

FEB 16 2022 Filed pursuant to the *Class Proceedings Act*, RSBC 1996, c.50

S-221215



No.

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

SUSAN DAVIS

PLAINTIFF

AND:

VANCOUVER POLICE DEPARTMENT CHIEF CONSTABLE ADAM PALMER, ROYAL CANADIAN MOUNTED POLICE COMMISSIONER BRENDA LUCKI, PRIMECORP, CITY OF VANCOUVER, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL), ATTORNEY GENERAL OF CANADA (ROYAL CANADIAN MOUNTAIN POLICE AND MINISTER OF FOREIGN AFFAIRS), JANE DOE, JOHN DOE, JULIA DOE and JULIAN DOE

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs 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 plaintiffs,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, 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

#### The Parties

1. The Plaintiff, Susan Davis, is a businesswoman and sex worker rights advocate. The Plaintiff has an address for service at 511-55 East Cordova Street, Vancouver, BC, V6A 0A5.
2. The Defendant, Vancouver Police Department Chief Constable Adam Palmer ("VPD-CC"), has, pursuant to s. 34(1) of the *Police Act*, RSBC 1996, c.367, general supervision and command over the Vancouver Police Department ("VPD"). VPD-CC is named in respect of the Plaintiff's claim for injunctive relief.
3. The Defendant, City of Vancouver ("Vancouver") is a municipal entity continued and sustained by *The Vancouver Charter*, RSBC 1953, c. 55, as amended, with an address for service at 453 West 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4. Vancouver is sued in right of the VPD.
4. The Defendant, Royal Canadian Mounted Police Commissioner Brenda Lucki ("RCMP-C"), is the Commissioner of the RCMP appointed pursuant to s.5(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c.R-10, and has control and management of the RCMP and all matters connected with the RCMP. RCMP-C has an address for service at 73 Leikin Drive, Ottawa, Ontario, K1A 0R2. RCMP-C is named in respect of the Plaintiff's claim for injunctive relief.
5. The Defendant PRIMECorp (Police Records Information Management Environment Incorporated) is a corporate entity with an address for service at 2700-700 West Georgia Street, Vancouver, BC, V7Y 1B8. PRIMECorp is an emergency communications corporation pursuant to s.1 of the *Emergency Communications Corporations Act*, SBC 1997, c.40. PRIMECorp is accountable to the Ministry of Public Safety and Solicitor General and exists solely to manage PRIME-BC, the information management system and database that provides police with immediate access to information about the public. PRIMECorp is named in respect of the Plaintiff's claim for injunctive relief.
6. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (the "Province"), through the Minister of Public Safety and Solicitor General ("MPSSG"), is vicariously liable for torts committed by members of the RCMP acting as provincial constables in the course of their duties, pursuant to s. 11 of

the *Police Act*, RSBC 1996, c.367. The Province has an address for service at PO Box 9290 Stn Prov Govt, Victoria, BC, V8W 9J7.

7. The Defendant, Attorney General of Canada, is the legal officer of the government of Canada and is named as a defendant in right of the RCMP and in right of the Minister of Foreign Affairs and has an address for service at 900-840 Howe Street, Vancouver, V6Z 2S9. The RCMP is an entity continued by the *Royal Canadian Mounted Police Act*, RSC 1985, c.R-10.
8. The Defendants, Jane Doe and John Doe, are members and employees of the VPD who were at all material times responsible for the entry, maintenance and disclosure of police records.
9. The Defendants, Julia Doe and Julian Doe, are members of the RCMP who were at all material times responsible for the entry, maintenance and disclosure of police records.

## **Introduction**

10. On December 20, 2013, the Supreme Court of Canada issued its decision in *Canada (Attorney General) v. Bedford*, 2013 SCC 72. *Bedford* declared three offences enacted by the *Criminal Code of Canada* to be of no force and effect: keeping a common bawdy-house (CCC s. 210); living on the avails of prostitution (CCC s.212(1)(j)); and communicating for the purposes of engaging in prostitution (CCC s. 213(1)(c)) (the "Sex Work Offences"). The Court found that the Sex Work Offences infringed life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c.11* (the "*Charter*"), and in a manner that is inconsistent with the principles of fundamental justice.
11. The Plaintiff and proposed class members were convicted of, charged with or had police interaction dealing with one or more of the Sex Work Offences before December 20, 2013. The Defendants currently keep, maintain, consult, use and disseminate records of convictions, charges and police interactions dealing with the Sex Work Offences that were struck down in *Bedford* ("the Sex Work Records"). The Plaintiff says that Sex Work Records maintained, accessed, used or disseminated by the Defendants should be expunged.

## **Records of Criminal Convictions**

12. Sex Work Records are kept, maintained, consulted, used and disseminated by the following means and systems:

- a. A database known as PRIME-BC. PRIME is an acronym for the Police Records Information Management Environment. PRIME-BC was implemented in March 2001. PRIME-BC is primarily managed and controlled by PRIMECorp, but numerous police and security agencies are able to access, add to and download information using PRIME-BC, including information dealing with convictions for and police dealings involving Sex Work Offences.
- b. Legacy RMS (Record Management System), which holds data prior to March 2001, which is managed or controlled by the VPD. Police and security agencies other than VPD are able to access and obtain information from RMS, including information dealing with convictions and dealings with police in respect of Sex Work Offences.
- c. CPIC (Canadian Police Information Centre), a federal database managed by RCMP. Police and security agencies other than RCMP are able to access, add to and download information from CPIC, including information dealing with convictions and dealings with police in respect of Sex Work Offences.
- d. PIRS (Police Information Retrieval System), a database managed and maintained by the RCMP. Police and security agencies other than RCMP are able to access, add to and download information from PIRS, including information dealing with convictions and dealings with police in respect of Sex Work Offences.
- e. O/RMS (Occurrence/Records Management System), a database managed and maintained by the RCMP. Police and security agencies other than RCMP are able to access, add to and download information from O/RMS, including information dealing with convictions and dealings with police in respect of Sex Work Offences.
- f. PROS (Police Reporting and Occurrence System), a federal database managed by the RCMP. Police and security agencies other than RCMP

are able to access, add to and download information from PROS, including information dealing with convictions and dealings with police in respect of Sex Work Offences.

- g. CCRTIS (Canadian Criminal Real Time Identification Services), a federal database managed by the RCMP. Police and security agencies other than RCMP are able to access, add to and download information from CCRTIS, including information dealing with convictions and dealings with police in respect of Sex Work Offences.
- h. JUSTIN, an integrated system for managing and administering criminal justice process, which was implemented in 2001.
- i. A hard copy archive of criminal convictions maintained in Ottawa by the RCMP.

(collectively, the "Databases")

- 13. The Databases may be accessed by individual police officers and may be publicly disclosed to potential employers, volunteer organizations and communities through criminal record checks. Law enforcement officials utilize the same databases to conduct standard information checks as part of their regular law enforcement duties.
- 14. Sex Work Records constitute private information of a personal and confidential nature, and are not evidence of criminality. There is no lawful authority to keep, maintain, use, access or disseminate Sex Work Records.

### **The Plaintiff's Experience**

- 15. The Plaintiff wished to volunteer for the board of a community policing foundation in November of 2020. To do so, she was required to consent to a criminal records check. Her criminal records check, which included a record of conviction for Sex Work Offences, was disclosed to administrators and members of the Board and other unknown persons.
- 16. The Plaintiff is a sex worker and sex worker advocate and that information is available in the public sphere. However, the criminal records check process, as she experienced it, deprived her of control over when, where and who to tell about her convictions for Sex Work Offences and interactions with police in relation to the Sex Work Offences. The Plaintiff's privacy and control over her biographical

information was undermined. In other contexts, dissemination of this information could pose a risk to the Plaintiff's safety or a risk of hostile or discriminatory treatment from members of the public.

17. Criminal record checks are required for employment and volunteer positions. They are a requirement for parents and guardians who wish to assist with curricular or extracurricular activities involving children and youth. Disclosure of Sex Work Records to potential employers, volunteer organizations, schools and other institutions can have adverse consequences.

18. One or more of the Defendants transmitted Sex Work Records to immigration, border, and policing authorities in other states, including the United States of America, Australia, the European Union and its member states, and other States better known to the Defendants (the "Foreign States").

### **The Proposed Class**

19. This action is brought on behalf of the following proposed classes of persons:

- a. All persons convicted of communicating for the purposes of engaging in prostitution (CCC s. 213(1)(c)), whose information is maintained, used, accessed or disseminated within British Columbia;
- b. All persons convicted of keeping a common bawdy-house (CCC s. 210), except persons who were engaged in exploitation of a sex worker, whose information is maintained, used, accessed or disseminated within British Columbia;
- c. All persons convicted of living on the avails of prostitution (CCC s.212(1)(j)), except persons who were engaged in exploitation of a sex worker, whose information is maintained, used, accessed or disseminated within British Columbia; and
- d. All persons who had interactions with police in respect of Sex Work Offences, except persons who were engaged in exploitation of a sex worker, whose information is maintained, used, accessed or disseminated within British Columbia.

(collectively, the "Class Members")

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff seeks the following injunctive relief:
  - a. An order requiring each of the Defendants to permanently delete and expunge all Sex Work Records in their possession or control, including all Sex Work Records within PRIME-BC, PIRS, CCRTIS, O/RMS, Legacy RMS, CPIC, PROS and JUSTIN.
  - b. An Order that each of the Defendants is to permanently cease and desist from accessing, using and disseminating Sex Work Records.
  - c. An Order directing the government of Canada, through the Attorney General of Canada and/or the Minister of Foreign Affairs, to take reasonable and appropriate steps to request that Foreign States expunge Sex Work Records in their possession or control.
2. The Plaintiff additionally seeks the following relief:
  - a. A declaration that retention, maintenance, use, accessing and disseminating Sex Work Records infringes ss.7 and 8 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11;
  - b. Damages pursuant to s. 24(1) of the *Charter*;
  - c. General damages; and
  - d. Costs.

## **Part 3: LEGAL BASIS**

1. The *Bedford* decision is of retroactive effect in respect of Class Members, none of whom were engaged in exploitation of sex workers. Even if the *Bedford* decision is not of retroactive effect in respect of Class Members, there is no lawful authority and no valid police purpose for maintaining, using, accessing or disseminating Sex Work Records, and the information is private, its retention and dissemination is unlawful and harmful, and it should be deleted and expunged.
2. The Plaintiff relies on the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11. The Plaintiff says that her right to privacy under the s.7 of the *Charter* was



breached by the Defendants and that her right to liberty and security of the person, as protected by s. 7 of the *Charter* was breached, contrary to the principles of fundamental justice. Maintaining, using, accessing and disseminating Sex Work Records violates the right to privacy of the Plaintiff and Class Members under ss.7 and 8 of the *Charter*.

3. The conduct of the Defendants referred to herein constitutes a violation of the privacy of the Plaintiff and Class Members pursuant to s. 1 of the *Privacy Act*, RSBC 1996, c.373.
4. The Plaintiff acknowledges that the Courts do not have jurisdiction over the Foreign States, and the immigration, border and policing authorities and agencies thereof. The Courts maintain *Charter* jurisdiction to direct the government of Canada, through the Attorney General of Canada and the Minister of Foreign Affairs, to take reasonable and appropriate steps to request Foreign States and the immigration, border and policing authorities thereof to expunge and delete Sex Work Records. Alternatively, the Plaintiff seeks declaratory relief to assist the Attorney General of Canada and Minister of Foreign Affairs in exercising their discretionary powers in their engagements with the Foreign States.

Plaintiffs' address for service:                    Gratl & Company  
Barristers and Solicitors  
511-55 East Cordova Street  
Vancouver, BC V6A 0A5  
**Attn: Jason Gratl**


Fax number for service:                            604-608-1919

E-mail address for service (if any):            n/a

Place of trial:                                         Vancouver

The address of the registry is:                   The Law Courts  
800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

Date: February 16, 2022

  
\_\_\_\_\_  
Signature of lawyer for plaintiff  
Jason Gratl

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.

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## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class action seeking injunctive relief and damages resulting from the Defendants' failure to remove reference to private and confidential information regarding the Plaintiff and proposed class from their databases.

### 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:**

*Class Proceedings Act*, RSBC 1996, c.50

*Emergency Communications Corporations Act*, SBC 1997, c.40

*Royal Canadian Mounted Police Act*, RSC 1985, c.R-10

*Police Act*, RSBC 1996, c.367

*The Vancouver Charter*, RSBC 1953, c. 55