

**SUPREME COURT OF PRINCE EDWARD ISLAND  
(GENERAL SECTION)**

**BETWEEN:**

SUSAN HOLMES, CORA PLOURD NICHOLSON, and SVETLANA TENETKO

**Plaintiffs**

- and -

THE GOVERNMENT OF PRINCE EDWARD ISLAND,  
ROBERT GHIZ, ALLAN CAMPBELL, and MICHAEL MAYNE

**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 lawyer acting for you must prepare a statement of defence in Form 18A and a designation of address for service (Form 16A.1), prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are in Prince Edward Island.

If you are served in another province or territory of Canada or 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, this period is sixty days. Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100 for costs and have the costs assessed by the court.

Date ..... June 10, 2015 ..... Issued by ..... **(SGD.) ELIZABETH MURRAY**  
**Deputy Registrar** .....  
 Local registrar

Sir Louis Henry Davies Law Courts  
 PO Box 2000 42 Water Street  
 Charlottetown, PE C1A 7N8  
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**TO: THE GOVERNMENT OF PRINCE EDWARD ISLAND**  
 5th Floor South, Shaw Building  
 95 Rochford Street PO Box 2000  
 Charlottetown, PE C1A 7N8

**AND TO: ROBERT GHIZ**  
 c/o Government of P.E.I.  
 5th Floor South, Shaw Building  
 95 Rochford Street PO Box 2000  
 Charlottetown, PE C1A 7N8

**AND TO: ALLAN CAMPBELL**  
 c/o Government of P.E.I.  
 5th Floor South, Shaw Building  
 95 Rochford Street PO Box 2000  
 Charlottetown, PE C1A 7N8

**AND TO: MICHAEL MAYNE**  
c/o Government of P.E.I.  
5th Floor South, Shaw Building  
95 Rochford Street PO Box 2000  
Charlottetown, PE C1A 7N8

## CLAIM

1. The Plaintiffs, Susan Holmes, Cora Plourd Nicholson, and Svetlana Tenetko each claim against the Defendants:
  - a. general and aggravated damages in the amount of \$250,000.00 (\$750,000 collectively);
  - b. a declaration that their rights, as enshrined in the *Canadian Charter of Rights and Freedoms*, were infringed and damages for violation of those rights pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$100,000 (\$300,000 collectively);
  - c. punitive or exemplary damages in the amount of \$250,000.00 (\$750,000 collectively);
  - d. special damages, including out-of-pocket expenses, past income loss, and loss of competitive advantage, in a sum to be disclosed before trial, but anticipated to total more than \$1,000,000 collectively;
  - e. pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - f. costs of this action on a substantial indemnity basis; and
  - g. such further and other relief as this Honourable Court deems just.

## THE PARTIES

2. The Plaintiffs, Cora Plourd Nicholson, and Svetlana Tenetko are former employees of Island Investment Development Inc. Ms. Nicholson currently resides in Prince Edward Island (“PEI”), and Ms. Tenetko resides in British Columbia.

3. The Plaintiff, Susan Holmes, is a former employee of the Department of Innovation and Advanced Learning of PEI, which was later known as the Department of Economic Development

and Tourism (either is referred to herein simply as the “**Department of Economic Development**”). Ms. Holmes currently resides in New Brunswick.

4. The Defendant, Robert Ghiz (“**Premier Ghiz**”), is a resident of PEI and, at all material times, was the Premier of PEI. Premier Ghiz is, and was, a member of the Liberal Party of PEI.

5. The Defendant, Allan Campbell (“**Minister Campbell**”), is a resident of PEI and, at all material times, served as the Minister of Innovation of PEI and was the Minister responsible for the Department of Economic Development. Minister Campbell is, and was, a member of the Liberal Party of PEI.

6. The Defendant, Michael Mayne (“**Deputy Minister Mayne**”), is a resident of PEI and at all material times served as the Deputy Minister of Economic Development. Deputy Minister Mayne is, and was, a member of the Liberal Party of PEI.

7. The Defendant, the Government of Prince Edward Island (the “**Government of PEI**”), is named in these proceedings pursuant to the provisions of the *Crown Proceedings Act*, RSPEI 1988, c C-32. The Government of PEI, through and with its employees and agents, was, at all material times, responsible for the operation, management, administration, supervision, and funding of the Provincial Nominee Program and the Department of Economic Development. The Government of PEI was a custodian over confidential personal information and records provided to it by the Plaintiffs through the course of their service as employees or contractors of the Government of PEI. The Government of PEI controlled a Crown corporation, Island Investment Development Inc. (“**IIDI**”) – which was created pursuant to the *Island Development Act*, RSPEI 1988, c I-10.1. The Government of PEI, together with IIDI, implemented, administered, and directed the PEI Provincial Nominee Program (the “**Program**”).

## THE PROGRAM

8. The Government of PEI began operating the Program beginning in 2001. Under the Program, immigrant investors provided the Government of PEI with a \$200,000 refundable deposit and agreed to live in the province and start or purchase a business there. In return, the Government of PEI sponsored the immigrant investors for permanent Canadian residency, to be granted upon the investors' arrival in Canada and PEI.

9. Ostensibly, the Program encouraged immigration to PEI by attracting foreign nationals interested in taking an active role in local businesses. The Program allowed immigrant investors an alternative avenue into Canada when they were otherwise unqualified to apply as permanent residents or would have to undergo a lengthy application period. Many of these putative immigrants, after claiming that they would live in PEI, simply immigrated to other parts of Canada in direct contravention of the terms of the Program.

10. Between 2007 and 2008, more than \$525 million was placed into the Program by immigration investors from which approximately \$290 million went into "fees" or to "intermediaries".

11. Significant amounts of money paid into the Program went into businesses or investments linked to the Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, or to other members of the PEI Liberal Party and their family members, including, in particular, Spencer Campbell, Brooke MacMillan, Bush Dumville, and Richard Brown. In addition, payments were made in the form of "bonuses" directly from the Program to various senior managers associated with the Program including Neil Stewart (Corporate Services Director), Phil Muisse (Immigration Services Director), Jamie Aiken (Acting Manager). Trips to Dubai, Hong Kong, and elsewhere

were paid for out of the Program by directly charging potential immigrant investors – including charging “interview” fees of up to \$2,500 and “administration” fees of up to \$18,000.

12. The Program provided a means for PEI Liberal Party members to funnel money into the hands of politically connected friends and family members. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, exploited the Program for their own benefit and for the benefit of their businesses, friends, and families.

13. Following complaints and federal investigations into wrongdoing and corruption with immigration investor programs throughout the country, including in PEI, the Federal government instituted widespread regulatory changes affecting the Program. When news of the regulatory changes was announced, the Government of PEI pushed nearly \$400 million worth of questionable applications through the Program.

14. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, actively sought to conceal money funneled into the hands of individuals connected to the PEI Liberal Party and IIDI through the Program - including taking steps to prevent disclosure of the identity of businesses or individuals who received money from the Program. These Defendants took these actions to protect themselves, and others, who obtained undisclosed funds from the Program that were either illegally gotten or politically embarrassing.

15. The Government of PEI suspended the Program indefinitely in September 2018 after ongoing problems – including continued allegations of wrongdoing and corruption.

## THE PLAINTIFFS' ROLE IN THE PROGRAM AND SUSPICION OF WRONGDOING

16. As part of their employment with the Government of PEI and the Department of Economic Development, the Plaintiffs, Ms. Plourd and Ms. Tenetko, were responsible for day-to-day operations of the Program including reviewing, investigating, and approving immigrant applications under the Program. Ms. Plourd and Ms. Tenetko were front-line workers for the Program and gained personal familiarity with a number of files that proceeded through the Program.

17. The Plaintiff, Ms. Holmes, was the Program's Manager of Population Services. In this capacity, Ms. Holmes oversaw newcomer settlement, retention, engagement, recruitment, communications, and language services. She also completed work for the Government of PEI's program for Government Assisted Refugees. Ms. Holmes' work as a Manager of Population Services included representing the Government of PEI both regionally and nationally, including acting as a representative for the Government of PEI on all Federal-Provincial committees related to her work.

18. For reasons that were not explained to them, Ms. Plourd and Ms. Tenetko were regularly pressed by senior managers (including Neil Stewart, Phil Muise, and Jamie Aitken at IIDI), as well as by other individuals connected to the PEI Liberal Party, to approve immigrant investor applications to the Program that were otherwise rejected during initial review and investigation as "unqualified" or otherwise problematic. This included applications made by an individual closely connected to Premier Ghiz (Frank Zhou) whose applications to the Program were ultimately accepted by senior managers at IIDI, despite the Plaintiffs' vocal reservations that his applications did not meet much of the criteria upon which the Program ostensibly relied.



## **THE GLOBE ARTICLE AND THE PLAINTIFFS' WHISTLEBLOWING ON THE PROGRAM**

19. On September 15, 2011, an article appeared in the Globe and Mail (the "**Globe**") newspaper, entitled "Ottawa Calls for Probe into PEI Immigration Program" (the "**Globe Article**"), which included allegations about improprieties in the operation of the PEI Crown's Program. The Globe Article reported that senior government officials and directors of the Program received bribes so as to accept or fast-track applications under the Program.

20. The Globe Article based its reporting, in part, upon information provided by the Plaintiffs. This information included Ms. Tenetko's report that, in the summer of 2008, a number of Chinese nationals who sought immigration to Canada met with senior managers with IIDI, including Neil Stewart, at a Marriott hotel in Hong Kong and may have received bribes in cash-stuffed envelopes. The Plaintiffs advised the Globe that the federal government was aware of the allegations and that the Royal Canadian Mounted Police and Canadian Border Services Agency were investigating.

21. Other than the names of Ms. Holmes, Ms. Tenetko, and Ms. Plourd, and their status as employees with the Program, the Globe Article provided no personal information about the Plaintiffs.

## **BREACH OF THE PLAINTIFFS' PRIVACY**

22. On the same day that the Globe Article was published, Minister Campbell gathered information relating to the Plaintiffs, in cooperation with the other Defendants. Minister Campbell's office, under Minister Campbell's personal direction, then forwarded a copy of e-mails received nine months earlier by his office from Ms. Tenetko to the (then) Deputy Minister to the Premier, the Clerk of the Executive Council, and the Deputy Minister of Justice. A copy of a

Human Rights complaint made against Economic Development by another Plaintiff (Ms. Plourd), in which she alleged discrimination based on her political affiliation, as well as the personnel files of all three Plaintiffs were also distributed to each of these parties.

23. On or around September 13, 2011, the PEI Liberal Party issued a news release attempting to discredit the Plaintiffs for making allegations of fraud and bribery involving the Program and accused them of being politically motivated in whistleblowing on the Program. The news release, drafted by Spencer Campbell, as a spokesperson for the PEI Liberal Party, disclosed significant personal information that the Defendants had collected about each of the Plaintiffs, including copies of:

- a. personal e-mails sent from Ms. Tenetko to the Deputy Minister;
- b. a description and response of the Human Rights complaint of Ms. Plourd, including her work history and performance;
- c. the hire date and termination date of each of the Plaintiffs; and
- d. the personal contact information for each of them.

(Together, the Plaintiffs' "**Personal Information**")

24. The Plaintiffs were not then aware of how their Personal Information was provided to the PEI Liberal Party and who was to blame for providing their Personal Information to the public. Spencer Campbell indicated to the media at the time that the PEI Liberal Party had received this information in a "brown envelope". Premier Ghiz also suggested to the media that the Personal Information was leaked to the PEI Liberal Party anonymously through a mysterious brown envelope.

25. Members of the PEI Liberal Party, including the Defendants Premier Ghiz, Minister Campbell, and Mr. Mayne, together with Spencer Campbell, maintained that the privacy legislation in PEI did not apply to political parties and, therefore, the Plaintiffs' Personal Information, received through the alleged "brown envelope", could be disseminated to the public by the PEI Liberal Party.

26. The Defendants nevertheless knew that leaking the Plaintiffs' Personal Information would violate the privacy of the Plaintiffs and would cause harm. As particularized below, this, in fact, is precisely why their Personal Information was leaked.

#### **PRIVACY INVESTIGATION**

27. On September 20, 2011, the Plaintiffs made a complaint to the PEI Privacy Commissioner's Office about the public disclosure of their Personal Information. This complaint led the Privacy Commissioner to launch an investigation and to request that the PEI Department of Economic Development conduct its own separate internal investigation into the disclosure of the Personal Information.

28. On October 14, 2011, the Department of Economic Development responded that it had completed its internal review, and found no violation of the PEI *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (the "**FOIPP Act**"). Despite this, the Privacy Commissioner's Office continued its investigation for more than six years.

29. Consequently, prior to December 2017, the Plaintiffs remained in the dark as to who was the source of the leak of their Personal Information, which the Defendants and the PEI Liberal Party consistently maintained was disclosed through an anonymous and unidentifiable source.

## CONCLUSION OF PRIVACY INVESTIGATION AND REVELATION OF PERPETRATORS' IDENTITY

30. On December 5, 2017, the Privacy Commissioner's Office released a report in which it found that various persons associated with the Government of PEI did, in fact, breach the privacy rights of the Plaintiffs (the "**Privacy Commissioner's Report**").

31. The Privacy Commissioner's Report concluded that some of the Plaintiffs' Personal Information was inappropriately disclosed to the public. Furthermore, it concluded that the Personal Information was disclosed from Minister Campbell to the PEI Liberal Party and then ultimately leaked to the public by Spencer Campbell, acting as spokesperson for the PEI Liberal Party. The Privacy Commissioner's Report noted that the print job passed along to the PEI Liberal Party which included the Plaintiffs' Personal Information shows that the Personal Information was printed on September 15, 2011 (just after the publication of the Globe Article) by the administrative assistant to Minister Campbell, and that the Personal Information was then sent along to the PEI Liberal Party by Minister Campbell's Office.

32. Contrary to the Defendants' misleading assertions, the Plaintiffs' Personal Information was not disclosed through a brown envelope. The Defendants and the PEI Liberal Party fabricated this story to hide the improper and unlawful method by which the Plaintiffs' Personal Information was provided to the PEI Liberal Party.

33. The Privacy Commissioner found that the Government of PEI, through the Liberal government then in power under Premier Robert Ghiz, was either directly or indirectly responsible for the breach of the Plaintiffs' privacy rights.

## DELETION OF RECORDS

34. Following allegations of misconduct against the Defendants for their handling of the Program, and the commencement of the Privacy Commissioner's investigation at the behest of the Plaintiffs, critical records, including email records, were caused, by the Defendants, to be deleted or altered.

35. The Defendants knowingly deleted or altered, or caused to be deleted or altered, records evidencing their involvement in improper or illegal transactions associated with the Program.

36. The Defendants acted individually, or in concert, to frustrate or obstruct the Plaintiffs' efforts to obtain critical records about the Program and the source of the leaks of their Personal Information.

37. The Defendants interfered with the disclosure of records that should have been publicly available through the Plaintiffs' (and others') *FOIPP Act* applications.

38. The Plaintiffs request that an adverse inference be drawn against the Defendants for any records relevant to this litigation that were improperly deleted, altered, or lost as a result of the actions, or inactions, of the Defendants.

## CAUSES OF ACTION

### *A. Conspiracy*

39. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, together or separately, conspired with each other and with Spencer Campbell and the PEI Liberal Party by knowingly and unlawfully publicly disclosing private information protected under the *FOIPP Act*

or, in the alternative, by disclosing the Plaintiffs' Personal Information with the predominant purpose of harming the Plaintiffs.

40. Steps taken in furtherance of this conspiracy, whether by unlawful means or by predominant purpose to harm the Plaintiffs, included the Defendants, Premier Ghiz, Minister Campbell, Deputy Minister Mayne, together with Spencer Campbell and the PEI Liberal Party:

- a. Devising a strategy in conjunction with the Minister of Economic Development, the Deputy Minister to the Premier, the Clerk of the Executive Council, and the Deputy Minister of Justice, to undermine the Plaintiffs' credibility by portraying them as liars, "crazy", or partisan towards the PEI Conservative Party;
- b. Leaking the Plaintiffs' Personal Information as reprisal for their involvement in whistleblowing about the corruption that took place through and within the Program;
- c. Leaking the Plaintiffs' Personal Information to send a message to other individuals involved with the Program that whistleblowers will be punished;
- d. Organizing a press release with that included defamatory statements about the Plaintiffs in order to undermine their standing and the strength of their allegations against the Liberal government;
- e. Obstructing full, timely, and proper disclosure of the relevant records available from PEI and requested by the Plaintiffs in violation of the provisions of the *FOIPP Act*;
- f. Intentionally misleading the Plaintiffs and the public about the source of the leak of the Plaintiffs' Personal Information in order deliberately to prevent the Plaintiffs from taking timely legal action against the Defendants for the breach of privacy; and
- g. Taking such further and other actions pursuant to the conspiracy as are known only to the Defendants.

41. The Defendants, Premier Ghiz, Minister Campbell, Deputy Minister Mayne, together with Spencer Campbell and the PEI Liberal Party, in the various ways particularized above, acted in concert, by agreement, or with a common design, to injure, embarrass, intimidate and promote bias against the Plaintiffs. They knew, or ought to have known, that their acts would, in fact, cause harm to the Plaintiffs.

***B. Intrusion upon Seclusion***

42. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, intentionally intruded upon the seclusion of the Plaintiffs' private affairs in a manner that is highly offensive to a reasonable person.

43. The Plaintiffs' Personal Information was disseminated by the Defendants to and by the PEI Liberal Party without lawful justification for the purpose of causing distress, humiliation, and anguish.

***C. Misfeasance in Public Office***

44. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, were public officers of the Government of PEI. Through their office, they exercised public functions. They used their respective offices to obtain the Plaintiffs' confidential Personal Information prior to disclosing this information to Spencer Campbell and the PEI Liberal Party.

45. The disclosure of the Plaintiffs' Personal Information by the Defendants Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, was maliciously targeted at the Plaintiffs for the purposes of injuring them. In the alternative, these Defendants acted with subjective knowledge

that they had no lawful power to obtain the Plaintiffs' personal information in the circumstances or they were reckless as to whether they had power to do such an act.

46. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, owed a duty to the Plaintiffs not to subject them to an abuse of their power; nevertheless, these Defendants breached this duty by providing the Plaintiffs Personal Information to the PEI Liberal Party.

47. As they reasonably expected or intended, the Defendants Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, caused harm to the Plaintiffs, as further particularized below.

#### ***D. Intentional Infliction of Mental Suffering***

48. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, intentionally inflicted mental suffering on the Plaintiffs through their flagrant or outrageous conduct, as particularized above. This conduct was specifically calculated to cause the Plaintiffs harm.

49. As a result of the flagrant and outrageous conduct of the Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, the Plaintiffs suffered visible and provable mental injuries, including extreme anxiety and Post-Traumatic Stress Disorder. These Defendants were the actual and proximate cause of the Plaintiffs' injuries.

#### ***E. Harassment***

50. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne intentionally inflicted mental suffering on the Plaintiffs through their outrageous conduct, as particularized above. This conduct was specifically calculated to cause the Plaintiffs emotional distress or was reckless as to whether the Plaintiffs would suffer emotional distress.



51. As a result of the outrageous conduct of the Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, the Plaintiffs suffered severe or extreme emotional distress including Post-Traumatic Stress Disorder and these Defendants were the actual and proximate cause of the Plaintiffs' injuries.

***F. Breach of Confidence***

52. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, were provided with the Personal Information from the Plaintiffs in confidence and for the purposes of their employment with IIDI or the Government of PEI. The Personal Information was communicated in confidence and was intended for use only by IIDI or the Government of PEI for government purposes or the Program.

53. The Defendants breached the confidence of the Plaintiffs by providing their Personal Information to Spencer Campbell and the PEI Liberal Party.

***G. Negligence***

54. The Defendants owed a duty of care to the Plaintiffs. As the Plaintiffs' employer, the Government of PEI, had custody of the Plaintiffs' Personal Information and was required to take reasonable steps to ensure that such Personal Information was kept confidential. The Defendant, the Government of PEI, was under a duty to take reasonable care so as to protect the privacy interests of the Plaintiffs, including by keeping confidential their Personal Information.

55. The Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne, had direct or indirect control over the Personal Information of the Plaintiffs. As Ministers of the Government

of PEI, the Defendants were under a duty to take reasonable care so as to protect the privacy interests of the Plaintiffs, including by keeping confidential their Personal Information.

56. The Plaintiffs were persons with whom the Defendants were in a relationship of sufficient proximity such that they could reasonably foresee the Plaintiffs suffering harm if their Personal Information was not kept confidential.

57. Through their negligence, the Defendants caused or contributed to the Plaintiffs suffering harm through the public disclosure of their Personal Information. The particulars of such acts of negligence include:

- a. Failing to create or implement policies, standards, or programs appropriate for administering and safeguarding the Plaintiffs' Personal Information;
- b. Failing to provide adequate methods of securing Personal Information from access by unauthorized persons;
- c. Failing to take adequate, or any, steps to prevent further disclosure of the Plaintiffs' Personal Information once this information was disclosed;
- d. Failing to take adequate, or any, steps to assist the Plaintiffs in determining the source of the disclosure of their Personal Information; and
- e. Such further and other particulars of negligence as may become apparent and counsel may advise.

58. The harm suffered by the Plaintiffs was a reasonably foreseeable consequence of the Defendants' negligent acts or omissions.

59. The Defendants' respective breaches of the duty of care owed to the Plaintiffs caused the Plaintiffs to suffer damages, as particularized below.

### *H. Fiduciary Duty*

60. The Government of PEI owed the Plaintiffs, Ms. Plourd and Ms. Tenetko, as individuals who were employed by it, fiduciary duties. These duties included a duty to care for and protect the Plaintiffs' privacy interests and to act in their best interests in the circumstances with respect to the Plaintiffs' Personal Information over which the Government of PEI was a custodian.

61. By virtue of the relationship between the Plaintiffs and the Government of PEI being one of trust, reliance and dependency, the Government of PEI owed fiduciary obligations to ensure that the Plaintiffs were treated respectfully, fairly and safely, and to act in the best interest of those individuals with respect to their Personal Information.

62. The Plaintiffs had a reasonable expectation that the Government of PEI would act in their best interests and protect their confidential information.

63. The Plaintiffs were entitled to rely upon, and in fact did rely upon the Government of PEI to fulfill its fiduciary obligations.

64. The Government of PEI breached its fiduciary duties to the Plaintiffs by:

- a. Disclosing the Plaintiffs' Personal Information to Spencer Campbell and the PEI Liberal Party;
- b. Allowing persons who had no reason to have access to the Plaintiffs' Personal Information, and other private information, such access;
- c. Failing to take adequate, or any, steps to prevent the further disclosure of the Plaintiffs' Personal Information once it was clear that such information was compromised;
- d. Failing to assist the Plaintiffs in determining the source of the disclosure of their Personal Information; and

e. Such further and other particulars as may become apparent and counsel may advise.

65. The Government of PEI knew, or ought to have known, that as a consequence of its failure to properly care for and control the Plaintiffs' Personal Information, the Plaintiffs would suffer damages, as particularized below.

### ***I. Violations of the Charter***

66. At all material times, the Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne were government entities and the Canadian *Charter of Rights and Freedoms* (the "Charter") was applicable to them.

67. By taking vindictive actions against the Plaintiffs for whistleblowing on the Program, including intentionally disclosing, or causing to have disclosed, the Plaintiffs' Personal Information, the Defendants breached the Plaintiffs' *Charter* rights as enshrined in Sections 2(a), 2(b), 2(d), and 7. The purpose of the disclosure of the Plaintiffs' Personal Information was to intimidate and threaten the personal security of the Plaintiffs, as well as to impede their ability to speak openly about the wrongdoing that they believed was being committed by government actors.

68. There was no reasonable and demonstrable justification for the breach of the Plaintiffs' *Charter* rights.

### ***J. Vicarious Liability***

69. The Defendant, the Government of PEI, is liable for the acts of its agents, including ministers, pursuant to the provisions of the *Crown Proceedings Act*, RSPEI 1988, c C-32, s 4 and is responsible for torts committed by its agents. The Government of PEI is consequently liable for the tortious acts of the Defendants, Premier Ghiz, Minister Campbell, and Deputy Minister Mayne.

**DAMAGES SUFFERED BY THE PLAINTIFFS**

70. As a result of the Defendants' tortious actions, the Plaintiffs suffered, and continue to suffer damages, including:

- a. impairment of mental and emotional health and well-being;
- b. depression, anxiety, emotional distress, and mental anguish;
- c. pain and suffering;
- d. a loss of self-esteem and feelings of humiliation and degradation;
- e. a sense of isolation from their immediate family, extended family and their community;
- f. loss of income and loss of competitive advantage;
- g. costs of moving and uprooting of their lives;
- h. diminution of value of their homes;
- i. costs of medical treatment and prescription drugs;
- j. out of pocket expenses; and
- k. other damages not yet particularized and as counsel will advise prior to the start of trial.

71. At all material times, the Defendants knew, or ought to have known, that disclosure of the Plaintiffs' Personal Information and the assassination of their character and credibility would cause, contribute to, or aggravate the Plaintiffs' injuries and damages and that their actions did, in fact, cause, contribute to, or aggravate the Plaintiffs' injuries and damages.

**PUNITIVE DAMAGES**

72. The Defendants' wrongful conduct, as particularized above, was high-handed, callous, and in blatant disregard of the Plaintiffs' interests and well-being, as well as their *Charter* rights.

73. The Defendants systematically, knowingly, and unjustifiably violated fundamental rights of the Plaintiffs – including their rights to personal privacy and security of the person. The Defendants' behaviour necessitates an award of punitive or exemplary damages for the purposes of denunciation and deterrence.

**CHARTER DAMAGES**

74. The Plaintiffs claim damages against the Defendants pursuant to Section 24(1) of the *Charter* in order to affirm and vindicate the violation of their *Charter* rights, as well as to deter similar *Charter* breaches in the future.

**STATUTORY AUTHORITY, ETC.**

75. The Plaintiffs plead and rely upon the following statutes, including any amendments or regulations thereto:

- a. The *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
- b. The *Island Investment Development Act*, RSPEI 1988, c I-10.1;
- c. The *Crown Proceedings Act*, RSPEI 1988, c C-32; and
- d. The *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, F-15.01.

76. The Plaintiffs propose that this action be tried in the City of Charlottetown.

**DATE:** June 10, 2019



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**SUSAN HOLMES et al.** -and-  
Plaintiffs

**THE GOVERNMENT OF PRINCE EDWARD ISLAND, et al.**  
Defendants

Court File No.

**PRINCE EDWARD ISLAND  
SUPREME COURT**

**STATEMENT OF CLAIM**

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