

NEW WESTMINSTER

OCT 13 2021

CIVIL REGISTRY

No.: 240162

New Westminster Registry

In the Supreme Court of British Columbia

Between

GEORGE KAVALLIS, AKVAL HERR, GREGORY TOOMBS, NORM RYDER, PATRICK JARDINE, DAVID HAMILTON, CHRISTOPHER SUMMERS, TERRY FEDORAK, ROD BARRETT, JENNIFER BAKER, BRUCE JUNKER, BLAINE GILBERTSON, KEN GRYSIUK, RICHARD LAST, DARREN SCHLAMB, CHRIS LAWSON, SARAH LAWSON, EUGENE LAHO, NORMAN TRAVERSY, DAVID CURTIS, PATRICIA O'CONNOR, GIUSEPPE MARCELLINO, JAMES ROLLO, ANDRE MARTIN, ARMAND DURELLE, GILLES MARTIN, GORDON WAYNE SKINNER, AND PAUL TAYLOR.
(on behalf of Canadians & others injured at work, while working in Canada)

Lead Plaintiffs

and

WorkSafeBC

Also known as the Workers Compensation Board of British Columbia

Defendant

and

Workers' Compensation Appeal Tribunal of BC – WCATBC

Defendant

and

Alberta Workers Compensation Board – AWCB

Defendant

and

Alberta Appeals Commission – AAC

Defendant

and

Saskatchewan Workers Compensation Board – SWCB

Defendant

and

Saskatchewan Board Appeal Tribunal – SBAT

Defendant

and

Workers Compensation Board of Manitoba – WCBM

Defendant

and

The Appeal Commission of Manitoba – ACM

Defendant

and

Workplace Safety & Insurance Board – WSIB
Also known as the Workers Compensation Board of Ontario

Defendant

and

**Workplace Safety & Insurance Appeals Tribunal –
WSIAT**
*Also known as the Workers Compensation Appeals Tribunal
of Ontario*

Defendant

and

**Commission des normes, de l'équité, de la santé et de la
sécurité du travail – CNESST**

Defendant

and

WorkSafeNB
*Also known as the Workers Compensation Board of New
Brunswick*

Defendant

and

**New Brunswick Workers' Compensation Appeals
Tribunal – NBWCAT**

Defendant

and

Workers Compensation Board of PEI – WCBPEI

Defendant

and

**Workers' Compensation Appeal Tribunal of PEI –
WCATPEI**

Defendant

and

Workers Compensation Board of Nova Scotia – WCBNS

Defendant

and

**Workers' Compensation Appeal Tribunal of Nova Scotia
– WCATNS**

Defendant

and

**Workplace Health, Safety and Compensation
Commission – WHSCC**
*Also known as the Workers Compensation Board of
Newfoundland & Labrador*

Defendant

and

**Workplace Health, Safety & Compensation Review
Division – WHSCRD**

Defendant

and

**Yukon Workers' Compensation Health and Safety Board-
YWCHSB**

*Also known as the Workers Compensation Board of Yukon
Territory*

Defendant

and

Yukon Workers' Compensation Appeal Tribunal- YWCAT

Defendant

and

**Northwest Territories Workers' Safety and
Compensation Commission –NWTWSCC**
*Also known as the Workers Compensation Board of
Northwest & Nunavut Territories*

Defendant

and

**NWT and Nunavut Workers' Compensation Appeals
Tribunal-NWTNWCAT**

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: The Workers' Compensation Board, (the "**BC Board**") and the Workers' Compensation Appeal Tribunal of BC ("**BCWCAT**", collectively the "**BC Defendants**")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The BC Defendants deny all allegations in the Notice of Civil Claim (the “**Claim**”) except as expressly admitted herein.

Division 2 – Defendants’ Version of Facts

The BC Board

2. The BC Board is a corporation continued under and charged with the administration of the *Workers Compensation Act*, RSBC 2019, c 1 (“**WCA**”).
3. The *WCA* establishes a comprehensive benefits scheme for workers who sustain workplace injuries or suffer from occupational diseases.
4. Subject to the jurisdiction of the BCWCAT, at all material times, the BC Board has had exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined under the occupational health and safety as well as the compensation provisions in the *WCA*. The BC Board’s actions or decisions are final and conclusive.
5. At all material times, the BC Board as well as its directors, officers or employees have had statutory and common law immunity from claims for damages. No claim may be brought against the BC Board for any act, omission or decision that was within or believed to have been within its jurisdiction.
6. The Plaintiffs’ allegations against the BC Board are with respect to matters within the Board’s exclusive jurisdiction under the *WCA* and are barred by the BC Board’s statutory and common law immunity. The BC Board has at all times performed its role under the *WCA* in good faith.

The BCWCAT

7. The BCWCAT is an appeal tribunal continued under the *WCA*.
8. At all material times, the BCWCAT has had exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined within its jurisdiction under *WCA*. The BCWCAT’s actions or decisions under the *WCA* are final and conclusive.
9. At all materials times, the BCWCAT as well as its tribunal members, adjudicators, registrar or other officers, have had statutory and common law immunity from claims for damages. No claim may be brought against the BCWCAT for anything done or omitted in the performance or intended performance of any duty under the *WCA* or in the exercise or intended exercise of any power under the *WCA*. The BCWCAT has at all times performed its role under the *WCA* in good faith.

Division 3 – Additional Facts

1. N/A

PART 2: RESPONSE TO RELIEF SOUGHT

1. The BC Defendants oppose the granting of the relief sought in Part 2 of the notice of civil claim.

PART 3: LEGAL BASIS

Statutory and Common Law Immunity

1. The Plaintiffs' claims against the BC Defendants are statute barred pursuant to the statutory immunity provisions in the *WCA* and the *Administrative Tribunals Act*, SBC 2004, c 45.
2. The BC Defendants, in their capacity as quasi-judicial decision-maker and/or regulator, are also immune to the Plaintiffs' claims at common law.
3. Allegations of bad faith or *Charter* breaches do not convert what is properly the subject of judicial review into a civil claim.

Judicial Review

4. The Claim challenges the lawfulness of the BC Defendants' policies, decisions, or omissions; alleges the BC Defendants breached the *Canadian Charter of Rights and Freedoms* ("**Charter**") in their administration of the *WCA*; and alleges instances of procedural unfairness. These issues can only be dealt with by the Court on judicial review.
5. A claim for damages, including damages pursuant to the *Charter*, does not convert what is properly the subject of judicial review into a civil action.
6. Prior to seeking judicial review, the Plaintiffs and potential class members must first exhaust the statutory remedies available to them under the *WCA*.

Abuse of Process

7. Starting an action for monetary damages without exhausting the statutorily prescribed remedies or seeking a judicial review is a collateral attack on the jurisdiction of an administrative body and is an abuse of process.
8. Filing duplicative class proceedings in multiple jurisdictions for no legitimate purpose is an abuse of process.

No Breach of Section 2(b) of the Charter

9. The BC Defendants deny that it violated the Plaintiffs' or potential class members' s. 2(b) rights under the *Charter* as alleged or at all.
10. The BC Defendants deny that their actions engaged the Plaintiffs' or potential class members' freedom of thought, belief, opinion or expression.
11. Further and in the alternative, any breach of the Plaintiffs' or potential class members' s. 2(b) rights, which is not admitted but denied, is justified as a reasonable limit as contemplated by s. 1 of the *Charter*.

No Breach of Section 7 of the Charter

12. The BC Defendants deny that they violated the Plaintiffs' or potential class members' s. 7 rights under the *Charter* as alleged or at all.
13. The BC Defendants deny that their actions engaged the Plaintiffs' or potential class members' right to security of the person.
14. Further and in the alternative, the BC Defendants' actions accord with the principles of fundamental justice.
15. Further and in the alternative, any breach of the Plaintiffs' or potential class members' s. 7 rights, which is not admitted but denied, is justified as a reasonable limit as contemplated by s. 1 of the *Charter*.

No Breach of Section 12 of the Charter

16. The BC Defendants deny that they violated the Plaintiffs' or potential class members' s. 12 rights under the *Charter* as alleged or at all.
17. The BC Defendants deny that their actions engaged the Plaintiffs' or potential class members' right not to be subjected to any cruel and unusual treatment or punishment.
18. Further and in the alternative, any breach of the Plaintiffs' or potential class members' s. 12 rights, which is not admitted but denied, is justified as a reasonable limit as contemplated by s. 1 of the *Charter*.

No Breach of Section 14 of the Charter

19. The BC Defendants deny that they violated the Plaintiffs' or potential class members' s. 14 rights under the *Charter* as alleged or at all.
20. The BC Defendants deny that their actions engaged the Plaintiffs' or potential class members' right to an interpreter.

21. Further and in the alternative, the BC Defendants' actions accord with any right the Plaintiffs' or potential class members may have to an interpreter.
22. Further and in the alternative, any breach of the Plaintiffs' or potential class members' s. 14 rights, which is not admitted but denied, is justified as a reasonable limit as contemplated by s. 1 of the *Charter*.

No Breach of Section 15 of the Charter

23. The BC Defendants deny that they violated the Plaintiffs' or potential class members' s. 15 rights under the *Charter* as alleged or at all.
24. The BC Defendants deny that their actions created a distinction or differentiation on the basis of an enumerated or analogous ground as alleged or at all.
25. Further and in the alternative, the BC Defendants deny that their actions resulted in an arbitrary or discriminatory disadvantage to the Plaintiffs or potential class members.
26. Further and in the alternative, any breach of the Plaintiffs' or potential class members' s. 15 rights, which is not admitted but denied, is justified as a reasonable limit as contemplated by s. 1 of the *Charter*.

No Entitlement to Relief Sought

27. In answer to the whole of the Claim, the BC Defendants deny that they have any liability to the Plaintiffs or any potential class member. The Plaintiffs' pleadings disclose no cause of action against the BC Defendants. The Plaintiffs seek remedies that are not available in law or equity against the BC Defendants.
28. The BC Defendants specifically deny that any of their conduct warrants an award of punitive, aggravated, or exemplary damages to the Plaintiffs or any of the potential class members.
29. *Charter* damages are not a just and appropriate remedy in these circumstances. There are administrative law remedies potentially available to the Plaintiffs. Awarding *Charter* damages against the BC Defendants would undermine the principles of good governance.
30. If the Plaintiffs or any potential class member has sustained damages as alleged in the Claim, or at all, which is not admitted but expressly denied, such damages are excessive, exaggerated, too remote and not recoverable at law or in equity.

Limitation Barred

31. The BC Defendants plead and rely upon the provisions of the *Limitation Act*, SBC 2012, c. 13, and its predecessor legislation.

Class Proceedings

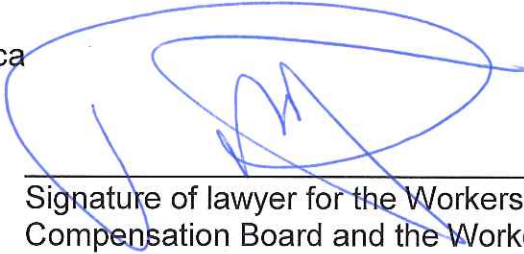
32. In response to paragraphs 184-186 of the Claim, this case is not suitable for a class proceeding. The Claim advances a broad range of issues and is not confined to any specific time period. The Claim raises numerous policies, decisions and exercises of jurisdiction and discretion that lack sufficient commonality to be the basis of a class proceeding.

Defendants' address for service:

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Date: 12/Oct/2021



Signature of lawyer for the Workers'
Compensation Board and the Workers'
Compensation Appeal Tribunal of BC

Reidar Mogerman

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.