

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hansma v. Atira Property Management Inc.*,  
2024 BCSC 2024

Date: 20241106  
Docket: S232782  
Registry: Vancouver

Between:

**Jennifer Hansma**

Plaintiff

And

**Atira Property Management Inc., Atira Development Society, Atira Women's Resource Society, City of Vancouver (Fire and Rescue Services), Winters Residence Ltd., and British Columbia Housing Management Commission**  
Defendants

Before: The Honourable Justice Marzari

## Reasons for Judgment on Notice to Class Members

Counsel for the Plaintiff:	R.L. Coad B.A. Leibel
Counsel for the Defendant, Atira Property Management Inc.:	K.L. Weslowski
Counsel for the Defendants, Atira Development Society and Atira Women's Resource Society:	P.W. Bruce M.T. Wong
Counsel for the Defendant, City of Vancouver (Fire and Rescue Services):	I.K. Dixon J. Michaud
Counsel for the Defendant, Winters Residence Ltd.:	E. Yacout
Counsel for the Defendant, British Columbia Housing Management Commission:	S.M. Mackenzie F. Troen
Place and Date of Hearing:	Vancouver, B.C. September 12, 2024

Place and Date of Judgment:

Vancouver, B.C.  
November 6, 2024

[1] Jennifer Hansma has sought to certify a class proceeding on behalf of residents, guests and visitors of the Winters Hotel in Vancouver’s Downtown Eastside, which was destroyed by a fire on April 11, 2022 (the “Fire”). More than 70 individuals who were living in the Winters Hotel at the time of the Fire were displaced and lost their personal property. In companion reasons indexed at 2024 BCSC 2023, I certified the class proceeding, including a definition of the class as follows:

All individuals who were tenants of the Winters Hotel, 203 Abbott Street, Vancouver on April 11, 2022 (“**Tenants**”) and their long-term guests (collectively with Tenants, “**Residents**”); and,

Non-resident guests or visitors who were in the Winters Hotel at the time of the Fire (“**Guests**”); and,

The personal representatives and dependents of Residents and Guests who they claim died as a result of the fire; but

Excluding individuals who were Residents of Unit #206 on April 11, 2022, which is where the Fire began.

[2] Ms. Hansma seeks approval of her proposed protocol for notice to the class (the “Notice Program”).

[3] The defendants generally agree that this protocol is acceptable, with the exception of two areas where they seek changes:

- a) The handling of Tenants’ and Residents’ private contact information that they would be required to share with the plaintiff; and
- b) The extent of discretionary costs of giving notice that they are asked to bear.

[4] I will consider the requirements for notice to the class members generally, and address the defendants concerns in these reasons.

**GENERAL PRINCIPLES**

[5] In accordance with s. 19(1) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [CPA], notice that a proceeding has been certified as a class proceeding must be given by the representative plaintiff to the class members.

[6] Section 19(6) of the CPA governs the content of that notice:

**Notice of certification**

**19** (6) Unless the court orders otherwise, notice under this section must

- a) describe the proceeding, including the names and addresses of the representative plaintiffs and the relief sought,
- b) state the manner in which and the time within which a class member may opt out of the proceeding,
- c) [Repealed 2018-16-9.]
- d) describe the possible financial consequences of the proceeding to class members and subclass members,
- e) summarize any agreements respecting fees and disbursements
  - i. between the representative plaintiff and the representative plaintiff's solicitors, and
  - ii. if the recipient of the notice is a member of a subclass, between the representative plaintiff for that subclass and the representative plaintiff's solicitors,
- f) describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim,
- g) state that the judgment on the common issues for the class, whether favourable or not, will bind all class members who do not opt out of the proceeding,
- h) state that the judgment on the common issues for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the proceeding,
- i) describe the rights, if any, of class members to participate in the proceeding,
- j) give an address to which class members may direct inquiries about the proceeding, and
- k) give any other information the court considers appropriate.

[7] Notice is intended to provide class members with information relevant to the decision of whether or not to opt out of the class proceedings. The information should assist the reader in understanding the advantages and disadvantages of participating in the class proceeding, and should not be so lengthy or complicated that it is too difficult to understand: *Bodnar v. The Cash Store*, 2009 BCSC 74 at para. 19.

[8] The notice must also be, and appear to be, balanced and independent: *Bartram et al v. GlaxoSmithKline Inc. et al.*, 2015 BCSC 315 at para. 7.

**PROPOSED PROTOCOL**

[9] The plaintiff’s Notice Program is found at Schedule “A” to her notice of application, and she provided the Court with copies of each of the draft notices. The plaintiff proposes that notice of certification be distributed in four forms, collectively referred to as the “Notices”:

- a) A poster notice containing information about one or more in-person meetings with class counsel (“Poster Notice”);
- b) A short-form notice for dissemination by press and community organizations and to post on class counsel’s website (“Short Form Notice”);
- c) A letter to be sent directly to potential class members whose contact information is known (“Letter Notice”); and
- d) A form of notice for electronic messaging or posting on social media that directs the class members to the Short Form Notice (“Text Message Notice”).

[10] At the end of the proceedings, class counsel provided an updated Schedule A Notice Program and updated Notices, correcting some typographical errors. In addition, it is agreed that the Notices will be revised to reflect the updated definition of the class as it has now been certified.

[11] Some key elements of the Notice Program include that:

- a) The defendants are required to provide class counsel with current contact information they have for the class members. The information is to be provided within 7 days of the expiry of the appeal period as it relates to the

certification order, and also requires the defendants to respond to class counsel's requests for updated information if a class member is rehoused.

- b) For those potential class members whose contact information is known, class counsel will mail and/or email the Letter Notice and Poster Notice, or will send the Text Message Notice to class members who have only been communicating with class counsel via text.
- c) For those potential class members whose contact information is not known, class counsel proposes to conduct inquiries with community organizations and other third parties who may be in contact with these individuals. Class counsel will also search for class members on Facebook, and if found, will send the Text Message Notice over Facebook Messenger.
- d) The plaintiff requests that the defendants Atira Women's Resource Society, Atira Property Management Inc., and Atira Development Society post the Poster Notice and Short-Form Notice in any buildings they own or manage where potential class members are believed to reside, and have copies available for distribution at these locations.
- e) Class counsel will post the Short-Form Notice on their website and post the Text Message Notice on social media. Class counsel will also make best efforts to request that other community groups help disseminate the Poster Notice and the Short-Form Notice.
- f) Class counsel may, at their sole discretion, advertise or publish the Short-Form Notice in Megaphone Magazine, Carnegie Newsletter, or any other media outlet. The plaintiff seeks the costs of such efforts to be born by the defendants collectively.
- g) Class counsel may retain a social worker to assist with locating class members or answering questions from class members. The plaintiff also

seeks that the costs of that social worker be born by the defendants collectively.

- h) The defendants shall reimburse class counsel for all costs related to the Notice Protocol, within 45 days of receipt of the invoices confirming the amounts expended by class counsel.

[12] With respect to the opt-out process, the proposed Notice Protocol stipulates that a person may opt out of the class proceeding by delivering a written election to class counsel by mail, courier, or email. The written election must contain the person's full name, their signature (or that of a designee), and a statement to the effect that they wish to be excluded. Written elections to opt out must be made no later than 60 days after the Notices are first disseminated. That date will have to be clearly set out in all of the Notices.

### **ISSUES**

[13] As noted above, the defendants do not object to the Notice Program as a whole, but submit that certain changes should be made, particularly around the defendants' liability for certain discretionary expenses, and the protection of private information provided by defendants to class counsel.

[14] I will first address the privacy issues, and then the expense issues.

#### **Protection of Privacy**

[15] The plaintiffs seek, as part of the Notice Program, that the defendants, and particularly those involved in housing persons previously resident at the Winters Hotel, produce contact information for potential class members and provide updates to that contact information upon request. The defendants seek to ensure that any such requirement be incorporated into a court order to address their obligations in protecting the privacy of their tenants and clients. That will be accomplished by incorporation of the approved Notice Program in this Court's order as Schedule A.

[16] The defendants also go further, and request that class counsel agree to delete all class member contact and personal information received from the defendants within 30 days of the expiry of any right to appeal arising from the individual issues trial, unless consent is obtained from the individual class member to whom the contact information relates. As I understand it, the defendants make these requests for the purposes of protecting class member privacy, as well as themselves from potential privacy complaints that may be advanced by class members whose personal information is requested by or provided to class counsel.

[17] Class counsel objects to this condition, on the basis that it is not necessary, and that class member contact information will be thoroughly incorporated into their files, including any communication with the class members showing their address or other contact information. Destruction of all contact information would essentially require destruction of substantial portions of their solicitor's files.

[18] I am not prepared to make the order sought by the defendants in this respect.

[19] It is established that a solicitor-client relationship arises upon certification, such that counsel for the representative plaintiff becomes counsel for the class at the time certification is granted: *Dominguez v. Northland Properties Corporation*, 2012 BCSC 539 at para. 64. In *Dominguez* at para. 74, the Court held that the provision of contact information to class counsel was to the benefit of the class, not a breach of privacy, and any restriction thereon would potentially impede class members in making an informed decision with respect to their participation in the class proceeding.

[20] It is therefore unnecessary, and even problematic, to require that class members' personal and contact information provided by the defendants to class counsel be separated from information garnered from other sources and destroyed. Class counsel can be expected to comply with the privacy protections applicable to lawyers' storage of such information with respect to their own clients. Indeed, they are required to both keep and safeguard this information for much longer than sought by the defendants.



[21] In accordance with R. 3-107 of the Law Society Rules, a lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of client identification and verification for the longer of:

- a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
- b) a period of at least 6 years following completion of the work for which the lawyer was retained.

[22] Further, R. 10-4 of the Code of Professional Conduct for British Columbia requires a lawyer to protect all records related to the lawyer's practice and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

[23] Finally, I note that the Law Society Practice Resource pertaining to Closed Files, Retention and Disposition, published in August 2017, advises that records relating to a tort claim advanced on behalf of a plaintiff should be retained by the lawyer to the plaintiff for 6 years after the final judgment, dismissal, or settlement.

[24] I therefore decline to add any requirement to the Notice Program for the destruction of contact information provided by the defendants with respect to members of the class.

### **Costs of Notice Program**

[25] The defendants do not take issue with the plaintiff's proposal that they pay the costs of the Notice Program, subject to two exceptions: the costs of a third-party social-worker or skip-tracer, and advertising costs beyond those expressly described in the Notice Program that are solely within class counsel's discretion. The defendants argue that they should not be required to pay for unbounded expenses, and particularly object to paying for a social worker to answer class member's questions about the proceedings. Finally, they seek a period of 60 days after receipt, rather than 45 days, to pay any invoices from class counsel for notice related costs.

[26] The defendants rely on the case of *Walls et al. v. Bayer Inc.*, 2007 MBQB 131 at paras. 51–53 for the proposition that there must be a principled basis and evidence upon which the court chooses to depart from the presumption that the representative plaintiff bears the cost of providing notice to the class.

[27] After further discussion during the proceedings, the defendants consented to pay a lump sum towards the cost of a social worker to track down class members who have yet to be located. The plaintiff was also interested in a court approved limit on the efforts they would be required to undertake in this respect to contact class members, and agreed that they would not be seeking to use a skip tracer to locate class members given the marginalization and vulnerability of many of the class members.

[28] Section 24(1) of the *CPA* provides that the court may make any order it considers appropriate as to the costs of providing notice, including an order apportioning costs among parties.

[29] Although the representative plaintiff bears the responsibility to give notice of the certification, it is within the discretion of the court to decide who bears the cost of doing so. The court has a broad discretion to order that costs be paid in a manner that will further the objectives of the *CPA*: judicial economy, access to justice, and behaviour modification: *Dominguez* at paras. 78, 83–85.

[30] In *Dominguez*, the Court exercised its discretion to order the defendants to pay the costs of a mail out and publication in a newspaper, and further ordered that the defendants and representative plaintiff share the cost of any skip tracing that might be needed to locate class members: paras. 87, 91.

[31] The affidavit evidence before me indicates that class counsel has in mind a social worker with ties to the community, and that the cost of the social worker's time is \$35/hour. In light of this information, the defendants submitted that \$5000, or 8 hours for each of an estimated 18 class members that thus far have not been located, is a reasonable lump sum payment for this purpose.

[32] In my view, a \$7000 maximum is appropriate for these costs, allowing for closer to 10 hours on average and some flexibility if more than 18 class members prove not to have current contact information. I make the order for the defendants to bear these costs collectively, subject to that maximum. I also limit the scope of the social worker's role to locating class members and directing them to class counsel if they have questions. Subject to further application, class counsel will not be required to engage third party services beyond this, and the defendants, collectively, are not obliged to pay any amount greater than \$7000 for this service.

[33] I also agree that a limit to the discretionary advertising costs is appropriate, and I limit those costs to \$500.

[34] Finally, I would allow the defendants up to 60 days to pay these amounts after being invoiced by class counsel.

**CONCLUSION**

[35] With the above changes, and the incorporation of the class definition as approved into the various Notices, I approve the Notice Program as attached to these reasons as Schedule A.

“Marzari J.”

**SCHEDULE A**

**Notice Program**

1. Within 7 days following the expiry of the appeal period as it relates to the certification order, the defendants will provide Class Counsel with the current contact information (addresses, email addresses, and phone numbers) they have for Class Members. The defendants will have an ongoing obligation to respond to Class Counsel's requests for updated contact information if a Class Member is rehoused. The defendants' obligations herein are imposed pursuant to an order of the British Columbia Supreme Court.
2. Notice of certification will be distributed in four forms:
  - (a) a poster notice containing information about one or more in-person meetings Class Members can attend to be informed about the notice, ask Class Counsel questions, or deliver their election to opt-out ("Poster Notice");
  - (b) a short-form of notice created for dissemination by the press and community organizations and to post on Class Counsel's website (the "Short-Form Notice");
  - (c) a letter to be sent directly to potential Class Members whose contact information is known ("Letter Notice"); and
  - (d) a form of notice for electronic messaging or posting on social media that directs Class Members to the Short-Form Notice ("Text Message Notice");
3. The notices will be distributed as follows:
  - (a) Class Counsel will mail the Letter Notice and the Poster Notice to the Class Members that Class Counsel have addresses for.

- (b) Class Counsel will email the Letter Notice and the Poster Notice to the Class Members that Class Counsel have email addresses for.
- (c) Class Counsel will send the Text Message Notice to Class Members who have been communicating with Class Counsel by text messaging.
- (d) For Class Members whom Class Counsel have not spoken to, Class Counsel may make inquiries with community organizations or other third parties that Class Counsel believe may be in contact with these Class Members. Additionally, Class Counsel will search for these Class Members on Facebook using their names and any other information provided in the records. If these Class Members appear to have a Facebook account, Class Counsel will send them the Text Message Notice over Facebook Messenger.
- (e) AWRS, APMI, or ADS will post the Poster Notice and Short-Form Notice in any buildings they own or manage where Class Members are believed to reside, and have copies available for distribution at those buildings. If Class Counsel and AWRS, APMI, or ADS are unable to agree on which buildings meet this definition, they may apply to the court for directions.
- (f) The text of the Short-Form Notice will be posted on Class Counsel's website at <https://www.cfmlawyers.ca/active-litigation/winters-hotel-fire/>.
- (g) Class Counsel will post the Text Message Notice on social media, including Facebook, X (Twitter), and Instagram, that direct Class Members towards the Short-Form Notice on class counsel's website.
- (h) Class Counsel will make best efforts to request that other community groups help disseminate the Poster Notice and the Short-Form Notice.
- (i) Class Counsel may, at Class Counsel's sole discretion also advertise or publish the Short-Form Notice in the following media outlets:

- (i) Megaphone Magazine;
  - (ii) Carnegie Newsletter; or
  - (iii) any other media outlet that Class Counsel chooses, provided that these costs do not exceed \$500.
- (j) Class Counsel will provide a copy of a Notice to any Class Member (or the representative of any Class Member) who requests a copy.
4. Class Counsel may also retain a third-party social worker, to assist with locating Class Members to provide them with a Notice and to direct them to Class Counsel to answer questions about the Notices, at a cost of up to \$7,000.
5. After the Notices have been delivered but before the expiry of the opt-out period, Class Counsel will hold between one and three in-person meetings that Class Members can attend to be updated about the status of the class action, ask Class Counsel questions, or deliver their election to opt-out. Class Counsel will hold these meetings at a location in the downtown east side.

**Opt-Out Process**

6. A person may opt-out of the Class Action by delivering a written election to opt-out, signed by the person or the person’s designee, to Class Counsel by hand, mail, courier, or email to Class Counsel at an address specified in the Notices.
7. The written election to opt-out must contain the following information in order to be valid:
- (a) the person’s full name and contact information; and
  - (b) a statement to the effect that the person wishes to be excluded from the Class Action.
8. Written elections to opt-out must be made no later than sixty (60) days after the Notices are first disseminated (the “Opt-Out Deadline”), which deadline shall

be expressly stated in the Notices. A written election shall be deemed to be made at the earliest of the following dates:

- (c) the date it is received by Class Counsel;
  - (d) where sent by mail, the date of the postmark;
  - (e) where sent by mail, if the postmark is not legible, 7 days prior to the date the election is received by Class Counsel.
9. Within thirty (30) days of the Opt-Out Deadline, Class Counsel will provide a report to the Defendants and the court listing the names of all persons who have opted out of the Class Action.

**Cost of Notice**

10. The costs of the Notice Program are to be initially borne by Class Counsel. The defendants will reimburse Class Counsel within sixty (60) days after receiving copies of invoices confirming amounts expended pursuant to the Notice Program order. The cost of the Notice Program will be divided equally between the defendants, and Class Counsel will invoice each defendant separately. If the parties cannot agree on the reasonableness of any costs pertaining to the Notice Program, the matter shall be referred to the Registrar.