

Form 3-9
(Rule 3-9)

COURT FILE NUMBER _____
COURT OF _____
JUDICIAL CENTRE REGINA
PLAINTIFF(S) BRETT HERMAN
DEFENDANT(S) BERNIE HERMAN and the ROYAL CANADIAN
MOUNTED POLICE

NOTICE TO DEFENDANT

1 The Plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:

- (a) serve a Statement of Defence on the Plaintiff; and
- (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2 The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

- (a) 20 days if you were served in Saskatchewan;
- (b) 30 days if you were served elsewhere in Canada or in the United States of America;
- (c) 40 days if you were served outside Canada and the United States of America.

3 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4 This Statement of Claim is to be served within 6 months from the date on which it is issued.

5 This Statement of Claim is issued at the above-named judicial centre on the 15th day of July, 2021.

Court Seal

Local Registrar

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff, Brett Herman resides in Prince Albert, Saskatchewan. He is the brother of the deceased Braden Herman ("**Braden**"), who was murdered by Bernie Herman ("**Bernie**"), who, at the time of the murder, was a Corporal in the Royal Canadian Mounted Police (the "**RCMP**"). Bernie has been charged with first-degree murder in a separate criminal action. Braden and Bernie were unrelated.

FACTS

GENERAL FACTS

The incident.

2. On 11th May 2021, in or around Prince Albert, Saskatchewan, Bernie murdered the Plaintiff's brother, Braden Herman using a gun.
3. Bernie was wearing his RCMP uniform at the time of murdering Braden.
4. On the day of the murder, Bernie had called a co-worker and made "disturbing comments that he had killed someone".
5. At the time of the murder Braden was 26 years old, and Bernie was around 53 years old. Braden had no criminal record. Bernie's interest was not societally related.
6. The observation of the skull of Braden shows that the gun was placed close to his forehead. As a result of Bernie putting his RCMP-issued revolver close to Braden's forehead and deliberately and brutally murdering him Braden's skull has a black hole where the bullet penetrated his skull, and the back of his skull was almost entirely blown away.

7. Bernie intentionally killed Braden.
8. Bernie resigned from the RCMP following the murder.

Harassment by Bernie.

9. The deceased was a member of the Clearwater River Dene Nation and Bernie was a member of the La Loche Nation.
10. Bernie had been harassing the deceased for a number of years before ultimately shooting him in May 2021.
11. Bernie often visited Braden's house.
12. Bernie often came exuding the authority of an RCMP officer.
13. Braden's car was once stopped by Bernie driving an RCMP vehicle when Braden's friend was driving it.
14. Braden was often found with cuts, scratches, bruises and on one occasion a broken wrist, caused by Bernie.
15. Braden was often called by Bernie from a private cell phone.
16. Braden feared for his safety at the hands of Bernie. This made obtaining information from him very difficult, but Bernie was behind the threats.
17. This stress created by Bernie, led Braden to leave his job.

The RCMP

18. Bernie was a member of the RCMP when Braden was murdered by Bernie.
19. Bernie harassed Braden in his capacity as an RCMP officer.

20. The RCMP employed an unstable person, known to the RCMP to be unstable, who for personal reasons was utilizing his position and authority as an RCMP officer over a 26-year-old boy.

21. In the small community of Prince Albert, the RCMP knew or ought to have known about the wrongful actions of their officer, Bernie.

22. RCMP assessments of Bernie indicated or should have indicated to the RCMP that Bernie was a danger to himself and others. The authority and awe of the RCMP has been created by the work of the RCMP and is a part of the institutional mandate of the RCMP but with that creation of authority and awe comes the responsibility of the RCMP to protect Braden and people like him from the improper exercise of RCMP authority and it was as an RCMP officer, exerting the authority of an RCMP officer that Bernie harassed and ultimately Bernie cracked and brutally and callously murdered Braden in a barbarous manner.

THE FATAL ACCIDENTS ACT

23. The Defendants are liable under the *Fatal Accidents Act*.

24. The death of Braden was a direct consequence of the Defendants' wrongful act, neglect, or default. Without the Defendant's actions, the deceased's death would not have occurred.

25. The Defendants are liable for the medical expenses/hospital expenses incurred for the deceased, funeral expenses of the deceased, the cost of grief counselling for the family members and associated people, loss of earnings for the period in which the persons by whom or for whom this benefit of action is brought, are unable to work because of the death in addition to any other out of pocket expenses reasonably incurred as a consequence of the death.

NOMINATE TORTS

PRIVATE NUISANCE

26. The Defendants are liable to the Plaintiff for the tort of private nuisance.
27. At all material times, the Plaintiff had a valid interest in his Unit in Prince Albert.
28. At all material times such interest owned, possessed, or held by Plaintiff was:
 - a. Obtained for valuable consideration;
 - b. An important incident of the ordinary enjoyment by the Plaintiff of his property or interests, worthy of protection pursuant to the law.
29. The conduct of the Defendants was unreasonable in that:
 - a. Their interference was severe, having regard for to its nature, duration, and effect;
 - b. Their conduct served neither valid, lawful nor equitable utility;
 - c. The character of the Plaintiff's property was worthy of legal or equitable protection;
 - d. The interest of the Plaintiff was sensitive to such wrongful conduct of the Defendants.
30. The conduct of the Defendants directly caused material damage, harm, or economic loss to the Plaintiff.

31. Alternatively, to para 34, the conduct of the Defendants directly or indirectly interfered with the rights or interests of the Plaintiff and caused him inconvenience.

32. The liability of the Defendants to the Plaintiff in private nuisance is strict and irrespective of the purported intent, negligence, or non-faulty conduct of the Defendants.

PUBLIC NUISANCE

33. The Defendants are liable to the Plaintiff for the tort of public nuisance.

34. Bernie's conduct constitutes a public nuisance in that it unreasonably interfered with the public's interest in questions of morality, comfort, or convenience.

35. The Impugned Conduct amounts to an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort, and other forms of interference.

36. The Impugned Conduct has a public nature as Bernie is a member of a public body, the RCMP. The officers of the RCMP hold a public office.

37. The impugned conduct served no utility.

38. There is no general practice from other RCMP officers to indulge in the impugned conduct.

ASSAULT

39. The Defendants are liable to the Plaintiff for the tort of assault.

40. Bernie regularly visited Braden's house in addition to threatening him on occasions and creating a sense of fear in his mind. Braden constantly felt threatened that he may suffer bodily harm due to Bernie's actions.

41. Bernie's actions were intended to cause apprehension of harmful or offensive contact; and

42. The act indeed caused apprehension in the victim that harmful or offensive contact would occur.

43. A person who intends to cause apprehension of imminent harm and succeeds in doing so has committed the tort of assault. In the present matter, Bernie has committed the tort of assault.

44. The same was evident from Braden's behaviour. He was constantly in a state of shock and felt threatened due to Bernie's actions.

BATTERY

45. The Defendants are liable to the Plaintiff for the tort of battery.

46. A battery is an intentional tort accompanied by the elements of intent, contact, and harm.

47. Braden was often found with cuts, bruises, scratches and on one occasion a broken wrist before ultimately killing Braden. These were a result of several confrontations between Bernie and Braden.

48. Bernie at all material times had the intent to cause injury and commit battery against Braden.

49. Bernie non-consensually contacted Braden by touching him, causing physical harm, and ultimately killed him.

50. The harm caused by Bernie was but not limited to physical, mental, and emotional in nature.

MISFEASANCE OF PUBLIC OFFICE

51. The Defendants' actions amount to misfeasance of public office.

52. The leading authority in Canada on the misfeasance of public office is *Odhavji Estate v Woodhouse*. To establish a claim for misfeasance in public office, the Plaintiff must show that (in addition to causation and damages) the public officer:

1. engaged in deliberate and unlawful conduct in its capacity as a public officer; and,
2. was aware that its conduct was unlawful and likely to harm the Plaintiff.

53. The Defendant engaged in deliberate and unlawful conduct in his capacity as a public officer when: -

- a. He stopped Braden's car using an RCMP vehicle.
- b. He threatened and harassed Braden when he visited his house in Prince Albert several times.
- c. He called Braden using a private number.
- d. He killed Braden with a gun when he was in his RCMP uniform.

NEGLIGENCE OF THE DEFENDANTS

54. The Defendants are liable to the Plaintiff for the tort of negligence.

55. At all material times the Defendants owed a duty of care to the Plaintiff to ensure that they did not unlawfully interfere with Braden's interests or rights, or with his privacy.

56. The interests of the Plaintiff collectively herein referred to as the "**Reasonable Interests**".

57. At all material times the Defendants knew or ought to have known that the breach of its duties of care to the Plaintiff relating to Braden's Reasonable Interests would cause serious damage to the Plaintiff. At all material times, such harm was reasonably foreseeable. At all material times, the Defendants knew or ought to have known maintaining such duties of care was paramount.

58. At all material times there was a relationship of sufficient proximity between the Plaintiff, and specifically Braden and Bernie (in his capacity of an RCMP officer) to make it just and fair to impose the duties of care on the Defendants, in that:

- a) The policy considerations arising from the relationship between the Plaintiff and Defendants is conducive to such duty of care;
- b) The Plaintiff had a legitimate or reasonable expectation that the Defendants would not breach or violate the Reasonable Interests of the Plaintiff and the deceased;
- c) The interests of the Plaintiff were of economic and proprietary natures and were particularly vulnerable to the malicious and/or wrongful conduct of the Defendants.

- d) The Defendants negligently ignored their duties to the Plaintiff and the deceased. The Defendants breached their duties of care to the Plaintiff and the deceased, which caused damages to the Plaintiff.
- e) At all material times the Plaintiff was a foreseeable Plaintiff, and the risk of their losses was at all material times foreseeable. At no material time were losses by the Plaintiff in this way so remote to exclude this claim for negligence.
- f) There are no residual policy considerations that would negate or limit the scope of said duties of care.

VICARIOUS LIABILITY OF THE RCMP

59. The RCMP is vicariously liable for the actions of their employee Bernie Herman.

60. There is an employer-employee relationship between the RCMP and Bernie.

61. Bernie committed various torts against the Plaintiff and his deceased brother.

62. The torts occurred within the scope of employment as Bernie used his authority as an RCMP officer to commit those torts.

63. The acts were authorized by the employer.

64. In the alternative, the acts were unauthorized acts that were so connected with acts that the employer has authorized that they may rightly be regarded as “**modes**” — although improper modes — of doing what has been authorized (see: Canadian Pacific Railway Co. v. Lockhart, [1942] A.C. 591 at 599 (P.C.))

PUNITIVE AND EXEMPLARY DAMAGES

65. The conduct of Bernie, the conduct of the RCMP, and failures by the RCMP merit the societal intervention of the Court of Queen's Bench by which the third arm of governance in Canada should send a message to members of police forces and police force managements that this kind of conduct is reprehensible and will not be tolerated in Saskatchewan and Canada.

66. The Defendants' actions constituted serious misconduct. Their conduct warrants punishment, deterrence, or denunciation in the form of punitive or exemplary damages.

REMEDIES

67. An order that the Defendants are liable to the Plaintiff under the *Fatal Accidents Act*.

68. An order that the Defendants are liable to the Plaintiff for private nuisance;

69. An order that the Defendants are liable to the Plaintiff for assault;

70. An order that the Defendants are liable to the Plaintiff for battery;

71. An order that the Defendants are liable to the Plaintiff for misfeasance of public office;

72. An order that the Defendants are liable to the Plaintiff for negligence;

73. Damages in an amount to be determined at trial;

74. Special damages in an amount to be determined at trial;

75. Consequential damages in an amount to be determined at trial;

76. Punitive and exemplary damages in an amount to be determined at trial;

77. Costs; and

78. Such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at Regina, Saskatchewan, this 15th day of July 2021.

MERCHANT LAW GROUP LLP



E.F. Anthony Merchant, Q.C.
Solicitors for the Plaintiff, Brett Herman

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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