



No. VIC-S-S-152506  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between:

Susan Service

Plaintiff

And:

University of Victoria

Defendant

Brought under the *Class Proceedings Act*

**ORDER MADE AFTER APPLICATION**

BEFORE ) JUSTICE V. JACKSON ) 24/JUL/2023

ON THE APPLICATION OF the Plaintiff coming on for hearing at the Victoria Courthouse, 850 Burdett Avenue, Victoria, British Columbia, on 24/JUL/2023 and on hearing Christopher A. Siver and Michael Mulroney for the Plaintiff and Nicole Toye for the Defendant,


THIS COURT ORDERS that:

1. BY CONSENT:

- a. The description of the "Class" set out in Schedule "A" to this Order is approved;
- b. Susan Service is appointed as the representative plaintiff;
- c. Mulroney Siver Law is appointed as Class counsel;
- d. The nature of the claim is for breach of contract by the defendant due to a failure of the defendant to grant salary range progression and corresponding pension contributions as outlined in the Management Excluded Terms and Conditions (METCs);
- e. The relief sought by the Class is:
  - i. General damages for breach of contract including but not limited to past wage loss, future cumulative wage loss, lost pension contributions, and lost pension value;

- ii. Costs;
  - iii. Interest; and
  - iv. Such further and other relief as the court deems just.
2. BY CONSENT the common issues of fact or law that are set out in Schedule "B" to this Order at paragraphs 4, 5, 6, and 7 are certified;
  3. The issue of written notice in paragraph 3 of Schedule "B" to this Order is certified as a common issue.
  4. BY CONSENT the Litigation Plan set out in Schedule "C" to this Order (the "Litigation Plan") is certified, which plan includes, *inter alia*:
    - i. The manner and the time within which a class member may opt out of the proceeding, and
    - ii. The manner in which and the time within which a person who is not a resident of B.C. may opt in to the proceeding;
  5. The names and contact information of all class members are to be provided to the Plaintiff within 30 days of the date of this Court Order;
  6. Lists of documents are to be exchanged within 45 days of the first post-certification case management conference;
  7. BY CONSENT, the Notice of Certification to be given to the members of the Class in the form set out in Schedule "D" and Appendix 1 to this Notice of Application and in accordance with the Litigation Plan.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Christopher A. Siver, lawyer for the Plaintiff  
Signed by Scott Constantine on behalf of Christopher Siver



Nicole C.M. Toye, lawyer for the Defendant

By the Court.

**Schedule "A"**  
**Class Description**

1. The "Class" be described as:

All persons who were employed by the Defendant

- a. both before June 30, 2013 and after July 1, 2013;
- b. both before June 30, 2014 and after July 1, 2014;
- c. both before June 30, 2015 and after July 1, 2015; or,
- d. both before June 30, 2016 and after July 1, 2016

as Management Excluded employees subject to the Management Excluded Terms and Conditions of Employment as promulgated in or around January 1, 2012 and as modified from time to time thereafter, and who:

i. were entitled to:

1. an annual determination of overall performance (an "Evaluation") as referred at section 3.4 and elsewhere in the Terms and Conditions; and,
2. range progression as outlined in sections 4.1 and 4.2 of the Terms and Conditions, which includes an annual salary increase (a "Progression") that, depending on the salary range prior to the Progression and subject only to the achievement of a particular "Performance Level" as referred to in the Terms and Conditions, was either:
  - a. a fixed percentage of salary prior to the Progression; or,
  - b. a variable percentage of the salary prior to a Progression which percentage is to be determined at the sole discretion of the supervisor but which percentage was within a fixed range;

to take effect on the July 1 immediately following an Evaluation; and,

ii. either:

1. achieved in any Evaluation a Performance Level which entitled them to:

- a. a Progression; or,
  - b. to be considered for a Progression at the sole discretion of their supervisor; or,
2. during any fiscal year in which they were Excluded employees, did not receive an Evaluation; or,
- iii. did not receive a Progression for any fiscal year that immediately followed a fiscal year during which they either:
1. achieved in their Evaluation a Performance Level at which they were entitled to a Progression or to be considered for a Progression at the sole discretion of their supervisor; or
  2. were not subject to an Evaluation that resulted in the determination of a Performance Level.

**Schedule "B"****Common Issues**

The Plaintiff proposes the following common issues:

***The Contract***

1. **Was the document, the "Management Excluded Terms and Conditions" [(METCs)], of January 1, 2012 (the "Contract"), a common contract between the University and members of the Class? (certified)**

***MD as a Lawful excuse***

2. **Did the Ministerial Direction [(MD)] provide a lawful excuse, pursuant to s. 14.3(1) and (6) of the PSEA, for the University to not perform the Contract terms related to increases in the compensation of ME Employees [(MEEs)]? (certified)**

***Written Notice***

3. **Did the University provide each class member with written notice that the Ministerial Directive amended the Contract? If so,**
  - 3.1. Was the Contract amended by written notice to the Class members?
  - 3.2. Was the class members' silence an acceptance or condonation of a change to the terms of the Contract?
  - 3.3. If the Ministerial Direction did not provide a lawful excuse pursuant to s.14.3(1) and (6) of the PSEA for the University to not perform the Contract terms related to increases in the compensation of the class members, does this have any impact on the effectiveness of the written notices the University provided to the class members concerning the salary freeze?

***Contract Breach***

4. Did the University breach the Contract with the class members by failing to grant salary progressions?
5. If the University breached the Contract, did the class members suffer damages?
6. If so, how should the class members' damages be calculated?
7. Should the value of any of the following payments or benefits provided to the class members after the MD be deducted from the damages awarded to class members for breach of the Contract:
  - 7.1. Paid special leave grant provided to class members impacted by the salary freeze;
  - 7.2. Salary increases granted after November 2012; or

- 7.3. The monetary value of other benefits granted by the University during the period in which salaries were frozen.

**Schedule "C"**

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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**SUSAN SERVICE**

PLAINTIFF

AND:

**UNIVERSITY OF VICTORIA**

DEFENDANT

Brought under the *Class Proceedings Act*

**LITIGATION PLAN****Introduction**

1. The Plaintiff will ask the Court to set a schedule for the action. Subject to directions from this Court, the Plaintiff proposes the following schedule:

**Parties**

2. The proposed representative Plaintiff is Susan Service.
3. The Defendant is the University of Victoria.

**Notice of Certification**

4. The Plaintiff proposes that the Court order:
  - (a) University of Victoria to provide to Class Counsel within 30 days following the date of the Court Order contact information for all Class members. The information shall be delivered in electronic form in .xls or tab delimited text form with appropriate field separations with an indication as to the source and recency of the information and flagging any contract information which is not believed to be recent or known to be current.

- (b) the notice to the Class be in the form appended as Schedule "D" to this Order, and be mailed by Class Counsel's law firm to the Class Members within 28 days following receipt of the contact information for Class Members described in paragraph 2(a); and,
- (c) the reasonable costs of notifying the Class members by sending notices via regular mail be paid for by the University of Victoria.

### **Opt-Out Procedure**

- 5. The Plaintiff proposes that the opt-out deadline date be the 90th day following the date that the notice is sent to the Class Members pursuant to paragraph 4(b).
- 6. The Plaintiff proposes the following opt-out procedure:
  - (a) a person may opt-out of the class proceeding by sending a written election to opt-out to Plaintiff Counsel's law firm before a date fixed by the court; and,
  - (b) a person may not opt-out of the class proceeding after the expiration of the opt-out period.
- 7. The Plaintiff proposes that the opt-out election form should be in the form set out in Appendix "1" to Schedule "D" to this Litigation Plan.
- 8. Class Counsel will report to the court the number of persons who opt-out by the date fixed by the Court for that report.

### **Discovery**

- 9. Relevant documents in the possession and control of the Plaintiff have been disclosed in affidavits of the Plaintiff.
- 10. The defendant has referred to classes of documents in its Response to Civil Claim, but not disclosed all of them. Those missing classes are:
  - (1) Notice of a change of the contract in September 2012; and
  - (2) Written Notices provided to post-November-2012-hires advising the terms of their contracts were different than what is written in the METC.
- 11. The Plaintiff proposes that:



- (a) lists of documents and the documents themselves be exchanged on the common issues within 45 days of the first post-certification case management conference (the "First CMC"), which is discussed further below; and
- (b) the examinations for discovery, if either party deems such examinations necessary, on the common issues be completed within 6 months of the parties exchanging documents.

### **Refinement of Common Issues**

12. Following examinations for discovery and the exchange of expert reports, if any, and prior to the trial of the common issues, the Plaintiff may ask the Court for an order to amend or further refine the common issues, if required.

### **Litigation Relating to the Common Issues**

13. The Plaintiff anticipates that the litigation of the common issues will follow a fairly "traditional" pre-trial and trial plan and propose that the First CMC be arranged within 120 days of the Defendant providing the Plaintiff with the contact information for all Class Members:
  - (a) pleadings - ensure that pleadings are closed, that all contemplated amendments have been concluded and that all parties have been joined;
  - (b) identification and simplification of issues - ensure that liability and damages issues have been simplified and narrowed as much as possible;
  - (c) discovery – As outlined above, the Plaintiff proposes that lists of documents be exchanged on the common issues within 45 days of the First CMC and the examinations for discovery on the common issues be completed within 6 months following the parties exchanging documents.
  - (d) expert evidence - the Plaintiff does not anticipate relying on expert evidence in relation to the common issues. However, all expert reports, if any, will be exchanged at least 84 days before the scheduled trial date.
  - (e) trial date and length of trial - the Plaintiff proposes that the trial of the common issues be conducted on a summary basis by affidavit evidence and be 5 days and commence at least 30 days after the later of completion of examinations for discovery and delivery of the last expert reports.

### **Common Issues Trial**

14. The common issues trial will be held in Victoria.

**Determination of Common Issues**

15. The class will be informed of the results of the common issues trial by publication of a notice pursuant to section 20 of the Class Proceedings Act.
16. If the Plaintiffs are ultimately wholly or partially successful on the common issues, then further proceedings may be needed to resolve any outstanding individual issues for class members.

**Judgment**

17. The Plaintiff will seek judgment on the common issues at the end of the common issues trial.

**Legal Counsel/Communications with Class**

18. The proposed representative Plaintiff has entered into a Retainer Agreement with Mulroney Siver Law to act on her behalf and on behalf of the Plaintiff class, subject to approval of this Honourable Court.
19. Mulroney Siver Law will be the law firm of record for the Plaintiffs.
20. Mulroney Siver Law will have direct and regular communication with the proposed representative Plaintiff so that she is kept informed as the action progresses and so that meaningful instructions can be obtained.

**Schedule "D"**

## NOTICE OF CERTIFICATION

*Service v University of Victoria*  
British Columbia Supreme Court Action No. VIC-S-S-152506

***Why am I getting this letter?***

This letter has been sent to you because you have been identified as a potential class member in a class proceeding that has been certified in the Supreme Court of British Columbia. You are entitled to be a class member if you fall under the following definition:

All persons, wherever they reside, who were employed by the Defendant as "Excluded" employees both before June 30 and after July 1 of any year since and including 2013, which Excluded employees were subject to the University of Victoria's Management Excluded Terms & Conditions of Employment dated January 2012 as modified from time to time (the "Terms and Conditions"), whether or not they remain employed as Excluded employees, and who were denied an annual salary increase (a "Progression") on July 1 of any year since and including 2013 through to and including 2016.

**The Certification Order**

The Court has certified the action in *Service v University of Victoria* (the "Class Action") as a class proceeding and appointed Susan Service as the representative plaintiff of the class.

**What is this case about?**

The Notice of Civil Claim filed by Susan Service, the representative Plaintiff, alleges that the University of Victoria breached its contracts with her and all other Class Members beginning July 1, 2013 when it declined to grant salary Progression due to the *Public Sector Management & Executive Compensation Freeze Policy* (the "Policy").

Damages and other forms of relief are claimed on behalf of each Class Member. The damages claimed are the difference between the amount of compensation that the University of Victoria ought to have paid to each Class Member since July 1, 2013 and the amount of compensation that the University of Victoria has actually paid each Class Member since July 1, 2013, including present and future pension value loss, accruals thereto and interest. Other relief is sought to require the University of Victoria to

retroactively grant raises which ought to have been given and adjust pay scales accordingly.

On July 24, 2023, the Court allowed the action to proceed as a Class Action, which may make it possible for you to obtain compensation for your reduced or eliminated post-retirement health and welfare benefits.

### **What to do**

IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION, please contact Class Counsel by mail, fax or email (contact information below) and inform them that you have received this letter and you would like to participate. You will be asked to provide Class Counsel with updated contact information, including an email address and/or telephone number.

If you have any questions, contact Class Counsel by any of the means noted in the contact information below.

IF YOU DO NOT WISH TO PARTICIPATE IN THE CLASS ACTION, you must take action to exclude yourself by opting out.

If you do not opt out of the Class Action you will be included in the Class Action and bound by the terms of any judgment or settlement in the Class Action whether favourable or not. You will be entitled to share in the amount of any award or settlement recovered in the Class Action.

If you wish to opt out of the Class Action you must do so on or before **MMMM DD, YYYY** by sending a written election signed by the class member stating that you are opting out of the Class Action by mail, fax or email to Class Counsel (contact information below).

You may use the attached Opt Out Form, Appendix "1" to this Notice, but it is not necessary to do so provided your communication is clear that it concerns this case and your decision.

No class member will be permitted to opt-out of the Class Action after **MMMM DD, YYYY**.

### **Legal Fees and Disbursements**

Class Counsel have entered into an agreement with the representative Plaintiff with respect to legal fees and disbursements. The agreement provides that Class Counsel will not receive payment for their work unless the class action is successful or costs are

received from the University of Victoria. The agreement must be approved by the Court to be effective. Members of the class will not be personally liable to pay Class Counsel any legal fees or disbursements.

### **Additional Information**

Any questions about the matters in this notice should NOT be directed to the Court because its administrative structure is not designed to address this type of inquiry. The certification order and other information may be obtained by visiting Class Counsel's website at: [www.yourlawpartner.ca](http://www.yourlawpartner.ca)

For delivery of Opt-In and Opt-Out Forms send your completed Form by mail, fax or email to Class Counsel as shown below.

Attn.: Mr. Christopher A. Siver

**By mail:**

Mulroney Siver Law  
414 – 1207 Douglas Street  
Victoria, BC V8W 2E7

**By Email:**

[uvicclass@yourlawpartner.ca](mailto:uvicclass@yourlawpartner.ca)

**By Fax:**

250-389-6033

If you consider it necessary to speak with a person at Class Counsel's law firm call Chris Siver at 250-389-6022.

**Appendix 1**

No. VIC-S-S-152506  
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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

SUSAN SERVICE

PLAINTIFF

AND:

UNIVERSITY OF VICTORIA

DEFENDANT

*Brought Pursuant to the Class Proceedings Act, R.S.B.C. 1996, c. 50*

**OPT-OUT FORM**

Complete this Opt-Out form only if you are a class member as described in the Notice of Certification and you wish to be excluded from participating in the University of Victoria Class Action. By opting out you will not be eligible to receive benefits obtained by way of Judgment or Settlement Agreement.

If you do not wish to be part of this lawsuit, please complete the lower portion of this form and submit it to Class Counsel, Mulronev Siver Law, by mail, fax, or email, received or postmarked no later than **MMMM DD, YYYY**:

Mulronev Siver Law  
414 – 1207 Douglas Street  
Victoria, BC, V8W 2E7  
Tel: 250-389-6022  
Fax: 250-389-6033  
Email: [uvicclass@yourlawpartner.ca](mailto:uvicclass@yourlawpartner.ca)

**No, I do not want to be part of the lawsuit.**

\_\_\_\_\_  
**First Name**

\_\_\_\_\_  
**Last Name**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City**

\_\_\_\_\_  
**Province**

\_\_\_\_\_  
**Postal Code**

\_\_\_\_\_  
**Telephone**

\_\_\_\_\_  
**Email**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**