

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROBERT STEWART

PLAINTIFF(S)

and

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE ATTORNEY GENERAL
OF ONTARIO, THE COMMISSIONER OF THE ONTARIO PROVINCIAL POLICE,
OTTAWA REGIONAL POLICE SERVICE BOARD, THE CHIEF OF POLICE OF THE
OTTAWA REGIONAL POLICE, LOU OKMANAS, LYLE MACCHARLES, RICHARD
RIDDELL, HEATHER LARMARCHE, CHRISTINA BENSON, JOHN RALKO, GARY
DOUGHTERY, GEORGE SNIDER, IAN DAVIDSON, VIKKI BAIR, TERRY COOPER,
AND DENIS GAUDREAU**

DEFENDANT(S)

STATEMENT OF DEFENCE

1. The Defendants Ottawa Police Services Board (incorrectly referred to as "Ottawa Regional Police Service Board"), Chief of the Ottawa Police Service (incorrectly referred to as "The Chief of Police of Ottawa Regional Police") and Ian Davidson (the "Ottawa Police defendants") deny each and every allegation pleaded in the Statement of Claim, including the claim for damages and other relief as stated in paragraph 1 therein, except as hereinafter specifically admitted.
 2. The allegations in the Statement of Claim are barred by operation of the limitation contained in subsection 7(1) of the *Public Authorities Protection Act*, R.S.O. 1990, c.P.38 and, as applicable, by operation of the *Limitations Act, 2002*, S.O. 2002, c.24, Sch. B., as applicable.
- All further pleadings are in the alternative.

3. The Defendant Chief of the Ottawa Police Service is not an entity capable of being sued and is therefore not a proper party to this action.
4. The Ottawa Police defendants, specifically including Ian Davidson, neither arrested nor charged the Plaintiff and accordingly no cause of action exists as against the Ottawa Police defendants. All further pleadings are in the alternative.
5. The Ottawa Police defendants specifically deny each and every allegation of breach of *Charter* rights, unlawful arrest, false imprisonment, wrongful conviction, malicious prosecution, conspiracy to injure, negligence, and abuse of process.
6. The Ottawa Police defendants plead that, at all material times, they acted in good faith, without malice and in furtherance of their public duties in the investigation and prosecution of the Plaintiff for the murders of Michel Giroux and Manon Bourdeau.
7. The Ottawa Police defendants plead that they reasonably believed that, and, there were, in fact, reasonable and probable grounds to arrest the Plaintiff for the murders of Giroux and Bourdeau.
8. The Ottawa Police defendants further plead that they reasonably believed that, and, in fact, there were at all times reasonable grounds to continue the prosecution of the Plaintiff on these charges.
9. The Ottawa Police defendants rely in support of the above pleadings on the evidence disclosed to the Plaintiff in the course of the prosecution of the Plaintiff and the evidence led at the Plaintiff's trial.
10. The Ottawa Police defendants plead that they fully complied with their disclosure obligations in the course of the prosecution of the Plaintiff and specifically deny that they

failed to disclose, or improperly edited for disclosure or presentation at the Plaintiff's trial, any relevant evidence.

11. The Ottawa Police defendants deny that they improperly interviewed or attempted to influence the evidence of any person they interviewed or who was called as a witness in the Plaintiff's trial and plead that at all times they acted to ensure that the true state of facts was presented.
12. Stewart and his three co-accused, Trudel, Sauvé, and Mallory, were charged and arrested between December 19 and 20, 1990. The preliminary hearing into the charges took place between September 1991 and February 1994, and resulted in a committal for trial for all four accused.
13. The trial of all four accused commenced on January 23, 1995 and subsequent to its commencement, the accused successfully moved to sever the joint trial. Trudel and Sauvé were tried first, followed by the trial of Stewart and Mallory.
14. All four accused were convicted in the murders of Michel Giroux and his pregnant spouse, Manon Bourdeau. On May 30, 1996, Trudel and Sauvé were convicted on two counts of first-degree murder. On February 1, 2000, Stewart was convicted on two counts of first-degree murder, and Mallory was convicted on two counts of second-degree murder.
15. Subsequent to their conviction, Stewart and Mallory brought an application to stay proceedings on grounds that their ability to make full answer and defence was infringed in the investigation and prosecution of the charges against them. On March 17, 2000, McWilliam J. dismissed this application.

16. On January 30, 2004, the Ontario Court of Appeal ordered a new trial for Sauvé and Trudel. The Ottawa Police defendants plead that any errors found by the Court of Appeal occurred in good faith in response to the conduct of the accuseds' defence in this case.
 17. On January 12, 2007, McKinnon J. of the Superior Court of Justice stayed the charges against Sauvé and Trudel. McKinnon J. ruled that the accuseds' *Charter* rights under sections 11(b) and 7 had been violated as a result of the overall passage of time from the time that the offence had been committed.
 18. On January 26, 2007, the Ontario Court of Appeal ordered a new trial in Stewart and Mallory's case. The Ottawa Police defendants plead that any errors found by the Court of Appeal occurred in good faith in response to the conduct of the Plaintiff's and his co-accused, Mallory's, defence in this case.
 19. On February 27, 2007, the Crown stayed the charges against Stewart and Mallory due to the passage of time and in light of the stay of proceedings ordered by Justice McKinnon in the related case against Sauvé and Trudel.
 20. The Ottawa Police defendants plead that it is an abuse of process to attempt to relitigate the allegations raised in the Statement of Claim all of which were, or ought to have been, raised by the Plaintiff in the course of the prosecution and disposed of therein.
 21. The Ottawa Police defendants deny that the Plaintiff suffered any loss or damages for which they are liable and put him to the strict proof thereof. In the alternative, the damages claimed are exaggerated, excessive, remote and unforeseeable. In the further alternative, the Plaintiff failed to act reasonably to mitigate any damages that were suffered, and was contributorily negligent with respect to same.
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22. The Ottawa Police defendants deny that the Plaintiff has suffered or will continue to suffer any physical, psychological or emotional damage. In the alternative, if the Plaintiff has suffered or continues to suffer any such damage, which is not admitted but denied, such damage was not in any way caused by or in any way the result of any act or omission of the Ottawa Police defendants.
23. The Ottawa Police defendants state that the Plaintiff was incarcerated with respect to other offences during a portion of the period for which damages are claimed in this action.
24. The Ottawa Police defendants plead that the Plaintiff was engaged in criminal activity for a number of years prior to the charges in issue and consequently suffered no harm to his reputation or any compensable loss of income as a result of the charges.
25. The Ottawa Police defendants plead that, as insufficient particulars of damages have been pleaded, any claim for prejudgment interest should be disallowed.
26. The Ottawa Police defendants plead that there is no basis for any claim for exemplary, punitive and/or aggravated damages in the circumstances.
27. The Ottawa Police defendants plead that the Plaintiff received a remedy for any breach of his *Charter* rights in the prosecution of the Plaintiff including an order for a new trial and stay of proceedings, and deny that damages would be an appropriate and just remedy under s.24 of the *Charter* for any breach of the Plaintiff's *Charter* rights.
28. The Ottawa Police defendants rely on the *Police Services Act* R.S.O. 1990, c.P. 15.

29. Accordingly, the Ottawa Police defendants request that the action be dismissed with costs.

DATED: April 21, 2009

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ROBERT STEWART

and
PLAINTIFF(S)

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO ET AL
DEFENDANT(S)
Court file no. CV-08-00362956-0000

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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