



No. PRG-S-S-2058198  
Prince George Registry

*In the Supreme Court of British Columbia*

Between:

LEONARD HAY

Plaintiff

and:

MUNDI 910 VICTORIA ENTERPRISES LTD., CHOICE HOTELS CANADA INC., CITY OF PRINCE GEORGE, ALL POINTS FIRE PROTECTION LTD., AZTECH FIRE SAFETY PLANNING & CONSULTING (2015) LTD.

Defendants

**BROUGHT PURSUANT TO THE *CLASS PROCEEDINGS ACT*, RSBC, 1996 C. 50**

**RESPONSE TO CIVIL CLAIM**

**Filed by: City of Prince George**

**Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS**

Division 1 – Defendant’s Response to Facts

1. The facts alleged in no paragraphs of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 1, 2, 5, 6, 7, 15 to 17, 27, 29, 30, 31, 46 to 48.1 and 52 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 3, 4, 8 to 14, 18 to 26, 28, 30, 33 to 45, and 49 to 51 of Part 1 of the notice of civil claim are outside the knowledge of the City.

Division 2 – Defendant’s Version of Facts

1. The City denies each and every allegation of fact contained in the notice of civil claim except where admitted herein.

2. For pleading purposes only, the City adopts the defined terms as set out in the notice of civil claim and makes no admission as to the facts pleaded with those definitions.
3. In response to paragraph 1 of part 1 of the notice of civil claim, the City admits only that a fire broke out at 910 Victoria Street, Prince George, British Columbia.
4. In response to paragraphs 16-17 of part 1 of the amended notice of civil claim, insofar as the City is alleged to be responsible for building and fire inspections, and fire fighting services, which is not admitted but denied, at all material times the City adopted and complied with its applicable policies, procedures, standards and specifications and acted entirely within its statutory discretion.
5. At all material times the City fulfilled any applicable duties and obligations, and acted with prudence and reasonable care, and in accordance with all applicable standards, regulations and requirements.
6. In response to paragraph 27 of part 1 of the amended notice of civil claim, the City did not inspect the motel's fire warning and suppression systems. It reviewed all visually reviewable items in accordance with its policies and procedures regarding same and issued various orders to the property owner, including testing and tagging portable extinguishers and the fire alarm system annually, keeping a particular exit clear, and creating a fire safety plan.
7. In response to paragraph 29 of part 1 of the amended notice of civil claim, the City re-attended for the purposes of conducting a re-inspection order review. The City reasonably relied upon representations from the property owner's representatives and from All Points that a fire safety plan had been prepared and that the testing of the fire alarm system had occurred with the latter done in accordance with CAN/ULC-S536 standards by a qualified independent contractor.
8. In response to paragraph 48.1 of the amended notice of civil claim, the fire on July 8, 2020 developed quickly into a dangerous conflagration that generated large amounts of smoke and put the attending firefighters in immediate harm of injury and death. At all times, the firefighters of the City acted reasonably and prudently in fighting the fire.

### **Division 3 – Additional Facts**

1. Particulars of which counsel for the City will advise as they become known.

#### **Part 2: RESPONSE TO RELIEF SOUGHT**

1. The City consents to the granting of the relief sought in none of the paragraphs of Part 2 of the notice of civil claim.

2. The City opposes the granting of the relief sought in all of the paragraphs of Part 2 of the notice of civil claim.
3. The City takes no position on the granting of the relief sought in paragraphs NONE of Part 2 of the notice of civil claim.

**Part 3: LEGAL BASIS**

1. The notice of civil claim is being defended pre-certification and therefor in relation to the allegations on behalf of the plaintiff only.
2. The plaintiff fails to meet the requisite test for certifying this action as a class proceeding. Further particulars and defences will be raised should the plaintiff bring an application in the within action to have his action certified as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50
3. In response to the whole of the notice of civil claim, if the plaintiff or putative members of the proposed class (the “Plaintiffs”) suffered any injuries, loss, damage, or expense, which is specifically denied, then such loss, damage or expense was not as a result of any act, omission, negligence, negligent advice, breach of duty, breach of contract, breach of warranty or fault on the part of the City, its agents, servants, employees, or sub contractors, nor were any alleged acts or omissions the direct or approximate cause or contributory to the cause of the loss, damage or expense alleged in the notice of civil claim.
4. In the alternative, and in further response to the whole of the notice of civil claim, the City denies that it owed a duty of care to the Plaintiffs, as alleged, or at all.
5. Pursuant to the *Local Government Act*, the City established terms and conditions it considered appropriate to carry out its duties. In further answer to the whole of the amended notice of civil claim, the City adopted, through the *bona fide* exercise of discretion, reasonable policies and procedures in relation to building and fire inspections, and the provision of firefighting services, for which the City is not answerable in law to the Plaintiffs.
6. The City followed such policies and procedures at all material times.
7. The City relies on and pleads the “policy/operation” line of authorities for the basis that it is not liable or responsible for the Plaintiffs’ alleged injuries as a matter of law.
8. In the alternative, if the City owed any duty of care to the Plaintiffs as alleged, or at all, which is denied, the City denies that it breached its duty of care.
9. In the alternative, if the City owed any duty of care to the Plaintiffs, as alleged, or at all, at all times the City fulfilled all applicable duties and obligations, and acted with

prudence and reasonable care, and in accordance with all applicable standards, regulations and requirements

10. If the Plaintiffs suffered any injuries, loss, damage or expense, which is denied, then such injuries, loss, damage or expense was caused wholly or in part by the negligence and/or breach of contract and/or breach of duty of the other parties and/or other parties who are not known to the City and/or not named in this proceeding.
11. Particulars of the negligence, breach of contract, breach of duty, breach of duty to warn and/or other fault of the co-defendants are set out in the notice of civil claim, and are herein adopted by the City, save and except to the extent that they may implicate the City, and such further particulars as may become known to the City.
12. If the Plaintiffs suffered any loss or damage, which is denied, then such loss or damage was caused wholly or in part by their own negligence. Particulars of the negligence of the Plaintiffs include but are not limited to:
  - a. Failing to take reasonable care for their own safety in all of the circumstances;
  - b. Failing to take reasonable care when they knew or ought to have known about the fire and/or the need to vacate premises;
  - c. Failing to evacuate the premises reasonably, or at all, when able to do so;
  - d. Failing to be aware of their surroundings; and
  - e. Such further and other particulars as counsel may advise.
13. The City seeks an apportionment of liability against the Plaintiffs, the co-defendants or one or more of them. The City also seeks contribution or indemnity from the co-defendants or one or more of them. The City pleads and relies upon the provisions of the *Negligence Act*, RSBC 1996, c.333 and amendments thereto.
14. In the alternative, and in further response to the whole of the notice of civil claim, The City denies that the Plaintiffs suffered any injury, loss, damage and/or expense, as alleged, or at all. In the alternative, if the Plaintiffs suffered any injury, loss, damage and/or expense, as alleged, or at all, then such amounts are not recoverable as damages at law because:
  - a. Such injury, loss, damage and/or expense, as alleged, or at all, which is denied, is attributable to their previous and/or subsequent injuries, traumas, congenital defects and/or medical conditions
  - b. the Plaintiffs and/or its agents failed to mitigate the alleged losses reasonably or at all; and/or

- c. the amounts incurred are excessive, and unreasonable.
15. The City denies that it was a “wrongdoer” as that term is defined in section 1 of the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27. The City denies any entitlement of the Government of British Columbia to recover against it pursuant to the *Health Care Costs Recovery Act*.
16. In the alternative, any amounts being claimed by virtue of the *Health Care Costs Recovery Act* did not arise by reason of, nor were they incurred by reason of, the fire.
17. Further, any amounts being claimed by virtue of the *Health Care Costs Recovery Act* whether for costs incurred in the past or to be incurred in the future are costs that would have arisen in any event of the fire.
18. The City pleads and relies upon the provisions of:
  - a. *Class Proceedings Act*, RSBC 1996, c. 50, as amended
  - b. The *Local Government Act* RSBC 2015, s. 1, as amended
  - c. *Fire Services Act*, RSBC 1996, c 144
  - d. *City of Prince George By-Law 8272*
  - e. the *Negligence Act*, RSBC 1996, c.333 as amended;
  - f. the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27; and
  - g. such further and other statutes and regulations as counsel may advise.
19. The City seeks that the plaintiff’s action against it be dismissed with costs payable to the City.

Defendant’s address for service: Whitelaw Twining Law Corporation  
2400 – 200 Granville Street  
Vancouver, BC V6C 1S4

Fax number address for service (if any): 604-682-5217

E-mail address for service (if any): N/A

Date: 5/Jan/2021



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Signature of lawyer for The City of Prince  
George

T. Ryan Darby

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.