

THE QUEEN'S ~~SKING'S~~ BENCH

Winnipeg Centre

BETWEEN

William Acheson,

Plaintiff,

and

~~Her Majesty the Queen in Right of the Province~~  
The Government of Manitoba,

Defendant.

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

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AMENDED STATEMENT OF CLAIM

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TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Aug 31 2022  
Date

Issued D. Rondeau  
Deputy Registrar

To: ~~HER MAJESTY THE QUEEN IN RIGHT OF~~  
~~THE PROVINCE~~ **GOVERNMENT OF MANITOBA**  
Attorney General  
Room 104 Legislative Building – 450 Broadway  
Winnipeg, MB R3C 0V8

AMENDED THIS 17<sup>th</sup> DAY  
OF May, 2023  
J. MACLEOD  
DEPUTY REGISTRAR  
COURT OF KING'S BENCH  
FOR MANITOBA

## CLAIM

1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class pursuant to *The Class Proceedings Act*, CCSM c C130 (the "CPA");
- (b) a declaration that the Defendant has been unjustly enriched by receipt of the Overcharge;
- (c) a declaration that the Defendant made false representations as alleged;
- (d) a declaration that the Defendant knew that the representations were false, or alternatively that the Defendant was reckless as to whether the representations were true or false;
- (e) in the alternative to the plaintiff's claim for negligent and fraudulent misrepresentation, a declaration that agreement between the Plaintiff and the Defendant reflected a common mistake or unilateral mistake requiring rectification;
- (e)(f) a declaration that the Defendant account for and make restitution to the Plaintiff and other Class Members in an amount equal to the Overcharge;
- (g) general damages for fraudulent and/or negligent misrepresentation;
- (d)(h) judgment in the amount of the Overcharge;
- (e)(i) pre-judgment and post-judgment interest pursuant to the *Court of Queen's Bench Act*, CCSM c C280;
- (f)(j) the costs of this action, including HST and other taxes as applicable;
- (g)(k) the costs of all notices and of administering the plan of distribution of the judgment in this action, together with applicable taxes; and

~~(h)~~(l) such further and other relief as this Honourable Court may deem just.

### **Overview**

2. This action arises from the Defendant's unlawful collection of speeding fines issued by photo radar devices ("**Photo Radar Speeding Fines**") pursuant to ss. 95(1) and 95(1)(c) of the Preset Fines and Offence Descriptions Regulation, Man Reg 96/2017 (the "**Regulation**") from November 20, 2017 to November 12, 2021 (the "**Class Period**").
3. During the Class Period, the Defendant and/or its officers or agents issued Photo Radar Speeding Fines based on each kilometre per hour over the maximum permitted speed. The Regulation permitted the Defendant to issue Photo Radar Speeding Fines based on each kilometre per hour in excess of 10km/h over the maximum permitted speed (the "**Permitted Fines**"). The difference between the amount that Class Members paid in Photo Radar Speeding Fines to the Defendant during the Class Period, and the total amount that Class Members would have paid during the Class Period if they had paid the Permitted Fines is the "**Overcharge**".
4. The Plaintiff, on behalf of the Class Members, say that they have sustained losses in the amount of the Overcharge, which they paid to the Defendant.

### **The Plaintiffs and the Class**

5. The Plaintiff, Mr. William Acheson, is a resident of Winnipeg, Manitoba. Mr. Acheson received and paid one or more Photo Radar Speeding Fines in the Class Period in accordance with s. 95(1) of the Regulation.
6. The Plaintiff seeks to represent a class consisting of:  
  
All persons in Canada from whom the Province of Manitoba collected speeding fines by photo radar devices in accordance with ss. 95(1) and 95(1)(c) of the Preset Fines and Offence Description Regulation, Man Reg 96/2017, from November 20, 2017 to November 12, 2021 (the "**Class**" or "**Class Members**").
7. The precise number of Class Members is known to the Defendant.

### **The Defendant**

8. The Defendant, ~~Her Majesty the Queen in Right of the Province~~The Government of Manitoba, is named in this proceeding pursuant to the *Proceedings Against the Crown Act*, CCSM c P140.
9. The Defendant is liable for the acts of its officers or agents, including enforcement officers for the purposes of the *Provincial Offences Act and Municipal By-law Enforcement Act*, CCSM c P160 (the "Offences Act").

### **The Underlying Legislation**

- ~~9.10.~~ The Defendant and/or its officers or agents implemented the Regulation pursuant to the ~~*Provincial Offences Act and Municipal By-law Enforcement Act*, CCSM c P160.~~ The Regulation replaced the Offence Notices Regulation, Man Reg 210/2003.

- ~~10.11.~~ At all material times, the provisions of the Regulation establishing the preset fines for speeding (s. 95(1)) and speeding in a designated construction zone (s. 95(1)(c)) read as follows:

95(1) Preset Fine: \$7.70 for each kilometre per hour in excess of 10km/h over the maximum permitted speed  
Court Costs: add 45% of preset fine.  
Surcharges: add 25% of preset fine, rounded up to nearest dollar, plus \$50.  
Total fine: rounded down to the nearest dollar.

95(1)(c) Preset fine: \$15.40 for each kilometre per hour in excess of 10km/h over the maximum permitted speed  
Court Costs: add 45% of preset fine.  
Surcharges: add 25% of preset fine, rounded up to nearest dollar, plus \$50.  
Total fine: rounded down to the nearest dollar.

12. Throughout the Class Period the Defendant also issued and maintained the Brown Book, which is a partial reprint of the Regulation, containing offences commonly issued by the Defendant and/or its officers or agents. At all material times, the Brown Book set out identical language to that found in the Regulation, set out at paragraph 10 above.

### **The Overcharge was Unlawful**

41.13. Throughout the Class Period, the Defendant and/or its officers or agents issued Photo Radar Speeding Fines that were inconsistent with ss. 95(1) and 95(1)(c) of the Regulation. Specifically, the Photo Radar Speeding Fines were calculated based on each kilometre per hour over the maximum permitted speed, instead of the Permitted Fines.

42.14. The Defendant's collection of the Overcharge was not authorized by law.

### **The Representations**

15. The Defendant and/or its officers or agents made, approved, used or authorized a common and uniform representation in, among other things, the tickets for Photo Radar Speeding Fines issued to the Plaintiff and Class Members.

16. Throughout the Class Period, the Defendant and/or its officers or agents represented, among other things, that the Photo Radar Speeding Fines issued by the Defendant and/or its officers or agents during the Class Period were consistent with the Regulation (the "Representations").

17. The Representations were false, untrue, inaccurate, or misleading.

18. The Defendant and/or its officers or agents knew, or ought to have known, that the Representations were false, or the Defendant and/or its officers or agents was otherwise reckless as to the truth of the Representations.

19. The Defendant and/or its officers or agents knew that the Plaintiff and Class Members would rely and act on the Representations in paying the Photo Radar Speeding Fines.

### **Injury to the Plaintiffs and Class Members**

43.20. By reason of the Overcharge, the Plaintiff and the Class Members have sustained losses by having paid higher fines than the Permitted Fines.

~~14.21.~~ The Overcharge is capable of being quantified on an aggregate basis as the difference between the fines actually paid by the Class Members during the Class Period and the total amount that the Plaintiff and Class Members would have paid if they had paid the Permitted Fines.

~~15.22.~~ The Defendant is liable for the entire Overcharge collected from Class Members during the Class Period.

### **Unjust Enrichment**

~~16.23.~~ The Plaintiff and the Class Members are entitled to claim and recover based on equitable and restitutionary principles.

~~17.24.~~ The Defendant has been unjustly enriched by receipt of the Overcharge paid by the Plaintiff and the Class Members.

~~18.25.~~ The Plaintiff and the Class Members have suffered a corresponding deprivation in the amount of the Overcharge.

~~19.26.~~ Since the Overcharge that was received by the Defendant from the Plaintiff and the Class Members was not authorized by law, there is and can be no juridical reason justifying the Defendant retaining any part of the Overcharge.

~~20.27.~~ The Defendant is required to make restitution to the Plaintiff and the Class Members for the entire Overcharge because, among other reasons:

- (a) the Defendant was unjustly enriched by receipt of the Overcharge;
- (b) the Plaintiff and the Class Members suffered a deprivation by paying the Overcharge;
- (c) the Overcharge was not authorized by law;
- (d) the Overcharge was acquired in such circumstances that the Defendant may not in good conscience retain it;

- (e) justice and good conscience require restitution; and
- (f) there are ~~no~~no factors that would render restitution unjust.

24-28. Equity and good conscience require the Defendant to make restitution to the Plaintiff and Class Members of the Overcharge, or alternatively disgorge that amount to the Plaintiff and the Class Members.

**Negligent Misrepresentation**

- 29. At all material times, the Defendant and/or its officers or agents owed a duty of care to Class Members. The Defendant and/or its officers or agents breached that duty of care and was negligent by making the Representations, which were untrue, inaccurate, or misleading, to Class Members.
- 30. The Plaintiff and Class Members reasonably relied on the Representations in paying the Photo Radar Speeding Fines, and suffered damages in the amount of the Overcharge as a result.

**Fraudulent Misrepresentation**

- 31. The Defendant and/or its officers or agents made the Representations to the Plaintiff and the Class Members as the core of a uniform and consistent ticketing program.
- 32. The Defendant and/or its officers or agents made the Representations despite knowing that the Representations were false. Alternatively, the Defendant and/or its officers or agents was reckless as to whether the Representations were true or false.
- 33. The Representations were untrue, inaccurate and misleading.
- 34. The Plaintiff and Class Members acted on the Representations when they paid the Photo Radar Speeding Fines.



35. The Representations were intended to be and were capable of being acted upon and it was reasonable for the Plaintiff and Class Members to act upon the Representations when they paid the Photo Radar Speeding Fines.
36. If the Plaintiff and Class Members had known that the Representations were false, they would have paid less for the Photo Radar Speeding Fines in the amount of the Overcharge.
37. The Plaintiff and the Class Members suffered damages as a result of the Representations in the amount of the Overcharge.

#### Rectification

38. In the alternative to the plaintiff's claims for negligent and fraudulent misrepresentation, the plaintiff seeks rectification of a common or unilateral mistake.
39. The Plaintiff and the Class Members paid the Photo Radar Speeding Fines based on the common understanding that the amount of the fine was calculated in accordance with ss. 95(1) and 95(1)(c) of the Regulation.
40. By common mistake, the tickets, as legal instruments, did not reflect the agreement intended by the parties. Specifically, the amounts of the Photo Radar Speeding Fines set out on the tickets were inconsistent with ss. 95(1) and 95(1)(c) of the Regulation.
41. In the alternative, the Defendant knew or ought to have known that the tickets it issued did not reflect the agreement intended by the parties. Specifically, the amounts of the Photo Radar Speeding Fines set out in the tickets were inconsistent with ss. 95(1) and 95(1)(c) of the Regulation. To permit the Defendant to take advantage of the Plaintiff and Class Members' mistakes would amount to fraud or the equivalent of fraud.
42. Rectification requires the Defendant to make restitution to the Plaintiff and Class Members of the Overcharge, or alternatively disgorge that amount to the Plaintiff

and the Class Members. The proposed rectification would carry out the agreement as intended by the Defendant and the Plaintiff and Class Members.

**Discoverability and Postponement**

22.43. The Plaintiff and the Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged Overcharge until the filing of this claim.

23.44. The Defendant actively, intentionally, and fraudulently concealed the fact of their collection of the Overcharge from the public, including the Plaintiff and Class Members. Because the collection of the Overcharge was concealed from the public, the Plaintiff and the Class Members were unaware of the Overcharge until the filing of this claim.

**Statutory Provisions**

24.45. The plaintiffs and Class Members plead and rely on, *inter alia*:

- (g) *Class Proceedings Act*, CCSM
- (h) *Court of Queen's Bench Act*, CCSM c C280
- (i) *Limitation of Actions Act*, CCSM c L150
- (j) *Preset Fines and Offence Descriptions Regulation*, Man Reg 96/2017
- (k) *Proceedings Against the Crown Act*, CCSM c P140
- (l) *Provincial Offences Act and Municipal By-law Enforcement Act*, CCSM c P160

Date of Issue: August 31, 2022

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