

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

JAN 30 2015



S=150827

No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MONICA WINTER

PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF BRITISH COLUMBIA and  
THE BRITISH COLUMBIA COLLEGE OF TEACHERS

DEFENDANTS

---

NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*, RSBC 1996, c.50

---

**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 services, 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**

#### *The Plaintiff*

1. The Plaintiff is an employee of the Defendant Government of British Columbia where she has been employed since January 9, 2012. The Plaintiff is presently the Director of Certification for the Ministry of Education, Teacher Regulation Branch and from January 9, 2012 to January 28, 2014, was Director of Finance and Operations.

2. The Plaintiff was an employee of the Defendant, British Columbia College of Teachers from November 16, 2006 until her termination on January 6, 2012. The Plaintiff was Director of Finance and Operations.

#### *The Defendant Government*

3. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia, is the provincial government of British Columbia (the "Government"), with an address for service herein at 1001 Douglas Street, Box 928 Stn Provincial Government, Victoria, BC, V8W 9J7

*The Defendant College*

4. The Defendant, British Columbia College of Teachers (the “College”), was the regulatory body for the teaching profession in British Columbia, and has an address for service herein at 1001 Douglas Street, Box 928 Stn Provincial Government, Victoria, BC, V8W 9J7.

*The Contract of Employment*

5. The Plaintiff was hired on or about November 16, 2006. It was a term of the Plaintiff’s employment that the Defendant College could not terminate her without just cause unless it paid her severance pay or provided reasonable notice.

6. The Plaintiff’s terms and conditions of employment were set out in an employment agreement signed by the Defendant College and the Plaintiff on or about July 22, 2011 (the “College Employment Contract”).

7. Section 1.02 (d) of the College Employment Contract provided that the Registrar of the College (the “Registrar”) could only terminate the Plaintiff without cause if the employee was given reasonable notice in advance of the possible termination and had been provided with and opportunity to make representations before a decision was made (“Reasonable Notice”).

8. Section 1.02(e) of the College Employment Contract provided if the Registrar terminated the Plaintiff without cause the Defendant College would pay an all-inclusive lump sum in lieu of notice comprised of:

- a) one month salary and the College costs of benefits (including pension contributions) provided to the employee for each year of service; and
- b) one additional month of salary and benefits (including pension contributions) for each year the Plaintiff was over 50 years of age (the “Severance Payment”).

9. The Plaintiff relies on all provisions of the College Employment Contract.

*The Termination*

10. The Plaintiff performed her job duties diligently and faithfully during her employment with the Defendant College.

11. On November 14, 2011, the Defendant Government passed the *Teacher's Act* 2011 SBC c. 19 (the "*Teacher's Act*"), which, among other things, dissolved the College effective January 9, 2012.
12. On December 1, 2011, the Defendant Government offered the Plaintiff employment with the Ministry of Education effective January 9, 2012 in a written offer (the "Ministry Employment Contract").
13. The Ministry Employment Contract was significantly inferior to College Employment Contract and offered less salary, benefits, and vacation pay to the Plaintiff.
14. The Ministry Employment Contract required the Plaintiff to accept the offer by December 14, 2011 and to remain an employee of the College until January 9, 2012.
15. The Plaintiff was not provided with Reasonable Notice nor any opportunity to discuss or negotiate changes to the Ministry Employment Contract.
16. The Plaintiff was told by the Defendant College and the Defendant Government that the College Employment Contracts would be void on January 9, 2012 and the provisions, including the Severance Payment, would not be honoured.
17. The Plaintiff relied on the representations of the Defendants that the Severance Payment would not be paid and, faced with the imminent loss of employment and income, signed the Ministry Employment Contract on December 7, 2011.
18. The Plaintiff was terminated by the Defendant College without cause on January 6, 2012.
19. The Defendant College did not discuss with the Plaintiff the reasons for her termination or alternatives as required by the College Employment Contract or provide Reasonable Notice.
20. The Plaintiff was not paid the Severance Payment by either of the Defendants.
21. The Plaintiff did not expressly or implicitly waive or abandon any terms, conditions, rights, or entitlements in the College Employment Contract by accepting the Ministry Employment Contract, including the Severance Payment.

22. Pursuant to the College Employment Contract, the Severance Payment due to the Plaintiff was approximately 32.5 weeks of salary, plus benefits and pension contributions.

*The Proposed Class*

23. The Plaintiff's claim is brought pursuant to the *Class Proceedings Act* and is brought on behalf of former employees of the College, wherever they reside, who had their employment terminated without cause in or around January 2012 by the dissolutions of the College or such other class definition as this court may ultimately decide on the motion for certification (the "Proposed Class").

24. The members of the Proposed Class:

- a) have substantially similar employment contracts to the College Employment Contract;
- b) were terminated without cause in the same or similar manner as the Plaintiff on the dissolution of the College; and
- c) suffered the same type of loss, denial of the Severance Payment under their respective employment contracts, although the quantum may differ.

**Part 2: RELIEF SOUGHT**

1. The Plaintiff on her own behalf and on behalf of the Proposed Class seeks the following relief:

- i. an order certifying this action as a class proceeding and appointing the Plaintiff as representative Plaintiff;
- ii. an order finding that the Defendant College breached the employment contracts of the Class Members by terminating them without cause;
- iii. an order that the Plaintiff and all other Class Members are entitled to payment of severance pursuant to their employment contracts;
- iv. pre-judgment interest and post-judgment interest according to the *Court Order Interest Act*, RSBC 1996, c. 79; and

- v. such further and other relief this Honourable Court may deem just and equitable in all of the circumstances.

**Part 3: LEGAL BASIS**

1. The Plaintiff was contractually entitled to receive the Severance Payment at the time she was terminated without cause by the Defendant College.
2. The Defendant College breached the College Employment Contract by not paying the Severance Payment to the Plaintiff.
3. The Defendant College breached the College Employment Contract by not providing Reasonable Notice to the Plaintiff.
4. The Plaintiff did not waive or abandon any rights or benefits she had under the College Employment Contract by accepting the Ministry Employment Contract.
5. The Ministry Employment Contract provided no consideration for the rights under the College Employment Contract that the Defendants refused to recognize, including the Severance Payment.
6. The Defendant Government is liable for debts and obligations of the Defendant College, including any amounts owing to the Plaintiff herein pursuant to the *Teacher's Act*, section 87(1)(d) which provides: "all of the debts, liabilities, and obligations of the College of Teachers are transferred to and assumed by the government."
7. Further, the College Employment Contract is deemed to be a contract between the Plaintiff and the Defendant Government pursuant to the *Teacher's Act* section 87(4) which provides: "On and after the date on which the former Act is repealed, a reference to the council of the College of Teachers or to the College of Teachers in any commercial paper, contract, lease, licence, permit or other instrument or document is deemed to be a reference to the government".
8. The Defendant Government is liable to the Plaintiff for the Severance Payment as a debt, or alternatively as damages for breach of contract.

9. Costs are payable under the *British Columbia Supreme Court Civil Rules*, B.C. Reg. 168/2009.
10. Interest is payable pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.


Plaintiff's address for service:

**Victory Square Law Office LLP**  
500 - 128 West Pender Street  
Vancouver, BC V6B 1R8  
**Attn. John Rogers, Q.C.**  
Fax number address for service: 604-684-8427

Place of trial: Vancouver, British Columbia

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

Date: January 30, 2015

  
\_\_\_\_\_  
Signature of lawyer for the Plaintiff  
John Rogers, Q.C.

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

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

A claim for damages for a breach of contract.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A dispute concerning:  an employment relationship

### **Part 3: THIS CLAIM INVOLVES**

a class action

### **Part 4:**

*The Teacher's Act*, 2011 SBC, c. 11.

*The Class Proceedings Act*, RSBC 1996, c. 50