

Court File No. T-529-23

**FEDERAL COURT****PROPOSED CLASS PROCEEDING**

BETWEEN:

**PASCAL DUGAS, MARCO VACHON and LUC BELLIVEAU,**

Plaintiffs

- and -

**ATTORNEY GENERAL OF CANADA,**

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

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 Courts Rules](#), serve it on the plaintiffs' solicitor or, if 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 the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Courts Rules](#).

Copies of the [Federal Courts 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.

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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	16-MAR-2023	
Adam Young		
Fredericton, N-B.		-1-

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

Date: March 16, 2023

Issued by: Original signed by Adam Young  
*(Registry Officer)*

Address of  
local office: 82 Westmorland Street, Suite 100  
Fredericton, NB  
E3B 3L3

TO: **ATTORNEY GENERAL OF CANADA**  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa ON K1A 0H8

## CLAIM

### A. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA

1. The Plaintiffs claim on behalf of themselves and the other members of the proposed class:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the Class pursuant to rule 334.16 of the *Federal Court Rules*, SOR/98-106 (the "*Federal Court Rules*");
  - (b) a declaration that Canada was, and continues to systemically breach individual members of the RCMP's right to privacy;
  - (c) a declaration that Canada and its agents systemically violated, and continue to violate, section 8 of the *Charter* in a way that is not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*;
  - (d) a declaration that Canada is liable to the Plaintiffs and Class Members for damages caused by breach of the individual members of the RCMP's right to privacy;
  - (e) a declaration that Canada is liable to the Plaintiffs and Class Members for damages under section 24(1) of the *Charter* for breach of sections 8 of the *Charter* in relation to the actions of RCMP Officers who breached the Class Members' right to privacy;
  - (f) damages for breach of privacy and breach of the *Charter* in the amount of \$500 million;
  - (g) punitive and exemplary damages in the amount of \$100 million;
  - (h) prejudgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;
  - (i) costs of this action on a substantial indemnity scale or in an amount that provides full indemnity.
  - (j) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*; and

- (k) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

## B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- (a) **“Agents”** mean the servants, contractors, officers and employees of Canada and the operators, managers, administrators, police officers, and other staff members at RCMP Detachments;
- (b) **“Canada”** means the Defendant in this proceeding as represented by the Attorney General of Canada.
- (c) **“Class” or “Class Members”** means:
  - all members of the RCMP who allege that their right to privacy, has been violated by the Agents and were alive as of March 18, 2023;*
- (d) **“Class Period”** means the period from April 17, 1982, to the present;
- (e) **“RCMP”** means the Royal Canadian Mounted Police;
- (f) **“RCMP Detachments”** means the various local RCMP police stations and offices operated by Canada;
- (g) **“RCMP Officers”** means Agents of Canada.

## C. OVERVIEW OF THIS ACTION

- 3. The action is brought to preserve and affirm the fundamental civil and constitutional rights of all Class Members who were harmed as a result of the intentional violation of the right to privacy by Agents of Canada.
- 4. The Class Members communicate with other Class Members in the performance of their duties as RCMP officers at various times and using various means of communication. The Class Members had an expectation of privacy in their communications.
- 5. The Class Members have become aware that from time to time and over an extended period

the Defendants did intentionally record such communications without the consent or approval of the Class Members and without lawful justification.

6. The result of finding out that the practice of the RCMP Officers recording communications without a Court Order or consent was an invasion of privacy that was highly offensive and caused the individual Class Members distress, humiliation and/or anguish.
7. Further the invasion of privacy has resulted in individual Class Members suffering extreme stress and has negatively affected both their work and home life.
8. The lives of Class Members have been permanently impacted, as a result of the Defendant's breach of privacy and *Charter* breach.

#### **D. THE PARTIES**

##### **a) The Representative Plaintiffs and the Class**

9. The first Representative Plaintiff is Pascal Dugas. Pascal Dugas is 45 years old and resides in Dieppe, New Brunswick. He is a member of the RCMP and has been so employed for 23 years.
10. The second Representative Plaintiff is Marco Vachon. Marco Vachon is 54 years old and resides in Memramcook, New Brunswick. He is a member of the RCMP and has been so employed for 30 years.
11. The third Representative Plaintiff is Luc Belliveau. Luc Belliveau is 38 years old and resides in Dieppe, New Brunswick. He is a member of the RCMP and has been so employed for 15 years.
12. The Representative Plaintiffs became aware in April of 2021 that conversations they had with other members of the RCMP were recorded without their consent or the consent of the other party to the conversations. Further such was done without an order of the court. The recordings, made over a period of years, were provided to other Agents of Canada including the Office of Investigative Standards and Practice from "K" Division.
13. "K" Division had for a period of time conducted an investigation of the Command Triangle - a division or group of RCMP officers in New Brunswick. The Representative Plaintiffs and other members participated in the investigation. Only at the latter stages of such it became

evident that recording of conversations was being used. The Representative Plaintiffs and other members of the class became aware of the existence of such recording of their conversations late in the investigation.

14. The results of the investigation did not find any fault with the Representative Plaintiffs. The investigation did cause significant stress upon the Representative Plaintiffs and did negatively affect their work and home life.
15. The actions of the Agents of Canada recording conversations are in violation of section 184 (1) of the *Criminal Code* R.S.C., 1985, c. C-46 and using such to advance their objective and violate the Representative Plaintiffs' Right to Privacy and the provisions of section 8 of the *Charter* did cause loss of confidence in the integrity of the process.
16. The Plaintiffs bring this action pursuant to the *Federal Court Rules* on their own behalf and on behalf of the Class.

**b) The Defendant**

17. The RCMP is Canada's national police force pursuant to the federal *Royal Canadian Mounted Police Act*. The federal Crown is liable, pursuant to section 3 of the *Crown Liability and Proceedings Act*, for the wrongful or negligent acts and omissions of the RCMP's members, employees, agents, and officers including those from other police forces operating under its jurisdiction or command. According to the *Crown Liability and Proceedings Act*, the Defendant Attorney General of Canada is also the person in whose name proceedings are taken against the federal Crown.

**E. THE TREATMENT OF RCMP MEMBERS BY THE RCMP**

**a) The RCMP and its Mandate**

18. The RCMP is Canada's national police force and an agency of the Federal Ministry of Public Safety. Under the direction of the Minister of Public Safety Canada, the Commissioner of the RCMP has exclusive control and management of policing and all matters connected therewith.
19. The RCMP is organized under the authority of *Royal Canadian Mounted Police Act*, and the *Royal Canadian Mounted Police Regulations, 2014*.

20. The RCMP's mandate includes preventing and investigating crime, maintaining peace and order, enforcing laws, contributing to national security, ensuring the safety of state officials, visiting dignitaries and foreign missions, and providing vital operational support services to other police and law enforcement agencies within Canada and abroad.
21. The RCMP must act in accordance with its *Code of Conduct* which is a schedule to the *Royal Canadian Mounted Police Regulations, 2014*. RCMP Officers must:
  - (a) Treat every person with respect and courtesy and not engage in discrimination or harassment;
  - (b) Respect the law and the rights of all individuals.
  - (c) Act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position.
22. The protection of RCMP members in relation to performance of their duties included that they must act in accordance with section 25 of the *Criminal Code* which requires the RCMP and its agents to use force that is intended or likely to cause death or grievous bodily harm only when the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.
23. In practice, there is no provision that permits RCMP Officers from not having court approval to record third-party conversations as it is not a matter of self-preservation or otherwise.

**b) The Crown's knowledge of RCMP breaching the protection of privacy of the Class Members**

24. At all relevant times, the Crown had knowledge of the RCMP's practices and failed to prevent the Defendants from violating the Class Members' right to privacy and section 8 *Charter* rights.

**F. THE PLAINTIFFS' EXPERIENCE**

25. Agents of Canada, without the Plaintiffs' consent, recorded 557 days of audio conversation between October 2017 to early 2020, on average about 10 hours of recording each day.
26. RCMP officers gave these unvetted recordings to Public Prosecution Service Canada

("PPSC") and shared them with several other RCMP members and Public Servant Employees ("PSE") who were not properly security cleared to listen to these sensitive conversations discussing police operations and human resource information.

27. In October 2020 the Plaintiffs received a letter from PPSC stating they wanted Moncton RCMP members to be investigated criminally and for Codes of Conduct related to suppressing evidence. There was a very long ongoing battle between the Plaintiffs, management and PPSC. The Plaintiffs were told by management that they own the privilege to the letter, and it would never be disclosed.
28. PPSC decided against that and sent letter to RCMP in Quebec - C division who were running an investigation parallel to the Plaintiffs' investigation, into Organized Crime, and tarnished their reputation and integrity.
29. Their Federal Policing Officer ("FPO") and Inspector sent a letter to PPSC Chief of Atlantic Canada stating the Plaintiffs had done nothing wrong and no members will receive any Code of Conduct or Criminal Investigation.
30. RCMP J Division management decided to have 8 people (members and PSE's) review all audio conversations and report back. Not only did the Plaintiffs have their own management question them but now another 8 people listening to private communications.
31. On March 25, 2021, the Plaintiffs started receiving emails from the reviewing team asking questions with regard to radio conversations. That is the day it was confirmed to the Plaintiffs that Agents of Canada had in fact recorded the Plaintiffs without their consent and now Agents of Canada were sharing those recordings.
32. In May 2022, the Plaintiffs were made aware that a review of the entire file, communications and operational decisions would be conducted by the K division (Alberta) Office of Investigative Standards and Practices ("OISP").
33. The Plaintiffs were very confident they had done nothing criminal or merit the disrespect that had been shown to them by Agents of Canada.
34. At the conclusion of the second review a detailed document was produced, and it clearly indicated issues and problems that arose with Agents of Canada.



35. Once the review was completed, the Plaintiffs received an email from their FPO apologizing for what had been done and the negative effect it had on the Plaintiffs professionally and personally. The correspondence to the Plaintiffs in part stated:

“FSOC were not notified that radio transmissions were being recorded. Recommend if they do use recorded channels to ensure everyone is aware. Following the PPSC letter, both internally and externally employees became aware of the radio transmissions. This negatively impacted employee’s morale and reputation and created trust issues with Management and PPSC.”

## **G. THE RCMP'S DUTIES TO CLASS MEMBERS**

### **a) Right to Privacy**

36. The Defendant owes a duty of care to Class Members through the establishment, funding, oversight, operation, supervision, control, maintenance, and support of RCMP.
37. The Defendant and its Agents are obligated under the *Royal Canadian Mounted Police Regulations, 2014, SOR/2014-281* to:
- (a) treat every person with respect and courtesy and not engage in discrimination or harassment.
  - (b) respect the law and rights of all individuals.
  - (c) act with integrity, fairness and impartiality, and not compromise or abuse its authority, power or position; and
  - (d) behave in a manner that is not likely to discredit the Force.
38. The Defendant and its Agents are and were aware that privacy has long been recognized as an important underlying and animating value of various traditional causes of action to protect personal and territorial privacy.
39. The Defendant and its Agents are and were aware that *Charter* jurisprudence recognizes privacy as a fundamental value in our law and specifically identifies, as worthy of protection, a right to informational privacy that is distinct from personal and territorial privacy.
40. Through itself or its Agents, the Defendant was in a relationship of proximity with Class

Members because of its operation of RCMP.

41. During the Class Period, Class Members were employed by the Defendant and expected that they would not be treated by the Defendant in a manner that would breach their right to privacy.
42. The Defendant knew or ought to have known that RCMP Officers recording their conversations without their consent or with an order of the Court would breach their right to privacy. The Defendant had particular knowledge of the actual harms perpetrated on Class Members by virtue of internal reports, community knowledge, complaints by Class Members.
43. The Defendant knew or ought to have known that its failure to *respect the right to privacy* would result in harm to Class Members.
44. Class Members had the reasonable expectation that Canada would operate its RCMP in a manner that substantially respected the right to privacy and section 8 of the *Charter* during the Class Period.

**b) Fiduciary Duty**

45. The Defendant, Canada, has a fiduciary-beneficiary relationship with Class Members.
46. The Defendant has exclusive power under its Conduct Process designated by the Commissioner's Standing Orders (Conduct) with the power to conduct meetings and investigations.
47. By virtue of its Standing Orders, the Defendant has an ongoing obligation of disclosure which would include the acknowledgement of a breach of privacy.
48. There is an expressed and implied undertaking by Canada to protect the Class Members' right to privacy.
49. The fiduciary obligation is an implied term of employment contracts that arises when the RCMP has the power or discretion to use information in a way that could negatively affect the Class Members' interests.
50. The fiduciary obligations aim was to protect the Class Members in work relationships

involving a high level of trust and confidentiality.

## **H. CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS**

### **a) Breach or Right to Privacy and Fiduciary Duty**

51. During the Class Period, the Defendant breached its fiduciary duty and common law duty of care by the following acts or omissions, including but not limited to:
- (a) failure to adequately, properly and effectively care for Class Members;
  - (b) failure to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures by RCMP Officers during the Class Period;
  - (c) failure to establish or implement standards of conduct for RCMP Officers to ensure that no employee would breach the right to privacy of any Class Members;
  - (d) failure to provide any or an adequate program or system through which breach of the right to privacy could be recognized, reported, investigated or addressed;
  - (e) failure to oversee the acts of RCMP Officers in a way that would protect Class Members from breach of the right to privacy;
  - (f) failure to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
  - (g) failure to properly maintain administrative records; and
  - (h) such other and further grounds as the plaintiff may advise and this Honourable Court may consider.
52. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada and the RCMP continued to turn a blind eye to breach of the right to privacy by RCMP Officers or reasonably should have known, that the Class Members would suffer the significant harms described herein.

**b) Breach of Section 8 of the *Charter***

53. Section 8 of the *Charter* guarantees that every individual has the right to be secure against unreasonable search or seizure and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
54. As a government actor, the Defendant owed, and continues to owe, duties under the *Charter* to the Class Members.
55. There is no justification in a free and democratic society for breach of the right to privacy by RCMP Officers under section 1 of the *Charter*.

**I. DAMAGES SUFFERED BY THE CLASS MEMBERS**

56. The Defendant knew or ought to have known that as a consequence of its negligence, breach of fiduciary duty and breaches of section 8 of the *Charter*, the Plaintiffs and Class Members would suffer injury and damages including, but not limited to:
  - (a) emotional abuse;
  - (b) psychological abuse;
  - (c) psychological illness;
  - (d) an impairment of mental and emotional health amounting to a severe and permanent disability;
  - (e) emotional and psychological pain and suffering;
  - (f) an impaired ability to participate in normal family life;
  - (g) isolation from family and community;
  - (h) alienation from family, spouses and children;
  - (i) an impairment of the capacity to function in the workplace and a permanent impairment in the capacity to earn income;
  - (j) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders;

- (k) depression, anxiety and emotional dysfunction;
- (l) pain and suffering;
- (m) loss of self-esteem and feelings of degradation;
- (n) loss of income;
- (o) loss of enjoyment of life; and
- (p) such other and further damages as the plaintiff may advise and this Honourable Court may consider;

57. At all material times, the Defendant has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures pleaded above would continue to create, continue to aggregate and contribute to the Class Members' injuries and damages.

58. As a result of the Defendant's conduct, Class Members have required and will continue to require further medical treatment, rehabilitation, counseling and other care.

59. Canada and its Agents knew or ought to have known that as a consequence of its negligence, breach of fiduciary duty and breach of section 8 of the *Charter*, all Class Members would suffer the damages for which the Defendant is directly or vicariously liable for as described above.

60. In the circumstances, the Plaintiffs and the Class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the Class Members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and,
- (c) deter systemic violations of a similar nature.

61. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

**J. PUNITIVE AND EXEMPLARY DAMAGES**

62. Canada and its Agents had specific and complete knowledge of the widespread physical, psychological and emotional abuses incurred by the Class Members during the Class Period.
63. In establishing and operating RCMP during the Class Period, Canada acted in a high-handed and callous manner towards Class Members warranting a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. Canada conducted its affairs with wanton disregard for Class Members' interests, safety and well-being.
64. The Plaintiffs plead and rely upon the following:
- (a) *Federal Courts Rules*, SOR/98-106;
  - (b) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
  - (c) *Federal Courts Act*, R.S.C. 1985, c. F-7;
  - (d) *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act, 1982 (U.K.)*, 1982. C. 11;
  - (e) *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10;
  - (f) *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
  - (g) *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281;
  - (h) *Criminal Code*, R.S.C. 1985, c. C-46;

The Plaintiffs propose that this action be tried in Fredericton, New Brunswick.

March 16, 2023



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Rodney J. Gillis, K.C.  
**GILBERT McGLOAN GILLIS**  
107 Charlotte Street  
Saint John, NB E2L 2J2

Tel: (506) 634-3600  
Fax: (506) 634-3612  
Email: [rigillis@gmgalw.com](mailto:rigillis@gmgalw.com)

Solicitors for the Plaintiffs

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the 16

day of March A.D. 20 23

Dated this 23 day of March 2023



Adam Young  
Registry Officer  
Agent du greffe

**PASCAL DUGAS, MARCO VACHON and LUC BELLIVEAU,**  
Plaintiffs

- and -

**ATTORNEY GENERAL OF CANADA,**  
Defendant

Court File No.

**FEDERAL COURT**

Proceeding commenced at Fredericton

**STATEMENT OF CLAIM**

**GILBERT MCGLOAN GILLIS**  
Barristers and Solicitors  
107 Charlotte Street  
Saint John, NB  
E2L 2J2

Rodney J. Gillis, K.C.  
Tel: (506) 634-3600  
Fax: (506) 634-3612  
Email: [rjgillis@gmgmlaw.com](mailto:rjgillis@gmgmlaw.com)

Solicitors for the Plaintiffs