

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	14 Jul 2021	
Wayne Sawtell		
Ottawa, ONT	1	

Court File NO. T-1105-21**FEDERAL COURT OF CANADA**

BETWEEN:

Ryan FLARO, Gabrielle BERGERON and Maurice FLARO

Plaintiffs

-and-

HER MAJESTY THE QUEEN in right of Canada

Defendant

STATEMENT OF CLAIM**TO THE DEFENDANT:**

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a Statement of Defence in Form 171B prescribed by the Federal Court Rules, serve it on the plaintiffs solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court. WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: 07/14/2021

Issued by: _____
(Registry Officer)

Address of local office:
Thomas D'Arcy McGee Building 90 Sparks
Street, Main Floor Ottawa, Ontario
K1A 0H9

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Deputy Attorney General of Canada 284 Wellington Street
Ottawa, Ontario K1A 0H8

CLAIM

1. The Plaintiffs claim against the Defendant:
 - (a) a declaration that the Defendant is unlawfully detaining the sum of \$181,183.00 that rightfully belongs to the Plaintiffs, to be apportioned among the Plaintiffs as \$150,844.00 in favour of Ryan Flaro, \$3,539.00 in favour of Gabrielle Bergeron, and \$26,800.00 in favour of Maurice Flaro;
 - (b) an order for the return and restitution of the \$181,183.00 detained by the Defendant to the Plaintiffs, to be apportioned among the Plaintiffs as \$150,844.00 to be returned to Ryan Flaro, \$3,539.00 to be returned to Gabrielle Bergeron, and \$26,800.00 to be returned to Maurice Flaro;
 - (c) in the alternative, damages in the amount of \$181,183.00 payable by the Defendant to the Plaintiffs, to be apportioned among the Plaintiffs as \$150,844.00 payable to Ryan Flaro, \$3,539.00 payable to Gabrielle Bergeron, and \$26,800.00 payable to Maurice Flaro;
 - (d) pre-judgment and post-judgment interest pursuant to the provisions of the *Federal Courts Act*, R.S.C. 1985, c. F-7 on all amounts awarded;
 - (e) costs of the action in an amount and on a scale to be determined by the Court in the exercise of its discretion in the circumstances; and
 - (f) such further and other relief as this Honourable Court may deem just.
2. The monetary relief claimed, exclusive of interest and costs, exceeds \$50,000.00. The value of the property sought to be recovered is \$181,183.00. The action is not being proceeded with as a simplified action.

THE PARTIES

3. The Plaintiffs are a family unit of Ryan Flaro and Gabrielle Bergeron, legally married spouses, and Maurice Flaro, the father of Ryan Flaro. All three reside together at a single family residence located at 20262 County Road 2, South Glengarry, Ontario (the Residence). They have resided there prior to 7 July 2010 when the events in this matter first arose.
4. The Defendant includes (though not named as separate parties according to the *Federal Courts Act*) the Attorney General of Canada and the Minister of National Revenue, who were through their agents the primary actors in the events giving rise to this action.

MATERIAL FACTS

a. Seizure and Detention by RCMP of Funds from Plaintiffs

5. On 7 July 2010 as. 487 *Criminal Code*, R.S.C. 1985, c. C-46 search warrant, which had been issued to Constable James Ritchie of the Royal Canadian Mounted Police by Justice of the Peace Chiand, was executed at the Residence of the Plaintiffs. A variety of items were seized from the Residence and the persons of the Plaintiffs at the time of the search, including \$181,183.00 in cash (the Seized Funds), and two legal-to-possess hunting guns. The Seized Funds were located as \$150,000.00 (over which the Plaintiff Ryan Flaro asserted an ownership interest) and \$25,000.00 (over which the Plaintiff Maurice Flaro asserted an ownership interest), some of which was located in a safe in the Residence, \$844.00 on the person of the Plaintiff Ryan Flaro, \$1,800.00 on the person of the Plaintiff Maurice Flaro, \$2925.00 and \$583.00 U.S. (\$614.00 Canadian equivalent using Bank of Canada exchange rates on that date of seizure) from the purse of the Plaintiff Bergeron.
6. Although the search warrant may have been of questionable legal validity, its validity was never challenged in court, and thus the seizure was presumptively valid. Although the Information to Obtain the Search Warrant executed against the Residence only alleged an offence under the *Excise Act, 2001*, S.C. 2002, c. 22, for unknown reasons investigators

apparently elected not to proceed to seek a warrant under s. 258 of the *Excise Act, 2001*, despite that being the Act under which they were alleging offences had been committed and for which there was allegedly evidence at the Residence.

7. Constable Denis Giroux of the Royal Canadian Mounted Police eventually filed a s. 489.1 *Criminal Code* Report to Justice confirming that the search of the Residence had been conducted pursuant to the warrant, that "I have seized the following things and detained them at Cornwall RCMP Detachment Exhibit Vault, 501 Tollgate Road East, Cornwall, Ontario" and that "Charges were laid on 2010-07-07 in relation to this investigation and are pending before the Courts." Those charges against all the Plaintiffs involved *Excise Act, 2001* offences, plus unsafe storage of a shotgun and ammunition, and possession of property obtained by crime under the *Criminal Code*.
8. By operation of the law, s. 490 of the *Criminal Code* thereafter applied to the detention of Seized Funds. There was never and remains no dispute over ownership of the Seized Funds. The Plaintiffs have from the time of the seizure asserted their ownership rights to the Seized Funds, no third-party ever asserted any rights, and the Crown never disputed that ownership of the Plaintiffs. The Plaintiffs have likewise since the time of seizure of the Seized Funds offered reasonable explanations for their legitimate origins. The Plaintiff Ryan Flaro operates Flaro Developments Inc., a property development company, and his wife Gabrielle Bergeron operates Hair Secrets Salon.
9. The expectation of the Plaintiffs and requirement of the law was that all things seized were to be returned to the persons from whom they were seized at the conclusion of legal proceedings, unless an order of forfeiture concerning specific things had been issued by a competent court of law, or a third-party had initiated legal proceedings asserting ownership rights in the seized things. There was never any forfeiture order issued by any court (or even sought by the Crown) concerning the Seized Funds. Likewise, no third-party ever made any competing claim over the Seized Funds. The Seized Funds also do not fall into any of the very limited exceptions to the legal requirement for return of seized items at the conclusion of a case, for example perishable items (whose proceeds

would still need to be returned to the rightful owner after sale) or inherently illegal items like certain narcotics where any possession would be unlawful.

10. The Seized Funds were detained for approximately 3 ½ years while the proceedings concerning the Plaintiffs were before the courts. All of those charges against the Plaintiffs were ultimately dismissed by the Court, pursuant to the Judgment of Justice Pelletier of the Superior Court of Justice for Ontario, dated January 20th 2014 (the “Dismissal”).
11. Prior to issuing his Dismissal, and following lengthy in camera proceedings which were held outside the presence of the Plaintiffs and/or their legal counsel, Justice Pelletier had issued a disclosure order (the “Disclosure Order”) on April 18th 2013:

(1) The Court’s review of the disclosure sought by the Applicant reveals the following legitimate earnings:

- *Between 1996 and 2010, the Applicants received multiple payments totalling \$146,550.00.*

(2) All payments made in cash denominations of \$10.00, \$20.00, \$50.00 and \$100.00

b. Unlawful Refusal of Crown to Return Seized Funds

12. Contrary to the expectations of the Plaintiffs, the Seized Funds were not returned to them at the conclusion of the proceedings, following the Dismissal. When the Plaintiffs’ solicitor Maurice Gatien wrote to the Federal Crown Prosecutor James Meloche seeking return of the Seized Funds, the Crown responded by letter on 4 April 2014 (less than 90 days after the conclusion of the court proceedings):

In regard to monies seized by police following the execution of a search warrant against the above-named accused, it is my understanding that custody of the seized monies was transferred to Canada Revenue Agency for forfeiture in accordance with section 267 and related provisions of the Excise Act, 2001.

Notices of seizure under the Excise Act, 2001 was provided to all accused shortly after their arrest. My understanding is that any discussions about the return of the monies

is now separate from the criminal matters and will need to be done independently with officials from the Canada Revenue Agency.

13. Section 267 of the *Excise Act, 2001* which the Crown's agent Mr. Meloche referred to in his 4 April 2014 letter simply states: "*Subject to the reviews and appeals provided for under this Act, anything by means of or in relation to which a contravention under this Act was committed is forfeit to Her Majesty from the time of the contravention.*" No Canadian court or other body has ever made a finding of a proven contravention under the *Excise Act, 2001* related to the Seized Funds, and thus contrary to Mr. Meloche's assertions, s. 267 of the *Excise Act, 2001* provides the Crown with no statutory or other assistance in retaining the Seized Funds.
14. At the direction of the Crown's agent Mr. Meloche, the solicitor for the Plaintiffs Maurice Gatien next wrote to the Canada Revenue Agency requesting return of the Seized Funds for his clients. On 25 April 2014 the Canada Revenue Agency responded by letter claiming that the Plaintiffs only had 90 days from the date of seizure to request a decision of the Minister concerning return of the Seized Funds. The response bluntly stated: "*Your request is denied.*" The CRA letter further claimed: "*Please note this matter is a civil matter and not a criminal procedure. Whether or not criminal charges are laid is unrelated to the case at hand or for any cases for that matter. Criminal proceedings and civil proceedings are separate and distinct. In other words, the outcome of the criminal proceedings does not influence the civil matter.*" The letter appeared ignorant of the Crown's obligations under the *Criminal Code* concerning custody and care of seized things after seizure pursuant to a s. 487 *Criminal Code* search warrant, as was utilized in the present case to seize and detain the Seized Funds. The letter likewise appeared ignorant of the fact that there were never any "civil proceedings" pending against the Plaintiffs or the Seized Funds.
15. The 25 April 2014 letter from the Canada Revenue Agency to the Plaintiffs' solicitor further cited s. 271 of the *Excise Act, 2001* as its authority for a 90 day request for a decision time limit. However, s. 271 only applies according to the language of that

section to where "a penalty was imposed in error under section 254 or a thing was seized in error under section 260" of the Act. There never was any penalty imposed in the present case under s. 254 of that Act, and likewise there can never have been any seizure conducted under s. 260 of that Act as that section relates to solely seizures incident to "Inspections." Here a *Criminal Code* search warrant was the tool used by the Defendant to secure the Seized Funds.

16. The Crown in its actions concerning the Plaintiffs and their lawful property appeared to take the position that it could use a criminal investigation tool to seize evidence, initiate proceedings in a criminal court which required continued custody of that evidence, but then later claim that the evidence was seized pursuant to civil and not criminal authority, and in fact had been forfeited to the Crown years prior to the conclusion of the criminal proceedings, without any notice of pending or actual forfeiture having ever been given to the Plaintiffs.
17. An initial claim was filed with the Federal Court in Docket Number T-113-16, which ultimately was dismissed, due to the lapse of time. The Plaintiffs successfully appealed this dismissal to the Federal Court of Appeal, under Docket Number A-106-18, pursuant to which the Minister was to render a further Minister's decision. Following a lengthy delay, a new Minister's decision was issued on April 16th 2021 (the "April 16th 2021 Ministerial Decision"), pursuant to which the Minister's representative Jocelyn Danis ("Danis") stated the following:

The Minister of National Revenue has carefully reviewed the documentation and representations pertaining to the seizure of \$180,600 Canadian currency and \$583 US currency and has concluded that there has been a contravention under Section 32 of the Excise Act, 2001 (the Act) on which the seizure was based. As a result, the Minister will confirm the seizure pursuant to paragraph 275(2)(a) of the Act."

c. *Liability of Crown for Seized Funds and Obligation to Return or Pay Damages*

18. No other legal means were available to the Plaintiffs to secure return of the Seized Funds.

as during the four years of pending proceedings against the Plaintiffs the Defendant was subject to s. 490 *Criminal Code* authority to detain the Seized Funds, but thereafter when all charges had been dropped the Defendant claimed the Seized Funds had essentially been forfeited four years previously without any court application ever having been brought under the *Criminal Code* or any statute for such forfeiture. There was never any decision taken by any Government of Canada agency, board, tribunal or court in the present case for which a review could be sought. Nor was there any court decision in the matter which could be appealed (other than the prior action and related appeal). The Plaintiffs were therefore left with resorting to the civil action against the Crown to recover their property, under Docket T-113-16.

19. Following the more recent April 16th 2021 Ministerial Decision, the Plaintiffs are now forced to resort to this civil action.

20. The Defendant owed and continues to owe a duty of care to the Plaintiffs when seizing the Seized Funds and safeguarding them post-seizure. There are no policy considerations which would negate the creation of a duty of care in the present case. The Defendant also owes a fiduciary duty to the Plaintiffs, as well as duties of good faith and fair dealing. The Defendant was essentially acting in the role of a trustee when it took possession of the Seized Funds, with the beneficiaries of the trust being the Plaintiffs. The Defendant took no action to lawfully terminate the trust, and the operation of the law continues the trust until this day. The Plaintiffs have since the conclusion of legal proceedings been requesting of the Defendant that the trust relationship is at an end and that therefore the Defendant should fulfill its fiduciary duty of restoring the Seized Funds to the Plaintiffs. The Defendant has therefore breached its duty of care, its fiduciary duty, its duty of good faith, its duty of fair dealing, and committed a civil breach of trust by retaining the Seized Funds without lawful authority. The Defendant is also in breach of its statutory duties under the *Criminal Code* and the *Excise Act, 2001*, though it is the common law of tort and law of equity upon which the Plaintiffs fundamentally base their claims in the present action. Therefore the Defendant is liable to the Plaintiffs for full restitution of the Seized Funds, plus interest, or the equivalent amount in damages.

21. The Defendant has likewise been unjustly enriched by its continued unreasonable detention of the Seized Funds and its deprivation of the Plaintiffs from restoration to their possession of the Seized Funds. There was an enrichment by the Defendant, there was a corresponding deprivation of the Plaintiffs, and there was a complete absence of juristic reason for the enrichment. The Defendant is thus likewise liable under unjust enrichment for the payment of damages to the Plaintiffs equivalent to the value of the Seized Funds, plus interest.
22. The Plaintiffs plead and rely upon the common law of tort and the law of equity.
23. The Plaintiffs plead and rely upon the *Criminal Code*, R.S.C. 1985, c. C-46 and the *Excise Act*, 2001, S.C. 2002, c. 22.
24. The Plaintiffs plead pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, that the Crown is liable for damages resulting from a breach of duty attaching to the possession or control of property.
25. The Plaintiffs plead and rely upon s-s. 17(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 for the Court's jurisdiction over this matter concerning money of any person in the possession of the Crown.
26. The Plaintiffs propose that this action be tried at Ottawa.

DATE: July 13, 2021

GATIEN / HUZA LAW OFFICE
Barristers & Solicitors
40 Second Street West
Cornwall, ON K6J 1G2

Maurice Gatien LSUC # 12391K

Tel: 613-936-2100
Fax: 613-932-1478
Email: mgatien@lawcornwall.com

Lawyers for the Plaintiffs

