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	December 06, 2022 06 décembre 2022		
	No. _____ Renee Cornick		
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## FEDERAL COURT

BETWEEN:

**ALEXANDER DOCHERTY, LOGAN DOCHERTY  
and SKYE VIEW FARMS LTD.**

**Plaintiffs**

and

**ATTORNEY GENERAL OF CANADA,  
CANADA REVENUE AGENCY and FERNAND COMEAU**

**Defendants**

## STATEMENT OF CLAIM

### TO THE DEFENDANTS

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; or

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

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

Copies of the *Federal 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.

DATED at \_\_\_\_\_, Province of \_\_\_\_\_ this \_\_\_\_ day of December A.D. 2022.

Issued by: \_\_\_\_\_  
Registry Officer

TO: A. FRANÇOIS DAIGLE  
Deputy Attorney General of Canada  
Department of Justice Canada  
Duke Tower, Suite 1400  
5251 Duke Street  
Halifax, N.S. B3J 1P3  
Lawyer for the Defendant

## **CLAIM**

1. The Plaintiffs claim:
  - (a) General and aggravated damages of \$50,000 each;
  - (b) punitive and exemplary damages of \$100,000 each;
  - (c) damages pursuant to s.24 of the *Canadian Charter of Rights and Freedom*, Part I of the *Constitution Act, 1982* being schedule B to the *Canada Act 1982 (UK)*, 1982, c.11 (hereinafter the “**Charter**”) in amounts to be determined at trial;
  - (d) pre-judgment and post-judgment interest;
  - (e) costs of this action on a substantial indemnity basis or in the alternative, on a partial indemnity basis; and
  - (f) such other remedies that this Honourable Court may deem just and proper.
2. The amount claimed by the Plaintiffs, exclusive of interest and costs, exceeds \$50,000.
3. The Plaintiff, Alexander Docherty is an individual residing in Clyde River, the Province of Prince Edward Island.
4. The Plaintiff, Logan Docherty is an individual residing in Clyde River, the Province of Prince Edward Island.
5. The Plaintiff, Skye View Farms Ltd. (hereinafter “**SVF**”), is a corporation duly incorporated and carrying on business in Prince Edward Island.
6. The Defendant the Canada Revenue Agency (hereinafter the “**CRA**”) is a body corporate established under the *Canada Revenue Agency Act*, S.C. 1999, c.17, and is responsible for, *inter alia*, enforcing tax legislation in Canada. The CRA is under the control of the Minister of National Revenue and is an agent and/or servant of His Majesty the King in Right of Canada. The CRA is vicariously liable for the torts or other actionable causes committed by its officers, employees or agents while they acted in the ordinary course of their employment.

7. Environment and Climate Change Canada (hereinafter "**ECCC**"), through its Environmental Enforcement Directorate, is a ministerial department and, *inter alia*, was and is tasked with investigating various federal regulatory matters which includes offences contrary to the *Fisheries Act*, R.S.C. 1985, c. F-14 (hereinafter the "**Fisheries Act**"). The ECCC is under the control of the Minister of Environment and Climate Change and is an agent and/or servant of His Majesty the King in Right of Canada. At all material times, the ECCC was responsible for investigating offences contrary to the *Fisheries Act* allegedly committed by the Plaintiffs, namely: Alexander Docherty, Logan Docherty and SVF. The ECCC is vicariously liable for the torts or other actionable causes committed by its officers, employees or agents while they acted in the ordinary course of their employment.
8. The Defendant the Attorney General of Canada (hereinafter the "**Attorney General**"), is the government official responsible and liable for, *inter alia*, all matters alleged of His Majesty the King in Right of Canada as represented by the Minister of Environment and Climate Change and the Minister of National Revenue.
9. The Defendant Fernand Comeau (hereinafter "**Comeau**"), an individual residing in the Province of New Brunswick, was at all material times an enforcement officer employed by ECCC.
10. Canada's income tax regime is based on a self-assessment and self-reporting system, legislatively requiring individuals and corporations in Canada to provide personal and financial information to the CRA.
11. Canada's income tax regime includes confidentiality provisions, legislatively requiring those who receive personal and financial information pursuant to the regime to protect that information and precluding dissemination of that information except in limited circumstances and for specific purposes. Specifically, paragraph 241(1)(a) of the *Income Tax Act*, R.S.C.

1985, c.1 (5<sup>th</sup> Supp) (hereinafter the “***Income Tax Act***”), states that except as authorized by [section s.241], no official or other representative of a government entity shall knowingly provide, or knowingly allow to be provided, to any person any taxpayer information.

12. Each of the Plaintiffs provided personal and financial taxpayer information to the CRA as required by law.
13. The information provided to the CRA by the Plaintiffs was provided in confidence and in reliance on the confidentiality requirements established by the governing legislation.
14. Comeau was the officer in charge of an investigation with respect to an allegation that the Plaintiffs acted contrary to s.36(3) of the *Fisheries Act* in that they unlawfully permitted the deposit of a deleterious substance (agricultural runoff containing pesticides) in water frequented by fish thereby committing an offence contrary to s.40(2)(b) of the *Fisheries Act*.
15. Paragraph 241(3)(a) of the *Income Tax Act* provides an exception to the requirement that CRA strictly protect taxpayer information. The exception applies in respect of criminal proceedings that have been commenced by the laying of an information or the preferring of an indictment.
16. The investigation involved an alleged summarily conviction regulatory offence.
17. Subsection 40(1) of the *Fisheries Act* provides for ranges of available fines in the event of conviction. The legislation provides for a higher fine for corporations if they no longer qualify as *small revenue corporations*. Subsection 40(2.1) of the *Fisheries Act* defines small revenue corporations as those not exceeding \$5 million dollars in gross revenue in the twelve months immediately before the first day on which the subject matter of the proceedings arose.

18. There is no legislative provision in the *Fisheries Act* establishing ranges of fines for individuals based on their income and/or financial solvency.
19. On 23 October 2018 Comeau swore an information alleging the Plaintiffs, between 20-28 July 2016, did contravene the aforesaid provisions of the *Fisheries Act*.
20. Following the laying of an information, Comeau requested that the CRA provide him with tax records for SVF for the years of 2015, 2016 and 2017 to determine the size of the corporation for determining the proper monetary penalty that will be imposed on SVF. Comeau also requested the tax records for Alexander Docherty and Logan Docherty for the years 2015, 2016 and 2017 to determine the monetary penalty that may be imposed on the individuals. Comeau represented to the CRA that paragraph 241(3)(a) of the *Income Tax Act* provided the legislative authority for the CRA to release the requested records to him without the necessity of a warrant.
21. SVF's taxpayer information for the periods of 01 January to 20 July 2015, 29 July 2016 to 31 December 2016 and the entirety of 2017 fall outside of the twelve-month period used to determine whether a corporation qualifies as a small revenue corporation and are irrelevant for that purpose.
22. Alexander Docherty and Logan Docherty are not corporations. Their personal and financial taxpayer information is irrelevant for the purpose of prosecuting the allegations, aforesaid.
23. Jeff Klassen (hereinafter "**Klassen**") is an employee, official or otherwise a representative of the CRA, being itself a government entity. On or about 23 November 2018, Klassen, on behalf of the CRA, released the Plaintiffs' personal and financial taxpayer information to a third party without proper authority and/or consent.
24. Once in possession of the Plaintiffs' personal and financial taxpayer information, Comeau

shared it with others involved in the investigation and prosecution of the Plaintiffs.

25. The Plaintiffs were acquitted at trial before the Prince Edward Island Provincial Court, a decision which was appealed to the Supreme Court of Prince Edward Island sitting as Summary Conviction Appeal Court and then again to the Prince Edward Island Court of Appeal. Both appeals were rejected. While arguing the appeals, counsel for the Attorney General of Canada argued that the *Fisheries Act* charges were regulatory in nature and were not to be treated akin to a criminal proceeding while responding the Plaintiffs' *Charter* arguments which were originally successfully argued at trial.
26. The allegations made against the Plaintiffs in the information sworn by Comeau were not of a criminal nature and did not involve a criminal proceeding.

### **Causes of Action**

27. For the purposes of the causes of action pleaded herein, the Plaintiffs plead that the laws of Prince Edward Island apply in respect of requisite limitation periods.
28. The Plaintiffs plead the following cases of action:
  - (a) negligence;
  - (b) breach of fiduciary duty;
  - (c) violation of privacy;
  - (d) intrusion upon seclusion;
  - (e) misfeasance of public office; and
  - (f) breach of statutory duty, including but not limited to the *Charter*, *Income Tax Act* and *Privacy Act*.

## **Constitutional Claims**

29. The Plaintiffs repeat and rely upon the allegations stated above and plead the Defendants individually, jointly and collectively (as the case may be), as representatives of government and pursuant to section 8 of the *Charter*, owed a duty of care to the Plaintiffs:

- (a) in the case of the Attorney General and Comeau,
  - (i) not to seize or otherwise obtain private taxpayer information without legislative authorization or a duly executed warrant permitting such seizure;
  - (ii) not to represent or otherwise hold-out to others that one has the legislative authority to release private taxpayer information when one does not;
- (b) in the case of the Attorney General, Comeau and the CRA,
  - (i) to maintain private taxpayer information confidential unless otherwise required by law; and
  - (ii) to protect private taxpayer information from being unlawfully released or otherwise distributed to third parties.

30. The Plaintiffs state the Defendants knew or ought to have known that their breach of the duty of care as representatives of government/or pursuant to section 8 of the *Charter* would:

- (a) deprive them of their rights to secure against unreasonable search and seizure;
- (b) lead to or contribute to harm to the Plaintiffs; and
- (c) lead to or contribute the breach of privacy of the Plaintiffs.

31. The Plaintiffs state that the Defendants breached the aforementioned duty of care owed to



them by:

- (a) representing that the proceeding against the Plaintiffs was in the nature of a criminal proceeding, when it was not;
- (b) failing to investigate the allegation that the exception provided by paragraph 241(3)(a) of the *Income Tax Act* permitted and/or required the release of private taxpayer information to third parties, when it did not;
- (c) failing to take all reasonable steps to maintain and protect the confidentiality of their private taxpayer information;
- (d) acting with reckless disregard in the seizure or otherwise collection of private taxpayer information when they knew, or ought to have known, there was no lawfully authority for obtaining same;
- (e) acting with reckless disregard in the distribution or otherwise dissemination of private taxpayer information when they knew, or ought to have known, there was no lawfully authority for providing same;
- (f) in the case of the individual Plaintiffs, accessing their private taxpayer information without lawful authority for the purpose of seeking fines commensurate or otherwise linked to their income;
- (g) such further acts or omissions as may become evident.

32. As a result of the aforesaid breach of their constitutional rights, the Plaintiffs have suffered harm, damages and expense. Accordingly, the Plaintiffs seek a remedy pursuant to section 24 of the *Charter*.

**Particulars with Respect to Negligence, Intrusion upon Seclusion, Breach of Fiduciary Duty and Violation of Privacy**

33. The Plaintiffs repeat and rely upon the allegations stated above and plead the Defendants individually, jointly and collectively (as the case may be), owed a duty of care to the Plaintiffs to protect their personal and financial taxpayer information and to not disclose, disseminate and/or otherwise access that information without lawful authority. This duty of care includes, but is not limited to, carrying out a careful, prudent, thorough, and reasonably skilled investigation of whether lawful authority existed before:
- (a) in the case of Comeau, representing to others that he had lawful authority to demand and obtain the Plaintiffs' private taxpayer information without warrant; and
  - (b) in the case of CRA, disclosing the Plaintiffs' private taxpayer information to third parties without warrant or the Plaintiffs' consent.
34. Comeau was assigned to investigate the Plaintiffs alleged violation of the *Fisheries Act*. In that regard, he was the lead investigator or otherwise the officer in charge of the investigation.
35. As a result of his position as an investigator investigating the Plaintiffs alleged violation of the *Fisheries Act* he held a position of power over, and in respect of, the Plaintiffs.
36. Comeau knew, or ought to have known, that the allegations against the Plaintiffs made pursuant to the *Fisheries Act* were not criminal proceedings.
37. Comeau knew, or ought to have known, that the exception provided by paragraph 241(3)(a) of the *Income Tax Act* did not permit and/or require the release of the Plaintiffs' private taxpayer information which he sought from CRA.

38. Comeau intended that his requests to CRA for the Plaintiffs' personal taxpayer information would result in him obtaining the information without the necessity of first applying for a warrant or seeking the Plaintiffs' consent.
39. At all material times, Comeau was acting in the ordinary course of his employment with ECCC, as represented by the Attorney General.
40. The Plaintiffs state that Comeau knew or ought to have known that his breach of his duty of care would:
- (a) breach their privacy;
  - (b) result in the unlawful release of their personal and financial taxpayer information to a third party without lawful authority; and
  - (c) cause their personal and financial taxpayer information to be used in the prosecution of the allegations as against the Plaintiffs.
41. The Attorney General is vicariously and independently liable for the negligent conduct performed by ECCC environment officers, of which includes Comeau.
42. Furthermore, the Attorney General failed to meet the reasonable standard of care and created and contributed to the risk that Comeau would improperly and negligently claim to have the power to request and obtain the Plaintiffs' personal taxpayer information (when he did not) as it failed to take reasonable steps to train, supervise and monitor Comeau.
43. Klassen was assigned or otherwise tasked to review Comeau's request for the Plaintiffs personal taxpayer information.
44. The CRA is vicariously and independently liable for the negligent conduct performed by its

employees, of which includes Klassen.

45. The Plaintiffs provided their personal taxpayer information to the CRA with a reasonable expectation that their privacy would be maintained.
46. The CRA collected the Plaintiffs' personal taxpayer information in the course of its activities.
47. The CRA released the Plaintiffs' personal and financial taxpayer information to a third party (Comeau) without proper authority and/or consent.
48. The CRA failed to protect the personal and financial taxpayer information provided to it by the Plaintiffs as was legislatively required of it.
49. The CRA owed a duty of care to the Plaintiffs to ensure the personal and financial taxpayer information provided to the CRA in accordance with the income tax regime was protected as required by the applicable legislation.
50. The CRA breached their duty of care to the Plaintiffs by releasing their personal and financial taxpayer information to a third party without lawful authority or consent. Moreover, the CRA failed to warn the Plaintiffs of their intention to release their confidential taxpayer records.
51. The CRA is subject to the protection of personal information requirements as established in both the *Income Tax Act* and the *Privacy Act*, (RSC, 1985, c. P-21). The CRA is under a duty to protect taxpayers' privacy as well as their personal and confidential information.
52. Under the *Income Tax Act* and the *Privacy Act*, the Plaintiffs have a right to privacy and security of their personal information.
53. Through the Defendants' wrongdoing, as aforesaid, the Plaintiffs' personal taxpayer

information was deliberately shared with, and accessed by, third parties without lawful authority or the Plaintiffs' consent. Consequently, the CRA breached the Plaintiffs' common law and statutory rights to privacy, including, but not limited to the tort of intrusion upon seclusion, the *Income Tax Act*, and the *Privacy Act* upon which the Plaintiffs plead and rely.

54. The breach of the Plaintiffs' privacy by CRA constitutes a breach of the *Income Tax Act* and the *Privacy Act* for which damages may be awarded.
55. The CRA was in a fiduciary relationship with the Plaintiffs by reason of their entrustment with the Plaintiffs' personal and financial information which the Plaintiffs were required, by law, to provide to the CRA. By virtue of this fiduciary relationship and the vulnerability of the Plaintiffs, the CRA had a duty to care to use reasonable means to keep the Plaintiffs' personal and financial information strictly confidential and secure. The CRA breached this duty causing harm to the Plaintiffs.
56. By virtue of the trust reposed in the CRA by the Plaintiffs, there existed a special relationship between the parties giving rise to a duty of care owed by the CRA to the Plaintiffs.
57. The Plaintiffs reasonably relied upon the CRA to keep their information secure from unlawful release to third parties. The CRA ought reasonably to have foreseen that the Plaintiffs would rely on that representation.
58. The Plaintiffs state the aforementioned acts or omissions of the Defendants were performed (or not performed) in the absence of good faith.
59. The Plaintiffs' state the Defendants' breaches of their requisite duties of care caused them harm, damage and expense.

#### **Particulars of Mifeasance in Public Office**

60. The Plaintiffs repeat and rely upon the allegations stated above and state Comeau held a public office and exercised his authority on behalf of the His Majesty the King in Right of Canada as represented by the Minister of Environment and Climate Change.
61. In his capacity as a public officer and whilst exercising a public function, Comeau engaged in intentional and deliberate conduct he knew or ought to have known was unlawful and would or likely would adversely harm the Plaintiffs.
62. Comeau represented to the CRA that he had lawful authority to request and obtain the Plaintiffs' personal and financial taxpayer information when he did not and, as a result of his misrepresentations, did obtain the records. Once in possession of them, Comeau personally reviewed the Plaintiffs' records and then shared them with others acting as prosecutors of the allegations made against the Plaintiffs. This information was intended by Comeau to assist in the prosecution of the Plaintiffs. As a result of the breach of the Plaintiffs' privacy, those acting as the Plaintiffs' prosecutors were given information regarding the Plaintiffs' capacity to pay fines and their capacity to fund the defense of the allegations made against them.
63. The Plaintiffs' personal taxpayer records were viewed by those acting as prosecutors of the Plaintiffs during their prosecution of them.
64. Comeau's actions, aforesaid, were done in bad faith or were carried-out in reckless disregard to their outcome.
65. The Plaintiffs' state Comeau's misfeasance caused them harm, damage and expense.

The Plaintiffs propose that this action be tried at Charlottetown, Queens County, Prince Edward Island.

DATED at Charlottetown, Queens County, Prince Edward Island this 6 day of December, A.D. 2022.



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**D. Brandon Forbes**  
Campbell Lea  
65 Water Street, Suite 400  
Charlottetown, PE  
Lawyers for the Plaintiffs  
Tel: 902-370-7135  
Fax: 902-367-3713  
Email: [bforbes@campbelllea.com](mailto:bforbes@campbelllea.com)

TO: A. FRANÇOIS DAIGLE  
Deputy Attorney General of Canada  
Department of Justice Canada  
Duke Tower, Suite 1400  
5251 Duke Street  
Halifax, N.S. B3J 1P3  
Lawyer for the Defendant