



Court File No. **VIC-S-S-202187**  
VICTORIA REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

KARI WHITE

Plaintiff

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION D.B.A. BC HOUSING  
and THE CITY OF NANAIMO

Defendants

**NOTICE OF CIVIL CLAIM**

Brought under the *Class Proceedings Act*

**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 reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (b) If you reside in the united States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (c) If you reside elsewhere, within 49 days after the date on which the filed Notice of Civil Claim was served on you; 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**

#### Overview

1. The plaintiff, Kari White, brings this action on her own behalf and on behalf of a class of persons (the “Class”) consisting of all residents of Sanala, Kwakwaka’wakw (“Sanala”), a 35-unit affordable housing complex for Indigenous people and families located at 564 Fifth Street in Nanaimo, BC.
2. The defendants, in violation of their legal duties and the human rights of the Class, failed to maintain basic standards of health, safety, and decency at Sanala, resulting in injury, damage, and loss. The defendants’ acts and omissions in relation to Sanala constitute systemic failures in respect of which this proceeding seeks remedies on a class-wide basis.

#### The parties

3. The plaintiff, Ms. White, is a resident at Sanala and has an address for service care of #300-376 Harbour Road, Victoria, BC.
4. Ms. White brings this action on her own behalf and on behalf of the Class, of which she is a member, and which is defined as follows:

All persons, alive on the date that this matter is certified, who reside or previously resided at Sanala.

5. As many as 170 persons reside in Sanala at any given time, the majority of whom are children.
6. The defendant British Columbia Housing Management Commission is a statutory corporation continued under s. 10(b) of the *Ministry of Lands, Parks and Housing Act*, R.S.B.C. 1996, c. 307, which does business as “BC Housing” (see s. 1 of the *Homeowner Protection Act*, S.B.C. 1998, c. 31), and which has an address for service at #1701-4555 Kingsway, Burnaby, BC.
7. *Inter alia*, the mandate of BC Housing includes the provision of safe, affordable, and quality housing for British Columbians. In that regard, BC Housing develops, manages, administers, and markets subsidized housing in BC, including Sanala.
8. The defendant City of Nanaimo (“Nanaimo”) is a municipal corporation pursuant to the *Local Government Act*, R.S.B.C. 2015, c. 1, and has an address for service at 455 Wallace Street, Nanaimo, BC.
9. *Inter alia*, Nanaimo is responsible for the issuance, administration, and enforcement of bylaws regarding health and safety of buildings within its jurisdiction, including Sanala.

Non-party entities

10. Sanala is owned by a third party styled “Provincial Rental Housing Corporation, Inc.No. BC0052129.”
11. Nanaimo Aboriginal Centre Society is a not-for-profit society and is the sole landlord for Sanala.

The defendants’ acts and omissions in relation to Sanala

12. Prior to May 2017, Sanala was a privately-owned rental housing complex known as “King Arthur Court.”

13. BC Housing approved of and funded the purchase of King Arthur Court for the purpose of converting it into safe, affordable, and quality housing for Indigenous persons and their families, which then culminated in the complex known as Sanala.
14. On multiple occasions but most recently in 2016, King Arthur Court had been determined to be a “nuisance” property pursuant to Nanaimo Bylaw No. 7250.
15. The building which constituted King Arthur Court was almost 60-years old at the time of its acquisition for the purposes of developing Sanala.
16. At all material times, BC Housing knew or ought to have known that King Arthur Court suffered from severe deficiencies (the “Deficiencies”) which made it unsafe, unhealthy, and unfit for habitation, as a result of the age of the structure and years of neglect.
17. At the time of its acquisition for the purpose of conversion into Sanala, the Deficiencies included numerous violations of the BC Building Code, BC Fire Code, and BC Plumbing Code, including:
  - a. chronic verminous infestations, including by cockroaches, mice/rats, and bedbugs;
  - b. intermittent lack of heat, hot water, and other basic amenities;
  - c. water ingress, which compromises the structural integrity of the building, damages the interior of the building along with residents’ property, and results in the growth of toxic mold;
  - d. inadequate and unsafe electrical wiring;
  - e. inadequate and unsafe plumbing; and
  - f. other dangerous deficiencies, such as holes in walls, floors, and ceilings, water damage, and broken windows.
18. BC Housing managed and administered the re-development of King Arthur Court

into Sanala (the “Redevelopment”), in partnership with other entities.

19. The Redevelopment was cosmetic and failed to address the Deficiencies, adequately or at all, with the result being that Sanala and the Class continued to suffer from the Deficiencies.

20. At all material times the Deficiencies posed serious, specific risks to the Class, who are thereby exposed to (*inter alia*):

- a. infectious disease resulting from vermin infestations;
- b. pathogens including toxic mold;
- c. bodily danger resulting from fire, structural collapse, or other causes;
- d. destruction of property, whether from the foregoing or as a result of water ingress; and
- e. serious and prolonged emotional disturbance

(cumulatively, the “Risks”).

21. At all material times, BC Housing knew or ought to have known that it could and did not address the Deficiencies so as to render Sanala safe, healthy, or fit for habitation by the Class, nor meaningfully mitigate the Risks; however, instead of replacing the existing complex with a new, safe, healthy building, BC Housing continued to manage, administer, and market housing at Sanala.

22. At various material times, BC Housing received reports and complaints concerning the Deficiencies at Sanala, and conducted inspections of the site, but failed to address the Deficiencies or the Risks, adequately or at all.

23. At material times, BC Housing received reports and complaints of inadequate maintenance at Sanala, but failed to address or respond to those events, adequately or at all.

24. At material times, BC Housing received reports and complaints that the persons who manage Sanala have attempted to suppress complaints about the Deficiencies by the Class, including through threats of eviction and intimidation, but failed to address or respond to those events, adequately or at all.
25. When the Class made reports and complaints to BC Housing about Sanala, BC Housing employees responded that these should be raised with the Nanaimo Aboriginal Centre Society instead as that entity “is your landlord.”
26. At no time following the Redevelopment did BC Housing take any steps to ensure that Sanala was adequately maintained, despite its knowledge of the Deficiencies and Risks.
27. At material times, BC Housing maintained public listings for affordable housing in British Columbia, through which it marketed Sanala and thereby made express and implicit misrepresentations about the health, safety, and fitness for habitation of Sanala.
28. Nanaimo is aware of the Deficiencies and Risks, has been aware or ought to have been aware of these things since the Redevelopment, and approved Sanala for occupancy despite that it was not fit for human habitation as a result of the Deficiencies and Risks.
29. At all material times, Nanaimo knew or ought to have known that the Deficiencies and Risks violate Nanaimo’s bylaws with respect to property and building maintenance, safety, and health.
30. Despite actual or constructive knowledge of the Deficiencies and Risks at material times, Nanaimo has not taken adequate or any action to enforce its bylaws in relation to Sanala.
31. At material times Nanaimo and the owners of Sanala made express and implicit agreements that purport to exempt Sanala from the application or enforcement of Nanaimo bylaws under which the Deficiencies constitute infractions.

32. At material times, Nanaimo decided not to enforce certain of its bylaws in relation to Sanala on the basis that the Class, as persons living in subsidized housing for Indigenous persons, are in a special category of persons whom are not entitled to the benefit of those laws.
33. At material times Nanaimo conducted inspections and issued permits in relation to Sanala; Nanaimo's acts and omissions in relation to bylaw enforcement at Sanala constitute representations about the health, safety, and fitness for habitation of Sanala.
34. On numerous occasions, the defendants misrepresented to the Class that Sanala provided safe housing that was fit for habitation, and failed to correct that misrepresentation in the face of knowledge of the serious, ongoing risks posed to the Class.
35. At no time did the defendants correct their misrepresentations in relation to Sanala; at the time of this filing, BC Housing continues to promote Sanala as providing "safe, affordable housing for Indigenous people and families."
36. At no time did the defendants warn the public or the Class about the Deficiencies or Risks at Sanala.
37. The Class relied on the defendants' representations about the health, safety, and fitness for habitation of Sanala to their detriment.
38. The Class, persons seeking to secure the basic human need of shelter, were:
- a. particularly susceptible to the acts or omissions of the defendants in relation to Sanala;
  - b. unable to protect their own interests due to their vulnerability relative to the defendants; and
  - c. subject to harsh and adverse conditions, i.e. the Deficiencies and Risks, which the acts and omissions of the defendants created but also concealed

from the Class,

such that the defendants committed or engaged in unconscionable acts or practices.

39. As a result of the Deficiencies and Risks, the Class suffered injuries, damages, and loss, the particulars of which include:

- a. emotional, psychological, and psychiatric injury, or aggravation thereof, or both;
- b. physical injury, or aggravation thereof, or both;
- c. injury to dignity;
- d. human rights violations, including the right to security of the person under s. 7 of the *Charter*, and the right to equal protection and benefit of the law without discrimination under s. 15(1) of the *Charter*;
- e. pain and suffering;
- f. loss of amenities of life;
- g. loss of enjoyment of life;
- h. cost of medical and other treatment and care, past and future;
- i. loss of earnings or earning capacity, past and future; and
- j. destruction of property.

## **PART 2: RELIEF SOUGHT**

1. Ms. White and the Class seek:

- a. appointment of the Plaintiff as representative plaintiff for the Class, pursuant to s. 2 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;



- b. damages pursuant to s. 24 of the *Charter*;
  - c. damages for loss of dignity and violation of human rights;
  - d. general damages;
  - e. special damages;
  - f. damages for future cost of care;
  - g. damages for loss of earnings or earning capacity, past and future;
  - h. punitive damages;
  - i. in-trust damages;
  - j. damages for costs of replacement or repair of property;
  - k. special costs;
  - l. damages pursuant to s. 171 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “*BPCPA*”);
  - m. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79, and amendments thereto; and
  - n. such further and other relief as to this Honourable Court may deem just.
2. In this action the plaintiff and the Class do not seek relief under or pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the “*RTA*”). For greater certainty, this proceeding does not seek any relief in relation to rights, obligations or prohibitions under the *RTA*, nor the resolution of any dispute with an entity which is a “landlord” as contemplated in that legislation.

### **PART 3: LEGAL BASIS**

1. The defendants owe the Class duties of care which they breached by:

- a. failing to take any steps or adequate steps to address the Deficiencies and Risks at Sanala;
- b. failing to ensure that Sanala was reasonably safe for use by the Class;
- c. failing to correct misrepresentations made with respect to the safety and suitability of Sanala as a housing complex;
- d. failing to warn the Class about the Deficiencies and Risks at Sanala;
- e. failing to meet the standard of care applicable to a developer, administrator, manager, and/or marketer of housing;
- f. failing to meet the standard of care applicable to a regulator of property, buildings, and housing;
- g. failing to take any care, or in the alternative, any reasonable care to ensure that the Class would be reasonably safe;
- h. acting with reckless disregard to the safety of the Class;
- i. exposing the Class to risks of damage or injury of which the defendant knew or ought to have known;
- j. violating the occupiers' duty of care under the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337;
- k. engaging in deceptive and unconscionable acts or practices prohibited under the *BPCPA*;
- l. failing to have any policies, or in the alternative, any reasonable policies in place concerning the above; and
- m. such further and other particulars as counsel may advise.

2. The defendants violated the *Charter* rights of the Class, as:
  - a. the defendants are governmental entities to which *Charter* scrutiny applies;
  - b. the Deficiencies and Risks violated the Class' right to security of the person in a manner which violates the principles of fundamental justice, contrary to s. 7 of the *Charter*; and
  - c. the defendants' conduct deprived Indigenous people who are members of the Class of the right to equal benefit of the law without discrimination, contrary to s. 15(1) of the *Charter*.
3. The defendants, by exposing the Class which includes children, seniors, and other vulnerable persons, to the Deficiencies and Risks, acted with indifference and recklessness to their health, safety, and human rights.
4. The defendants' acts and omissions in relation to Sanala constitute high-handed, arbitrary, and reprehensible conduct which departs from a marked degree from ordinary standards of decent behaviour.
5. The Plaintiff pleads and relies on the:
  - a. common law and the law of equity;
  - b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
  - c. *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
  - d. *Occupiers Liability Act*, R.S.B.C. 1996, c. 337;
  - e. bylaws of the City of Nanaimo;

- f. BC Building Code, BC Fire Code, and BC Plumbing Code;
- g. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2
- h. *Crown Proceeding Act*, R.S.B.C. 1996, c. 89;
- i. such further and other statutes or authorities as counsel may advise.

Plaintiff's Address for Service: Acheson Sweeney Foley Sahota  
#300-376 Harbour Road  
Victoria, BC V9A 3S1

Place of Trial: Victoria, British Columbia

The Address of the Registry is: 2 - 850 Burdett Avenue  
Victoria, BC V8W 1B4

DATED: 02 July 2020

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**RAJINDER S. SAHOTA**  
**PATRICK DUDDING**  
Lawyers for the Plaintiff

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 defendants, in violation of their legal duties and the human rights of the Class, failed to maintain basic standards of health, safety, and decency at the Sanala complex, an affordable housing project in Nanaimo, BC. The defendants' acts and omissions resulted in injury, damage, and loss, constitute systemic failures in respect of which this proceeding seeks remedies on a class-wide basis.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

another cause

A dispute concerning:

a matter not listed here

### **Part 3: THIS CLAIM INVOLVES:**

a class action

aboriginal law

constitutional law

### **Part 4:**

*Canadian Charter of Rights and Freedoms*, R.S.C. 1985, App. II, No. 44, Schedule B

*Class Proceedings Act*, R.S.B.C. 1996, c. 50

*Occupiers Liability Act*, R.S.B.C. 1996, c. 33