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ORIGINAL

NO. 68375-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SCOTT D. ENT, a married man,

Appellant,

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING
COMMISSION,

Respondent.

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COURT OF APPEALS, DIV I
STATE OF WASHINGTON

RESPONDENT'S BRIEF

ROBERT M. MCKENNA
Attorney General

JON R. MORRONE
WSBA NO. 37871
Assistant Attorney General
Defendant/Respondent State of
Washington
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-7352

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I. INTRODUCTION

The Criminal Justice Training Commission (CJTC) is an executive commission created by the Washington State Legislature, and is therefore subject to statutory obligations and directives. RCW 43.101, *et seq.* One of the CJTC's legislatively-assigned duties is to educate and train future law enforcement personnel at a Basic Law Enforcement Academy (Academy); the CJTC is responsible for operating, overseeing, and administering the Academy training program.

While attending an official CJTC training at the Academy, Scott Ent sustained injuries. He contends that the CJTC was negligent, and that he is therefore entitled to relief. But because this lawsuit challenges official acts performed in the administration of RCW 43.101, Mr. Ent can present no set of facts that entitles him to relief. The Legislature unambiguously reserved immunity for the CJTC from any civil suit, and dismissal is therefore appropriate.

II. COUNTERSTATEMENT OF THE ISSUES

1. When RCW 43.101.390 unambiguously confers immunity upon the CJTC, is dismissal appropriate?
2. Assuming, for purposes of argument, that RCW 43.101.390 is ambiguous, is dismissal still appropriate when the reservation of

immunity is harmonious with other provisions of RCW 43.101, and when it would be inharmonious to conclude otherwise?

3. Should this Court consider hypothetical scenarios advanced by Mr. Ent when there are no facts, consistent with the complaint, that entitle him to relief, and when objections on public policy grounds are not permitted?

4. Is dismissal appropriate when Mr. Ent can prove no facts, consistent with his complaint, that entitle him to recovery because RCW 43.101.390's reservation of immunity is an insuperable bar to relief?

III. COUNTERSTATEMENT OF THE CASE

Mr. Ent was hired by the Moses Lake Police Department, and was instructed by his employer to attend the Academy in order to become a certified law enforcement officer. CP 18, ¶¶ 3.1, 3.2. As Mr. Ent acknowledges, successful completion of the Academy is a prerequisite for certification. CP 18, ¶ 3.1. Mr. Ent entered the Academy as a cadet in November 2008. CP 18, ¶¶ 3.1, 3.2. Today, Mr. Ent is a commissioned law enforcement officer. RP at 12:13-14.

On January 7, 2009, the cadets – including Mr. Ent – were directed by CJTC Academy Staff to appear for an official training event. CP 19, ¶¶ 3.3, 3.4. At the training, cadets attended a graduation ceremony and were inspected by a training officer. CP 19, ¶ 3.4. While standing at

“parade rest” during the inspection ceremony (but prior to the conclusion of the training event), Mr. Ent passed out. CP 19, ¶ 3.8. He claims injuries as a result. CP 19, ¶ 3.9.

Mr. Ent filed this lawsuit on January 13, 2011, naming only the CJTC as a defendant. CP 17. The CJTC answered the complaint on February 3, 2011, and asserted the affirmative defense of immunity pursuant to RCW 43.101.390. CP 1, 4. On January 4, 2012, the CJTC moved for dismissal of Mr. Ent’s claims under CR 12(c), and cited RCW 43.101.390’s unambiguous reservation of immunity as grounds for dismissal. CP 22. On February 3, 2012, the Honorable Regina S. Cahan granted the motion to dismiss, CP 74-75, and Mr. Ent appeals the order of dismissal.

IV. ARGUMENT

A. Standards Of Review

1. De Novo Standard For Statutory Construction Analysis

Mr. Ent claims that the trial court erred in dismissing his lawsuit pursuant to RCW 43.101.390’s unambiguous reservation of immunity. When the meaning of a statute is under review, the inquiry is a question of law that is reviewed *de novo*. *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001).

2. De Novo Standard For Motions On The Pleadings

In the alternative, Mr. Ent claims that dismissal on the pleadings was inappropriate because RCW 43.101.390's reservation of immunity is not triggered by the facts of his case. Orders that dismiss a case on the pleadings are also reviewed *de novo* by an appellate court. *P.E. Systems, LLC v. CPI Corp.*, 164 Wn. App. 358, 364, 264 P.3d 279 (2011).

B. Dismissal Is Appropriate Because RCW 43.101.390 Is Unambiguous, And Immunizes The CJTC From Liability

As Mr. Ent concedes, a plain reading of RCW 43.101.390 supports dismissal. Appellant's Opening Brief at 1. On matters of statutory construction, the court's objective is to "ascertain and carry out the Legislature's intent," and "[i]f the statute's meaning is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislature intended." *J.M.*, 144 Wn.2d at 480 (citations omitted). Stated differently, if the language of a statute is plain, the court must effectuate it as written, even if it evinces policy choices that the court considers to be ill-advised. *See State v. Gossage*, 165 Wn.2d 1, 7, 195 P.3d 525 (2008).

"[A]n action cannot be maintained against the state without its consent." *O'Donoghue v. State*, 66 Wn.2d 787, 789, 405 P.2d 258 (1965). "Since the state, as a sovereign, must give the right to sue, it follows that it

can prescribe the limitations upon that right.” *Id.* (citing *State ex rel. Pierce Cnty v. Superior Court of Thurston Cnty*, 86 Wn. 685, 688, 151 P. 108 (1915)). Thus, through the enactment of statute, “[t]he State has authority to determine whether it will be immune from liability for its tortious acts.” *McCluskey v. Handorff-Sherman*, 68 Wn. App. 96, 106, 841 P.2d 1300 (1992) (citing Wash. Const. art. II, § 26).

Relevant here, the Legislature has generated an unambiguous reservation of immunity to shield the CJTC from liability so that the center may train law enforcement personnel. RCW 43.101.390 (delineation of CJTC immunity); RCW 43.101.020 (delineation of CJTC purpose). That immunity provision (RCW 43.101.390) states:

The [CJTC], its boards, and individuals acting on behalf of the [CJTC] and its boards are immune from suit in *any* civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

RCW 43.101.390 (emphasis added). As indicated by the Legislature, “[t]he purpose of [the CJTC] shall be to provide programs and standards for the training of criminal justice personnel.” RCW 43.101.020.¹

In the administration and enforcement of RCW 43.101, the CJTC is required to operate, oversee, and administer the Academy, as well as all

¹ The full text of RCW 43.101.020 states: “There is hereby created and established a state commission to be known and designated as the Washington state criminal justice training commission. The purpose of such commission shall be to provide programs and standards for the training of criminal justice personnel.”

trainings provided as part of the Academy program. See RCW 43.101.020, .080, .095(1), .180, and .200. It is undisputed that the training event at issue was a training program provided by the CJTC Academy, and that the injury took place during the event and prior to its conclusion. Thus, Mr. Ent's civil action against the CJTC for injuries sustained during an official Academy training event triggers the immunity reserved in RCW 43.101.390, and falls under the prohibition on "any" civil actions against the CJTC; to argue that the word "any" has limitation is untenable.

RCW 43.101.390 is not ambiguous. The Legislature crafted an express reservation of immunity so that the CJTC may perform its required duties. Because the facts at issue involve official actions performed in the administration and enforcement of RCW 43.101, the superior court did not err in giving effect to the plain meaning of RCW 43.101.390 as an expression of legislative intent. Dismissal was appropriate, and this court should affirm the superior court's order.

C. Assuming, For Purposes of Argument, That RCW 43.101.390 Is Ambiguous, Dismissal Was Appropriate Because The Reservation Of Immunity For The CJTC Is Harmonious With The Entire Statute

Mr. Ent contends that RCW 43.101.390 is ambiguous, and that the trial court's application of immunity conflicts with other portions of

RCW 43.101. Appellant's Br. at 6-8. He is mistaken. When construing an ambiguous statute, the court considers the entire statutory framework, "giving effect to all that the [L]egislature has said, and by using related statutes to help identify the legislative intent embodied in the provision in question." *In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005) (citing *State, Dep't. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). When performing a statutory construction analysis, the ultimate goal is to have a harmonious statutory scheme. *See Federal Way School Dist. No. 210 v. Vinson*, 172 Wn.2d 756, 779, 261 P.3d 145 (2011) (citing *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974)).

Should this Court conclude that RCW 43.101.390 is ambiguous, Mr. Ent's lawsuit remains subject to dismissal for three reasons. First, the reservation of immunity for the CJTC is harmonious with RCW 43.101 as a whole. Second, it is inharmonious to conclude that RCW 43.101.390's reservation of immunity is restricted to the certification and decertification of law enforcement personnel. Finally, even if immunity were limited to the certification and decertification process, Mr. Ent was required to attend and complete all Academy trainings to obtain certification, thereby triggering immunity under Mr. Ent's own analysis. Dismissal was appropriate.

1. Mr. Ent's Claim That RCW 43.101.390 Conflicts With RCW 43.101.080(7) Is Inaccurate

Mr. Ent argues that the express reservation of immunity raised in RCW 43.101.390 (which reserves immunity for all official acts) conflicts with RCW 43.101.080(7) (which grants the CJTC the power to assume legal, fiscal, and program responsibility for all trainings). Appellant's Br. at 6-7. He is incorrect. When construing two portions of the same statutory scheme that are alleged to be in conflict, the statute must be interpreted in a manner that gives effect to all of the language therein, with no portion rendered meaningless. *Whatcom Cnty v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). This is because "[t]he purpose of an enactment should prevail over express but inept wording." *Id.*

Mr. Ent's position renders both provisions of RCW 43.101 meaningless. The CJTC cannot be both immune for all official acts (which include the administration of Academy trainings) *and* liable for an injury that occurs during the administration of an official Academy training. These positions are mutually exclusive.

There is, however, a more harmonious approach to reading these two provisions. RCW 43.101.080 delineates the CJTC's powers, and

RCW 43.101.080(7) provides that “[t]he commission shall have all of the following powers: . . . (7) To assume legal, fiscal, and program responsibility for all training conducted by the commission.” Thus, it is far more congruent to read RCW 43.101.080(7) as an enumerated grant of authority rather than a limitation of RCW 43.101.390’s reservation of the state’s immunity; that the CJTC – and the CJTC alone – is responsible for all aspects of training law enforcement personnel in Washington State. The power to assume legal responsibility of the training program does not clearly assert an assumption of civil liability, but rather, a plain reading of that provision indicates that it refers to the CJTC’s general power to manage legal matters related to the administration of the training programs. Together the statutory provisions in RCWs 43.101.080(7) and .390 harmoniously read that the CJTC has the power to assume general legal responsibility for the administration of training conducted *and* possesses the requisite immunity to achieve its training obligations.

This position – viewing the power to assume “legal responsibility” for training as part of the CJTC’s administrative function rather than an assumption of civil liability – is bolstered by the fact that the next 11 enumerated duties in RCW 43.101.080 each regard the permissive powers granted to the CJTC to assist in the administration and enforcement of training law enforcement personnel. Further, the defined purpose of the

CJTC is “to provide programs and standards for the training of criminal justice personnel[,]” RCW 43.101.020, and “[t]he first priority of the commission shall be to provide for basic law enforcement training[.]” RCW 43.101.180.² Thus, it is clear that the Legislature intended to convey all necessary powers unto the CJTC so that it may effectuate the training of cadets, RCW 43.101.080, while simultaneously reserving immunity for the CJTC, its boards, and individuals acting on behalf of the CJTC for their official acts, RCW 43.101.390, which include the administration and enforcement of Academy trainings. RCW 43.101.020, .080, .095(1), .180, .200.

Such a reservation of immunity for a state commission is well within the purview of the Legislature, and legislative enactments are entitled to a heavy presumption in favor of validity. *In re Binding Declaratory Ruling of the Department of Motor Vehicles, Salstrom’s Vehicles, Inc. v. Department of Motor Vehicles*, 87 Wn.2d 686, 690-91, 555 P.2d 1361 (1976). This court must resist Mr. Ent’s attempts to render portions of RCW 43.101 moot. Rather, when reading these two provisions in a harmonious manner, it is clear that each provision reinforces the other. Dismissal was appropriate.

² The full text of RCW 43.101.180 reads: “The first priority of the commission shall be to provide for basic law enforcement training, corrections training, and education programs. In addition, the commission shall provide training programs for other criminal justice personnel.”

2. It Is Inharmonious To Conclude That Immunity Is Restricted To The Certification And Decertification Of Law Enforcement Personnel

Mr. Ent claims that RCW 43.101.390 applies only to the certification and decertification of law enforcement personnel. Appellant's Br. at 8-15. He is mistaken. The immunity granted to the CJTC applies to all "official acts performed in the course of their duties in the administration and enforcement of this chapter." RCW 43.101.390. Thus, when considering RCW 43.101.390's language, every word must be given its full meaning. *State v. Fenter*, 89 Wn.2d 57, 60, 569 P.2d 67 (1977) (citing *State v. Lundquist*, 60 Wn.2d 397, 374 P.2d 246 (1962)).

There is certainly more to RCW 43.101 than the certification and decertification of law enforcement personnel. See RCW 43.101.080, .085. For example, the CJTC is authorized to "contract for services as it deems necessary[.]" to "establish . . . standards for the training of criminal justice personnel[.]" to "purchase, lease, or otherwise acquire . . . a training facility or facilities," to "allocate financial resources[.]" and even employ various individuals. RCW 43.101.080(3), (8), (9), (14), (17).

In contrast, the CJTC's ability to "grant, deny, or revoke certification of police officers[.]" RCW 43.101.085(6), is but one of 29 enumerated powers and duties contained in RCWs 43.101.080 and .085. Thus, it is beyond reason to argue that a statute guaranteeing immunity for

the enforcement of an entire chapter is somehow limited to the performance of one, fractional duty therein.

In addition, if the Court adopts Mr. Ent's reading of the statute, CJTC entities that are not involved in certification and decertification would be denied immunity even though such entities are specifically enumerated in RCW 43.101.390 as retaining immunity. The hearing process for decertification is governed by RCW 43.101.380. It states that a five member *hearing panel* will be formed in order to make an administrative recommendation for the commission as to decertification. RCW 43.101.380(2). (emphasis added). But RCW 43.101.390 conveys immunity not only to "individuals acting on behalf of the commission[,] but also to "[t]he commission" itself, as well as "boards" performing "their duties in the administration and enforcement" of the entire chapter. The term "boards" is defined as "the education and training standards boards[,] RCW 43.101.010(2), neither of which have *any* role in certification or decertification. RCW 43.101.080(13), (18). Rather, these boards offer recommendations for minimum training and education standards. RCW 43.101.080(13), (18).

If the immunity provision in RCW 43.101.390 was intended only to immunize the certification and decertification process, the education and training boards would not have been specifically named therein since

they have no role in those processes. In other words, in order to achieve the result advanced by Mr. Ent, the court would have to ignore the plain language immunizing the boards. Again, rendering words in a statute meaningless is contrary to principles of statutory construction. *State ex rel. Schillberg v. Barnett*, 79 Wn.2d 578, 584, 488 P.2d 255 (1971).

RCW 43.101.390 immunizes the CJTC, its boards, and individuals for all official acts performed in the course of their duties in the administration and enforcement of RCW 43.101. It is therefore untenable to argue that immunity only applies to the certification and decertification process when there is much more to RCW 43.101 than certification and decertification. Further, to conclude that RCW 43.101.390 only applies to certification and decertification, Mr. Ent ignores the express reservation of immunity to the education and training standards boards, which have no role in the certification or decertification process. Dismissal was appropriate.

3. Even If Immunity Were Restricted To The Certification/Decertification Process, Immunity Would Still Bar This Lawsuit Because Certification Requires Successful Completion Of The Academy

Even if we assume that Mr. Ent is correct (that immunity is only available in instances relating to the certification or decertification of law enforcement personnel), the CJTC is still immune from liability. Unless

waived, the CJTC certification process *requires* law enforcement personnel to successfully attend and complete all Academy trainings. *See* RCW 43.101.200 (mandating engagement in and successful completion of the Academy for certification), RCW 43.101.080(16) (issuance of diplomas that certify satisfactory completion of the Academy), and WAC 139-06-010(1) (unless waived, certification requires successful completion of the Academy). Mr. Ent recognizes this condition precedent to certification. CP 18, ¶ 3.1 (as part of the Complaint for damages, Mr. Ent states “all persons . . . are required to successfully complete the Academy to become a police officer in Washington State.”).

Further, as Mr. Ent acknowledges, one of the 12 “New Sections” that facilitate the goals enumerated in H.B. 1062, 57th Leg., Reg. Sess. (Wash. 2001), *enacted as* Laws of 2001, ch. 167, regards “[n]ew requirements for certification[.]” Appellant’s Br. at 10, 12; CP 34, 49-50. As expressly stated therein, the CJTC “shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200[.]” CP 49. Again, RCW 43.101.200 provides the statutory authority for the CJTC to

administer the Academy as a precondition for certification. See RCW 43.101.200(1).³

Mr. Ent was required to attend and successfully complete the Academy and all trainings therein – which included the training event in question – to obtain certification. Thus, the CJTC is immune from liability under Mr. Ent’s own analysis: he was injured while standing in formation during an official Academy training event, and successful attendance and completion of the Academy is a prerequisite for certification. Dismissal of Mr. Ent’s claims was appropriate.

D. Mr. Ent’s Hypotheticals Should Not Be Considered Because They Are Not Facts Consistent With The Complaint, And Objections That RCW 43.101.390 Contravenes Public Policy Are Not Permitted

Mr. Ent argues that RCW 43.101.390 contravenes public policy. Appellant’s Br. at 15-18. His assertions fail for two reasons. First, the

³ The full text of RCW 43.101.200(1), with emphasis added, reads:

(1) **All law enforcement personnel**, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, **shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080.** For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. **Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.**

hypotheticals raised by Mr. Ent are not facts consistent with the complaint that would entitle him to relief. Second, objections on grounds that a statute contravenes public policy are not permitted. Dismissal is appropriate.

1. The Examples Proffered By Mr. Ent Are Improper Because They Are Not Facts Consistent With The Complaint That Would Entitle Him To Relief

On a motion for judgment on the pleadings under CR 12(c), the court reviews the pleadings to decide whether the nonmoving party can prove any set of facts *consistent with the complaint* that would entitle him to relief. *P.E. Systems, LLC*, 164 Wn. App. at 364 (emphasis added). As Mr. Ent acknowledges, “a court cannot consider any matter outside the pleadings.” Appellant’s Br. at 6 (citing *Fondren v. Klickitat Cnty*, 79 Wn. App. 850, 853 n.1, 905 P.2d 928 (1995)). Thus, although the court may consider hypothetical facts in this analysis, such facts must still be consistent with the complaint. See *M.H. v. Catholic Archbishop of Seattle*, 162 Wn. App. 183, 189, 252 P.3d 914 (2011) (citations omitted).

Not one of the hypotheticals Mr. Ent relies upon contain facts consistent with his case. Rather, they involve theoretical situations that may never transpire, and are not alleged to have occurred in this case. This court should only consider facts consistent with Mr. Ent’s complaint,

and avoid declaring a duly enacted statute improper simply because something *might* happen in the future.⁴

2. The Court Must Not Distort RCW 43.101.390 Because The Immunity Reserved Therein Is Sound Public Policy

Mr. Ent's objections on public policy grounds are not permitted. The Washington State Supreme Court has explained that "a court is not permitted to distort a statute's meaning in order to make it conform with the [judicial officer's] own views of sound social policy." *Aviation West Corp. v. Washington State Dep't of Labor & Industries*, 138 Wn.2d 413, 432, 980 P.2d 701 (1999) (citations omitted). This is because "[a] statute is not subject to an objection on a ground that it contravenes public policy. When the [L]egislature enacts the statute it becomes public policy." *Riksem v. City of Seattle*, 47 Wn. App. 506, 511, 736 P.2d 275 (1987).

The plaintiff in *Riksem* (Riksem) was bicycling along the Burke-Gilman Trail. *Riksem*, 47 Wn. App. at 507-08. When he attempted to pass a fellow cyclist, Riksem collided with another individual who was

⁴ In addition, the hypotheticals also fail under Mr. Ent's own test. In arguing that immunity only applies to the certification and decertification process, Mr. Ent claims that "without immunizing reporters to [the CJTC] that certifications should be revoked and without immunizing those involved in the process of certification/revocation, particularly hearing board members, no reasonably careful person would ever agree to assist [the CJTC] in the [decertification] process[.]" Appellant's Br. at 13. If fear of litigation would preclude individuals from engaging in the certification/revocation process, then, surely, fear of litigation would preclude individuals – as well as the CJTC itself – from administering high speed driving techniques, firearms training, and even tests of mettle with live hand grenades should that become part of the curricula. Immunity frees the CJTC to train modern police officers. That was the legislature's purpose in immunizing the commission.

jogging along the same pathway. *Riksem*, 47 Wn. App. at 508. Both Riksem and the jogger sustained substantial injuries. *Id.* Riksem sued the City of Seattle for his injuries, claiming that the City failed to adequately design and maintain the trail, as well as failed to deploy adequate warning signs and devices. *Id.* The City successfully moved for summary judgment, arguing that the Recreational Use Statute shielded it from liability. *Id.* at 509.

Riksem appealed the order granting summary judgment and argued, in part, that the Recreational Use Statute contravened public policy. *Riksem*, 47 Wn. App. at 510. On appeal, Division I dismissed Riksem's contentions. *Id.* at 511. In so doing, this Court held that "[p]ublic policy is left up to the state [L]egislature." *Id.* As such, Riksem's claims that the Recreational Use Statute violated public policy were without merit. *Id.*

The argument and application in this case is identical to that employed in *Riksem*. As in *Riksem*, Mr. Ent sustained injuries, and filed this lawsuit to recover damages. Also, as in *Riksem*, summary judgment was granted because a duly enacted statute shielded the defendant from liability. Just as in *Riksem*, Mr. Ent claims that the statute at issue (RCW 43.101.390) violates public policy, and that summary judgment should be overturned.

“The State has authority to determine whether it will be immune from liability for its tortious acts.” *McCluskey*, 68 Wn. App. at 106 (citing Wash. Const. art. II, § 26). As such, this Court should follow its own precedent and resist Mr. Ent’s recommendation to invalidate RCW 43.101.390 on grounds that it contravenes public policy. By duly enacting RCW 43.101.390, the Legislature has determined that the immunity therein is sound public policy. Dismissal was appropriate.

E. Mr. Ent Can Prove No Set Of Facts Consistent With The Complaint That Entitles Him To Relief Because His Injuries Occurred At An Official Academy Training Event, Thereby Triggering RCW 43.101.390’s Reservation Of Immunity

Mr. Ent claims that the training at issue does not trigger RCW 43.101.390’s reservation of immunity because the training was not necessary, and because it was not one of several trainings enumerated in RCW 43.101.⁵ Appellant’s Br. at 19-20. He is mistaken. On a motion for judgment on the pleadings, the court reviews the pleadings to decide whether the nonmoving party can prove any set of facts consistent with the complaint

⁵ Mr. Ent acknowledges that the training event at issue was an official Academy training event. *See* CP 18-19 (as part of his Complaint for damages, Mr. Ent alleges that “Academy Staff” directed all cadets to stand “at attention” and “parade rest” during the graduation ceremony). His only contention, therefore, is whether the training at issue was *necessary*. Appellant’s Br. at 20; *see also* CP 67 (in response to the motion to dismiss, Mr. Ent argues that “nowhere in RCW 43.101 is Defendant charged with holding ceremonies and ordering student police officers to stand motionless for so long they collapse and are injured, like Mr. Ent.”). For the reasons stated herein, dismissal is appropriate because the Legislature has given the CJTC all decision-making authority for determining which trainings are necessary, as well as immunity from civil suit in the administration of their training programs.

that would entitle a plaintiff to relief. *P.E. Systems, LLC*, 164 Wn. App. at 364. As Mr. Ent concedes, Appellant's Br. at 5, it is appropriate to grant motions on the pleadings when "some insuperable bar to relief" exists. *Catholic Archbishop of Seattle*, 162 Wn. App. at 189 (citing *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)).

RCW 43.101.200 requires the CJTC to provide training for peace officers, which Mr. Ent concedes. Appellant's Br. at 19. He claims, however, that administration of the training at issue was not a "dut[y] in the administration and enforcement of this chapter." Appellant's Br. at 19. Stated differently, Mr. Ent believes that the training at issue was unnecessary, and therefore not covered by RCW 43.101.390's reservation of immunity. Appellant's Br. at 20. His reasoning is unsound (as it overlooks the role of the CJTC) and not supported by statute (as the Legislature expressly delegated authority to the CJTC for determining, establishing, and implementing a training regime for cadets like Mr. Ent).

The Academy is an academic environment, and determining what trainings are necessary requires professional judgment. It is well settled that courts give wide latitude to such academic decisions. *See, e.g., Marquez v. Univ. of Washington*, 32 Wn. App. 302, 648 P.2d 94 (1982) and *Doherty v. Southern College of Optometry*, 862 F.2d 570, 577 (6th Cir., 1988) (the judiciary is "ill equipped to evaluate the proper emphasis

and content” of particular curricula) (citing *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 89-91, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978)).

Like students, cadets do not decide what is or is not necessary for their development. Rather, those decisions rest with the administrators who oversee their respective programs. Here, that entity is the CJTC, and the Legislature has given the CJTC one overarching priority: to determine, develop, and implement the requisite training program for law enforcement personnel. RCW 43.101.020, .080(8), (10), (13), .180. In effectuating this overarching priority, the Legislature has immunized the CJTC from *any* civil lawsuit arising there from. Thus, Mr. Ent’s civil action against the CJTC for injuries sustained during an official Academy training event triggers the immunity granted in RCW 43.101.390, and arguing that the word “any” has limitation is untenable.

In addition, Mr. Ent’s claim that the training at issue does not trigger RCW 43.101.390’s reservation of immunity simply because it was not one of several trainings enumerated in RCW 43.101, Appellant’s Br. at 20-21, is beyond reason. The Legislature gave the CJTC, and the CJTC alone, the authority to establish the curriculum and standards for all training programs. RCW 43.101.080(1). Thus, the CJTC has authority to develop and implement all trainings above and beyond those enumerated

by the Legislature, and a jury should not be permitted to decide which trainings are necessary to equip law enforcement officers with the requisite skills in the field of law enforcement. Rather, those decisions should be left to the CJTC as the Legislature intended.

Mr. Ent can prove no set of facts consistent with his complaint that entitles him to recovery because RCW 43.101.390's reservation of immunity is an "insuperable bar to relief[.]" *Catholic Archbishop of Seattle*, 162 Wn. App. at 189 (citing *Tenore*, 136 Wn.2d at 330). This Court should defer to the legislative intent of RCW 43.101.390 and affirm dismissal of Mr. Ent's lawsuit.

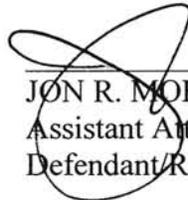
V. CONCLUSION

Dismissal should be upheld, as RCW 43.101.390's reservation of immunity is an unambiguous, insuperable bar to relief. Further, assuming, solely for purposes of argument that RCW 43.101.390 is ambiguous, dismissal is still appropriate because RCW 43.101.390's reservation of immunity is harmonious with other provisions of RCW 43.101, and it would be inharmonious to conclude otherwise. Mr. Ent's objections on public policy grounds are not permitted, and he can prove no set of facts

consistent with his complaint that entitles him to relief. Dismissal pursuant to CR 12(c) was, and remains, appropriate.

RESPECTFULLY SUBMITTED this 14 day of June, 2012.

ROBERT M. MCKENNA
Attorney General



JON R. MORRONE, WSBA NO. 37871
Assistant Attorney General
Defendant/Respondent State of Washington

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on the undersigned date the original and one copy of the preceding Brief of Respondent Washington State Criminal Justice Training Commission and Certificate of Service were filed in the Washington State Court of Appeals, Division I, by legal messenger, at the following address:

Court of Appeals of Washington, Division I
One Union Square
600 University Street
Seattle, WA 98101

That one copy was served by First Class Mail on counsel for Plaintiff/Appellant at the following address:

Kenneth W. Chadwick
Schultheis Tabler Wallace, PLLC
P. O. Box 876
56 C St. NW
Ephrata, WA 98823

DATED this 14th day of June 2012, at Seattle, Washington.



GRACE SUMMERS