No. S-117413

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

STEVEN A.W. DE JARAY

Plaintiff

AND:

THE ATTORNEY GENERAL OF CANADA

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date

on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

I. OVERVIEW

1. This claim is for recovery of a life, reputation and fortune that were critically damaged by a negligent criminal investigation conducted by the Canadian Border Services Agency ("CBSA") and the Department of Foreign Affairs and International Trade ("DFAIT") that resulted in criminal charges against the Plaintiff and his young daughter. Those charges were abruptly abandoned on August 3, 2011 by the Director of Public Prosecutions ("DPP") prior to trial. The January 26, 2009 DFAIT report that formed the very foundation of the allegation that a crime had been committed by the Plaintiff was misconceived, based upon unverified data and was unbalanced. In addition, the report ignored explicit notice from the Plaintiff himself that the products said to have been illegally shipped by a company associated with him contrary to the *Export Import Permits Act* ("EIPA") did not have the characteristics that would have rendered them controlled and thus subject to the prior permit regime created by EIPA.

2. The negligent investigation led to the February 12, 2009 execution of search warrants at the Plaintiff's home and business premises with devastating effect on his reputation and businesses.

3. Then, when EIPA and *Customs Act* criminal charges were sworn on April 29, 2010 against the Plaintiff and his daughter, the impact on the Plaintiff's life was horrific. When the fact that the charges had been laid was publicly broadcast by way of a CBSA press release on May 28, 2010, itself an act of negligence, the

Plaintiff was effectively branded as the equivalent of a terrorist or weapons dealer. In the information age, the CBSA press release "went viral" and was repeated, analyzed and republished over and over again.

4. When the criminal charges were laid the Plaintiff's wife of 31 years severed all contact with him and he became estranged from his daughter and son. The business and social community that had been so much a part of his life closed him out completely. A new business venture in Oregon which required community supported licenses collapsed. The ostracization arising from the negligent investigation and consequent criminal charges was so complete that by September, 2010 the plaintiff was forced to move abroad, alone, to attempt to rebuild his life.

5. On August 4, 2011, thirty one months after the negligent report had been issued, and fifteen months after the consequent charges had been sworn, the Director of Public Prosecutions ("DPP") entered a stay of proceedings to terminate the criminal charges then set for a four week trial scheduled to commence on October 11, 2011 in the Provincial Court of British Columbia. No explanation by the DPP for the entry of the stay of proceedings has ever been given. Nor has either the CBSA or DFAIT ever apologized to the Plaintiff for the harm that their improvident investigation has caused.

6. The Plaintiff and his family can never be made whole for what they have suffered. This claim seeks all that the law can provide: recovery of compensable damages arising from negligent investigation.

II. THE PARTIES

7. The Plaintiff, Steven Allan Wylie de Jaray ("de Jaray") now resides abroad.

8. The Defendant, The Attorney General of Canada, represents Her Majesty the Queen in Right of Canada. The Attorney General of Canada is named in his representative capacity in respect of actions by the CBSA and the DFAIT and their employees in accordance with the *Crown Liability and Proceedings Act*.

Both CBSA and DFAIT are Departments of the Federal Government of Canada responsible for the administration of the *EIPA* and the *Customs Act*.

III. THE PLAINTIFF'S FULL LIFE PRIOR TO THE NEGLIGENT INVESTIGATION

(a) Education and Family

9. The Plaintiff was born on November 11, 1956. He completed secondary school in 1973 and attended UBC in 1974 to commence the study of engineering and then graduated from BCIT with an Engineering Technology Associate Degree in 1977.

10. He married his wife on September 2, 1979. He and his wife were blessed with a close family life with two children.

11. The Plaintiff and his wife began their family together in 1982 in a West Vancouver home located on Seaview Road. The family also came to own a recreation home located in Alpine Meadows in Whistler where they have enjoyed skiing together for 25 years.

(b) The Plaintiff's Career as an Entrepreneur

12. During his career as an entrepreneur the Plaintiff founded, developed and ultimately sold a number of companies including Pacific Rim Shellfish Ltd. (1978-79), Carbon Plastics Ltd. (1980-85) , Allanco International Environmental Products Ltd. (1986-present), AIM Safety Company Ltd. (1985-1997), AIMagine Software Company (1998) and the TSX and ASE listed AIMGlobal Technologies Corporation ("AIM") (1996-2001).

13. As described in more detail at para 19, in 2008 the Plaintiff was the founder and principle beneficial shareholder of Apex Micro International Electronics Ltd. ("Apex Canada"), Apex Micro Manufacturing USA Limited ("Apex USA"), American Micro-Fuel Device Corporation ("AMFD") and Footstone Jive, California St. Winery Limited ("Footstone").

14. As a manufacturer and businessman the Plaintiff's reputation and business relationships were pivotal to the success of the manufacturing businesses he established and with which he was associated.

15. In this context, and since 1997, he was actively involved in the B.C. Chapter of the Young Presidents Organization ("YPO") which is recognized as an influential organization of emerging corporate presidents and leaders. Since 2005 he has been a member of the World Presidents Organization ("WPO"), an influential organization of achieved corporate leaders.

16. The Plaintiff's reputation prior to the negligent investigation was reflected in the support he enjoyed from the business community, both by the business leaders who participated in the YPO "Forum" group of which he was a part, and by those who agreed to serve on the Board of Directors of the publicly listed AIM.

17. The Plaintiff also enjoyed institutional recognition. He was nominated by Ernst & Young as Entrepreneur of the Year (Canada) in both 1999 and 2000. Deloitte and Touche nominated AIM to the Fast 50 (British Columbia) list of growth companies in 2000 and 2001. British Columbia recognized Apex Canada as one of the BC's Top 50 Technology companies from 2002 to 2007. In aid of his industry the Plaintiff served on the Technical Advisory Board of the Bellingham Technical College from 2002 to 2006.

18. Although AIM encountered financial difficulties in the stock market crash of 2001 and the Plaintiff received B.C. Securities Commission sanctions arising from matters related to AIM that had occurred in 2000, by the time of the 2008 negligent investigation described below the Plaintiff had founded Apex Canada (2002), Apex USA (2003), AMFD (2008) and Footstone (2008). From its inception in 2002 until 2007 Apex Canada had grown to employ over 250 persons and had reached annual sales in excess of CDN $40M. Indeed, confidence in the Plaintiff and his business activities in 2008 was such that only six months prior to the negligent investigation described herein a very senior and highly sophisticated Vancouver investor had purchased a 35% equity interest in Apex Canada for $4M

and a 30% interest in AMFD for approximately $.75M in arms length transactions.

(c) *The Plaintiff's Community Engagement and Charitable Activities*

19. The Plaintiff was also deeply involved in the Vancouver community. In 1980, along with a group of other families, the Plaintiff and his wife participated as founding parents of West Vancouver's Collingwood School. The Plaintiff's daughter, attended Collingwood School and emerged as one of the school's first graduates. She then attended university and had joined her father's firm, Apex Canada, only 16 months before the Defendants' acts of negligence.

20. In 2000 the Plaintiff and his wife joined another group of families to expand Mulgrave School as a second West Vancouver co-educational university preparatory school. The Plaintiff's son ultimately graduated from Mulgrave and also went on to university.

21. The Plaintiff was also an enthusiastic boater. As such he has been a full member and supporter of the Eagle Harbour Yacht Club ("EHYC") since 1995 and of the West Vancouver Yacht Club ("WVYC") since 1996 where he has served as a Center Bay Commodore. In 1997 the Plaintiff became a full member of the Royal Vancouver Yacht Club ("RVYC") and where he ultimately became a founding member of the "Boat for Hope" campaign which annually sponsors maritime activities and raises funds in support of children with disabilities.

IV THE BACKGROUND TO THE NEGLIGENT INVESTIGATION

(a) *Apex Canada's Operations*

22. In 2008 the Plaintiff was the principal beneficial shareholder of Apex Canada which operated from manufacturing premises located at 8128 River Way, Delta, B.C. and through a wholly owned subsidiary Apex USA located in Ferndale, Washington. The Plaintiff's daughter worked with her father at Caliber Component Solutions ("CCS"), a wholly owned subsidiary of Apex.

23. Apex Canada and Apex USA were engaged in the business of advanced electronics manufacturing services ("EMS"). EMS companies operate globally as outsource manufacturers on contract to original equipment manufacturers ("OEM") who design and market electronic products of all forms. EMS companies provide OEM's with expertise in sourcing, procurement and raw materials and inventory management. In some cases, EMS's, like Apex, also provide additional services including product design, supply chain management, global distribution and repair services.

24. Apex Canada commenced operations in 2002 as an outsource provider of advanced micro-manufactured electronics, manufacturing electronic printed circuit board assemblies for its aerospace, telecommunications, medical, automotive and industrial OEM clients according to the technical specifications and requirements of their end-products. Apex Canada also performed quality assurance, ISO and other in-circuit functional testing, finished product assembly, and conducted research and development of electronic products for its client companies.

25. A vital part of Apex Canada's business model was the provision of complete "Turn Key" electronic manufacturing services to its OEM customers. These services involved the efficient management of all micro electronic component sourcing, procurement, and administration of raw materials for the customer – including following the requisite quality control measures, providing specialized and environmentally controlled storage, conducting technical testing of specialized advanced electronic components, and obtaining functionality certification.

26. Apex Canada's product and manufacturing services were based on long term customer relationships and were unique to each customer and assembly. Apex Canada manufactured custom (non-commoditized) electronic assemblies to be incorporated into its customers' electronic products. Those customers included, amongst others, Teleflex Incorporated; G.B. Enterprises; Los Alamos

Laboratories; SR Telecom Inc.; Alpha Technologies Inc.; Gatekeeper Systems, Inc.; NASA; Spectrum Signal Processing; Dees Communication Corporation; Rockwell Automation; Symetrix Audio; and Meyer Sound Laboratories Inc. and others.

27. To meet its customers' contract manufacturing needs, Apex Canada required a rolling supply of raw materials and electronic components. These raw materials and components comprised the most substantial portion of the cost of goods Apex Canada manufactured, generally comprising 65 to 80 percent of the total cost of Apex Canada's finished goods. Many components were only available on extended delivery times and in large quantities, which often far exceeded the customer's immediate demand.

28. The variable nature of the OEM annual demand for product assembly meant that it was commercially unwise, costly and practically impossible for Apex Canada to procure parts and components in a manner or in a quantity that only met the exact current production demand of its OEM customers. It also meant that, because Apex Canada was generally able to source preferential pricing in return for volume commitments, Apex Canada would procure parts and components on the basis of the customer's entire annual order in quantities that far exceeded what was specifically required by current demand. OEM production shortfalls and product changes often resulted in excess electronic inventory to be dealt with. CCS was established to operate in parallel to Apex to procure and dispose of excess inventory that might arise from "no demand" components and to otherwise trade in the secondary electronic components market.

29. In consequence both Apex and CCS routinely shipped large volumes of electronic components to and from international and Chinese companies.

(b) *The Initial Seizure*

30. In the normal course of its business, on December 19, 2008, two packages were retrieved by Federal Express ("FedEx") in Delta, BC for shipment to Hong Kong.

31. The packages were examined at the FedEx warehouse at the Vancouver International Airport on December 22, 2008 by FedEx Security Specialist Peter Scott who called CBSA Intelligence as he believed the packages might be "suspicious" in some way.

32. Both packages were consigned to CCS in Kowloon, Hong Kong. Both waybills described the contents as "printed circuit board assembly". CBSA Border Services Officer Coelho (Coelho) attended and upon inspection concluded that the components in the packages might be export controlled within the meaning of the *EIPA*. Two types of field programmable logic devices ("FPLD") (collectively referred to as the "Seized Devices") were identified as:

    a. SI 1048C – 50 LG F1A0608 883 ΔΔC ("SI") manufactured by Lattice Semiconductor Corporation ("Lattice"); and
    b. GAL 22V10D – 15LD 883 ΔΔC ("GAL") also manufactured by Lattice.

33. Based on his observations, Coelho referred the packages to DFAIT, which provides technical analysis services to CBSA in support of their joint administration and enforcement of *EIPA,* to determine if the Devices were captured by the Export Control List ("ECL").

(c) Regulatory Framework

34. The EIPA implements Canada's commitment to the *Wassenaar Arrangement* ("WA") an agreement among nations entered into in 1996 to regulate the trade in conventional weapons and dual use goods and technologies.. Section 13 of the EIPA prohibits persons from exporting or transferring any goods or technology described on the ECL, which is established by Order in Council, unless it is in accordance with an export permit issued pursuant to EIPA. Section 2(a) of the ECL includes goods and technology referred to in Groups 1, 2, 6, and 7 of the Schedule attached thereto that are intended for export to any destination other than the United States. In the attached Schedule to the ECL, Group 1 is defined as "Goods and Technology, as described in Group 1 of the Guide, the export of

which Canada has agreed to control in accordance with the Wassenaar Arrangement." The Guide implementing the WA is defined as "A guide to Canada's Export Controls – 2007" (the "Guide")

35. Group 1 of the Guide (which in 2008 was defined as the 2006 edition), adopts the different categories of the WA. Critically, for the purposes of this proceeding, Section 3.A.1.a.2.c. describes certain electronic components that could have both a civilian and military use as "Dual-use List – Category 3 – Electronics". Again, critically, one of the primary criteria that distinguishes civilian commercial and industrial electronics from potential dual use FPLDs is that those that might entail the potential for military use are

> ***"rated for operation over the entire ambient temperature range from 218K (-55C) to 398 K (+125C)."***

Other criteria can also be important. For example, Section 3.A.1.a.7 of the 2009 WA list also includes FPLDs having either "a maximum number of digital input/outputs greater than 200;" or "a system gate count of greater than 230,000."

V. THE NEGLIGENT DFAIT REPORT LEADING TO FURTHER INVESTIGATION AND CHARGES

(a) Communication between the Plaintiff and CBSA/DFAIT

36. On December 22, 2008, three days after the initial seizure, an Apex employee telephoned Coelho to inquire about the seized packages. Coelho advised that the seized packages would be detained until their export control status was determined. On December 29, 2008 Coelho spoke to Heather States, Logistics Coordinator of Apex, who advised, *inter alia*, that Apex did not have export permits for the components in the packages. Coelho then provided States with a copy of a CBSA Detention Notice and told her to provide CBSA with any relevant specifications relating to the Devices.

37. From December 31, 2008 to January 21, 2009, the Plaintiff corresponded with CBSA and DFAIT officials and provided supporting documents relating to the end use and specifications of the Devices as requested. At no time during this

correspondence was the Plaintiff advised that criminal charges could arise as a result of the detention.

38. As requested by Coelho, on January 5, 2009 the Plaintiff wrote a detailed letter to CBSA providing a background description of the larger business context surrounding the exportation of the seized items indicating that

> *"All materials are to meet or exceed Automotive Standard (Automotive Temperature Grade-40 to 125 Celsius TΔDevices)".*

This communication precipitated a series of follow on interchanges between servants of the Crown and the Plaintiff, relevant excerpts of which are as follows:

(i) On January 13, 2009 DFAIT Export Control Division Officer Schonfeld ("Schonfeld") responded to the Plaintiff:

> *"Canada Border Services Agency (CBSA) has forwarded the above referenced file to this office for a technical assessment of the subject goods in order to determine the applicability of Canada's Export Controls*" and requested further information from the Plaintiff.

(ii) On January 14, 2009 the Plaintiff responded in detail again and indicated

> *"All materials to meet or exceed Automotive Standard (Automotive Temperature Grade -40 to 125 Celsius TΔDevices)".*

(iii) On January 14, 2009 Schonfeld replied to the Plaintiff

> *"(1) With respect to the two PSLDs, the Lattice GAL 22V10 and the Lattice GAL IPL1048C, can you provide all of the following: a) operating temperature range for which the item is rated."*

(iv) On January 16, 2009 the Plaintiff responded:

> *"Our engineering department have now provided the following technical specifications from the manufacturers' data sheets for you, on the following:... Lattice GAL 22V10....Operating Temperature Range: -40° – 85°C... Lattice GAL IPL 1048C... Operating Temperature Range: -40° – 80°C".*

(v) On January 19, 2009 Schonfeld replied to the Plaintiff:

"As discussed over the phone, some of the parameters you sent in your fax of Jan 16th could not be verified (by me) from the spec sheets you sent earlier.....

2. ***The operating temp range in the spec suggest -55 to 125 deg C but you are referencing -40 to 85 deg C. Is this based on The "'recommended operating conditions" in the specs?"*** [emphasis added]

(vi) On January 21, 2009 the Plaintiff replied:

"We have put your added queries to our Engineering Department, and would confirm their response as follows:....2. It appears inconsistent with the manufacturers' data to suggest that an, "...operating temp range in the spec suggests -55 to 125 deg C... ",

On page 7 of *the* ***data sheet(s)*** *you have received and therein represented immediately below the data table,* ***it distinctly refers to this particular temperature range (...55 to 125 deg C...) – and your suggestion alternatively as a '... stress only rating...', and not an operating temperature range, and furthermore confirms that the -55 to 125 deg C, to which you refer and more importantly whereat any, '... functional operation of the devise [sic] at these (... as in your suggested -55 to 125 deg C...) or at any other conditions above those indicated in the operational sections of this specification is not implied...' i.e., this is not an operating temperature range at all – it is not even 'implied'.*** *Rather, and you will see on the right hand side of the page, the very section; the operational section entitled, 'Recommended Operating Conditions' to which this particular qualification or specification disclaimer clearly refers.*

To this end, you will also easily see under Recommended Operating Conditions the devise [sic] rating of: -40 to 85 deg C; and accordingly the proper operating temperature range in response to that which you had requested in your initial correspondence.... Ben, we are trusting this will provide you the details you require and we are genuinely hopeful this will be of assistance in efficiently now bringing this detention to a favourable close." [sic and emphasis added]

(b) The Critical Negligent First DFAIT Report

39. Notwithstanding the Plaintiff's correspondence with DFAIT as described in paragraph 38, *supra*, on January 26, 2009 Export Control Division Senior Engineering Advisor, Patrick Liska ("Liska"), authored a report (the "First Liska

Report") concluding that the seized items were subject to EIPA permit requirements, *inter alia,* because:

> "*With respect to the Lattice GAL 22V10D-15LD 883ΔΔC and Lattice ispLS11048C – 50LG F1A0608 883ΔΔC. Caliber Solutions had indicated these items were industrial grade programmable logic devices with operating temperature ranges of -40C to +85C. The data sheets provided by Caliber Solutions for commercial and industrial grade components reflect this temperature range.* ***However, the items under detention are in fact programmable logic devices qualified to the military standard Mil-Std-883C as noted by the suffix 883ΔΔC imprinted on the devices. The actual data sheets*** *for the Lattice GAL 22V10D-15LD 883ΔΔC and Lattice ispL11048C – 50 LGF1A0608 883ΔΔC* ***were obtained from open source and confirm the operating temperature range of these devices to be -55C to 125C.***" [emphasis added].

40. In making these critical findings, Liska relied on both the "883 ΔΔC manufacturer's marking and the Lattice open source specification sheets which he obtained off the internet to conclude that the operating temperature range of the Devices was -55C to +125C. Despite the fact that Liska knew his report would be used for the purposes of an investigation into possible criminal conduct, and could be used in support of a prosecution of the CBSA's targets, including the Plaintiff, at no time did Liska check to determine the currency of the specification sheets he obtained online, nor did he contact Lattice to confirm the correct interpretation of them in connection with the operating temperature range of the Devices.

41. Nowhere in this critical report does Liska appear to consider or acknowledge that "Mil-Std-883" simply establishes a uniform methodology for testing devices for use in military and aerospace systems and that "Mid-Std-883" does not specify parameters related to the functional operating temperature of devices to which it applies. Nor does he acknowledge that there is no reference to "Mid-Std-883" in either the Guide or the WA.

42. Nor does Liska reference the fact that the Lattice open source specification sheets for the Devices themselves explicitly qualify the "Absolute Maximum Rating" ,

"Case Temperature With Power Applied------55 to 125°C" as clearly subject to a disclaimer footnote that reads:

> "Stresses above those listed under the 'Absolute Maximum Ratings' may cause permanent damage to the device. **Functional operation of the device <u>at these</u> or at any other conditions above those indicated in the operational sections of this specification is not implied** (while programming, follow the programming specifications)" (the "Lattice Disclaimer") [emphasis and underlining added].

(c) The Criminal Investigation

43. On February 2, 2009, on the basis of the First Liska Report, Steven Goodinson of the Export Controls Division of DFAIT wrote to the Strategic Export Control Section, DFAIT, and recommended that the file be forwarded for further investigation to the Criminal Investigations Division of the CBSA on the basis that the Devices required a permit for export to Hong Kong and that CCS did not have an export permit history with DFAIT. On that same day, the CBSA's Criminal Investigations Division Investigator Kevin Varga ("Varga") was assigned to the file.

44. On February 3, 2009 Goodinson emailed Liska to report:

> *"I was just* speaking *to Tim Ranger on another matter and he mentioned that there appears to be a bun fight between CBSA and RCMP on the west coast about who should be handling this. But I suppose we will just offer advice to whoever contacts us."*

45. On February 10, 2009 Varga emailed Schonfeld:

> *"I have an urgent request for you. I have your report dealing with the Caliber Solutions and CBSA Detention 8211-08-00229. I see that you had some communication with Steven De Jaray during the determination process. I was wondering if you could please provide me with any mailing addresses and telephone or tax numbers associated to those communications. We are trying to ascertain if he is conducting business from a location other than the office".*

46. In other words, at this very early stage of the CBSA investigation there is no doubt that Varga was familiar with the explanations provided by the Plaintiff to

the servants of the Crown as set out above in paragraph 38, *supra,* to the effect that the open source Lattice specification sheets themselves asserted that it was not even implied by Lattice that the seized devices would operate at the Guide temperatures that would render them subject to permits.

47. On February 12, 2009 Varga swore an Information to Obtain a Search Warrant seeking judicial authorization to search the Plaintiff's home at 5730 Seaview Road, West Vancouver and the business premises of Apex located at 8128 River Road, Delta. In support of his assertion that he had reasonable and probable grounds to believe that an offence had been committed, Varga relied upon the January 26, 2009 First Liska Report and made no reference to the Plaintiff's representations that the seized items did not have the operating temperature characteristics described by the First Liska Report. On February 12, 2009 search warrants under s. 111(1) of the Customs Act were issued for the residence of the Plaintiff and for the business premises of Apex.

48. At no time before swearing the said Information did Varga take steps to determine whether the Plaintiff's explanations set out above in paragraph 38 were valid. Although on explicit notice from the Plaintiff neither Liska nor Varga contacted the manufacturer of the seized devices, Lattice, to determine from it directly what the operating characteristics of the seized devices in fact were.

49. On the morning of February 13, 2009 commencing at 10:20 a.m. seven CBSA officers accompanied by three West Vancouver police officers executed the February 12, 2009 search warrants at the Plaintiff's home where they searched for more than four hours. Along with documents, CBSA also seized data from the Plaintiff's laptop. Amongst this information, they found evidence that other Lattice devices had been exported, the specifications of which they forward to Liska to include in his report.

50. Simultaneously on the morning of February 13, 2009 an additional nine CBSA officers executed the Apex business premise search warrants, later joined by four

more CBSA officers. During the course of the execution of these warrants Varga interviewed Apex employees regarding the criminal allegations.

51. On March 16, 2009 Liska wrote to Varga, Goodinson and Schonfeld to note that the Lattice open source specification sheets upon which his opinion relied:

> "... include a disclaimer that '*The specifications and information herein are subject to change without notice.*' ***Lattice Semiconductor Corp*** *(Oregon, US) and Maxim Integrated Products (California, US)* ***should be contacted to verify the open source specification sheets (attached) accurately reflect the integrated circuits exported.***" [emphasis added].

52. At that time Liska again made no mention of the Lattice open source specification sheet disclaimer respecting the operating temperature characteristics of the components.

53. On May 13, 2009, production orders were issued requiring United Parcel Service ("UPS") and Federal Express Canada ("FEC") to produce export and/or import records for Apex. These documents were provided to CBSA on June 26, 2009. Lattice voluntarily provided documentation and correspondence pertaining to sale of Lattice products to Apex and/or the Plaintiff at the request of CBSA.

54. On May 29, 2009, in the wake of the financial crisis that had commenced in September, 2008, the Bank of Montreal ("BMO") placed Apex Canada into receivership.

55. On September 24, 2009, production orders requiring BMO and the HSBC Bank Canada ("HSBC") to produce banking records relating to Apex, CCS, Tolo-Pacific Consolidated Industries Corporation ("Tolo-Pacific"), AMFD, Allandy Consulting Ltd., and Anchors Alpine Promotions Ltd were issued. Varga received the HSBC records on October 8, 2009 and the BMO records on October 30, 2009. Following review of the HSBC records, on Oct 15, 2009 Varga successfully applied for a second production order requiring HSBC to produce additional records.

VI THE FAILURE TO ASSESS OR RE-ASSESS THE PREMISES OF THE ALLEGED CRIMINALITY PRIOR TO THE SWEARING OF CHARGES

56. Between March 2009 and January 2010 Varga interviewed many employees of Apex Canada. At some point in time during that period Varga forwarded a Report to Crown recommending criminal charges against the Plaintiff, his daughter, Cynthia-Gale Watson, the CEO of Apex, and against the corporate entities Apex and CCS.

57. On January 27, 2010 Varga emailed Liska to advise:

> *"The Apex-Micro Manufacturing Corporation/Caliber Solutions/ Steven de Jaray case arising out of Detention 8211-08-0229 has been submitted to Crown Counsel for charge approval. This has turned out to be a fairly significant case. We are recommending charges in relation to the Lattice integrated circuits that required Individual Export Permits. We are going to ignore the rest of the items in the shipments to simplify the case. In addition to the items seized, we have evidence from search warrants that many more shipments were illegally exported from Canada. Our evidence shows that the exports totaled at least 157,000 integrated circuits valued at least $3.2 Million UDS...*
>
> ***Crown would like to know exactly what you did in arriving at your conclusions, whether you conducted any tests on the items, what was referenced, how and why the items fall** under **the ECL item that they do, etc. They basically want a play-by-play so the lay person can understand what happened and why. Crown is withholding charge approval pending your report.**"* [emphasis added]

58. On January 27, 2010 Liska replied:

> *"1. We will put together the standard package we have for other prosecution cases and rout it through our legal department as soon as possible for forwarding to the appropriate DoJ contact.*

59. In consequence, on February 1, 2010, Liska emailed CBSA internal legal officers Shelly MacInnis ("MacInnis") and Isabelle Ranger ("Ranger") as follows:

> *"CBSA Investigations has submitted their case to Crown Counsel for charge approval. The Crown has requested my C.V. and a detailed examination report and determination of the control status of the components.*

> ***Over the last 9 months CBSA has conducted the investigation on their own. This has not been a co-operative approach as we have developed with the ongoing RCMP investigations. The assessment report is based upon open source information rather than certified documentation from the manufacturer.***"[underlining and emphasis added].

60. On February 2, 2010 at 11:16 a.m. MacInnis replied:

> *"I cannot comment on the substance of this assessment (way beyond my Grade 12 physics capabilities!(), but my comments on the format of the assessment are as follows:*
>
> *(1) It would be helpful for the Crown prosecutor in this case if you could include a Conclusion Summary paragraph right up front in the document (with separate heading) which would clearly state that, e.g. 'They are controlled, and it is under ECL item number xyz.' This would then be followed by the supporting analysis which lead you to that conclusion;*
>
> ***(2) It would be helpful to explain further the consequences of TIE's actual physical examination of the goods, and the limitations associated with that****... I would also recommend that you name the TIE officers who conducted the physical examination of these goods."* [emphasis added]

61. On February 2, 2010 11:30 a.m. Liska replied to DFAIT Legal:

> *"**The other point is that the assessment is based on open source info which has the disclaimer on change. CBSA did not provide definitive spec sheets from the original US manufacturer or any definition of the capabilities of the goods from the US manufacturer."*** [emphasis added]

62. Notwithstanding Liska's own awareness of both the limitations of his opinion (uncorroborated and unconfirmed internet data subject to change and no "definition of the capabilities of the goods from the US manufacturer") and the fact that his opinion would be utilized as a basis for the laying of criminal charges, on February 3, 2010 he reported to DFAIT Legal:

> *"I have updated the first section based on Shelly's comments. TIE Analysis section has not changed. I have drafted it in way to allow CBSA to choose which scenario applies. If CBSA believes they have strong evidence to suggest the devices were 'non-programmed' then the "Non-Programmed PLD scenarios applies. If the devices were 'Programmed' then we need more data to assess. I have also added the*

analogy to a blank CD versus a CD with Microsoft Office." [emphasis added]

63. On February 4, 2010 DFAIT Legal's MacInnis replied to Liska:

> *"Give us a call if you want to discuss this document further. I think that is now much clearer. We have made a few additional track changes revisions to the document but you may need to revise these further. On page three for example,* ***I thought it was necessary to spell out for the reader what "use" you are hypothesizing that these PLDs could be put to owing to their greater ability to withstand temperature changes then what was observed in the open source material. If we have described this hypothesis incorrectly then please correct as necessary****.*
>
> *Otherwise, I think that it is ready to send on to the Crown counsel and to CBSA for their review."* [emphasis and underlining added]

On that same day Liska forwarded his February 4, 2010 report (the "Second Liska Report") to Varga.

64. On April 27, 2010 Liska responded to a request by Varga to clarify his report as follows:

> *"I am revising the report to reference your email of 19 Apr 2010 regarding your confirmation 'that the lab analysis (meaning CBSA or third party on behalf of CBSA) of the Lattice components examined by your (meaning TIE) office shows that the components with part numbers CAL22V10D-15LD/883 (5962-8984103LA) and ispl SII048C-50LG/883 (5962-9558701MXC) are unprogrammed'.*
>
> *For all of the other devices that were allegedly exported (based on the CBSA investigation of the company records) these devices were never detained or examined and as such the report for these devices must remain as originally drafted. Is CBSA able to make any definitive statements on the 'programmed' / non programmed' status of these other alleged shipments which could be reference in the next report or is this based on employee statements?"*

65. On that same date Varga responded:

> *"I have attached the lab report for your reference if you wish. The other devices were from historical shipments so they were never detained or analyzed. I understand that the assessment will remain the same for them.* ***We will address the alleged status of these devices through evidence from the manufacturer and witnesses****.* [emphasis added]

66. Finally on April 27, 2010 Varga separately emailed DFAIT Legal officers MacInnis and Ranger as follows:

> *I spoke to Pat Liska a couple of weeks ago to advise him that the lab testing showed the components in our case were un-programmed. He said they will update the attached Assessment accordingly. The case has been forwarded to PPSC for review and they have indicated that they will approve charges.* ***Are they [sic] any concerns from FAITC Legal Services before charges are laid?***"[emphasis and sic added]

Notwithstanding their correspondence with Liska on February 4, 2010 MacInnis replied:

> *"****No concerns Kevin****. You may wish to attach the results of the laboratory analysis as an Annex to Pat's Technical Assessment. Pat we would be happy to provide comments on the updated Assessment if you wish. Thanks for consulting us."* [emphasis added]

67. On April 29, 2010 Information 54755-1 was sworn by Varga charging the Plaintiff and his daughter with violation of EIPA s. 19 and the *Customs Act* s. 160 and confirming that the Crown had elected to proceed "By Indictment". When prosecuted by indictment the punishment for violation of EIPA is a maximum of 10 years imprisonment and for violation of s. 160 of the *Customs Act* the maximum punishment is 5 years imprisonment.

68. On May 6, 2010 Liska responded to Varga with amendments to the Second Liska Report and forwarded his last report on that date (the Third Liska Report").

69. On May 28, 2010 the CBSA released a press release announcing the fact that charges had been laid against the Plaintiff and his daughter on April 29, 2010. The press release emphasized the maximum sentence that could be imposed and that in proceeding with their charges CBSA and DFAIT were exercising their responsibility to control "the export of strategic and dangerous goods" and that CBSA's work in tandem with DFAIT "enhances the CBSA's ability to detect illegal exports and prevent threats to international security". Continuing, Neil Galbraith, the Director of CBSA's Criminal Investigation Division, emphasized:

> *"Canada has a responsibility to ensure that goods entering the international market from Canada do not pose a threat to international peace and security."*

70. On September 21, 2010 the Plaintiff and his daughter both elected to be tried in the Provincial Court of British Columbia and a four week trial was scheduled to commence on October 11, 2011.

VII CIRCUMSTANCES LEADING TO THE STAY OF PROCEEDINGS

71. On March 21, 2011, the EIPA consulting firm, Canadian Export Consulting Services ("CECS"), led by the former Deputy Director (Technology) of the DFAIT Export Controls Division, provided an opinion to the Plaintiff's criminal defence counsel that the seized devices were not subject to the Guide and WA and therefore were not subject to the EIPA prior permit requirements. After providing detailed analysis the report concluded in summary:

> Both the GAL22V10/883 and the ispl SI 1048C/883 PLD's are not specially designed for military use. Further, the parameters as described in the open source documentation are not within those outlined in Canada's Export Control List. **There is no reference to functional operability at ambient temperatures (Ta), where Ta = -55°C to +125°C, and, in fact, there is a disclaimer in both data sheets to operability at and within those temperature ranges.** Therefore, one cannot assume these devices are controlled under 1-3.A.1.a.2.c. of Canada's Export Control List.
>
> For the foregoing reasons, it is our opinion that the GAL22V10/883 and the ispl SI 1048C/883 PLD's **are not enumerated in the ECL and consequently not controlled."** [emphasis added]

72. On April 18, 2011 the Plaintiff's defence counsel provided the DPP with the CECS report along with submissions that as the devices were not subject to the Guide or the WA no permit was ever required pursuant to the EIPA. The Plaintiff's defence counsel submitted that as no *actus reus* had ever occurred the prosecution of the Plaintiff and his daughter should be terminated forthwith.

73. On June 14, 2011 the Plaintiff's defence counsel and counsel for the DPP appeared before Fratkin J. in Richmond Provincial Court. At that time the

Plaintiff's defence counsel outlined that the submissions referred to in para 72 had been made. Counsel for the DPP then advised the Court that in light of the CECS report the DPP had sought a report from the manufacturer, Lattice, related to the operating characteristics of the seized devices (the "Lattice Report") and that the DPP expected to receive the Lattice Report by the end of July, 2011. Based upon this advice Fratkin J. directed that the criminal pre-trial conference be adjourned to August 8, 2011.

74. On August 4, 2011, having received the Lattice Report, Crown counsel directed that all of the criminal charges against the Plaintiff and his daughter be stayed.

VIII THE DEVASTATING EFFECT OF THE EXECUTION OF SEARCH WARRANTS BASED UPON THE NEGLIGENT REPORT

75. The Plaintiff was in his home on February 13, 2009 when the CBSA and West Vancouver Police arrived to execute the search warrant. As the Plaintiff's home at 5730 Seaview Road was located directly opposite the Eagle Harbour Yacht Club a number of the Plaintiff's fellow club members and others in the community observed the fact that a very robust search was being conducted by a large and heavily armed search team for many hours. In this small community execution of a police warrant on one of the members of the community immediately became a matter of vicious gossip and rife speculation as to the nature of the Plaintiff's criminal conduct. These rumors and community fears soon spread to the Plaintiff's larger West Vancouver social community and ultimately to the Vancouver business community. The follow on innuendo and rumors humiliated and profoundly embarrassed the Plaintiff in all of his relationships.

76. The February 13, 2009 military style search of Apex's business premises for an entire day shut down its business operations and traumatized its employees. The fact of the Apex search spread to the electronics industry and to Apex's customers and competitors like wildfire. Competitors spread rumors. Customers cancelled contracts. Critical employees soon left, some to join competitors.

77. When the BMO called its loans in May, 2009 and then appointed a receiver over Apex less than 90 days after the search warrants were executed the Plaintiff's ability to successfully raise alternative debt or additional equity financing in order to address the BMO's financial demands was compromised as the fact of the execution of the search warrant was known and, in any event, the Plaintiff himself would have been subject to a duty to disclose to any potential lender or investor that he was the subject of a criminal investigation.

78. Although the 2008 global recession impacted Apex's customer base and thus Apex's supply contracts, revenues and receivables, any hope for Apex's sustainability was extinguished by the commercial and reputational impact of the execution of the search warrants.

79. And although the Plaintiff and his wife of 31 years had separated prior to the execution of the search warrants the fact that the warrants had been executed inhibited any prospect of reconciliation. In turn, the Plaintiff's relations with his children, particularly including his daughter, were strained by the negligent criminal investigation.

IX THE DEVASTATING EFFECT OF THE SWEARING OF CHARGES AND THE ISSUANCE OF THE PRESS RELEASE

(a) The Destruction of Footstone Jive, California St. Winery Limited

80. During 2009 the Plaintiff came to accept that his career as an electronics manufacturer, in an industry dependent upon trust and where the business success of customer (OEM) and supplier (EMS) were deeply intertwined, had been permanently damaged by the criminal investigation. In order to attempt to build a new life and career the Plaintiff attempted to establish a winery and distillery under the brand name Footstone Jive Winery in Jacksonville, Oregon.

81. In pursuit of a new life in late 2009 and early 2010 the Plaintiff turned his attention to Footstone and invested heavily in the development of the Footstone business plan, the hiring of staff, the creation of unique branding and the

manufacture of custom bottles, the negotiation of fruit supply and distillation contracts, the leasing of premises and the application for and compliance with the regulatory requirements related to the Oregon liquor licensing regime and the federal Tax and Tobacco Bureau (TTIB) requirements. On May 20, 2010 the Footstone business plan had been reported by the media and the first 5,000 cases of wine were under production by contract wine producers. By that time the TTB had already issued the required federal license and the Oregon Liquor Control Commission (the "OLCC") had already preliminarily approved the issuance of the required state winery/distillery license subject to local approval by Jacksonville City Council ("JCC"), which had already issued a general business license for Footstone's business operations. On May 22, 2010, the Jacksonville media warmly profiled Footstone's business plan in an article under a headline:

> "A vision of wine greatness: A Canadian investor plans to create a winery in Jacksonville to sell vintages made with Rogue and Applegate Valley grapes in big-city markets".

82. When the charges against the Plaintiff were announced by the CBSA press release on May 28, 2010 the OLCC's application to the JCC for local endorsement of Footstone's winery/distillery license was pending approval at an upcoming June 15, 2011 JCC meeting. In consequence of the press release on May 29, 2010 media outlets in Jacksonville published the contents of the CBSA press release, in part, as follows:

> *"New winery owner facing charges over technology exports*
>
> *May 29—The owner of the recently announced Footstone Jive Winery in Jacksonville is one of two West Vancouver, B.C. residents charged this week with trying to export technology that might have military applications, according to Canada Border Services Agency,"*

Media reports continued by emphasizing the content of the CBSA's press release including reference to the maximum sentence that might be imposed in the event of conviction.

83. The publication by employees of the Crown within the CBSA of the negligent press release and its re-broadcast in Jacksonville, Oregon had a devastating and immediate effect upon Footstone's JCC license endorsement application. On June 15, 2010 the JCC voted not to endorse Footstone's OLCC license application explicitly citing concerns arising from the then pending criminal charges. But for the negligent investigation by the servants of the defendant, it was reasonably expected that the endorsement of the JCC would have been issued in the normal and routine course of such matters in Oregon. Media reporting of the JCC's refusal of the endorsement on June 15, 2010 wryly noted that on that same day the Plaintiff and his daughter were scheduled to appear in Richmond Provincial Court to answer to the criminal charges that had been laid.

84. After unsuccessful appeals to the OLCC itself to critically assess the underlying merits of the April 29, 2010 charges, Footstone and the Plaintiff sought to mitigate their losses by a variety of means. Ultimately, the nearby city of Medford, Oregon endorsed Footstone's reapplication for an OLCC wholesaler license and for a consequent export license that would permit Footstone to export its already manufactured wines As the business plan to establish a winery and distillery had been frustrated by the negligent press release, once the exports of its already manufactured wines had been effected, Footstone was shut down. In the result the Plaintiff suffered an almost complete capital loss of his investment in time and money in Footstone as well as Footstone future profits as a direct and immediate effect of the negligent DFAIT and CBSA investigation, including the negligent press release.

(b) *The Collapse of the Plaintiff's Family Life*

85. The swearing and announcement of criminal charges against both the Plaintiff and his daughter led the Plaintiff's wife to sever all contact with him and he became estranged from his daughter and son. Compounding the tragedy, during the summer of 2010, the Plaintiff's wife was reafflicted with a prior cancer that had remitted in 2006 and to which she succumbed in December, 2010.

86. Following on the June, 2010 destruction of the Plaintiff's efforts to re-establish a business in Oregon and the tragedy to his family life caused by the negligent investigation, charges and press release in September 2010 the Plaintiff retained Vancouver criminal defence counsel to defend against the criminal charges and then moved abroad.

Part 2: RELIEF SOUGHT

1. By reason of the negligent investigation described in this Claim, the Plaintiff has suffered damage to his person, dignity, family relations, reputation and economic interests, including loss of income, loss of income earning capacity, and loss of share value. He has suffered mental anguish, embarrassment and humiliation. Some of his businesses have collapsed. He has been prevented from entering into and attending to new business ventures. He has been put to substantial expense in defending himself against the criminal charges.

2. As a result of the Defendant's negligence, the Plaintiff has suffered loss and damage and is entitled to an award of general, special, and aggravated damages including in relation to his time and his capital investment in Footstone and to its future profits.

WHEREFORE the Plaintiff claims:

(a) General damages for pain, suffering, humiliation, embarrassment, loss of dignity, mental anguish, harm to reputation and damage to family relations;

(b) General damages for loss of income, and loss of income earning capacity;

(c) General damages for loss of share value in Footstone.

(d) Special damages, including the legal costs of defending the prosecution, and the costs associated with relocating his life abroad;

(e) Aggravated damages;

(f) Interest pursuant to the *Judgment Interest Act;*

(g) Such further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. At all material times, there was a close and direct relationship between, on the one hand, the Crown and its servants working for the CBSA and DFAIT, and on the other the Plaintiff, such that the defendant ought to have had the Plaintiff in mind as a person who would be harmed by negligence in the investigation described in this Claim. The Plaintiff was a particularized suspect with a critical personal interest in the conduct of the investigations. At stake were his freedom, his reputation, his business, his livelihood, and the course of his future life. Accordingly the defendant owed the Plaintiff a duty of care, and in particular a duty to investigate without negligence.

2. In the alternative, the said duty of care was owed to the Plaintiff by DFAIT's Liska, Schonfeld, MacInnis, Ranger and Goodinson (the "DFAIT employees"), and by CBSA's Varga, and his CBSA Criminal Investigation Division supervisors, including Galbraith (the "CBSA employees"), and the defendant is vicariously liable for the negligence of these Crown servants, and in this regard the Plaintiff pleads and relies upon s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

3. Particulars of the negligence of the DFAIT employees include:

The First Liska Report

(a) relying solely on specification sheets obtained off the internet without verifying their currency and accuracy and without verifying their correct interpretation with the manufacturer Lattice;

(b) failing to properly read the specification sheets including the disclaimer contained therein;

(c) inferring from the Lattice stamps on the seized devices that they "would be qualified to the military standard Mil-Std-883" without investigating or assessing whether or not that standard in any way addressed the EIPA Guide criteria that the seized devices be "rated for operation over the entire ambient temperature range from 218K (-55C) to 298K (+125C)" before being subject to permit as described in paras 34 and 35 of this Claim.

(d) failing to investigate, either reasonably or at all, the Plaintiff's representations described in paras 36 to 38 of this Claim that the seized devices did not have the operating temperature characteristics described in his correspondence with Schonfeld and in the First Liska Report prior to providing CBSA with an opinion that the seized devices were subject to the permit requirements of the EIPA;

(e) failing to make inquiries with Lattice Semiconductor Corporation as to the actual operating temperature characteristics of the seized devices being exported by CCS.

The Second Liska Report

(f) having notified Varga and his CBSA colleagues, as described in para 51 of this Claim, that the Lattice internet specification sheets explicitly stated that they were subject to change Liska failed to emphasize the same specification sheet's footnote disclaimer as to the limitations of the seized devices' operating temperature to all persons who he knew were then carrying out a criminal investigation of the Plaintiff;

(g) failing to address the deficiencies set out above in paragraphs (a) to (e);

(h) failing to meaningfully respond to the DPP's request for a detailed explanation as to why Liska believed that the seized devices were subject to the Guide as had been explicitly requested by the DPP as described in para 57 of this Claim;

(i) failing to refuse to ratify and reissue the Second Report without having been provided with "certified documentation from the manufacturer" as described in para 59 of this Claim;

(j) failing to refuse to ratify and reissue the Second Liska Report without having been provided with "any definition of the capabilities of the goods from the U.S. manufacturer" related to the operational capacities of the seized devices as described in para 60 of this Claim;

(k) adding inflammatory and speculative language to his report related to the potential military uses of the seized devices;

(l) issuing, and in the case of MacInnis and Ranger, permitting Liska to issue his Second Report based upon uncorroborated and unsubstantiated hypothesis known to DFAIT to be inconsistent with the uncertified internet Lattice specification sheets available to all DFAIT officials as described in para 63 to 67 of this Claim;

The Third Liska Report

(m) even following the swearing of criminal charges further reissuing the Liska Third Report without suggesting or insisting that all relevant Crown servants stop to reassess whether or not there was any, or any sufficient, evidence in support of the DFAIT opinion that the seized devices were subject to the WA, the Guide and the permit requirements of EIPA;

(n) failing to address the deficiencies set out above in paragraphs (a) to (e); and

(o) such further particulars as counsel may advise.

4. Particulars of the negligence of CBSA employees include:

(a) failing to investigate, either reasonably or at all, the Plaintiff's representations that the seized items did not have the operating

temperature characteristics described by the Liska Reports prior to seeking and executing search warrants and prior to swearing criminal charges and publishing the press release related to the charges;

(b) notwithstanding explicit notice from Liska and DFAIT that the manufacturer should be contacted, failing to make inquiries with Lattice as to the operating temperature characteristics of the devices being exported by CCS before alleging that the Plaintiff and his daughter had committed crimes;

(c) relying solely on specification sheets obtained off the internet without verifying their currency and accuracy and without verifying their correct interpretation with the manufacturer Lattice;

(d) failing to properly read the specification sheets including the disclaimer contained therein;

(e) obtaining the search warrants without having made the investigations referred to above in subparagraphs (a) and (b) and without advising the Justice of the Peace that such investigations had not been made; and

(f) such further particulars as counsel may advise.

5. The negligent investigation by the defendant and its employees as set out herein caused the damages described above in Part 2 of this Notice of Civil Claim.

6. In addition to the duty not to conduct a negligent investigation and in the alternative to the Plaintiff's claim that the negligent investigation caused the publication of the press release, the Crown and its servants owed the Plaintiff a duty not to publish the Press Release negligently. The Crown servants responsible for the publication of the Press Release, including Galbraith and others who are not known to the Plaintiff, knew or ought to have known that its publication would lead to, *inter alia,* humiliation, embarrassment, loss of reputation, and economic loss to the Plaintiff, which it did.

7. Particulars of the negligent publication include:

(a) failing to investigate, either reasonably or at all, the Plaintiff's representations that the seized items did not have the operating temperature characteristics described by the Liska Reports prior to publishing the press release;

(b) failing to make inquiries with Lattice Semiconductor Corporation as to the operating temperature characteristics of the products being exported by the Plaintiff;

(c) failing to investigate, either reasonably or at all, whether in fact the products being exported by the Plaintiff were otherwise generally available worldwide, or effectively controlled by other parties to the WA, factors relevant to whether their export was a "threat to international peace and security";

(d) failing to investigate, either reasonably or at all, whether in fact the Plaintiff knew that the products being exported were being put to any military use or posed a "threat to international peace and security";

(e) failing to investigate, either reasonably or at all, whether in fact the products being exported by the Plaintiff were "strategic and dangerous goods" or "dual use goods" with "significant military application";

(f) failing to investigate, either reasonably or at all, whether in fact the Plaintiff knew that the products being exported were "strategic and dangerous goods" or "dual use goods" with "significant military application";

(g) using words in the Press Release which the said Crown servants knew or ought to have known would lead to an imputation which they knew or ought to have known could not be supported on the facts then available to them. Particulars of that imputation include:

(i) that the Plaintiff's conduct in exporting the products was a threat to international peace and security;

(ii) that the Plaintiff was acting, in effect, as a dealer of arms or at least military equipment;

(iii) that the Plaintiff knew he was engaging in criminal activity.

8. The defendant is vicariously liable for the negligence of its servants, including Neil Galbraith and others whose identity is presently unknown to the Plaintiff, in authoring and publishing the Press Release.

Plaintiff's address for service: c/o Martin & Associates, #760 – 1040 West Georgia Street, Vancouver, BC V6E 4H1

Fax number address for service (if any): (604) 682-4209

E-mail address for service (if any): reception@martinandassociates.ca

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: November 3, 2011

David J. Martin
Counsel for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Action for damages arising from negligent criminal investigation.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[x] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[ ] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[*Check all boxes below that apply to this case*]

[ ] a class action

[ ] maritime law