

COURT FILE NUMBER 2201-02402

COURT COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE CALGARY

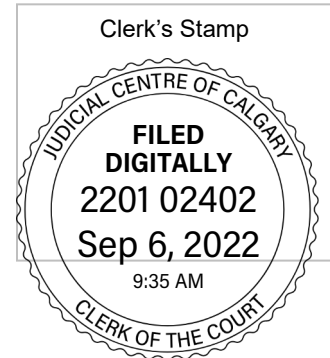
PLAINTIFFS CHRISTA STEELE AND MINDY SMITH

DEFENDANT THE CITY OF LEDUC

DOCUMENT **STATEMENT OF DEFENCE**

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**Statement of facts relied on:**

1. Except where expressly admitted, the City of Leduc (the "Defendant"), denies each and every allegation in the Amended Statement of Claim and puts the Plaintiffs to the strict proof thereof.
2. The Defendant admits that it is a municipality located in the Province of Alberta incorporated under the *Municipal Government Act*, RSA 2000, c M-26, as stated in paragraph 9 of the Amended Statement of Claim.
3. The Defendant admits that the Plaintiffs, Christa Steele and Mindy Smith, are both residents of Leduc, Alberta, as stated in paragraph 3 of the Amended Statement of Claim.
4. The Defendant admits that Ms. Steele has been employed with the Defendant's Fire Department since 2002 and remains an employee of the Defendant pursuant to paragraph 4 of the Amended Statement of Claim.
5. The Defendant admits that Ms. Smith has been employed as a firefighter with the Defendant's Fire Department since 2013 and remains an employee of the Defendant pursuant to paragraph 4 of the Amended Statement of Claim.

**Any matters that defeat the claim of the Plaintiffs:**

A. The Court Lacks Jurisdiction

6. The Plaintiffs are members of the International Association of Fire Fighters (“IAFF”) Local 4739. The IAFF is the exclusive bargaining agent for a comprehensive bargaining unit of all firefighters employed by the Defendant.
7. The IAFF and the Defendant are parties to a Collective Agreement that covers the conditions of employment for members of the IAFF’s bargaining unit. The Collective Agreement contains specific anti-discrimination provisions and a comprehensive grievance procedure. By virtue of their employment and status as members of the IAFF bargaining unit, the Plaintiffs are governed by the terms of the Collective Agreement.
8. The Plaintiffs’ claims against the Defendant stem from workplace issues. Specifically, the Plaintiffs’ claims arise out of allegations that:
  - a) Their complaints about harassment and discrimination were improperly processed, investigated, and resolved; and
  - b) The Defendant failed to comply with its workplace duties and obligations.
9. The essential character of such allegations constitutes a “difference arising out of an interpretation, application, administration, or alleged violation” of the Collective Agreement contemplated by Article 29.02 of the same. Pursuant to the labour relations regime as established by the *Labour Relations Code*, RSA 2000, c L-1, and the Collective Agreement, the Plaintiffs’ claims fall within the exclusive jurisdiction of a labour arbitrator. Accordingly, the Defendants state that the Court does not have jurisdiction over the within action.
10. The Defendant specifically denies that it was impossible for female firefighters and employees to access legislative remedies, internal reporting mechanisms, and grievance processes as alleged in paragraph 76 of the Amended Statement of Claim, or at all.
11. The Defendant states that the Plaintiffs and proposed Class Members failed to reach out to their bargaining unit representative and/or properly pursue the grievance process stipulated in their Collective Agreement. The Plaintiffs and proposed Class Members cannot bring the within action under the jurisdiction of the Court to circumvent the labour relations regime.
12. Further, and in the alternative, it would not be appropriate for the Court to exercise its residual jurisdiction to hear the within action as a labour arbitrator is vested with broad powers to award meaningful ultimate remedies to the Plaintiffs and proposed Class Members.
13. Further, and in the alternative, the Court lacks jurisdiction over the within action as the matter has already been addressed by the Workers’ Compensation Board, which retains exclusive jurisdiction conferred on it by section 17(1) of the *Workers’ Compensation Act*, RSA 2000, c W-15 over the work-related injuries alleged in the Amended Statement of Claim.

B. Statutory Bars to the Within Action

14. The Defendant states that the within action is statutorily barred by sections 21(1) and 21(2) of the *Workers' Compensation Act*, which prohibits workers from commencing a legal action against an employer by reason of any accident happening to the worker.
15. Any alleged sexual misconduct, as well as any alleged assault or battery, whether or not of a sexual nature constitutes an accident arising out of and occurring in the course of employment as defined by section 1(1)(a) of the *Workers' Compensation Act*.
16. The Plaintiffs and proposed Class Members have sought and received compensation from the Workers' Compensation Board and are not entitled to double-recovery of any alleged injuries, losses, or damages stated in the Amended Statement of Claim.
17. The Defendant states that the vast majority of the alleged events in the within action fall outside section 3(1) of the *Limitations Act*, RSA 2000, c L-12, which requires civil actions to be brought within two (2) years from the date that an actionable wrong was discoverable. Therefore, the Plaintiffs and proposed Class Members are statutorily barred from bringing an action with respect to those claims.
18. The Defendant further states that the claims in the within action are not saved by any other provisions of the *Limitations Act*. Specifically, the claims do not fall under section 3.1(1) of the *Limitations Act*. The Defendant puts the Plaintiffs and proposed Class Members to the strict proof of any alleged sexual assault, sexual battery, sexual misconduct, or non-sexual assault or battery.
19. Further, and in the alternative, if sexual misconduct or non-sexual assault or battery did occur, the Defendant denies that any of the Plaintiffs or proposed Class Members were, at the time of the misconduct, assault or battery:
  - a) A minor;
  - b) In an intimate relationship with the person who committed the misconduct;
  - c) Dependent, whether financially, emotionally, physical or otherwise, on the person who committed the misconduct; or
  - d) Under a disability.

C. Alleged Negligence

20. The Defendant specifically denies that it owed a duty of care to the Plaintiffs as alleged in paragraphs 94 and 95 of the Amended Statement of Claim, or at all.
21. In the alternative, if the Defendant owed a duty of care to the Plaintiffs, which is not admitted but specifically denied, then the Defendant states that it met all requisites of any such duty of care at all material times. The Defendant further specifically denies that it was negligent,

or breached its obligations owed to the Plaintiffs, as alleged in the Amended Statement of Claim, or at all.

22. The Defendant specifically denies that it permitted a workplace environment and culture that normalized the occurrence of gender based discrimination, sexual misconduct, and sexual assaults.
23. The Defendant specifically denies that it created, encouraged, allowed, condoned, or ignored improper conduct and systemic discrimination as alleged in paragraphs 76 and 96 of the Amended Statement of Claim, or at all.
24. At all material times, the Defendant took sufficient steps to protect employees, including the Plaintiffs and proposed Class Members from sexual harassment, discrimination, and assault.
25. The Defendant had in place at all material times proper workplace policies and procedures, including a Non-Discrimination Policy, a Sexual Harassment Policy, a Respectful Workplace Policy, and a Respectful Workplace Complaint Resolution Procedure. Such policies and procedures prohibit behaviour that would constitute gender based discrimination, sexual misconduct, and sexual assault and provided reasonable processes for complaints, investigation, discipline, and remedy.
26. At all material times, the Defendant provided adequate training, education, and supervision of its employees in relation to its policies and procedures.
27. At all material times, the Defendant properly communicated and administered these policies and procedures, including any investigative, disciplinary, and remedial measures, in a timely, diligent, and impartial fashion.
28. The Defendant specifically denies that there were any attempts to intimidate the Plaintiffs and witnesses speaking with investigators or otherwise interfere with the same as alleged in paragraphs 87 and 88 of the Amended Statement of Claim, or at all.
29. The Defendant specifically denies that it received any reports of intimidating behaviour during the investigation as alleged in paragraph 89 of the Amended Statement of claim. In the alternative, where such reports were received, which is not admitted but expressly denied, the Defendant denies that it did nothing as alleged in paragraph 89 of the Amended Statement of Claim, or at all.
30. The Defendant states that it treated the Plaintiffs and proposed Class members with civility, decency, respect, and dignity. The Defendant further states that it treated the Plaintiffs and proposed Class members fairly and in good faith during the course of their employment and investigative processes.
31. The Defendant maintains that the Plaintiffs' claims fall outside the jurisdiction of the Court, notwithstanding the Plaintiffs' allegations of negligence, which are not admitted but expressly denied. The essential character of the Plaintiffs' negligence claims relate to

employment conditions covered by the Collective Agreement and fall within the exclusive jurisdiction of a labour arbitrator.

D. Alleged Breach of the *Canadian Charter of Rights and Freedoms*

32. The Defendant specifically denies that it breached the right of Ms. Steele, Ms. Smith or any other employee to be free from discrimination on the basis of sex in violation of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11 (the "*Charter*") as alleged in paragraph 97 of the Amended Statement of Claim, or at all.
33. The Defendant specifically denies that it breached the right of Ms. Steele, Ms. Smith or any other employee to life, liberty, and security of the person pursuant to section 7 of the *Charter* as alleged in paragraphs 99 to 101 of the Amended Statement of Claim, or at all.
34. The Defendant denies that it has deprived the Plaintiffs or any other employee of their section 7 rights by subjecting them to the risk of discrimination, sexual misconduct, and sexual assault at the Fire Department.
35. The Defendant denies that discrimination, sexual misconduct, and sexual assault were prevalent in the Fire Department or its other departments. The Defendant further denies that that it deliberately or negligently failed to take steps to protect the security of the Plaintiffs or other employees from discrimination, sexual misconduct, and sexual assault as well as retaliation and reprisals related to the same.
36. The Defendant maintains that the Plaintiffs' claims fall outside the jurisdiction of the Court, notwithstanding their allegations of *Charter* breaches, which are not admitted but expressly denied. The Plaintiffs' claims fall within the exclusive jurisdiction of a labour arbitrator, who is expressly conferred jurisdiction to determine all questions of constitutional law and the *Charter*, in accordance with section 2 and schedule 1 of the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006.

E. Alleged Defamation

37. The Defendant denies that Mr. Melvie, or any other employee of the Defendant, has authored or published any defamatory statement about the Plaintiffs or the proposed Class Members on behalf of the Defendant as alleged in paragraphs 103 to 105 of the Amended Statement of Claim, or at all.
38. In the alternative, if the Defendant or any of its employees made or authored the statements alleged in paragraphs 103 to 105 of the Amended Statement of Claim, which is not admitted but expressly denied, then the Defendant states that:
  - a) Such statements were true in substance and in fact;
  - b) Said statements were made to the Plaintiffs and/or proposed Class Members only and not published to any third parties;

- c) Such statements would not reasonably lower the Plaintiffs and/or proposed Class Members in estimation of a reasonable person;
- d) Such statements were a reasonable expression of opinion;
- e) Such statements were not made maliciously or with improper intent; and
- f) Such statements are subject to absolute or qualified privilege and are therefore not actionable.

39. The Defendant maintains that the Plaintiffs' claims fall outside the jurisdiction of the Court, notwithstanding their allegations of defamation, which are not admitted but expressly denied. If there were defamatory statements made about any of the Plaintiffs or proposed Class Members, which is not admitted to but expressly denied, such statements are considered to be work related. The essential character of the alleged defamatory conduct is therefore covered by the Collective Agreement. As such, the Plaintiffs' defamation claim falls within the exclusive jurisdiction of a labour arbitrator.

F. Alleged Vicarious Liability

40. The Defendant puts the Plaintiff to the strict proof of any alleged gender based discrimination, sexual misconduct, sexual assault, and physical assault (collectively, the "Alleged Misconduct").

41. In the alternative, if the Alleged Misconduct did occur, then the Defendant states that it is not vicariously liable for these actions as the Defendant had no knowledge of the same occurring and could not have expressly or implicitly endorsed the same.

42. In the further alternative, the Defendant states that they are not vicariously liable for the actions of the alleged Negligent Individuals as defined in paragraph 106 of the Amended Statement of Claim as they were acting outside the scope of their employment.

43. Further, and in the alternative, if the Alleged Misconduct did occur, then the Defendant states that:

- a) The Defendant had strict policies and procedures against discrimination, sexual misconduct, and sexual assault in the workplace, and the same were read and agreed to by all employees;
- b) At no time did the Defendant provide the alleged Negligent Individuals with an opportunity to abuse their power in their employment;
- c) The Alleged Misconduct did not further the Defendant's aims in any way;
- d) The Alleged Misconduct is not related to friction, confrontation, or intimacy inherent to the Defendant's business and operations; and
- e) At no time were the Plaintiffs or proposed Class Members put in a vulnerable position.

44. The Defendant states that, at all times material to this action, it:

- a) Took sufficient steps in the circumstances to protect employees, including the Plaintiffs and proposed Class Members from harassment, discrimination, and assault;
- b) Treated the Plaintiffs and proposed Class Members fairly and in good faith during the course of their employment and through the investigation of the Alleged Misconduct;
- c) Conducted an appropriate, timely, and unbiased investigation into the Alleged Misconduct;
- d) Supervised and trained its employees, including the alleged Negligent Individuals adequately; and
- e) Properly trained and supervised its employees with respect to the harassment, discrimination, and assault in the workplace.

G. Class Proceedings Certification

45. The Defendant states that the within action is not suited for certification as a class proceeding as it fails to meet one or all of the requisite conditions stipulated in section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5. The failure to meet any one of the requisite conditions in section 5(1) is fatal to the Plaintiffs' certification application.

46. Specifically, the Defendants state that the Plaintiffs failed to disclose a valid cause of action. Notwithstanding the Plaintiffs' characterization of the claims advanced in the Amended Statement of Claim, the essential character of their action is one of workplace discrimination which may constitute a violation of the Collective Agreement, but is not a valid cause of action at common law. As such, the Defendants state that the Court should refuse to grant the certification application.

47. Further, and in the alternative, the proposed class being all women in Canada who have worked for the Defendant since 2002 per paragraph 5 of the Amended Statement of Claim is overly broad.

48. Further, and in the alternative, the claims of the prospective class members do not raise a common issue.

49. Further, and in the alternative, a class proceeding would not be the preferable procedure for the fair and efficient resolution of the common issues as the within action fails to satisfy the factors contemplated in section 5(2) of the *Class Proceedings Act*. In particular, the within action:

- a) Features questions of fact or law affecting only individual prospective class members that predominate questions of fact or law common to the prospective class members;
- b) A significant number of the prospective class members may have a valid interest in individually controlling the prosecution of separate actions;

- c) The class proceeding involves claims that are or have been the subject of other proceedings. The claims alleged have already been decided by the Workers' Compensation Board and at least some of the claims are currently before the Alberta Human Rights Commission;
- d) There are other means of resolving the claims that are more practical, efficient, and suitable:
  - i) The Defendant maintains that a labour arbitrator has exclusive jurisdiction over the within action by virtue of the essential character of the dispute and comprehensive grievance procedure stipulated in the Collective Agreement in place.
  - ii) In the alternative, the claims have already been practically and efficiently resolved before the Workers' Compensation Board.
  - iii) In the further alternative, the claims would be more practically and efficiently resolved at the Alberta Human Rights Commission;
- e) The administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means. Proceeding by class action is far more burdensome to the Parties due to the rigid procedural requirements of the Court, as compared to the more flexible and efficient procedural requirements of the grievance procedure, Workers' Compensation regime, and human rights complaint process; and
- f) Any other factors and considerations as may be proven in the trial of this matter.

50. The Defendant does not dispute that Ms. Steele and Ms. Smith would be eligible to be appointed as Representative Plaintiffs.

#### H. Alleged Injuries, Losses, and Damages

51. The Defendant puts the Plaintiffs and the proposed Class Members to the strict proof of any losses or damages alleged.

52. In the alternative, if the Plaintiffs, proposed Class Members, or their families have sustained any injuries, losses or damages as alleged in the Amended Statement of Claim, or at all, which is not admitted but is specifically denied, the Defendant states that:

- a. Such losses or damages were not caused by any actions or omissions of the Defendant;
- b. Such losses or damages pre-dated the Plaintiffs' and proposed Class Members' employment with the Defendant and are otherwise causally unrelated to the Defendant;



- c. Such losses or damages were the result of a subsequently incurred condition or intervening event and are in any case wholly unrelated to the events alleged in the Amended Statement of Claim;
- d. Such losses or damages were caused by factors which are in no way attributable to the Defendant, or to any employees, agents or servants performing services on the Defendant's behalf;
- e. All employees engaged by the Defendant were diligent in investigating and addressing reported instances of misconduct, assault, and discrimination in the workplace; and
- f. Such further and other particulars as will be proven at the trial of this matter.

53. Further, and in the alternative, if the Plaintiffs, proposed Class Members, or their families have sustained any losses or damages as alleged in the Amended Statement of Claim, or at all, then the Defendant states that:

- a. Such losses or damages were not reasonably foreseeable and are too remote to be compensable;
- b. Such losses and damages have already been fully or partially compensated by the Workers' Compensation Board and is not entitled to double-recovery;
- c. The Plaintiffs have failed to take reasonable steps to mitigate or recover any such losses or damages, including:
  - i. Failing to avail themselves to the remedial procedures provided within the Defendant's policies and procedures; and
  - ii. Failing to pursue and comply with the comprehensive grievance process provided by the Collective Agreement; and
- d. Such further and other particulars as will be proven at the trial of this matter.

54. Further, the Defendant states that the Plaintiffs' and proposed Class Members' families are not entitled to any losses or damages for claims in the nature of attendant care and voluntary services because:

- a) Such services were unnecessary as a result of the Plaintiffs' alleged injuries, which are not admitted but expressly denied;
- b) Further, or in the alternative, such services were within the normal duties expected of a family member;
- c) Further, or in the alternative, such claims are related to pre-existing conditions not attributable to the events alleged in the Amended Statement of Claim; and

d) Further, or in the alternative, any time and expenses incurred by family members, were not directly related to the alleged injuries.

55. The Defendant denies that punitive damages, any of the damages as alleged in paragraphs 112 and 117 of the Amended Statement of Claim, or any damages at all, are warranted in the relevant circumstances.

56. The Defendant pleads and relies upon the provisions of the *Labour Relations Code*, RSA 2000, c L-1, the *Workers' Compensation Act*, RSA 2000, c W-15, the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, the *Class Proceedings Act*, SA 2003, c C-16.5, the *Defamation Act*, RSA 2000, c D-7, and the *Limitations Act*, RSA 2000, c L-12 and amendments thereto and regulations thereunder.

**Remedy sought:**

57. Dismissal of the Plaintiffs' action, with costs in favour of the Defendant; and

58. Such further and other relief as this Honourable Court may deem fit and appropriate.