

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

S-111083

Form 1

FEB 18 2011



File No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CLAY ROUECHE

PLAINTIFF

AND:

**THE ATTORNEY GENERAL OF BRITISH COLUMBIA (MINISTER OF PUBLIC
SAFETY AND SOLICITOR GENERAL OF BRITISH COLUMBIA),
CITY OF VANCOUVER (VANCOUVER POLICE DEPARTMENT) and
CITY OF ABBOTSFORD (ABBOTSFORD POLICE DEPARTMENT)**

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Clay Roueche (the "Plaintiff" or "Mr. Roueche") is a Canadian citizen and has an address for service care of Martin Peters, Barrister, 1720-355 Burrard Street, Vancouver, B.C.
2. The Defendant, the Attorney General of British Columbia (Minister of Public Safety and Solicitor General of British Columbia) (the "Minister") has an address at 1001 Douglas Street in the City of Victoria, Province of British Columbia.
3. The Defendant, the City of Vancouver (Vancouver Police Department) has an address at 453 West 12th Avenue, in the City of Vancouver, Province of British Columbia.
4. The Defendant, the City of Abbotsford (Abbotsford Police Department) has an address at 32315 South Fraser Way, in the City of Abbotsford, Province of British Columbia.
5. On or around October 11, 2007, a United States ("U.S.") grand jury indicted Mr. Roueche under U.S. criminal law and a bench warrant was issued for his arrest.

6. On or after October 11, 2007, members of the U.S. Immigration and Customs Enforcement ("ICE") made members of the Organized Crime Agency of British Columbia ("OCABC"), Combined Special Forces Enforcement Unit - British Columbia ("CFSEU-BC"), Royal Canadian Mounted Police ("RCMP"), BC Integrated Gang Task Force ("BCIGTF"), Vancouver Police Department ("VPD") and/or Abbotsford Police Department ("APD") aware of the outstanding U.S. warrant for Mr. Roueche's arrest.
7. Between 2007 and 2008, members of the OCABC, CFSEU-BC, RCMP, BCIGTF VPD and/or APD communicated with members of ICE regarding ways to facilitate the execution of the U.S. warrant for Mr. Roueche's arrest without having to rely on the *Extradition Act*, S.C. 1999, c. 18 and/or the *Treaty on extradition between the Government of Canada and the Government of the United States of America*.
8. On or around the 16th day of May, 2008, the Plaintiff attended at the Vancouver International Airport for the purpose of departing on a regularly scheduled flight to Mexico, scheduled to depart on or about the 17th day of May, 2008.
9. Prior to or around the time of the Plaintiff's lawful departure from the Vancouver International Airport on a flight to Mexico, members of the CFSEU-BC, OCABC, RCMP, BCIGTF, VPD and/or APD did:
 - (a) unlawfully request that Mexican authorities detain the Plaintiff upon his arrival in Mexico, deny the Plaintiff entry into Mexico, and ensure that the Plaintiff board a plane which would land in the U.S.; and/or
 - (b) unlawfully, and contrary to section 8 of the *Privacy Act*, inform U.S. authorities of Mr. Roueche's plans to travel to Mexico for the purpose of enabling U.S. authorities to request that Mexican authorities detain the Plaintiff upon his arrival in Mexico, deny the Plaintiff entry into Mexico, and ensure that the Plaintiff board a plane which would land in the U.S.
10. Upon the Plaintiff's arrival at the airport in Mexico, Mr. Roueche was detained by Mexican authorities, denied entry into Mexico and ordered to board a plane destined

- for Vancouver, B.C., with a stop over at Fort Worth International Airport in Dallas, Texas, U.S.
11. Upon the Plaintiff's arrival in the U.S., Mr. Roueche was detained and arrested by U.S. authorities.
 12. Following Mr. Roueche's arrest by U.S. authorities, members of the CFSEU-BC, OCABC, RCMP and/or BCIGTF executed a search warrant on Mr. Roueche's residence in Coquitlam, B.C. and, contrary to section 8 of the *Privacy Act*, provided U.S. authorities with information obtained as a result of the execution of that warrant.
 13. On or about the 16th day of December, 2009, the Plaintiff was sentenced in the U.S. to 30 years in prison.
 14. Between 2006 and 2009, members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD did wilfully breach section 8 of the *Privacy Act* and section 193 of the *Criminal Code of Canada* by unlawfully:
 - (a) disclosing the existence of intercepted private communications of Mr. Roueche to U.S. authorities;
 - (b) providing U.S. authorities with information obtained through the interception of private communications of Mr. Roueche; and
 - (c) providing U.S. authorities with intercepts of Mr. Roueche's private communications.
 15. In addition, between 2006 and 2009, members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD did wilfully breach section 8 of the *Privacy Act* and section 193 of the *Criminal Code of Canada* by unlawfully disclosing intercepts of Mr. Roueche's private communications to Canadian media reporters knowing such disclosure was likely to cause injury to the Plaintiff.
 16. Section 8 of the *Privacy Act* was breached, as referred to in paragraphs 9(b), 12 and 14 herein, by members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD deliberately and unlawfully disclosing personal information of the Plaintiff, without the consent of the Plaintiff, to U.S. authorities outside any authority granted

for such disclosure under section 8(2)(f) of the *Privacy Act* and the *Treaty on extradition between the Government of Canada and the Government of the United States of America*. This disclosure of private information was made knowing it was likely to cause injury to the Plaintiff.

17. Section 193 of the *Criminal Code* was breached, as referred to in paragraph 14 herein, by members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD wilfully disclosing private communications of the Plaintiff, intercepted without the consent of the Plaintiff, to U.S. authorities for a purpose contrary to the interests of the administration of justice. This disclosure of intercepted private communications was made knowing it was likely to cause injury to the Plaintiff.
18. Members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD did unlawfully use surveillance information to remove Mr. Roueche to the U.S. for the purpose of enabling that foreign state to prosecute the Plaintiff.
19. The actions of members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD in unlawfully facilitating the Plaintiff's arrest on U.S. soil constituted:
 - (a) deliberate unlawful conduct in the exercise of public functions, which said members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD knew was likely to cause injury to the Plaintiff;
 - (b) wrongful removal from Canadian soil and breached the Plaintiff's constitutional right to enter, remain in and leave Canada as guaranteed by section 6 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*");
 - (c) a wrongful breach of the Plaintiff's constitutional right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice as guaranteed by section 7 of the *Charter*; and
 - (d) a wrongful breach of the Plaintiff's constitutional right not to be arbitrarily detained or imprisoned as guaranteed by section 9 of the *Charter*.

20. The actions of members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD in unlawfully using and disclosing the information referred to in paragraphs 9(b), 12, 14 and 15 herein constituted a wrongful breach of Mr. Roueche's right to privacy as guaranteed by *Charter*.
21. The Plaintiff first had opportunity to learn of the actions of members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD in unlawfully and deliberately using and disclosing information to U.S. authorities, as referred to in paragraphs 7, 9, 12 and 14 herein, on or about March 3, 2009 when Staff Sergeant Michael Coyle swore an affidavit regarding the disclosure of information to U.S. authorities. Said affidavit was filed in the U.S. District Court for the Western District of Washington (Seattle) on or about October 27, 2009.
22. The Plaintiff first had opportunity to learn of the actions of members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and/or APD in unlawfully and deliberately using and disclosing information to media reporters, as referred to in paragraph 15 herein, on or about December 12, 2009 when certain private communications intercepted by Canadian authorities were published through the Vancouver Sun.
23. The Minister is vicariously liable for the unlawful acts of the members of the OCABC, CFSEU-BC, RCMP and BCIGTF who were involved in the events described in paragraphs 7, 9, 12, 14, 15, 16, 17, 18, 19 and 20 herein.
24. The City of Vancouver (Vancouver Police Department) is vicariously liable for the unlawful acts of the members of the VPD who were involved in the events described in paragraphs 7, 9, 14, 15, 16, 17, 18, 19 and 20 herein.
25. The City of Abbotsford (Abbotsford Police Department) is vicariously liable for the unlawful acts of the members of the APD who were involved in the events described in paragraphs 7, 9, 14, 15, 16, 17, 18, 19 and 20 herein.
26. The Defendants are responsible for the breaches of the Plaintiff's rights as guaranteed under sections 6 and 7 of the *Charter* as a result of failing to adequately train, supervise and instruct members of the OCABC, CFSEU-BC, RCMP, BCIGTF, VPD and APD.

27. As a result of the unlawful acts of the Defendants, and its agents, the Plaintiff suffered loss and damage, including financial loss, emotional and mental distress, and breaches of his civil rights and liberties as guaranteed by the *Charter*.

Part 2: RELIEF SOUGHT

1. A Declaration that the Plaintiff's right to enter and remain in Canada as guaranteed by section 6 of the *Charter* has been infringed;
2. A Declaration that the Plaintiff's right liberty and security of the person as guaranteed by section 7 of the *Charter* has been infringed;
3. A Declaration that the Plaintiff's right to not be arbitrarily detained or imprisoned as guaranteed by section 9 of the *Charter* has been infringed;
4. A Declaration that the Plaintiff's right to privacy as guaranteed by the *Charter* has been infringed;
5. General damages;
6. Special damages;
7. Aggravated, exemplary and/or punitive damages;
8. Interest pursuant to the *Court Order Interest Act*, R.S.B.C.A 1996, c. 79;
9. Costs, including special or increased costs; and
10. Such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. The Plaintiff pleads and relies on:
 - a) The tort of misfeasance in public office;
 - b) The *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, sections 6, 7, 9, 24(1) and 32;
 - c) The *Privacy Act*, R.S.B.C. 1985, c. P-21, section 8;

- d) The *Criminal Code*, R.S.C. 1985, c. C-46, section 193;
- e) The *Police Act*, R.S.B.C. 1996, c. 367, sections 14 and 20;
- f) The *Extradition Act*, S.C. 1999, c. 18; and
- g) The *Treaty on extradition between the Government of Canada and the Government of the United States of America*, 1974.

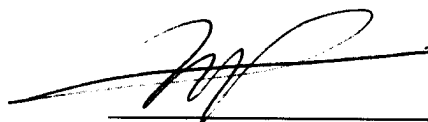
Plaintiff's address for service: Martin Peters
Barrister
1720 – 355 Burrard Street
Vancouver, B.C.
V6C 2G8

Fax number address for service: 604-682-6574

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street
Vancouver, B.C.
V6Z 2E1

Date: February 18, 2011



Signature of
☐ plaintiff ☒ lawyer for plaintiff
Martin Peters

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Tort of misfeasance in public office and breach of *Charter* rights.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

☐ a motor vehicle accident

☐ medical malpractice

☐ another cause

A dispute concerning:

☐ contaminated sites

☐ construction defects

☐ real property (real estate)

☐ personal property

☐ the provision of goods or services or other general commercial matters

☐ investment losses

☐ the lending of money

☐ an employment relationship

☐ a will or other issues concerning the probate of an estate

☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

☐ a class action

- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11
2. *Privacy Act*, R.S.B.C. 1985, c. P-21
3. *Criminal Code*, R.S.C. 1985, c. C-46