



ONTARIO COURT OF JUSTICE  
(GENERAL DIVISION)

98-CV-141829 CM  
COURT FILE NO.

BETWEEN:

THE ESTATE OF MANISH ODHAVJI, DECEASED, PRAMOD ODHAVJI, BHARTI  
ODHAVJI AND RAHUL ODHAVJI

Plaintiffs

-and-

MARTIN WOODHOUSE, PHILIP GERRITS, OFFICER JOHN DOE, OFFICER JANE DOE,  
METROPOLITAN TORONTO CHIEF OF POLICE DAVID BOOTHBY, METROPOLITAN  
TORONTO POLICE SERVICES BOARD  
AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU. 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 or America, the period is sixty days.

PURSUANT TO CONFORMÉMENT À		Defendants	
AMENDED THIS <u>5/98</u>		GRIFFIER LOCAL COUR DE L'ONTARIO (DIV. GÉN.)	
MOINS DE LA RÈGLE 26.02 (A)		LOCAL REGISTRAR COURT (GEN. DIV.)	
DATE OF ORDER OF CONVOIANCE DU JURY		DATE FAIT LE	

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend 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, JUDGEMENT 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 PLAINTIFFS' CLAIM AND \$2,000.00 for costs, within the time for service 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 Plaintiffs' claim and \$100.00 for costs and have the costs assessed by the court.

Date:

February 17, 1998

Issued by

Local registrar

Address of  
court office380 UNIVERSITY AVE.  
11TH FLOOR  
TORONTO, ONTARIO  
M5G 1E6380 AVE. UNIVERSITY  
11E ÉTAGE  
TORONTO, ONTARIO  
M5G 1E6

To:

Martin Woodhouse  
c/o Metropolitan Toronto Police Services  
40 College Street  
M5G 2J3

And To:

Philip Gerrits  
c/o Metropolitan Toronto Police Services  
40 College Street  
M5G 2J3

And To:

Officer John Doe

And To:

Officer Jane Doe

And To:

(55112)

Metropolitan Toronto Chief of Police David Boothby  
c/o Metropolitan Toronto Police Services  
40 College Street  
M5G 2J3

And To:

Metropolitan Toronto Police Services Board

40 College Street  
7<sup>th</sup> Floor  
M5G 2J3

And To:

Her Majesty the Queen in Right of Ontario

**CLAIM**

1. The plaintiff, the Estate of Manish Odhavji, claims:
  - a. Damages for assault, battery and negligence in the amount of \$1,000,000.00 (one million dollars);
  - b. Special damages in an amount to be determined with particulars provided prior to trial;
  - c. Punitive, exemplary and/or aggravated damages in the amount of \$1,000,000.00 (one million dollars);
  - d. Pre and post judgement interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
  - e. Its costs of this action on a solicitor and his own client scale; and
  - f. Such further and other relief as this Honourable Court deems just.
2. The plaintiffs, Pramod Odhavji, Bharti Odhavji, and Rahul Odhavji, each claim:
  - a. Damages for negligence, breach of public duty and/or misfeasance in public office in the amount of \$1,000,000.00 (one million dollars);
  - b. Special damages in an amount to be determined with particulars provided prior to trial;
  - c. Punitive, exemplary and/or aggravated damages in the amount of \$1,000,000.00 (one million dollars);
  - d. Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$200,000.00 (two-hundred thousand dollars);
  - e. Pre and post judgement interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
  - f. Its costs of this action on a solicitor and his own client scale; and
  - g. Such further and other relief as this Honourable Court deems just.

### **Introduction**

3. The claims of the plaintiffs arise from, *inter alia*, events which transpired on or about September 26, 1997 when Manish Odhavji, a resident of North York, Ontario, was shot and killed during the course of an interaction with officers of the Metropolitan Toronto Police Service. The plaintiffs state that the ~~actions of the defendants give rise to claims for, *inter alia*, assault, battery, negligence, misfeasance in~~ public office and negligent supervision.

### **The Parties**

4. Manish Odhavji, who at all material times was 22 years old and a resident of the City of Toronto in the Province of Ontario, died intestate.

5. The plaintiffs, Pramod Odhavji and Bharti Odhavji, are married and are, respectively, the father and mother of the late Manish Odhavji. The plaintiff, Rahul Odhavji, is the brother of the late Manish Odhavji. All are ordinarily resident in the City of Toronto. These plaintiffs enjoyed a close and loving relationship with Manish Odhavji.

6. The defendants, Martin Woodhouse ("Woodhouse"), Philip Gerrits ("Gerrits"), Officer John Doe and Officer Jane Doe (hereinafter collectively referred to as the "defendant police officers"), were at all material times and, in particular, on September 26, 1997, peace officers with the Metropolitan Toronto Police Service. These officers all reside in or around the area of the City of Toronto in the Province of Ontario. The wrongful actions of these defendant police officers, individually and/or collectively, in assaulting Manish Odhavji, resulted in his suffering and death.

7. The defendant, Metropolitan Toronto Chief of Police David Boothby (hereinafter "Boothby"), was at all material times the Chief of Police of the Regional Municipality of Metropolitan Toronto Police

Service and responsible for the supervision, training, direction and control of police officers employed by the Metropolitan Toronto Police Service, including the defendant police officers.

8. The Metropolitan Toronto Police Services Board (hereinafter "Police Services Board") is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the Regional Municipality of Metropolitan Toronto. The Police Services Board is liable for its own conduct and in respect of torts committed by members of the Metropolitan Toronto Police Service, including the defendant police officers and Boothby.

9. Her Majesty the Queen in Right of Ontario (hereinafter "Ontario"), through the Ministry of the Solicitor General and Correctional Services, is responsible for the establishment of police training and standards amongst police forces in the Province of Ontario. As such this defendant is responsible at law for the conduct of the remaining defendants.

### **Wrongful Death of Manish Odhavji**

10. A number of robberies of banks and jewellery stores took place in and around the Municipality of Metropolitan Toronto in 1997 that were believed to be related. Persons who would use, as transportation, Jeep Cherokees carried out the robberies. The persons who carried the robberies were referred to, colloquially in the media and by police officers as the "Cherokee Bandits."

11. Officers of the Metropolitan Toronto Police Service, including the defendant police officers, had identified a number of persons suspected of being the Cherokee Bandits. Surveillance was carried out in

respect of these suspects. On September 26, 1997 officers of the Metropolitan Toronto Police Service, including the defendant police officers, suspected that a robbery would take place at a branch of the Canadian Imperial Bank of Commerce. Approximately 35 officers took part in the surveillance.

12. At approximately 2:40 pm, a Jeep Cherokee containing the suspected persons arrived at the Canadian Imperial Bank of Commerce at 2973 Islington Avenue. Several of the occupants of the vehicle went into the bank and a robbery ensued. The police officers, including the defendant police officers, did not attempt in any way to prevent the robbery.

13. The persons who carried out the robbery left the bank and reentered the Jeep Cherokee in view of the defendant police officers, who did not attempt to arrest them or prevent them from leaving the scene. The Jeep Cherokee left the scene, followed by the defendant police officers. The Jeep Cherokee drove to a nearby parking lot at a school on Humberview Boulevard where some of the occupants exited it and entered two other vehicles. The deceased and another person entered a Ford Mustang. The deceased entered the passenger side. The Ford Mustang drove away followed by the defendant police officers. The deceased and the driver of the car were not armed.

14. The defendant police officers stopped the Ford Mustang nearby on Humberwood Boulevard, across the street from a school. Police vehicles surrounded the Ford Mustang, including the vehicles of the defendant police officers. The vehicle driven by the defendant Woodhouse blocked the driver's door of the Ford Mustang.

15. The defendant Woodhouse exited his vehicle while holding a handgun and immediately began firing shots into the Ford Mustang, where the deceased and the driver were sitting. The deceased left the vehicle through the passenger door and attempted to avoid being shot by the defendant Woodhouse. He ran approximately 15 metres away. The deceased held no weapon. His hands were in full view of the defendant police officers as he ran away from them.

16. The defendant Woodhouse and the other defendant police officers fired shots at the deceased as he ran away. The deceased was hit by at least two shots. The most serious injury resulted from a shot fired by the defendant Woodhouse that struck the deceased in the back.

17. At no time did the deceased or the driver of the Ford Mustang fire shots at the defendant police officers or threaten or provoke the police officers.

18. The deceased was mortally wounded and died at hospital less than two hours later. The deceased endured both physical and mental suffering prior to his death.

19. The plaintiffs state that at no time did the deceased present a threat of serious bodily harm to the defendant police officers nor did the defendant police officers perceive him as a threat.

20. The plaintiffs state that at no time did the defendant police officers attempt to use an alternative or lesser form of force to restrain or subdue the deceased.



21. The plaintiffs state that the death of Manish Odhavji was caused, *inter alia*, by the assault and battery of the defendant police officers. In particular and, without restricting the generality of the foregoing, these defendants intentionally applied force to the person of Manish Odhavji in the absence of his consent which force was not and is not justifiable at law. This force was applied in circumstances where the defendants knew or ought to have known that said force would cause the death of Manish Odhavji. The plaintiffs plead and rely upon the relevant provisions of the *Criminal Code* and state that the actions of the defendant police officers, in ending Manish Odhavji's life, constituted culpable homicide.

22. The plaintiffs state that the defendant Boothby is responsible at law for the aforesaid conduct of the defendant police officers.

23. The plaintiffs further state that the defendant Police Services Board is responsible at law for the aforesaid conduct of the defendant Boothby and the defendant police officers.

24. The plaintiffs state that the defendant, Ontario, is responsible at law for the aforesaid conduct of the defendant Police Services Board, the defendant Boothby and the defendant police officers.

25. Further and/or in the alternative, the plaintiffs state that all the herein defendants owed a duty of care to the deceased to take reasonable care for his safety, which duty of care increased once Manish Odhavji became a person in the detention of the Metropolitan Toronto Police Service. Without restricting the generality of the foregoing, the defendants owed a duty to Manish Odhavji to use only that force which was necessary to the carrying out of their lawful duties. Furthermore, where force was reasonably necessary, to use the least amount of force necessary to carry out their duties.

26. The plaintiffs state that the defendants breached the duties of care they owed to Manish Odhavji and, accordingly, are liable in negligence to the plaintiffs. The plaintiffs state that the injuries and death suffered by the deceased on September 26, 1997 arose as a direct result of the negligence of the defendants. The plaintiffs state that the negligent actions and/or inactions of the defendants as plead herein each and/or collectively caused the death of Manish Odhavji, a consequence the defendants knew or ought to have known would occur as a result of their negligence. Without restricting the generality of the foregoing, some of the particulars of the negligence are, *inter alia*, as follows:

- A. As against the defendant police officers for whose negligence the defendants Boothby, Police Services Board and Ontario are all in law responsible:
  - i. The defendants Woodhouse and Gerrits discharged their firearms incompetently and in breach of the standard of care expected of members of a police service acting professionally;
  - ii. The defendants Woodhouse and Gerrits discharged their firearms in circumstances where they could not see what and/or who they were shooting;
  - iii. All the defendant police officers breached their duty to use only so much force as was necessary to carry out their legal duties;
  - iv. The defendant police officers breached their obligations to ensure the safety of the deceased;
  - v. The defendant police officers failed at all material times to exercise the standard of care required by their position as police officers with the Metropolitan Toronto Police Service;

- vi. The defendant police officers acted with reckless disregard for the life of Manish Odhavji; and
  - vii. The defendant police officers were incompetent to carry out the duties of police officers lacked reasonable care, skill, ability and training and ought not to have been assuming the responsibilities and obligations of their positions.
- 

B. As against the defendants, Boothby, Police Services Board and Ontario:

- i. They were negligent in the manner in which they carried out their responsibilities with the consequence that Manish Odhavji was wrongfully injured and killed; and
- ii. They failed to maintain appropriate supervision and control over the defendant Police Constables.

27. The plaintiffs, have and continue to suffer physically, psychologically and emotionally as a direct result of the conduct of the defendants as plead aforesaid. The damages suffered by these plaintiffs are all consequences which the defendants knew or ought to have known would result from their wrongful conduct in causing the death of Manish Odhavji.

28. Further, and/or in the alternative, the plaintiffs, Pramod, Bharti and Rahul plead and rely upon the relevant provisions of the *Family Law Act*. In particular, these plaintiffs enjoyed a close and loving relationship with Manish Odhavji and have suffered the loss of his guidance, care and companionship as a result of his wrongful death.

29. The plaintiffs, Pramod, Bharti and Rahul have also suffered pecuniary loss, in that they have been deprived of financial support that Manish Odhavji would have provided to them had he not died as a result of the wrongful acts of the defendants.

30. The plaintiffs have also been put to the expense as a direct result of the wrongful acts of the defendants, including, and without restricting the generality of the foregoing:

- i. Funeral expenses;
- ii. Loss of employment income;
- iii. Legal fees in respect of proceedings other than the herein claim; and
- iv. Loss of tuition.

31. By reason of the facts set out herein, the plaintiffs claim exemplary, aggravated and/or punitive damages arising out of the conduct of the defendants as plead aforesaid.

32. The plaintiffs plead and rely upon the *Negligence Act* R.S.O. 1990, c. N.1. as amended.

**Breach of Public Duty/Misfeasance in Public Office**

33. The plaintiffs state that the acts and/or omissions of the defendant police officers in undermining the investigation into the death of Manish Odhavji (particularized below) represented intentional breaches of their legal duties as police officers which they knew or ought to have known would cause injuries and/or losses to the plaintiffs. Having caused injuries and/or losses to the plaintiffs the defendant police officers are liable to the plaintiffs for breach of public duty and/or misfeasance in public office.

34. Pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15, s.113 (hereinafter the "*Act*"), the Special Investigations Unit (hereinafter "S.I.U.") is charged with investigating circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. Upon the conclusion of an investigation, the director of S.I.U., if there are reasonable grounds to do so, shall cause informations to be laid against police officers and shall refer them to the Crown Attorney for prosecution.

35. Section 113(9) of the *Act* states that "Members of the police forces shall co-operate fully with the members of the unit in the conduct of investigations."

36. The plaintiffs state that the shooting of Manish Odhavji occurred at 2:50 pm on the afternoon of September 26, 1997. By 3:15 pm, counsel for the defendant Boothby, Rusty Beauchesne, had notified a representative of S.I.U. that a shooting had occurred. Mr. Beauchesne was advised by the representative that S.I.U. would investigate.

37. The plaintiffs state that once S.I.U. assumed carriage of the investigation into the police shooting, involved members of the Metropolitan Toronto Police Service, including the defendant police officers, were required to "cooperate fully with the members of the unit in the conduct of the investigation". Without restricting the generality of the foregoing, the plaintiffs state that, by operation of law and/or police operating procedures and/or police standing orders, the defendant police officers had the following obligations and duties, both operational and/or public duties:

- i. As witnesses to a homicide, the defendant police officers were required to avoid contact with any other police officers who were witnesses to the shooting by segregating themselves up until the time they had prepared their notes and had provided statements to the S.I.U.;
- ii. The defendant police officers were required to make themselves available to the S.I.U. for the purposes of interviews, the provision of their notes and providing requested evidence such as their clothing, their firearms and blood samples;
- iii. The defendant police officers were obligated to comply with all reasonable requests by S.I.U. investigators for the purposes of ensuring a complete and competent investigation; and
- iv. The defendant police officers were obligated to conduct themselves in a professional and ethical manner consistent with the standard of conduct that a reasonable citizen would expect from members of the police service during a homicide investigation.

38. The plaintiffs state that the defendant officers, individually and/or collectively, deliberately breached the duties set out above by engaging in a course of conduct calculated to undermine the S.I.U. criminal investigation into the death of Manish Odhavji. Without restricting the generality of the foregoing, particulars of this conduct are as follows:

- i. Despite express requests by S.I.U. investigators of those defendant police officers, categorized at the time as "witness officers", to be interviewed on September 26, 1997, the day of the shooting, these defendant police officers left the police station

without notifying S.I.U. and did not attend for interviews with S.I.U. until four days later on September 30, 1997;

- ii. Despite express requests at the outset of the investigation by S.I.U. investigators of counsel for Chief Boothby, Rusty Beauchesne, for all the defendant police officers to be segregated, the defendant police officers categorized as "witness officers" met in the Detective office at 23 Division where they remained together and unsupervised from approximately 4:30 pm – 10:00 pm on September 26, 1997, the day of the shooting;
- iii. The defendant police officers met again as "a crew" on September 29, 1997;
- iv. Despite express requests by S.I.U. investigators for all the defendant police officers to be segregated, the defendant police officers categorized as "subject officers" (being the officers who discharged their weapons and may have caused the death) drove together to the North York Hospital where they remained together with their lawyers for several hours following the shooting;
- v. All of the defendant police officers failed to make complete and accurate notes prior to the conclusion of their shifts;
- vi. The written notes of the defendant police officers categorized as witness officers, prepared days after the shooting and following a number of meetings, were tainted to the point that the Director of the S.I.U., Andre Marin, reported to the Attorney General for Ontario that he could give them no weight as independent recollections of the defendant police officers;
- vii. When the defendant police officers who were categorized as witness officers were interviewed by S.I.U. investigators on September 30, 1997, they were unable to



recount specifics of the shooting as it unfolded even though several of them were trained surveillance officers and were within metres of the incident. These failures to recount specifics of the incident were characterized by the Director of the S.I.U., Andre Marin, in his report to the Attorney General for Ontario, as having "hampered" the investigation; and

- viii. All defendant officers who were categorized as "subject officers" were asked to surrender their on duty clothing, provide medical releases to speak to any treating physicians in respect of the incident, blood samples and their notebooks. These defendant officers failed and/or delayed providing the requested evidence.

39. The plaintiffs state that, based on the facts set out above in paragraph 38, the defendant police officers did not make timely and accurate notes of their observances of the events surrounding the shooting of Manish Odhavji. The defendant police officers conferred with each other before and during the making of notes so that their individual recollections were not preserved. Moreover, some of the defendant police officers, including witness officers, whose identities are in the unique knowledge of the defendants and are known to the plaintiffs only as John Doe and Jane Doe, made inaccurate and misleading notes about their observances.

40. The plaintiffs further state that the defendant police officers did not give timely interviews or statements to the S.I.U. Moreover, many of the statements that were ultimately given to S.I.U. were inaccurate and misleading. In particular the defendant police officers, John Doe and Jane Doe, who were present at the scene and witnessed the events surrounding the shooting inaccurately and misleadingly stated that they had not witnessed the events surrounding shooting.

41. The defendant police officers are holders of a public office. The defendant police officers, by virtue of their training and experience as police officers knew or ought to have known that, in taking the actions they did (as set out in paragraph 38), they were undermining the criminal investigation by the S.I.U.

42. The defendant police officers were under a duty to co-operate with the S.I.U. pursuant to the *Act*. Moreover, the defendant police officers were under a duty pursuant to s.139(2) of the *Criminal Code* not to attempt to obstruct the course of justice. These defendant officers, in failing to co-operate with the S.I.U., in intentionally sabotaging their written and verbal accounts and by withholding evidence in respect of a homicide, collectively and/or individually, knowingly breached those duties set out in the *Act*, the *Criminal Code* and described at paragraph 37 above.

43. The plaintiffs state that the acts and omissions of the defendant police officers as plead herein were deliberate and motivated by a desire to frustrate and undermine the S.I.U. investigation and to prevent the authorities from uncovering the truth about the shooting of Manish Odhavji.

44. The plaintiffs state that the defendant Boothby is also liable for abuse/misfeasance in public office. Particulars of the said abuse are as follows:

- i. Chief Boothby, through his legal counsel, was directed by S.I.U. officers to segregate the defendant police officers and he deliberately failed to do so;
- ii. Chief Boothby failed to ensure that defendant police officers produced timely and complete notes;

- iii. Chief Boothby failed to ensure that the defendant police officers attended for requested interviews by S.I.U. in a timely manner; and
  - iv. Chief Boothby failed to ensure that the defendant police officers gave accurate and complete accounts of the specifics of the shooting incident.
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45. The plaintiffs state that Chief Boothby's liability arises, in part, from his failure to issue orders that would have ensured that the conduct of the defendant police officers did not undermine the S.I.U. investigation.

46. As a result of the actions of the defendants in effectively frustrating the investigation into the death of Manish Odhavji, the plaintiffs have been deprived of a thorough, competent and credible criminal investigation. The plaintiffs state that the results of the investigation have been irreparably tainted, thus depriving the plaintiffs (who are the family of Manish Odhavji) of any prospect of closure in respect of his death. The plaintiffs will always harbour uncertainties concerning the role of the police in bringing about Manish Odhavji's death. The plaintiffs state that this lack of closure is due directly to the acts and omissions of the defendants as plead herein.

47. As a result of the defendants' actions in undermining the criminal investigation, the plaintiffs' grieving for their deceased family member has been aggravated and prolonged. Further, the plaintiffs have and continue to suffer physically, psychologically and emotionally as a direct result of the defendants' actions as plead aforesaid. In addition to suffering from mental distress, anger, depression and anxiety, the plaintiffs have lost their confidence in the police authorities. The plaintiffs have lost their enjoyment of life and will continue to suffer in the future.

48. The damages suffered by these plaintiffs are all consequences which the defendants knew or ought to have known would result from their wrongful conduct in undermining the investigation into the death of Manish Odhavji.

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### Negligent Supervision

49. With respect to the defendant, Her Majesty the Queen in Right of Ontario, the Solicitor General and Minister of Correctional Services is the statutory legal entity who administers the *Act*. The Solicitor General is responsible for monitoring police forces to ensure that adequate and effective police services are provided at, among others, the municipal level (s. 3(2)(a)). The Solicitor General is mandated to monitor Police Services Boards to ensure that they comply with the prescribed standards of service (s. 3(2)(b)). The *Act* further states that the Solicitor General shall develop and promote programs to enhance professional police practices, standards and training (s. 3(2)(d)). Section 3(2) of the *Act* imposes the further statutory duties on the Solicitor General of issuing directives and guidelines respecting policy matters, operating the Ontario Police College and providing advice and information regarding police and police services.

50. With respect to the defendant Police Services Board, the plaintiffs state that, pursuant to ss. 27 to 40 of the *Act*, this defendant is responsible as the civilian overseer of the police on behalf the community. Pursuant to ss. 21 to 24 of the *Act*, the Ontario Civilian Commission on Police Services is the governing body of all Police Services Boards in the Province of Ontario. The plaintiffs plead and rely upon the *Ontario Civilian Commission on Police Services, Report of an Inquiry* dated August 1992 (commonly referred to as the "Junger Whitehead Report") which Report clarifies and elaborates on the responsibilities and legal duties of the defendant Police Services Board and the defendant

Boothby. In particular, the defendant Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. The Police Services Board exists to ensure that the policing services provided meet community standards. The Police Services Board has the overall responsibility for the operation of the Metropolitan Toronto Police Service. In order to competently discharge its legal duties, the defendant Police Services Board is required to have a mechanism for monitoring the implementation of its policies by the force and the capacity to investigate alleged problems which may come to light.

51. The plaintiffs state that at all material times the defendants Boothby, Police Services Board and Ontario owed a duty of care to the plaintiffs to ensure that the defendant police officers conducted themselves in a fashion that ensured the integrity of the criminal investigation into the shooting of Manish Odhavji. These defendants each and/or collectively have an obligation to the plaintiffs to institute training, programs, policies and/or orders which would ensure that police officers, including the defendant police officers, complied with their legal obligations to co-operate with the S.I.U.. Furthermore the plaintiffs state that these defendants had an obligation to ensure that police officers in their charge comply with their training and the laws of the land so as to ensure the integrity of criminal investigations.

52. The plaintiffs state that the defendants Boothby, Police Services Board and Ontario knew or ought to have known that police officers in their charge have, for the previous nine years, regularly failed to comply with their training and statutory duties to ensure the integrity of criminal investigations into police shootings. In particular, and without restricting the generality of the foregoing, these defendants know that, in cases of police shootings, members of the Metropolitan Toronto Police Service, both witness and subject officers, regularly fail to comply with the duty to co-operate with the S.I.U. as set out in s. 113(9)

of the *Act*. The plaintiffs plead and rely upon the recommendations of the juries in the Inquest into the Death of Raymond Lawrence and the Inquest into the Death of Lester Donaldson with respect to ensuring that police officers who are witnesses to police shootings conduct themselves according to the same standard as would be expected of any other witnesses in homicide investigations.

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53. The plaintiffs state that the defendants Boothby, Police Services Board and Ontario, in failing to mandate a course of conduct for the defendant police officers that ensured the integrity of criminal investigations into police shootings, breached the duties of care owed to the plaintiffs. These defendants failed to institute training, programs, policies and/or orders which would ensure that police officers, including the defendant police officers, complied with their legal obligations to co-operate with the S.I.U.. Further and/or in the alternative, if the training, programs policies and/or orders were adequately instituted, then these defendants failed to ensure that police officers including the defendant police officers complied with this training. The plaintiffs state these defendants are thus liable for negligent supervision of the defendant police officers.

54. The plaintiffs state that, as a direct result of the negligence of the defendants as plead in paragraphs 50-53, they suffered the damages described in paragraphs 46-48 above, which damages these defendants knew or ought to have known would be a result of their negligence.

55. The plaintiffs propose that this action be tried in the City of Toronto in the Judicial District of York.



Date of Issue: **February 17, 1998**

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**M5R 1A9**

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**Solicitors for the Plaintiffs**

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**THE ESTATE OF MANISH ODHAVJI et al.**  
Plaintiffs

**and**  
**MARTIN WOODHOUSE et al.**  
Defendants

Court File No. 98-CV-141829CM

**ONTARIO COURT (GENERAL DIVISION)**

Proceeding Commenced At Toronto

**AMENDED STATEMENT OF CLAIM**

**FALCONER, MACKLIN**  
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Solicitors for the Plaintiffs