

COURT FILE NUMBER

1401-02767

Clerk's stamp

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

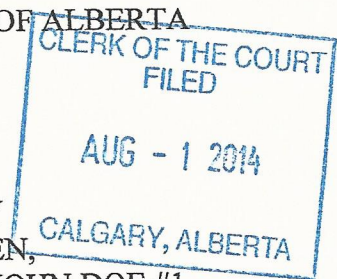
CALGARY

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

AFFIDAVIT OF NICHOLAS MCLEOD

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Carol M.W. Crosson
Barrister and Solicitor
253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2
Phone: 403-796-8110
Email: ccrosson@jccf.ca

I, Nicholas McLeod, of the City of Oakville, in the Province of Ontario, MAKE OATH AND SAY THAT:

1. I have personal knowledge of the facts deposed to, except where stated to be based on information and belief, and where so stated I believe them to be true.
2. I am the President of the Canadian Centre for Bio-Ethical Reform and, on Tuesday, February 19, 2013, at about 7:30 PM, I entered the Lincoln Park campus main building on the Mount Royal University campus. I began distributing pro-life postcards on campus.
3. I was dropped off outside of Wyckham House by my co-worker, Lauren Kyfiuk, who went to a meeting in Okotoks and was supposed to pick me up on her way back from her meeting at around 10:30 p.m. I was wearing my jacket, because it was cold outside, and was carrying two bags and a box worth of postcards. I put my jacket in a day locker, and was wearing only a shirt when I began distributing the literature on the ground level floor (called "second floor") of the Lincoln Park campus building in the "W" wing. When I finished this ground level floor, I then went to the first floor (underground level) and began to distribute there.
4. While distributing literature on the first floor, I was near a room with glass windows and tree-like wood paneling over it, when Jeff Beddome ("Beddome"), a Mount Royal University security guard, stopped me and said something to the effect that I was "done".
5. I asked why. Beddome responded that I was not going to be doing this any longer and tried to grab the postcards from my hand. I took the postcards back and said that he had no right to touch me or my things.

6. At this point I pulled my phone out and began video-recording my interaction with Beddome. He said that he did not want to be recorded and I replied that this was for my safety. The Canadian Centre for Bio-Ethical Reform instructs its staff and volunteers to record negative or potentially negative incidents, for our own safety, to confirm that our staff and volunteers are well-behaved and also, if necessary, to have a record of any assault or other illegal actions that might be taken against us.
7. From this point onwards, until Beddome took my phone away from me, everything was video-recorded and audio-recorded on my phone, which has an SD memory card, onto which videos are recorded.
8. My phone was a Huawei U1250. The SD memory card was a 32 GB micro SD card, the worth of the card being approximately \$50.00.
9. Beddome told me to stop what I was doing. I asked by what power he was asking me to stop. He said that the University told him to stop me. I replied that the courts have said that I have a legal right to distribute literature on a university campus, under R v. Whatcott.
10. Beddome then tried to take the phone out of my hands, but I pulled my hand away when he grabbed the phone, and he let go. He then called in for backup and a minute later three other guards approached.
11. Bill Borden ("Borden") was one of the first of these three to arrive. The first thing that he did was try to reach inside my bag. I moved the bag away from his reach and closed the cover on my bag, saying that he had no right to search my property.
12. I had no interactions at this time with the other two guards, both male, standing nearby, and was not able to see their name tags.
13. Beddome again tried to grab away my postcards from my hand, and again he was unable to wrestle them out of my hand.
14. Borden then began saying "will you leave!" I asked again by what authority he was asking me to leave. Borden repeated himself a couple more times, louder each time. He then stated that if I did not leave they would call Calgary Police Service.
15. I said that I wouldn't mind if security called the Calgary Police Service, because my employer has a positive relationship with the Calgary Police Service, and police are aware of my employer and the literature that my employer distributes in Calgary.
16. At this point, Borden attacked me and grabbed me, tried to grab my phone (still video-recording and audio-recording everything) and dragged me a few feet before I got out of his grasp. This happened very quickly.
17. I said that he had no right to touch me and that we should call CPS because I wanted to file a

complaint of assault. Borden responded mockingly with "pffft...assault."

18. Borden said, "Fine we will call CPS, let's go upstairs and wait for them." I said "fine" and went with the four guards, up the stairs to the ground level floor, to the campus security office.
19. All five of us (Beddome, Borden, two other male security guards and I) were in the hallway just outside the campus security office. One or two more guards joined us, making for a total of five or six guards. One of the guards wore a yellow jacket. He was a large man, about 6'2" and appeared to weigh more than 300 pounds, with short dark hair. I did not catch his name, but would easily be able to recognize him if I saw him again.
20. Beddome started telling me to leave the building. I replied that we were waiting for CPS, because Borden had told me that we were going upstairs to the ground level floor for the purpose of waiting for CPS.
21. Beddome then said "If you want to call CPS, then call them, but you have to leave the building."
22. My phone was video and audio recording so I could not call police. I said to Beddome "One of the guards had said that they called CPS already." Beddome said that if I wanted to, I was free to call them, but I had to leave the building.
23. I was confused because Borden said that were going upstairs for the purpose of waiting for CPS, but now the MRU guards were ordering me to leave the building.
24. At this point I capitulated and decided to leave. I said "Fine, I will leave. I just need to get my jacket". It was very cold outside and I was wearing only a shirt, and did not have a vehicle to get into, since I was waiting for a ride from a friend who would not show up for another two hours or longer. The big guard in the yellow jacket stood in front of me, blocking my path, so I could not walk towards the day locker where my jacket was. I said "I just need to get my jacket and then I will go, you guys are free to come with me if you want".
25. Borden said "you are not going anywhere except out those doors," pointing to the West entrance doors leading to the outside. I replied: "I am not going outside without my jacket." Beddome asked me where my jacket was. I said it was in a day locker right up that hallway.
26. They asked me if I was a student, and I responded "no", and they said "then you don't have a locker." I explained again that my jacket was in a day locker. The day lockers were just down the "W" wing, about fifty to one hundred metres from where we were. Beddome began taking pictures of me with his iPhone.
27. At that point one of the four remaining guards said "will you leave?" I said that yes, I would leave, but not without my jacket. At this point I was surrounded by the four guards, with the big guard in the yellow jacket in front. I attempted to go around him to retrieve my jacket, but the guard in the yellow jacket blocked my path.

28. There was a Mount Royal University security camera nearby, video-taping this exchange. I know this because I later saw the security camera display screens, and one of the cameras showed this area of the hallway.
29. In addition to the Mount Royal security camera, I was video-recording all of this with my phone (brand: Huawei) which I held tightly in my right hand. The video footage was being recorded onto the SD card in my phone.
30. Then one of the four guards grabbed my arm and said "you are under arrest then". I cannot remember which of the guards it was. The same guard grabbed my left wrist and pulled it behind my back. I fell to the floor and pulled my right arm under my body to protect my phone. The phone was still recording.
31. I heard Beddome, who was standing over me, saying that I should not resist. I was lying face-down on the floor. Beddome pushed his knee into my back and his thumb into my neck, which caused pain. I don't know why he did this, but I assume it was to get me to let go of my phone. I continued to hold my arm beneath my body, protecting my phone. Then Beddome put his thumb under my nose and pushed up, causing more pain, and I worried that he would break my nose.
32. I quickly put the phone in my pants, trying to put it somewhere where they would not be able to get at it and then gave up my right arm. Beddome responded to my actions by saying "we will get it anyway when we search you."
33. After I was handcuffed, they stood me up and the phone fell out through the legs of my pants. The phone did not break and the back of the phone did not separate from the front; it was intact when Beddome picked up the phone.
34. I said to Beddome "you had better not delete evidence from the phone" or words to that effect.
35. The big security guard in the yellow jacket, along with Beddome, Borden and another guard (a male whose name tag I was unable to see) led me into their campus security office. Beddome searched me, and removed my wallet and bag.
36. The guards did not take off my handcuffs even after they had taken me inside their security office and into a small holding room, which was roughly ten feet by seven feet. Beddome sat me down in their holding room, handcuffed, and began taking down my information from my driver's license.
37. During this time, I did not see my phone. I believed that Beddome still had it. A few minutes later I was asked my phone number. I gave my work number of 403-668-0485.
38. The guard in the yellow jacket asked me where my jacket was. I said it was in day locker number thirty, down the hall. He left and came back with my jacket and a bag of postcards.
39. He said that if I had only left earlier then I wouldn't be in handcuffs right now. I replied that I

wouldn't leave without my jacket. He stated that I could have waited for CPS outside and then when they came they would have escorted me in to get my jacket. I replied that it is freezing out there and I was not going to be put in that situation. Beddome checked his iPhone for Calgary weather and said "It's not that cold, it is only minus seven out". The guard in the yellow jacket also claimed that it was not that cold outside. I said "that is freezing cold", and they replied "No it isn't. You could have waited in the bus shelter". I replied "I don't know where the bus shelter is, and I am not going to be stuck outside without a jacket".

40. At this point a female guard asked me what my phone number was. This was the first time that I had seen her, or had any interactions with her. I gave her the same 403-668-0485 number I had provided previously, my work number.
41. There was some confusion when Beddome called a number and the person on the other line did not know my name, so Beddome apologized for calling the wrong number. I believe Beddome wrote down my number incorrectly. I did provide my correct work phone number to both Beddome and the female security guard.
42. Then Beddome took pictures of me, while I was still handcuffed, and placed my phone with my other things on a filing cabinet that I could see from the holding room, in which I was confined against my will. At that point Beddome asked what my plan was. I responded just to drop off the literature on campus. I stated again that I was allowed under the Charter of Rights and Freedoms to be doing what I was doing. He said that it was private property and I responded that the courts had ruled that a non-student was allowed to distribute literature at a public university.
43. Beddome complained to me that he had found pamphlets from CCBR in the public areas of the campus. I responded that we had student volunteers at most universities across the country. Jeff stated that he would be fine with literature distribution during the day. So I asked, "your only problem is the time I was here?" and then he said no. He then said that what I was doing was sneaky and that he didn't like it. I again explained that it's my right to distribute literature on campus in a peaceful manner. Beddome said that he got me on "trespassing". I stated that we will let the lawyers deal with it now.
44. The female guard told me that she was a retired Ontario police officer from the Peel Regional Police. I did not find out her name, but I recall her appearance, and I would easily be able to recognize and identify her if I saw her again in person. The female guard asked me several questions about my former residence in Ontario: where I lived and what I did. I refused to answer her questions, after which she said she would get all the information about me that she was interested in from her "Peel buddies" that she used to work with. I was shocked that she would speak so openly about using police resources to gather personal information about me.
45. Beddome, the guy in the yellow jacket, and the retired Ontario police woman all took turns watching me, standing in front of the small holding room.
46. I was sitting with my hands cuffed behind my back in the holding room from about 8:30 to about 11:30 p.m. During this time, I occasionally stood up to stretch and try to reduce the pain

off of my aching shoulders.

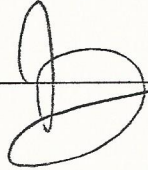
47. When the guard in the yellow jacket was watching me he was standing up and poking at my things on the shelf. I could see part of the shelf, but not the whole thing. At one point I saw him with my phone in pieces in his hand. He said that he dropped it. I have dropped my phone on previous occasions and it never came apart or fell apart, including an hour or two earlier, when my phone fell through my pant leg on to the floor. I watched him holding the cover, battery, and front of my phone, and I saw him put the parts back together.
48. I now believe that this guard in the yellow jacket was Shannon Courtorielle, who was charged on September 2, 2013, for the theft of the SD memory card from my phone, as I state later in this affidavit.
49. During the three hours that I was handcuffed and detained, I complained repeatedly to Beddome, the female guard, and the big guard in the yellow jacket, about my shoulders hurting. The female guard at one point said "Well sit on the edge of the seat." I tried that, but it did not help.
50. I also asked Beddome whether the handcuffs were necessary and he said that I "pushed into" the big guy with the yellow jacket who was blocking my path, and that was assault. I thought that notion was so ridiculous that I could not stop myself from laughing in response to Beddome's comment.
51. After having had my hands in handcuffs for roughly two-and-one-half hours, my shoulders were really hurting, and I started pacing the room to try to ease my shoulder pain. My wrists were really hurting, and I was trying to distract from the boredom and pain. Finally, after about two hours and forty-five minutes in handcuffs behind my back and me pacing the guy in the big yellow jacket asked if I would like the handcuffs in front of me. I said "Yes please." He told me to turn around, which I did, and he loosely put the cuffs on in front of me and offered water, which I accepted.
52. At around 11:15 p.m. my co-worker, Lauren Kyfiuk showed up at the desk and asked if they had seen me. The guard sitting at the desk said that I was arrested and was being held. I heard Beddome say that I was arrested and detained for distributing offensive literature. Lauren began giving them the same information about the Charter. Still handcuffed and confined to the small holding room, I yelled out at Lauren to just leave them alone, and for her to wait for me. Lauren waited around until police arrived about 15 minutes later at around 11:30 p.m. The police talked to security for a few minutes, then two Calgary Police Service constables came and released me from my handcuffs. They said to listen to Beddome, who issued me with a notice that I was not allowed back on the schools property for a year. He asked whether I understood, I said yes, and then signed a form. I then grabbed my things from on top of the filing cabinet, was given my jacket, and left with Lauren.
53. At no time during the three hours that I was handcuffed and confined was I presented with an opportunity to contact legal counsel.

54. I then waited outside the office for the Calgary Police officers to finish talking to the security guards and then I followed them outside. Outside the female officer told me to zip up my coat because it was cold outside. I agreed and she asked what had happened. I said I was distributing my literature, I was allowed to, I was about to leave but I needed my jacket which they were not going to let me get. I said that I could not leave without my jacket. She asked me if I would come back. I said that I believe that I did not break the law, that what I did was allowed, and that I would consult legal counsel. I said that I do not break the law and would let the lawyers deal with it. She said have a good night and I shook the hands of the officers and then left.
55. On my way home, I tried to look at the video footage which I had recorded, and there were no video-recordings on my phone. The following morning, I discovered that my SD memory card, on which my interactions with Beddome and Borden and others had been recorded, was missing.
56. My back, shoulders, wrists and nose were sore throughout the day on Wednesday, February 20, 2013, and the days which followed.
57. On Wednesday, February 20, I spoke with Terrance Zeniuk, the head of MRU campus security, and asked for the name of the big security guard who wore the yellow jacket, and the name of the female security guard from Ontario. Mr. Zeniuk refused to provide that information. I informed him of my missing SD memory card and he promised to investigate.
58. On Thursday, February 21, 2013, I still was still in pain from the injuries to my wrists, back, shoulders and nose. At about 2:45 p.m., I was seen by Dr. Xuandieu Nguyen at the Westwinds Family Care Centre on the second floor at 3633 Westwinds Drive NE, Calgary Alberta. Dr. Nguyen has documented the injuries to my back, shoulder, wrists and nose.
59. I have experienced and continue to experience anxiety, stress and other psychological suffering as a result of this February 19 incident. I also have received and continue to receive counseling as a result of the incident.
60. After the incident, I retained John Carpay to represent me in this matter.
61. On February 21, 2013, Mr. Carpay went to the Campus Security office at Mount Royal University, spoke with one of the security guards on duty, and explained that he was present on my behalf. Mr. Carpay requested the return of the SD memory card that had been removed from my cell phone, and provided the security guard with the office address where the SD memory card could be returned.
62. Later that same day, Mr. Carpay received an email from MRU in-house counsel Tricia Waddell in which she stated that she was aware of Mr. Carpay's "request regarding Mr. McLeod's SD card for his phone". She also stated that she was "advised that Security Services does not have Mr. McLeod's SD card. I am further advised that Security Services never had Mr. McLeod's SD card".

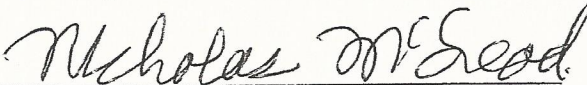
63. Attached hereto and marked as Exhibit "A" is a true copy of the email from Ms. Waddell to Mr. Carpay.
64. I am informed by Mr. Carpay that on September 5, 2013, Calgary City Police charged the Respondent security guard Shannon Courtorielle with theft under \$5,000 in regard to the theft of my SD memory card on the date of February 19, 2013.
65. Attached hereto and marked as Exhibit "B" is a true copy of the Information sworn by Calgary City Police against Mr. Courtorielle.
66. On April 10, 2014, in Calgary Provincial Court, J.P. Trafiak found that Courtorielle had completed the Alternative Measures Program ("AMP"), in which a person seeking entry to the program must accept responsibility for the act or omission that forms the basis of the offence.
67. Attached hereto and marked as Exhibit "C" are true copies of the Court Scheduling Notices in regard to Courtorielle's criminal charges.
68. On or about September 18, 2013, Mr. Carpay emailed MRU in-house counsel Ms. Waddell to ask her if it was still her position that "Security Services does not have Mr. McLeod's SD card, and that Security Services never had Mr. McLeod's SD card?" Ms. Waddell did not respond to this email and ten months later, at the present time, MRU still has not responded to this email.
69. Attached hereto and marked as Exhibit "D" is a true copy of the email from Mr. Carpay to Ms. Waddell.
70. I have been informed by Mr. Carpay that Beddome was suspended from his employment by MRU because of his conduct towards me on February 19, 2013. I have also been informed by Mr. Carpay that Courtorielle's employment was terminated by MRU because of his conduct towards me on February 19, 2013. I have been further informed by Mr. Carpay that the female security guard who threatened to use her police contacts in Ontario in order to obtain personal information about me stopped working at MRU not long after February 19, 2013, but I do not know whether she left of her own volition, or whether MRU terminated her employment.
71. The Plaintiff served its Affidavit of Records on the Respondents on May 28, 2014. The Plaintiff's Affidavit of Records listed the SD memory card under Schedule 3, as a record formerly under the possession of the Plaintiff.
72. My present counsel, Carol Crosson, contacted the Respondents' counsel, Derek Cranna, on July 7, 2014, to note that the Respondents' Affidavit of Records was more than one week late, with the deadline on this Affidavit of Records having been June 28, 2014. Ms. Crosson offered to extend the deadline for the Respondents' Affidavits of Records to July 14, extending the deadline in total by over two weeks.
73. Attached hereto and marked as Exhibit "E" is a true copy of my counsel's email to Mr. Cranna in this regard.

74. On July 14, 2014, the Respondent MRU forwarded its Affidavit of Records to Ms. Crosson, but Respondents' counsel Mr. Cranna did not forward the Affidavit of Records for any of the other Respondent security guards.
75. Attached hereto and marked as Exhibit "F" is a true copy of the Respondent MRU's Affidavit of Records.
76. Ms. Crosson informed Mr. Cranna that she could not extend the deadline for the Respondent security guards' Affidavit of Records any further.
77. When Ms. Crosson received the Affidavit of Records of the Respondent MRU, Ms. Crosson noted to Mr. Cranna that the Respondent MRU's Affidavit of Records did not list Nicholas' SD memory card, as either as in the possession of the Respondent or in the prior possession of MRU.
78. Mr. Cranna has not provided an explanation as to why the Respondents' Affidavit of Records does not contain any reference to the SD memory card.
79. The missing SD memory card constitutes crucial material evidence in this action. It contains the recording of the actions of the security guards on February 19, 2013, so it is crucial to this action.
80. In addition to excluding the SD memory card, the Respondents have not taken steps to locate this crucial evidence. MRU has not replied to the query it received ten months ago regarding this evidence. MRU has also not provided any information as to the whereabouts of the SD memory card, either presently or in the past. The Respondents have been uncooperative in seeking and disclosing information about this crucial evidence, the Plaintiff's SD memory card, as well as failing to produce the SD memory card.

SWORN BEFORE ME at Calgary, Alberta,
this 18 day of July, 2014.



John V. Carpay
Barrister and Solicitor



John Nicholas McLeod