



Court File No. **VLC-S-S-234872**
Vancouver Registry

In the Supreme Court of British Columbia

Between:

KIRK ADAM FORBES

Plaintiff

-and-

**ATTORNEY GENERAL OF CANADA,
THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL,
JOHN DOE, and JANE DOE**

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

1. The plaintiff, Kirk Adam Forbes, is resident of the City of Coquitlam, in the Province of British Columbia and is a businessperson with an address for service at c/o Labour Rights Law #206, 3007 Glen Drive, Coquitlam, BC (the "Plaintiff").
2. The Attorney General of Canada is a defendant as a result of the acts or omissions by or on the behalf of the RCMP, and the police force, pursuant to the *Royal Canadian Mounted Police Act*¹, and amendments thereto and the *Crown Liability and Proceeding Act*² (the "Defendant Attorney General").
3. The Minister of Public Safety and Solicitor General is a defendant as a result of the acts or omissions by or on behalf of the Royal Canadian Mounted Police (the "RCMP"), pursuant to the provisions of the *Royal Canadian Mounted Police Act*³, and amendments thereto and/or in the alternative, as a result of the acts or omissions on behalf of the members of the RCMP, and as such are provincial constables, pursuant to the *Police Act*⁴, and amendments thereto and pursuant to the *Crown Proceeding Act*⁵, and amendments thereto (the "Defendant Minister").
4. At all material times the Defendant Jane Doe was a member of the RCMP, stationed at the Coquitlam RCMP detachment, and whose name is presently

¹ *Royal Canadian Mounted Police Act*, RSC 1985 c. R10.

² *Crown Liability and Proceeding Act*, RSC 1985, c. C50.

³ *Supra* note 1.

⁴ *Police Act*, RSBC 1996, c. 367.

⁵ *Crown Proceeding Act*, RSBC 1996, c 89.

unknown to the Plaintiff, but whose wrongful acts contributed to the Plaintiff's injuries contained herein ("Jane Doe").

5. At all material times the Defendant John Doe was a member of the RCMP, stationed at the Coquitlam RCMP detachment, and whose name and address are currently unknown to the Plaintiff, but whose wrongful acts contributed to the Plaintiff's injuries contained herein ("John Doe").
6. The Royal Canadian Mounted Police was at all material times the employer of RCMP Members John Doe and Jane Doe and knew of and directed the actions of Jane Doe and John Doe.

Plaintiff's Facts

7. On 3 June 2022, the Plaintiff was taking a shower in his domicile on his property located at 1318 Gabriola Dr., Coquitlam, British Columbia (the "Dwelling House").
8. At all material times the Plaintiff was in lawful possession of the Dwelling House.
9. Unbeknownst to the Plaintiff, RCMP Members Jane Doe and John Doe, entered the Dwelling House without his consent, knowledge, permission, or judicially authorized warrant. The Plaintiff alleges that RCMP Members Jane Doe and John Doe abused their authority and power when they entered the Dwelling House without his consent, knowledge, permission, and a judicially authorized warrant, contrary to Sections 7 and 8 of the *Canadian Charter of Rights and Freedoms* (the "Charter").⁶
10. At no time did RCMP Members Jane Doe and John Doe announce their presence to the Plaintiff or request the Plaintiff's permission to enter the Dwelling House.
11. After completing his shower, the Plaintiff proceeded to exit the shower, in a state of undress, and proceeded into his bedroom to change.
12. To the complete surprise, shock, and consternation of the Plaintiff, the Plaintiff noticed a large intruder in his bedroom.
13. Afraid, confused and in a state of shock, the Plaintiff almost attempted to neutralize the ostensible home invader by tackling them.
14. When the Plaintiff realized that the intruder was Jane Doe, a uniformed member of the RCMP, the Plaintiff stopped immediately.
15. The Plaintiff, shocked, confused and embarrassed at the situation, inquired as to the reason Jane Doe was in the Dwelling House.

⁶ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 [Charter].

16. It was at this point that Jane Doe identified herself as a member of the Coquitlam RCMP detachment.
17. At no point did Jane Doe indicate that she had lawful authority to be in the Dwelling House nor did she seek the Plaintiff's prior permission to be on the property.
18. Jane Doe then asked the Plaintiff, who was still in a state of undress, to identify himself and confirm that he was indeed Kirk Forbes, informing the Plaintiff that she was there to serve a traffic violation ticket on the Plaintiff that had allegedly occurred in Pemberton, British Columbia, on or about 22 November 2021 (the "Violation Ticket").
19. Prior to service of the Violation Ticket, the Plaintiff was completely unaware of any violation that he had incurred or any interaction with the RCMP in Pemberton.
20. As the Plaintiff was unaware of any traffic violation that he allegedly committed, the Plaintiff continued to be confused and asked Jane Doe to leave the bedroom as he was still in a state of undress.
21. Being in a state of undress in front of a stranger was deeply embarrassing and caused the Plaintiff to feel ashamed.
22. After receiving confirmation of the Plaintiff's identity, RCMP Member Jane Doe acceded to the Plaintiff's request to leave and proceeded to exit the bedroom to allow him to put his clothes on.
23. After getting dressed, the Plaintiff proceeded into his living room and kitchen area to discuss the matter with RCMP Member Jane Doe.
24. As the Plaintiff entered his living room, he discovered that RCMP Member John Doe had ostensibly entered the property along with RCMP Member Jane Doe.
25. The Plaintiff observed that RCMP Member John Doe was searching the living room and kitchen area without his consent, knowledge, permission, or judicially authorized search warrant.
26. When the Plaintiff inquired of RCMP Members Jane Doe and John Doe the reason that they had entered the Dwelling House, RCMP Member Jane Doe indicated that when they had knocked on the door, it had flung open and they proceeded to enter.
27. At the same time, RCMP Member Jane Doe joked mockingly that perhaps they should investigate whether a break-in had occurred.
28. Unsatisfied with the explanation, offended by RCMP Member Jane Doe's levity, and feeling unsafe, the Plaintiff became increasingly upset, angry and shocked.

29. Ostensibly unaware of the Plaintiff's state of upset and shock, RCMP Member Jane Doe proceeded to serve the Plaintiff with the Violation Ticket and then left the Dwelling House.

The Complaint Process

30. The same morning, the Plaintiff decided to make a complaint to the Coquitlam RCMP detachment.
31. Wishing to make such a complaint, the Plaintiff contacted the Coquitlam RCMP and spoke to Sergeant Mark McCutcheon, the Traffic Services Commander, and disclosed the particulars of his complaint.
32. Having been advised by Sgt. McCutcheon that he could either make an informal complaint or formal complaint, the Plaintiff decided to make an informal complaint at that time (the "Informal Complaint").
33. The Plaintiff was advised that the RCMP would investigate the complaint and contact the Plaintiff with the findings.
34. Not having received the findings after several weeks, the Plaintiff decided to re-attend at the Coquitlam RCMP detachment to ascertain the status of the complaint.
35. When the Plaintiff explained the situation to the RCMP receptionist at the reception window located at the Coquitlam Detachment, the receptionist responded that the Plaintiff "must be the shower guy".
36. It was apparent to the Plaintiff that the incident had been discussed amongst other members and employees of the Coquitlam RCMP Detachment which caused the Plaintiff further anxiety, embarrassment, and upset.
37. To date, the Plaintiff has not received any indication as to the status of his complaint.
38. At all material times, the Plaintiff held a reasonable and high expectation of privacy with respect to the Dwelling House.
39. At all material times, RCMP Members John Doe and Jane Doe attended the Dwelling House without a warrant or any other legal justification nor had they received the consent of the Plaintiff.
40. RCMP Members John Doe and Jane Doe acted intentionally to invade the privacy of the Plaintiff.
41. In the alternative, RCMP Members John Doe and Jane Doe acted recklessly with respect to invasion of the Plaintiff's privacy.

42. The actions by RCMP Members Jane Doe and John Doe were highly offensive to the Plaintiff causing him anguish, distress, and humiliation.
43. The failure on the part of the Coquitlam RCMP to properly investigate the Plaintiff's Informal Complaint has compounded the Plaintiff's anxiety, frustration, and mental distress.
44. The ostensible sharing of this incident by members and employees of the Coquitlam RCMP has further compounded the anxiety, frustration, and mental distress of the Plaintiff.
45. On 12 May 2023, the Plaintiff made a formal complaint to the Civilian Complaints Commission for the RCMP (the "Formal Complaint"). While the Commission has acknowledged receipt of the Plaintiff's Formal Complaint, it remains unresolved.

Trespass and Intrusion upon Seclusion

46. RCMP Members John Doe and Jane Doe voluntarily entered the Plaintiff's Dwelling House without legal right or the Plaintiff's consent, knowledge, or permission.
47. RCMP Members John Doe and Jane Doe acted intentionally to enter the Dwelling House.
48. In the alternative, John Doe and Jane Doe acted with wanton and reckless disregard of the Plaintiff's rights in entering the Dwelling House.
49. The Coquitlam RCMP is vicariously liable for the actions of RCMP Members John Doe and Jane Doe.
50. The Defendants the Attorney General of Canada, and the British Columbia Minister of Public Safety and Solicitor General are liable for damages as a result of the actions of RCMP Members Jane Doe and John Doe.
51. As a result of the wrongful actions of RCMP Members John Doe and Jane Doe, the Plaintiff has suffered injuries including but not limited to:
 - a. Post Traumatic Stress Disorder;
 - b. Nervous shock;
 - c. Anxiety;
 - d. Emotional Distress;
 - e. Shame;
 - f. Humiliation;
 - g. Mental Distress;

- h. Disgust; and
 - i. Such other injuries as this Honorable Court may advise.
52. As a result of the wrongful actions of the Defendants and each of them, the Plaintiff continues to undergo medical care, has suffered and continues to suffer pain, discomfort and emotional upset and has suffered and continues to suffer loss of his privacy and enjoyment of life.
53. As a further result of the injuries, the Plaintiff has suffered impairment and interference with his occupation and has incurred loss of income and income-earning capacity, both past and prospective.
54. As a further result of the injuries, the Plaintiff has suffered interference with and impairment of his capacity to perform certain house maintenance duties and has suffered loss, both past and prospective.
55. As a further result of the wrongful acts of the Defendants and each of them and the aforesaid injuries, the Plaintiff claims an in-trust claim for assistance, housekeeping, and other duties provided by his spouse, third-parties, including parents and other family members, and for expenses incurred by them in the providing of such assistance, particulars of which will be provided prior to the trial of this action.
56. As a result of the wrongful actions of the Defendants and each of them, the Plaintiff has sustained certain special damages for past and future health costs of health care services pursuant to the *Health Care Costs Recovery Act*⁷.

Part 2: RELIEF SOUGHT

1. A declaration that the Defendants, the Attorney General of Canada and the BC Minister of Public Safety and Solicitor General, are vicariously liable for the actions of RCMP Members Jane Doe and John Doe;
2. A declaration that the Defendants breached the Plaintiff's fundamental rights under Sections 7 and 8 of the *Charter*;
3. A declaration that the Defendants breached the Plaintiff's right to privacy and intruded upon his right to seclusion;
4. A declaration that the Defendants committed the tort of trespass without lawful authority or colour of right;
5. An order compelling the Defendants, the Attorney General of Canada and the BC Minister of Public Safety to pay damages to the Plaintiff, including the following:
6. An order compelling the Defendants to pay damages to the Plaintiff, including:
 - a) General Damages;
 - b) Special Damages, in an amount to be disclosed by the Plaintiff before trial;
 - c) Past Wage Loss;
 - d) Future Wage Loss;

⁷ SBC 2008, c 27.

- e) Damages for Future Cost of Care;
 - f) Damages for house maintenance capacity;
 - g) In Trust Damages; and
 - h) Punitive Damages or, in the alternative, Aggravated Damages;
7. Interest pursuant to the *Court Order Interest Act* from the date of the judgement or day of payment whichever is sooner;
8. Past and future health care services pursuant to the *Health Care Costs Recovery Act, supra*;
9. Costs; and
10. Such further and other relief as this Honourable Court may deem just and equitable in all of the circumstances.

Part 3: LEGAL BASIS

1. The cause of action arose in the City of Coquitlam, in the Province of British Columbia, wholly within the jurisdiction of this Honourable Court.

Charter breaches

2. RCMP Members Jane Doe and John Doe abused their lawful authority and powers thus violating the Plaintiff's fundamental rights under Sections 7 and 8 of the *Charter*.
3. Section 8 of the *Charter* ensures that everyone is entitled to be free from unreasonable search and seizure.
4. It is well established that the right to privacy within the home is considered to be fundamental and any breach of that privacy is considered to be serious:

148 The police, without warrant or authority, entered a dwelling-house. This was not a simple perimeter search as in *Kokesch*, but an entry into the dwelling itself. It is hard to imagine a more serious infringement of an individual's right to privacy. The home is the one place where persons can expect to talk freely, to dress as they wish and, within the bounds of the law, to live as they wish. The unauthorized presence of agents of the state in a home is the ultimate invasion of privacy. It is the denial of one of the fundamental rights of individuals living in a free and democratic society. To condone it without reservation would be to conjure up visions of the midnight entry into homes by agents of the state to arrest the occupants on nothing but the vaguest suspicion that they

may be enemies of the state. This is why for centuries it has been recognized that a man's home is his castle. It is for this reason that the *Narcotic Control Act* prohibits entry into a private dwelling-house without a warrant and it is for this reason that a search warrant must be obtained from a judicial officer on the basis of reasonable and proper grounds. Despite the historical importance attached to the privacy interest of an individual in his or her home, and the significance attached to a dwelling-house by s. 10 of the *Narcotic Control Act*, the police entered the appellant's home without a warrant.⁸

Tortious conduct

5. RCMP Members John Doe and Jane Doe committed the Torts of Intrusion Upon Seclusion and Trespass.

Intrusion upon Seclusion

6. The elements of the tort of Intrusion upon Seclusion were recently considered in *Severs v. Hype3R Inc.*,⁹ the court held:

The tort of intrusion upon seclusion was recognized in *Jones v. Tsige*, 2012 ONCA 32 at paras. 70–72. Its elements include:

- a) Conduct of the defendant that is intentional or reckless;
 - b) Invasion of a plaintiff's private affairs or concerns, without lawful justification; and
 - c) A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.
7. In *Tucci v Peoples Trust Company*¹⁰, the British Columbia Court of Appeal endorsed the existence of the tort of intrusion upon seclusion:

It may be that in a bygone era, a legal claim to privacy could be seen as an unnecessary concession to those who were reclusive or overly sensitive to publicity, though I doubt that that was ever an accurate reflection of reality. Today, personal data has assumed a critical role in people's lives, and a failure to recognize at least some limited tort of breach of privacy may be seen by some to be anachronistic.

For that reason, this Court may well wish to reconsider (to the extent that its existing jurisprudence has already ruled upon) the issue of whether a common law tort of breach of privacy exists in British Columbia.

⁸ *R v Silveira*, [1995] 2 SCR 297.

⁹ *Severs v. Hype3R Inc.*, 2021 BCSC 2261 at ¶156.

¹⁰ *Tucci v Peoples Trust Company*, 2020 BCCA 246 at ¶¶66–¶67.

8. RCMP Members John Doe and Jane Doe intentionally invaded upon the private affairs of the Plaintiff.
9. In the alternative, RCMP Members John Doe and Jane Doe were reckless with respect to the invasion of the Plaintiff's private affairs.
10. RCMP Members John Doe and Jane Doe acted without any lawful justification.
11. A reasonable person would regard the invasion of someone's home as highly offensive resulting in distress, humiliation, or anguish.

Breach of Privacy

12. In the alternative, the Defendants have breached the statutory Tort outlined in Section 1 of the *Privacy Act*¹¹ (the "Act").
13. Section 1 of the *Act* states:
 - (1) It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.
 - (2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.
 - (3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.
14. By entering the Dwelling House without permission or warrant, RCMP Members John Doe and Jane Doe willfully and without claim of right violated the privacy of the Plaintiff.

Trespass

15. The actions of RCMP Members John Doe and Jane Doe constitute the Tort of Trespass.
16. The elements of Trespass are entry upon the property of another without lawful justification. The action of the tortfeasor must be voluntary. The action can be done either intentionally or negligently.
17. RCMP Members John Doe and Jane Doe intentionally entered the Dwelling House without legal justification and without consent, therefore, they have committed the essential elements of the tort of trespass.

¹¹ *Privacy Act*, RSBC 1996, c 373.

18. The Attorney General of Canada and the BC Minister of Public Safety and Solicitor General are vicariously liable for the actions of RCMP Members John Doe and Jane Doe.
19. At all material times the Coquitlam RCMP had knowledge of and specifically authorized and condoned actions of RCMP Members John Doe and Jane Doe.
20. In the alternative, the actions of RCMP Members John Doe and Jane Doe were undertaken in the course of their employment with the Defendant Coquitlam RCMP Detachment and thereby constitute a sufficient connection to the actions authorized by the RCMP, such that their actions are modes of the authorized action.¹²
21. The Defendant BC Minister of Public Safety and Solicitor General is liable for the acts of John Doe and Jane Doe by virtue of section 11 (1) of the *Police Act* and by virtue of an agreement between the Federal and Provincial Crowns, the BC Provincial Crown is vicariously and statutorily liable for the tortious and unlawful conduct of any and all RCMP Members within British Columbia.¹³
22. The Defendant Attorney General is liable for the acts of the Coquitlam RCMP, John Doe, and Jane Doe by virtue of the *Royal Canadian Mounted Police Act*¹⁴, and amendments thereto and ss.3 (a)(i) and 3(b)(ii) and 36 of the *Crown liability and Proceeding Act*.¹⁵

Damages

23. In *Henderson v McGregor*¹⁶, Walker J summarized the law related to aggravated and punitive damages:

Aggravated damages are compensatory in nature, designed to compensate for distress and humiliation suffered as a result of the defendant's conduct (often described as insulting behaviour) or high-handed conduct: *Vorvis v. Insurance Corp. of British Columbia* [footnote omitted] [

In *Thomson*, Madam Justice Gerow discussed the difference between aggravated and punitive damages:

Ms. Thomson is seeking both aggravated and punitive damages. Aggravated damages are a compensatory award that takes account of the intangible injuries such as distress and humiliation caused by a defendant's insulting behaviour.

¹² *Bazley v Curry*, 1999 Carswell BC 1264, [1999] 2 SCR 534.

¹³ *Supra* note 4.

¹⁴ *Supra* note 1.

¹⁵ *Supra* note 5.

¹⁶ *Henderson v McGregor* 2019 BCSC 1964 at ¶¶46-¶47.

Aggravated damages are often claimed as compensation for mental distress caused by a defendant's behaviour. Aggravated damages will frequently cover conduct which would also be subject to punitive damages, but their role is compensatory. They are designed to compensate a plaintiff and are measured by the plaintiff's suffering such as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, and similar matters caused by the conduct of a defendant: *Vorvis v. Insurance Corp. of British Columbia* [footnote omitted].

There is a close relationship between aggravated and punitive damages. The harshness of a defendant's conduct may give rise to both types of damages. However, it is important that a plaintiff not be compensated twice for the same harm or a defendant punished twice for the same type of moral culpability: *Huff v. Price* [footnote omitted].

24. In entering the Plaintiff's Dwelling House without permission, an area that attracts the highest level of privacy, continuing to make light of the situation and then reporting the situation to other Members and employees of the Coquitlam RCMP, the Defendants' conduct was insulting, highhanded and malicious.
25. As a result of the conduct of the Defendants RCMP Members Jane Doe and John Doe, the Plaintiff has suffered mental distress and humiliation worthy of compensation.
26. Moreover, the conduct of the Defendants RCMP Members Jane Doe and John Doe, has reached such a level of harshness that it is worthy of rebuke, thereby entitling the Plaintiff to Punitive damages.
27. The Plaintiff cites and relies upon the following:
 - a. Sections 7 and 8 of the *Charter*;
 - b. *Police Act*, RSBC 1996, c 367;
 - c. *Privacy Act*, RSBC 1996, c 373;
 - d. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
 - e. *Crown Liability and Proceeding Act*, RSC 1985, c C-50;
 - f. *Crown Proceeding Act*, RSBC 1996, c 89; and
 - g. *Health Care Costs Recovery Act*, SBC 2008, c 27.

Plaintiff's address for service: Labour Rights Law
Suit #206, 3007 Glen Drive
Coquitlam, BC V3B 0L8

Fax number address for service (if any): N/A

E-mail address for service (if any): Service@LabourRightsLaw.com

Place of trial: Vancouver, British Columbia.

The address of the registry is: Vancouver Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: 10 July 2023



Signature of Sebastien Anderson
Barrister & Solicitor, Counsel for the
Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM: A Claim for damages in tort against the Defendants for breach of privacy, trespass and intrusion upon seclusion.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: Statues relied upon

- a. Sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*, *The Constitution Act, 1982*, *Schedule B to the Canada Act 1982 (UK)*, 1982, c 11;
- b. *Police Act*, RSBC 1996, c 367;
- c. *Privacy Act*, RSBC 1996, c 373;
- d. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
- e. *Crown Liability and Proceeding Act*, rsc 1985, c C-50;
- a. *Crown Proceeding Act*, RSBC 1996, c 89; and
- f. *Health Care Costs Recovery Act*, SBC 2008, c 27.