

Court File No.: T-1934-13

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

JASON WILCOX

PLAINTIFF

AND:

HER MAJESTY THE QUEEN

DEFENDANT

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Vancouver, November 25, 2013

Issued by:



MUN Y. CHAN
REGISTRY OFFICER
AGENT DU GREFFE

(Registry Officer)

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TO: The Attorney General of Canada
Attention: Mr. William F. Pentney, Deputy Attorney General of Canada

CLAIM OF THE PLAINTIFF

RELIEF CLAIMED

1. The Plaintiff claims on his own behalf and on behalf of the proposed Class Members (as defined below):
 - (a) An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Court Rules* (the "**Rules**") certifying this action as a class proceeding and providing any ancillary directions;
 - (b) An Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiff as the representative plaintiff for the Class (as defined below);
 - (c) Damages for breach of privacy, reckless intrusion upon seclusion, negligence breach of contract, including damages for:
 - i. Costs incurred to ensure personal security,
 - ii. Costs incurred to secure marihuana gardens,
 - iii. Mental distress,
 - iv. Damage to reputation,
 - v. Loss of employment,
 - vi. Reduced capacity for employment,
 - vii. Out-of-pocket expenses, and
 - viii. Inconvenience, frustration and anxiety associated with taking precautionary steps to ensure personal security and security of marihuana gardens.
 - (d) Punitive damages;

- (e) Damages pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, R.S.C. 1985, App. II, No. 44, Schedule B (the “**Charter**”);
- (f) An Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief and distribution thereof to the Plaintiff and other Class Members;
- (g) Pre- and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, R.S.C. 1985, c. F-7;
- (h) Costs, if appropriate; and
- (i) Such further or other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Jason Wilcox, is a resident of Vancouver, British Columbia, with an address for service care of Branch MacMaster LLP, 1410 – 777 Hornby Street, Vancouver, British Columbia V6Z 1S4.
3. The Plaintiff brings this action on his own behalf and on behalf of members of a class (the “**Class Members**”) defined as:

All persons to whom correspondence was addressed in November 2013 by, or on behalf of, Health Canada or the Minister of Health and conveyed in envelopes with the following return address:

Health Canada
Marihuana Medical Access Program
Health Canada
AL: 0300A
Ottawa ON K1A 0K9

4. The Defendant, Her Majesty the Queen, is named as a representative of the Federal Government of Canada and the Minister of Health, the Minister responsible for Health Canada and the Marihuana Medical Access Program.

BACKGROUND

5. In July 2001, the *Marihuana Medical Access Regulations*, SOR/2001-227 (the “**Regulations**”) were brought into force. Among other things, the Regulations provide a regulatory framework for the issuance of authorizations and licenses to individuals with certain symptoms associated with certain medical conditions, permitting such individuals to possess and, in some cases, produce marihuana for

medical purposes. The Minister of Health is responsible for administering the Regulations and does so through Health Canada's Marihuana Medical Access Program ("**MMAP**").

6. The Plaintiff and the other Class Members were each issued an authorization to possess marihuana for medical purposes (the "**Authorization to Possess**") pursuant to section 11 of the Regulations.
7. At all material times, the Authorization to Possess authorized the Plaintiff and other Class Members to possess dried marihuana, in accordance with the authorization, for the medical purpose of the holder.
8. The Plaintiff and certain other Class Members were also each issued a personal-use production license ("**Production License**") pursuant to section 29 of the Regulations.
9. At all material times, the Production Licenses authorized the Plaintiff and certain other Class Members to produce and keep marihuana, in accordance with the license, for the medical purpose of the holder.
10. When applying for their Authorization to Possess and Production Licenses, as applicable, the Plaintiff and other Class Members were required to provide their residential address and, if different, a mailing address to the Minister of Health, and were required to notify the Minister of Health of any changes to their residential or mailing address.
11. Prior to November 2013, all hard-copy correspondence from the Minister of Health, Health Canada and/or MMAP relating to the Plaintiff's and other Class Members' Authorizations to Possess or Production Licenses, as applicable, was conveyed to the addresses provided by the Plaintiff and other Class Members via private courier in envelopes that did not reference the word "marihuana".
12. However, in November 2013, the Minister of Health, Health Canada and/or MMAP sent correspondence pertaining to MMAP to the addresses provided by the Plaintiff and other Class Members via Canada Post in envelopes stamped with the following return address (the "**Letters**"):

Health Canada
Marihuana Medical Access Program
Health Canada
AL: 0300A
Ottawa ON K1A 0K9

Each Letter also had the name and address of the applicable Plaintiff or other Class Member on the outside of the envelope (collectively, the "**Privacy Breach**").

13. On November 21, 2013, the Deputy Minister of Health issued a statement acknowledging the following about the Privacy Breach:
 - (a) Health Canada sent approximately 40,000 letters in envelopes that "were labeled to indicate they were sent by [MMAP]",
 - (b) He deeply regretted the error,
 - (c) Health Canada is taking steps to ensure it does not happen again, and
 - (d) Protection of personal information is of fundamental importance to Health Canada.

14. The Privacy Breach disclosed the following personal and health information about each of the Plaintiff and other Class Members:
 - (a) The Plaintiff or Class Member to whom the Letter was addressed (the "**Addressee**") held an Authorization to Possess marihuana,
 - (b) The Addressee likely possessed marihuana for medical purposes,
 - (c) An address where the Addressee may be located,
 - (d) The Addressee may possess a Production License and may be producing marihuana,
 - (e) The Addressee currently suffers from, or previously suffered from, at least one of the following:
 - i. severe nausea associated with cancer or an AIDS/HIV infection, or associated with medical treatment of one of those conditions,
 - ii. cachexia, anorexia and/or weight loss associated with cancer or an AIDS/HIV infection, or associated with medical treatment of one of those conditions,
 - iii. persistent muscle spasms associated with multiple sclerosis, or a spinal cord injury or disease, or associated with medical treatment of one of those conditions,
 - iv. seizures associated with epilepsy, or associated with medical treatment of that condition,

- v. severe pain associated with cancer, an AIDS/HIV infection, multiple sclerosis, a spinal cord injury or disease, or a severe form of arthritis, or associated with medical treatment of one of those conditions, and/or
 - vi. a debilitating symptom that is associated with a medical condition or with the medical treatment of that condition, and
- (f) Conventional treatments for the symptoms enumerated in (e) were found ineffective or medically inappropriate for the Addressee,

(collectively, the “**Personal and Health Information**”).

15. The Plaintiff and the other Class Members did not consent to the disclosure of their Personal and Health Information by the Defendant as disclosed in the Privacy Breach, or at all.

RECKLESS INTRUSION UPON SECLUSION

16. The Defendant’s intentional or reckless act or omission caused or contributed to the Privacy Breach.

17. The Defendant invaded, without lawful justification, the Plaintiff’s and other Class Members’ private affairs or concerns.

18. The invasion is highly offensive causing distress, humiliation or anguish to the reasonable person.

BREACH OF CONTRACT

19. Upon applying to Minister of Health for an Authorization to Possess or Production License, each of the Plaintiff and other Class Members entered into an express or implied agreement with the Minister of Health, Health Canada and/or the MMAP (the “**Contract**”).

20. The express or implied terms of the Contract required the Minister of Health, Health Canada and/or the MMAP to preserve the confidentiality of the Plaintiff’s and other Class Members’ Personal and Health Information.

21. The Defendant breached the contract when the Plaintiff’s and other Class Members’ Personal and Health Information was disclosed in the Privacy Breach.

22. The Plaintiff and other Class Members suffered damages as a result of the Defendant’s breach of contract, as particularized below.

23. It was foreseeable that the Defendant's breach of contract would cause the Plaintiff and other Class Members to suffer damages.

NEGLIGENCE

24. The Defendant owed the Plaintiff and the other Class Members a duty of care in the collection, retention, use and disclosure of the Personal and Health Information and to maintain the Personal and Health Information as confidential.

25. The Defendant had statutory duties regarding the collection, retention, use and disclosure of the Plaintiff's and other Class Members' Personal and Health Information, including:

- (a) Permitting the Plaintiff and other Class Members to determine for themselves when, how and to what extent the Personal and Health Information is communicated to others pursuant to sections 7, 8 and/or 15 of the Charter,
- (b) Refraining from disclosing the Plaintiff's and other Class Members' Personal Information without the consent of the respective Plaintiff or other Class Member pursuant to section 8 of the *Privacy Act*, R.S.C., 1985, c.P-21, and
- (c) In British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, refraining from willfully and without claim of right, violating the privacy of the Plaintiff's and other Class Members' pursuant to section 1 of the *Privacy Act*, R.S.B.C. 1996, c. 373, section 2 of the *Privacy Act*, R.S.S. 1978, c. P-24, section 1 of the *Privacy Act*, R.S.M. 1987, c. P125 and section 3 of the *Privacy Act*, R.S.N. 1990, c. P-22, respectively.

26. The Defendant breached its duty of care by:

- (a) Failing to comply with its statutory duties respecting the collection, retention, use and disclosure of the Plaintiff's and other Class Members' Personal and Health Information,
- (b) Failing to create or adhere to policies respecting the collection, retention, use, disclosure and confidentiality of the Plaintiff's and other Class Members' Personal and Health Information,
- (c) Failing to take reasonable steps to ensure the Plaintiff's and other Class Members' Personal and Health Information was not disclosed,
- (d) Failing to maintain the confidentiality of the Plaintiff's and other Class Members' Personal and Health Information,

- (e) Failing to comply with its obligations pursuant to the Contract,
- (f) Disclosing the Plaintiff's and other Class Members' Personal and Health Information in the Privacy Breach, and
- (g) Such further or other particulars as counsel may advise.

27. As a result of the Defendant's negligence, the Plaintiff and other Class Members have suffered damages, as particularized below.

28. It was reasonably foreseeable that the Defendant's negligence would cause the Plaintiff and other Class Members to suffer the damages.

BREACH OF *CHARTER* RIGHT TO PRIVACY

29. At all material times, the Plaintiff and other Class Members had a reasonable expectation of privacy pursuant to sections 7, 8 and/or 15 of the Charter.

30. Sections 7, 8 and/or 15 of the Charter guaranteed the Plaintiff's and other Class Members' right to determine for themselves when, how and to what extent their Personal and Health Information is communicated to others.

31. The Privacy Breach infringed or denied the Plaintiff's and other Class Members' right pursuant to sections 7, 8 and/or 15 of the Charter.

DAMAGES

32. As a result of the Defendant's intrusion upon seclusion, breach of privacy, negligence, and/or breach of contract, the Plaintiff and other Class Members have suffered damages including:

- (a) Costs incurred to ensure personal security,
- (b) Costs incurred to secure marijuana gardens,
- (c) Mental distress,
- (d) Damage to reputation,
- (e) Loss of employment,
- (f) Reduced capacity for employment,
- (g) Out-of-pocket expenses,

(h) Inconvenience, frustration and anxiety associated with taking precautionary steps to ensure personal security and security of marihuana gardens, and

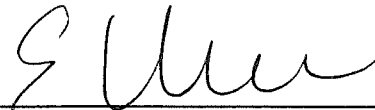
(i) Such further or other damages as counsel may advise.

33. The Defendant's conduct as particularized above was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and/or in complete disregard for the rights of the Plaintiff and other Class Members, and as such renders the Defendant liable to pay punitive damages.

GENERAL

34. The Plaintiff proposes that this Action be tried at Vancouver, British Columbia.

Date: November 25, 2013



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