

ID# 1 Act 0

Court File No.: T-226-13

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

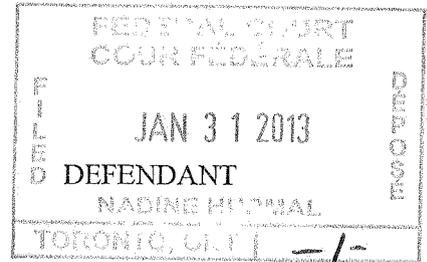
BETWEEN:

JOHN MARK JACQUES, GORDON ALBERT MEHEW and CRAIG ROBAR

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN



STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' solicitor or, where the Plaintiffs do not have a solicitor, serve it on the Plaintiffs, 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.

Toronto, January 31, 2013

Issued by:

[Signature]
AGENT DU GÉNÉRAL
(Registry Officer)

Address of Local Office:
180 Queen Street West
Suite 200
Toronto, ON M5V 3L6

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

CLAIM OF THE PLAINTIFFS**RELIEF CLAIMED**

1. The Plaintiffs claim on their 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 Plaintiffs as the representative plaintiffs for the Class;
 - (c) an interim Order or permanent order requiring the Defendant to fund credit monitoring services for the Plaintiffs and the Class Members and provide the Plaintiffs and Class Members with new Social Insurance Numbers;
 - (d) damages for breach of contract, breach of warranty, breach of confidence, reckless intrusion upon seclusion, and negligence, including damages for:
 - (i) costs incurred in preventing identity theft;
 - (ii) increased risk of future identity theft;
 - (iii) damage to credit reputation;
 - (iv) mental distress;
 - (v) out-of-pocket expenses;
 - (vi) inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of credit information; and
 - (vii) time lost in precautionary communications with third parties such as credit card companies, credit agencies, creditors, utilities, cable and internet providers, and other parties to inform them of the potential that the Plaintiffs’ and Class Members’ credit information may be misappropriated;

- (e) punitive damages;
- (f) pre- and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*; and
- (g) such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, John M. Jacques, is a resident of Morpeth, Ontario, with an address for service of 251 Goyeau St. #600, Windsor, Ontario.

3. The Plaintiff, Gordon Albert Mehew, is a resident of Kingsville, Ontario, with an address for service of 251 Goyeau St. #600, Windsor, Ontario.

4. The Plaintiff, Craig Robar, is a resident of Halifax, Nova Scotia, with an address for service of 251 Goyeau St. #600, Windsor, Ontario.

5. The Plaintiffs bring this action on their own behalf and on behalf of members of a class (the "Class Members") defined as:

All persons whose personal information was contained in an electronic storage device, also known as a USB key, in the control of Human Resources and Skills Development Canada, which was lost or disclosed to others in or about November, 2012, but not including senior management of Human Resources and Skills Development Canada or the Minister and Deputy Ministers of the Ministry of Human Resources and Skills Development.

6. The Defendant, Her Majesty the Queen, is named as a representative of the Federal Government of Canada and the Minister of Human Resources and Skills Development, the Minister responsible for Human Resources and Skills Development Canada (“HRSDC”).

BACKGROUND

7. The Plaintiffs and Class Members applied to HRSDC for pensions, disability benefits, old age security benefits, employment insurance or child care tax credits.

8. On or about November 5, 2012 the HRSDC discovered that it was missing a USB key containing unencrypted confidential personal information of approximately 5,000 Canadians who had applied for pensions, disability benefits, old age security benefits, employment insurance or child care tax credits. The confidential information consists of the names, dates of birth, Social Insurance Numbers, addresses, primary and (if applicable) secondary medical conditions, level of education, occupation type and Service Canada processing centre (the “Personal Information”) of the Plaintiffs and the Class Members.

9. The Defendant failed to notify the HRSDC’s security officer of the loss of the Personal Information until December, 2012, and failed to notify the Privacy Commissioner of Canada of the loss of the Personal Information until December 14, 2012.

10. The Defendant failed to disclose the loss of Personal Information to the Canadian public or to the Plaintiffs and Class Members until late December, 2012.

11. To date, the Defendant has been unable to locate the USB key on which the Personal Information was stored. The Defendant has been unable to determine when or how the USB key was lost, who is in possession of the USB key, or any details regarding whether the Personal Information stored on the USB key has been accessed, by whom, and for what purpose.

12. In December, 2012, the Plaintiffs each received a letter from HRSDC confirming that each of the Plaintiffs' Personal Information had been lost.

13. In the letter dated December, 2012, the Plaintiffs were advised by HSRDC that they should consider the following steps:

- (a) contacting their bank concerning protecting their bank accounts;
- (b) contacting a Canadian credit reporting agency such as Equifax or TransUnion to monitor their credit rating and to ask for a copy of their credit report; and
- (c) file a complaint with the Privacy Commissioner of Canada.

14. HSRDC also advised the Plaintiffs that if they suspected their Personal Information was being used fraudulently, they should:

- (a) report irregularities by mail delivery to Canada Post;

- (b) file a police complaint;
- (c) visit a Service Canada Centre and bring necessary documentation to show a fraudulent use of their Social Insurance Number; and
- (d) visit a Services Canada website regarding Social Insurance Number protection that repeats the information set out above.

BREACH OF CONTRACT AND WARRANTY

15. The Plaintiffs and the Class Members entered into agreements with HRSDC which were similar or identical with respect to the collection, retention, and disclosure of the Personal Information. As part of the agreement, each Class Member was required to complete an application to obtain pensions, disability benefits, old age security benefits, employment insurance or child care tax credits, and required that the Plaintiffs and each Class Member provide the Personal Information to the Defendant. The terms of the application for the benefits referred to above form the agreement (the "Contract"). The Contract provided that any Personal Information provided by the Plaintiffs and the Class Members as a part of the application process or throughout the duration of the Contract would only be used by HRSDC for certain defined purposes.

16. The express or implied terms of the Contract include but are not limited to:
- (a) HRSDC would comply with all relevant statutory obligations regarding the collection, retention, and disclosure of the Plaintiffs' and Class Members' Personal Information;

- (b) HRSDC would keep the Personal Information of the Plaintiffs and the Class Members secure and confidential;
- (c) HRSDC would take steps to prevent the Personal Information from being lost, disseminated, or disclosed to unauthorized persons; and
- (d) HRSDC would protect the Personal Information from compromise, disclosure, loss or theft.

17. The Contract offered peace of mind to the Plaintiffs and Class Members that in exchange for pensions, disability benefits, old age security benefits, employment insurance or child care tax credits for the financial benefit of the Class Members, the Personal Information would be used by the Defendant for limited purposes and would otherwise be kept secure and would not be lost, disseminated, or disclosed to unauthorized persons.

18. The Defendant warranted that it would keep the Personal Information secure and confidential, and would take steps to prevent the Personal Information from being lost, disseminated, or disclosed to unauthorized persons.

19. The Defendant breached the express or implied terms of the Contract and warranty by improperly losing, disseminating, or disclosing the Personal Information of the Plaintiffs and the Class Members.

NEGLIGENCE

20. The Defendant owed the Plaintiffs and Class Members a duty of care in their handling of the Personal Information and their fulfillment of the terms of the Contract.

21. The Defendant had statutory duties regarding the handling of the Plaintiffs' and Class Members' Personal Information:

- (a) pursuant to section 8(1) of the *Privacy Act*, RSC 1985, c P-21, the Personal Information was not to be disclosed without the consent of the individual to which the information relates;
- (b) pursuant to section 32 of the *Department of Human Resources and Skills Development Act*, SC 2005, c 34, the Personal Information is privileged and is not to be made available except as authorized by that Act; and
- (c) pursuant to section 104.01 of the *Canada Pension Plan Act*, RSC 1985, c C-8, the Personal Information is privileged and is not to be made available except as authorized by that Act.

22. The Defendant was negligent and/or reckless, and performed the Contract negligently by:

- (a) failing to meet its statutory duties in handling the Personal Information;
- (b) failing to create or adhere to policies for the handling of the Personal Information;

- (c) failing to take reasonable steps to ensure the Personal Information was not lost, disseminated, or disclosed;
- (d) failing to take reasonable steps to prevent unauthorized access to the Personal Information, including failing to encrypt the USB key on which the Personal Information was stored;
- (e) failing to disclose the loss of the Personal Information to its own security personnel and to the affected Plaintiffs and Class Members in a timely manner; and
- (f) other such particulars as counsel may advise.

BREACH OF PRIVACY, BREACH OF CONFIDENCE, AND INTRUSION UPON SECLUSION

23. The Defendant's breach of contract and the particulars of negligence set out above constitute:

- (a) a breach of confidence, as the Plaintiffs and Class Members communicated their Personal Information to the Defendant, and the Defendant misused that Personal Information to the detriment of the Plaintiffs and Class Members; and
- (b) a breach of privacy and a reckless intrusion upon the seclusion of the Plaintiffs and the Class Members in their private affairs, in a manner that would be highly offensive to a reasonable person.

DAMAGES

24. As a result of the Defendant's breach of contract, breach of warranty, breach of confidence, reckless intrusion upon seclusion, and negligence, the Plaintiffs and Class Members have suffered damages including:

- (a) Costs incurred in preventing identity theft; _____
- (b) Increased risk of future identity theft; _____
- (c) Damage to credit reputation;
- (d) Mental distress;
- (e) Out-of-pocket expenses;
- (f) Inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of credit information; and
- (g) Time lost in precautionary communications with third parties such as credit card companies, credit agencies, creditors, utilities, cable and internet providers, and other parties to inform them of the potential that the Plaintiffs' and Class Members' credit information may be misappropriated.

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

GENERAL

26. The Plaintiffs propose that this action be tried at Toronto, Canada.

Date: January 31, 2013



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JOHN MARK JACQUES et al,
Plaintiffs

v. **HER MAJESTY THE QUEEN**
Defendants

Court File No.:

ONTARIO FEDERAL COURT
Proceedings commenced in TORONTO

STATEMENT OF CLAIM

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DEPT. OF JUSTICE
JAN 31 2013
TORONTO

For file # : T - 226-13 Doc. # : 1 (ID# 1)

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Filing date / Date de dépôt :

No. Page

January 31, 2013

12

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ON / LE March 28, 2013

FROM / DE :

**Nathalie Lemieux
Support Services
Service de soutien**

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ON / LE _____

BY / PAR _____