

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

**E.D.L.**

PLAINTIFF

AND

**RODERICK DAVID MacDOUGALL and HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF BRITISH COLUMBIA**

DEFENDANTS

Brought Under the *Class Proceedings Act*

**NOTICE OF CIVIL CLAIM**

(Name and address of each plaintiff):

E.D.L.  
c/o Poyner Baxter LLP  
408 – 145 Chadwick Court  
North Vancouver, BC

(Name and address of each defendant):

Roderick David MacDougall  
address unknown

Her Majesty the Queen in Right of the Province  
of British Columbia  
c/o Attorney General  
Room 232, Parliament Buildings  
Victoria, BC V8V 1X4

**This action has been started by the Plaintiff 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,

- (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.

### **Part 1: STATEMENT OF FACTS**

1. The Plaintiff resides in the City of North Vancouver, in the Province of British Columbia.
2. The Defendant, Roderick David MacDougall ("MacDougall"), is a former corrections officer whose address is not known to the Plaintiff.
3. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia ("the Provincial Government"), is named in the proceedings pursuant to

the provisions of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 and amendments thereto.

4. At all times material hereto, the Provincial Government operated the Lower Mainland Regional Correction Centre, known as Oakalla Prison ("Oakalla").
5. At all times material hereto, MacDougall was employed by the Corrections Branch of the Provincial Government, as a corrections officer at Oakalla, and his actions hereinafter referred to were performed in the normal course of and within the scope of his employment.
6. During 1980 and 1981, while an inmate in Oakalla's Westgate B Annex, the Plaintiff, who was ages 17 and 18 years old at the time, was sexually assaulted by MacDougall on several occasions.
7. On each occasion, the Plaintiff was summoned by MacDougall into his office and told to sit down, whereupon MacDougall, without the consent of the Plaintiff, kneeled down in front of him and performed the act of fellatio on him.
8. The act of fellatio was performed by MacDougall upon the Plaintiff as aforesaid on a number of occasions. On the last occasion that the Plaintiff was summoned into MacDougall's office, he once again was about to experience the same form of sexual assault when he managed to muster the strength and resolve to struggle free and run out of the door.
9. After each sexual assault perpetrated on the Plaintiff as aforesaid, MacDougall warned him not to tell anybody about what had happened and stated to him that he, as the Oakalla Pass and Transfer Coordinator, would now, if he kept quiet about what had happened, make the necessary arrangements for him to get a pass so that he could go home and visit his family. This never happened.

10. The Plaintiff alleges that as a result of the sexual assaults committed upon him by MacDougall, and the breaches of duty by the Provincial Government, he has suffered and continues to suffer serious personal injuries, damages and loss, including but not limited to the following:
  - a. He is more prone to violent behaviour both towards his family and others;
  - b. Inferiority complexes;
  - c. Limited feelings of self-worth;
  - d. Alcohol and drug abuse;
  - e. Psychological and emotional problems
  - f. Inability to undergo normal and healthy peer development;
  - g. Inability to undergo normal and healthy sexual development;
  - h. Inability to complete his education;
  - i. Impaired ability to deal with persons in positions of authority;
  - j. Fear, humiliation and embarrassment as a child and adult;
  - k. Impaired ability to express emotions in a normal and healthy manner;
  - l. Impaired ability to obtain and sustain employment, resulting in lost income and loss of income-earning capacity; and

- m. Impaired ability to enjoy and participate in recreational, social and athletic and employment activities

which said injuries, damages and loss have caused and will permanently continue to cause the Plaintiff disability, pain and suffering, loss of enjoyment of life, impairment of health and loss of earnings, loss of income earning capacity and loss of opportunity to earn income, all of which matters aforesaid were caused by the sexual assaults upon the Plaintiff by MacDougall, or the negligence of the Provincial Government, or by both of them.

## **Part 2: RELIEF SOUGHT**

1. Wherefore, the Plaintiff claims on his own behalf and on behalf of members of the putative class as follows:
  - a. General damages;
  - b. Special damages;
  - c. Aggravated damages;
  - d. Exemplary damages
  - e. Punitive damages;
  - f. Interest pursuant to the *Court Order Interest Act*;
  - g. Costs; and
  - h. Such further and other relief as to this Honourable Court may seem just.

## **Part 3: LEGAL BASIS**

### **Vicarious Liability**

1. At all times material hereto, the Provincial Government was the employer of MacDougall, and is therefore vicariously liable for the sexual assaults committed by MacDougall, when acting under the direction and control of the Provincial Government in the course of his employment.

### **Breach of Duty by the Provincial Government**

2. At all times material hereto, MacDougall was a corrections officer at Oakalla, and was hired by, and worked under, the direction and control of the Provincial Government.
3. The Provincial Government had a duty to use reasonable care in assuring the safety and protection of the inmates at Oakalla, including the Plaintiff. The Provincial Government breached its duty to the Plaintiff, resulting in the said sexual assaults. Particulars of the Provincial Government's breach of duty include, but are not limited to the following:
  - a. In failing to reasonably investigate, or investigate at all, the character, background and qualifications of MacDougall;
  - b. In failing to investigate reports of sexual assaults being committed against inmates by MacDougall when it knew or ought reasonably to have known that such assaults were occurring;

- c. In failing to prevent the sexual assaults of the Plaintiff by MacDougall, when it knew or reasonably ought to have known that the sexual assaults would occur; and
- d. In failing to exercise reasonable or any supervision over MacDougall, or in the alternative, in failing to implement reasonable or any programs or procedures for such supervision, which would have prevented or disclosed the sexual assaults of the Plaintiff.

**Class Proceedings Act**

- 4. This action is brought on behalf of the Plaintiff and on behalf of a proposed class of persons with similar claims pursuant to the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c.50.

Plaintiff's address for service: : **Lonsdale Quay Plaza  
#408-145 Chadwick Court  
North Vancouver, BC V7M 3K1**

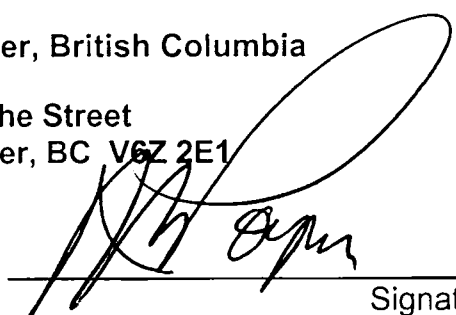
Fax number address for service (if any): **(604) 988-3632**

E-mail address for service (if any): **None**

Place of trial: **Vancouver, British Columbia**

The address of the registry is: **800 Smithe Street  
Vancouver, BC V6Z 2E1**

Date: August 4, 2010

  
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 Signature of  
 Plaintiff     Lawyer for 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.

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Appendix

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is an action brought under the *Class Proceedings Act* for damages arising from a series of sexual assaults that took place during 1980 and 1981 in the City of Burnaby, in the Province of British Columbia.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- 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
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Class Proceedings Act*, R.S.B.C. 1996, c. 50

*Court Order Interest Act*, R.S.B.C. 1996, c. 79

*Crown Proceeding Act*, R.S.B.C. 1996, c. 89