



Court File No. **VIC-S-S-130905**
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT NEIL HART

Plaintiff

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
DEFENDANT OF BRITISH COLUMBIA AS REPRESENTED
BY THE MINISTRY OF HEALTH**

Defendant

NOTICE OF CIVIL CLAIM

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 service, 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

1. The Plaintiff, ROBERT NEIL HART, also known as BOB HART, of 636 Raynor Avenue, Victoria, British Columbia, is unemployed, and was previously an employee of the Defendant within the meaning of the *Public Service Employment Act*, RSBC 1996 c. 385.
2. The Defendant is HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, pursuant to the *Crown Proceeding Act*, RSBC 1996 c. 89, and is represented by the Ministry of Health.
3. In or about the month of January of 1985 the Plaintiff commenced employment with the Defendant in the Ministry of Health. From that date until August 31, 2012 the Plaintiff was continuously employed by the Defendant.
4. In or about the month of May of 2008, by way of a contract that was partly oral and partly in writing, the Defendant employed the Plaintiff as the Director of Data Access, Research and Stewardship, within the Ministry of Health.
5. The responsibilities of the Plaintiff under the employment contract included managing a staff of approximately 25 employees through a number of different but inter-related functional groups that managed access to Ministry of Health data holdings.
6. The Plaintiff faithfully and diligently performed his duties on behalf of the Defendant and throughout his employment proved to be a valuable and reliable employee.
7. On or about August 31, 2012, the following representatives of the Defendant met with the Plaintiff:

Dale Samsonoff, Executive Director, Organizational Development,
Ministry of Health

Wendy Taylor, Director, Privacy Investigations, Ministry of Citizen
Services

Sarah Brownlee, Employee Relations Specialist, Employee Relations,
Public Service Agency

(the "August 31 meeting").
8. The Plaintiff was told that his attendance at the August 31 meeting was mandatory. At the August 31 meeting, the representatives of the Defendant confronted the Plaintiff with allegations of workplace misconduct. He was not given advance notice of those allegations, and was not given the opportunity to instruct or be represented by counsel. He was thereby denied the opportunity to make a full and complete answer to the allegations that were presented.

9. After the conclusion of the August 31, 2012 meeting, the Defendant delivered to the Plaintiff a letter signed on behalf of Lindsay Kislock, Assistant Deputy Minister, Ministry of Health, notifying him that his employment was immediately suspended without pay pending an investigation into allegations of workplace misconduct.
10. The August 31 letter advised the Plaintiff that he would be given an opportunity to respond to the findings of the Defendant's investigation and any recommendation regarding his employment.
11. The Plaintiff was dismissed by Deputy Minister Graham Whitmarsh by letter on or about September 13, 2012.
12. The Plaintiff was not given an opportunity to respond to the allegations in the September 13 dismissal letter, despite the assurances in the August 31 letter that he would be given that opportunity.
13. The dismissal of the Plaintiff by the Defendant was without just cause and without any notice, and constituted an arbitrary and willful breach of the Plaintiff's contract of employment with the Defendant and a wrongful dismissal of the Plaintiff.
14. At the date of his suspension and ultimate dismissal the Plaintiff was receiving salary of approximately \$94,500 per annum.
15. In addition to the salary set out above, the Plaintiff's remuneration package at the time of his termination on September 13, 2012 included:
 - (a) basic medical insurance;
 - (b) extended medical insurance;
 - (c) dental insurance;
 - (d) short term disability and long term disability;
 - (e) employer pension contributions; and
 - (f) 35 vacation days per year.
16. At the time of the Plaintiff's dismissal he was age 58.
17. The Plaintiff's qualifications for the position of Director of Data Access, Research and Stewardship include:
 - (a) a Bachelor of Arts degree in psychology;
 - (b) further education in the field of public administration;
 - (c) extensive knowledge of the health care system in the province and how it functions and operates;
 - (d) in-depth understanding of Ministry systems and data holdings and how they can be best utilized both independent of other data holdings and the value they hold in cross program analysis;

- (e) knowledge of Ministry of Health structure;
 - (f) networking skills to ensure the correct players were brought to the table to understand and make decisions about issues;
 - (g) understanding of legislative requirements; and
 - (h) almost 28 years' experience with the Ministry of Health.
18. There is no other employment available to the Plaintiff commensurate with his age, experience and qualifications.
 19. In the alternative, the Plaintiff's ability to seek other employment commensurate with his age, experience and qualifications has been irreparably compromised by the public announcements surrounding his dismissal, as outlined in paragraphs 22 to 27 and 29 below.
 20. The Defendant failed to discharge its obligation of good faith and fair dealing, in dismissing the Plaintiff in a callous and insensitive manner, and specifically failed to act in a candid, reasonable, honest and forthright manner that was a common expectation of the parties at the outset of the employment relationship.
 21. Particulars of the bad faith demonstrated by the Defendant in its dismissal of the Plaintiff include:
 22. Failing to give the Plaintiff any, or sufficient, notice of concerns the Defendant may have had about the Plaintiff's performance, and thereby failing to give the Plaintiff a reasonable opportunity to rectify any such concerns;
 23. Failing to follow the basic rules of procedural fairness or natural justice in its conduct of the August 31, 2012 meeting, as set out in paragraphs 7 and 8 above;
 24. Prejudging the outcome of the August 31 meeting, by having a suspension letter prepared in advance and ready for delivery to the Plaintiff at the time of the meeting;
 25. Failing to give the Plaintiff a further opportunity to respond to the results of the investigation, as had been promised by the August 31 letter;
 26. Defaming the Plaintiff in the manner set out in paragraphs 22 to 30; and
 27. Such further and other particulars as the Plaintiff may advise prior to the trial of this action.
 28. On September 6, 2012 the Defendant issued a media release, stating that the RCMP had been asked to investigate alleged inappropriate conduct, contracting and data-management practices in connection with four employees who had been terminated, and three who had been suspended without pay, from employment with the Ministry of Health.

29. The full text of the September 6, 2012 media release referred to in paragraph 22 is as follows:

The Ministry of Health has asked the RCMP to investigate allegations of inappropriate conduct, contracting and data-management practices involving ministry employees and drug researchers.

Health Minister Margaret MacDiarmid said today that the ministry has provided the RCMP with interim results of an internal investigation, which was supported by a lead investigator from the Office of the Chief Information Officer, Ministry of Citizens' Services and Open Government. It examined contracting and research grant practices between ministry employees and researchers at the University of British Columbia and the University of Victoria.

"We take all allegations of this nature very seriously," she said. "I have instructed the ministry to continue to take whatever steps are necessary to respond to these matters thoroughly. We must ensure confidence is maintained in the integrity of the public service to execute its responsibilities in a manner that meets the high standards of conduct expected by the public."

The formal investigation, which commenced in May 2012, examined financial controls, contracting, data management and employee/contractor relationships, and produced evidence of potential conflict of interest, and inappropriate contract management and data access with external drug researchers.

As an immediate response, the ministry took the following steps, pending the completion of an ongoing formal investigation into this matter:

- Four employees have been terminated and three have been suspended without pay - and their access to ministry data and government assets has been frozen.
- Two contractors had their contracts and data access suspended.
- All ministry data sharing with drug and evidence development researchers has been temporarily suspended.
- All work on contracts related to drug and evidence development has been suspended.
- All spending for the pharmaceutical services division now requires approval by the assistant deputy minister.
- The ministry will tighten its policy regarding awards of contracts to universities. All contracts entered into by the ministry will now be reviewed by the ministry's contract management branch.
- The ministry will engage an independent consultant to review and enhance the ministry's data security measures.

In addition to the RCMP, the ministry has been in contact with the Public Service Agency, the Office of the Comptroller General, the Office of the Auditor General, the Office of the Information and Privacy Commissioner, and the University of British Columbia and the University of Victoria.

30. On September 12, 2012 the Times Colonist, a Victoria based newspaper, published an article under the headline "Fired health ministry worker 'mystified' by allegations" that included the statement "The government suspended without pay Bob Hart, the director of data access, research and stewardship...".
31. On September 15, 2012, the Times Colonist published an article under the headline "Fifth worker fired over alleged privacy breach", that included the following statements:

...B.C. Health Minister Margaret MacDiarmid confirmed Friday that one of the three people in the health ministry suspended without pay in July and August has now been fired.

...sources confirm Bob Hart, a 30-year government employee and director of data access, research and stewardship, has had his employment terminated.

...Generally speaking, the minister said, the issues relate to the same inappropriate conduct, data management and contracting-out allegations that prompted an investigation in May and resulted in the dismissal of four others.

32. In a letter to the Victoria Times Colonist published September 20, 2012, Margaret MacDiarmid, Minister of Health, speaking for the Defendant, stated:

The Ministry of Health's investigation into employee conduct and use of research data is a serious situation...the ministry has a duty to conduct this investigation according to the B.C. government's legislation and regulations, and not to jeopardize any potential criminal investigation.

33. On October 24, 2012 the Defendant, as represented by the Minister of Health, was quoted in an article in the Times Colonist, a Victoria based newspaper, referring to the dismissals of Ministry of Health employees. The article included the statement, "The Minister called the alleged breaches of public trust 'deeply concerning'";
34. At all material times, the Defendant knew or ought to have known that the Plaintiff was commonly known and understood to be a member of a very small group of identified individuals who were the subject of the Defendant's media releases and the other media reports arising out of the Ministry of Health suspensions and firings, including the media releases and reports referred to in paragraphs 22 to 27 above, and thereby any statements regarding the Ministry's ongoing investigation would be understood by any reasonably informed reader or listener to refer to the Plaintiff as a member of that group.
35. The Defendant continues to engage the media in a manner that keeps the dismissal of the Plaintiff in the public eye, and continues to purport the Plaintiff's association with various data breaches by implication. On January 14, 2013, the

Defendant, as represented by the Minister of Health, issued a media release about specific instances of inappropriately accessed personal health data that do not pertain to the Plaintiff. By making reference to the September 2012 investigation, through which the Plaintiff is a member of a small group of identified individuals, the Defendant continues to imply falsely that the Plaintiff is involved with alleged workplace improprieties.

36. The Defendant's statements and publications reported in the media are defamatory of the Plaintiff, implying falsely that he has been involved in the misuse of health data, in breaches of patient data privacy, and that he has been involved in serious employment misconduct and is suspected of criminal wrongdoing.
37. In fact, there has been no investigation of the Plaintiff by the RCMP, there has been no evidence of criminal wrongdoing, and the Plaintiff has not been a party to any unauthorized release or sharing of Ministry of Health data.
38. As a result of the Defendant's conduct, the Plaintiff has suffered mental distress which was reasonably foreseeable as a result of the Defendant's breach of its duty of good faith, including:
 - (a) embarrassment, humiliation and loss of self-esteem;
 - (b) depression;
 - (c) loss of sense of self-worth;
 - (d) loss of confidence, and inability to make decisions;
 - (e) loss of a sense of connection with former co-workers;
 - (f) anxiety;
 - (g) emotional upset and mood swings;
 - (h) lack of sleep;
 - (i) loss of appetite;
 - (j) stress in marital and family relationships;
 - (k) inability to concentrate; and
 - (l) memory loss.
39. The conduct of the Defendant following its dismissal of the Plaintiff, evident in its active engagement of the local media to make defamatory statements about an identified group of dismissed employees, of which the Plaintiff is a member, has exacerbated the mental distress of the Plaintiff.

Part 2: RELIEF SOUGHT

1. The Plaintiff claims general damages.
2. The Plaintiff claims special damages.
3. The Plaintiff claims punitive damages.

- 4. The Plaintiff claims aggravated damages.
- 5. The Plaintiff claims interest pursuant to the *Court Order Interest Act*, RSBC 1996 c. 79.
- 6. The Plaintiff claims costs.
- 7. The Plaintiff claims such further and other relief as this Honourable Court deems just.

Part 3:LEGAL BASIS

- 1. The Defendant dismissed the Plaintiff from his employment without any notice and without just cause for doing so.
- 2. The Defendant failed to discharge its obligation of good faith and fair dealing, in its manner of dismissing the Plaintiff.
- 3. The Defendant dismissed the Plaintiff in a manner that caused him mental distress that was reasonably foreseeable to the Defendant.
- 4. The Defendant committed the tort of defamation of the Plaintiff.

Plaintiff's address for service: Robert S. Gill
 Clay & Company
 Barristers and Solicitors
 Main Floor, 837 Burdett Avenue
 Victoria BC V8W 1B3

Fax number address for service (if any): None

Email address for service (if any): None

Place of trial: Victoria

The address of the registry is: 2nd Floor, 850 Burdett Avenue, Victoria BC V8W 1B4

Date: March 11, 2013



 Signature of

plaintiff lawyer for plaintiff

Robert S. Gill

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:

Wrongful dismissal, breach of contract and defamation

Part 2: 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

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Public Service Employment Act*, RSBC 1996 c. 385
2. *Crown Proceeding Act*, RSBC 1996 c. 89
3. *Court Order Interest Act*, RSBC 1996 c. 79

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Defendant

NOTICE OF CIVIL CLAIM

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