

NOTICE OF CLAIM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER 1240086
REGISTRY LOCATION VANCOUVER

Bella Coola

FROM:

This person has made a claim against you in Small Claims Court.

NAME	Kimberly Mack, Daven Moody, and Demi King			CLAIMANT(S)
ADDRESS	c/o Pivot Legal Society 121 Heatley Avenue			
CITY, TOWN, MUNICIPALITY	Vancouver	British Columbia	V6A 3E9	TEL. # (604) 255-9700

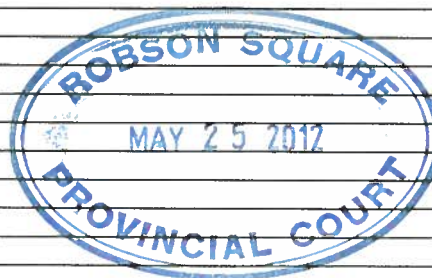
TO:

NAME	British Columbia (Minister of Justice and Attorney General), Cpl. William Wallace,			DEFENDANT(S)
ADDRESS	and Cst. Nick Jenkins P.O. Box 9290 Stn Prov Govt			
CITY, TOWN, MUNICIPALITY	Victoria	British Columbia	V8W 9E2	TEL. # (250) 387-1866

WHAT HAPPENED?

This is what the claimant says led to the claim.

See Attached Schedule "A"



If this box is checked the "what happened" section is continued on a another page. Be sure you have been given a copy of it.

WHERE?

This is where the claimant says it happened.

CITY, TOWN, MUNICIPALITY	Bella Coola	British Columbia
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WHEN?

This is when the claimant says it happened.

May 28, 2010

HOW MUCH?

This is what the claimant is asking for.

a	Aggravated General Damages	\$	8,000.00
b	Charter Damages	\$	7,000.00
c		\$	
d		\$	
e		\$	
TOTAL			15,000.00

TIME LIMIT FOR A DEFENDANT TO REPLY

The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant. Then the defendant will have to pay the amount claimed plus interest and further expenses.

The Court Address for filing documents is:

+ FILING FEES	\$	156.00
+ SERVICE FEES	\$	40.00
= TOTAL CLAIMED	\$	1596.00

DEBT
 OTHER THAN DEBT

PIN

defendant's copy

defendant's copy

No.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
SMALL CLAIMS DIVISION

BETWEEN:

KIMBERLY MACK, DAVEN MOODY, and DEMI KING

CLAIMANTS

AND:

BRITISH COLUMBIA (MINISTER OF JUSTICE and
ATTORNEY GENERAL), CORPORAL WILLIAM
WALLACE, and CONSTABLE NICK JENKINS

DEFENDANTS

SCHEDULE "A"

Kimberly Mack, Daven Moody, and Demi King
c/o Pivot Legal Society
121 Heatley Ave
Vancouver, BC V6A 3E9

Ministry of Justice, Corporal William Wallace, and Constable Nick Jenkins
c/o Bella Coola RCMP Detachment
Box 123
Bella Coola, BC V0T 1C0

1. The Claimant Kimberly MACK ("Ms Mack"), is a resident of Bella Coola in the Province of British Columbia. The Claimant Daven MOODY ("Mr. Moody") is the common-law partner of Ms. Mack, and the Claimant Demi KING ("Ms. King") is the sister of Ms. Mack. The Claimants have an address for service c/o Pivot Legal Society, 121 Heatley Avenue, Vancouver, British Columbia.
2. The Royal Canadian Mounted Police ("RCMP") is a police force created pursuant to the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, s 3. The RCMP "E" Division is the British Columbia division responsible for policing in British Columbia pursuant to the *Police Act*, RSBC 1996, c 367, s 14. The Bella Coola RCMP Detachment ("the

Detachment”) is responsible for policing the Bella Coola valley. The Defendant Constable Nick JENKINS (“Cst. Jenkins”) is an officer with the Detachment, and the Defendant Corporal William WALLACE (“Cpl. Wallace”) is the Detachment commander.

3. The Defendant British Columbia (Minister of Justice and Attorney General) is jointly and severally liable for torts committed by provincial constables appointed on behalf of a ministry, if the tort is committed in the performance of their duties, pursuant to section 11(1) of the *Police Act* RSBC [1996] c. 367.
4. On May 28, 2010, Ms. Mack was driving a Dodge Caravan westbound on Highway 20, returning home to Bella Coola from a potlatch in Vancouver.
5. Mr. Moody, the three children of Ms. Mack (son aged 15 months and two daughters aged 4 and 7 years old), and Ms. King were also in the van.
6. As Ms. Mack was approaching Hagensborg westbound on Highway 20, she saw two RCMP vehicles, a suburban and a pick-up truck, stopped at the side of the road facing east. One of the RCMP officers was out of his vehicle and speaking to another RCMP officer in the other vehicle. After Ms. Mack passed by them the two RCMP vehicles executed U-turns and began to follow Ms. Mack.
7. Ms. Mack pulled into the parking lot of a grocery store, Hagensborg Mercantile (located at 1801, Highway 20 in British Columbia), where she intended to take her children to use the washroom.
8. The RCMP suburban vehicle parked beside Ms. Mack’s van. The RCMP pick-up truck parked behind Ms. Mack’s van. The RCMP officer in the suburban vehicle, Cst. Jenkins, exited his vehicle and approached Ms. Mack’s driver-side window. The other RCMP officer from the pick-up truck, Cpl. Wallace, also came to her window.

9. When Ms. Mack opened her window Cst. Jenkins asked for her driver's licence and registration, which Ms. Mack provided.
10. Ms. Mack then told Cst. Jenkins that the children needed to use the washroom. Cst. Jenkins responded by saying that "No one is allowed out of the vehicle." Cst. Jenkins then instructed Ms. Mack to step out of her vehicle.
11. Cst. Jenkins asked Ms. Mack if she knew why she had been stopped. Ms. Mack answered that she did not.
12. Cst. Jenkins told Ms. Mack she had been stopped because the RCMP had information that Ms. Mack was trafficking in marijuana and crack cocaine. Both Cst. Jenkins and Cpl. Wallace were still standing near Ms. Mack's window.
13. Cst. Jenkins instructed Ms. Mack to get inside of the RCMP suburban vehicle.
14. Cpl. Wallace returned to the van and asked Ms. King for her driver's licence. Once she had produced her licence, Cpl. Wallace instructed Ms. King to move Ms. Mack's van to the side of the grocery store.
15. After the van had been moved to the side of the store by Ms. King, Cpl. Wallace told Mr. Moody he had to search him before Mr. Moody would be permitted to take the children to the washroom.
16. Cpl. Wallace patted Mr. Moody down and told him to open and empty all of his pockets. Mr. Moody complied. Mr. Moody was then permitted to take the children to the washroom.

17. While detained inside of the RCMP suburban Cst. Jenkins told Ms. Mack, “You are being charged with trafficking drugs”. Ms. Mack responded that she was not trafficking drugs. Cst. Jenkins requested to search Ms. Mack’s vehicle, and Ms. Mack refused the constables the permission to search her vehicle.
18. After Ms. Mack’s initial refusal Cst. Jenkins told Ms. Mack, “I can get the dogs and impound your vehicle and call the Ministry of Children and Family Services to come take the kids” if she continued to refuse to allow them to search her vehicle. Cpl. Wallace reiterated the same message to Ms Mack. As a direct result of, and solely because of, the threats made to her that her children would be removed from her care, Ms. Mack consented to the vehicle being searched, knowing that it did not contain any illegal substances.
19. Neither Cst. Jenkins nor Cpl. Wallace presented a warrant for arrest, a warrant for search or seizure, or any other information justifying the detention and search of Ms. Mack and her family.
20. Cst. Jenkins and Cpl. Wallace thoroughly searched the van. The panels were pulled off of the inside of the vehicle and entirety of the van was meticulously examined. Ms. Mack’s children were present during the search and could also see their mother detained in the back of the police vehicle.
21. Cst. Jenkins and Cpl. Wallace found no illegal substances in the search of the van.
22. Cpl. Wallace returned to the suburban and told Ms. Mack that if they received another call from their informant, they would have to “do this all again”, and that they would bring search dogs the next time. Cpl. Wallace also informed Ms. Mack that they would not be responsible for any damage done to the van. Cpl. Wallace told Ms. Mack that he had waited nine hours for her to come in to the valley, and that if he had to do this again he’d be very upset because he is close to her family.

END OF STATEMENT OF FACTS

23. The Claimants maintain that at all material times Cst. Jenkins and Cpl. Wallace were acting in the performance of their duties, and as such they plead and rely upon section 11(1) of the *Police Act* RSBC 1996, c 367 which states that the Minister of Justice as a representative of the provincial government is jointly and severally liable for their actions.
24. The Claimants plead that Cst. Jenkins and Cpl. Wallace committed the torts of unlawful detention and false imprisonment by detaining them for an extended period of time without reasonable cause.
25. The Claimants also pleads that Cst. Jenkins and Cpl. Wallace did not have sufficient grounds to search Ms. Mack, Mr. Moody, Ms. King, or Ms. Mack's van, and violated their right to be free from unreasonable search and seizure pursuant to section 8 of the *Canadian Charter of Rights and Freedoms* for the following reasons;
- a. The facts in this case suggest there was ample time for the defendants to obtain judicial authorization and a search warrant before the detention and search of the Claimants.
 - b. The officers made inappropriate threats about the use of police dogs and their ability to have Ms. Mack's children taken by the Ministry of Children and Family Services, and obtained the consent to search Ms. Mack's van through coercion.
 - c. The false tip to the officers from an unnamed source either:
 - i. did not exist, in which case the officers unequivocally had no grounds to detain the Claimants and search Ms. Mack's vehicle, or, in the alternative,
 - ii. did exist but did not provide sufficient grounds to search Ms. Mack's van without a warrant.

26. Section 11(7) of the *Controlled Drug and Substances Act* (S.C. 1996, c. 19) allows a peace officer to exercise the powers of search and seizure without a warrant when conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impractical to obtain one. The Claimants plead that exigent circumstances did not exist in this case, nor were the conditions present to obtain a warrant had the defendants had made attempts to do so.
27. The case of *R v. Grant* (2009 SCC 32). defined exigent circumstances where there is imminent danger of loss, removal, destruction or disappearance of evidence if the search were to be delayed. The Claimants plead that no such circumstances existed in this case.
28. The Supreme Court of Canada case of *R v. Debot* [1989] 2 SCR 1140 outlined the test for when an anonymous tip can provide reasonable grounds for a search. The court stated that a tip should be corroborated with police investigation prior to making the decision to conduct a search. The police report in this case shows no indication that there were any efforts made by the Defendants to independently verify the information which was allegedly provided to them.
29. The Claimants plead that Ms. Mack and her family were detained unlawfully, that the searches conducted on their person and vehicle were not incident to a lawful arrest or detention and were without judicial authority, and that the threats made to Ms. Mack to obtain her consent were heavy handed and an abuse of power.

Wherefore the Claimant Claims:

- a. Aggravated General damages for emotional distress, fearfulness and anxiety;
- b. Charter damages for violations of section 8 of the *Canadian Charter of Rights and Freedoms*;
- c. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
- d. Costs of this action; and

- e. Such further and other relief as the Court may deem necessary and fair to reasonably compensate the Claimant.

Place of Trial: Bella Coola, British Columbia

Dated this 24th day of May, 2012

A handwritten signature in black ink, consisting of a large, sweeping oval shape followed by a vertical line and a small loop at the bottom right.

Douglas C. King
Counsel for the Claimant