

CU-19-00622974 OCP

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**



BETWEEN:

**KALEVI HAIKOLA**

Plaintiff

-and-

**THE PERSONAL INSURANCE COMPANY and  
DESJARDINS GENERAL INSURANCE GROUP INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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, the 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 WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: *July 02, 2019*

Issued by   
Local registrar

Address of court office:  
393 University Avenue  
10th Floor  
Toronto, Ontario M5G 1E8

**TO: THE PERSONAL INSURANCE COMPANY**  
PO Box 7065, Station A  
Mississauga, Ontario L5A 4K7

**AND TO: DESJARDINS GENERAL INSURANCE GROUP INC.**  
PO Box 7065, Station A  
Mississauga, Ontario L5A 4K7

## CLAIM

1. The Plaintiff claims on his own behalf and on behalf of the proposed Class Members (as defined below):

- (a) An order, pursuant to the *Class Proceedings Act, 1992* (the “Act”), certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff for the proposed Class, as defined herein at paragraph 32;
- (b) A declaration that the Defendants breached their contract with the Class Members, by failing to comply with an implied term requiring compliance with the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”);
- (c) Damages in the amount of \$5,000,000.00 to be assessed either in the aggregate or individually for each Class Member;
- (d) Costs of this action, as well as costs of all notices to the Class, and of administering the distribution of any recovery in this action, plus disbursements and applicable taxes; and
- (e) Such further or other relief as this Honourable Court deems just.

## THE PARTIES

2. The Plaintiff, Kalevi Haikola, resides in the Province of Ontario. At all material times, the Plaintiff was insured by the Defendant, The Personal Insurance Company (“The Personal”), with a policy of automobile insurance under The Personal’s policy number K4432514 (the “Policy”).

3. The Defendant, The Personal, is a corporation incorporated pursuant to the laws of Canada with a registered business address in Mississauga, Ontario. The Personal provides insurance products, including automobile insurance, in Canada. The Personal issued Mr. Haikola’s Policy. The Personal is a wholly owned subsidiary of the Defendant, Desjardins General Insurance Group Inc. (“Desjardins”).

4. The Defendant, Desjardins, is a corporation incorporated pursuant to the laws of Canada, with a registered business address in Mississauga, Ontario. Desjardins is the parent company of The Personal.

### **THE ACCIDENT AND THE INSURANCE CLAIM**

5. The Plaintiff was involved in a motor vehicle accident in Ontario on November 24, 2012 (the “Accident”) and, that same day, reported the Accident to The Personal.

6. A claim was opened for the Plaintiff by The Personal as claim number P4270678 on November 24, 2012.

7. The Plaintiff advised the agent of The Personal that he spoke with on November 24, 2012 that he potentially suffered serious injuries in the Accident – including injuries to his head, neck, and jaw. The agent confirmed during this conversation that the Plaintiff’s claim would be handled speedily and fairly by The Personal.

8. As requested by The Personal’s agent, the Plaintiff completed a standard Ontario Claims Form (an OCF-1 form) shortly after reporting the Accident and forwarded this form to The Personal.

### **THE INTERVIEW**

9. On November 27, 2012, a claims adjuster with The Personal contacted the Plaintiff by telephone in order to seek information about the Plaintiff’s claim for accident benefits under the Policy (the “Interview”). During the course of the Interview, the claims adjuster asked for information from the Plaintiff about his injuries, insurance history, and financial background.

10. While the Plaintiff believed that much of the information requested during the Interview was improper and intrusive, the Plaintiff was concerned that if he objected to providing his personal information, The Personal may delay his claim or deny it.

11. Most significantly, during the Interview, the claims adjuster asked the Plaintiff to provide consent for The Personal to obtain a “FICO score” (a credit score typically used to assess credit risk for lending transactions). The Plaintiff was hesitant to provide this information because he believed it was not relevant to his insurance claim.

12. The claims adjuster did not provide an explanation during the Interview as to why credit information was needed or relevant and made it sound as though the request was a routine matter. Further, the claims adjuster did not explain how the information may be used.

13. Despite his misgivings about providing credit information, the Plaintiff answered “ok” to the claims adjuster’s request for a FICO score. The Plaintiff did not think that he had a choice, if he wanted his claim adjusted fairly and resolved quickly.

#### **FOLLOW-UP WITH THE PERSONAL**

14. The Plaintiff subsequently advised the claims adjuster of his concerns about the appropriateness of the credit score request, together with his concerns about the tone taken by the claims adjuster during the Interview.

15. On May 27, 2013, the claims adjuster provided a letter apologizing to the Plaintiff for the tone taken during the Interview and advising the Plaintiff that the question to obtain a credit bureau report was “one in a series of standard questions”. The letter did not explain why The Personal needed his credit score information in the first place.

16. In September 2013, the Plaintiff requested access to all personal information in The Personal's possession about him – including his credit information. While some information was disclosed to the Plaintiff by The Personal in November 2013, The Personal initially refused to provide the Plaintiff with the information it obtained about his credit score.

17. After continued demands for his credit score information were ignored, the Plaintiff followed up directly with the third-party provider used by The Personal to obtain his credit score information, Equifax, which, several months later, confirmed that the Plaintiff's credit file was accessed.

18. The Personal agreed to release the Plaintiff's own credit score information to him in January 2014.

#### **THE PERSONAL'S POLICY OF ACCESSING CREDIT SCORES**

19. In follow-up correspondence with The Personal, the Plaintiff asked for an explanation for why The Personal did not ask for his credit score information on January 18, 2012, the time of the Plaintiff's previous accident. The Plaintiff was advised that, at the time of the earlier accident, The Personal did not have a "policy" in place to request credit score information - suggesting that a policy requiring its claims adjusters to seek credit score information was instituted by The Personal sometime between January 18, 2012 and November 27, 2012.

20. The Personal, somewhere within this time period, instituted a policy instructing its accidents benefits claims adjusters to request consent to access and collect credit score information from The Personal's insureds who were making automobile insurance claims. Individual claims adjusters were required, by this policy, to seek consent to obtain an insured's credit score information for every accident benefits claim that was opened with The Personal.

21. A “standard script” was, apparently, instituted for this purpose, which provided as follows:

As a standard practice for our Accident Benefits claims, we would like your consent to obtain your current credit score. Collected information will remain confidential and will be used to facilitate your claim and to prevent, detect and prosecute fraud. Do I have your consent to do this?

22. Claims adjusters were not otherwise advised to relay to The Personal’s insureds that providing consent to obtain a credit score was optional.

23. In the event that an insured refused to give consent, the claims adjuster was to inform the insured that “I respect your decision if you do not want to give us consent, and I will handle your claim the same way I do with other clients.” This was not conveyed to the Plaintiff at the time that the request for his credit score was made.

24. The Personal expedited settlements for its insureds who consented to credit score checks and who had favourable credit score information, relative to those who refused to provide such consent, or who provided such consent but had unfavourable credit scores.

#### **PROCEEDINGS BEFORE THE PRIVACY COMMISSIONER**

25. As a result of his concerns about The Personal’s breaches of his privacy rights, and the privacy rights of other insureds of The Personal, the Plaintiff commenced a formal complaint against The Personal before the Office of the Privacy Commissioner of Canada (“OPCC”) under the provisions of the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) on July 9, 2014 under OPCC file number PIPEDA-032166.

26. In his complaint, the Plaintiff alleged, amongst other things, that The Personal collected personal information that was unreasonable and that he had not provided meaningful consent for The Personal to access his credit score.

27. On March 14, 2017, the OPCC, after reviewing submissions from both the Plaintiff and The Personal, made the following findings:

- (a) The Plaintiff's complaints against The Personal were well-founded;
- (b) The Personal's collection and use of credit scores during the auto insurance claim assessment process is not something that a reasonable person would consider to be appropriate;
- (c) The Personal did not obtain meaningful consent from the Plaintiff as it did not advise him that obtaining a credit score was optional; and
- (d) The Personal was not being open about its policies and practices with respect to the collection and use of credit score information during the auto insurance claim assessment process.

28. The OPCC found that The Personal contravened Section 5(3) and Principle 4.3 of PIPEDA.

29. The Personal committed to comply with the OPCC's findings by ceasing the practice of collecting and/or using credit score information during the claim assessment process for auto insurance as of April 22, 2017.

30. On February 8, 2018, the Plaintiff received notification from the OPCC that The Personal finally confirmed implementation of the OPCC's privacy recommendations.

31. The Personal had committed to the OPCC that it would not collect credit score information during the claim assessment process for auto insurance by April 22, 2017 and that it would implement any required information technology systems changes on or before that date. The Personal further committed to conduct a review of its current procedures and processes for the collection and use of credit score information for other types of insurance by June 30, 2017 and to implement major system changes, if necessary, by December 31, 2017. The Personal provided written confirmation to the OPCC that it had complied with all of its commitments to the OPCC



in February 2018. On the basis of The Personal's written confirmation that these steps were taken, the OPCC found that privacy breaches identified in its March 14, 2017 were resolved.

### **PROPOSED CLASS DEFINITION**

32. The Plaintiff brings this proposed class action on his own behalf, and on behalf of a proposed class of similarly situated persons (the "Class Members"), defined as:

All persons who: (1) were insured by The Personal Insurance Company ("The Personal") under a valid automobile insurance policy between January 2012 and May 2019; (2) made an automobile insurance claim under that policy with The Personal during that time; and (3) consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process (the "Class").

### **BREACH OF CONTRACT**

33. The Policy sets out the rights and obligations between the parties. As such, it operated as the contract between the Plaintiff and the Defendants.

34. The Policy contained a section on privacy, stating:

We collect, use and disclose your personal information only for the purpose of providing general insurance products and services. More specifically, we collect personal information from you and from other external sources including other property and casualty insurers, public and private sector underwriting or claims information databases, and credit reporting agencies in order to: assess your application for insurance; underwrite and service your insurance policy; process claims involving you; analyze business results; and act as required or authorized by law.

35. This is an implied contractual term that the Defendants would comply with *PIPEDA*.

36. The Defendants' process for obtaining Mr. Haikola's consent to access his credit score or other personal information when he made a claim for automobile accident benefits was not compliant with *PIPEDA*.

37. As such, the Defendants breached their contract with Mr. Haikola and are liable to him accordingly.

38. The Defendants likewise breached the contract between them and each of the Class Members, and are liable to each Class Member accordingly.

### **DAMAGES**

39. The Plaintiff and the Class Members have all suffered damages as a result of the Defendants' conduct:

40. Each class member deserves compensation for the Defendants' failure to comply with *PIPEDA*, as they were contractually obligated to do.

### **TRIAL**

41. The Plaintiff proposes that this action be tried at Toronto.

July *02*, 2019

**WADDELL PHILLIPS  
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Lawyers for the Plaintiffs

CU-19-00622974 OACP

KALEVI HAIKOLA  
Plaintiff

-and-

THE PERSONAL INSURANCE COMPANY et al.  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF CLAIM**

Service of a true copy hereof admitted  
this ..... day of ....., 2019  
by .....  
Solicitors for .....

**WADDELL PHILLIPS  
PROFESSIONAL CORPORATION**

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