



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

MICHAEL CHAN

Plaintiff

- and -

**HIS MAJESTY THE KING IN RIGHT OF CANADA, THE ATTORNEY GENERAL OF
CANADA, THE CANADIAN SECURITY INTELLIGENCE SERVICE, DAVID
VIGNEAULT, JOHN DOE, JANE SMITH, SAM COOPER and ROBERT FIFE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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 an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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.

Instead of serving and filing a Statement of Defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 25, 2023

Issued by _____
Local registrar

Address of court office 393 University Ave., 10th Floor
Toronto, ON M5G 1E5

TO	HIS MAJESTY THE KING IN RIGHT OF CANADA c/o The Attorney General Of Canada Office of the Deputy Attorney General of Canada 284 Wellington Street Ottawa, Ontario K1A 0H8
AND TO	THE ATTORNEY GENERAL OF CANADA Office of the Deputy Attorney General of Canada 284 Wellington Street Ottawa, Ontario K1A 0H8
AND TO	THE CANADIAN SECURITY INTELLIGENCE SERVICE PO Box 9732 STN T Ottawa ON K1G 4G4
AND TO	DAVID VIGNEAULT c/o The Canadian Security Intelligence Service PO Box 9732 STN T Ottawa ON K1G 4G4
AND TO	JOHN DOE
AND TO	JANE SMITH
AND TO	SAM COOPER c/o Global News 81 Barber Greene Road Toronto, ON M3C 2A2
AND TO	ROBERT FIFE c/o The Globe and Mail Inc. 351 King Street East, Suite 1600 Toronto, ON Canada, M5A 0N1

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CLAIM

1. The Plaintiff's claim is for:
 - (a) as against the defendants, general and aggravated damages in the amount of \$9,000,000;
 - (b) as against John Doe ("**Doe**"), Jane Smith ("**Smith**"), Sam Cooper ("**Cooper**") and Robert Fife ("**Fife**") punitive damages in the amount of \$1,000,000;
 - (c) pre-judgement and post-judgement interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c C43, as amended;
 - (d) his costs of this action on a substantial indemnity basis plus HST on such costs; and
 - (e) such further and other relief as this Court may deem just.

A. OVERVIEW

2. As set out below, commencing from at least November 2022 through to May 2023, John Doe and Jane Smith (employees of the Government of Canada with access to classified information and documents) have with the assistance and encouragement of certain members of the press engaged in a protracted campaign of repeatedly violating the provisions of the *Security of Information Act* by unlawfully disclosing (i.e. leaking) classified information. They have done so (and the Defendants Cooper and Fife have encouraged and induced them to do so) knowing that their unlawful actions would cause harm to Canadian politicians of Chinese ancestry, such as Michael Chan, who have been the target of such leaks. They (and the Defendants Cooper and Fife) have leaked such information knowing that such information is often a result of conjecture and subjective interpretation and that this information, looked at in isolation, might be misleading.

They have done so in an effort to advance their interests over the broader interests of Canada and without regard to the very significant harm that would be caused to Michael Chan by their illegal actions.

B. The Parties

(i) The Plaintiff

3. The Plaintiff, Michael Chan (“**Chan**”), is a Councillor in York Region and Deputy Mayor of the City of Markham. He was formerly a Member of the Legislative Assembly of the Province of Ontario. He was first elected as the Member for Markham-Unionville in 2007 and was re-elected three times since then. He was first appointed a cabinet minister in the Ontario Government in February, 2007 and had honourably served in several cabinet portfolios.

4. Chan was born in China and in his youth lived in Hong Kong and Macau. He came to Canada as a young man seeking a better life. He spoke no English and initially worked hard to establish himself in his new country. Eventually, through hard work and determination, he would become a successful businessman. He found that better life. He is one example of the millions of Canadian immigrants, who over the last several decades, have prospered in this country and, through their efforts, have helped this country prosper.

(ii) The Government Defendants

5. The Canadian Security Intelligence Service (“**CSIS**”) is a government agency created by the *Canadian Security Intelligence Act*, R.S.C. 1984 (the “**CSIS Act**”), as amended. Its function is to assist in protecting Canada’s national security and it is required to perform its duties and functions in accordance with the rule of law and in a manner that respects the *Canadian Charter of Rights and Freedoms*.

6. The Defendant, David Vigneault (“**Vigneault**”), is the Director of CSIS and has the control and management of CSIS and all matters connected therewith, including the oversight of its employees and employment-related policies.

7. His Majesty the King in Right of Canada (the “**Crown**”) is the legal entity that is responsible for torts committed by the agents and servants (including employees) of the Crown pursuant to section 3 of *The Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50.

8. The Attorney General of Canada is added as a Defendant pursuant to section 23 of *The Crown Liability and Proceedings Act*.

9. The true names and identities of the Defendants Doe and Smith are not known to Chan. The pseudonyms are used until their identities are determined.

10. Doe and Smith were employees of CSIS at the relevant times and were “public officers”. A significant and essential part of their employment is creating, reviewing and disseminating (in accordance with law) secret official information. In the course of such employment they had access to and came into possession of information pertaining to certain CSIS investigations, as set out below.

11. Pursuant to section 10 of the *CSIS Act*, Doe and Smith have made and are bound by statutory oaths of secrecy by which they have promised:

I, [name], swear that I will not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf of or under the direction of the Canadian Security Intelligence Service or by reason of any office or employment held by me pursuant to the *Canadian Security Intelligence Service Act*. So help me God.

12. In the alternative to paragraphs 10-11, Doe and Smith were employees of other branches of the Canadian Government with access to CSIS generated reports and secret official information.

(iii) The Defendants Cooper and Fife

13. The Defendant Sam Cooper (“**Cooper**”) is an online investigative journalist for Global News. Over the past few years, Cooper has endeavoured to establish himself as being an expert on Chinese-Canadian matters and, in particular, on alleged efforts by the Chinese government to exert improper influences in Canadian society. Cooper has also appeared on many podcasts or other broadcasts espousing these views.

14. Cooper has often repeated as truth, unverified information coming from persons affiliated with, or who claim to be affiliated with, western intelligence sources. This, in turn, has assisted him to cultivate relationships with individuals employed in or who deal with the Canadian intelligence community, as well as those who may want a public platform to advance theories or suspicions they believe or espouse.

15. Fife is an employee of The Globe and Mail. He has also cultivated relationships with individuals employed in or who deal with the Canadian intelligence community and has in the past been a conduit used by them to report leaked (and inaccurate) classified information. Fife has a history of acting as a conduit for illegally leaked classified (and false) information. In particular, the judicial commission for Inquiry into the Actions of Canadian Government Officials in relation to Maher Arar found that “over an extended period of time, classified information about” a Canadian citizen “was selectively leaked to the media by Canadian (intelligence) officials” to the media and that the press had repeated this information as being apparently credible. The “media”

referred to in this judicial report included leaks received and repeated by Fife knowing that they were illegal.

C. BACKGROUND FACTS

(i) CSIS' past treatment of Michael Chan

16. As an organisation, CSIS is legally required to be apolitical and its public officials are required to comply with the statutory oath of secrecy, and with the *Security of Information Act*, R.S.C. 1985, c. O-5 (the "*Security of Information Act*"), including Section 4(1)(a), which makes it an offence to communicate to others secret official information that has been entrusted to it.

17. The nature of the intelligence gathering activities of CSIS is that it often receives information about Canadian citizens that is based on rumour and innuendo or other information of questionable probative value and which would not be admissible in a court of law. Further, certain sources of information may have private or political agendas or views which raise issues with respect to the trustworthiness of information they provide. Finally, the information is distilled in an inherently subjective process.

18. CSIS generated information or reports may thus often be frail and suspect. It is therefore important that this information be handled with the utmost of care and held in the strictest of confidence. The reality is that if CSIS generated information is published, unofficially released or otherwise leaked to the general public, significant prejudice and harm could result both to the broader interest of Canada and to those in which such information may pertain by implication, or otherwise. Moreover, a cross section of the public will tend to believe such information to be factually credible given its stated association to CSIS.

19. The secrecy and non-communication provisions embedded in the statutory oath of secrecy, and in the *Security of Information Act*, among other things provides protection for Canadian citizens that they will not be harmed by CSIS or other government officials communicating official information or any of CSIS' views based on its investigative information.

20. This has not always been the case. CSIS and other public officials (including senior officials) have sometimes intentionally breached legal requirements in an effort to advance personal views and interests, or the views, interests and agendas of others.

21. In particular, in 2010, the then director of CSIS, Richard Fadden (“**Fadden**”), publicly spread a vague, general innuendo to the effect that CSIS had information that some (unnamed) Canadian cabinet minister(s), who were born outside of Canada, were believed to be under the influence of a foreign government (with the implication that this foreign government was China).

22. Chan at that time was a Minister in the Ontario Cabinet.

23. Fadden cavalierly casting aspersions on Canadian politicians who had immigrated from China was widely condemned, including by the press which called it “foolish”, “reckless” and “contradictory”. It was found by the relevant Parliamentary oversight committee (the “Standing Committee on Public Safety and National Security”) that “Fadden sowed doubts and created anxiety through his unsubstantiated allegations. In the Committee’s opinion, Mr. Fadden seriously damaged the reputation of elected officials in Canada.”

24. The Parliamentary Committee therefore recommended that Fadden be fired.

25. Stung by this public censure and not willing to abandon unfounded beliefs, in 2015 an unidentified CSIS official (or ex-official) in violation of the law told The Globe and Mail that one of the politicians referenced in 2010 by Fadden as allegedly being under “foreign influence” was

Michael Chan. As intended, The Globe and Mail proceeded in 2015 to then publish articles that suggested the CSIS information was credible and implied that Chan was some sort of threat to Canada.

26. Again, no evidence was ever presented to support this unsupported 2015 innuendo. CSIS never interviewed Chan, and Chan's name was simply smeared by CSIS with the press as a willing conduit.

(ii) Doe and Smith: Unlawful Acts and Mifeasance in Public Office

27. In late 2022/early 2023, Doe and Smith decided to repeat the tactic previously used by some CSIS or other government of Canada employees to go after Canadian politicians of Chinese ethnicity.

28. As public officers, Doe and Smith were at all times were subject to and bound by the *Security of Information Act*, which makes it an offence to communicate to others secret official information that has been entrusted in confidence to them by any person holding office under His Majesty, or owing to their position as a person who holds or has held office under His Majesty.

29. Doe and Smith were aware of their statutory oath of secrecy and the provisions of the *Security of Information Act*, but intentionally breached both provisions in their actions set out below. In doing so, they committed unlawful acts.

30. In particular, Doe and Smith deliberately communicated to, and shared with members of the press, secret official information about the existence of CSIS investigations relating to alleged activities of the Chinese government, its alleged interaction with Canadian politicians of Chinese ethnicity, and classified briefings to the Canadian government on such issues.

31. Doe and Smith then proceeded to identify to the press a number of specific Canadian politicians of Chinese ethnicity as individually being allegedly the subject of CSIS investigations and to report (inaccurately) on their alleged actions. They did so with the intent that this would generate publicity and sow uncertainty in the minds of the Canadian public as to whether these politicians could be trusted.

32. By February, 2023 the illegal actions of Doe and Smith in leaking secret official information to Cooper of Global News had helped plant in the minds of the public that CSIS was of the view that the Chinese Government had given \$250,000 in cash to (Liberal) candidates for public office, that there was a “network” of “operatives” in the Greater Toronto Area that was advancing the goals of the Chinese Communist party and that Chinese “agents” were assisting Canadian candidates for political office.

33. Against this general background of alleged widespread illegal interference by a foreign government through (initially unnamed) operatives, Doe and Smith then directly targeted Chan in their leaks.

34. Doe and Smith shared CSIS intelligence information with the intent that such information would be re-published by the press and that this would both personally and reputationally harm Chan – a person they (incorrectly) were of the view was somehow disloyal to or a threat to Canada.

35. More broadly, their actions were influenced by a stereotypical type-casting of immigrants born in China as being somehow untrustworthy.

36. As part of their broader attack on Canadian-Chinese politicians, Doe and Smith chose to deliberately communicate (either individually or collectively) about Chan:

- (a) to Fife of The Globe and Mail the (unfounded and inaccurate) view of certain segments of CSIS to the effect that Chan was improperly associating with persons who might be “intelligence actors” on behalf of the government of China on matters that were “election-related”, and that Chan had been mentioned in (classified) intelligence briefings to the federal government;
- (b) to Cooper of Global News that: (i) Chan was a “target of CSIS”, (ii) that CSIS’ information was that Chan was a “political kingmaker” of the Liberal party and had (in an unspecified manner) “orchestrated” the removal of a candidate for nomination in a federal riding and to replace him with a candidate that allegedly was favoured by the Chinese government, (iii) that Chan had provided (unspecified) “political information” to the Chinese consulate in Toronto, and (iv) that Chan’s actions threatened Canadian election integrity; and
- (c) provided Cooper of Global News with a July 2018 CSIS document that allegedly (and incorrectly): (i) claimed that Chan favoured the interests of China, (ii) that Chan provided political information to the Chinese consulate, and (iii) that Chan had offered to attack other politicians who raised Chinese human rights issues.

37. The communications to the press of this secret official information relating to Chan was, as intended, repeated by Fife and Cooper in the media, most notably in a Globe and Mail article dated February 13, 2023, in a Global News article dated February 24, 2023 and a further Globe and Mail article dated May 12, 2023. They have since been further republished by others and such publication is ongoing.

38. Doe and Smith then proceeded in or about May 2023 to illegally leak further classified information to Fife relating to an alleged classified electronic surveillance conducted on Chan by CSIS in 2019. They did so in the hope that this would keep the false allegations about Chan in the

public eye and would lead the public to believe that Chan must be untrustworthy and of questionable loyalty. This illegal action by Doe and Smith resulted in a further publication by Fife in *The Globe and Mail* on May 19, 2023.

39. The actions by Doe and Smith in intentionally breaching the *Security of Information Act* and targeting and seeking to damage Chan is an unlawful act pursuant to section 27 of the statute, which provides that “an individual convicted of an offence under the Act is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than 14 years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 12 months or to a fine of not more than \$2,000, or both.”

40. It further constitutes misfeasance in public office.

41. Alternatively, Doe and Smith agreed to use unlawful acts (the breach of the *Security of Information Act*) and such actions were directed at Chan (and other Canadian politicians of Chinese ethnicity) in circumstances where they knew or ought to have known harm to Chan would result.

42. The foregoing actions further constitute a conspiracy to injure.

(iii) Cooper - Unlawful Means Conspiracy

43. From at least 2019, Cooper engaged in an ongoing and relentless campaign against Chan and has sought to portray Chan (a Canadian Citizen of over 50 years) as some sort of agent for the Chinese government, and disloyal to Canada. Cooper's efforts in this regard *inter alia* include publishing an ongoing barrage of articles and posting Twitter comments regurgitating false CSIS-related and other unfounded allegations against Chan in a malicious, misleading and irresponsible manner.

44. Sometime in late 2022 or 2023, Cooper cultivated Doe and Smith as sources.

45. Cooper was at all times aware of the provisions of *the Security of Information Act*, knew that in his contacts with Doe and Smith referred to below, Doe and Smith were unlawfully breaching the provisions of the *Security of Information Act*, and induced them to do so. He was also aware that there was a significant risk that security information provided by Doe and Smith was fundamentally frail and suspect, but was prepared, given his ongoing campaign against Chan, to disregard that risk.

46. Cooper conspired with Doe and Smith to cause them to commit an illegal act (the breach of the *Security of Information Act* in their communications with him) and induced them to do so *inter alia* by agreeing to give them public dissemination of the CSIS intelligence information in a manner which would allow them to be anonymous. It was further understood that Cooper would portray this CSIS information about Chan as coming from a reputable source and hence as credible.

47. Cooper conspired with Doe and Smith with the intent that Chan would suffer damage given Cooper's (unfounded) belief that Chan was an agent for a malevolent force. Cooper, Doe and Smith knew, or ought to have known, that in the circumstances, Chan would likely suffer damages.

48. Cooper also recognised that by putting a "face" (a Canadian politician of Chinese ancestry) to the possibility of Chinese government interference in the Canadian electoral process, he would take the story from being a general (and possibly somewhat abstract) story to one with an identified and targeted villain – and hence would give the story impact and generate more public attention for Cooper.

(iv) Fife - Unlawful Means Conspiracy

49. Fife has engaged in a separate conspiracy with Doe and Smith. His actions in furtherance of the conspiracy have been taken separately from those of Cooper but involve the same material elements as set out at paragraphs 44 -48 (with the references to “Cooper” in such paragraphs to be replaced by Fife).

(v) Liability of Vigneault

50. Vigneault has the control and management of CSIS. As such, he has primary responsibility to ensure compliance by CSIS employees with their statutory oath of secrecy and to ensure they are not influenced by inappropriate racial stereotyping.

51. In this case, prior to the illegal actions of Doe and Smith directed at Chan, Vigneault was aware:

- (a) that CSIS secret official information as a result of its investigations was often based on rumour, innuendo and subjective conjecture;
- (b) if such speculative and unproven information was published in violation of the law, a significant cross-section of the public would tend to believe such information without understanding its factual frailties;
- (c) the sharing of such information in violation of the law could cause harm to innocent Canadians;
- (d) CSIS employees had previously engaged in the sharing of CSIS investigative information in violation of the law in an effort to smear the reputation of Canadian citizens or permanent residents and had in fact caused such harm;

- (e) there were segments of the press who were cozy with the intelligence community and who would willingly act as a conduit for untested investigative information (including the names of individuals) shared with them in order to curry favour with sources in the intelligence community;
- (f) in 2015 a CSIS employee (or ex-employee) had engaged in such misbehaviour with respect to Chan;
- (g) neither CSIS nor any other government authority had ever commenced any proceeding claiming Chan had in any way violated any law of Canada and there was, despite years of CSIS innuendo, no evidentiary basis for any such proceedings;
- (h) given that there was no actual evidence, and in the polarised political environment pertaining to matters related to China, that there was a real risk that CSIS employees might once again engage in the familiar tactic of the intelligence community in sharing with the press alleged “intelligence” about Chan in an effort to smear him again with anonymous (and fanciful) accusations;
- (i) there were elements within CSIS or the Canadian broader intelligence community who wished their views on Chinese-Canadian politicians (including Chan) to be given credibility by uninformed and irresponsible press publications of such views;
- (j) there had already been by November of 2022 illegal leaks to the press by government officials of CSIS secret official information allegedly referencing election interference by the Chinese government with the alleged assistance of “operatives” and “agents”;

- (k) systemic racism existed and exists in CSIS and the sharing of CSIS secret official information relating to Canadian politicians of Chinese ethnicity was thus a heightened risk;
- (l) systemic racism towards Asians exists in segments of Canadian society who might be willing to latch onto innuendo that Chan was somehow less of a Canadian than others; and
- (m) it was therefore imperative that all steps be taken to insure that CSIS secret official information pertaining to Canadian politicians of Chinese ethnicity (including Chan) not be shared by CSIS employees in violation of the law.

52. Vigneault in fact negligently failed to take appropriate steps to ensure there were no illegal sharing of secret official information pertaining to Chan in violation of the law.

(vi) Liability of the Crown, the Attorney General and CSIS

53. The Crown, the Attorney General and CSIS are liable for the tortious actions of Doe and Smith and the negligence of Vigneault under *The Crown Liability and Proceedings Act*.

54. Additionally, a significant part of Doe's and Smith's employment with CSIS and the Crown involved access to, possession of, and dissemination of, official secret information. CSIS and the Crown were and are institutionally best placed to prevent their employees from illegally communicating such information to others.

C. Damages

55. Chan is justifiably proud of his Chinese heritage. But he is first and foremost a Canadian. He has devoted a good portion of his working life to public service to his country.

56. As a result of the misfeasance in public office of Doe and Smith and their conspiracies with Cooper and Fife (for which His Majesty, the Attorney General and CSIS are responsible), Chan has suffered pain, embarrassment, humiliation, stress and damage to his reputation, and well as threats to his personal wellbeing and that of his family. It has particularly pained him to know that his family members have had to deal with this matter.

57. Chan has suffered real and permanent damage and asks this Court for a fair award of damages.

58. The Plaintiff proposes this action be tried in Toronto, Ontario.

May 25, 2023

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and

HIS MAJESTY THE KING IN
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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