



No. 09 2227
Victoria Registry

AMENDED MAY 27, 2009 WITHOUT LEAVE

PURSUANT TO RULE 24(1)(a) OF THE RULES OF COURT

(Original filed on May 22, 2009)

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KAYLA CHRISTINE CHEEKE

PLAINTIFF

AND:

UNIVERSITY OF VICTORIA

DEFENDANT

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996 C. 50

AMENDED STATEMENT OF CLAIM

1. The Plaintiff, KAYLA CHRISTINE CHEEKE, is a student and resides at 77 View Royal Avenue, Victoria, British Columbia, V9B 1A6.
2. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
3. The Defendant, the University of Victoria (the "University"), is a university incorporated pursuant to the *University Act*, R.S.B.C. 1996, c. 468, and has an office at 3800 Finnerty Road, Victoria, British Columbia, V8P 5C2.

4. The Plaintiff brings this action on her own behalf and on behalf of all persons from whom The University collected fines and related costs associated with immobilizing, towing or other removal of vehicles (the “Parking Fines”) that purport to have violated the University of Victoria Traffic and Parking Regulations (the “Regulations”) from July 1, 1999 to April 9, 2009.

BACKGROUND

University of Victoria Parking Policies

5. On or about July 1, 1999, the University of Victoria Board of Governors implemented the Regulations. The Regulations declare they are essential for the orderly movement and parking of vehicles on the University campus and purport to contain regulations governing the parking of motor vehicles on the University premises. Those regulations govern, *inter alia*, appeals, enforcement, parking areas, parking permit classifications, citations and penalties.
6. The Regulations are not regulations enacted by the Lieutenant Governor in Council, as contemplated under the *University Act*.
7. At all material times, the University lacked legislative authority to create offences or penalties.
8. The Regulations purport to give the University authority to issue citations to motor vehicle operators and motor vehicle owners demanding payment of fines for contraventions to the Regulations. The University does not have the legislative authority to demand such payment.

COMPULSION OF PAYMENT OF PARKING FINES FROM THE PLAINTIFF

9. On or about October, 2008, the Plaintiff parked her vehicle at a parking lot on the University campus, which parking area was at all material times controlled by the University. The conditions under which the Plaintiff’s vehicle was parked did not

contravene any real or purported parking rules or regulations in place at the University at that time.

10. The Plaintiff received a citation demanding that she pay on or about \$20.00 for contravening the Regulations.
11. Subsequent to receiving the citation, the Plaintiff submitted full payment of the Defendant's demand.

CAUSE OF ACTION AND REMEDIES

12. The Regulations are *ultra vires* the authority conferred to the University under the *University Act* or any powers possessed by the University through any other means. Particulars of the ways in which the Regulations are *ultra vires* the University include but are not limited to the following:
 - a. the Regulations purport to create offences and the University does not have the power to create offences;
 - b. the Regulations are penal in nature and the University does not have the power to enact penal regulations;
 - c. the University has attempted to appropriate enforcement authority through the *Motor Vehicle Act*, RSBC 1996, c. 318 and the *Highway Act*, RSBC 1996, c. 188 in the absence of any statutory authority for so doing; and
 - d. the Regulations were not enacted by the Lieutenant Governor in Council and regulations made under the *University Act* must be made by the Lieutenant Governor in Council.
13. Accordingly, all tickets and parking violation notices issued under the Regulations are a nullity. Fines paid pursuant to demands made by the University purportedly under the *University Act* must be repaid to the Plaintiff and the Class Members in restitution.

Restitution for Parking Fines Unlawfully Collected

14. Fines charged under the Regulations paid by the Plaintiff and the Class Members were paid by mistake because the Regulations are *ultra vires* the legislative authority of the University.
15. The Plaintiff and the Class Members have suffered damages in the amount of the fines charged under the Regulations and that amount must be returned to the Plaintiff and the Class Members in Restitution.

WHEREFORE THE PLAINTIFF CLAIMS:

1. an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
2. a declaration that the provisions of the Regulations which create offences and purport to authorize the University to levy fines for offences is *ultra vires* the legislative powers delegated to the University;
3. a declaration that any fines collected as payment for offences under the Regulations were collected unlawfully;
4. restitution by the University to the Plaintiff and the Class Members of all fines collected as payment for offences under the Regulations;
5. general and special damages;
6. costs of this action;
7. interest pursuant to the *Court Ordered Interest Act* R.S.B.C. 1996, Chapter 79 and amendments thereto; and

8. such further and other relief as to this Honourable Court may deem just.

PLACE OF TRIAL: Victoria, British Columbia

DATED AT Victoria, British Columbia, this 22nd day of May, 2009.

"Erik Y. Magraken"
Erik Y. Magraken
Counsel for the Plaintiff,
KAYLA CHRISTINE CHEEKE

This STATEMENT OF CLAIM is filed and served by **ERIK Y. MAGRAKEN** of the law firm MacIsaac & Company, whose place of business and address for service is 3rd Floor, 1117 Wharf Street, Victoria, BC, V8W 1T7; Phone 250-381-5353; Fax 250-380-7272.