

New Westminster

26-Nov-25

REGISTRY

No. 260443
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

David Samuel Donovan

PLAINTIFFS

AND:

Christa Findlay, Douglas Clunden, The Board of Education of
School District No. 36 (Surrey) and Fraser Health Authority

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: The defendants, The Board of Education of School District No. 36 (Surrey) and Christa Findlay (the “**School District Defendants**”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in paragraphs **2 and 13** of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs **3, 6 to 9, 14, 15 and 17 to 19** of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs **1, 4, 5, 10, 11, 12 and 16** of Part 1 of the notice of civil claim are outside the knowledge of the School District Defendants.

Division 2 – Defendant’s Version of Facts

1. The School District Defendants deny each and every allegation in the notice of civil claim, unless expressly admitted herein.
2. In response to paragraph 1 of Part 1 of the notice of civil claim, the School District Defendants say that the plaintiff is improperly named in the notice of civil claim. The **Family Compensation Act**, RSBC 1996, c. 126 (the “**FCA**”) is a complete code for actions for death by alleged wrongful act, neglect or default. Under s. 3(1) of the FCA, the only proper plaintiff is the personal representative of Felicity Donovan, for the benefit of Felicity Donovan’s parents.
3. In further response to paragraph 1 of Part 1 of the notice of civil claim, the School District Defendants say that an action was already commenced arising from the death of Felicity Donovan on or about August 12, 2025 by Laura Donovan, on her own behalf and as the intended Administrator of the Estate of Felicity Donovan, and other plaintiffs, against Surrey School District No. 36, Fraser Health Authority, Christa Findlay and Douglas Clunden under the FCA, in *BC Supreme Court Action No. 259160*, New Westminster Registry (the “Initial Action”). The plaintiff was a party to the Initial Action but filed a Notice of Discontinuance on or about November 4, 2025, discontinuing the plaintiff’s claim against the defendants in the

Initial Action. The other plaintiffs to the Initial Action have not discontinued their claims against the defendants in the Initial Action.

4. In response to paragraph 2 of Part 1 of the notice of civil claim, at all material times Felicity Donovan was a Grade 11 student at Elgin Park Secondary School (the “**School**”), a school operated by The Board of Education of School District No. 36 (Surrey) (the “**School District**”).
5. In response to paragraph 3 of Part 1 of the notice of civil claim, the School District Defendants admit that, at all material times, Christa Findlay was employed by the School District as a school counsellor at the School and, at all material times, was acting in the course and scope of her employment. The School District Defendants say that no action for damages lies or may be instituted against Christa Findlay under s. 94(1) of the **School Act** RSBC 1996, c. 412 (the “**School Act**”).
6. In response to paragraphs 6 to 9 of Part 1 of the notice of civil claim, the School District Defendants admit that, at all material times, the School District Defendants owed Felicity Donovan a duty of care. The School District Defendants deny the description of the duty of care as set out at paragraphs 7 to 9 of Part 1 of the notice of civil claim.
7. In response to paragraphs 6 to 9 of Part 1 of the notice of civil claim, the School District Defendants say as follows:
 - a. At all material times, Christa Findlay was a school counsellor at the School, who was assigned to Felicity Donovan. At all material times, Christa Findlay was known to Felicity Donovan and the plaintiff, as she had provided services to Felicity Donovan and the family in the past;
 - b. On or about **October 16, 2023**, the plaintiff contacted Christa Findlay and advised that Felicity Donovan was experiencing mental health issues. He advised that Felicity Donovan had ongoing counselling and was scheduled to meet with a psychiatrist. He requested assistance in getting Felicity Donovan caught up with her schoolwork and classes;
 - c. On or about **October 18, 2023**, Christa Findlay met with Felicity Donovan. The School District Defendants deny the description of the meeting at paragraph 7 of Part 1 of the notice of civil claim. The School District Defendants say Felicity Donovan disclosed that she was experiencing thoughts of suicide and that she had attempted suicide about one month prior. Christa Findlay completed a Suicide Risk Assessment (“**SRA**”). Christa Findlay contacted the plaintiff and asked that Felicity Donovan be picked up from the School counselling office. The plaintiff advised that Felicity Donovan’s mother, Laura Donovan, would pick Felicity Donovan up from the School counselling office. Christa Findlay consulted with another member of the school counselling team with respect to the SRA prior to Felicity Donovan being picked up. Christa Findlay met with Laura Donovan and reviewed the SRA, discussed suicide prevention steps at home and asked that Laura Donovan take Felicity Donovan to hospital to be assessed;
 - d. On or about **October 19, 2023**, Christa Findlay met with Felicity Donovan. Felicity Donovan disclosed that she had been assessed at the hospital and referred to a counsellor. Felicity Donovan and Christa Findlay created a Safety Plan, for Felicity Donovan to refer to if she had future suicidal thoughts. Christa Findlay contacted the plaintiff and advised him of the Safety Plan and asked that he review the Safety Plan and discuss it with Felicity Donovan;

- e. On or about **October 20, 2023**, Christa Findlay submitted a referral for Felicity Donovan to the Suicide Prevention, Education and Counselling Program at Options Community Services ("SPEAC"). Christa Findlay was contacted by an intake worker at SPEAC after submitting the referral. Christa Findlay understood from the discussion with the SPEAC intake worker that SPEAC would not provide services at the time, as Felicity Donovan was already in receipt of other ongoing services;
- f. On or about **October 23, 2023**, the plaintiff advised that he had reviewed the Safety Plan with Felicity Donovan and asked that Felicity Donovan's Grade 11 Psychology class be replaced by a Learning Support Teacher ("LST") period;
- g. On or about **October 23, 2023 and October 24, 2023**, Christa Findlay transferred Felicity Donovan from her Grade 11 Psychology class to an LST period and Christa Findlay contacted the plaintiff to confirm that this had been done. Christa Findlay also asked Felicity Donovan's remaining teachers and LST teacher to contact her if any concerns arose with Felicity Donovan;
- h. After or about **October 19, 2023** to on or about **December 2023**, Christa Findlay continued to check-in with Felicity Donovan regularly. No further acute mental health issues or concerns regarding suicide risk were reported to Christa Findlay, or any School staff, by Felicity Donovan, her parents, her teachers, or anyone, from on or about **October 19, 2023** to on or about **December 19, 2023**, nor were any acute mental health issues or concerns regarding suicide risk observed by Christa Findlay, or any School staff, during this time. Christa Findlay understood that, during this time, Felicity Donovan was seeing an outside counsellor and a psychiatrist;
- i. On or about **November 15, 2023**, the plaintiff contacted Christa Findlay to advise that Felicity Donovan would be away from school for a day, as she was meeting with a relative to discuss metal work careers, and requested assistance from Christa Findlay with respect to career services. Christa Findlay met with Felicity Donovan, and they attended at the School's career office to discuss career options and to provide Felicity Donovan with information pamphlets;
- j. On or about **November 16, 2023**, the plaintiff contacted Christa Findlay to advise that Felicity Donovan had expressed interest in attending the School's Winter Ball and requesting assistance with the fees for the Winter Ball. Christa Findlay made arrangements to have the fees waived for Felicity Donovan to attend the Winter Ball; and
- k. Felicity Donovan was in attendance at the School on or about **December 19, 2023**. She attended an LST period and participated in karaoke over the lunch period. No concerns were reported to School staff by Felicity Donovan, her parents, her teachers or anyone, on or about **December 19, 2023**, nor were any concerns observed by School staff.

8. In further response to paragraphs 6 to 9 of Part 1 of the notice of civil claim, the School District Defendants say that, at all material times, the School District had in place reasonable policies, procedures and protocols for concern regarding suicide risk for students within the School District. Further, at all material times, the School District, and its employees, agents and servants, followed the School District's policies, procedures and protocols.

9. In further response to paragraphs 6 to 9 of Part 1 of the notice of civil claim, the School District Defendants deny that the School District, or any of its employees, agents or servants, including Christa Findlay, were negligent or in breach of a duty of care, as alleged or at all.
10. In further response to paragraphs 6 to 9 of Part 1 of the notice of civil claim, the School District Defendants say that, at all material times, the School District's employees, agents and servants, including Christa Findlay, acted in accordance with the applicable standard of care, without fault or negligence, and exercised reasonable care, skill and diligence in their responsibilities at the School, including response to concern regarding suicide risk for Felicity Donovan.
11. In response to paragraphs 14 to 15 of Part 1 of the notice of civil claim, the School District Defendants deny that, after Felicity Donovan's death, the School District Defendants engaged in a pattern of bad-faith, misrepresentation and concealment, as alleged or at all.
12. In further response to paragraph 15(b) of Part 1 of the notice of civil claim, the School District Defendants deny that Christa Findlay fabricated or materially altered any records, as alleged or at all. The School District Defendants say that there is no factual basis to support this allegation.
13. In further response to paragraph 15(c) of Part 1 of the notice of civil claim, the School District Defendants say that, on or about **April 14, 2025**, and in response to a request by the plaintiff on or about **March 18, 2025** to access information under the *Freedom of Information and Protection of Privacy Act* RSBC 1996, c. 165 ("FOIPPA"), including a copy of the review prepared by KPMG LLP, the School District advised the plaintiff that the records were withheld under s. 14 of FOIPPA, as the subject of solicitor-client privilege.
14. In further response to paragraph 15(c) of Part 1 of the notice of civil claim, at all material times, the process for reviewing a party's response to a FOIPPA request was set out at s.52 of FOIPPA. The plaintiff asked the Information and Privacy Commissioner to review the School District's response to the FOIPPA request, under s. 52 of FOIPPA. There has been no finding that any information was improperly withheld by the School District. There is no petition for judicial review before the Court and It is not within the Court's jurisdiction, in this action, to review the findings of the Information and Privacy Commissioner.
15. In further response to paragraph 15(c) of Part 1 of the notice of civil claim, the School District Defendants deny that the purpose of seeking legal advice from KPMG LLP was to avoid disclosure, as alleged or at all. In any event, there can be no cause of action against the School District for seeking legal advice.
16. In response to paragraph 17 of Part 1 of the notice of civil claim, the School District Defendants deny that they discriminated against Felicity Donovan and/or the plaintiff, as alleged or at all.
17. In further response to paragraph 17 of Part 1 of the notice of civil claim, the School District Defendants say that, at all material times, the School District had in place reasonable cultural supports for indigenous students, and those supports were accessed by Felicity Donovan, including but not limited to an Indigenous Youth Care Worker, Indigenous Graduation Advocate and the Windspeaker Youth Leadership Program.
18. In further response to paragraph 17 of Part 1 of the notice of civil claim, the School District says that, after or about **December 19, 2023** the School District voluntarily provided culturally

safe supports to Felicity Donovan's family, including but not limited to referral to an Elder to provide support services.

19. In further response to paragraph 17 of part 1 of the notice of civil claim, the School District Defendants say that any claim for discrimination is properly within the jurisdiction of the British Columbia Human Rights Tribunal, under s. 21 of the ***Human Rights Code***, RSBC 1996, c. 210 (the "***Code***").
20. In further response to paragraph 17 of Part 1 of the notice of civil claim, the School District Defendants say that the ***Declaration on the Rights of Indigenous Peoples Act***, SBC 2019, c. 44 ("***DRIPA***") does not give rise to a cause of action against the School District Defendants.
21. In response to paragraph 18 of Part 1 of the notice of civil claim, the School District Defendants say that Felicity Donovan did not die as the result of any wrongful act, neglect or default by the School District Defendants, as alleged or at all.
22. In response to paragraph 19 of Part 1 of the notice of civil claim, the School District Defendants deny that they owed the plaintiff a duty of care related to the facts alleged in the notice of civil claim, as alleged or at all.
23. In response to paragraph 19 of Part 1 of the notice of civil claim, the School District Defendants admit that the plaintiff suffered a loss as the result of the death of his daughter, Felicity Donovan. The School District Defendants deny the description of the injuries, losses, damages and expenses as set out at paragraphs 19 of Part 1 of the notice of civil claim.
24. In the further alternative, and in further response to paragraph 16 of Part 1 of the notice of civil claim, the School District Defendants say that, if the plaintiff suffered the injuries, losses, damages or expenses as alleged at paragraph 19 of Part 1 of the notice of civil claim, which is denied, any injuries, losses, damages or expenses were not caused or contributed to by any act, omission, negligence or breach of a duty of care by the School District Defendants or any of the School District's employees, servants or agents, as alleged or at all.

Division 3 – Additional Facts

25. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The School District Defendants oppose the granting of the relief sought in ***all*** of the paragraphs of Part 2 of the notice of civil claim.
2. The School District Defendants say that the relief sought by the plaintiff in ***all*** of the paragraphs of Part 2 of the notice of civil claim is not available to the plaintiff in this action, on the facts or at law.
3. In response to paragraphs 1, 2 and 3 of Part 2 of the notice of civil claim, the School District Defendants say that the relief available under the *FCA* is statutory and is limited to s. 3(2) of the *FCA*. The School District Defendants deny that the plaintiff can advance a claim for general damages, aggravated damages, punitive damages, as alleged or at all.

4. In the alternative, and in further response to paragraphs 2 and 3 of Part 2 of the notice of civil claim, the School District Defendants say that the claim for aggravated damages and punitive damages is not supported by any material facts necessary to ground the claim pleaded; the factual basis for any aggravated damages or punitive damages is unknown. The School District Defendants deny that there are any material facts which could ground the claim pleaded.
5. The School District Defendants seek an order dismissing the plaintiff's claim, with costs.

Part 3: LEGAL BASIS

1. In response to the whole of the notice of civil claim, the School District Defendants say that s. 6 of the *FCA* requires only one action brought for the same subject matter, on behalf of all persons entitled to claim. The School District Defendants say that this is an irregularity, and the appropriate remedy is to combine the plaintiff's claim under the *FCA* with the Initial Action, and for this action to be stayed.
2. In response to the whole of the notice of civil claim, the notice of civil claim does not comply with Rule 3-1(2) of the **Rules** and should be struck under 9-5(1) and 22-7(2) of the **Rules**.
3. In response to the whole of the notice of civil claim, the notice of civil claim is unclear, confusing and difficult to understand. The notice of civil claim advances causes of action or claims against the School District Defendants which are not recognized causes of action or causes of action known in law. The notice of civil claim advances causes of action or claims against the School District that are not supported by any material facts necessary to ground the causes of action or claims pleaded.
4. In further response to the whole of the notice of civil claim, the notice of civil claim includes claims which are unnecessary, scandalous, frivolous or vexatious and have been brought for an improper purpose and are an abuse of process.
5. In response to paragraph 1 of Part 3 of the notice of civil claim, the School District Defendants admit that the School District is vicariously liable for the School District's employee, Christa Findlay. The School District Defendants say that no action for damages lies or may be instituted against Christa Findlay under s. 94(1) of the **School Act** in the circumstances.
6. In response to paragraph 2 of Part 3 of the notice of civil claim, the School District Defendants deny that they owed the plaintiff a duty of care, as alleged or at all. The School District defendants deny that the plaintiff has a cause of action against the School District Defendants, as alleged or at all.
7. In further response to paragraphs 1 to 3 of Part 3 of the notice of civil claim, the School District Defendants deny that the School District, or any of its employees, servants or agents, including Christa Findlay, were negligent or in breach of a duty of care, fiduciary or otherwise, owed to Felicity Donovan, as alleged in the notice of civil claim or at all. At all material times, the School District's employees, agents and servants, including Christa Findlay, acted in accordance with the applicable standard of care, without fault or negligence, and exercised reasonable care, skill and diligence in their responsibilities at the School, including response to concern regarding suicide risk for Felicity Donovan.

8. In response to paragraph 3 of Part 3 of the notice of civil claim, the School District Defendants deny that the **School Act** does not give rise to a cause of action against the School District Defendants.
9. In further response to paragraph 3 of Part 3 of the notice of civil claim, the School District Defendants say that the factual basis for any alleged breach of the **School Act** is unknown. The School District Defendants deny that there are any material facts which could ground the claim pleaded.
10. In response to paragraph 4 of Part 3 of the notice of civil claim, the School District Defendants say that the tort of misfeasance of public office has no application in the circumstances of this action or to the School District Defendants. The School District Defendants deny that Christa Findlay is a “*public official*” or “*public officer*”, and as a result, a claim for misfeasance of public office cannot be advanced as against the School District Defendants.
11. In the alternative, and in further response to paragraph 4 of Part 3 of the notice of civil claim, if Christa Findlay is a “*public official*” or “*public officer*”, which is denied, the School District Defendants deny that Christa Findlay knowingly engaged in deliberate or unlawful conduct, with a specific intent to injure the plaintiff or knowing that the acts were likely to injure the plaintiff, as alleged or at all. The School District Defendants say that there is no basis for a claim of misfeasance of public office, as alleged or at all.
12. In response to paragraph 5 of Part 3 of the notice of civil claim, the School District Defendants deny that the School District Defendants or any of the School District’s employees, servants or agents discriminated against Felicity Donovan or the plaintiff, or otherwise acted contrary to the *Code* or the reconciliation objectives of *DRIPA*.
13. In the alternative, and in further response to paragraph 5 of Part 3 of the notice of civil claim, the School District Defendants say that any complaint of discrimination is properly within the jurisdiction of the British Columbia Human Rights Tribunal, under s. 21 of the *Code*. The School District Defendants deny that this Court has jurisdiction to hear the claim for discrimination under s. 8 of the *Code*.
14. In further response to paragraph 5 of Part 3 of the notice of civil claim, the School District Defendants say that *DRIPA* does not give rise to a cause of action against the School District Defendants.
15. In response to the whole of the notice of civil claim, the School District Defendants say that Felicity Donovan did not die as the result of any wrongful act, neglect, negligence, breach of duty of care, statutory or otherwise, misfeasance of public office or discrimination, by the School District Defendants or any of the School District’s employees, agents or servants, as alleged or at all.
16. In further response to the whole of the notice of civil claim, the School District Defendants deny the plaintiff suffered the injury, loss, damage or expense as alleged in the notice of civil claim.
17. In the alternative, and in further response to the whole of the notice of civil claim, if the plaintiff suffered any injury, loss, damage or expense, as alleged or at all, which is denied, any injuries, losses, damages or expenses were not caused or contributed to by any act, omission, negligence, breach of a duty of care, statutory or otherwise, misfeasance of public office or

discrimination by the School District Defendants or any of the School District's employees, servants or agents, as alleged or at all.

18. In the further alternative, and in further response to the whole of the notice of civil claim, if the plaintiff suffered any injury, loss, damage or expense, as alleged or at all, the School District Defendants deny that any act, omission, negligence, breach of a duty of care, statutory or otherwise, misfeasance of public office or discrimination by the School District Defendants or any of the School District's employees, servants or agents, as alleged or at all, all of which is denied, was the proximate cause of any injury, loss, damage, expense, as alleged or at all.
19. In the further alternative, and in further response to the whole of the notice of civil claim, the School District Defendants say that there is no direct causal link between the alleged negligence, breach of statutory duty, misfeasance of public office, or discrimination by the School District Defendants, or any of the School District's employees, agents or servants, as alleged or at all, all of which is denied, and Felicity Donovan's suicide. The plaintiff cannot show that Felicity Donovan's suicide would not have occurred but for the alleged negligence, breach of statutory duty, misfeasance of public office or discrimination by the School District Defendants, or any of the School District's employees, agents or servants, as alleged or at all, all of which is denied.
20. In the further alternative, and in further response to the whole of the notice of civil claim, if Felicity Donovan's death or if any injury, loss, damage or expense suffered by the plaintiff, as alleged or at all, was caused or contributed to by the fault of the School District Defendants, or any of the School District's employees, agents or servants, all of which is denied, the School District Defendants says that the acts or omissions of others, including Felicity Donovan, were independent intervening events and the School District Defendants plead and rely on the doctrine of *novus actus interveniens*.
21. In the further alternative, and in further response to the whole of the notice of civil claim, if the plaintiff suffered any injury, loss, damage, expense, as alleged or at all, which is denied, any such injury, loss, damage or expense was not reasonably foreseeable.
22. In the further alternative, and in further response to the whole of the notice of civil claim, if the plaintiff has suffered any injury, loss, damage or expense, as alleged or at all, which is denied, any such injury, loss, damage or expense is attributable to the plaintiff's unrelated pre-existing and subsequent health conditions, illness, congenital defects, injuries or accidents. No act, omission, negligence, breach of statutory duty, misfeasance in public office or discrimination on the part of the School District Defendants, or any of the School District's employees, agents or servants, as alleged or at all, which is denied, aggravated or exacerbated any such injury, loss, damage or expense.
23. In the further alternative, and in further response to the whole of the notice of civil claim, if the plaintiff has suffered any injury, loss, damage or expense, as alleged or at all, which is denied, and if any such injury, loss, damage or expense was caused or contributed to by an act, omission, negligence or breach of statutory duty, misfeasance in public office, or discrimination by the School District Defendants, or any of the School District's servants, agents or employees, all of which is denied, then the plaintiff has failed to mitigate his damages.

24. The School District Defendants plead and rely on:

- a. **Family Compensation Act**, RSBC 1996, c. 126;
- b. **School Act**, RSBC 1996, c. 412;
- c. **Negligence Act**, RSBC 1996, c. 333, as amended;
- d. **Freedom of Information and Protection of Privacy Act** RSBC 1996, c. 165;
- e. **Human Rights Code**, RSBC 1996, c. 210;
- f. **Declaration on the Rights of Indigenous Peoples Act**, SBC 2019, c. 44; and
- g. **Supreme Court Civil Rules**, B.C. Reg. 168/2009

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N/A

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Date: November 26, 2025



Marie E. Willcock

Lawyer for the defendants, the Board of
Education of School District No. 36
(Surrey) and Christa Findlay

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.