

T-1258-15 101

FEDERAL COURT

BETWEEN:

**MICHAEL CARROLL
TAMIKO LAGERWAARD**

FEDERAL COURT COUR FÉDÉRALE	
JUL 28 2015	
Victoria Gawn	
CALGARY, AB	1

Plaintiffs

and

**MINISTER OF PUBLIC SAFETY and EMERGENCY PREPARDNESS
CANADA BORDER SERVICES AGENCY
GILBERT RYLAN SCHAFFER
KEVIN BRADLEY SOPER**

Defendants

STATEMENT OF CLAIM

STATEMENT OF CLAIM TO THE DEFENDANT

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 Courts 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.

July 28, 2015

**ORIGINAL SIGNED BY
VICTORIA GAWN
A SIGNÉ L'ORIGINAL**

Issued by: _____
(Registry Officer)

Address of local office: Calgary Local Office Bureau local de Calgary
635, 8th Avenue S.W. 635, 8ième Avenue, sud-ouest
Calgary, Alberta Calgary (Alberta)
T2P 3M3 T2P 3M3

TO:

- 1) Minister of Public Safety and Emergency Preparedness
1686 Woodward Drive
Ottawa, ON
K1A 0L8
- 2) Canada Border Services Agency
Ottawa, ON
K1A 0L8
- 3) Gilbert Rylan SCHAFFER
369 – 6 Avenue West
Cardston, AB
T0K 0K0
- 4) Kevin Bradley SOPER
PO Box 45
Aetna, AB
T0K 1Y0

CLAIM:

The Plaintiffs claim:

- a. That on or about July 30, 2013 at the Carway, Alberta, border crossing (Carway) members of the Canada Border Services Agency (CBSA) seized property from Plaintiff Carroll, to wit: a collapsing rifle stock and ammunition, that he was lawfully entitled to possess under the Criminal Code of Canada (the Code) and the Canadian Firearms Act (the Act), and that had been lawfully declared.
- b. The Plaintiffs 2013 KIA Sorento SUV (the vehicle) was seized as the Instrument of Conveyance and the Plaintiffs paid \$27.75 to the CBSA to get their KIA out of seizure. The Plaintiffs believe that if the Court rules that the seizure was unjust, then their KIA should not have been seized and the \$27.75 should be returned with interest; and
- c. Plaintiff Carroll's Charter Rights were grossly, and repeatedly, breached under sections 8, 9, 10(a), 10(b), 12 and 13 as set out in the supporting information, including, but not limited to, unlawful detention, unlawful interrogation and excessive and intrusive search of his person. Plaintiff Carroll is seeking the Court to impose a monetary remedy that is appropriate for the outrageous actions of the Defendants that lead to Plaintiff Carroll's Charter rights being violated; and
- d. Plaintiff Lagerwaard's Charter Rights were grossly, and repeatedly, breached under sections 7, 8, 9, 10(a), 10(b), and 12 as set out in the supporting information, including, but not limited to, unlawful detention and unlawful interrogation. Plaintiff Lagerwaard is seeking the Court to impose a monetary remedy that is appropriate for the outrageous actions of the Defendants that lead to Plaintiff Lagerwaard's Charter rights being violated; and
- e. The Defendants also breached 98 of the Customs Act when they conducted an intrusive body search of Plaintiff Carroll. This Plaintiff is seeking the Court to impose a monetary remedy that is appropriate for the actions of the Defendants that led to this breach of the Customs Act; and
- f. Plaintiff Carroll had his basic Human Rights violated by the Defendants when they refused to provide him with food or water during his detention. This Plaintiff is seeking the Court to impose a monetary remedy that is appropriate for the actions of the Defendants that led to Plaintiff Carroll's Human Rights being violated; and
- g. Plaintiff Lagerwaard had her basic Human Rights violated by the Defendants when they refused to provide her with food, water, bathroom access and medication when requested during her illegal detention. This Plaintiff is seeking the Court to impose a monetary remedy that is appropriate for the actions of the Defendants that led to Plaintiff Lagerwaard's Human Rights being violated; and
- h. Plaintiff Lagerwaard had her Common Law spousal privilege violated repeatedly when

the Defendant's used threats and intimidation to attempt to force her to provide evidence against her spouse. This Plaintiff is seeking the Court to impose a monetary remedy that is appropriate for the actions of the Defendants that led to Plaintiff Lagerwaard's Common Law Rights being violated; and

- i. Plaintiff Carroll was assaulted by Defendant Schaffer when being searched. This Plaintiff is seeking the Court to impose a monetary remedy that is appropriate for the actions of Defendant Schaffer that led to Plaintiff Carroll being assaulted contrary to section 266 of the Criminal Code, as well as having the tort of battery inflicted upon him; similarly, Plaintiff Carroll is asking the Court to hold Defendant Schaffer accountable for this behaviour; and
- j. Defendant Schaffer violated sec 86(1) of the Criminal Code by leaving a handgun in an open and unlocked vehicle, in an area freely accessible to the public, for several hours. The Plaintiffs are seeking the Court to hold Defendant Schaffer accountable for this Criminal act: and
- k. Defendant Schaffer violated sec 128 of the Criminal Code when he told Plaintiff Lagerwaard that he had evidence to charge Plaintiff Carroll with gun smuggling, but was not doing so as a "professional courtesy" because Plaintiff Carroll was a Police Officer. The Plaintiffs are seeking the Court to hold Defendant Schaffer accountable for this Criminal and corrupt act: and
- l. Upon release from custody, Defendant Schaffer deprived Plaintiff Carroll of his Right to his property, to wit: ammunition, by not informing the Plaintiff that the property would be released (as per the CBSA seizure receipt) upon payment of a small fine. Plaintiff Carroll is seeking the Court to impose a monetary remedy that is appropriate for the actions of Defendant Schaffer that led to Plaintiff Carroll being deprived of his property for 4 months; and
- m. After the release of the Plaintiffs, the Defendants informed Plaintiff Carroll's employer (the Calgary Police Service) that Plaintiff Carroll had been detained and was being investigated for attempting to improperly import prohibited gun parts into Canada. This was a gross violation of Plaintiff Carroll's Federal and Provincial Privacy Rights. Plaintiff Carroll is seeking the Court to impose a monetary remedy that is appropriate for the actions of Defendant Schaffer that led to Plaintiff Carroll's Privacy Rights being grossly violated; and
- n. After seizing Plaintiff Carroll's property, Defendant Schaffer either failed or refused to fill out a Form 5.2 Report to Justice, as required by law. Plaintiff Carroll is seeking the Court to hold Defendant Schaffer accountable for breaching the requirements of sec 489(2) of the Criminal Code; and
- o. Due to the violation of Plaintiff Carroll's Privacy Rights by Defendant Schaffer, Plaintiff Carroll was removed from an acting supervisory position by his employer, thus incurring significant financial loss. This cost Plaintiff Carroll \$16,000.00 in lost wages as well as

a loss of approximately \$60,000.00 to his projected pension income upon retirement. Plaintiff Carroll believes that if the Court rules that the initial seizure was unjust, then this amount of \$76,000.00 should be reimbursed with interest; and

- p. On or about November 12, 2013, Plaintiff Carroll retrieved his seized property from the CBSA Calgary Commercial Office. With CBSA officers as witnesses, Plaintiff Carroll discovered that Defendant Schaffer had stolen some of the Plaintiff's property, to wit: 2 boxes of WPA ammunition, contrary to sec 334(b) of the Criminal Code; as well, Defendant Schaffer had fabricated evidence by planting 3 objects in Plaintiff Carroll's property, to wit: a cut piece of metal, a piece of rubber and a retaining pin for an AR15 lower receiver, in an attempt to support the Defendant's baseless and unsupported accusations, contrary to section 137 of the Criminal Code. Plaintiff Carroll is seeking the Court to impose a monetary remedy that is appropriate for the actions of Defendant Schaffer for committing these Criminal acts, as well as holding Defendant Schaffer responsible for his corrupt and Criminal behaviour; and
- q. On November 12, 2013, Plaintiff Carroll had to pay \$55.27 to CBSA to retrieve his property. Plaintiff Carroll believes that if the Court rules that the seizure was unjust, then his property should not have been seized and the \$55.27 should be returned with interest; and
- r. For 6 months after the Plaintiffs release from custody, Plaintiff Carroll's mail was specifically targeted and searched by the Defendants as part of a Criminal investigation. This was done without any specific Judicial Authority, and thus breached Plaintiff Carroll's section 8 Charter Rights. Plaintiff Carroll is seeking the Court to impose a monetary remedy that is appropriate for the actions of the Defendants that led to Plaintiff Carroll's section 8 Charter Rights being violated; and
- s. The Plaintiffs are aware that reports containing the Defendants version of the events that occurred on the incident date have been entered into the CBSA computer system. These reports contain false or misleading information and major omissions. The Plaintiffs respectfully request that the Court direct the CBSA to remove these reports or to archive the reports so that they do not populate when the Plaintiffs passports are swiped at any Canadian border crossing, resulting in the Plaintiffs being automatically sent for secondary inspection; and
- t. This incident also caused the Plaintiff's to have their NEXUS memberships rescinded, and both Plaintiffs to be ineligible for partaking in the NEXUS program. The Plaintiffs respectfully request that the Court direct that the Plaintiffs NEXUS memberships be reinstated immediately, without penalty; and
- u. As a result of this enforcement action and seizure the Plaintiffs are now automatically placed into a Level two category for any future seizures that might occur. The Plaintiffs would like the Court to direct the CBSA to remove this seizure record from their files so that any potential future seizures do not automatically become classified as a Level two; and

- v. As a result of this entire incident, Plaintiff Carroll has endured pain and suffering, health concerns, damage to position and reputation at work, significant time lost dealing with this matter and significant legal costs incurred. Defendant Schaffer still continues to slander this Plaintiff's reputation, verbally and in writing, with absolutely no evidence to support his vexatious accusations. Plaintiff Carroll respectfully requests the Court to direct the Defendants to pay \$100,000.00 to Plaintiff Carroll as compensation for this; and
- w. As a result of this entire incident, Plaintiff Lagerwaard has endured pain and suffering, health concerns (including significant worsening of certain health issues due to the negligence of the Defendants in not providing her with required medical treatment, and her treatment at the hands of the Defendants), damage to her personal and professional reputation, significant time lost dealing with this matter and significant legal costs incurred. Plaintiff Lagerwaard respectfully requests the Court to direct the defendants to pay \$100,000.00 to Plaintiff Lagerwaard as compensation for this; and
- x. The Plaintiffs respectfully request the Court to direct Defendant Schaffer and Defendant Soper to write a letter of apology to the Plaintiffs for the Defendants' behaviour throughout this matter; and
- y. The Plaintiffs respectfully request the Court to direct the Defendants to write a letter to Plaintiff Carroll's employer, the Calgary Police Service, explaining that Plaintiff Carroll did in fact NOT commit any of the acts or breaches of Acts of Parliament that the Defendants have accused him of, to wit: Plaintiff Carroll did NOT attempt to smuggle any gun parts, did NOT mail a firearm to himself, and the CBSA investigation turned up NO evidence of wrongdoing by Plaintiff Carroll; and
- z. That within 30 days of the Federal Courts decision on these matters that the Plaintiffs be supplied a certified letter from the Minister confirming that any or all of the orders of the Federal Court have been carried out; and
- aa. Should the Plaintiffs be successful in this action that they be awarded costs for these proceedings, including costs involved in filing, and dealing with, a judicial review of this seizure that has been held in abeyance pending the outcome of this action, and the outcome of a formal complaint against CBSA, as well as costs for the man hours spent preparing these actions.

The Plaintiffs will rely on the following to support this action:

- i) Plaintiff Michael Carroll is a Canadian Citizen, resides in Calgary, and has done so since 1972.
- ii) Plaintiff Tamiko Lagerwaard is a Canadian Citizen, resides in Calgary, and has done so since 1970.

iii) On 25 October 2013 (89 days after the incident), Plaintiff Carroll notified CBSA, by FAX delivery, of the Plaintiffs intent to civilly sue the Defendants upon the conclusion of the Appeal and Complaint (Document 1).

iv) Although the Ministerial decision as to the legality of the seizure from this incident is not complete, the Plaintiff's fear if they do not file this action prior to the 2 year statute, they will then be statute barred by the Provincial limitation.

In respect to crossing from the United States into Canada for the purpose of this incident:

1) On 30 July 2013, approx. 1730 hrs, the Plaintiffs Michael Carroll and Tamiko Lagerwaard drove up to the Canada Border Services Agency border crossing at Carway, Alberta from Montana. They spoke with the officer at the window. When he asked the total value of goods purchased, the Plaintiffs told him the amount and proffered their written list. He waved it away. This was unusual as they had never had an officer refuse to take their list before. However, his attention seemed to be riveted on whatever was displayed on the computer screen in front of him when he waved their list away (had the port video been secured, it would have captured this interaction, thereby undermining Defendant Schaffer's version of events). The officer asked if there were any firearms in the vehicle. Plaintiff Carroll told him there was one pistol taken down to the U.S. and all the appropriate paperwork was with it. The officer instructed the Plaintiffs to pull over and bring the paperwork for the pistol inside. After a lengthy wait at the counter inside the building, the Plaintiffs were approached by an officer (later identified as Defendant Gilbert Schaffer) who was accompanied by another officer who would not give his name, but was short and fat (later identified as Defendant Kevin Soper). Defendant Schaffer looked at the paperwork and demanded to see Plaintiff Carroll's drivers licence, and subsequently, his firearms licence. Both of these pieces of ID were kept in the same wallet that Plaintiff Carroll's police ID and badge are in, and it was not possible to remove these two pieces of ID without the badge being visible. Defendant Schaffer then stated "you went to the gun show in Kalispell while you were down there." At no point did Defendant Schaffer ask the Plaintiffs if they attended a gun show and bought a gun or gun parts. Defendant Schaffer and his partner then took the Plaintiffs outside to verify the serial number on the pistol. It was at this point Plaintiff Carroll attempted to tell the Defendants that there was also some ammunition in the vehicle, both some brought down from Canada and some purchased. Unfortunately neither Defendant would listen to the Plaintiff. In fact, when Plaintiff Carroll noticed the Defendants comparing the pistol serial number to the firearm certificate number (which obviously didn't match), he attempted to point this out to them, and was cut off and curtly told to stand at the front of the vehicle. The Plaintiff did so. Once the Defendants had confirmed the pistol serial number, they stated they were going to conduct an inspection of the Plaintiffs vehicle. As they began to remove bags from the vehicle, Plaintiff Carroll approached and said to Defendant Schaffer "Just so there are no surprises, I wanted to let you know that you will find a holster under the driver's seat, and a magazine and ammo in my bag". This was the first opportunity Plaintiff Carroll had to mention the ammunition, due to the behaviour of the Defendants. Defendant Schaffer's partner immediately asked Plaintiff Carroll if it was a high capacity magazine. He responded "no, it is a 9 rounder for my pistol". Defendant Schaffer said "as long as it is under 10 rounds it is OK". Plaintiff Carroll again reiterated that it was a 9 round mag

2) As the search progressed Plaintiff Carroll approached Defendant Schaffer to ask him if he (Defendant Schaffer) could explain to Plaintiff Lagerwaard why this search was being conducted. Defendant Schaffer told her that CBSA had conducted an intelligence gathering operation at the Kalispell gun show, and the Plaintiffs licence plate was seen going into the fairgrounds. Plaintiff Carroll replied that there was also a fossil and gem show there, and that the Plaintiff's had attended that, as they collected geodes. Neither Plaintiff ever stated that Plaintiff Lagerwaard had gone to the fossil and gem show, while Plaintiff Carroll went to a shoot – this is a fabrication on Defendant Schaffer's part. At no time during these interactions did Defendant Schaffer or anyone else ask Plaintiff Carroll if he had "been to a gun show and purchased guns or gun parts". In fact, Defendant Schaffer's statement that he asked Plaintiff Carroll "did you purchase any firearm parts while you were in the US?" and that he answered in the negative is completely false – first of all the Plaintiffs can attest to the fact that defendant Schaffer never asked any such question; secondly the Plaintiff's had already declared the stock parts on their written list.

3) Defendant Schaffer and Defendant Soper removed the stock parts (which were contained in a plastic grocery bag, as there were several loose springs and pins), along with the 7 boxes of ammunition Plaintiff Carroll had purchased. There were also numerous other items contained in similar plastic bags in the luggage, including footwear, clothing, books and food items – however, Defendant Schaffer neglects to mention this in his Narrative Report. Defendant Schaffer then took the stock parts and ammunition and told Plaintiff Carroll to accompany him back into the office.

4) Defendant Schaffer and Defendant Soper took Plaintiff Carroll into an office that the public clearly did not have access to. Plaintiff Carroll was seated with his back against the far wall, and Defendant Soper stood in such a way as to block the only exit from this room. It was clear to Plaintiff Carroll at that point that he was not being allowed to go anywhere and that he was being deprived of his liberty.

5) Once inside this office, Defendant Schaffer asked where the items had been obtained. Plaintiff Carroll replied that he had been to the gun show, and that he had purchased the stock parts and ammo at the gun show, and had paid cash for them.

6) Schaffer then asked why Plaintiff Carroll had not declared the firearms parts. Plaintiff Carroll responded he had; that they were listed on the written list they had proffered initially. Defendant Schaffer asked who Plaintiff Carroll showed the list to. Plaintiff Carroll told him the first officer dealt with, but that he had waved it away. Defendant Schaffer then stated that a written declaration was not acceptable – this was not an airport. At a land border it **has** to be a verbal declaration – a written declaration will not do. He further stated that when Plaintiff Carroll declared the ammunition, that would have been the perfect time to also declare the stock, but (according to him) Plaintiff Carroll chose not to. He then went on to inform Plaintiff Carroll that since he did not declare the stock parts, that made them prohibited items. Defendant Schaffer and Defendant Soper then went on to accuse Plaintiff Carroll of buying a rifle in the US, taking off the stock, mailing the rifle to himself, then attempting to "smuggle" the stock back into Canada. They also stated that they thought the stock parts made Plaintiff Carroll's rifle "go full auto" - which is not true. Defendant Schaffer then instructed Plaintiff Carroll to name the parts, which he did. He later ordered Plaintiff Carroll to write the parts down, which he also did, as he believed he did not have a choice in the matter. When Plaintiff Carroll had

done this, Defendant Schaffer took the paper from him.

7) Defendant Schaffer also stated that he had found packing tape, scissors and a Sharpie in Plaintiff Carroll's bag which he states "My experience at the border tells me that he brought these items down with him to purposely mail a package". Plaintiff Carroll explained that he brought those items to the US, as certain items were ordered that were shipped to the Plaintiffs hotel. These included vitamins, Amazon purchases, dog treats, ebay items and so on. Plaintiff Carroll explained that frequently, for various reasons, the items needed to be shipped back, and it is easier to bring their own supplies to do this than to try to borrow or buy them in the US. Defendant Schaffer stated that made no sense, and that it was clear that Plaintiff Carroll had mailed a package to himself or someone else, and that the package contained a rifle (minus the stock). Defendant Schaffer neglects to mention in his Narrative Report that he observed numerous packages in the Plaintiff's vehicle that had clearly been mailed to them in the US, from companies in the US.

8) While this line of accusations was occurring, Plaintiff Lagerwaard had also been illegally detained in another room. Defendant Soper went to speak with her outside. He advised her to place her dog in her car, then come into the building with him. Plaintiff Lagerwaard followed him inside. As soon as she was in the building, Defendant Soper spun around, and she found herself backed up against the wall, with no access to a way out, since he was blocking any exit. He then began to grill her. He stated to her that he knew Plaintiff Carroll had mailed a package and wanted to know what was in it. Plaintiff Lagerwaard told him she had no idea what he was talking about. He kept on about this, and said he did not believe that she knew nothing, and that she would obviously have had a conversation with Plaintiff Carroll about what he was mailing, when he mailed it and so on. Plaintiff Lagerwaard kept telling him she had no idea what he was talking about. Finally Defendant Soper said to her "Oh, so you're pleading the Fifth?". Plaintiff Lagerwaard told him she could not plead the Fifth amendment to the US Constitution as she was not a US citizen, she was simply denying that his accusations were true. She further stated that if there was anything to tell him, that she would - however there was nothing to tell. Again, this particular encounter would have been captured on the port video, had it not been deleted.

9) Defendant Soper then took Plaintiff Lagerwaard to another room, which was also not accessible to the public, told her to "wait here", closed the door and left her. Defendant's Schaffer and Soper subsequently reattended the room she was in, told her she was not being detained, but that they were now responsible for her well being (food, water, and medication). Plaintiff Lagerwaard stated "that sounds like I am under arrest. Am I under arrest?". Defendants Schaffer and Soper refused to answer, then left the room, closing the door behind them. Defendants Schaffer and Soper then periodically re-entered the room, and continued questioning her in an accusatory fashion, telling her they knew Plaintiff Carroll had purchased a rifle at the gun show and mailed it to himself. They told her they knew this for a fact and if she did not admit it, they would charge her criminally also. This berating continued for between 1 to 2 hours. During this time, Defendant Soper came into the room Plaintiff Lagerwaard was in with a tape measure. He announced that it was a tape measure. He then told her they knew Plaintiff Carroll had mailed a package to himself of "this size", and measured out a large package shape (height by length by depth). Plaintiff Lagerwaard replied that was not true, and that Plaintiff Carroll had mailed a small item, and demonstrated an envelope size. They refused

to believe her.

a) After this, they told Plaintiff Lagerwaard that Plaintiff Carroll had admitted mailing a large package to himself, that they knew she knew there was a gun in it and if she did not admit that, they would charge her Criminally as an accessory. Their horrific behaviour and threats terrorized Plaintiff Lagerwaard to the point where she actually burst into tears.

10) At the beginning of her detainment in this room, Plaintiff Lagerwaard had her cell phone and laptop removed, along with her car keys, and the Defendant Soper also conducted a search of her purse. Throughout this incident, Plaintiff Lagerwaard repeatedly asked if they (the Plaintiffs) could leave, to which she was told "No" each time. She was not allowed to leave the room to go to the bathroom without an escort. She asked if she could use her cell phone to make a call. Defendant Soper demanded to know whom she wanted to call, then told her "no, we don't have cell phone reception here". She asked if she could use her laptop to send a Facebook message and was told "No, we don't have internet reception". Finally she asked if she could use a landline to phone a number in Calgary, and was told "No, we don't have a Calgary phonebook". (The first two statements are complete lies – when the Plaintiffs were eventually released from the rooms they had been detained in, they spent 40 minutes watching all 3 officers surfing the internet on computer stations. During this time Plaintiff Carroll also made two cell phone calls whilst in the building. Further, while under arrest in the cell, Plaintiff Carroll watched Defendant Schaffer make repeated cell phone calls.)

11) Defendants Schaffer and Soper then returned to the room Plaintiff Carroll was being detained in and Defendant Soper stated "your wife said you mailed a package this big by this big by this big (measuring out dimensions with the tape measure). What do you have to say about that?". Plaintiff Carroll replied "You must have been talking to somebody else's wife because I have no idea what you are talking about". They then began berating the Plaintiff, accusing him of mailing a large package. Plaintiff Carroll told them he had mailed an envelope to himself. They refused to believe this, although they asked what was in the envelope. Plaintiff Carroll told them it was a list of vitamins and some other documentation. Defendant Schaffer stated "that makes no sense at all." Defendant Soper asked Plaintiff Carroll why Plaintiff Lagerwaard would say that. Plaintiff Carroll said he had no idea. Defendant Soper then asked Plaintiff Carroll if he thought they were making it up. Scared of their response, Plaintiff Carroll said he didn't know. He reiterated more forcefully, yelling at Plaintiff Carroll "It's a simple question – do you think we are making this up? Yes or No?". Plaintiff Carroll replied that yes, he thought they were making this up. Plaintiff Carroll further stated that he knew CBSA would be monitoring his mail for the next several months, and so they would see when they opened the envelope that he was telling the truth. Again, Defendant Soper lied in his Narrative when he claims that Plaintiff Carroll said to him that he thought his wife was making it up – it was clear in Plaintiff Carroll's statement that he knew Defendant's Schaffer and Soper were making it up. Again, had the video been retained, Defendant Soper's behaviour would have been evident.

12) After more of this back and forth, Defendants Schaffer and Soper came back in. Defendant Schaffer said "so you won't admit you mailed a package to yourself?". Plaintiff Carroll replied "why would I? There is no package!". At that point Defendant Schaffer told him he was being detained under the Customs Act, and read him his rights. Plaintiff Carroll had been detained in custody in the office close to 2 hours by this point. Defendant Schaffer handcuffed Plaintiff

Carroll, searched him, took his property and placed him in a cell. During the search, even though having just been informed of Plaintiff Carroll's recent left knee surgery, Defendant Schaffer kicked Plaintiff Carroll's left foot outward, resulting in further injury to the left knee. (Again, this action would have been captured on the video, had it been secured). Plaintiff Carroll was in this cell for about another 3-4 hours. During this incarceration, Plaintiff Carroll had to bang on the door to request to use the bathroom, to request a jacket and to request water twice – the first time he received 2 tiny Dixie cups of water; the second time Defendant Schaffer refused to provide water, telling him "we're almost done". At no time was Plaintiff Carroll ever offered food, even though he was famished.

13) Also during her detention, Plaintiff Lagerwaard was never offered food or water, and was delayed in being able to take her medication (which she informed both Defendants she required) such that her body temperature dropped to a low level, from which she had difficulty recovering. The Defendants also did not turn off the air conditioning in the room Plaintiff Lagerwaard was being detained in, even though she repeatedly requested them to.

14) Upon Plaintiff Carroll's release Defendant Schaffer had retained his stock parts, as well as his ammunition and stated they were being forwarded for the Criminal investigation, and that Criminal charges would be following.

15) At approx. 0140 hours the Plaintiffs were made to pay a fine, released from detention, provided with a seizure receipt and proceeded home, after Defendant Schaffer made an inappropriate comment about Plaintiff Lagerwaard to Plaintiff Carroll. Upon arriving home three hours later the Plaintiff's wrote down a detailed account of this incident.

16) In November 2013, after the Plaintiff's lawyer wrote a letter to CBSA asking where Plaintiff Carroll's property was and when it would be released, Defendant Schaffer replied via email that Plaintiff Carroll could pick it up at the Calgary CBSA Commercial office. On 12 November 2013, Plaintiff Carroll attended this office to collect his property. The officers there had no idea what the Plaintiff was talking about, but after more than an hour, they finally found some plastic property exhibit bags. They brought these out, told Plaintiff Carroll it was very unusual, as there was no paperwork or release documents with these bags and no one knew anything about them. They then opened them up. Plaintiff Carroll went through the property with the officer present. Plaintiff Carroll noticed that one of the springs and one of the pins was missing. The rest of the springs and pins were contained in 2 small clear plastic zip lock bags, that also were not the Plaintiffs. There was no sign of the plastic grocery bag that had originally contained the parts. Plaintiff Carroll also noticed 2 of the 4 boxes of WPA ammo had also been taken. Defendant Schaffer listed 3 boxes of Tul ammo and 40 boxes of WPA ammo on the seizure receipt he gave Plaintiff Carroll. There were in fact only 4 boxes, not 40, of WPA ammo. Either way, Defendant Schaffer took 2 of the 4 boxes, as Plaintiff Carroll only received 2 boxes back. Also included with Plaintiff Carroll's property were three items that did not belong to him: 1) a square piece of metal of unknown origin; 2) a piece of rubber; 3) a retaining pin for the lower receiver of an AR 15. These three items were not seized from Plaintiff Carroll, not on his Seizure Receipt and did not belong to him. They were clearly added to his property by Defendant Schaffer. After Plaintiff Carroll spoke with the supervisor, Supt O'Bertos, she retained these items and gave him a receipt for them.

With respect to the incident at Carway itself;

17)The Plaintiffs suffered a significant violation of their 10(b) Charter Rights.

a) To reference a few Court decisions: The generally accepted definition of “detention” in the Courts is that a “brief restraint involved in the ordinary progressive border search conducted pursuant to the *Customs Act* did not constitute detention within the meaning of s. 10 of the *Charter*.”.

b)In *R. vs Therens*, the Court stated: “In its use of the word "detention", s. 10 of the *Charter* is directed to a restraint of liberty other than arrest in which a person may reasonably require the assistance of counsel but might be prevented or impeded from retaining and instructing counsel without delay but for the constitutional guarantee. In addition to the case of deprivation of liberty by physical constraint, there is in my opinion a detention within s. 10 of the *Charter* when a police officer or other agent of the state assumes control over the movement of a person by a demand or direction which may have significant legal consequence and which prevents or impedes access to counsel.”.

c)In *R. vs Rodenbush and Rodenbush* (1985) the BC Court of Appeal stated : “the accused were detained within the meaning of s. 10 of the *Charter* when they were asked by the customs officer to enter a separate interview room”.

c) Lastly, in *R. vs Simmons*, the Supreme Court Justices stated : “I am therefore of the view that the appellant was detained when she entered the search room and that she should have been informed of her right to retain and instruct counsel at that time.”.

d)Bearing in mind that Plaintiff Carroll was held against his will in an office for approximately two hours, and Plaintiff Lagerwaard was similarly held in a room that she was not allowed to leave for between one to two hours, this extends far beyond a “brief restraint”. All levels of Court, up to and including the Supreme Court of Canada would agree that the Plaintiff’s both were detained by the actions of Defendant’s Schaffer and Soper. As such, both should have been provided with their 10(b) Charter Rights, and immediate access to counsel. Since this was not done, this was a clear violation of the Plaintiffs sec 7, sec 9 and sec 10 Charter Rights, and thus everything that followed afterwards was unlawful.

18)There is another case, that although was in reference to police officers, cannot be ignored, as CBSA officers are considered by the Courts to be agents of the state. This is the

recent *R. vs Grant* decision by the Supreme Court of Canada regarding psychological detention. The court affirmed that detention refers to a suspension of an individual's liberty, by either significant physical or psychological restraint. Psychological detention occurs either where the individual has a legal obligation to comply with a restrictive request or demand of a police officer, or a reasonable person would conclude by reason of the police officer's conduct or words that they had no choice but to comply.

a) The court set out a series of factors to assist in determining whether a reasonable person in the individual's circumstances would conclude that he or she had been deprived of choice such that they are detained by a police officer. Those factors include:

i) a) The circumstances giving rise to the encounter as would reasonably be perceived by the individual: whether the police were providing general assistance; maintaining general order; making general inquiries regarding a particular occurrence; or, singling out the individual for focused investigation.

ii) b) The nature of the police conduct, including the language used; the use of physical contact; the place where the interaction occurred; the presence of others; the duration of the encounter.

iii) c) The particular characteristics or circumstances of the individual where relevant, including age; physical stature; minority status; level of sophistication.

Thus, factors like tone of voice, posture, and language used can all be factors that are examined to determine the issue of detention.

b) In this situation, it was clear to Plaintiff Carroll from the Defendant's behaviour, and accusatory statements, that from the moment he was placed in the office, he was not free to go. This includes the positioning of the three in the room – Plaintiff Carroll with his back to the wall, and the doorway exit blocked by Defendant Soper. (If the video had been secured, it would have clearly shown this.) This meets the threshold of psychological detention as decided by the SCC. Thus Plaintiff Carroll should have been afforded his 10(b) Charter Rights and immediately given access to counsel at the moment he was taken into that office. As he was not, Plaintiff Carroll's Charter Rights were significantly violated.

19) Likewise, from the moment Plaintiff Lagerwaard was brought in to the CBSA Port, trapped in the hallway and questioned by Defendant Soper, followed by being placed in a separate room and told to "stay here", she was also psychologically detained. Any reasonable person would conclude from these actions that they were in no way free to go. In addition, she had all forms of communication removed from her, and was refused any chance to communicate with anyone throughout this ordeal. Even though at one point she was told "you are not being detained", the fact that she was told several times she could not leave, the body language and behaviour of the Defendants, and the accusatory tone of their interrogation, along with the threat to charge her Criminally if she did not tell them what they wanted to hear, would all support the psychological detention. Further, after she was

placed in this room, Defendant Schaffer told her they were now responsible for her well being, including food, water and any medication she needed. Plaintiff Lagerwaard understandably felt that she was “under arrest”. In fact, after Defendant Schaffer’s “speech”, Plaintiff Lagerwaard said to him “That sounds like I am under arrest. Am I under arrest?”. He did not answer and just left the room. Added on to this is that Plaintiff Lagerwaard was not allowed to use a washroom – her initial request to use a washroom was denied; a subsequent request was granted, but she was escorted to the washroom. It is clear that given these circumstances, any reasonable person would consider themselves detained, as per the R. v. Grant decision. This is also supported by the Supreme Court decision in R. vs Simmons. Thus Plaintiff Lagerwaard should have been afforded her 10(b) Charter Rights and immediately given access to counsel at the moment she was placed in the “waiting room”. Again, this shows a significant and grievous violation of her sec 9 and sec 10 Charter Rights and all “information” gathered after this point from both Plaintiffs was gathered unlawfully and inappropriately. The Supreme Court of Canada also made it clear in R. vs Simmons that a lay person, in this sort of situation, cannot be expected to be their own lawyer, and assert their right to their Charter Rights.

20)The CBSA has been given authority and powers by the Courts to do their job. This is essential as one of the prime functions of CBSA is to protect this Country from a variety of external threats. Both Plaintiffs agree that these powers are essential to maintain the security of the Nation. The Courts have not ruled specifically on the authority of CBSA officers to search phones and electronic devices of citizens entering the Country. The broadly accepted practice is that electronic devices can be searched, as part of a standard Customs search as they are considered “goods” being brought into the Country.

a) However, it is clear from Defendant Schaffer’s behaviour and statements from the very start of this incident that he was conducting an investigation under the Criminal Code, as well as the Customs Act. This is supported by his own documentation – his seizure receipt that has both boxes checked stating the Plaintiffs property was seized under the authority of the Criminal Code, as well as under the Customs Act; and his search/arrest synopsis states Plaintiff Carroll was detained for an offence under the Customs Act and an offence under the Criminal Code (Document E).

21)Thus, when Defendant Schaffer searched through the Plaintiff’s cell phones and laptop, he did so unlawfully. Since he was clearly also conducting a Criminal investigation in parallel with his Customs investigation, he had to abide by the Court decisions regarding Criminal investigations.

a) The Courts have been very clear on this matter. One case of note is the 2013 decision of

the Supreme Court of Canada *R. vs Vu*. Although the decision was issued after this incident at Carway, the offence in this court case occurred well before it. This case deals with the SCC limiting the ability of law enforcement to search electronic devices, deciding that LEO require prior specific judicial authorization to search electronic devices, which includes establishing reasonable grounds to believe the electronic device contains sought after evidence.

b) Another relevant case is *R. vs Fearon*, for which the Supreme Court of Canada will shortly be handing down their decision. This case deals with searching of cell phones incident to arrest. Again, this decision will be handed down after the Carway incident, but the offence in question happened well before.

c) Although it could be argued that these cases have no bearing on Defendant Schaffer's search of the Plaintiffs cell phones and laptop, these decisions show the Courts' mindset with respect to the privacy of individuals and their Charter Rights preventing unreasonable searches. It is acceptable to search a phone to determine ownership of it. Once that has been established, if it belongs to the individual it was taken from, any further searching of the phone needs to be conducted under the authority of a search warrant. If Defendant Schaffer was conducting only a Customs Act investigation, he could most likely explain his illegal searches of the electronic devices by claiming he was "examining goods" being "imported" into Canada. Since his own documentation shows that he was also conducting a Criminal investigation, he is required to abide by the more stringent Court rules for Charter Rights in a Criminal investigation. As he did not, he therefore again violated the Plaintiff's section 8 Charter Rights (Document E).

22) Likewise, from the following factors:

- the behaviour of the Defendants inside the Port, prior to speaking with the Plaintiffs.;
- the behaviour of both Defendants when searching the Plaintiffs vehicle; the comment Defendant Schaffer made about the CBSA "intelligence gathering operation" in Kalispell, Montana;
- the accusations that Defendant Schaffer immediately made during his accusatory interrogation of Plaintiff Carroll after he was placed in the private office and had his liberty restrained;
- the accusations that the Defendants made to Plaintiff Lagerwaard during their unlawful interrogation of her;
- the threats and intimidation tactics the Defendants employed against both Plaintiffs during these interrogations;
- the constant theme of what offences the Defendants insisted that the Plaintiffs admit to;

it is clear that Defendant Schaffer and his partner already had it fixed in their mind that the Plaintiffs had committed a Criminal offence and were conducting their interrogations in an attempt to confirm their ludicrous theory. According to many Court decisions, too numerous to list, Defendant Schaffer and Defendant Soper should have immediately read the Plaintiffs the Caution and Waiver, so they were aware of their Rights, and what potential jeopardy they could be facing during these interrogations, based on the idea the Defendants had created in their minds, and the fact the Plaintiffs had the Right to speak to counsel. The Defendants chose not to do this. As such they violated they violated the sec 10(a) and 10(b) Charter Rights of both Plaintiffs.

23) Two other court cases are of note, with respect to interrogation after violation of 10(b) Charter Rights, denying access to counsel; the first is the Supreme Court of Canada decision in *R. vs Collins* (1987). The Court states: "However, the situation is very different with respect to cases where, after a violation of the *Charter*, the accused is conscripted against himself through a confession or other evidence emanating from him. The use of such evidence would render the trial unfair, for it did not exist prior to the violation and it strikes at one of the fundamental tenets of a fair trial, the right against self-incrimination. Such evidence will generally arise in the context of an infringement of the right to counsel"

a) The second is the Supreme Court of Canada comment in *R. vs Simmons*. The Court states, in reference to interrogation and access to counsel: "Using this sort of analysis, it is possible to distinguish the two types of situations. In a border search, the issue is not one of self-incrimination. The individual is not facing "custodial interrogation". In my view, the right to counsel was chiefly intended for that type of situation."

b) Again, after both Plaintiffs were placed in individual rooms, which the public did not have unfettered access to, both Defendants Schaffer and Soper began an accusatory (custodial) interrogation of both Plaintiffs. They accused Plaintiff Carroll of committing several grievous Criminal offences to do with firearms and smuggling. They told Plaintiff Lagerwaard he had committed these acts, and that if she did not admit it, they would charge her criminally as an accessory. At no point did either of these two officers state to either Plaintiff whether their interrogation was to do with an alleged Customs Act violation, an alleged Criminal Code violation, or both. From what the accusations were, the Plaintiffs both individually concluded that this was a Criminal investigation. This was supported when, at the end of this ordeal, Defendant Schaffer stated that the property was being forwarded to an investigator to further the Criminal investigation, and that Criminal charges would be following. This was supported even further on the Evidence Seizure Receipt that clearly shows the property was seized under the authority of the Criminal Code. Even further supportive is Defendant Schaffer's Arrest Synopsis showing he detained Plaintiff Carroll for an offence under both the Criminal Code and the Customs Act.

c) After denying Plaintiff Carroll his 10(b) Charter Rights and access to counsel (since, according to the Supreme Court of Canada, he was detained immediately upon being placed in the office that he was not allowed to leave), Defendants Schaffer and Soper spent

approximately two hours trying to intimidate the Plaintiff into incriminating himself for offences that did not occur, but that they continued to accuse him of. This is exactly the situation that R v Simmons refers to, since both Plaintiffs were being subjected to "custodial interrogation". It was clear that Defendants Schaffer and Soper had a pre conceived idea in their mind, and they were going to "prove it", regardless of what the facts showed, or what laws or rights they violated to do so.

d) Again, this was a grievous violation of sec 9 and sec 10 Charter Rights of both Plaintiffs.

24) Likewise, even though they knew the Plaintiffs were legally married, after denying Plaintiff Lagerwaard her 10(b) Charter Rights, Defendant Schaffer and Defendant Soper then intimidated Plaintiff Lagerwaard and attempted to compel her to give "evidence" against her husband, Plaintiff Carroll. They also used threats and inducements that the Courts have forbidden. For example, Plaintiff Lagerwaard was threatened by these Defendants when they told her that she would be charged criminally as an accessory if she did not tell them that Plaintiff Carroll mailed a package, and admit that there was a gun in it. Also, Defendant Schaffer told Plaintiff Carroll if he did not admit he mailed a firearm to himself, they were going to tear his car apart structurally to see what they could find. Defendant Schaffer further stated that he was going to open all the Plaintiff's vitamin purchases to look for "contraband" if Plaintiff Carroll did not "come clean" about mailing a gun to himself. This action is a clear violation of numerous Court decisions on interrogation behaviour and inducements, including SCC decisions. The courts have made it clear what inducements can be used by agents of the state and what ones cannot. The ones Defendant Schaffer and Defendant Soper chose to employ are illegal and unlawful, as a reasonable person would easily admit to something they did not do, out of fear of the consequences if they did not "confess". Attempting to compel Plaintiff Lagerwaard (Plaintiff Carroll's spouse) to give false evidence against Plaintiff Carroll was also a clear violation of Common Law on the part of Defendants Schaffer and Soper.

25) Likewise, at some point, Defendants Schaffer and Soper entered the room that Plaintiff Lagerwaard was being unlawfully detained in. Defendant Schaffer told her that Plaintiff Carroll was "in big trouble" and that he was "this close" to being charged Criminally with gun smuggling. Defendant Schaffer then went on to say that the only reason they had not charged Plaintiff Carroll was as a "professional courtesy". They then told Plaintiff Lagerwaard, again, that if she did not admit that Plaintiff Carroll mailed a gun to himself she would be charged Criminally as an accessory. This is both an illegal inducement and a threat. This is again a violation of Common Law of compelling one spouse to give evidence against another. Lastly, if it was in fact true that Defendant Schaffer had enough evidence to charge Plaintiff Carroll Criminally and was choosing not to do so because of the Plaintiffs occupation, this is the worst sort of corrupt practice and perversion of Justice

possible by a law enforcement officer. It is a clear violation of sec 128 of the Criminal Code by Defendant Schaffer.

26) While Plaintiff Lagerwaard was unlawfully detained in the room, Defendant Soper conducted an unlawful search of her purse. He picked it up and asked "you mind if I search this?". Plaintiff Lagerwaard who was under the impression she was detained or arrested, did not feel it was OK to say no. Defendant Soper then proceeded to search her purse, and asked if she "had anything valuable in it that might go missing". As Plaintiff Lagerwaard had been told she was not detained, this was an unlawful search of her property. Again, Defendant Schaffer's paperwork makes it clear that they were conducting a Criminal investigation. Since, according to Defendants Schaffer and Soper, she was not detained, they had no authority to search her purse. This was not an officer safety search, as according to their words she was not detained. This was not a consent search, as the SCC has given strict outlines of how a consent search must be performed, and Defendant Soper violated all of them. As such, this illegal search by Defendant Soper violated Plaintiff Lagerwaard's sec 8 Charter Rights.

27) The person who Plaintiff Lagerwaard wanted to contact was, in fact, a lawyer. She was not required to inform Defendant Soper of this, as she had been told she was not detained. Thus who she wanted to call was no business of Defendants Soper or Schaffer. Since, in fact, she was being detained, the fact that they prevented her from contacting legal counsel is also a grievous violation of Plaintiff Lagerwaard's sec 7, sec 9 and sec 10 Charter Rights.

a) Defendant Soper clearly lied to Plaintiff Lagerwaard about this, which is discreditable conduct. In doing so, he also grossly violated her sec 7 and sec 9 Charter Rights. The fact that he included none of these details in his "Narrative Report" shows clear deceit.

28) During the unlawful detention of Plaintiff Lagerwaard, she was not allowed to use the bathroom, initially being refused access to the bathroom, then being allowed to use the bathroom under escort. This again is a gross violation of her sec 7 and sec 9 Charter Rights.

29) During the unlawful detention of Plaintiff Lagerwaard, even though Defendant Schaffer told her that they were now responsible for her well being, including any medication she required, this did not occur. Plaintiff Lagerwaard told the Defendants that she had a thyroid condition which necessitated medication, and that the medication was in the Plaintiffs vehicle. She told the Defendants she was freezing cold in the room because of this condition, and asked them to switch off the air conditioning. This was not done until 30 minutes after her final request. Even though she told them she

needed her medication, she was not allowed to leave the room to be escorted to her vehicle to obtain this medication until well past the point where she needed it – her body temperature dropped to the point where she was shivering uncontrollably, including having her teeth chattering. Since her medication was not provided in a timely fashion, and no medical attention was obtained for Plaintiff Lagerwaard (or even inquired about), Defendants Schaffer and Soper violated both her sec 7 and sec 12 Charter Rights, as well as her basic human rights.

30)After approximately 2 hours of unlawful detention, as well as continual unfounded accusations, Defendant Schaffer finally told Plaintiff Carroll he was being detained, read him his Charter Rights, but only stated that he was being detained “under the Customs Act”. Defendant Schaffer’s own Search/Arrest Synopsis states Plaintiff Carroll was detained for an offence under the Criminal Code as well as under the Customs Act. However, Defendant Schaffer never mentioned to Plaintiff Carroll he was being detained for a Criminal offence. This was a violation of his sec 10(a) Charter Rights, as Defendant Schaffer did not specify the jeopardy Plaintiff Carroll was facing. Likewise, there are numerous Court decisions stating that a person must be told the **specific reason** they are being detained. Giving a vague and general reason like “the Customs Act” is not acceptable. The exact offence the person is being detained for must be specified (i.e. theft, or smuggling, or robbery etc). Defendant Schaffer did not do this. This was again a violation of Plaintiff Carroll’s sec 10(a) Charter Rights.

31)After this, Defendant Schaffer then proceeded to search Plaintiff Carroll. Defendant Schaffer instructed him to stand up, turn around and spread his legs. Plaintiff Carroll attempted to do so. Defendant Schaffer kept instructing him in a loud voice to spread his legs wider. Plaintiff Carroll told Defendant Schaffer he could not as he had recently had surgery on his left knee, and was unable to spread his legs any further. Defendant Schaffer moved in and kicked Plaintiff Carroll’s left leg wider, causing excruciating pain, and swelling to the injured knee. In doing this, Defendant Schaffer committed a criminal assault on Plaintiff Carroll, as there was no need to do this. This is contrary to section 266 of the Criminal Code. This also constituted the tort of battery against Plaintiff Carroll. Again, had the video been secured, this would have been seen.

32)After this, Defendant Schaffer handcuffed Plaintiff Carroll to search him. This was an incredible demonstration of excessive force by Defendant Schaffer. What threat did Plaintiff Carroll suddenly present, that he had not presented in the preceding 2 hours, which necessitated handcuffing? Particularly since there were 2 officers present (the

Defendants). Plaintiff Carroll does not accept an explanation that Defendant Schaffer is too incompetent to search an unhandcuffed person, as his business card states he is a use of force instructor. Defendant Schaffer only handcuffed Plaintiff Carroll in an attempt to belittle and humiliate him. This constitutes excessive force, discreditable conduct, and abuse of authority by Defendant Schaffer.

33) Although Defendant Schaffer told Plaintiff Carroll he was being detained, not arrested, Defendant Schaffer then proceeded to conduct a thorough search of him, emptying his pockets and taking all his property. Again, the Courts, up to and including the SCC, have been very specific about the level of search allowed for a detention versus an arrest. Upon detention, a brief frisk or pat down search is allowed for officer safety. This is not a search for evidence, it is not allowed to be intrusive past a pat down, and the person's property must be left with them, unless the property could be a potential weapon, or afford evidence. Defendant Schaffer took all of Plaintiff Carroll's property, including his watch, cash, wallet with credit cards and Police badge. None of these were of evidentiary value, nor were they possible threats to officer safety. Defendant Schaffer again violated Court decisions by doing this, and conducted a very intrusive search, contrary to Court direction, and he kept all the Plaintiff's property, again contrary to Court direction. This is both discreditable conduct and abuse of authority by Defendant Schaffer. And by extension for Defendant Soper who stood by and watched this, saying nothing to the contrary.

34) Under the Customs Act, the Plaintiff has the right to request that a supervisor be present if he is going to be searched. This was never explained to Plaintiff Carroll prior to the intrusive search conducted by Defendant Schaffer. Even though it appears Defendant Schaffer was technically the supervisor for the port that night, Plaintiff Carroll still had the right to have his supervisor present for this search, since Defendant Schaffer was conducting the search. Again, in *R. vs Simmons*, the SCC stated that it was not reasonable to expect that a person would be aware of this, nor was it acceptable to simply point to a sign stating this prior to searching a person. Not informing Plaintiff Carroll of this was neglect of duty on the part of both Defendants Schaffer and Soper.

35) After the handcuffed search, Schaffer walked Plaintiff Carroll forward about 5 feet into a cell, then removed the handcuffs. He was kept in this cell for almost 4 hours. During this time, he was not checked on by the Defendants, was not offered food, and was not offered water. Plaintiff Carroll had to bang on the cell door to attract Defendant Schaffer's attention to request some water. This was a hot summer day, and he had been in Defendant Schaffer's custody 4 or 5 hours by this time. Defendant Schaffer provided 2 small Dixie cups of water. Some time later, he again had to bang on the door to

request to use the bathroom. Plaintiff Carroll was escorted there and back by Defendant Schaffer. Finally, some time later, he again banged on the door to request more water from Defendant Schaffer as the Plaintiff was incredibly thirsty. When Defendant Schaffer heard the request, he refused to provide any water, stating that they were "almost done". Plaintiff Carroll had to sit in the cell, parched, for quite some time after. At no time during his incarceration was he offered food by Defendants Schaffer or Soper, even though this ordeal lasted 7 or 8 hours. This is a clear violation of numerous Civil and Criminal Court decisions regarding care in custody, and is also a violation of Plaintiff Carroll's basic Human Rights. This is neglect of duty on the part of Defendant Schaffer, as well as a violation of the Plaintiff's sec 12 Charter Rights.

36)When Plaintiff Carroll was escorted to the bathroom by Defendant Schaffer, he did not know what was going on, or how long it would take, and also was unaware of the treatment his wife, Plaintiff Lagerwaard, was enduring at the hands of Defendants Schaffer and Soper, he saw his wife outside by the bathroom area. Plaintiff Carroll asked Defendant Schaffer if his wife should go or if she should stay. Defendant Schaffer replied "Oh, she will be staying". To a reasonable person that says that Plaintiff Lagerwaard was clearly being detained, regardless of the words Defendants Schaffer or Soper may have said to her. This is a violation of Plaintiff Lagerwards sec 9 Charter Rights.

37)When Plaintiff Carroll was escorted out to the washroom by Defendant Schaffer, he was taken outside the port building to the public washroom. This is an area that all public have access to. In fact, another civilian came in and used the washroom whilst Plaintiff Carroll was in there with Defendant Schaffer. This was also where the Plaintiffs vehicle was parked. Even though it had been several hours since the vehicle was searched, the vehicle still had the hatchback open, and the Plaintiffs belongings were strewn all about the ground. This was in an area that the public had unfettered access to, was right outside the public washroom, and had no one guarding it. There were only 3 officers in the port – the third officer, who was in the primary point of contact, and Defendants Schaffer and Soper who were interrogating the Plaintiffs, non stop. Thus no one was effectively safeguarding the Plaintiffs possessions. This included Plaintiff Carroll's handgun, which Defendants Schaffer and Soper had left in this insecure vehicle. It would have taken nothing for Defendant Schaffer to bring the handgun inside the secure facility, but he did not do so. This is both neglectful behaviour on both Defendants parts, as well as a Criminal Offence of unsafe/careless storage of a firearm, contrary to section 86(1) of the Criminal Code.

38)Defendant Schaffer's Narrative Report, dated 02 August 2013 (Document F), was

compiled 3 days after the incident occurred at Carway. This report is full of lies and half truths.

a) For instance: Defendant Schaffer claims that he found a “concealment holster” under the driver’s seat of the vehicle, then asked Plaintiff Carroll about this. This is untrue. As stated earlier, Defendants Schaffer and Soper had rudely cut Plaintiff Carroll off when he tried to explain that they were looking at the wrong information to match the serial number of his pistol. Since they had not prior given Plaintiff Carroll an opportunity to speak to them, as they approached the vehicle to search it, Plaintiff Carroll said in a loud voice to Defendant Schaffer “just so there are no surprises, there is a holster under the front driver’s seat and a magazine and ammo in my bag”. Defendant Schaffer said “that’s fine” and began to search the vehicle. If Defendant Schaffer had secured the video of this incident, as per the best evidence rule, the video would show exactly how this occurred, as there was a camera in this area. Defendant Schaffer chose not to do so. Not securing the video as part of his investigation is neglectful on the part of Defendant Schaffer.

b) Defendant Schaffer states “I knew that CARROLL was a Calgary Police Services Officer as he made sure to show us his badge inside the office and then in the vehicle he had his dress uniform hung up in the vehicle”. Defendant Schaffer neglects to mention that inside the port, he demanded to see Plaintiff Carroll’s driver’s licence, and then his firearms licence – his badge is located in the same wallet as his ID. Thus there was no way Plaintiff Carroll could comply with Defendant Schaffer’s demand without the badge being exposed. Defendant Schaffer neglects to mention this detail in his report. Likewise, not once during this incident did Defendant Schaffer ask why there was a dress tunic in the vehicle. It was because the Plaintiffs had been to a co workers wedding on this trip, which was formal dress tunic wear. Plaintiff Carroll’s tunic was hung on the hanger hook in the vehicle. It is not clear why using part of the vehicle for it’s intended use is deemed suspicious by Defendant Schaffer. He also neglects to mention any of this in his report.

c) Defendant Schaffer claims after he told Plaintiff Carroll that they had officers “working a stint at the gun show” that the Plaintiff said “nope they didn’t go to the gun show and that his wife had parked in the parking lot to go to the Fossil show that was right next to it...”. This also is untrue. Defendant Schaffer stated he knew Plaintiff Carroll had gone to the gun show because his car was seen in the fairgrounds parking lot. Plaintiff Carroll informed him that there was also a fossil show at the fairgrounds, and that the Plaintiffs had attended this. Plaintiff Carroll did not deny that he had gone to the gun show.

d) Defendant Schaffer then lists three questions that he alleges he asked Plaintiff Carroll, along with answers. This is also untrue, as Defendant Schaffer asked no questions at that point. He never at any point during this incident asked Plaintiff Carroll if he had purchased “firearms, weapons or firearm parts” while in the US. This is an outright untruth. It would make no sense to write on the list the parts that had been purchased, then try to deny that they had been purchased. Plaintiff Carroll also never, at any point said “No, I went to a competitive shoot and my wife went to the fossil show” or any variation of that. This was Defendant Schaffer’s concocted idea. Again, although there was no audio available, if Defendant Schaffer had secured the video, it would clearly show that Defendant Schaffer and Plaintiff Carroll were not in any proximity outside for the amount of time it would take to ask and answer these questions that he alleges occurred.

e) Plaintiff Lagerwaard was present for all of the above interactions, and can attest to the fact that what Defendant Schaffer claims, was never asked or answered while she was present.

f) Defendant Schaffer states that he noticed in Plaintiff Carroll’s bag “packing tape gun, packing tape, scissors and a sharpie. My experience at the Border tells me that he brought these items down with him to purposely mail a package”. What Defendant Schaffer neglects to mention is that the vehicle also contained numerous packages that had been mailed to the Plaintiffs in the US from a vitamin company, ebay and Amazon, among others. He also minimizes in his notes and Narrative Report that when he questioned Plaintiff Carroll about these items, he stated he brought them down with him, as items are mailed to the hotel, and sometimes those items need to be mailed back to the company, while in the US (for instance, it is free return shipping within the US, but not from Canada). As it is not convenient to try to find, borrow or buy, those items, Plaintiff Carroll stated the he brings them down to make return shipping easier. Defendant Schaffer stated that made no sense, and instead it was clear to him that the Plaintiffs had those items so they could mail a gun to themselves. Again, Defendant Schaffer chose not to include that exculpatory evidence, as it does not support his baseless allegations.

g) Defendant Schaffer states “I also noticed on his cell phone that he had taken a picture of a gun that was dated July 28, 2013”. Defendant Schaffer is clearly admitting that he knew the ownership of the phone. Since, by his own paperwork, he indicates he was conducting a Criminal investigation as well as a Customs Act investigation, Defendant Schaffer should have obtained a search warrant to search Plaintiff Carroll’s cell phone for “evidence” to support his baseless accusations. As he did not, this is an admitted violation of Plaintiff Carroll’s sec 8 Charter Rights.

h) Defendant Schaffer claims he asked Plaintiff Carroll "Can you please write down what all the parts are that you purchased?". This is also untrue. After repeatedly accusing Plaintiff Carroll of gun smuggling, Defendant Schaffer entered the room that he was being held in, told him to name all the parts verbally, then later threw down a pen and paper and told him to write them down. At the time, Plaintiff Carroll did not feel that he had any choice in the matter. As Defendant Schaffer was attempting to gain "evidence" to support his baseless theory, he was attempting to have Plaintiff Carroll incriminate himself. Defendant Schaffer should have read Plaintiff Carroll the SCC dictated Caution and Waiver prior to any of this, but he chose not to. This is again a gross violation of Plaintiff Carroll's sec 10 and sec 13 Charter Rights.

i) Defendant Schaffer claims he asked "Why didn't you declare the firearms parts?", followed by "Who did you show the list to?", and that Plaintiff Carroll replied "Nobody, he didn't ask for it.". This is a fabrication. Plaintiff Carroll told Defendant Schaffer that he had included the parts on the written list, and when he tried to show it to the officer at primary, that officer was so engrossed with whatever was on his computer screen, he waved it away and quickly asked Plaintiff Carroll if he had any firearms in the vehicle (again, had the video been secured, it would have shown how this interaction proceeded). Defendant Schaffer then told Plaintiff Carroll that a written declaration is only acceptable at an airport; at a land port, it has to be a verbal declaration. Thus, in his opinion, Plaintiff Carroll did not declare the parts. He further stated that when Plaintiff Carroll had declared the ammunition, that would have been the opportune time to declare the gun parts. Since the parts were for a restricted weapon, Plaintiff Carroll's "failure to declare them" made them prohibited gun parts, and thus he was trying to "smuggle" prohibited gun parts" into the country. None of this is supported at law. In the CBSA "I Declare" document, it says a written declaration is completed at an airport, but at a land port, a verbal declaration "may be sufficient". This indicates that at a land port a written declaration would actually be superior to a verbal one. Also, in addition to not being in any way regulated, these parts can be used on both restricted and none restricted firearms (Document G). They are not exclusive to restricted firearms. Even if they were, nowhere in the Criminal Code, the Firearms Act or the Customs Act does it state that even if firearms parts for restricted weapons are not declared, that that elevates them to the level of "prohibited firearms parts". The Criminal Code and the Firearms Act are very clear as to what constitutes "prohibited firearms parts".

j) Further to the above point, all research, both prior to, and after, this incident, has indicated that there are no permits required to import the firearm parts in question or the ammunition into Canada. To quote from CBSA Memorandum D19-13-2 – there is no mention made on restrictions on importing none prohibited or none regulated gun parts,

or the requirement to verbally declare them. It does address import of ammunition:
Importation of Ammunition

145. For comprehensive information on ammunition and explosives permit requirements, see Memorandum D19-6-1, Administration of the Explosives Act and Regulations.

Personal importations by residents

146. Residents may import certain quantities of ammunition. An Explosives Importation Permit issued by Natural Resources Canada (NRCan) is not required for the quantities listed below if the ammunition is imported for private use and not for sale. (a) 5,000 safety cartridges; and (b) 5,000 percussion caps (primers) for safety cartridges; and (c) 5,000 Empty primed safety cartridge cases; and (d) 8 kg or 17.66 pounds of gunpowder (black powder) in canisters of 500 g (1.10 pounds) or less and smokeless powder in canisters of 4,000 g (8.82 pounds) or less; and (e) pyrotechnic distress signals and lifesaving devices, any quantity necessary for the safe operation of the aircraft, vessel, train, or vehicle in which they are transported, or for the safety of the occupants.

k) Likewise, under the RCMP Firearms Act website : “Currently, an import authorization under Canadian law for firearms or firearm parts that are not prohibited is not required.”. There is a requirement to inform CBSA of any firearms or weapons in a persons possession, which Plaintiff Carroll did. The parts were declared on the written list of purchases, which the primary officer declined to accept. The ammunition was declared at the first opportunity to, as soon after the examination of Plaintiff Carroll’s pistol as possible, which was prior to the vehicle search. Defendant Schaffer himself acknowledged that Plaintiff Carroll had declared the ammunition when he stated that Plaintiff Carroll should have declared the stock at the same time. Defendant Schaffer stated that the firearms parts were “prohibited items”. This is not true – these parts will fit and function on none restricted firearms, and are not in any way regulated.

l) At no point did Plaintiff Carroll ever say to Defendants Schaffer or Soper , with respect to the parts “I know they aren’t illegal to have so didn’t think it was a big deal.” Plaintiff Carroll would never make such a dismissive comment about legality or illegality. Plaintiff Carroll is aware that in both law enforcement and the Courts the rule of law is paramount, and technicalities are incredibly important and relevant. Plaintiff Carroll never made any such statement.

m) Defendant Schaffer states that he asked “What did you mail at the Post Office”. That is untrue; Defendant Soper asked this question. This will be addressed further down. At best this shows poor recollection by Defendant Schaffer, 3 days after the incident, as to who asked what questions. This can also be extrapolated to the reliability of the Defendants recollections of answers as well.

n) Defendant Schaffer then goes on in detail about Plaintiff Carroll’s alleged body language during his interrogation. (sixth paragraph on page 4 of his Narrative Report). The descriptions are a complete fabrication. Again, if the video of this incident had been secured, it would give lie to the preposterous claims Defendant Schaffer is making.

o) In the third paragraph on page 5 of Defendant Schaffer's Narrative Report he details what he alleges is a conversation he had with Plaintiff Carroll while in custody in his jail cell. Stating that Plaintiff Carroll's eyes "started to well up with tears", that he "Immediately ...looked at the ground and lost eye contact..." and that "His face was flushed again and he still had watery eyes." This is all completely untrue. The second time Plaintiff Carroll banged on the door in an attempt to get a drink of water, Defendant Schaffer attended the cell. Plaintiff Carroll's mouth and throat were incredibly dry because he was very thirsty, having had nothing but 2 small Dixie cups of water over a several hour period. It was at this time that Defendant Schaffer stated he would not get me more water, as they were "almost done". Defendant Schaffer again violated the Court edicts surrounding care in custody, and denied Plaintiff Carroll basic human rights by refusing to provide water because he would not give a false inculpatory statement.

p) Defendant Schaffer then goes on in this paragraph to state that when he told Plaintiff Carroll to come clean about mailing a gun to himself that "He paused in movement and looked back to the floor and then back up at me and said "Remember when you said I don't have to say anything? Well I want to invoke that right". This is completely untrue. Plaintiff Carroll was refused access tower for several hours. When Defendant Schaffer opened the door, after refusing to obtain water for Plaintiff Carroll, he told him that they both knew Plaintiff Carroll had mailed a gun to himself and that he should retain a little dignity and admit that he mailed a gun to himself, and that the look on his face told Defendant Schaffer that he knew Plaintiff Carroll had mailed a gun to himself. Plaintiff Carroll had maintained eye contact with Defendant Schaffer through this whole litany, but was frustrated by the continued baseless accusations. Plaintiff Carroll replied to him "This look that you are misinterpreting is me invoking my right to silence". All levels of Courts, up to and including the Supreme Court of Canada have repeatedly stated that if a person invokes their Charter Rights, that **can not** and **will not** be interpreted by an investigator as an inculpatory admission or action, as the person is guaranteed these Rights under the Charter. Defendant Schaffer's "inaccurate recollection" of this encounter is phrased in such a way to do just that – because Plaintiff Carroll reiterated that he had invoked his Charter Rights, Defendant Schaffer tries to insinuate that he clearly is guilty.

q) Defendant Schaffer states that "We went to a level 2 seizure because of the goods being concealed within the contents of his luggage...". Terry Boudreau of the Recourse Directorate of CBSA has stated in correspondence to Defendant Schaffer that this is an inappropriate increase, as luggage is intended to contain items (Document H). Yet Defendant Schaffer refuses to follow this direction.

r) In the last paragraph on page 5 of the Narrative Report, Defendant Schaffer claims that "...I explained the appeal process then asked if there were any questions." This is untrue. After the Plaintiffs were released from their detentions, and making them wait approximately 40 minutes Defendant Schaffer preferred Plaintiff Carroll a copy of the Seizure Receipt, stated his property was being forwarded for the Criminal Investigation and that Criminal charges would be following. At no time did he explain the appeal process – the Plaintiffs found this out from their own research. Also, as the Plaintiffs were completely willing to pay any fees required by law, including the "conveyance penalty", Defendant Schaffer deprived Plaintiff Carroll of his right to property, namely the ammunition. Defendant Schaffer stated the ammunition was being retained as an exhibit. However, on the Seizure Receipt, it clearly states the ammunition was held "pending payment". Thus Defendant Schaffer should have released the ammunition at that point.

s) Defendant Schaffer claims this incident concluded at "approximately 2355 hrs.". After paying the Conveyance penalty the penalty, the Plaintiffs were not given the paperwork and released until approximately 00:45 hrs. Thus they were in custody for approximately 7 hours. This incident started on 30 July 2013, the payment receipt is dated 31 July 2013, and the Seizure Receipt is dated 31 July 2013, so Defendant Schaffer's recollection of this part of the incident is incorrect., This also sheds doubt on the credibility of his recollection of the rest of the incident, as he recorded it 3 days after it occurred.

39) Defendant Soper's Narrative Report (Document I) is also dated 02 Aug 2013, which is 3 days after the incident occurred. Defendant Soper's report also contains several fabrications.

a) Defendant Soper states "...it seemed like Mr. CARROLL opened his badge wallet in a manner as to flip open to his badge, so we could see he was a police officer.". Defendant Soper also neglects to mention that Defendant Schaffer had demanded Plaintiff Carroll's driver's licence and firearms licence, both of which were in the same wallet as his police badge.

b) On page 1 of his Narrative Report, Defendant Soper details the alleged discussion he had with Plaintiff Carroll regarding the mailing of an item from Montana. Interestingly, Defendant Soper's version of events conflicts with Defendant Schaffer's. Defendant Schaffer alleges that Plaintiff Carroll stated he never went to the post office. Defendant Soper's version alleges that Plaintiff Carroll admitted he went to the post office. This in itself raises doubt about the entire line of questioning and the recollection of Defendants

Schaffer and Soper. In fact, it was Defendant Soper who asked "So what day did you go to the post office?". Plaintiff Carroll could not immediately recall which specific day it had been, and told him so. At no point did Plaintiff Carroll deny attending the post office. Nor did he deny mailing an envelope to himself. Plaintiff Carroll did not however, specify the size of the envelope mailed, as claimed by Defendant Soper. This is, at best, an inaccurate recollection on Defendant Soper's part.

c) On the bottom half of page 2 of Defendant Soper's Narrative Report, he alleges a conversation he had with Plaintiff Lagerwaard regarding an alleged "package" that was mailed. This entire part of his Report is a complete fabrication. Plaintiff Lagerwaard can attest that at no time did she hold out her hands to show height, length and depth of any "package" mailed. As written earlier, it is Plaintiff Lagerwaard's testimony that Defendant Soper entered the room in which she was being unlawfully detained, showed her a tape measure, announced it was a tape measure, then measured out the dimensions of a "package", stating that Plaintiff Carroll had allegedly admitted to mailing to himself. He then began to bully her in an attempt to get her to agree with him that plaintiff Carroll had mailed a firearm to himself in a package of those dimensions. At no time did Plaintiff Lagerwaard show any dimensions, other than an envelope size, with respect to what was mailed. Defendants Schaffer and Soper used illegal inducements in an attempt to coerce an admission from Plaintiff Lagerwaard. They told her that they knew Plaintiff Carroll had mailed a gun to himself and if she did not admit it, they would charge her criminally as an accessory. The Courts have ruled that this is an illegal inducement – threatening jeopardy for a person if they do not admit what the investigator wants them to. This is also a violation of long standing Common Law that it is unlawful to attempt to induce one spouse to give evidence against another spouse. Lastly, by threatening to charge Plaintiff Lagerwaard criminally, Defendant Soper increased her jeopardy, and immediately should have read her the Caution and Waiver and given her access to counsel. He did not. this is a gross violation of Plaintiff Lagerwaard's Common Law rights as well as her sec 10 Charter Rights.

d) On pages 2 and 3 of his Narrative Report, Defendant Soper details the alleged account he had with Plaintiff Carroll after threatening Plaintiff Lagerwaard. He alleges that he told Plaintiff Carroll that Plaintiff Lagerwaard had measured out the dimensions of a package he had mailed and asked him if he thought the Defendants were lying or if Plaintiff Lagerwaard was making it up. He alleges that Plaintiff Carroll responded that "She is making this up.". In fact, defendant Soper re-attended the room that Plaintiff Carroll was having his liberty revoked in, and in the presence of Defendant Schaffer, again demonstrated some dimensions with a tape measure. He stated that Plaintiff

Lagerwaard stated Plaintiff Carroll mailed a package of those dimensions and asked what he had to say about that. Plaintiff Carroll was initially confused as, taking this statement on face value, had no idea why his wife would say such a thing. Plaintiff Carroll replied “well, you must have been talking to someone else’s wife, cause I have no idea what you are talking about.” This caused both Defendants Schaffer and Soper to guffaw. Defendant Soper then asked Plaintiff Carroll if he thought they were making this up. At this point, Plaintiff Carroll was afraid of their anger, and what else they might do, so replied “I don’t know!”. Defendant Soper then raised his voice, and yelled “It’s a simple question – do you think we are making this up? Yes or no?”. Plaintiff Carroll then replied that yes, he thought they were making this up. This seemed to anger both Defendants Schaffer and Soper.

40)When finally released, and Defendant Schaffer made his comment about the criminal investigation, Plaintiff Lagerwaard said “so what he did wasn’t illegal!”, indicating that Defendant Schaffer had lied to her. Defendant Schaffer had no answer, and Plaintiff Lagerwaard stormed out of the port, very upset. Defendant Schaffer watched her go, then looked at Plaintiff Carroll with a smirk and stated “Well, I guess you will have a stressful ride home.”. This was an incredibly unprofessional comment to make, as well as being offensive.

41)Both Defendants Schaffer and Soper state that both Plaintiffs were released at 2355 hrs. This is in fact untrue. They were released almost an hour after that. The payment receipt and the seizure receipt are both dated 31 July 2013, which was the day after this incident started. A check on the internet usage of defendants Schaffer and Soper would also show what time and date they were dealing with the Plaintiffs (even though defendant Soper told Plaintiff Lagerwaard earlier that there was no internet reception at the port, when he was restricting her liberty unlawfully). It is interesting that Defendants Schaffer and Soper both list the exact same time as the end time, especially since Defendant Soper has admitted that he made no notes other than his Narrative Report, which was made 3 days after the incident (Document J). Defendant Soper either has an amazing memory, or clearly used Defendant Schaffer’s notes to complete his Narrative Report. This may seem like a small detail, but it is significant both because it is incorporated into their care in custody responsibilities (it tries to minimize time in custody), and it also can call into question both Defendants Schaffer and Soper’s credibility with respect to recollection of this incident. Again, this can be proven by conducting a few simple checks on the time of their internet usage.

42)At no point throughout this incident did either Plaintiff ever refer to plaintiff Carroll’s occupation in any way. Defendant Schaffer actually brought up the occupation in the

course of his accusatory interrogation. The only comment Plaintiff Carroll made in reference to his occupation was after Defendant Schaffer had continuously accused him of mailing a firearm to himself, and he stated that he had 24 years on his job and would not do anything stupid to jeopardize that. Defendant Schaffer misquoted this in his Narrative Report, claiming that Plaintiff Carroll made a similar comment to this, whilst outside at the vehicle, prior to being taken into the port. At best, this can be considered a completely inaccurate recollection on Defendant Schaffer's part.

43) In relation to 42), as mentioned, at no time did Plaintiff Carroll bring his occupation into this incident. However, throughout this entire incident, Defendant Schaffer, in phone conversations, kept referring to Plaintiff Carroll by his rank and occupation. This was entirely inappropriate as Plaintiff Carroll was travelling as a private citizen. As this was continuous, it appeared that Defendant Schaffer had some sort of personal axe to grind with police officers, as there can be no other reason why he would state this in every communication he had. This fact comes from the cell phone calls overheard, Defendant Schaffer's notes, his Narrative Report, statements by other investigators and all manner of documents received through ATI requests, which refer to Plaintiff Carroll not by name, but by occupation (these documents can be supplied if required). During Plaintiff Carroll's incarceration, Defendant Schaffer contacted a Detective from N.W.E.S.T. This Detective was also a member of the Calgary Police Service, and Defendant Schaffer made sure to continually refer to Plaintiff Carroll by his rank and occupation. This was discovered from the notes of the N.W.E.S.T. investigator. The day after this incident occurred, Defendant Schaffer and/or Bill Axten and/or another CBSA employee contacted the Office of the Chief of Police of the Calgary Police Service to tell them that Plaintiff Carroll "was being investigated for trying to smuggle restricted, possibly prohibited, gun parts into Canada and that N.W.E.S.T. had been engaged". All of this was a serious breach of Plaintiff Carroll's Privacy Rights, and a breach of both the Federal and Provincial Privacy Acts. At no time during this incident did Plaintiff Carroll represent himself as anything other than a private citizen. He never mentioned his employment, or attempted to use it to gain favour. Most importantly, neither Plaintiff was ever charged with any offence, as there was never any evidence to support any offences having been committed. All there was, was Defendant Schaffer's slanderous and baseless allegations, which were not only unsupported by any factual evidence, but in fact all factual evidence was to the contrary. This did not deter Defendant Schaffer from trying to smear Plaintiff Carroll's exemplary name and reputation at the Calgary Police Service.

44) Upon being released from the jail cell that Plaintiff Carroll was detained in, Defendant Schaffer gave him back his property, including his wallet. Upon arriving home, Plaintiff

Carroll discovered that one of his business cards was missing from his wallet. Prior to being at Carway, Plaintiff Carroll only had two business cards in his wallet, and made a mental note to add more upon arriving home. Upon arriving at home, only one business card was in the wallet. Defendant Schaffer had custody of the wallet and contents. Further, he removed one of the business cards and photocopied it, as shown in ATI releases (Document K). These business cards are the personal property of Plaintiff Carroll. He did not authorize Defendant Schaffer to take and keep one of them. As such, Defendant Schaffer stole personal property, contrary to sec 334(b) of the Criminal Code.

45) On 25 October 2013, Plaintiff Carroll submitted, via FAX, notice of intention to appeal the enforcement action taken by Defendants Schaffer and Soper. This FAX was sent to Kevin Hewson. Plaintiff Carroll subsequently received a letter from Defendant Schaffer indicating his office had received notice of the appeal on 02 November 2013 (Document L). Defendant Schaffer, if conducting a competent and honest investigation, should have secured the port video at the time of the incident, as this would be the best practice taught in basic investigative techniques courses. At the very least, upon receiving notice of the appeal he should have secured the video. He did not do so. He either deleted the video, or allowed it to be deleted, **after** receiving notice of the intention to appeal his action. The video is a relevant piece of evidence that Defendant Schaffer was complicit in the destruction of. At best, this is neglect of duty and incompetence on his part. At worst it is deceit and corrupt practice. Either way, it casts grave doubt on his investigative abilities.

46) On the 31 October 2013, the Plaintiff's lawyer Karen Molle submitted a letter to Mr. Hewson requesting the release of their goods, as this investigation was clearly finished. Also, the seizure receipt shows that the property was seized under the authority of the Criminal Code, as well as under the authority of the Customs Act. Under sec 490 of the Criminal Code, items seized, without charges laid, can only be held for 3 months (90 days). The property was subsequently released. However, despite repeated requests from Ms. Molle and the Plaintiffs, including ATI requests, they were never provided with a copy of the 5.2 Report to Justice. Defendant Schaffer's own paperwork states the Plaintiff's property was seized under the authority of section 489(2) of the Criminal Code. This same section states that the seizing officer, absent of a warrant to seize the goods, must by law fill out a Form 5.2 Report to Justice outlining the items seized, and the reason they are being held. Defendant Schaffer did not do this. This leads to one of two conclusions. Either defendant Schaffer does not know the law, which means he is incompetent. Or Defendant Schaffer does know his duties required under the law, and

choose not to fulfill them. Either way, this casts doubt on Defendant Schaffer's credibility throughout this entire incident.

47) There are several mistakes on the Seizure report as issued by Defendant Schaffer (Document M). On the front page, defendant Schaffer has not checked off either box indicating whether I was served in person or by mail. Defendant Schaffer lists the items seized as an AR15 stock, an AR15 safety, 3 boxes of Tul ammunition and 40 boxes of WPA ammunition. First of all, the stock and the selector are not specific to the AR15. The stock also fits on shotguns and the selector is used on, for example, the JR carbine. Both of these firearms are none restricted, and both are also owned by Plaintiff Carroll. Next, defendant Schaffer listed a total of 43 boxes of ammunition seized by him. There were only seven boxes of ammunition seized: 3 boxes of Tul and 4 boxes of WPA. Throughout subsequent documentation, plaintiff Carroll's ammunition is referred to both as "5 boxes of ammunition" and "43 boxes of ammunition". This is an official document that, if charges were laid, would be presented in Court to establish the chain of continuity of these items. The mistakes made again shows a significant level of incompetence on the part of Defendant Schaffer and sheds doubt on his credibility and investigative ability.

48) On 12 November 2013, plaintiff Carroll attended the CBSA Calgary Commercial office to pick up his property. It took approximately one hour before the officer's there could find the property. Plaintiff Carroll spoke with Supt O'Bertos regarding this matter. She told him this was highly unusual as there were no release documents, reports or other paperwork left with the property. All Plaintiff Carroll had to show them was his original seizure receipt. They finally found the property that was contained in several plastic bags with property labels on them. This says that Plaintiff Carroll's property was handled as an exhibit. Plaintiff Carroll was present when these bags were opened, and the property was placed in front of him. 2 boxes of WPA ammunition were missing, along with one pin and one spring. Defendant Schaffer's seizure receipt clearly shows a total of 7 boxes of ammunition seized from Plaintiff Carroll (3 + 4) (Document M). But only 5 were returned. The Plaintiffs submit that Defendant Schaffer stole 2 boxes of the seized ammunition, contrary to section 334(b) of the Criminal Code.

49) Of greater concern, there were three additional parts added in to Plaintiff Carroll's property: a piece of rubber, a square piece of metal, and a retaining pin for an AR15 lower receiver. Plaintiff Carroll told Supt. O'Bertos that these parts were not his, and were not seized from him, and refused to take custody of them. Supt. O'Bertos did the appropriate thing – she retained these three pieces and gave Plaintiff Carroll a receipt for them, indicating they were not his (Document N). Nowhere on the seizure receipt

Defendant Schaffer filled out, nor on the list naming the parts that Defendant Schaffer forced Plaintiff Carroll to write out, nor in any of Defendant Schaffer's notes, are any of these three parts mentioned. It is not known by the Plaintiffs what the piece of rubber or the square piece of metal are; but the Plaintiffs do know that the retaining pin is a part of the firearm Defendant Schaffer kept accusing Plaintiff Carroll of mailing to himself. If this retaining pin was indeed part of Plaintiff Carroll's property, it would have been on the list Defendant Schaffer forced him to write, and, given how significant to Defendant Schaffer's case it would have been, would have been on his seizure receipt and mentioned in all his notes, reports, emails etc (as the safety switch was). None of this occurred – for the simple reason that neither the retaining pin, nor the other two pieces, were amongst the property Plaintiff Carroll had in his luggage, which was seized from him. At some point, Defendant Schaffer furnished the CBSA investigator with photos purporting to show this property. No one has informed the Plaintiffs when these pictures were taken, or by whom. The retaining pin and the square piece of metal are in these photos, but the piece of rubber is not (incidentally, in the photos, the 2 boxes of WPA ammunition have already been stolen). The suggestion made by Investigator Lammerhirt, that these 3 parts must have been inside the buffer tube when the property was seized from Plaintiff Carroll is ludicrous. First of all, the square piece of metal would not physically fit in the tube. Secondly, if the retaining pin was inside the tube, it clearly would have rattled around, and fallen out with the way Defendant Schaffer manhandled the property. Plaintiff Carroll submits that defendant Schaffer planted these parts into his property in a vain attempt to support his baseless theory, with which he kept accusing Plaintiff Carroll. In doing so he fabricated evidence, contrary to section 137 of the Criminal Code.

50) Furthermore, when Plaintiff Carroll placed his property in his luggage, he had put it all into a white plastic grocery bag. This was because there were numerous small parts (pins and springs) that would otherwise be lost – the grocery bag was the only item to hand to safely contain all these parts. When Plaintiff Carroll's property was returned to him, the pins and springs that were not stolen were in two small clear plastic zip lock bags. One of these had some very worn printing on it, and appears to be from a hunting store in the US. The white plastic grocery bag was nowhere to be found, and was not returned. Plaintiff Carroll's parts were not in these zip loc bags when they were seized from him. They are not mentioned anywhere in Defendants Schaffer or Soper's paperwork, nor are they shown in any of the photograph's. This appears to show incredibly poor exhibit handling on Defendants Schaffer and Soper's part, as well as the introduction of foreign evidence into Plaintiff Carroll's property, and again sheds incredible doubt on the Defendant's credibility and investigative abilities.

51) Despite repeated requests from the Plaintiffs and their lawyer Ms. Molle, to numerous CBSA employees, no one has ever furnished a copy of the 5.2 Report to Justice, or explained why it does not exist. Likewise, no one has addressed the Plaintiffs repeated attempts to have explained the errors on Defendant Schaffer's evidence receipt, as it pertains to Plaintiff Carroll's stolen ammunition.

52) After the Plaintiffs release from custody, Defendant Schaffer and CBSA specifically targeted and intercepted the Plaintiffs mail in a vain attempt to find something, or anything, to support Defendant Schaffer's baseless accusations regarding the mailing of a gun to Plaintiff Carroll by himself. This occurred at both the Plaintiffs home address and the work address of Plaintiff Carroll. As Defendant Schaffer's own paperwork clearly shows he was conducting a Criminal Code investigation in parallel with a Customs Act investigation,; as such, he should have obtained Judicial authority to intercept the Plaintiffs mail. The Plaintiffs have never been presented with any copies of any search warrants, or information to obtain search warrants, for this mail interception, or any other surreptitious activity that Defendant Schaffer and/or CBSA undertook. Clearly Defendant Schaffer either committed these acts without Judicial authorization, or he obtained it and failed to follow the rule of law by furnishing the Plaintiffs with a copy of said warrants. This is at best neglect of duty and incompetence, or at worst corrupt practice on the part of Defendant Schaffer.

53) Schaffer has continually slandered Plaintiff Carroll's personal and professional reputations with his unfounded allegations. As mentioned earlier, it is clear that Defendant Schaffer had already made up his mind at the start of his dealings with the Plaintiffs that Plaintiff Carroll had illegally mailed a gun to himself. He was going to prove this, regardless of what the facts actually showed. As his inability to prove it became obvious, he then took to slandering Plaintiff Carroll's professional reputation by notifying his workplace (the Calgary Police Service), and all other involved investigators, of Plaintiff Carroll's rank and occupation. Even after the mail interception turned up nothing (because there was nothing to find), Defendant Schaffer still persists in slandering Plaintiff Carroll's good name. This is evident in an email from Defendant Schaffer to Terry Boudreau of the CBSA Recourse Directorate, dated 20 January 2014 (Document O). In it Defendant Schaffer maintains that although the mail intercept turned up nothing, the package must have "slipped through the cracks". Defendant Schaffer would rather believe that Plaintiff Carroll single handedly outwitted the combined investigative ability of CBSA, Canada Post, the RCMP and the Calgary Police Service, rather than admit that perhaps he was wrong, and Plaintiff Carroll never mailed any gun or "package" to himself. Interestingly, in this three paragraph email, Defendant

Schaffer refers to Plaintiff Lagerwaard as both Plaintiff Carroll's wife and his girlfriend – Defendant Schaffer cannot keep it straight which she is in just three short paragraphs. Again, this sheds serious doubt on his credibility.

a) Schaffer's slanderous, and baseless, accusations also caused the CPS to conduct a 10 month surreptitious investigation of Plaintiff Carroll at work. This intense screening by CPS also showed that Plaintiff Carroll had committed no offence, and continues to commit no offences. Defendant Schaffer's slander has however, affected Plaintiff Carroll's reputation and the level of trust that is placed in him at his workplace, and resulted in him being removed from a supervisory position that he was in.

b) Defendant Schaffer's behaviour demonstrates incredibly unprofessional conduct, and is bordering on obsessive. He has since flagged the Plaintiffs on the CBSA computer as suspected firearms smugglers, and that they smuggle prohibited gun parts in their luggage in plastic grocery bags. This is evident every time the Plaintiffs now cross the border. This was also confirmed by a CBSA officer. This is bordering on harassment – because Defendant Schaffer was not able to prove his baseless accusation, he is now disrupting every trip out of the country the Plaintiffs make.

54) The Plaintiffs understand that the CBSA is charged with an incredibly important, difficult and challenging function, in keeping our Nation safe. The Plaintiffs both fully support this. However, they do not believe that any reasonable person in this country, including everyone that has heard this story, would feel that the actions of Defendants Schaffer and Soper were legal, moral, or in keeping with Canadian law and ideals. This type of horrendous behaviour only serves to have the Courts restrict the power and authority that they impose upon all levels of law enforcement. The Plaintiffs have no doubt that if this incident was placed before a Judge of any Court in this country, it would only result in precedent being set that would impede law enforcement, case law made, and more power stripped from the very law enforcement agencies that desperately need it to properly fulfill their functions. Due to Defendant Schaffer's violation of Plaintiff Carroll's Privacy Rights and his continued slanderous, and baseless, accusations, this specific incident has only served to damage the relationship that CPS members have with CBSA. This is most unfortunate.

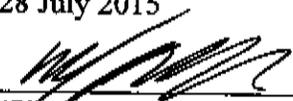
55) The Charter of Rights is in place specifically to ensure that gross violations of Canadian citizen's freedoms do not occur. Likewise is the reason that the Courts are responsible for conferring, and monitoring, authority and powers on state agencies. In this case, both Defendants Schaffer and Soper far overstepped any and all authority that CBSA officers have, and in fact grossly and flagrantly, ignored both the Charter of Rights,

and all manner of Court decisions. They both have brought the reputation of the CBSA into disrepute, and must be held accountable for their actions. Plaintiff Lagerwaard summed it up best when she stated that she expected that behaviour like this would only occur in third world countries with no rule of law – she never expected this type of horrendous behaviour to occur in Canada.

56) At this point, the Plaintiffs are awaiting the results of investigations that they have requested by the Office of the Information Commissioner, the Office of the Privacy Commissioner, the Office of the Public Sector Integrity Commissioner, CBSA Professional Standards, CBSA Recourse Directorate and the Calgary Police Service. These results are integral to the furtherance of this action by the Plaintiffs in Federal Court.

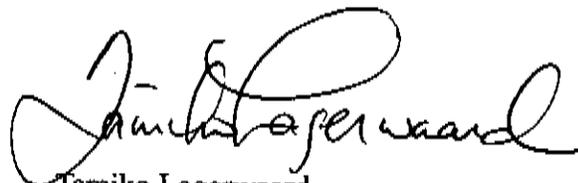
The plaintiffs propose that this action be tried at Calgary, Alberta.

28 July 2015



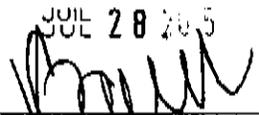
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SOR/2004-283, s. 35

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on / and dated JUL 28 2015  _____ Victoria Gawn/Registry Officer
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