

Court File No.

FEDERAL COURT

BETWEEN:

KURT SUSS

Plaintiff

And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

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

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

(Date)

Issued by:

Address of local office:

Thomas D'Arcy McGee Building

90 Sparks Street, Main Floor

Ottawa, Ontario

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TO The ATTORNEY GENERAL OF CANADA

284 Wellington Street

Ottawa, Ontario

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CLAIM

1. The plaintiff's claim is for compensation under s.24 of the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.(“the Charter”) for breach of the plaintiff's rights under s.7 of the Charter in the nature of damages and punitive damages arising from
 - a) the breach of the plaintiff's privacy through the unlawful, unauthorized and improper interception of the Plaintiff's cell phone by the defendant's servants, the management, employees and agents of Correctional Service of Canada, contrary to the Corrections and Conditional Release Act, S.C. 1992, c.20 (“ the CCRA “) and the Privacy Act, R.S.C. 1985, c.P-21 and to his common law rights of privacy;
 - b) the resultant and concomitant misconduct of the defendant and her servants, or any of them, consisting in the harm caused to the plaintiff subsequent to their breach of his privacy;
 - c) Such other compensable harm suffered by the plaintiff set out herein, as may be discovered in the course of this action,
2. Specifically, the quantum of the compensation for said harm to the plaintiff includes:

a) first, in the amount of \$300,000.00:

- i) Intentional infliction of emotional distress upon the plaintiff arising from the defendant's servants' intrusion upon the plaintiff's privacy and personal integrity, in breach of their fiduciary duties, incident to their unlawful interception of his cell phone and their transmission of harmful personal information acquired by the intercepts ;
- ii) The resultant assaults and threats of harm toward the plaintiff made by fellow servants of the defendant, caused by the reckless or negligent disclosure to other persons of the illegally obtained and disclosed false and defamatory information concerning the Plaintiff;
- iii) The public humiliation and ostracizing of the plaintiff incident to the violation of his employment rights subsequent to the impugned interceptions and disclosure of same to other employees;

b) second, in the amount of \$200,000.00, for the harm arising from:

- i) the wrongful dismissal of plaintiff from his employment, the wrongful deprivation of his income and employment benefits and the denial of his opportunities for advancement resulting from their breach of the plaintiff's privacy and Charter rights

c) third, in the amount of \$200,000.00, the harm arising from:

- i) the intimidation of the plaintiff by the defendant's servants in threatening him with unlawful financial penalties unless he agreed to a patently unfair agreement with his employer regarding compensation for the harm caused in the present matter and patently unreasonable terms related to his retirement and pensions.

- d) Fourthly, such other harm as shall be determined by the parties and accepted by the Court.
- e) Finally, punitive damages in the amount of \$100, 000.00 arising from:
 - i) the arrogant, high-handed, egregiously insidious and deliberate acts of the defendant's servants, or any of them, in flagrantly breaching the plaintiff's right to privacy and in subjecting the plaintiff to scorn, abuse and emotional distress by their interception of his cell phone and unlawful dissemination of harmful, false information about him.

Material information and pleadings

- 3. In May, 2015, or thereabouts, an uncover surveillance operation was launched at Warkworth Institution by the defendant's servants to surreptitiously capture persons' cell phone information on the premises of CSC institutions.. This operation was illegal and oppressive and violated the plaintiff's rights, and those of other employees, under s.7 of the Charter, without justification under s.1 of the Charter ,the CCRA and related Regulations and policies, the Privacy Act and employees' rights to privacy at common law.
- 4. At the time of the interceptions CSC had been investigating the importation of drugs by staff and inmates, and other misconduct, through a device furnished by an outside contractor. This device intercepted any digital communications made on the premises.

5. On or about October 21, 2015 the plaintiff, an employee of the Correctional Service of Canada (“CSC”) and carrying out duties pursuant to the the CCRA, was informed by the defendant’s servant, Bruce Somers that his personal cell phone had been intercepted and that the local police and the RCMP would be conducting an investigation of this and that he would be contacted by the police.
6. No such contact ensued.
7. In September,2015, the plaintiff’s cell phone was identified as being electronically captured in the operation and information stolen.
8. Nothing that the plaintiff said on his cell phone, which the device intercepted, indicated any information about his engaging in any kind of misconduct.
9. Subsequently the operation was shut down because institutional staff found out about it and it was determined unlawful by the defendant’s servants.
10. It was clear both to the defendant’s servants and to the plaintiff that the fact that an interception had taken place and that police were investigating could lead to very negative, and potentially dangerous, inferences by other of the defendant’s servants including, but not limited to:
 - a) that the plaintiff was using his cellphone to manage or implement importation of drugs or to support some other misconduct.
 - and
 - b) that the plaintiff was involved in some police investigation of other employees for criminal activities.

11. The defendant's servants took no measures to clarify that the plaintiff had committed no offence or misconduct according to the information acquired in the intercept, thereby permitting employees to make the above inferences about his conduct
12. Prior to the interception incident, the plaintiff had been considered a good employee over his many years of service and had the respect of his peers and of the management of the institution.
13. After the incident the defendant's servants sent the plaintiff home, pending the servants' purported investigation, and he was away from work for two weeks. When he returned to work he was informed that he had been removed indefinitely from the work schedule. The institutional Warden, the servant of the defendant, never contacted him to inform him of this decision or the rationale for it.
14. He remained away for some time, [about...weeks] on paid leave and then was informed that he had been placed on Workers Compensation allowance. This resulted from the institutional employer submitting a claim to Workers Compensation on his behalf, without his knowledge, which indicated that he was on leave for psychological trauma.
15. It was only after a significant period off work that the plaintiff became aware that his cell phone had been intercepted by the installation of a machine by a contracted agent.
16. Despite many requests to the employer to return to work the plaintiff was kept off the work schedule without any clarification or explanation from Employment Relations and Human Resources personnel about why he was not welcome at work.
17. In essence, the Warden and other staff were doing whatever they could to compel the Plaintiff to be absent on WSB status.

18. At some point, the defendant's servants at the institution, or some of them, made other servants of the defendant aware that the plaintiff had been sent away from work due to the telephone intercepts.
19. The plaintiff was very concerned that he would be labelled by other staff as having conspired to introduce drugs in the institution for inmates.
20. He believed that this would cause him to be shunned and even harmed by other staff, whose animus against any staff who committed such misconduct was well known to all CSC staff.
21. Ultimately, he remained at home for about eight months.
22. Then the Warden Scott Thompson, was abruptly transferred and a new Warden, Larry Ringler, arrived at the institution and ordered the plaintiff back to work.
23. The plaintiff was required to work in locations isolated from other staff and during the night shift. This was to prevent him from interacting with other staff because, having been informed of the phone intercepts, and possible other adverse information about the plaintiff, staff members began to harass the plaintiff and to make his work hours very stressful.
24. This harassment took the form, in part, of being placed in the isolated work location and close observation by two Correctional Managers, who directed staff not to speak to the plaintiff.

25. As well, the defendant's servants or agents, or some of them, placed a full size training mannequin that required two people to move it into place in the plaintiff's work location.
26. This was purposely positioned in a very demeaning and offending position with the plaintiff's uniform hat on it, a ball taped and stuffed in its mouth and a steel rod in the rectum.
27. A manager saw this mannequin before the plaintiff came to work and did not report it, did not remove, nor inform me. If you need to submit pictures I'm sure I have sent you some. I do have pictures of this scene.
28. In another instance of harassment an object representing a sort of scarecrow was placed close to where the plaintiff parked his car. This had a severed head, blood on it and had a sign on it indicating the plaintiff's name and the statement "when was süss going to off himself."
29. This incident was hidden by manager Tim Gunter, who took pictures and did a report but claimed he "accidentally erased" everything. He at another time that the plaintiff found defecation in the waste bucket in his office, which he reported to Tim Gunter.
30. The harassment indicated by these incidents caused the plaintiff considerable fear, anxiety and humiliation, as he knew that it was intended to label him as a wrong-doer and to threaten him with harm.
31. The defendant's servant, the employer, did nothing to clear his name and reputation in the eyes of fellow employees, even though the employer knew he had committed no wrong-doing or made any accusations about the plaintiffs' purported misconduct.

32. The reasonably inferred purpose of the harassment was to prompt the plaintiff to leave his employment without compensation for the harm to which the defendants had subjected him.
33. In total the plaintiff lodged three complaints of harassment under the Federal Public Sector Labour Relations Act (S.C. 2003, c. 22, s. 2).
34. These were referred to an outside group (the Quintet Corporation) for investigation.
35. For 12 months the Ontario Provincial Police (OPP) were investigating the interception of the plaintiff's phone, and indeed of the placement in the workplace of a machine intended to monitor cell phone calls.
36. As the OPP investigation began and proceeded, the plaintiff became more and more suspicious that the interception of his cell phone without his permission was an offence under the Criminal Code of Canada and a breach of his rights under the Privacy Act and the CCRA.
37. The plaintiff believed that he would be offered a financial settlement to leave the Service.
38. The plaintiff engaged in discussion with representatives of the Correctional Service of Canada, and of their Bargaining Agent, for the purported purpose of resolving the plaintiff's complaints against CSC and without limiting the generality of the foregoing:
- a) to compensate him for the harm that he had suffered because of the interception of his phone and the ensuing actions of various defendants in the workplace;
 - b) to provide him reasonable compensation for the time that he had been away from work as a result of this matter;
 - c) to provide him reasonable notice and compensation for early retirement, should he wish to accept this.

39. Ultimately the plaintiff received a settlement package offer from the defendant's servant, the employer, that was reasonable in his view - 5 years' pay and then a pension at the rate he would enjoy if he continued to full retirement age before leaving, this in return for signing a non-disclosure agreement about the terms of the settlement package.
40. Then, however, he received a letter from the Public Safety Minister informing him that settlement discussions would not proceed while the matter was under police investigation.
41. Then, despite the apparently favourable offer he had previously received, the plaintiff was induced to sign an agreement with CSC under duress in late 2018.
42. He signed it because the Warden, Larry Ringler, threatened to require him to pay \$50,000 for the pay he had received while absent from work at material times.
43. Subsequently, on advice of investigators who had been assigned to investigate the issues under the Canada Labour Code, the plaintiff concluded that this new agreement was unlawful as he had signed it under duress.
44. Given the said threat, by the Mr. Ringler, and the information he subsequently received from expert sources, the plaintiff concluded through attempts to resolve the matter through legislative dispute-settlement mechanisms, negotiation, and third-party assistance (investigation by Labour Canada), that he should be considered to have been terminated.
45. The plaintiff attempted to resolve the above issues related to the interception and subsequent misconduct of the defendant's servants by use of:
- a) the employee grievance procedure,

- b) the Public Service harassment investigation procedure
- c) negotiations under the workers compensation regulations
- d) a complaint under the Privacy Act , R.S.C. 1985, c. P-21 (The Privacy Act) alleging that the interception itself and the disclosure of their personal information to others violated their right to have their personal information kept confidential by CSC staff.

46. For clarification, in January 2016 - The Union of Correctional Officers filed a complaint with the Privacy Commissioner, who determined, in October 2018, that the complaint was well founded and that a breach had occurred against all the correctional officers and civilian staff in conducting the operation monitoring meta data, but not for capturing any individuals' phones, or acquiring and disclosing personal information.

47. The response determined that, despite the breach in intercepting cell phones, the defendant's servants acted somehow with colour of right in the exercise of their security responsibilities.

48. This finding was not acceptable to the plaintiff because he had been told that his rights had been violated when his phone information was captured and that he was the only one to whom this happened except to one co worker.

49. The plaintiff exhausted all methods of recourse and resolution to attempt to find out what happened and absolve him of any wrong doing, including , but not limited to, the following

50. In March 2018- he attempted to get answers from various levels of CSC management, and various high levels of Government including the Prime Ministers office, without success.

51. In August 2018 he began submitting many access to information requests.
52. He contacted the Ontario Provincial Police who did not respond and were not interested in speaking with him..
53. In February 2019, he began submitting complaints for late and incomplete access to information reports.
54. In October ,2019 he began receiving more responses to his ATIP requests which indicated to him even more deception from Corrections Canada and confirmed to him what appeared to be a cover up. The information also gave more indication that his privacy was violated as an individual. This did not sit well with him and he determined that another privacy investigation could be warranted.
55. Over all, the plaintiff proceeded through these administrative mechanisms, rather than engage in formal litigation until two culminating events occurred that convinced him that:
- a) he could not count on further administrative steps assisting them in achieving redress
 - b) the interception of his cell phones and disclosure of the personal information, per se, even under the purported guise of a security investigation constituted a breach of his rights to privacy both under the Privacy Act and the common law.
56. The plaintiff realized that, having proceeded to negotiate in good faith concerning his employment status, he was nonetheless forced to sign an agreement under duress. This agreement provided him with compensation for time away from work and stipulated that he would retire from CSC. It also required him not to disclose any information about the intercepts or other information arising from the incident.

52. The threat by the defendant's servants was that they would deduct pay for the plaintiff's time off work if he did not sign the agreement.

53. The plaintiff lodged a complaint of harassment against one of the defendant's servants, Tim Gunter, a manager, who had been willfully blind and recklessly indifferent to the harassment and shunning that the plaintiffs had suffered from other servants.

54. , In August 2019, Scott Harris, a regional CSC manager and servant of the defendant, threatened the plaintiff Suss with "legal action" if he did not withdraw his harassment complaint against Mr. Gunter.

55. The plaintiff began putting together information to present his case to the Privacy Commissioner's Office as an individual complaint in his own name

56. . His complaint was based on the previous complaint the union of correctional officers submitted, and on his new information from ATIP requests

57. In February 2020, the Plaintiff submitted a complaint to the Privacy Office, first to investigator Brad Carrier, who reviewed the complaint and took some preliminary information.

58. In his complaint he also gave the Privacy Commissioner names of witnesses and the people whom he believed responsible for the breaches of his privacy and the ensuing harassment and illegal measures.

59. The Complaint was passed on to Kamis Ezenwa, another investigator who took statements from the Plaintiff as well as some written witness statements from other persons. The matter was then passed to a senior investigator, Justin Lee, for further investigation. It was determined that the plaintiff met the requirements for a investigation and a well founded decision was

rendered for his complaint. It was determined that his privacy had indeed been breached with illegal cell phone intercepts and that his personal information had been unlawfully collected, stored and shared.

60. The Privacy Commissioner's response was received by the plaintiff on August 06 2021- This was the first time that the plaintiff received written confirmation by way of the completed privacy document completed by Mr. Lee, the of breach of his privacy rights arising from the interception and the disclosures related to his cell phone.

61. Based on this decision, the plaintiff filed the instant action.

Liability

62. The defendant's servants intercepted the plaintiffs' personal information on their cell phones and distributed to others the information that his cell phone had been intercepted when the said servants knew , or ought to have known,:

- a) that the interception and disclosure breached the plaintiffs' right to the privacy of their personal information;
- b) that the disclosure of the interception to other servants of the defendant at the institution would probably lead to repercussions and retaliation against the plaintiffs based on unfounded assumptions that they were carrying on illegal activities to which other servants would object.

63. The disclosure, which took place either through the intentional conduct or through the negligence of the defendant's servants, did indeed give rise to repercussions on the part of other servants – such as threats, insults and removal from employment - that have caused the plaintiff harm – such as ongoing emotional distress, loss of employment, humiliation and loss of income.

57. The defendant's servants, or some or all of them, who had a duty of care to protect the plaintiff from harm, breached the plaintiff's privacy, caused him foreseeable emotional harm and distress and breached his right to security of the person under s. 7 of the Charter and at common law without justification under s.1 of the Charter, in breach of their duties as an employer at common law and under the CCRA, and labour relations and employment legislation and policy,
- a) by illegally operating a machine that they knew, or ought to have known, would illegally intercept the plaintiff's phone and reveal personal information stored therein without the plaintiff's consent – and which did in fact cause this harm.
 - c) by permitting the intercept and permitting foreseeable misinformation about the plaintiff's role in assisting with drug importation to be made known to other staff when the servants knew, or ought to have known, that the information transmitted to other staff was false and that the other staff would react adversely and threaten or harass or otherwise harm the plaintiff.
 - d) by threatening him with dismissal and by attempting to pressure him to leave employment without reasonable compensation, knowing that the plaintiff had done no wrong and should not be required to leave their employment.
 - e) by, constructively dismissing the plaintiff without reasonable notice or cause by placing him in precarious, isolated work situations which did not conform to his regular duties and by unlawfully removing him from his duties on the defendant's premises..

64. The defendant's servants, or some of them, carried out a persistent process unlawful attempts to suppress the interceptions and to prevent the plaintiffs from disclosing the information. This process of harassment itself caused the plaintiffs considerable emotional stress and resulted in their unlawful removal from employment.
65. Accordingly the respondent's servants are liable for all the harm to the plaintiffs that has taken place because of, and arising from, the unlawful interception and distribution of personal information took place.
66. The defendant's servants, or any of them, have also breached the plaintiff's right to privacy under the Privacy Act and are liable for the breach, per se, and the harm arising from the breach.
67. The defendant's servants have breached the plaintiff's right to security of the person under s. 7 of the Canadian Charter of Rights and Freedoms (the Charter) ¹by either causing or permitting him to be subjected to harassment and removal from his employment, without justification under s.1 of the Charter.
68. The plaintiffs submit this claim under s.24 of the Charter to this Honourable Court.

Harm

69. The current psychological assessment of the plaintiff is that he suffers from significant, ongoing and potentially indefinite mental and physical trauma arising from his treatment at work and including, but not limited to, post traumatic stress syndrome and psychologically-induced coughing jags.

¹ Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

70. This will seriously impair his ability to return to meaningful employment.

Punitive Damages

71. The defendants servants , or any of them, committed the aforesaid harm against the plaintiffs in furtherance of a deliberate attempt to deceive the plaintiffs by concealing the illegal interception of their personal information.

72. The defendants, or some of them, completely disregarded the harm being caused to the plaintiffs in a manner demonstrating disdain, arrogance and complete disregard for the plaintiffs' feelings or health. This was done despite the Defendants' fiduciary duties and duties as the employer of the Plaintiffs, to provide them with a respectful, safe and lawful working environment.

73. The defendants' misconduct herein went beyond that which can be addressed by compensatory damages and requires sanction or punishment to prevent such misconduct from re-occurring.

Vicarious liability

74. The defendant is liable for the harm caused by the acts and omissions of her servants herein arising in the course of their duties and functions.

All of which is respectfully submitted.

September 30, 2021

J. Todd Sloan

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<p>THE ATTORNEY GENERAL OF CANADA</p> <p>Respondents</p>	<p>and KURT SUSS</p> <p>Plaintiff</p> <p>Court File No. T</p>
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FEDERAL COURT

PROCEEDING COMMENCED AT OTTAWA, ONTARIO

STATEMENT OF CLAIM

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