



Court File No. **KAM-S-S-60188**
Court File No. _____
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHELLY LEWIS

PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL),
ATTORNEY GENERAL OF CANADA AND DUNCAN MCDONALD

DEFENDANTS

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

- (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(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 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.

CLAIMS OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, Shelly Lewis, is a drywaller and currently has an address for service at 620 Battle Street, Kamloops, British Columbia, V2C 2M3.
2. The defendant, Her Majesty the Queen in Right of the Province of British Columbia (Minister of Public Safety and Solicitor General) (“HMQ”) is the provincial government of British Columbia, properly served by registered mail to the Deputy Attorney General at P.O. Box 9290, Stn Prov Govt, Victoria, British Columbia, V8W 9J7.
3. The defendant, Attorney General of Canada represents the Federal Government of Canada and is properly served by way of service on the Deputy Attorney General of Canada through its regional office in British Columbia at 99 – 840 Howe Street, Vancouver, British Columbia, V6Z 2S9 (“AG Canada”).
4. The defendant, Duncan McDonald, was at all material times a regular member of the Royal Canadian Mounted Police (“Cst. McDonald”).
5. At all material times, HMQ was responsible for the actions of provincial RCMP members and specifically Cst. McDonald.
6. At all material times, AG Canada was responsible for the actions of provincial RCMP members and Cst. McDonald as well as jail guards at the RCMP detachment.

The Unlawful Acts of the RCMP

7. On December 6, 2020, Cst. McDonald was acting in his capacity as a constable with the RCMP.

8. After arriving at Shelly Lewis' residence, an unknown RCMP member or members searched parts of the residence and garage without a warrant.
9. About 20 minutes after most police officers had left Shelly Lewis' residence she was standing on her front lawn when Cst. McDonald demanded that she stop moving. Shelly Lewis complied fully with Cst. McDonald's verbal direction.
10. While Shelly Lewis was immobile and compliant with Cst. McDonald's instructions, Cst. McDonald ran at Shelly Lewis and tackled her from behind and proceeded to arrest her without a warrant or any grounds (the "Unlawful Arrest").
11. During the Unlawful Arrest, Cst. McDonald slammed Shelly Lewis to the ground which resulted in personal injuries and a fractured arm (the "Excessive Force").
12. Shelly Lewis was arrested and taken down to the Burns Lake RCMP detachment and held in custody for a period of time (the "False Imprisonment").
13. While in custody, Shelly Lewis was humiliated during a strip search and required to and assisted in removing her wire bra in the presence of male officers at the detachment (the "Strip Search").
14. Shelly Lewis complained of being in pain and needing medical attention while she was held in city cells in Burns Lake but her complaints were ignored and she was not provided with any medical attention after her arrest (the "Refusal to Provide Medical Care").

The Injuries

15. As a result of the Unlawful Arrest, the Excessive Force, the False Imprisonment, the Strip Search and the Refusal to Provide Medical Care (together the "Unlawful Acts"), the plaintiff, Shelly Lewis, has sustained personal injury, loss and expense, all of which have caused and continue to cause the plaintiff pain and suffering, loss of enjoyment of life, inconvenience, loss of income and loss of earning capacity, both past and prospective, and in particular, the plaintiff has sustained:
 - (a) whiplash and;
 - (b) a chipped tooth;
 - (c) headaches and a concussion;
 - (d) a fractured arm;
 - (e) nausea;

- (f) shoulder pain;
 - (g) back pain;
 - (h) chest pain;
 - (i) jaw pain;
 - (j) emotional upset;
 - (k) post-traumatic stress; and
 - (l) such other injuries as counsel may advise.
16. As a consequence of the Unlawful Acts of Cst. McDonald and other RCMP members or jail guards, the plaintiff has sustained certain special damages, loss and expense, particulars of which will be provided as they become available.
17. Further, the plaintiff was a beneficiary under the *Medicare Protection Act*, RSBC 1996 c 286, and the plaintiff has or will receive health care services as defined by the *Health Care Costs Recovery Act*, SBC 2008 c 27 (“HCCRA”).

Part 2: RELIEF SOUGHT

18. The plaintiff claims judgment against the defendants for:
- (a) general damages for pain, suffering, loss of amenities, and loss of enjoyment of life;
 - (b) damages for past lost income and loss of opportunity to earn income;
 - (c) damages for future loss of income and future earning capacity;
 - (d) damages for past and future cost of care;
 - (e) damages for loss of housing capacity;
 - (f) special damages;
 - (g) costs of this action;
 - (h) costs of past and future health care services under the HCCRA;
 - (i) aggravated and punitive damages;;
 - (j) section 24(1) *Charter* damages;
 - (k) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c79; and
 - (l) such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

19. This cause of action arose wholly within the jurisdiction of this Honourable Court.
20. Pursuant to section 11 of the *Police Act*, RSBC 1996, c 367, HMQ is liable for the torts committed by Cst. McDonald and other RCMP members and employees in their capacity as police officer.
21. Pursuant to section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, the AG Canada is liable for the torts of its servants including RCMP members and jail guards.
22. Cst. McDonald committed the torts of assault, battery and false imprisonment when he used excessive force to arrest the plaintiff without reasonable grounds to do so.
23. Cst. McDonald and other RCMP members committed the tort of false imprisonment by detaining the plaintiff at the Burns Lake RCMP detachment without grounds.
24. The plaintiff was humiliated by being required to remove her wire bra in the presence of male officers at the detachment and the plaintiff says the RCMP members committed an intrusion upon seclusion through the strip search.
25. HMQ and AG Canada and their servants have a duty to provide medical attention to detainees and, through their servants, both failed to provide medical attention to the plaintiff when it was called for.
26. Alternatively, if the defendants actions in any of the paragraphs from 22 to 25 above were not intentional, the plaintiff says the defendants were negligent in their actions and caused her harm.
27. The defendants are, therefore, liable to the plaintiff in tort for all damages suffered as a result of Cst. McDonald's unlawful actions.

Cause of Action for *Charter* Damages

28. The plaintiff's section 7 *Charter* rights were breached as a result of Cst. McDonald's Excessive Force and the Refusal to Provide Medical Attention.
29. The plaintiff's section 8 *Charter* rights were breached when her residence was searched and when she was searched incident to her unlawful arrest and subsequently ordered to remove her wire bra in the presence of two male police officers.
30. The plaintiff's section 9 *Charter* rights were breached when she was unlawfully arrested and detained.

31. The plaintiff's claim for *Charter* damages pursuant to section 24 (1) of the *Charter*, for breaches of their sections 7, 8 and 9 *Charter* rights.

Claims for Aggravated and Punitive Damages

32. The plaintiff claims that, considering all of the circumstances, a substantial award for aggravated and punitive damages is also appropriate.

33. The plaintiff pleads the provisions of the:

(a) *Police Act*, RSBC 1996, c 367;

(b) *Court Order Interest Act*, RSBC 1996, c 79; and

(c) *Negligence Act*, RSBC 1996, c 333.

Plaintiff's address for service:

620 Battle Street
Kamloops, British Columbia
V2C 2M3

Fax number address for service: (250) 374-7777

Place of trial: Prince George, British Columbia

The address of the registry is: 455 Columbia Street, Kamloops, British Columbia

Date: May 13, 2021



Daniel McNamee
Counsel for the Plaintiff
Shelly Lewis

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:

The plaintiff claims against an RCMP officer and the provincial government for serious personal injuries sustained as a result of an unlawful arrest and the use of excessive force.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause – police misconduct

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:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above

Part 4: *Police Act*, RSBC 1996, c 367
Court Order Interest Act, RSBC 1996, c 79
Negligence Act, RSBC 1996, c 333.