

S-192260

No. _____
Vancouver Registry

~~THE SUPREME COURT~~
~~OF BRITISH COLUMBIA~~
VANCOUVER REGISTRY

BETWEEN:

MAR 01 2019 WANZHOU MENG



PLAINTIFF

AND:

CBSA OFFICER JOHN DOE 1, CBSA OFFICER JOHN DOE 2,
CBSA OFFICER JOHN DOE 3, CONSTABLE WINSTON YEP,
AND THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM

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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

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- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, 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

A. OVERVIEW

1. This case concerns a deliberate and pre-meditated effort on the part of the Defendant officers to obtain evidence and information from the Plaintiff in a manner which they knew constituted serious violations of the Plaintiff's rights under the *Canadian Charter of Rights and Freedoms*.
2. On November 30, 2018, Defendant Constable Yep, in aid of a request from the United States and in anticipation of the Plaintiff's arrival at 11:30 a.m. the next morning at Vancouver International Airport, obtained a warrant ordering her immediate arrest. However, Constable Yep, in cooperation with the Defendant Canadian Border Services Agency ("CBSA") officers, intentionally delayed the immediate execution of the warrant, contrary to the order of the Court. Instead, the Defendant CBSA officers, under the guise of a routine border check, unlawfully subjected the Plaintiff to a detention, search and interrogation to extract evidence from her before she was arrested and provided with her rights under the *Charter*.

B. PARTIES

3. The Plaintiff Wanzhou Meng is a Chinese business executive with an address for service c/o Gudmundseth Mickelson LLP, 2525 – 1075 West Georgia Street, Vancouver, British Columbia.
4. The Defendant the Attorney General of Canada represents Her Majesty the Queen in Right of Canada ("**Canada**"). The Attorney General of Canada is named in his representative capacity in respect of the actions of Canada's agents, the CBSA and the

Royal Canadian Mounted Police (the “**RCMP**”) and their employees in accordance with the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50.

5. The Defendant Constable Winston Yep is an officer of the RCMP (“**Constable Yep**”).
6. The Defendants CBSA Officer John Doe 1, CBSA Officer John Doe 2 and CBSA Officer John Doe 3 are officers of the CBSA (collectively the “**CBSA Officers**”) whose names are unknown to the Plaintiff.

C. MATERIAL FACTS

a. The Issuance of the Provisional Arrest Warrant

7. On November 30, 2018, Canada made an *ex parte* application for a warrant for the provisional arrest of the Plaintiff pursuant to s. 13 of the *Extradition Act*, S.C. 1999, c. 18 (the “**Provisional Arrest Warrant**”).
8. Canada’s *ex parte* application for the Provisional Arrest Warrant relied on the sworn affidavit of Constable Yep (the “**Yep Affidavit**”).
9. The Yep Affidavit indicated, *inter alia*, that a Magistrate Judge for the Eastern District of New York (“**EDNY**”) issued a warrant for the arrest of the Plaintiff to stand trial in the EDNY on charges which Constable Yep described as “serious charges of fraud involving millions of dollars” (the “**U.S. Charges**”).
10. The Yep Affidavit further indicated the Plaintiff was scheduled to arrive at Vancouver International Airport (“**YVR**”) from Hong Kong, China, in transit to Mexico, on Cathay Pacific flight CX838 (“**Flight CX838**”) on Saturday, December 1, 2018, at 11:30 a.m.
11. The Yep Affidavit proceeded to set out several grounds for the urgent and necessary arrest of the Plaintiff during her “brief stopover in Vancouver” including to prevent her from escaping the jurisdiction. The Yep Affidavit relies on the U.S. request to have the Plaintiff arrested, which states that unless the Plaintiff was arrested during her stopover in Canada, “it will be extremely difficult, if not impossible, to secure her presence in the United States for prosecution.”

12. To facilitate this arrest, the Yep Affidavit provided information to identify the Plaintiff, including her age, flight schedule, passport number and two photographs of her.
13. In reliance on the Yep Affidavit, on November 30, 2018, the Honourable Madam Justice Fleming issued the Provisional Arrest Warrant for the Plaintiff containing the following mandatory terms:

TO ALL PEACE OFFICERS HAVING JURISDICITON IN CANADA:

...

YOU ARE HEREBY COMMANDED to immediately arrest Wanzhou Meng and to bring her before a judge of a justice within twenty-four hours of her arrest, but if no judge or no justice is available within this timeframe, then Wanzhou Meng shall be brought before a judge or a justice as soon as possible, for which this shall be your warrant;

(Emphasis added)

14. Upon execution of the Provisional Arrest Warrant the peace officer is required under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the “*Charter*”) to, among other things, inform the Plaintiff of her right to know the reason for her arrest, of her right to retain legal counsel, and to afford her an opportunity to retain and instruct legal counsel without delay. The Plaintiff also has the right to silence upon execution of the Provisional Arrest Warrant. Peace officers executing the Provisional Arrest Warrant have no power to compel information from the subject of the arrest.

b. The CBSA’s cooperation with the RCMP in detaining the Plaintiff

15. Instead of complying with the Order of the Court under the Provisional Arrest Warrant to immediately arrest the Plaintiff with her attendant *Charter* rights, Constable Yep and other RCMP officers whose names are presently unknown to the Plaintiff, and/or representatives of the United States Department of Justice (“**U.S. D.O.J.**”) arranged with the CBSA and the CBSA Officers for the CBSA Officers to detain, search and interrogate the Plaintiff upon her arrival at YVR, without arresting her, under the guise of a routine customs or immigration related examination and to then use that opportunity to

unlawfully compel her to provide evidence and information (the “**Unlawful YVR Detention**”). The full particulars of the communications between the CBSA including the CBSA Officers, the RCMP including Constable Yep, and/or representatives of the U.S. D.O.J. are within the full knowledge of the Defendants.

16. As detailed below, the CBSA Officers detained, searched and interrogated the Plaintiff under the guise of a customs or immigration examination, as opposed to immediately arresting her as peace officers pursuant to the Provisional Arrest Warrant. This was both significant and deliberate. Under the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) (the “*Customs Act*”), and the *Immigration and Refugee Protection Act*, S.C. 2001, c. 17 (the “*IRPA*”), CBSA officers may conduct routine examinations of travelers at ports of entry. In these circumstances, CBSA officers have compulsion and search powers. Travelers are required to answer questions and submit to searches. Routine examinations are not considered “detentions” that trigger a traveler’s rights under sections 7, 8, 9, or 10 of the *Charter*. However, where the examination is not routine, and in particular, where the person is arrested (as required by the Provisional Arrest Warrant), the traveler must be afforded her *Charter* rights.
17. Accordingly, to avoid affording the Plaintiff her *Charter* rights on her arrival at YVR by immediately arresting her (as required under the Provisional Arrest Warrant), the Defendant CBSA Officers instead detained, searched and interrogated the Plaintiff under the false pretense of a ‘customs or immigration examination’.
18. On December 1, 2018, the CBSA Officers intentionally carried out the Unlawful YVR Detention. Also on December 1, 2018, Constable Yep and other RCMP officers unknown to the Plaintiff, in furtherance of the Unlawful YVR Detention, and despite the knowledge that Flight CX838 would be arriving at 11:30 a.m., intentionally disregarded their obligation to immediately arrest the Plaintiff as Ordered under the Provisional Arrest Warrant. Rather, Constable Yep and other RCMP officers, whose names are presently unknown to the Plaintiff, deliberately delayed their arrest of the Plaintiff at YVR so as to facilitate the objectives of the Unlawful YVR Detention.

c. The CBSA Officers' apprehension of the Plaintiff in violation of the Provisional Arrest Warrant and without statutory authority

19. On December 1, 2018, at approximately 11:10 a.m., the Plaintiff arrived at YVR on Flight CX838. The Plaintiff was among the first dozen passengers to exit onto the jetway. As she walked up the jetway, the CBSA Officers were screening passengers of Flight CX838 by examining their passports. Upon identifying the Plaintiff, the CBSA Officers apprehended her and thereafter immediately stopped screening passengers.
20. The CBSA Officers are designated "peace officers" under the *IRPA*. Despite this fact, the CBSA Officers intentionally disregarded the Order "to all peace officers" in the Provisional Arrest Warrant to immediately arrest the Plaintiff. Instead, the CBSA Officers were stationed on the jetway for the sole purpose of detaining the Plaintiff and unlawfully searching and interrogating her before turning her over to the RCMP to carry out the arrest pursuant to the Provisional Arrest Warrant.
21. At all material times in relation to the Unlawful YVR Detention, the CBSA Officers were acting in their capacity as public officers. The powers of CBSA officers to act in this capacity are limited, however, to the purposes of the statutes under which they are empowered to act, the two primary statutes being the *Customs Act* and the *IRPA*.
22. None of the acts on the part of the CBSA Officers described below, including the detention, search and interrogation of the Plaintiff, were for a customs or immigration purpose or any other purpose for which the CBSA Officers are empowered to act. Further, the CBSA Officers knew or were recklessly indifferent to the fact that their detention, search and interrogation of the Plaintiff, as set out below, was unlawful including contrary to the terms of the Provisional Arrest Warrant, and that they were acting outside of any statutory authority granted to them, including under the *Customs Act* or the *IRPA*.

d. The Unlawful YVR Detention

23. From the moment of her apprehension on the jetway, the Plaintiff was under the total control of the CBSA Officers and had no freedom of movement. As the detention was unlawful, it was arbitrary.
24. Upon detaining the Plaintiff on the jetway, the CBSA Officers physically escorted the Plaintiff to a CBSA secondary services and inspections area of the terminal (the “**Secondary Area**”).
25. For the entire time that the Plaintiff was detained and under the CBSA’s control in the Secondary Area, the CBSA Officers prohibited the Plaintiff from speaking with her travelling companion or any other persons, including a lawyer. The CBSA Officers instructed the Plaintiff to sit in a specific location and not to walk around. When the Plaintiff needed to use the washroom, the Plaintiff was escorted by a CBSA officer. At no time was the Plaintiff permitted to leave the Secondary Area or contact anyone.
26. Despite having detained the Plaintiff, the CBSA Officers did not promptly inform the Plaintiff of the reasons for her detention, afford her an opportunity to retain and instruct legal counsel without delay, or inform her of her right to do so under the *Charter*.

e. The CBSA Officers’ unlawful seizure and search of the Plaintiff’s electronic devices and unlawful search of her luggage

27. While in the Secondary Area during the Unlawful YVR Detention, one of the CBSA Officers directed the Plaintiff to surrender all of her electronic devices and computers, including two personal cellphones, an iPad, and a personal computer, which the CBSA Officers then unlawfully seized (the “**Seized Devices**”).
28. The CBSA Officers subsequently took the Seized Devices to a private office. Soon after one of the CBSA Officers demanded the Plaintiff surrender the passwords for the Seized Devices, which the Plaintiff provided, believing she had no choice as the CBSA Officers had intentionally failed to advise her of the true reasons for her detention, her right to counsel, and her right to silence.

29. On receipt of the passwords unlawfully compelled from the Plaintiff, the CBSA Officers unlawfully opened and viewed the contents of the Seized Devices in violation of the Plaintiff's right to privacy. The full particulars of this unlawful search and the use of the fruits of that search are within the full knowledge of the Defendants.
30. In addition, the CBSA Officers performed a thorough, invasive and focused search of all of the Plaintiff's luggage in violation of the Plaintiff's right to privacy. The CBSA Officers knew or were recklessly indifferent to the fact that they had no authority to conduct such a search, which search was performed under the false pretense of a routine customs or immigration related examination.

f. The CBSA's unlawful interrogation of the Plaintiff

31. The CBSA Officers, on behalf of the RCMP and/or the U.S. D.O.J., used the opportunity of the Unlawful YVR Detention to conduct an unlawful interrogation of the Plaintiff. The unlawful interrogation occurred in two sessions over a sustained period. The unlawful interrogations were conducted by CBSA Officer John Doe #1 and CBSA Officer John Doe #2, while CBSA Officer John Doe #3 took notes. The specific nature of the questions asked during the interrogation were informed by the provision of documentation and/or a prior briefing of the CBSA Officers by the RCMP and/or representatives of the U.S. D.O.J. familiar with the details of the U.S. Charges.
32. The CBSA Officers' interrogation of the Plaintiff without having arrested her as required by the Provisional Arrest Warrant, which would have otherwise have engaged her *Charter* rights, constituted a deliberate and serious violation of the Plaintiff's *Charter* rights.

g. The RCMP's exercise of the Provisional Arrest Warrant more than three hours late

33. Approximately three hours after the Unlawful YVR Detention began, Constable Yep of the RCMP entered the Secondary Area to arrest the Plaintiff under the Provisional Arrest Warrant. It was only at that time that the Plaintiff was informed of the reasons for her arrest under the Provisional Arrest Warrant and of her right to counsel.

34. Constable Yep knew the Plaintiff was scheduled to arrive at YVR at 11:30 a.m. on December 1, 2018. Instead of immediately implementing the Provisional Arrest Warrant by arresting the Plaintiff at YVR, as was his duty, Constable Yep failed to comply with the immediacy requirement of the Provisional Arrest Warrant by delaying his arrest of the Plaintiff at the Secondary Area, or on the jetway. This was an unlawful act.
35. Constable Yep intentionally delayed the arrest for the purpose of allowing the Unlawful YVR Detention which culminated in the unlawful detention, search and interrogation of the Plaintiff by the CBSA Officers under the false pretense of a routine border check of a foreign traveler.
36. At all material times and in relation to the entirety of the Unlawful YVR Detention, the CBSA Officers and Constable Yep knew or were recklessly indifferent to the fact that their actions were unlawful and would likely cause harm to the Plaintiff, which harm, as set out below, did occur.

h. The Unlawful YVR Detention violated the Plaintiff's *Charter* rights

37. At all material times the CBSA Officers detained the Plaintiff for the express purpose of obtaining information which they and the RCMP and/or the U.S. D.O.J. did not believe would be obtained if the Plaintiff was immediately arrested under the Provisional Arrest Warrant and afforded her rights under s. 10 of the *Charter*.
38. By engaging in the conduct set out above, the CBSA Officers knowingly or recklessly violated the Plaintiff's rights under sections 7, 8, 9 and 10(a) and 10(b) of the *Charter*.

i. The Unlawful YVR Detention has caused the Plaintiff harm

39. As a direct result of the Unlawful YVR Detention, the Plaintiff suffered damages including mental distress, anxiety and loss of liberty.

j. Vicarious liability

40. The actions of the CBSA Officers set out herein occurred in the course of their employment with Canada. Canada is accordingly vicariously liable for those tortious actions.

Part 2: RELIEF SOUGHT

41. The Plaintiff claims declarations that her rights under sections 7, 8, 9 and 10 of the *Charter* were infringed.
42. The Plaintiff claims general tort damages in relation to the unlawful detention at YVR.
43. The Plaintiff claims exemplary or punitive damages.
44. The Plaintiff claims costs or special costs.
45. The Plaintiff claims such further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

46. The CBSA Officers committed the tort of misfeasance in public office. The CBSA Officers, in their capacity as public officers, engaged in deliberate and unlawful conduct during the Unlawful YVR Detention, and were aware their conduct was unlawful and that it was likely to harm the plaintiff.
47. Constable Yep committed the tort of misfeasance in public office. Constable Yep, in his capacity as a public officer, engaged in deliberate and unlawful conduct through his intentional non-compliance with the Provisional Arrest Warrant and his participation in the Unlawful YVR Detention, and was aware his conduct was unlawful and that it was likely to harm the plaintiff.
48. The CBSA Officers committed the tort of false imprisonment. During the Unlawful YVR Detention the direct and intentional conduct of the CBSA Officers resulted in the total confinement of the Plaintiff against her will and without lawful justification.

49. The CBSA Officers' conduct breached the Plaintiff's rights under sections 7, 8, 9 and 10 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.
50. The Plaintiff relies on the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50.

Plaintiff's address for service:

Howard A. Mickelson, Q.C.
Gudmundseth Mickelson LLP
2525 – 1075 West Georgia Street
Vancouver, BC V6E 3C9

Fax number address for service (if any): N / A

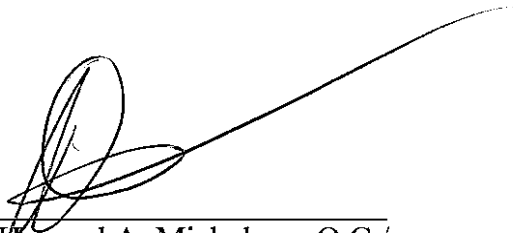
E-mail address for service (if any): N / A

Place of trial: Vancouver, B.C.

The address of the registry is:

The Law Courts
800 Smithe Street Vancouver, B.C. V68 5N3

Dated: March 1, 2019



Howard A. Mickelson, Q.C./
Allan L. Doolittle
Lawyers for the Plaintiff
Wanzhou Meng

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 return of specific property and damages arising from false imprisonment and breach of privacy.

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: ENACTMENTS RELIED ON

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11

Privacy Act, RSBC 1996, c 373

Crown Liability and Proceedings Act, RSC 1985, c. C-50