

Case No.

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**BRITISH COLUMBIA PROVINCIAL COURT**  
for *Vancouver B.C.*

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In re dev\_Typ

**MOTION TO DISMISS**

**PRESIDING JUDGE  
KOALAMEDVEDEVA**

**DATE FILED: 12/02/2022**

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**MOTION TO DISMISS**

The respondent, in the matter of In re dev\_Typ, moves for dismissal on the grounds that the petitioner has failed to state a claim, failed to show jurisdiction, and lacks standing.

**BACKGROUND**

On the 16th of November 2022, the petitioner filed a petition for mandamus relief in the aforementioned case. The petitioner raises two claims, a violation of the 'RERB' (which the respondent will assume refers to the Revised Employee Rights Bylaw) and a violation of the Code of Statutes, specifically Section III of the Torts Act of 2022.

**ARGUMENT**

The aforementioned matter should be dismissed for a number of reasons described herein below;

**I. THE PETITIONER IS NOT ENTITLED TO THE DEMANDED RELIEF UNDER  
THE REVISED EMPLOYEE RIGHTS BYLAW**

The petitioner, in their complaint, requests relief from the court in three ways. First, they request a reform of the Human Resources Complaints Commission. Second, they request the

creation of new policies for the Human Resources Complaints Commission. Third, they request that the respondent review all terminations issued by the Human Resources Complaints Commission.

In mandamus petitions, a petitioner must demonstrate pass eight different tests (see *Cupe, Air Canada Component v. Canada* (Labour), 2012 FC 1484), the foremost including (1) a public legal duty to act (2) which the petitioner is owed. The petitioner, in this matter, does not pass the second test. The Revised Employee Rights Bylaw, which provides statutory foundation for the first claim, does not entitle the petitioner to any of the requested relief.

According to the cited bylaw, the petitioner is merely entitled to a reversal of the issued disciplinary action under Section II(f). As the petitioner is not seeking the reversal of any disciplinary action (and especially as they have not mentioned any disciplinary action in specific), this court does not have jurisdiction to grant the requested relief. With that being said, if the petitioner cannot demonstrate some other statutory foundation for the relief requested (that this duty is ‘owed,’ *ibid*), they are not entitled to that relief.

Mandamus petitions must argue that the government is statutorily obligated to do something that it has failed to do; mandamus petitions are not discretionary. The petitioner has failed to enter an argument to this effect for their first claim therefore it must be dismissed.

## **II. OUT OF COURT RESOLUTION DOES NOT CONSTITUTE AN ADMISSION OF WRONGDOING**

The petitioner, in their first stipulation, argues that their rights were violated ‘multiple times.’ Yet, they fail to enter any evidence or any matter of public record demonstrating these alleged violations. The decision of the respondent to overturn these actions should not be understood to imply that their issuance in the first place was without cause or in violation of the

law. If the petitioner believes that their rights were violated in the course of any of these disciplinary actions, they should litigate those violations through. The petitioner should not and cannot be allowed to assume that these actions were illegal in a blanket cover if no court held that they were.

### **III. THE RESPONDENTS ENJOY CROWN IMMUNITY**

In matters like these, wherein the government is litigated against for a violation of a statute that does not expressly bind the government to some obligation, the government enjoys immunity. It is common law practice that the government cannot be held to answer against tortious claims without being statutorily bound to it (*Alberta Government Telephones v. (Canada) Canadian Radio-television and Telecommunications Commission* [1989] 2 SCR 225, *Province of Bombay v. Municipal Corporation of Bombay*, [1947] A.C. 58). In *Bombay* it was held that the government is only bound (and therefore liable to) statutory law when an obligation or binding is ‘mentioned or referred to.’ The interpretation of this last phrase is further clarified. “In my view, this passage makes it abundantly clear that a contextual analysis of a statute may reveal an intention to bind the Crown if one is irresistibly drawn to that conclusion through logical inference,” *ibid.*

With this holding firmly established, we must look to the statutory language of the second claim to determine if the government is bound. “Negligence shall be defined as the act of causing damage through neglect, or causing damage by failure to do what is socially, and legally, expectable of a person.” The defense is not irresistibly drawn to the conclusion that the language of this statute binds the government, especially because of the usage of the word ‘person,’ not ‘the government’ or ‘the crown.’ Therefore, the court lacks jurisdiction to hear the second claim of negligence because it enjoys immunity from the claim.

### **CONCLUSION**

If the petitioner cannot demonstrate standing for civil suit or jurisdiction for their claims they cannot be entitled to the mandamus relief nor the damages they have requested. The court must protect the rights of the government against litigation that lacks statutory standing.

/s/ Hecxtro\_\_\_\_\_

Attorney General

British Columbia Ministry of Justice

DATED: 12/03/2022