



*Court File No. VLC-S-S-1913066*  
NO.  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JANNELLE BUCHANAN

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA, GREGORY ZBITNOFF  
and FRANCA PASSANANTE

DEFENDANT

### **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 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 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

### **Part 1: STATEMENT OF FACTS**

#### **I. OVERVIEW**

1. At all material times, the plaintiff was a Canadian Border Services Agency (“CBSA”) officer. This action concerns actionable torts committed by employees of the CBSA against the plaintiff.

#### **II. THE PARTIES**

2. The plaintiff Janelle Buchanan was at all material times a Canadian Border Services Agency officer. The plaintiff resides in British Columbia and has an address for service at 210-2438 Marine Drive, West Vancouver, BC V7V 1L2.
3. The defendant the Attorney General of Canada represents the Crown and CBSA in this action under 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

and vicarious liability of the CBSA and individuals who were at all material times Crown employees, agents and servants.

4. The defendant Gregory Zbitnoff is a “professional standards investigator” employed by the CBSA.
5. The defendant Franca Passanante is a “professional standards investigator” employed by the CBSA.

### **III. INTRODUCTION**

6. From January 2015 to 2017, the plaintiff was employed as a firearms instructor at the CBSA’s range in Chilliwack. The plaintiff was a member of the Customs and Immigration Union (“CIU”).
7. The plaintiff and other employees of the CBSA witnessed one CBSA employee (the “Employee”) acting inappropriately around and towards female employees. Although the Employee’s behaviour was plain to see, the CBSA took no steps to curtail the conduct.
8. Some examples of the Employee’s conduct included: offering to put a rag under the noses of women employees and asking “Does this rag smell like chloroform?”; touching women employees while in close quarters; targeting young women students on their arrival at the range, and ensuring that he would be their instructor for the day; lying on top of women students when they were in prone position at the range; simulating masturbation around female employees; and inviting female candidates to his residence on the weekends to practice the prone position naked on his couch. As part of his sexualized behaviour towards young, female employees, the Employee would often refuse to call a stage fail when the shooter was the young female.
9. At various times between 2011 and 2016, employees of the CBSA, individually, would ask management employees to intervene. Management employees dissuaded them from making formal complaints, on the basis that outside managers

would come in and “management’s hands would be tied”. The implication was that the problem would not be solved by making a formal complaint.

10. Management also disbelieved the complaints, treating the matter not as an issue of sexual harassment but rather as interpersonal disputes.
11. The Employee’s behaviour, combined with management’s inaction, led to an unpleasant, intolerable and toxic work environment. Management’s action validated the Employee’s conduct and gave him permission to continue.
12. In the spring of 2015, the plaintiff was on overtime on a Saturday to assist with Annual Qualifications; the day before she had offered to cook a barbecue for staff so they could all have lunch together. While the plaintiff was cooking, the Employee came up behind her, grabbed her hips thrusting into her buttocks area and whispered in her ear a sexualized reference to her cooking and him being a single man.
13. In late October 2016, the plaintiff made a formal complaint of sexual harassment and bullying against the Employee. The plaintiff was one of several employees who made formal complaints.
14. In or around January 2017, the CBSA began a formal investigation of the Employee’s conduct, which included interviewing the plaintiff.
15. In or around the fall of 2017, the CBSA upheld the majority of the complaints against the Employee. The CBSA, in particular, found that the Employee sexually harassed and assaulted the plaintiff.
16. On November 2, 2017, the CBSA dismissed the Employee.
17. The Employee has grieved the dismissal and is seeking reinstatement. The CIU is supporting the Employee’s grievance and seeking the Employee’s reinstatement.

#### **IV. RETALIATION**

18. After the plaintiff and other employees made their complaints regarding the Employee, the Employee retaliated by initiating complaints against the plaintiff and the other employees. Rather than seeing the Employee's complaints as retaliation, the CBSA decided to investigate.
19. In November 2017, management of the CBSA told the plaintiff that the CBSA was proceeding to investigate complaints the Employee had made about her, and that she would be interviewed as a respondent. Her interview was scheduled for November 17, 2017 at Chilliwack. By this time, the plaintiff no longer worked at Chilliwack.
20. On November 9, 2017, the CBSA made arrangements for the plaintiff to attend the interview in a CBSA vehicle. This meant that the plaintiff would be required to be in uniform and be armed with her firearm. The plaintiff commented to a colleague, in a personal and private text, that because she was coming to Chilliwack in a CBSA vehicle, she would be "gunned up" when she came to the interview.
21. On November 14, 2017, the plaintiff told the CBSA that she would prefer to drive her own vehicle to the interview because she may wish to go home after the interview. The result was that the plaintiff would not be in uniform and would not be required to be armed.
22. On November 17, 2017, the plaintiff arrived for her interview. She was dressed in civilian clothing comprising a t-shirt, an unbuttoned collared shirt and tight-fitting, athletic leggings.
23. Before the plaintiff's arrival, the individual defendants knew that:
  - (a) the plaintiff had not made any threat against the CBSA; and
  - (b) the plaintiff was not armed.

24. Upon arrival, the plaintiff was detained by the individual defendants and accused of having made a threat against the CBSA. The plaintiff was ignored when she tried to explain she was neither armed nor a threat.
25. The accusation of making a threat against the CBSA was false, and the individual defendants knew in advance that the plaintiff had not made a threat.
26. The defendant Zbitnoff demanded the plaintiff's wallet, keys and phone. The individual defendants told her to face the wall, place her hands on the wall and spread her feet.
27. Despite the fact that it was plainly visible that the plaintiff was not armed, the defendant Passanante conducted a body search of the plaintiff by touching her all over her body, including her chest and groin area.
28. The detention of the plaintiff constituted a wrongful arrest; the seizure of the plaintiff's personal items was a wrongful seizure and the subsequent search of the plaintiff constituted an assault.
29. The wrongful detention of the plaintiff, the seizure of her personal items and the assault were deliberate tactics by the individual defendants to cause distress to the plaintiff and gain a psychological advantage in the interrogation.
30. The plaintiff suffered shock and could barely breathe. She felt degraded and humiliated.
31. Particulars of the interrogation included:
  - (a) the plaintiff was not told of the allegations against her in advance, so could not prepare;
  - (b) during the interrogation itself, the individual defendants did not make clear to the plaintiff what allegations the Employee made against her;
  - (c) the plaintiff was blindsided by the demands made of her during the interrogation;

- (d) the individual defendants told the plaintiff that attendance was mandatory and she could not leave the interrogation once it started;
- (e) the individual defendants told the plaintiff that a CIU representative could be present, but only as an observer;
- (f) the individual defendants told the plaintiff that the CIU representative could not intervene and if the CIU representative spoke at all, she would be required to leave the room;
- (g) the interrogation was recorded;
- (h) before the tape recording commenced, the defendant Zbitnoff told the plaintiff that if he did not think she was providing “full candour”, he could have her security clearance removed, which would mean the plaintiff would not have a job;
- (i) the defendant Zbitnoff gave the plaintiff the impression that he was the decision maker about whether she could remain employed and that the plaintiff had to convince him she was telling the truth;
- (j) the individual defendants refused to allow breaks or stop the interrogation when the plaintiff became upset, rather the interrogation intensified;
- (k) the individual defendants made false statements to the plaintiff demanded that the plaintiff admit the false statements;
- (l) The interrogation was abusive and not in keeping with the standard interrogation techniques employed by the CBSA when interrogating possible drug smugglers, let alone conducting an employee interview;
- (m) the interrogation was not a fact-finding exercise but was solely seeking admissions that would be harmful to the plaintiff; and
- (n) the interrogation was designed to humiliate and intimidate the plaintiff.

32. Throughout the interrogation, the plaintiff was accused of lying. The defendant Zbitnoff told the plaintiff that “everyone in the office agreed that she was lying”. Such statement was false.
33. The plaintiff felt pressured into admitting facts in an effort to save her security clearance.
34. During the interrogation, the defendant Passanante seized the plaintiff’s personal cellphone. The defendant Passanante then read the plaintiff’s personal texts and emails.
35. The plaintiff left the interrogation traumatized and depressed. She has faced reprisal, backlash and re-victimization for having complained of sexual harassment.
36. The plaintiff went on leave and, in March 2019, resigned from the CBSA.

**V. INTENTIONAL INFLICTION OF MENTAL SUFFERING**

37. The individual defendants are experienced investigators, whose sole job is to investigate allegations of wrongdoing.
38. At all material times, the individual defendants acted in concert.
39. The conduct of the individual defendants during the interrogation, including the conduct set out in paragraphs 18-34 above, was deliberate, flagrant and outrageous.
40. The conduct of the individual defendants was calculated to harm the plaintiff.
41. The conduct of the individual defendants caused the plaintiff to suffer a visible and provable illness.

**VI. INVASION OF PRIVACY**

42. As set out in paragraphs 26 and 34 above, the individual defendants breached the privacy of the plaintiff by seizing her personal cellphone and reviewing private text messages.



43. The plaintiffs had a reasonable expectation of privacy in the contents of her personal cellphone.

## **VII. FALSE IMPRISONMENT**

44. As set out in paragraph 24, 26 and 27 above, the detention of the plaintiff constituted a false imprisonment, particulars of which include the following:

(a) the plaintiff was totally deprived of her liberty;

(b) the deprivation was against her will; and

(c) the deprivation was caused by the individual defendants.

## **VIII. ASSAULT**

45. As set out in paragraph 27 above, the conduct of the defendant Passanante towards the plaintiff, with the support of the defendant Zbitnoff, constitutes a battery.

## **IX. VICARIOUS LIABILITY**

46. The individual defendants purported to act in furtherance of their duties as professional standards investigators. Consequently, the CBSA is vicariously liable for their conduct.

## **X. INJURY AND DAMAGES**

47. As a consequence of the conduct of the individual defendants, as set out in paragraphs 18-34 above, the plaintiff has suffered mental and emotional distress, nervous shock, stress, anxiety, depression, diminished self-worth, diminished ability to concentrate, repeated and ongoing nightmares, difficulty in coping with emotional stress, emotional anguish, insomnia, loss and damage.

48. The emotional distress caused by the individual defendants is over and above the normal distress resulting from being the subject of an investigation, entitling the plaintiff to aggravated damages.

49. The individual defendants' conduct was purposeful and deliberate, and calculated to cause the plaintiff damage and distress. Their conduct was high-handed, malicious and reprehensible, entitling the plaintiff to punitive damages.

## **Part 2: RELIEF SOUGHT**

The plaintiff claims:

1. general and special damages;
2. aggravated and punitive damages;
3. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 76;
4. costs; and
5. any such further relief which to this Honourable Court may seem just.

## **Part 3: LEGAL BASIS**

### **I. VICARIOUS LIABILITY**

1. The Crown is vicariously liable for torts committed by 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.

### **II. INTENTIONAL INFLICTION OF MENTAL SUFFERING**

2. The tort of intentional infliction of mental distress has three elements:
  - (a) the defendant's conduct must have been calculated to harm the plaintiff;
  - (b) the conduct must have been flagrant and outrageous; and
  - (c) the conduct caused the plaintiff to suffer a visible and provable illness.
3. The conduct of the individual defendants was calculated to harm the plaintiff, did so harm her, and caused her mental and emotional distress, stress, anxiety, loss and damage.

### **III. INVASION OF PRIVACY**

4. The tort of invasion of privacy has the following elements:
  - (a) the defendant must willfully
  - (b) and without claim of right
  - (c) violate the privacy of another.
5. The plaintiff had a reasonable expectation of privacy in the contents of her personal cellphone, which the individual defendants violated willfully and without claim of right.
6. The plaintiff pleads and relies on the *Privacy Act*, R.S.B.C. 1996, c, 373.

### **IV. FALSE IMPRISONMENT**

7. the tort of false imprisonment contains the following elements:
  - (a) the plaintiff totally deprived of her liberty;
  - (b) the deprivation was against her will; and
  - (c) the deprivation was caused by the individual defendants.
8. The individual defendants' detention of the plaintiff constituted a false imprisonment.

### **V. ASSAULT**

9. The tort of battery requires proof of touching without consent.
10. When the defendant Passanante conducted a body search of the plaintiff, she touched the plaintiff without her consent.

**VI. AGGRAVATED AND PUNITIVE DAMAGES**

11. The emotional distress caused by the individual defendants is over and above the normal distress resulting from being the subject of an investigation, entitling the plaintiff to aggravated damages.

12. The individual defendants' conduct was purposeful and deliberate, and calculated to cause the plaintiff damage and distress. Their conduct was high-handed, malicious and reprehensible, entitling the plaintiff to punitive damages.

Plaintiff's address for service: Foy Allison Law  
210-2438 Marine Drive  
West Vancouver, BC V7V 1L2  
Attention: Gwendoline Allison

E-mail address for service: gwendoline.allison@foyallison.com

Place of trial: Vancouver, British Columbia

The address of the registry is: Law Courts  
800 Smithe Street  
Vancouver, British Columbia V6Z 2E1

Dated: November 18, 2019



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Signature of lawyer for the plaintiff  
Gwendoline Allison

Rule 7-1(1) of the Supreme Court 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

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

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The nature of the claim is an action for personal injury arising from the commission of intentional torts.

### **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 and 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 4: THIS CLAIM INVOLVES**

a class action

maritime law

aboriginal law

construction law

conflicts of law

none of the above

do not know