

COURT FILE NUMBER

1401-02767

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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

NICHOLAS MCLEOD

DEFENDANTS

MOUNT ROYAL UNIVERSITY
JEFF BEDDOME, BILL BORDEN,
SHANNON COURTORIELLE, JOHN DOE #1,
JOHN DOE #2, JANE DOE #3, JOHN DOE LTD.



DOCUMENT

APPLICATION BY THE PLAINTIFF NICHOLAS MCLEOD

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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NOTICE TO THE DEFENDANTS MOUNT ROYAL UNIVERSITY, JEFF BEDDOME, BILL BORDEN, SHANNON COURTORIELLE, JOHN DOE #1, JOHN DOE #2, JANE DOE #3, JOHN DOE LTD.

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: September 12, 2014
Time: 10:00 a.m.
Where: Justice Chambers, Calgary Courts Centre
Before: The presiding Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An order for the Respondents to pay the Applicant a penalty of 2 times the amount set out in item 3(1) of the tariff in Division 2 of Schedule C for failing to serve their Affidavit of Records, contrary to the provisions of Rule 5.12 of the *Alberta Rules of Court*.
2. An order compelling the Respondents to produce the following:
 - a) The SD memory card taken from Nicholas McLeod ("McLeod") by Shannon Courtorielle ("Courtorielle") on the evening of Tuesday, February 19, 2013;
 - b) The names of the other security guards who were present and on duty during the incident on February 19, 2013;
 - c) The video-footage of the entirety of the events that transpired between the security guards and McLeod on February 19, 2013;
 - d) The employment records of each of the security guards who were present and on duty during the incident on February 19, 2013, or alternatively the sections of the employment records of the security guards pertaining to reprimands, suspensions, terminations and other consequences arising from the conduct of security guards on February 19, 2013;
3. An order that the Respondent MRU produce a further and better Affidavit of Records which will include reference to the following:
 - a) The SD memory card that Courtorielle took from McLeod on February 19, 2013;
 - b) The video-footage of the entirety of the events that transpired between the security guards and McLeod on February 19, 2013;
 - c) The employment records of each of the security guards who were present and on duty during the incident on February 19, 2013, or relevant sections thereof, pertaining to reprimands, suspensions, terminations and other consequences arising from the conduct of security guards on February 19, 2013.
4. An order of replevin to grant McLeod the recovery of his cell phone's SD memory card which was unlawfully taken from him by the Respondents on Tuesday, February 19, 2013, and is material evidence in this case.

5. An order that each of the Respondents Jeff Beddome, Bill Borden, Shannon Courtorielle, John Doe #1 (whose name is known by the Respondent Mount Royal University ("MRU"), John Doe #2 (whose name is known by the Respondent MRU) and Jane Doe #3 (whose name is known by the Respondent MRU) serve their Affidavit of Records to the Plaintiff on or before September 18, 2014.

6. An order that the Respondents pay the costs of this Application.

7. An order that the undertakings regarding Rule 6.49(1) be waived because they are inapplicable to this Application for replevin.

8. An order that in the event that the things ordered to be done are not done, that the Respondents be commanded to appear before the court to show cause as to why they should not be cited in contempt of court.

Grounds for making this application:

9. The Applicant is a Plaintiff in an action commenced by Statement of Claim filed March 12, 2014, against the following: MRU, Jeff Beddome, Bill Borden, Shannon Courtorielle, John Doe #1, John Doe #2 and Jane Doe #3. The claim rests on torts of false arrest, imprisonment, battery, and negligence, and for breaches of sections 2(b), 7, 8, 9, 11(a) and 12 of the *Charter*.

10. Courtorielle was one of MRU's security guards who apprehended McLeod on the evening of Tuesday, February 19, 2013, when McLeod was peacefully distributing literature on campus.

11. McLeod used his cell phone to record the behaviour of the Respondent security guards and his interaction with the guards, during which time he was attacked, arrested and imprisoned by the security guards. Courtorielle took McLeod's cell phone and removed from it the SD memory card containing the recording of the Respondent security guards' behaviour and conduct.

12. The Calgary Police Service charged Courtorielle on September 5, 2013, with theft under \$5,000 for having stolen the SD memory card of McLeod. Courtorielle entered the Alternative Measures Program by accepting responsibility for having taken the SD memory card from McLeod, thereby avoiding a criminal record. On April 10, 2014, in Calgary Provincial Court, J.P. Traftak found that Courtorielle had completed the Alternative Measures Program.

13. This missing SD memory card constitutes crucial material evidence in this action.

14. The Respondent MRU denies having, or having had, the SD memory card in its possession. The Respondents have not communicated to McLeod that they have made any efforts to locate the SD memory card which Courtorielle stole from McLeod.

15. The Respondents have not returned the SD memory card to McLeod.

16. MRU has also failed to include the SD memory card in its Affidavit of Records. The Plaintiff's Affidavit of Records listed the SD memory card under Schedule 3, as a record formerly under the possession of McLeod.

17. MRU terminated Courtorielle's employment because of Courtorielle's conduct on February 19, 2013. MRU also suspended Beddome in regard to his conduct on February 19, 2013.

18. In its Affidavit of Records, MRU has failed to include information as to the names of all of the other security guards who were present and on duty the evening of February 19, 2013, as well as the employment records of each of the security guards or relevant portions thereof.

19. MRU has undertaken to provide brief video security footage of the events that occurred on February 19, 2013, in a Supplementary Affidavit of Records. However, the MRU Affidavit of Records Security Services Service Report indicates that the footage discovered of the incident covers only approximately four minutes of footage from the evening of February 19, 2013, thereby missing approximately 3 ½ hours of video footage.

20. The Respondents' Affidavit of Records was due on June 28, 2014. McLeod agreed to extend this deadline to July 14, 2014, giving the Respondents more than two weeks of extra time in which to serve their Affidavit of Records. Though the Respondent MRU served its Affidavit of Records on July 14, 2014, the Respondent security guards have neglected to serve their Affidavit of Records. The Plaintiff has refused to further extend the deadline for the remaining Affidavits of Records.

Material or evidence to be relied on:

21. The affidavit of Nicholas McLeod, filed

Applicable rules:

22. Rules 5.11, 5.5(3), 5.12(1) (a), 6.48-6.53 under Part 6, Division 8

How the application is to be proposed or heard:

23. In Justice Chambers

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.