



No. VLC-S-S-178564
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JENNIFER REILLY

PLAINTIFF

AND:

THE UNIVERSITY OF BRITISH COLUMBIA and ELIZABETH CROFT

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: The Defendants the University of British Columbia (the “**University**”) and Elizabeth Croft (together, the “**Defendants**”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in paragraphs 1 and 2 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 3-15 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in n/a of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendants.

Division 2 – Defendants’ Version of Facts

1. The Defendants deny all allegations contained in the Notice of Civil Claim unless expressly admitted in this Response to Civil Claim.
2. The Plaintiff was employed by the University from approximately May 1998 until her employment was terminated on April 25, 2017 due to a restructuring. Prior to her termination, the Plaintiff was employed as Director, UBC Engineering Co-op and Professional Development. As the Plaintiff’s termination was without cause, she was

provided with pay in lieu of 18 months of notice in accordance with the Agreement on Conditions and Terms of Employment that was negotiated between the University and the Plaintiff's exclusive non-union bargaining agent, the Association of Administrative and Professional Staff ("AAPS").

3. The Engineering Co-op program falls within the University's Faculty of Applied Science. Undergraduate students from every Engineering Department participate in the Engineering Co-op program, completing eight academic terms and up to five work terms over a five-year period. These Engineering Departments are: Chemical and Biological Engineering; Civil Engineering; Electrical and Computer Engineering; Materials Engineering; Mechanical Engineering; Mining Engineering; and the School of Engineering (at UBC Okanagan). Graduate students enrolled in a Masters of Engineering (various disciplines) or a Masters of Applied Science (various disciplines) also participate in the Engineering Co-op program.
4. Each year, approximately 700 new University students join the Engineering Co-Op program and at any given time there are approximately 1,800 University students participating in the Engineering Co-Op program.
5. In response to paragraph 5 of the Notice of Civil Claim, two former employees of the University who had reported to the Plaintiff did complain that the Plaintiff had bullied and harassed them. The University conducted an investigation and concluded that the Plaintiff had not bullied or harassed the complainants, but that she had failed to follow the University's Statement on Respectful Environment for Students, Faculty, and Staff in a number of respects. The University confirmed these conclusions in a May 17, 2016 letter to the Plaintiff. That letter also informed the Plaintiff that a number of recommendations would be implemented, including the hiring of a performance coach to work with the Plaintiff and her supervisor to improve the Plaintiff's management skills and communication style. Another recommendation noted that co-op education is an academic program, and as such a review of the Engineering Co-op program would be carried out.
6. In response to paragraph 6 of the Notice of Civil Claim, the University did provide the Plaintiff with a written warning dated May 18, 2016 due to her failure to follow direction and her disclosure of personal information of other employees contrary to the *Freedom of Information and Protection of Privacy Act*. AAPS grieved that discipline and on June 14, 2016, after certain acknowledgements from the Plaintiff, the University withdrew that disciplinary letter from the Plaintiff's file.
7. In response to paragraph 7 of the Notice of Civil Claim, the Faculty of Applied Science decided to restructure the Engineering Co-op program in order to enhance the academic leadership of the program. It was determined that the program should no longer be led by the Plaintiff, who was not an academic faculty member, but instead by an academic full professor in order to greater connect the Co-op program to the academic core of the University. As a result, the University terminated the Plaintiff's

employment without cause on April 25, 2017 and appointed Dr. Bhushan Gopaluni (Chemical and Biological Engineering), to the position of Associate Dean, Education & Professional Development, Applied Science Faculty, to lead the Engineering Co-op program.

8. In response to paragraph 8 of the Notice of Civil Claim, at the regularly scheduled Department Heads and Directors Meeting (“**DHD Meeting**”) which took place on April 25, 2017, Dr. Croft, who was the Plaintiff’s supervisor, advised that the Plaintiff’s employment had been terminated as a result of a restructuring and that Dr. Gopaluni had been appointed to the position of Associate Dean, Education and Professional Development and would focus on the co-op program, professional development, and undergraduate programs. Dr. Croft was promoted to the new role of Senior Associate Dean, focusing on graduate education, international partnerships, Engineering expansion, special projects, and marketing and communications. As part of the ensuing discussion Dr. Croft noted that there had been a workplace issue with the Plaintiff the previous year.
9. DHD Meetings are attended by the senior administration within the Faculty of Applied Science: the Dean and Associate Deans; the School Directors; the Department Heads of the various Engineering Departments; the Director of Finance and Director of Development; and an Executive Assistant. DHD meetings are not open to the public, and when personnel matters are discussed at DHD Meetings, they are intended to be confidential among the participants. The attendees at the April 25, 2017 DHD Meeting held senior positions within the Faculty of Applied Science and they had a legitimate interest in understanding the details of the Plaintiff’s removal from the Engineering Co-op program.
10. In further response to paragraph 8 of the Notice of Civil Claim, a DHD Ad Hoc Meeting was also held on May 2, 2017 to further discuss the restructuring. The attendees at this meeting were once again the senior administration from the Faculty of Applied Science, who continued to have a legitimate interest in understanding the details of the Plaintiff’s removal from the Engineering Co-op program. During the meeting Dr. Croft and Dr. James Olson (then Associate Dean for Research and Industrial Partnerships in the Faculty of Applied Science) who were leading the meeting were asked questions about the Plaintiff’s termination. This discussion was also intended to be confidential among the participants. Dr. Croft and Dr. Olson were asked if there had been performance issues with the Plaintiff and Dr. Croft and Dr. Olson confirmed there had been performance issues, and there had been coaching in place. Dr. Croft confirmed that the Plaintiff’s termination was due to the restructuring, with Dr. Gopaluni now leading the Engineering Co-op program.
11. The Defendants specifically deny all of the allegations contained in paragraphs 9-15 of the Notice of Civil Claim, and put the Plaintiff to the strict proof of her allegations contained therein.

12. The Defendants say that the Plaintiff did not have a reasonable expectation of privacy over any of the information that was discussed at the DHD Meeting or the DHD Ad Hoc Meeting, or any Private Meetings (as defined in the Notice of Civil Claim).
13. The Defendants say that the University and its senior leadership have the right to discuss confidential personnel matters amongst its senior administration, and the exercise of such right does not violate the privacy of an individual.
14. The Defendants further say that they did not violate the Plaintiff's privacy in the DHD Meeting, the DHD Ad Hoc Meeting, any Private Meeting, or at all, particularly given the nature, incidence, and occasion of the DHD Meeting, the DHD Ad Hoc Meeting, and any Private Meetings, and the relationship between the parties.
15. The Defendants further say that they did not wilfully violate the privacy of the Plaintiff.
16. The Defendants further say that if they did wilfully, and without a claim of right, violate the privacy of the Plaintiff, all of which is denied, any such violation was minimal and the Plaintiff did not suffer injury, loss, or damage as a result.

Division 3 - Additional Facts

1. n/a

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendants do not consent to the granting of any of the relief sought in Part 2 of the Notice of Civil Claim.
2. The Defendants oppose the granting of all relief sought in Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Defendants rely on the *Privacy Act*, R.S.B.C. 1996 c. 373.
2. The Defendants say that under the *Privacy Act*:
 - (a) The Plaintiff had no reasonable expectation of privacy over any of the information that was discussed at the DHD Meeting, the DHD Ad Hoc Meeting, or any Private Meeting.
 - (b) The Defendants did not violate the Plaintiff's privacy in the DHD Meeting, the DHD Ad Hoc Meeting, any Private Meeting, or at all, particularly given the nature, incidence, and occasion of the DHD Meeting, the DHD Ad Hoc Meeting, and any Private Meetings, and the relationship between the parties.

- (c) The Defendants did not wilfully violate the privacy of the Plaintiff.
3. An employer such as the University, and the senior leadership of that employer, have the right to discuss confidential personnel matters amongst its senior administration, and the exercise of such right does not violate the privacy of an individual.
 4. In the alternative, if the Defendants did wilfully, and without a claim of right, violate the privacy of the Plaintiff, all of which is denied, any such violation was minimal and the Plaintiff did not suffer injury, loss, or damage as a result
 5. The Defendants say that the action should be dismissed with costs awarded to the Defendants.

Defendants' address for service:

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Barristers & Solicitors
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Fax number address for service : 604-661-9349

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Dated: October 27, 2017



Signature

Defendant Lawyer for Defendants

Michael H. Korbin

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.