

E-mail address for service (if any): info@callkleinlawyers.com

Place of trial: Vancouver, British Columbia

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

Date: November 25, 2022



Signature of lawyer for plaintiff
David A. Klein

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.
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APPENDIX**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:****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. *Adult Guardianship Act*, R.S.B.C. 1996, c. 6
2. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
3. *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11