

MAR 22 2023

In the Supreme Court of British Columbia

Between



**Charleen Miller on behalf of herself and the siblings of
Amos Miller**

Plaintiff

and

**His Majesty the King in Right of the Province of
British Columbia**

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) 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

- (c) 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
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

23MAR23 2305149 RISS 200.0
21422 5232126

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(s),

- (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 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.

PART 1: STATEMENT OF FACTS

Overview

1. Amos Miller ("**Amos**") was a member of West Moberly First Nations and a man of Dunne-za ancestry.
2. Amos died in a motel fire that occurred on July 8, 2020 at the Econo Lodge Hotel, located at 910 Victoria Street, Prince George, British Columbia (the "**Motel**"). At least two other people also died in the fire. More were severely injured.
3. Leonard Hay, another guest of the Motel at the time of the fire, has started a proposed class proceeding in relation to the fire: *Leonard Hay v Mundi 910 Victoria Enterprises Ltd. et al*, PRG-S-S-2058198 (the "**Class Action**"). The Class Action seeks the recovery of damages for wrongful death, personal injury, loss of property

and economic losses on behalf of registered guests and other individuals who were present at the Motel at the time of the fire.

4. Prior to his death, Amos's siblings were dependent on him for support. Under the *Family Compensation Act*, RSBC 1996, c 126, Amos's siblings are prohibited from bringing an action to recover the pecuniary loss they have suffered as a result of his death.
5. The plaintiff, Charleen Miller ("**Charleen**"), is Amos's sister. In this action, she alleges that s. 3(1) of the *Family Compensation Act* discriminates against her on the basis of race, family status and ethnic origin and is contrary to s. 15 of the *Charter*.
6. Charleen brings this action as a representative proceeding pursuant to Rule 20-3(1) on behalf of herself and Amos' siblings.
7. The defendant is His Majesty the King in right of the Province of British Columbia (the "**Province**").

Amos Miller

8. Amos was Dunne-za and a member of West Moberly First Nations. He was born on or around November 27, 1972 and was 47 years old at the time of his death. He grew up at Summit Lake, BC as the youngest in a large and close family.
9. Amos' parents predeceased him. His father died in 1989 and his mother died in 2011.
10. He is survived by his siblings April Bennett, Debbie Miller, Charleen Miller, Bruce Miller, Gord Miller ("**Gord**"), Brenda Miller, Peggy Miller, Chad Miller, Wanda Miller, and Albert Miller ("**Albert**"). Amos had no children or spouse at the time of his death.
11. After high school, Amos became a carpenter. He lived with his brother Albert in Vancouver for period of time while working in the construction industry.

12. Approximately five years before his death, Amos moved back to northern BC.
13. Amos worked as a carpenter for West Moberly First Nations after moving back to northern BC.
14. Amos also developed a strong relationship with his brothers through shared hunting trips.
15. In the years before his death, Amos generally lived with Gord in Prince George. Amos had his own room and key at Gord's house and came and went as he pleased.
16. At times, he also stayed with his sister Charleen or with his brother Albert.
17. At other times, he stayed for short periods of time in a motel on his own.
18. At the time of his death, Amos was working intermittently for two weeks at a time as a carpenter in Williams Lake and staying with family when he was not working.
19. Amos provided care and assistance to his siblings in a number of ways, including:
 - (a) financial assistance;
 - (b) handyman or remodeling work;
 - (c) cooking and barbecuing;
 - (d) yard work;
 - (e) cleaning;
 - (f) collecting firewood;
 - (g) hunting; and
 - (h) purchasing food.

20. In particular, Amos provided significant assistance to Gord after Gord became ill with cancer. Amos left his job as a carpenter at this time and spent approximately one year caring for Gord as well as assisting him in remodeling his home. He also collected firewood and cooked and cleaned for Gord during this time.
21. At the time of his death, Amos was continuing to care for Gord as well as helping Gord with the remodeling of his home. The remodeling work is not yet complete.
22. At the time of his death, Amos was planning to help Charleen remodel her bathroom. On the day of his death, he was planning to meet Charleen to help her remodel her bathroom, but died in the Fire before he could do so.
23. Amos was a devoted sibling, uncle, nephew and cousin. As a result of his death, Charleen and her siblings and extended family have suffered loss, damage and expense including:
 - (a) loss of financial support;
 - (b) loss of valuable services;
 - (c) loss of care, guidance, affection and companionship;
 - (d) funeral and burial expenses;
 - (e) such further and other particulars of damages as may be proven at the trial of this action.

Dunne-za Family Structure

24. Amos was a member of West Moberly First Nations ("West Moberly"), a "band" as defined in the *Indian Act*, RSC 1985, c I-5, and an "Aboriginal people" within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*. West Moberly is one of the successor First Nations to the Hudson's Hope Band of Indians who adhered to Treaty No. 8 in 1914.

25. West Moberly did not exist before contact with Europeans. West Moberly ancestors were part of a larger Dunne-za community that lived along and were connected by the Peace River and its tributaries. Modern day West Moberly also includes descendants of Cree and Saulteau peoples that migrated and settled in Dunne-za lands several centuries ago.
26. Since time immemorial, Dunne-za have travelled through their territory in small family groups.
27. Traditionally, and presently, West Moberly members and their Dunne-za ancestors relied on relationships of interdependency or dependency between siblings. Siblings share resources and support one another. This sharing and support includes:
 - (a) hunting;
 - (b) trapping;
 - (c) fishing;
 - (d) gathering of berries and other resources;
 - (e) sharing of game and gathered resources;
 - (f) childrearing;
 - (g) gathering and sharing of firewood and shelter materials; and
 - (h) in-kind services according to individual strengths and talents.
28. In modern times, these relationships of interdependence or dependence also include financial support and assistance.
29. A person's obligation to support and share resources with siblings is a Dunne-za cultural value, both historically and presently.

30. Through residential schools and other colonial policies of assimilation, such as child welfare policies, British Columbia and other Canadian governments and religious institutions sought to assimilate Dunne-za families and their ancestors to fit within an Anglocentric conception of family that focused on the nuclear family.
31. Despite these colonial policies of assimilation, Dunne-za families, including the Miller family of which Amos was a part, continue to involve familial relationships, including sibling relationships, of support and dependency outside of the nuclear family.
32. Dunne-za families traditionally, and continuing to present, are more likely to involve sibling relations of support and dependency than British Columbians of English settler heritage.
33. Indigenous peoples, and Dunne-za in particular, are an historically disadvantaged group. They continue to suffer historical disadvantage, including economic disadvantage and social and political exclusion, as a result of colonial policies of assimilation and discrimination.

The Family Compensation Act

34. The *Family Compensation Act* was first enacted in 1897 as the *Death by Accident Act*, RSBC 1897 c 58. The legislation was modelled after Britain's *Fatal Accidents Act*, 1846 9 & 10 Vict. c. 93, known as *Lord Campbell's Act*, and did not materially differ from the English statute.
35. *Lord Campbell's Act* recognized a right of action for a deceased person's personal representative on behalf of the deceased's spouse, children or parents. The right of action allowed a spouse, children and parents of the deceased to recover pecuniary loss suffered by these family members as a result of the deceased's death.

36. Section 3(1) of the *Family Compensation Act*, as it was first enacted as s. 4 of the *Death by Accident Act*, and continuing to present, similarly limits the potential recovery of pecuniary loss to a deceased's spouse, children or parents.
37. At the time *Lord Campbell's Act* was enacted, it reflected the cultural values of English society at that time. These cultural values privileged the nuclear family relationships over sibling-dependent family relationships.
38. As a result of the limitations in s. 3(1) of the *Family Compensation Act*, the *Family Compensation Act*, Dunne-za are more likely to be unable to recover pecuniary loss suffered as a result of the death of a family member upon whom they were dependent than British Columbians of English settler heritage.

PART 2: RELIEF SOUGHT

39. The plaintiff seeks the following relief:
 - (a) a declaration that s. 3(1) of the *Family Compensation Act* unjustifiably infringes s. 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Constitution Act, 1982*") and that the words "or Dunne-za siblings" or "or Indigenous siblings" should be read into the section after the word "child"; or
 - (b) in the alternative, a declaration that s. 3(1) of the *Family Compensation Act* unjustifiably infringes s. 15 of the *Charter* and is of no force and effect;
 - (c) damages pursuant to s. 24(1) of the *Charter*;
 - (d) costs, including special costs; and
 - (e) such further and other relief as this Honorable Court deems just.

PART 3: LEGAL BASIS

Section 15 of the Charter

40. Section 15 of the *Charter* states as follows:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

41. Section 3(1) of the *Family Compensation Act*, on its face and/or in its effects, infringes the right to equality under s. 15(1) of the *Charter*.

42. On its face, s. 3(1) creates a distinction based on family status that discriminates against persons who are part of sibling-dependent families by providing benefits to those who are part of nuclear families while denying benefits to those who are part of sibling-dependent families.

43. Section 3(1) also creates a distinction based on race, national or ethnic origin and Indigenous identity, including Indigenous ancestry, family structure, social structure and culture.

44. The *Family Compensation Act* and its predecessors, the *Death by Accident Act* and the *Lord Campbell's Act*, on their face discriminate against Indigenous people, and Dunne-za in particular, by providing benefits to individuals who are part of an Anglocentric cultural conception of family while denying benefits to individuals who are part of a Dunne-za cultural conception of family.

45. Further, or in the alternative, s. 3(1) of the *Family Compensation Act* has a disproportionate impact on Indigenous people, and Dunne-za in particular, as they are more likely to be excluded as eligible beneficiaries of a wrongful death claim

that otherwise could have been pursued under the *Family Compensation Act* as compared with British Columbians of English settler heritage.

46. This disproportionate impact denies benefits to Indigenous people, and Dunne-za in particular, in a manner that has the effect of reinforcing, perpetuating and/or exacerbating the historical disadvantage experienced by Indigenous peoples, and Dunne-za in particular, including economic disadvantage and social and political exclusion.

Declaration on the Rights of Indigenous Peoples Act

47. Section 3(1) of the *Family Compensation Act* is inconsistent with British Columbia's obligations under the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, which requires the Province to ensure the laws of British Columbia conform with the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP").
48. Section 3(1) of the *Family Compensation Act* is inconsistent with Articles 20, 21, 33, and 35 of UNDRIP, as incorporated into the *Declaration on the Rights of Indigenous Peoples Act*. These articles provide that Indigenous peoples have the right:
- (a) to maintain and develop their own social systems and be secure in the enjoyment of their own means of subsistence;
 - (b) to the improvement of their economic and social conditions without discrimination;
 - (c) to determine their own identity and determine the structure and selection of members within their own institutions; and
 - (d) to determine the responsibilities of individuals to their communities.
49. Article 21 of UNDRIP, as incorporated into the *Declaration on the Rights of Indigenous Peoples Act*, requires the Province to take effective measures, and

where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

50. Section 15 of the *Charter* requires the Province's laws to be consistent with UNDRIP and not interfere with Indigenous family structures and social systems.

Section 1 of the Charter

51. The infringement of s. 15 cannot be justified under s. 1 of the *Charter*, the burden of proof of which lies on the Province.

Remedy

52. The plaintiff seeks remedies under s. 52(1) of the *Constitution Act, 1982*.
53. Pursuant to s. 52(1), the Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.
54. The remedies available under s. 52(1) include reading in words into the statute or striking down the impugned provision in its entirety.
55. Reading in the words "or Dunne-za siblings" or "or Indigenous siblings" is appropriate in order to minimize interference with the legitimate legislative purpose of the *Family Compensation Act* generally, which is to ensure that close familial dependents of wrongfully deceased persons have a right of action to sue the wrongdoers for their resulting pecuniary losses.
56. In the alternative, the appropriate remedy is to strike down s. 3(1) of the *Family Compensation Act* in its entirety.
57. Amos's siblings are seeking compensation under the *Family Compensation Act* in relation to Amos' death as part of the class proceeding in *Hay v. Mundi et al*, PRG-S-S-2058198, or alternatively, through a separate action against the defendants Mundi 910 Victoria Enterprises Ltd., Choice Hotels Canada Inc., City of Prince George and AllPoints Fire Protection Ltd.

58. In the event that compensation for Amos's siblings in relation to his death is unavailable in these actions, the plaintiff, on behalf of herself and her siblings, seeks *Charter* damages in this action as against the defendant.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 22/Mar/2023



Signature of lawyer
for plaintiff

Jamie Thornback

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

CONCISE SUMMARY OF NATURE OF CLAIM:

Charter claim alleging that s. 3(1) of the *Family Compensation Act* discriminates against the plaintiff on the basis of race, family status and ethnic origin.

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

THIS CLAIM INVOLVES:

- ☐ a class action

- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

1. *Constitution Act*, 1982
2. *Family Compensation Act*, RSBC 1996, c 126
3. *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44