

COURT FILE NUMBER

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COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

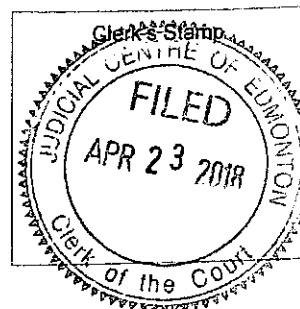
EDMONTON

PLAINTIFF(S)

CLAYTON ANTOINE BOUCHER

DEFENDANT(S)

CORPORAL DANIEL FENTON;
CONSTABLE JANARTH PARAMANANTHAM;
CONSTABLE ALLISON MOORE;
CONSTABLE KARINE BERTRAND;
STAFF SERGEANT HENRY VAN DORLAND;
ERWIN SCHULZ;
LEIGHTON GREY;
THE CROWN IN RIGHT OF ALBERTA; and
HER MAJESTY THE QUEEN IN RIGHT OF
CANADA



DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:**A. THE PARTIES**

1. The Plaintiff, Clayton Antoine Boucher, is currently a resident of Edmonton, Alberta and previously resided in Lac La Biche, Alberta. He was born in 1972 and is of Métis ancestry. Mr. Boucher was arrested on January 22, 2017 by officers with the Royal Canadian Mounted Police (“RCMP”), charged, and wrongfully convicted of possession of a controlled substance for the purposes of trafficking.
2. The Defendants, Corporal Daniel Fenton (“Corporal Fenton”), Constable Janarth Paramanatham (“Constable Paramanatham”), Constable Allison Moore (“Constable Moore”), and Constable Karine Bertrand (“Constable Bertrand”) (collectively, “Acting Officers”) are, or were, RCMP officers who, at all material times, were stationed at the RCMP detachment located in Lac La Biche, Alberta. The Acting Officers, individually or collectively, were responsible for Mr. Boucher’s arrest, detention, and the processing of exhibits following Mr. Boucher’s arrest on January 22, 2017. The Acting Officers were further individually or collectively responsible for the execution of a search warrant at Mr. Boucher’s residence in Lac La Biche on or about January 22, 2017.
3. The Defendant, Staff Sergeant Henry Van Dorland (“Staff Sergeant Van Dorland”), was the Detachment Commander at the Lac La Biche RCMP detachment. Van Dorland was responsible for overseeing the overall operation of the Lac La Biche RCMP detachment. In addition, Van Dorland was responsible for supervising the Acting Officers.
4. The Defendant, Erwin Schulz (“Schulz”) is the Crown prosecutor who was assigned to prosecute Mr. Boucher’s criminal charges stemming from his January 22, 2017 arrest. At all material times Schulz was an agent of the Public Prosecution Service of Canada.
5. The Defendant, Leighton Grey (“Grey”), was retained as criminal defence counsel for Mr. Boucher from January 17, 2017 until shortly after Mr. Boucher’s conviction on May 30, 2017. Grey was and is a partner with the law firm of Grey Munday Wowk LLP.

6. The Defendant, the Crown in Right of Alberta (the “Alberta Crown”), was responsible for directing the RCMP in Alberta according to the provisions of the *Police Act*, RSA 2000, c P-17 and is liable for the RCMP’s handling of Mr. Boucher’s arrest, detention, search, and processing of exhibits.

7. The Defendant, the Her Majesty the Queen in Right of Canada (the “Federal Crown”) was responsible for directing the Public Prosecution Service of Canada and is responsible for the acts of the Director of Public Prosecutions and the acts of individual prosecutors of the Public Prosecution Service of Canada exercising the Directors powers under the *Director of Public Prosecutions Act*, SC 2006, c 9, s 121. The Federal Crown is vicariously liable for Schulz’s acts as a public prosecutor. Under the terms of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, a member of the RCMP is deemed to be a servant of the Federal Crown.

B. THE EVENTS

8. Mr. Boucher was targeted and harassed by the RCMP for months before his arrest on January 22, 2017 - when he was charged with possession of a controlled substance contrary to the *Controlled Drugs and Substances Act*, SC 1996, c 19 (the “CDSA”). Thereafter, he spent months incarcerated not only in the absence of evidence, but despite the existence of exonerating evidence that was withheld from him. He was effectively compelled to plead guilty in order to obtain his freedom to deal with the tragic death of his wife that occurred while he was wrongfully behind bars. This travesty of justice took place despite Mr. Boucher's repeated pleas for disclosure.

INCIDENTS PRIOR TO THE ARREST

9. Mr. Boucher was a target of the Acting Officers, and particularly Constable Paramanatham, well before January 22, 2017. Between the summer of 2016 and January 2017, members of the RCMP detachment in Lac La Biche, including the Acting Officers, frequently stopped Mr. Boucher to “check up”, question him, and effectively monitor him.

10. During this period, Mr. Boucher was stopped 8-10 times or more by RCMP officers. These stops were carried out in public and in a highly conspicuous manner. They often included the use of lights and sirens, and were completed while Mr. Boucher was in the company of his common law wife, Phyllis Favel, seemingly to ensure maximum visibility and embarrassment.

11. The most notorious of these incidents was a random curfew check conducted in or around July 2017, ostensibly to ensure that Mr. Boucher was conforming to the conditions of his bail. Mr. Boucher, who is hearing impaired, was sleeping when the RCMP came to his home, and he did not wake up. This “random” curfew check was completed notwithstanding the almost weekly or biweekly encounters Mr. Boucher had with Acting Officers, such that his whereabouts were well known.

12. From the summer of 2016 to January 2017, Mr. Boucher was consistently harassed, intimidated, and targeted by the Acting Officers.

THE ARREST AND DETENTION

13. At approximately 9:00 am on January 22, 2017, Corporal Fenton stopped a car for an alleged moving violation, and recognized Mr. Boucher as the passenger in the vehicle. Shortly thereafter, other Acting Officers arrived, including Constable Paramanatham, who together with Constable Bertrand, proceeded to arrest Mr. Boucher, ostensibly for a breach of probation.

14. Mr. Boucher was transported to the Lac La Biche RCMP detachment office for initial processing. Mr. Boucher’s personal possessions, including cash he had on his person, were seized by Acting Officers.

SEARCH OF MR. BOUCHER’S HOME

15. During Mr. Boucher's arrest, the driver of the vehicle is alleged to have claimed that Mr. Boucher had sold him “meth”. Acting Officers searched Mr. Boucher, the vehicle and the driver for drugs, but found nothing. Despite having found no evidence of drugs, Corporal Fenton decided to seek a warrant to search Mr. Boucher's residence.

16. At approximately 3:00 pm on January 22, 2017, the Acting Officers carried out a search of Mr. Boucher’s residence. They located some white powdery substances, including substances in an Arm & Hammer baking soda box in a kitchen cupboard, which they concluded must be cocaine, and therefore seized as evidence.

17. Mr. Boucher was subsequently questioned by the Acting Officers about the white powdery substances, and he adamantly maintained it was baking soda. The Acting Officers believed that Mr. Boucher was lying, and decided that the substance must be cocaine, crack cocaine, or methamphetamine.

18. While the Plaintiff was detained, Constable Paramanatham told the Plaintiff that Phyllis was too good to be with the Plaintiff and that they should end their relationship.

19. Constable Paramanatham further informed the Plaintiff's son, Justin Boucher, that it was better that the Plaintiff was in jail as it would protect the Plaintiff from using drugs.

CHARGES AND DETENTION IN EDMONTON REMAND

20. After approximately six hours from the time of Mr. Boucher's arrest, Mr. Boucher was charged by the Acting Officers with various offences, which ultimately included:

- a) Unlawful trafficking of crack cocaine;
- b) Unlawful trafficking of methamphetamine;
- c) Unlawful production of crack cocaine;
- d) Unlawful possession of cocaine;
- e) Breach of recognizance by selling controlled substances;
- f) Breach of recognizance by possessing alcohol and controlled substances;
- g) Breach of probation by disturbance of the peace; and
- h) Breach of probation by consuming alcohol and intoxicating substances.

21. Mr. Boucher was then transported from the RCMP detachment in Lac La Biche to the Edmonton Remand Centre where he was imprisoned for over 4 months.

LEGAL COUNSEL AND BAIL CONCERNS POST-ARREST

22. Mr. Boucher quickly sought the assistance of legal counsel and was permitted to contact Grey on or about January 23, 2017. Grey agreed to act as Mr. Boucher's criminal counsel for the charges he was facing stemming from the January 22, 2017 arrest.

23. Grey advised Mr. Boucher that he should not pursue bail because, as he was on probation, the nature of these new serious charges implied that he would not likely succeed. In particular, he faced a “reverse onus” situation where he was required to demonstrate to a presiding justice why he should be granted bail as the Alberta Crown would likely seek bail revocation for, amongst other things, trafficking in illegal substances. Accepting Grey’s direction, Mr. Boucher did not seek bail immediately and remained in Edmonton on remand.

24. Knowing that the powder obtained from his home was baking powder, and in no way an illegal substance, Mr. Boucher asked Grey to ensure that the Crown and the police analyzed the samples quickly to confirm this. Mr. Boucher understood that once the test results from such an analysis came back, there would be no basis for the charges against him.

25. As part of a prosecution for *CDSA* charges, any seized substance is delivered to Health Canada for a test to determine whether it contains a controlled substance under the *CDSA*. A one-page Certificate of Analyst is evidence of the results of this test. Mr. Boucher needed the Certificate of Analyst to proceed to a bail hearing to show that the seized substances were not illegal. Grey, Schulz, Van Dorland, and the Acting Officers were all well aware of this and yet took no steps to expedite the completion and production of a Certificate of Analyst, notwithstanding the fact that Mr. Boucher’s liberty was at stake.

FOLLOW UP DEMANDS FOR A CERTIFICATE OF ANALYST

26. Mr. Boucher followed up again with Grey on February 17, 2017 when nothing was done to assist him and no Certificate of Analyst had been produced. In a conversation with Grey, Mr. Boucher reiterated to Grey that “the drugs are fake”, and instructed Grey to acquire a Certificate of Analyst from Acting Officers as soon as possible to prove this.

27. On February 17, 2017, Grey emailed Federal Crown prosecutor Schulz and Alberta Crown Prosecutor Jeff Rudiak (who is not a party to this proceeding). Grey advised them that Mr. Boucher was “adamant” that the seized substances were not drugs, and requested that the Alberta Crown adjourn the bail hearing until the analysis of the substances was done.

28. After not hearing back from Grey about a Certificate of Analyst, Mr. Boucher completed follow up telephone calls to Grey’s office, including on at least March 3, 13, 16, 17 and 23, 2017,

and continued to demand status updates on his case, including the status of the Certificate of Analyst. In each telephone call, Mr. Boucher continued to advise Grey that the seized substances were not illegal and that a Certificate of Analyst would prove this.

29. Despite the fact that a Certificate of Analyst still was not provided to Mr. Boucher, a trial was scheduled for September 12, 2017. Mr. Boucher was advised of this on or around March 30, 2017.

30. Mr. Boucher's correspondence with Grey and his office did not cease after Mr. Boucher received this notice. On April 3, after Mr. Boucher called Grey's office, prompting Grey's assistant, Robin Harrison, to record on a telephone call log sheet, "He keeps asking the same questions!!!"

31. Mr. Boucher phoned Grey's office on April 5, 2017 demanding that Grey acquire the Certificate of Analyst by no later than that Friday. When Mr. Boucher did not have a response, he telephoned Grey twice on Friday April 7, 2017, continuing to demand an update on what was happening.

32. Mr. Boucher called Grey's office numerous additional times during this period, asking for more information on his file, demanding that Grey obtain a copy of the Certificate of Analyst and reiterating that had been in prison for a long time and for no reason.

33. During this time, Mr. Boucher also called Schulz, and other members at Schulz's Public Prosecution Service of Canada office, demanding that the seized substances be tested, demanding a copy of the Certificate of Analyst, and informing them that he was wrongfully imprisoned.

34. By April 28, 2017, Mr. Boucher had been in prison for over three months and still did not have a copy of the Certificate of Analyst which was the key to regaining his liberty. He was completely vulnerable, and reliant upon Grey, Schulz, and the Acting Officers doing their jobs; nevertheless, he was effectively ignored and dismissed.

MEDICAL HEALTH COMPROMISED

35. Throughout his detention in the Edmonton Remand Centre from January to May 2017, Mr. Boucher's health deteriorated. He was not treated for his pre-existing physical and mental

conditions – including his documented history of Bell's Palsy, and missed the specialist treatment he was otherwise scheduled to receive because of his imprisonment. He also suffered the predictable and palpable stress and anxiety of an innocent man forced to remain in jail while awaiting the clear and simple proof that will exonerate him.

36. On March 8, Valerie Cey, Mr. Boucher's sister, wrote to Crown prosecutors advising that her brother's detention was interfering with his medical treatment for Bell's Palsy. No steps were taken to assist Mr. Boucher with his need for treatment. During the time that Mr. Boucher remained in remand, his medical needs were disregarded.

DEATH OF MR. BOUCHER'S WIFE

37. On April 30, 2017, Mr. Boucher's common-law wife, Ms. Favel, died in a tragic car accident in Saddle Lake, Alberta. She was 34. Mr. Boucher immediately contacted Grey's office to inform them of her death. Mr. Boucher was torn apart by his wife's death, and became desperate to get out of jail. On May 5, 2017, Mr. Boucher told Grey's office that he was willing to plead guilty to lesser charges in order to expedite his release. However, he still held out hope that Grey might be able to obtain the evidence that would exonerate him. Mr. Boucher pleaded with Grey to find out anything he could from the RCMP and the Federal Crown, including the date that the seized substances were sent away for analysis.

38. When he received no response, Mr. Boucher advised Grey's office on May 7, 2017 that he was "mad that nothing is happening" and that he might commence a lawsuit against Grey and his office when released from prison.

39. Mr. Boucher attended Ms. Favel's funeral on May 8, 2017. As a condition of his attendance, Mr. Boucher was required by the Alberta Crown and the Federal Crown to wear an orange jumpsuit and shackles for the entirety of the ceremony. Mr. Boucher felt utterly humiliated by this experience. At no point had Mr. Boucher demonstrated that he was a risk to anyone present at the funeral, or that he would become a flight risk if permitted to wear regular clothing or not be in shackles.

THE GUILTY PLEA

40. On May 15, 2017, Grey advised Schulz that Mr. Boucher would plead guilty in exchange for a lesser sentence. A May 30, 2017 summary trial date was arranged to receive the guilty plea.

41. On May 17, 2017, Grey explained the purpose and elements of a guilty plea to Mr. Boucher. As far as Mr. Boucher remembers, this explanation was entirely theoretical, and while it may well have accurately described a guilty plea in general, it did not take into account the specific circumstances of Mr. Boucher's case - particularly the absence of the Certificate of Analyst. At this point, Grey knew that Mr. Boucher adamantly denied that the seized substances were drugs and, if this was true, there was no *actus reus* for an offence of possession or trafficking.

42. On May 30, 2017, Mr. Boucher pleaded guilty in front of Justice Ladouceur of the Lac La Biche Provincial Court to the following charges:

- a) Unlawful possession of methamphetamine contrary to section 5(2) of the *CDSA*;
- b) Unlawful possession of cocaine contrary to section 4 of the *CDSA*;
- c) Breach of recognizance for a failure to keep the peace and be of good behaviour by illegally possessing controlled substances; and
- d) Breach of probation by possessing a controlled substance under the *CDSA*.

43. Mr. Boucher pled guilty to these charges despite having never seen a Certificate of Analyst and despite having insisted, numerous times, that the seized substances did not contain narcotics. Grey and Schulz were present for the duration of this plea and did not mention the non-existence of a Certificate of Analyst to the judge nor did they advise the judge that Mr. Boucher adamantly maintained, and did not cease maintaining, that there were no drugs in his home, and that he was innocent.

44. Pursuant to the terms of the plea arrangement, Mr. Boucher was sentenced to 90 days in jail. By this time, Mr. Boucher had already spent more than a month in excess of his sentence behind bars, even without considering additional credit that may be granted for time spent in remand.

45. Mr. Boucher's rationale for pleading guilty is self-evident. The 90-day proposed sentence was already complete and, thus, if Mr. Boucher pled guilty, his sentence would be time served plus one day. Additionally, Mr. Boucher is poor, and he needed the return of his cellphone and cash that were seized on his arrest. The return of these items was a condition of the plea deal; otherwise these items may have been retained as alleged "proceeds of crime". Finally, Mr. Boucher accepted the plea agreement so he could finally deal with matters relating to his wife's death.

THE CERTIFICATE OF ANALYST FINDINGS

46. Unbeknownst to Mr. Boucher, the Certificate of Analyst was actually completed several months before Mr. Boucher entered his guilty plea, and it was readily available to Mr. Grey, upon request, at least two weeks before Mr. Boucher entered his guilty plea.

47. On February 20, 2017, a Health Canada analyst received the seized substances to test them for controlled substances. On February 23, 2017, an analyst with Health Canada prepared Certificate of Analyst 31370V which stated:

I examined and analyzed the said sample... and was unable to identify a substance within the meaning of the *Controlled Drugs and Substances Act* or the Prescription Drug List as defined in section A.01.010 of the *Food and Drug Regulations*.

48. On February 24, 2017, the same Health Canada analyst prepared a second Certificate of Analyst, 31371V, which yielded an identical result. As of that date, the evidence was clear that Mr. Boucher was not guilty of any of the offences with which he was charged on January 22, 2017.

MISHANDLING OF THE EXHIBITS AND CERTIFICATES BY THE RCMP

49. On or about February 24, 2017, the Certificates of Analyst from the Health Canada analyst were sent to the RCMP detachment in Lac La Biche. Constable Moore was the exhibit custodian, and therefore responsible for informing the other Acting Officers of the completion and results of the Certificates of Analyst. Constable Moore placed the Certificates into a holding locker without informing anyone else of their existence.

50. Constable Bertrand, who was working closely with Constable Moore on the handling of exhibits, did not properly document the file in order to follow up on the Certificates of Analyst.

She did not follow up with Constable Moore at any point after Mr. Boucher's arrest to obtain the results of the Certificates of Analyst.

51. Constable Paramanatham, who was the designated lead investigator on the file, did not request the Certificates of Analyst at any time, despite knowing they should be available well before he finally inspected them in May 2017.

52. Corporal Fenton had an active supervisory role on the file at all times, and was therefore expected to manage the process of handling, documenting and processing exhibits from start to finish.

53. Staff Sergeant Van Dorland was responsible for the detachment as a whole, including for implementing systems and processes for the timely handling and disclosing of critical pieces of evidence that may directly effect the liberty of detained persons, and to ensure the proper training and performance of those entrusted with those duties.

54. There is no acceptable explanation for why it took a month to get the samples to Health Canada, why the results were not promptly reviewed and disclosed upon receipt, and why none of the Acting Officers who had moved with such speed and force to condemn Mr. Boucher to lockup had bothered to look for the results of the testing.

55. On March 16, 2018, Mr. Boucher was advised by Chief Superintendent Wendell Reimer of the RCMP that the incidents involving Mr. Boucher were sufficiently serious so as to justify an internal investigation and Code of Conduct proceedings against the Acting Officers.

COUNSEL KNOWLEDGE OF THE RESULTS PRE-PLEA AGREEMENT

56. On May 2, 2017, Grey finally took steps in response to Mr. Boucher's pleas, and wrote Schulz an email threatening a *Stinchcombe* application if he did not produce a Certificate of Analyst. Grey never gave a reason why he did not send this letter earlier, why he did not proceed with the *Stinchcombe* application, or why he would allow Mr. Boucher to plead guilty when he plainly knew the importance of the Certificate of Analyst – including the fact that its existence would almost certainly secure Mr. Boucher's acquittal.

57. Grey's threat prompted Schulz to contact the RCMP, and on May 3, 2017 a member of the Lac La Biche detachment told Schulz the seized substances had tested negative for any substance controlled under the *CDSA*. On May 4, 2017, Schulz conveyed the result of the Certificate of Analyst by telephone to Grey. Remarkably, Schulz did not immediately offer to drop all charges and release Mr. Boucher, nor did Grey demand that he do so.

58. Grey, and possibly Schulz, knew at this time that Mr. Boucher's wife had recently been killed. It is unconscionable that, knowing of Mr. Boucher's innocence, Schulz allowed the farce of his charges to persist while he was grieving his wife's death and to insist on a humiliating protocol as a condition to permitting him to attend her funeral.

59. On May 15, 2017, Schulz's office physically received the Certificates of Analyst from the RCMP. As described above, these unequivocally stated that the testing did not find *any* controlled substances in samples provided. Schulz, as an experienced Crown prosecutor, fully understood the documents and their implications.

60. The same day, Schulz and Grey had a telephone conversation regarding Mr. Boucher's case. Schulz suggested that Mr. Boucher plead guilty to the *CDSA* charges, and Grey spoke of a plea to "possession of smaller amounts of drugs".

61. Grey and Schulz came to the plea agreement and proceeded before Justice Ladouceur on May 30, 2017 with guilty pleas for charges that they both knew were untenable. Schulz, as a representative of the Crown, and an officer of the Court, owed a duty of candor to the Court to disclose critical information in his possession demonstrating that the charges were untenable. Grey had full knowledge that Mr. Boucher was pleading guilty to charges for which there was no evidence and, without letting his client appreciate the full circumstances, allowed him to plead guilty.

62. On or about May 30, 2017, Mr. Boucher was released from Edmonton Remand pursuant to the terms of the plea agreement.

63. Well before this point, Mr. Boucher reasonably determined that, because of the ongoing harassment of the Lac La Biche RCMP detachment, including, in particular, the Acting Officers, he needed to move to a different location. He subsequently moved to Saskatchewan upon his

release, before moving to Edmonton to continue with medical treatment for his worsening Bell's Palsy and other neurological conditions.

APPEAL OF CONVICTION

64. Despite having pled guilty to get out of jail, Mr. Boucher continued to fight for evidence showing his innocence. He knew all along that the substances taken from his home were not illegal. Mr. Boucher sought to appeal his guilty plea made just over a week earlier, and he asked for Grey's help, but he refused. Mr. Boucher yet again demanded that Grey give him a copy of the Certificate of Analyst, but without success.

65. The next day, on June 9, 2017, Mr. Boucher repeated his demand to Grey for the Certificate of Analyst, but Grey's office said they did not have it. Despite this, Mr. Boucher continued to follow up with Grey's office in an effort to obtain a copy. On June 15, 2017, instead of assisting Mr. Boucher in obtaining this, Grey's office told Mr. Boucher to get it himself from the Crown.

66. On June 15, 2015, Mr. Boucher submitted a Notice of Appeal as a self-represented litigant.

67. Mr. Boucher sought assistance from the Legal Aid Society of Alberta ("LASA"), which contacted Grey directly for an opinion on the merits of an appeal. On July 7, 2017, Grey advised the LASA that there were no procedural or substantive basis for an appeal. Despite this, sometime between July 7 and July 12, 2017, Grey changed his position and decided that he would complete Mr. Boucher's appeal *pro bono*. It is unclear why Grey's position changed during this time.

68. On August 24, 2017, Jonathan Martin, Senior Counsel for the Public Prosecution Service of Canada, submitted a letter to the Court of Appeal for Alberta. This letter stated, in particular, that:

- a) The file showed that Mr. Boucher did not possess a controlled substance;
- b) The communications between Grey and Schulz showed that Mr. Boucher did not possess a controlled substance;
- c) The presence or absence of a controlled substance in the powder would be highly relevant to Mr. Boucher's decision to plead guilty;

- d) Mr. Boucher could demonstrate by fresh evidence that the guilty plea should be overturned and an acquittal should be entered;
- e) The Crown had no issue with the seized items being returned to Mr. Boucher; and
- f) The Crown consented to the appeal being allowed.

69. On September 26, Justices Slatter, Wakeling, and Schutz of the Alberta Court of Appeal allowed Mr. Boucher's appeal from conviction, now with the Federal Crown's full consent. Mr. Boucher was acquitted of all charges stemming from his January 22, 2017 arrest.

CONTINUED FAILURE TO DISCLOSE THE CERTIFICATE OF ANALYST BY GREY

70. Throughout the summer of 2017, Mr. Boucher continued to contact Grey's office requesting the Certificate of Analyst and for a status update on the appeal. Mr. Boucher called Grey's office on:

- a) June 8, 9, 14 and 15;
- b) July 12, 27 and 28;
- c) August 23; and
- d) September 7, 11, 13 and 18.

At no point was Mr. Boucher provided with a copy of the Certificate of Analyst from Grey, despite his persistent requests for this critical document.

71. On September 27, 2017, Mr. Boucher called Grey to ask why Grey did not attempt to acquire the Certificate of Analyst before Mr. Boucher entered his guilty plea.

72. On October 19, 2017, almost nine months after his arrest and almost eight months after the RCMP received the results from Health Canada, Mr. Boucher finally received a copy of each Certificate of Analyst - delivered to him by Mr. Reimer of the Public Prosecution Service of Canada rather than by Grey.

C. CAUSES OF ACTION

73. In addition to any causes of action otherwise described above, Mr. Boucher pleads the following causes of action against the Defendants:

MALICIOUS PROSECUTION BY THE POLICE AND CROWN COUNSEL

74. The Defendants, the Acting Officers and Schulz, initiated criminal proceedings against Mr. Boucher which were ultimately terminated in Mr. Boucher's favour.

75. The Acting Officers and Schulz continued, or allowed to be continued, criminal proceedings against Mr. Boucher even when they learned that there were no reasonable and probable grounds to continue criminal proceedings against him.

76. The Acting Officers and Schulz were motivated by an improper purpose in doing so, including spite of Mr. Boucher, a disdain for Mr. Boucher on the basis of Mr. Boucher's past criminal history, and a desire to hide their own negligence or wrongdoing stemming from their failure to provide the Certificates of Analyst to Mr. Boucher and his counsel in a timely manner.

ABUSE OF PROCESS

77. The Defendants, the Acting Officers and Schulz, initiated, or allowed to be continued, the criminal charges against Mr. Boucher in order to further another indirect, collateral, or improper objective.

78. The Acting Officers and Schulz knew that Mr. Boucher had not committed a criminal offence subsequent to his arrest on January 22, 2017 when they were informed of the results of the Certificates of Analyst. The Acting Officers did not immediately inform Schulz when they knew the results of the Certificates of Analyst. Schulz did not immediately drop all charges against Mr. Boucher when he was aware of the results of the Certificates of Analyst and continued criminal proceedings against Mr. Boucher, despite knowing there was no *actus reus* for an offence under the *Criminal Code*.

79. Mr. Boucher suffered monetary damages, including a loss of income, as a result of being held in remand while the charges were outstanding.

MISFEASANCE IN PUBLIC OFFICE

80. The Defendants, the Acting Officers and Schulz, engaged in deliberate and unlawful conduct in their capacity as public officers. The Acting Officers and Schulz were aware that their deliberate and unlawful conduct was likely to injure Mr. Boucher.

81. The Acting Officers intentionally delayed obtaining Certificates of Analyst, or hid the results of the Certificates of Analyst from Mr. Boucher, from Crown counsel, and other persons who could ensure that Mr. Boucher was released from remand and acquitted of all charges. Further, or in the alternative, the Acting Officers obtained substances from a search of Mr. Boucher's residence that they knew were not illegal substances but proceeded to lay criminal charges nonetheless.

82. Schulz continued prosecuting Mr. Boucher on charges that he knew were not legally tenable. Schulz, as a Crown prosecutor, was obligated to discontinue all charges when he had grounds to believe that an offence had not been committed. Nevertheless, Schulz continued the unlawful prosecution against Mr. Boucher knowing that Mr. Boucher would remain in remand until the charges were dropped or a plea bargain was struck.

INTENTIONAL INFLICTION OF MENTAL SUFFERING

83. The actions of each of the Defendants, the Acting Officers, Schulz, and Grey, were flagrant and outrageous, calculated to harm Mr. Boucher, and caused Mr. Boucher to suffer a visible and provable illness.

TORT OF HARASSMENT

84. The Acting Officers deliberately targeted Mr. Boucher, and intended to ensure that he was kept behind bars as long as possible - even if he committed no crime. Mr. Boucher was regularly and consistently harassed by the Acting Officers, to the point where he could no longer live in Lac La Biche.

85. The actions of the Defendants, the Acting Officers, were outrageous, intended to cause emotional distress to Mr. Boucher, did cause Mr. Boucher to suffer severe or extreme emotional

distress, and the actions of the Acting Officers were the actual and proximate cause of Mr. Boucher suffering severe or extreme emotional distress.

BREACH OF FIDUCIARY DUTY BY GREY AND SCHULZ

86. Each of the Defendants, Grey and Schulz, alone or together, were in a fiduciary relationship with Mr. Boucher as they had the scope for the exercise of power and discretion over his affairs, and they could, and did, unilaterally exercise that power to affect his interests. Mr. Boucher was vulnerable to the exercise of their power.

87. Grey, as counsel to Mr. Boucher, was in a relationship of trust, reliance, and dependency with Mr. Boucher. Mr. Boucher reasonably expected that Grey would diligently act in Mr. Boucher's best interests. Mr. Boucher was entitled to rely upon, and did rely upon, Grey to act in Mr. Boucher's best interests. Grey, nevertheless, breached his fiduciary duties to Mr. Boucher, including by:

- a) Failing to obtain all relevant information about Mr. Boucher's file prior to advising him to complete a plea agreement;
- b) Failing to take active and meaningful steps to obtain all relevant information from the RCMP, the Federal Crown, and the Alberta Crown prior to advising Mr. Boucher to complete a plea agreement;
- c) Without obtaining instructions, and in breach of Mr. Boucher's explicit and implicit instructions, waiving Mr. Boucher's right to demand disclosure of the Certificate of Analyst;
- d) Failing candidly to provide Mr. Boucher with all information relevant to Mr. Boucher's file in Grey's knowledge or possession;
- e) Misleading the Court about the background circumstances of a plea;
- f) Failing to respond to Mr. Boucher in a timely manner, or at all, when information his file was sought – including the status of a Certificate of Analyst;
- g) Allowing Mr. Boucher to plead guilty to an offence that did not occur; and
- h) Failing to assist Mr. Boucher when Mr. Boucher sought to rectify Grey's failures, including, in particular, refusing to assist Mr. Boucher with an appeal.

88. Schulz, as counsel for the Federal Crown and by reason of his employment with the Public Prosecution Service of Canada, owed a fiduciary duty to the Canadian public, including Mr. Boucher, to act in its best interests and to conduct prosecutions only if, and in a manner that is in the public interest. Mr. Boucher was entitled to, and did rely upon, Schulz to conduct a transparent prosecution, in good faith, and not to pursue criminal charges that were unfounded or unjust. Schulz, nevertheless, breached his fiduciary duties to Mr. Boucher, including by:

- a) Continuing a criminal prosecution against Mr. Boucher when he knew that the prosecution was not supported by the available evidence;
- b) Failing to disclose to Mr. Boucher on a timely basis, or at all, the Certificates of Analyst;
- c) Failing diligently to follow up for a Certificate of Analyst to confirm that Mr. Boucher actually committed an offence for which he was charged;
- d) Misleading Mr. Boucher about testing of the seized substances;
- e) Failing to respond to Mr. Boucher in a timely manner, or at all, when information his file was sought – including the status of a Certificate of Analyst
- f) Misleading the Court about the background circumstances of a plea; and
- g) Allowing Mr. Boucher to plead guilty to an offence that he knew did not occur.

PROFESSIONAL NEGLIGENCE OF GREY

89. Grey owed Mr. Boucher, as a client, a duty of care. Grey knew or ought to have known that Mr. Boucher could reasonably be expected to suffer damages if he conducted his criminal defence of Mr. Boucher negligently.

90. Through his negligence, Grey breached the standard of care owed to Mr. Boucher, the particulars of which are as follows:

- a) Failing to obtain all relevant information about Mr. Boucher's file prior to advising him to complete a plea agreement;
- b) Failing to take active and meaningful steps to obtain all relevant information from the RCMP, the Federal Crown, and the Alberta Crown prior to advising Mr. Boucher to complete a plea agreement;

- c) Without obtaining instructions, and in breach of Mr. Boucher's explicit and implicit instructions, waiving Mr. Boucher's right to demand disclosure of the Certificate of Analyst;
- d) Failing to provide Mr. Boucher with all information relevant to Mr. Boucher's file;
- e) Failing properly to supervise his office staff;
- f) Taking on too large of a case load and failing to devote sufficient time to Mr. Boucher's file;
- g) Failing to respond to Mr. Boucher, or Mr. Boucher's counsel, in a timely manner, or at all, when information in his file was sought – including the status of a Certificate of Analyst;
- h) Allowing Mr. Boucher to plead guilty to an offence that he knew, or ought to have known, did not occur; and
- i) Such further and other particulars as may become apparent and counsel may advise.

91. Grey's conduct fell below what is reasonably expected of a competent criminal defence counsel in a way that cannot be attributed to a simple lapse in judgment or tactical mistake.

NEGLIGENCE OF CROWN COUNSEL

92. Schulz, as public prosecutor, owed a duty of care to the public and to Mr. Boucher. Schulz knew, or ought to have known, that if he carried out his duties to Mr. Boucher negligently, Mr. Boucher could reasonably be expected to suffer damages.

93. Schulz breached the duty of care owed to Mr. Boucher, the particulars of which are as follows:

- a) Continuing a criminal prosecution against Mr. Boucher when he knew, or ought to have known, that the prosecution was not supported by the available evidence;
- b) Failing to disclose to Mr. Boucher on a timely basis, or at all, the Certificates of Analyst;
- c) Failing diligently to follow up for a Certificate of Analyst to confirm that Mr. Boucher actually committed an offence for which he was charged;
- d) Failing to inform Mr. Boucher, or Mr. Boucher's counsel, in a timely manner about the results of testing of the seized substances;

- e) Failing to respond to Mr. Boucher, or Mr. Boucher's counsel, in a timely manner, or at all, when information in his file was sought – including the status of a Certificate of Analyst
- f) Failing to inform the Court about the background circumstances of a plea that he knew, or ought to have known, were important facts of which the presiding judge should be aware;
- g) Allowing Mr. Boucher to plead guilty to an offence that he knew, or ought to have known, did not occur; and
- h) Such further and other particulars as may become apparent and counsel may advise.

94. Schulz's conduct fell below what is reasonably expected of a competent public prosecutor in a way that cannot be attributed to a simple lapse in judgment or tactical mistake.

NEGLIGENCE OF ACTING OFFICERS / NEGLIGENT INVESTIGATION

95. The Acting Officers, as police officers, owed the public and Mr. Boucher a duty of care. The Acting Officers knew, or ought to have known, that if they carried out their duties to Mr. Boucher negligently, Mr. Boucher could reasonably be expected to suffer damages.

96. The Acting Officers breached the duty of care they owed to Mr. Boucher through their negligence, the particulars of which are as follows:

- a) Assuming, without reasonable grounds, that substances found in Mr. Boucher's residence were narcotics;
- b) Allowing their personal biases, including biases against Metis persons, to influence the conduct of an arrest, detention, investigation, or laying of charges;
- c) Charging Mr. Boucher with possession of narcotics without reasonable grounds;
- d) Charging Mr. Boucher with trafficking narcotics without reasonable grounds;
- e) Failing to listen to, or to consider, Mr. Boucher's explanation for the seized substances;
- f) Failing diligently to consider and to investigate Mr. Boucher's explanation that the seized substances were not narcotics;
- g) Failing to provide the seized substances to Health Canada in a timely manner in order to verify that the seized substances were, in fact, narcotics;

- h) Failing regularly to follow up with Health Canada to determine what the results of Health Canada's testing was;
- i) Failing to implement a proper protocol for handling seized substances and handling testing results for seized substances;
- j) Failing to communicate testing results from Health Canada to Crown counsel and to Mr. Boucher in a timely manner; and
- k) Such further and other particulars as may become apparent and counsel may advise.

97. The Acting Officers' conduct fell below what is reasonably expected of competent police officers in a way that cannot be attributed to a simple lapse in judgment.

· NEGLIGENCE OF DETACHMENT SUPERVISOR

98. Staff Sergeant Van Dorland owed a duty to the public, including Mr. Boucher, to ensure that the RCMP detachment he supervised was properly run and that the officers working under him were properly trained and supervised, and that the public would not be harmed by his officers. He knew, or ought to have known, that the public, including Mr. Boucher, would reasonably be expected to suffer damages if he carried out his supervisory duties negligently.

99. Staff Sergeant Van Dorland breached the duty of care owed to Mr. Boucher by failing to oversee his officers and by failing to implement appropriate systems and strategies for investigating and testing seized substances. He allowed his officers "free-reign" and did not intervene when he knew, or ought to have known, that there were deficient practices for investigating and testing seized substances, for cataloguing evidence, diarizing due dates and reporting to the Crown.

100. In addition, Staff Sergeant Van Dorland knew, or ought to have known, that Metis and aboriginal persons were being disproportionately "targeted" by officers within his detachment. Despite having ample information available to him that this was the case, Staff Sergeant Van Dorland took no meaningful steps to rectify the problem.

101. Staff Sergeant Van Dorland's conduct fell below what is reasonably expected of competent RCMP detachment supervisors in a way that cannot be attributed to a simple lapse in judgment.

CHARTER

102. The Defendants, the Federal Crown, the Alberta Crown, Schulz, the Acting Officers, or Staff Sergeant Van Dorland, breached Mr. Boucher's rights as enshrined in the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), including those enshrined in Sections 7, 8, 9, 10(a), 11(b), 11(d), 11(e), 11(g), 12, and 15.

103. The acts of each of the Defendants, the Federal Crown, the Alberta Crown, Schulz, the Acting Officers, and Staff Sergeant Van Dorland, are not demonstrably justifiable in a free and democratic society.

104. Mr. Boucher is entitled to a monetary remedy pursuant to Section 24(1) against the Federal Crown or the Alberta Crown in order to:

- a) compensate Mr. Boucher for his pain and suffering;
- b) compensate Mr. Boucher for his loss of dignity and reputation;
- c) vindicate Mr. Boucher's fundamental human rights;
- d) deter systemic violations of a similar nature; and
- e) encourage the remediation of future *Charter* violations in a timely manner.

HUMAN RIGHTS ABUSES AND SYSTEMIC DISCRIMINATION

105. Each of the Defendants, the Acting Officers and Schulz, engaged in racial profiling based on Mr. Boucher's Metis heritage, together with other forms of discrimination against Mr. Boucher, contrary to the provisions of the *Charter* and the *Alberta Human Rights Act*, RSA 2000, c A-25.5 (the "*HRA*").

106. As agents of the Crown, each of the Acting Officers and Schulz, were bound to uphold the provisions of the *HRA* and were obligated not to discriminate against Mr. Boucher, including discrimination based on the grounds enumerated in the *HRA*. Through their actions, they breached this duty.

SYSTEMIC DISCRIMINATION

107. The Acting Officers, Schulz, the Alberta Crown, and the Federal Crown systemically discriminated against Metis and aboriginal persons – including in the Lac La Biche area. Mr. Boucher’s wrongful arrest, detention, investigation, and prosecution were the result, in whole or in part, of the system of discrimination implemented, adopted or acquiesced to by each of the Acting Officers, Schulz, the Alberta Crown, and the Federal Crown. Metis and aboriginal persons in the Lac La Biche area were arrested, detained, investigated, and prosecuted at rates significantly higher than persons of other racial or ethnic groups.

THE HONOUR OF THE CROWN

108. The Alberta Crown or the Federal Crown’s implementation of, participation in, or failure to stop, the systemic discrimination against Metis and aboriginal persons arrested, detained, investigated, or prosecuted within the criminal justice system is a blight on the Honour of the Crown and the Crown’s unique obligations to Canada’s Metis and aboriginal peoples.

D. DAMAGES

109. The wrongful conduct of the Defendants has caused Mr. Boucher to suffer damages.

110. Mr. Boucher was wrongfully deprived of his liberty for more than four months.

111. Mr. Boucher suffered a loss of reputation and has otherwise suffered physically, mentally, and emotionally from the wrongful treatment of the Defendants. The wrongful acts of the Defendants have caused Mr. Boucher stigmatization and to suffer a loss of self-esteem.

112. In particular, Mr. Boucher’s wife died while he was wrongfully held in remand. He was unable to see her or to speak with her during her final days. Mr. Boucher was forced to attend her funeral wearing shackles and an orange jumpsuit, signalling his incarcerated status to all those in attendance.

113. Mr. Boucher’s pre-existing medical conditions, including his Bell’s Palsy, were exacerbated by the lack of appropriate medical attention received while in Edmonton remand.

114. Mr. Boucher has suffered an impairment of his ability to earn an income, resulting in a loss of income both in the past and in the future. His prospects for future employment and advancement have been tarnished as a result of the Defendants' wrongdoing.

115. Mr. Boucher has suffered, or will suffer, out-of-pocket expenses, including expenses for future medical and psychological care, including medication and counselling.

116. Mr. Boucher was forced to incur legal fees to defend himself against the wrongful charges prosecuted against him.

117. Mr. Boucher's *Charter* rights were infringed by the Defendants and he is entitled to compensatory and exemplary damages pursuant to Section 24(1) to vindicate his rights.

118. The wrongful acts committed by the Defendants are of such a reprehensible nature as to warrant an award of aggravated and/or punitive damages. The wrongful acts committed by the Defendants were calculated to injure and carried out for that purpose. Aggravated and punitive damages are appropriate in order to deter the Defendants, or those similarly situated, from taking such wrongful actions in the future.

E. AUTHORITIES

119. Mr. Boucher pleads and relies upon the following statutes, including any amendments or regulations thereto:

- a) The *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;
- b) The *Criminal Code of Canada*, RSC 1985, c C-46;
- c) The *Controlled Drugs and Substances Act*, SC 1996, c 19;
- d) The *Crown Liability and Proceedings Act*, RSC 1985, c C-50;
- e) The *Proceedings Against the Crown Act*, RSA 2000, c P-25;
- f) The *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
- g) The *Police Act*, RSA 2000, c P-17;
- h) The *Director of Public Prosecutions Act*, SC 2006, c 9, s 121;

- i) The *Alberta Human Rights Act*, RSA 2000, c A-25.5
- j) The *Judgment Interest Act*, RSA 2000, c J-1; and
- k) The *Judicature Act*, RSA 2000, c J-2.

120. Mr. Boucher proposes that this case be tried in the City of Edmonton, in the Province of Alberta.

121. In the opinion of counsel for Mr. Boucher, a trial of the matter is unlikely to exceed 15 days.

Remedy sought:

For these reasons, Mr. Boucher claims:

- a) General and aggravated damages of \$250,000;
- b) Special damages in an amount to be quantified at trial and fixed by this Honourable Court;
- c) Damages for a loss of income in an amount to be quantified at trial and fixed by this Honourable Court;
- d) Equitable compensation for breach of fiduciary duty as against the Defendant, Leighton Grey;
- e) Punitive damages of \$250,000 as against the Defendant, Leighton Grey;
- f) Punitive damages of \$250,000 as against the Defendant, Erwin Schulz;
- g) Punitive damages of \$250,000 as against the Defendants, the Acting Officers;
- h) A Declaration that the Defendants, Erwin Schulz, the Acting Officers, Staff Sergeant Van Dorland, the Federal Crown, or the Alberta Crown breached the *Charter* rights of Mr. Boucher;
- i) *Charter* damages in an amount to be quantified at trial and fixed by this Honourable Court;
- j) Interest according to the *Judgment Interest Act*, RSA 2000, c J-1;

- k) Costs of this action, including GST; and
- l) Such further and other relief as this Honourable Court considers just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on Mr. Boucher's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to Mr. Boucher(s) against you.