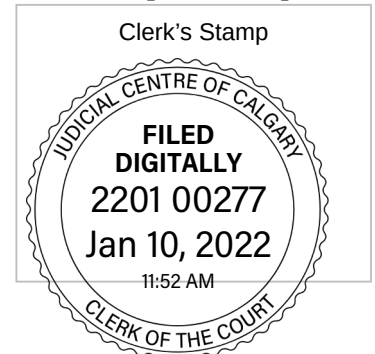




COURT FILE NUMBER

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF DR. EVAN MATSHES

DEFENDANTS THE CANADIAN BROADCASTING CORPORATION, MARK
KELLEY AND HARVEY CASHORE

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT **PEACOCK LINDER HALT & MACK LLP**
INFORMATION OF PARTY FILING THIS Suite 4050, 400 – 3rd Avenue SW
DOCUMENT Calgary, Alberta, T2P 4H2
Perry R. Mack, Q.C.
Telephone (403) 296-2280
Fax (403) 296-2299
FILE: 5960

NOTICE TO DEFENDANTS

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.

Statement of facts relied on:

The Plaintiff

1. The Plaintiff, Dr. Evan Matshes ("Dr. Matshes"), is an individual residing in the City of San Diego, in the State of California, in the United States of America.
2. The Plaintiff is a fellowship trained and examination board certified forensic pathologist who has assiduously cultivated and protected his character and reputation, which is founded upon the utmost honesty, integrity and professionalism. As at the time of filing, the Plaintiff is 43 years old. The Plaintiff's education and training include the following:

- a. 1996-2000: University of Saskatchewan
Bachelor of Science Degree
Human Anatomy and Cell Biology,
Magna Cum Laude
 - b. 2000-2004: University of Saskatchewan
Doctor of Medicine Degree
Great Distinction
 - c. 2004-2009: University of Calgary and Calgary Laboratory Services Department
of Pathology and Laboratory
Medicine Anatomic Pathology Specialist Training
 - d. 2009: Examination Board Certification in Anatomic Pathology by the
Royal College of Physicians and Surgeons of Canada and the
American Board of Pathology
 - e. 2009-2010: Dallas County Medical Examiner Department
Southwestern Institute of Forensic Sciences
Forensic Pathology Subspecialist Training
 - f. 2010: Examination Board Certification in Forensic Pathology by the
American Board of Pathology
3. The Plaintiff has published numerous articles in the field of forensic pathology, and has co-authored the following books:
 - (a) Mohamed A., Matshes E., and Sher B. 2001. An Atlas of Human Osteology. University of Saskatchewan, College of Medicine.
 - (b) Dolinak D. and Matshes E. 2002: Medicolegal Neuropathology: A Color Atlas. CRC Press, Boca Raton, FL.
 - (c) Matshes E., Burbridge B., Sher B., Mohamed A. and Juurlink B. 2004: Human Osteology and Skeletal Radiology: An Atlas and Guide. CRC Press, Boca Raton, FL.
 - (d) Dolinak D., Matshes E. and Lew E. 2005: Forensic Pathology: Principles and Practice. Academic Press.
4. Between 2011 and 2018, the Plaintiff was the co-director and Executive Director of *Academic Forensic Pathology: The Official Publication of the National Association of Medical Examiners*. During this time, this medical journal was the official publication of the profession of forensic pathology.
5. The Plaintiff's work experience includes:

- (a) From approximately August 1, 2010 to September 1, 2011, the Plaintiff worked as a forensic pathologist and Assistant Chief Medical Examiner at the Office of the Chief Medical Examiner (the "OCME") in Calgary.
 - (b) Between approximately April 2011 and June 2020, the Plaintiff was a Clinical Associate Professor of Pathology & Laboratory Medicine at the University of Calgary.
 - (c) From approximately September 1, 2011 to June 2012, the Plaintiff worked as a contract autopsy pathologist for Alberta Health Services ("AHS").
 - (d) From April 2012 through December 2014, the Plaintiff was an Associate Medical Investigator and Director of Pediatric Forensic Pathology and Forensic Neurocardiac Pathology at the Office of Medical Investigator at the University of New Mexico.
 - (e) From 2014 to the present, the Plaintiff has worked as a consulting forensic pathologist.
6. The Defendant, Canadian Broadcasting Corporation ("the CBC") is a body corporate established under the laws of Canada with its head office located in Toronto, Ontario. The CBC is governed by the *Broadcasting Act*, S.C. 1991, c.11 and is the owner or operator of a network of television, radio and internet broadcasting stations and websites. The CBC broadcasts a weekly television program called The Fifth Estate, said to feature "in-depth investigations."
7. The Defendant, Mark Kelley ("Kelley"), so far as is known to the Plaintiff, resides in the City of Toronto, in the Province of Ontario, and at all material times was employed by CBC as a producer, writer and host of a television program called "The Fifth Estate".
8. The Defendant, Harvey Cashore ("Cashore"), so far as is known to the Plaintiff, resides in the City of Toronto, in the Province of Ontario, and was at all material times employed by the CBC as a producer, writer and director of The Fifth Estate.
9. The Defendants, Mark Kelley and Harvey Cashore are officers, servants or employees of the CBC within the meaning of section 12 of the *Defamation Act*, RSA 2000, c.D-7.
10. On January 12, 2020 and January 19, 2020, the CBC broadcast a two-part story on The Fifth Estate television program entitled "The Autopsy: What If Justice Got It Wrong", hereinafter referred to as "the Story". In the Story, the Defendants either broadcast or caused to be broadcast a defamatory publication of irresponsible sensationalism conceived and created by the Defendants to create and foster false allegations that Dr. Matshes had caused or contributed to miscarriages of justice and wrongful convictions in criminal proceedings in the Courts of the Province of Alberta. The broadcasts stated, expressly or impliedly by innuendo that the professional work of the Dr. Matshes as a forensic pathologist in the Office of the Chief Medical Examiner was wrong, misleading, negligent, and substandard and that miscarriages of justice had occurred as a result of the work of Dr. Matshes. The story was presented in a deliberately dramatic, nonobjective,

misleading fashion designed to create a sensational and provocative presentation. The presentation of the Story was the result of selective and incomplete presentation of opinion, conjecture, and facts calculated to present what was a distorted, inaccurate, incomplete and wrongful picture of the circumstances of the cases discussed. The presentations amounted to a reckless, irresponsible, and deliberate defamation of Dr. Matshes professional and personal standing and character. The presentations amounted to a malicious and marked departure from responsible journalism.

11. The entirety of the Story as presented on the Fifth Estate broadcasts will be presented at the trial of the matter. Dr. Matshes says that the Story in its parts, presentation, tone and in its totality is defamatory. Some particulars of such defamation are as follows (references are to a transcription of the broadcasts):

Season 45, Episode 12

Page 2, lines 8-18

REPORTER: The Department of Justice has found serious problems with the work of a former Calgary pathologist.

SUSAN MILTON-LLOYD: Did we go after a young mother the way we shouldn't have?

MARK KELLEY: It was buried.

SHELBY HERCHAK: Why?

MARK KELLEY: That's what we're trying to figure out.

JAMES LOCKYER: Alberta Justice has a lot to answer for.

Page 4, lines 5-10

NARRATOR: Baby Daniel died in hospital. An autopsy would explain his injuries.

SUSAN MILTON-LLOYD: The autopsy said that Daniel suffered two injuries. That was really hard because then I'm looking at her. Did she hurt him twice? Who am I living with? What have I got in my house now?

Page 5, lines 16-19, and 27

REPORTER: Authorities have relied on autopsy results to determine how the baby died.

NARRATOR: Shelby was labelled a baby killer in newspapers and on social media.

Page 5, line 27 to Page 6, line 27

NARRATOR: That critical autopsy was performed by Dr. Evan Matshes. In just over a year at the Chief Medical Examiner's Office in Alberta, he performed some 262 autopsies. He was able to see what others didn't. But questions arose about some of his autopsies. This is where our investigation begins.

UNIDENTIFIED SPEAKER: So I went to court as we heard about these allegations against this doctor. So I wanted to see what his background was.

NARRATOR: Alberta Justice ordered a review of 14 cases done by Dr. Matshes. A panel of experts was brought in to examine his work. We found the experts' report buried in the Calgary courthouse.

UNIDENTIFIED SPEAKER: So, you know, this case, for example, it showed that the manner of death was unreasonable, so was the cause of death, and other opinions.

MARK KELLEY: Unreasonable.

UNIDENTIFIED SPEAKER: Unreasonable. And so --

MARK KELLEY: And that's their terminology to say he got it wrong?

UNIDENTIFIED SPEAKER: Yeah. And so unreasonable doesn't just mean a difference of opinion. They mean a reasonable pathologist in this situation should not have come to this conclusion.

MARK KELLEY: What does that suggest to you?

Page 6, line 27 – Page 7, line 18

DR. JOHN BUTT: What it suggests to me is that there is a significant problem with the work that was done by Dr. Matshes.

NARRATOR: Dr. John Butt is one of Canada's pre-eminent medical examiners.

DR. JOHN BUTT: The descriptions are not satisfactory. The cause of death is not satisfactory. The manner of death is not satisfactory. And other opinions that are -- that are expressed are not reasonable. This case has three check marks that are -- mean good, and three check marks that are bad. In other words, not reasonable. That means the manner of death is incorrect or believed to be incorrect. The cause of death is believed to be incorrect, i.e., unreasonable. And there was no charge laid in that case.

NARRATOR: If he got it wrong for those who died, what impact did that have on the lives of those left behind?

Page 8, lines 8-14,17-18, and 24-26

MARK KELLEY: And what was Dr. Matshes' opinion on that?

ADRIANO IOVINELLI: His opinion was that the type of injury, if it occurred as part of the car accident itself, that she would've had significant signs. She would have been dying at the scene of the car accident, that that type of brain bleed could not have persisted.

...

Narrator: After Dr. Matshes completed his autopsy, the RCMP arrested Butch.

...

NARRATOR: Dr. Matshes said Charmaine Wesley suffered blunt head trauma inflicted by another person.

Page 9, lines 19-22

NARRATOR: This is the power of the medical examiner's report. Even the accused begins to waiver. To the police, it was a confession. Backed into a corner, Butch took a plea for manslaughter.

Page 10, lines 1-16

NARRATOR: But we discovered Dr. Matshes' autopsy of Charmaine Wesley was reviewed by that panel of experts. And here is what they determined. Her severe injuries could indeed be the result of a motor vehicle collision. Exactly what Butch first said. And then a bombshell. The conclusion of homicide is not adequately supported.

MARK KELLEY: This is a report that we have obtained.

ADRIANO IOVINELLI: In fact, this is the first time I've seen this. This is the first time I've seen a peer review saying that there were errors done. Now we have concern that the actions of your client did not lead to the death of the deceased. It's no longer a homicide.

Page 12, lines 4-8

UNIDENTIFIED SPEAKER: So this is the document I found at the courthouse. It's a review of the first doctor's work, okay, of the autopsy.

And it has very different opinions than what that first doctor said. The conclusion of homicide is not adequately supported.

Page 12, lines 24 to Page 13, line 13

JAMES LOCKYER: And certainly, I've been involved in a number of cases where people have been put in jail for crimes that never happened. And the cause has almost invariably been erroneous opinions by forensic pathologist or medical examiners who did the original autopsies this those cases.

NARRATOR: James Lockyer works with Innocence Canada, a legal team that has helped exonerate 23 people after exposing miscarriages of justice.

JAMES LOCKYER: I think that there has been and still is a culture amongst forensic pathologists and medical examiners to think dirty. And by that I mean they approach a suspicious case, if you will, as they call it, from the point of view of it's a homicide unless it's proved otherwise when it really should be the other way around.

Page 13, line 26 to Page 14, line 2

NARRATOR: Shelby's aunt hasn't spoken to her niece in years. To the police, Dr. Matshes' autopsy suggested a pattern of abuse. We showed her what the expert review panel said.

Page 15, lines 8-11

NARRATOR: We're looking into autopsies done by the medical examiner, Dr. Evan Matshes. Back in 2012, an expert panel in Alberta raised serious concerns about his work in 14 cases.

Page 17, lines 2-11

NARRATOR: The panel of three expert pathologists met here in Edmonton for two days in November 2012. Their findings then delivered to Alberta Justice.

REPORTER: The Department of Justice has found serious problems with the work of a former Calgary pathologist.

REPORTER: All murder cases in which Dr. Matshes' work was relied upon will be getting a second look.

Page 17, line 25 to Page 18, line 6

MARK KELLEY: The panel disagrees in this case. They said he got it wrong. Manner of death, cause of death, they think he got it wrong.

Manner of death, cause of death, they think he got it wrong. Manner of death, cause of death, they think he got it wrong. Manner of death, cause of death, they think he got it wrong. Manner of death, cause of death, they think he got it wrong. Manner of death, cause of death, you get the point.

Page 19, lines 7-10

NARRATOR: But when her son was just 26 days old, he suffered a fatal head injury. After the police got Dr. Matshes' autopsy, a death became a murder.

Page 20, lines 5-9

NARRATOR: The experts reviewed Dr. Matshes' autopsy of baby Daniel. Everyone agreed he died from a blunt trauma to the head. But Dr. Matshes went a step further, saying he detected prior injury.

Page 20, lines 20-25

SHELBY HERCHAK: What?

MARK KELLEY: Have you ever been told of the existence of this?

SHELBY HERCHAK: No. So where did that piece of paper go when I was in court?

MARK KELLEY: It was supposed to be shown to

Page 21, lines 15-19

NARRATOR: So all this begs the question, where is Dr. Evan Matshes now? By the time the experts' review came out, he had already left Alberta. He now works in the US as an expert pathologist for hire.

Page 22, lines 2-5, and 9-12

NARRATOR: There were explosive allegations that Dr. Matshes was removing body parts for research without consent. He denies it. No charges have been laid.

...

NARRATOR: He runs his company out of this building north of San Diego. We contacted him for an interview, but he declined to speak with us on camera.

Page 22, line 23 to Page 23, line 19

NARRATOR: Through his lawyer, Dr. Matshes sent a statement to the Fifth Estate. It says in part, "I stand by my work." Adding, "Local politics and personal vendettas have created controversy where none should have existed." In 2014 he sued Alberta's Minister of Justice, the Attorney General, the three members of the expert panel, even his former boss at the medical examiner's office. The \$30,000,000 defamation suit has not been settled. He says Alberta Justice has ruined his career.

JAMES LOCKYER: But at the end of the day, from my perspective, Matshes is not the important player here. The important players, if I can put it that way, are the people who may have been convicted of crimes they didn't commit because of what's happened here.

NARRATOR: In 2013 Dr. Matshes demanded that Alberta Justice toss out the expert panel findings. He said they were based on incomplete information, and he wasn't given time to respond. Alberta Justice agreed, and a judge quashed the results. But Alberta Justice also said, "Justice demands a second review be done to ensure there were no wrongful convictions."

Season 45, Episode 13

Page 4, lines 10-27

MARK KELLEY: Iyanna Teeple had a big smile and made friends easily. Her babysitter was giving her a bath but left her alone to clean up a spill in another room.

UNIDENTIFIED SPEAKER: The child eventually was pronounced dead over at Calgary, and the medical examiner's office over there becomes involved.

MARK KELLEY: But once an autopsy was done on the child, the police investigation would take a dramatic turn.

UNIDENTIFIED SPEAKER: A medical examiner's report is key to any of these types of investigations.

MARK KELLEY: A medical examiner plays a critical role at the intersection between medicine and law enforcement. An autopsy determining the cause and manner of death and the difference between an accident and foul play. Look the same.

Page 5, lines 3-4

MARK KELLEY: Medical examiners can help determine who goes to jail and who walks free.

Page 6, lines 1-27

MARK KELLEY: A husband, a baby, two lives lost, and at the heart of both their stories lies the same medical examiner, Dr. Evan Matshes. And in both cases, his autopsies would be put under the microscope. These are the reviews of each of the 14 cases. Are they looking to see whether he did his job right?

UNIDENTIFIED SPEAKER: They're looking for mistakes.

MARK KELLEY: In our previous episode, we revealed a report unearthed by our colleague Rachel Ward which shows back in 2012, Matshes' work was raising questions and concerns. These were done by this review panel that was brought in?

UNIDENTIFIED SPEAKER: Yeah, they brought in ...

MARK KELLEY: So Alberta Justice brought in three expert pathologists from the US to examine 14 cases he'd worked on.

UNIDENTIFIED SPEAKER: They went through his files, toxicology reports, pictures, slides, police reports.

MARK KELLEY: In 13 cases the expert panel raised red flags about Matshes' conclusions.

UNIDENTIFIED SPEAKER: Manner of death was unreasonable, so was the cause of death.

MARK KELLEY: Unreasonable.

UNIDENTIFIED SPEAKER: Yeah. They mean a reasonable pathologist in the situation should not have come to this conclusion.

Page 7, lines 1-13

MARK KELLEY: Alberta Justice knew it had a big problem on its hands. Results of that expert panel could possibly be evidence in criminal cases, both active and closed ones. Their report would have to be disclosed to the lawyers. Greg Lepp, then Alberta's chief crown prosecutor, had stated: (as read) There were people in prison whose liberty may hinge on this. The justice minister of the day, Jonathan Denis, said the results were

"concerning". Alberta Justice vowed they would look into all the murder cases to correct any possible miscarriages of justice.

Page 7, line 26 to Page 8, line 5

MARK KELLEY: The RCMP didn't see murder. But then Dr. Matshes talked to a crown prosecutor in BC. He said there was extensive bruising on the baby, which, in his opinion, "is typical of abused children". He added: (as read) There's no benign explanation for the child's injuries.

Page 8, line 24-27

JESSE GELBER: There was something incongruous about the Matshes report in terms of how it laid in the context of the remainder of the evidence in the file.

Page 9, lines 13-21

MARK KELLEY: Well, then, I think the least we can do is share that with you. As for the child abuse, Matshes had claimed, Well, the other three pathologists say it didn't happen.

JESSE GELBER: So manner of death, not reasonable. Cause of death, not reasonable. Other opinions, not reasonable. Yeah, well, that was my gut feeling when I got the file.

Page 10, lines 6-12

JAMES LOCKYER: I -- I would say without qualification that Tammy Bouvette's a victim of miscarriage of justice. I find it shocking. The idea that you've got pathologists all sitting down together and agreeing the most important thing that's being alleged against this lady is false. It's extraordinary and that it wasn't disclosed. Extraordinary.

Page 11, lines 3-10

Behind the scenes, Dr. Matshes fired back at Alberta Justice. He argued the review of his 14 cases was designed to discredit him. He wrote Justice Minister Jonathan Denis about Tammy's case saying he'd noted "numerous injuries" to the child that "were alarming". And he hired a law firm to take on Alberta Justice, who he said weren't behaving in a "just or fair manner".

Page 12, lines 13-27

After a year of battling Alberta Justice, Dr. Matshes would get his way. The justice minister "consented" to set aside the panel's report because Matshes hadn't been given time to review it. Special counsel Marta Burns

wrote a report saying it was "integral" his work be investigated again and that "justice demands a new external review panel be conducted". That was almost seven years ago. When we come back ...

ADRIANO IOVINELLI: Who dropped the ball? Seven years ago while people are sitting in jail. Seven years ago while families don't know whether or not it was a homicide or it wasn't a homicide. Seven years. I -- I -- I don't know how that could ever be justified.

Page 13, lines 1-3

MARK KELLEY: Clearly you would believe, as the minister of justice, that there should be justice for all, not just justice for some?

Page 15, lines 6-12, and 22-25

MARK KELLEY: The RCMP opened an investigation into Preston's death. But Dr. Evan Matshes' autopsy would change everything. He acknowledged that the fight played a part, but concluded Preston died from heart disease, not. Sally says police told her no charges would be laid.

...

MARK KELLEY: Our investigation shows that in 2012, in case after case, the opinions of the three pathologists hired to review Dr. Matshes' autopsies were not disclosed to the defence.

Page 16, lines 6-10

This is a report that we have obtained. The panel disagrees in this case. They said he got it wrong. Manner of death, cause of death, they think he got wrong. Manner of death, cause of death, they think he got it wrong. You get the point.

Page 17, lines 1-9

MARK KELLEY: In the opinion of the three pathologists, a homicide is more appropriate with these circumstances. No one's ever told you about this?

SALLY WHEELER: No. No. Why wasn't the case reopened? Why did nothing happen? This is just really -- just a slap in the face.

MARK KELLEY: And that's our concern, is that somebody's -- somebody got away with murder here.

Page 23, lines 10-13

TAMMY BOUVETTE: All I've got to say to them is shame on them for not, you know, doing their job right. It's taken everything from me. My freedom, my whole self, everything.

12. In conjunction with The Fifth Estate broadcasts of the Story, the Defendants promptly thereafter posted the broadcast to the CBC internet webpage, including associated linked webpages (collectively referred to as the "CBC Websites"), the two Fifth Estate broadcasts together with additional video, a radio broadcast, articles, and commentary which advanced, repeated, and expanded upon the defamatory, sensational, and additional defamatory allegations in "The Autopsy: What If Justice Got It Wrong". These materials ("the Internet Publications") have been continuously republished and available on the CBC Websites and include:

(a) <https://www.cbc.ca/news/canada/fifth-estate-the-autopsy-1.5421945>

"I did not kill her": Justice officials withheld report signaling no homicide while Alberta man sat in prison (January 15, 2020)

This publication contained, *inter alia*, the following statements:

"These revelations come as part of a sixth-month The Fifth Estate investigation that found senior officials at Alberta Justice were aware of a report that shook the foundations of several murder charges and cast into doubt numerous findings of a medical examiner in Calgary a decade ago"

"At issue were some of the autopsies performed by Dr. Evan Matshes, a forensic pathologist working out of the Office of the Chief Medical Examiner in Calgary in 2010 and 2011. After concerns were raised about some of his findings, Alberta Justice launched an inquiry into whether or not there had been miscarriages of justice relating to autopsies."

"Alberta justice eventually decided to hire an external panel of three U.S. forensic pathologists to assess Dr. Matshes work."

"The panel later stated their opinion that Matshes had made unreasonable" findings in 13 of 14 cases reviewed. Five of those cases were related to criminal charges"

"Yet The Fifth Estate has learned that in several criminal cases, those findings were not provided to defence lawyers or their clients, and that the report was buried for years by Alberta Justice--- even as the incarcerated were serving their sentences."

"You have three pathologists who have reviewed the case and reviewed the original autopsy and all three of them are agreed that the original autopsy report was erroneous, wrong,"

“We know from wrongful conviction cases in Canada...that people pleaded guilty to crimes they didn’t commit because they were facing a murder charge,”

“What this suggests to me is that there is a significant problem with the work that was done by Dr. Matshes, said Dr. Butt, who has developed medical examiner legislation across Canada. “

(b) <https://www.cbc.ca/news/canada/fifth-estate-autopsy-did-a-killer-walk-free-1.5431705>
“Did a killer walk free after this man’s autopsy?” (January 18, 2020):

“Calgary Medical Examiner Dr. Evan Matshes told the RCMP that contrary to what they might have thought, Lohead died from cardiac disease.”

“Lohead’s death was one of several cases that came under scrutiny in 2012. Alberta’s Justice Ministry ordered a review of some of the autopsies done by a Calgary medical examiner after questions we raised about the accuracy of his findings.”

“Documents obtained by The Fifth Estate reveal that Alberta Justice commissioned that review which exposed several potential miscarriages of justice.”

“Documents obtained recently by The Fifth Estate show that a second medical opinion from three expert forensic pathologist -- written two years after Lohead died -- differed from the original medical examiner’s finding.”

“They wrote that Lohead’s death was more likely a homicide by ‘strangulation.’”

“Senior officials in the Alberta’s Justice Ministry received that report as part a larger review of Matshes autopsies, but the finding were buried in Court files for several years until unearthed by The Fifth Estate.”

(c) <https://www.cbc.ca/news/canada/bc-special-prosecutor-autopsy-fifth-estate-1.5430387>
“B.C. Appoints special prosecutor to probe Crown conduct in decade-old child murder case”
(January 16, 2020):

“Court documents obtained by The Fifth Estate show that the medical examiner who performed the autopsy, Dr. Evan Matshes, told prosecutors there was ‘no benign’ explanation for some injuries found on the toddler and he identified bruising that was ‘typical of child abuse.’”

“Three weeks after speaking with Matshes, B.C. prosecutors charged Bouvette. RCMP praised the ‘efforts of the medical examiner in Calgary’ as being ‘instrumental in pushing the case forward.’”

“The Fifth Estate discovered that medical experts were asked to review the autopsy after concerns were raised about some of Matshes other findings. Alberta Justice had convened an expert panel to analyze his findings in 14 cases, including Lyanna’s.”

“The panel of three forensic pathologists stated in their report that the comments Matshes made to the prosecutor about ‘intentional injuries’ on the body and prior abuse were ‘unreasonable.’”

(d) <https://www.cbc.ca/radio/thecurrent/the-current-for-jan-24-2020-1.5438975/get-to-the-bottom-of-this-civil-liberties-group-wants-inquiry-into-buried-records-in-alta-criminal-cases-1.5438979>. “Get to the bottom of this: civil liberties group wants inquiry into buried records in Alta criminal cases” (January 24, 2020):

“The Canadian Civil Liberties Association is calling for Alberta to conduct a public inquiry into why there were no follow ups after a previous inquiry revealed possible flaws in a forensic pathologist evidence the several criminal convictions, including murder cases.”

“The concerns fall were recent investigation by the CBC’s Fifth Estate into autopsies carried out by medical examiner Dr. Evan Matshes.”

“There may be people in jail right now who shouldn’t be in jail.”

“You got to get to the bottom of this, because obviously there’s been miscarriages of justice.”

(e) <https://www.cbc.ca/news/canada/calgary/alberta-probe-autopsy-1.5433333> “Alberta Justice Minister calls for probe into prosecutors’ handling of autopsy controversy” (January 31, 2020):

“The call comes after an investigation by The Fifth Estate revealed multiple defendants, facing murder charges, say they were not shown documents from an Alberta justice autopsy review that raise questions about key evidence in their cases.”

“The independent medical expert review, conducted in 2012, found Dr. Evan Matshes came to unreasonable conclusions in 13 cases, several of which involve criminal matters. Matshes who continues to stand by his work, has left Alberta and now works as a pathologist-for-hire- in San Diego.”

(f) <https://www.cbc.ca/news/canada/calgary/judge-alberta-autopsy-scandal-1.5469933>
(February 26, 2020)

(g) <https://www.cbc.ca/news/canada/alberta-prosecutors-shelby-herchak-autopsy-fifth-estate-1.5483752> “Alberta prosecutors had mounting evidence disputing murder charges against Calgary baby killer” (March 6, 2020)

“At the center of the Herchak autopsy dispute was Dr. Evan Matshes, a former medical examiner in Alberta who conducted more than 250 autopsies for the province in 2010 and 2011.”

“After his departure from that role, questions were raised about some of his findings. That prompted the province to hire a panel of forensic pathologists in November 2012 to review 14 of his cases. They concluded he had made ‘unreasonable’ findings in 13 of them. ‘The Fifth Estate reported last month that the external panel of three experts disputed two key aspects of the original Herchak autopsy. The experts disagreed with Matshes statement that there was a brain injury that was at least a week old.’”

13. In addition to the Story and the Internet Publications the Defendants did a national radio broadcast on a show called “The Current” on January 24, 2020 which repeated and amplified the defamatory publications of the Story and Internet Publications. That Radio Broadcast which continues to be available on the Internet at: <https://www.cbc.ca/radio/thecurrent/the-current-for-jan-24-2020-1.5438975/friday-january-24-2020-full-transcript-1.5439431>
14. The Radio Broadcast repeated or slightly modified the defamatory material in the other Defamatory Publications and added other defamatory statements including:

MARK KELLEY: Well, as you mentioned off the top, in 2012 there was this report. Three medical examiners were brought in from the United States expert pathologist to look into 14 cases that he had done. Questions started to arise in the medical examiner's office in Alberta, about his work, concerns about the conclusions that he was reaching. So these experts are brought in to look at 14 of his cases. As you mentioned, in 13 of the 14, they find unreasonable conclusions. And that's the terminology these pathologists use. They're raising red flags about the conclusions. And we knew we'd heard about this and that the government had made this public, the fact that they looked into this report. But key issues, Matt, that they never made public, which cases were involved? What were the concerns that these expert pathologists had and what was done with that information? That's what we wanted to find out.

MG: How did you come across the report?

MARK KELLEY: Well, are very, very resourceful colleague Rachel Ward, our colleague in Calgary. She starts digging. And because Dr. Matshes had launched this defamation suit, filed this defamation suit saying that Alberta government had ruined his career, he used included this expert report in his case as evidence against the government. So this report that was never made public, we found it in the files. Rachel found it in the files. And through that, we could then contact the people whose cases were involved and ask them the questions: did you know about this report?

MG: And it raised questions about Dr. Matshes's work.

MARK KELLEY: Oh, indeed. And once we started looking at some of the specific criticisms that they had, the expert pathologists had about his work. Now, we wanted to know more about how could this have affected the cases, the individuals who are involved in this. So many unanswered questions that put us on a quest that's consumed us at the fifth estate for the past six months.

MG: We're going to hear more about this just in terms of the personal experience that somebody went through. But just broadly, what does it say about his work, this report?

MARK KELLEY: Well, what it says, it raises some serious concerns about the quality of his work, that he was reaching conclusions that that other pathologists said that they found to be unreasonable, that he was finding rare injuries, previously injuries on people that the expert pathologist said that did not exist, that he was ascribing intent, that there was actually going one step further and saying in dealing with the police and saying that he saw patterns of abuse that helped build cases against these people and ultimately sent them to prison.

...

MG: If you could speak with that medical examiner, Dr. Matshes, who performed the autopsy on your on your husband, what would you say to him?

SALLY WHEELER: Nothing I can probably say right now.

MG: You're still really- it's still it's still really raw for you.

SALLY WHEELER: Yes. Yes, it is. It is. You know, I loved her and Alberta justice, you know, like to me, the man killing him. That was bad. The medical examiner screwing up. That was really bad. But for Alberta justice to find out two years after it happened, so seven years ago, that it was a homicide and then they just chose to bury that is just absolutely disgusting.

....

MG: The Canadian Civil Liberties Association has called for a public inquiry into how Alberta justice handled this review. What would that inquiry look like?

MICHAEL BRYANT: It would look like the Goudge Inquiry. It would mean, firstly, that people don't have to tiptoe around, in terms of what they say about the players for fear of being sued for libel.

MG: And so when the current attorney general in Alberta says that this happened before my time...

MICHAEL BRYANT: Yes, it happened before my time, too, Dr. Charles Smith. It happened before my time. But I mean, if anything, politically, that's a reason why there's no reason for him to be circling the wagons and not calling a public inquiry into something that happened before his time. I mean, I don't care what his motivation is. You got to get to the bottom of this, because obviously there's been miscarriages of justice. And the only way to rectify it, ultimately, is through a public inquiry.

15. The Story, the Radio Broadcast, and the Internet Publications, collectively ("the Defamatory Publications") at numerous points in time and content stated expressly or impliedly by words, manner of presentation, or innuendo meant to, in their natural and ordinary meaning, say the following:
 - (a) That Dr. Matshes' work had caused several miscarriages of justice.
 - (b) That Dr. Matshes' work was "wrong", "unreasonable", "not satisfactory", had "significant problems", was "not reasonable", and "incorrect";
 - (c) That Dr. Matshes was incompetent.
 - (d) That Dr. Matshes had unethical standards of practice.
 - (e) That Dr. Matshes' work was incapable of reliance by the Courts; and
 - (f) That Dr. Matshes had a role or was responsible for the decisions and actions of Crown Prosecutors.
16. In pursuing and presenting its sensational and provocative story the Defendants knew or ought to have known that they had recklessly disregarded information and were presenting incomplete, inaccurate, misleading and inflammatory information to the public.

17. In pursuing and presenting its sensational and provocative story the Defendants knew or ought to have known they had recklessly disregarded information that persons and institutions involved in the underlying facts could not or would not be in a position to fully comment on the story as a result of various legal impediments including, without limiting the generality of the forgoing, the Alberta Minister of Justice and Attorney General, the Alberta Crown Prosecutors, Judges of the Court of Queen's Bench and the Provincial Court of Alberta, police officers involved in the investigation of the subject cases, and Dr. Matshes.
18. In presenting its sensational and provocative story, the Defendants chose to rely upon a discredited so-called "Expert Panel Report" that purported to question the findings of Dr. Matshes in certain cases. The CBC failed to clearly and unequivocally state the alleged "Expert Panel Report" had been quashed by Order of the Court of Queen's Bench of Alberta on November 13, 2013. Despite having access to publicly available Court records concerning the so-called "Expert Panel Report" and the reasons for which it was quashed and set aside by the Court of Queen's Bench of Alberta the CBC presented a sensational and provocative story to the effect that the discredited "Expert Panel Report" had been "buried" and was supportive of miscarriages of justice for which Dr. Matshes was responsible.
19. In all of the Defamatory Publications the CBC and the individual Defendants presented, inaccurately, selected extracts and excerpts of the report of the so called "Expert Panel Report" with the effect and innuendo that:
 - (a) The so-called "Expert Panel Report" was "independent" and "external";
 - (b) The so-called "Expert Panel Report" was "expert";
 - (c) The so-called "Expert Panel Report" was fair;
 - (d) The so-called "Expert Panel Report" had actually reviewed the subject cases;
 - (e) The so-called "Expert Panel Report" amounted to a "Peer Review" when it did not;all of which to suggest Dr. Matshes was incompetent, unethical and unreliable.
20. In all of their innumerable references to the so -called Expert Panel Report the Defendants deliberately ignored the strong comments by the Court of Queen's Bench of Alberta Justice who, in quashing the report said:

"What transpired breached the duty of procedural fairness to be accorded to Dr. Matshes and strayed into a process, it would appear on this record, to be directed at Dr. Matshes' reputation and employability rather than any, and I use this next word intentionally, demonstrated purpose for the administration of justice within Alberta."

21. In order to further sensationalize its intended theme and story, the Defendants persistently described the so-called “Expert Panel Report” as “buried” or otherwise “hidden” notwithstanding that at the time of the events, the judicially discredited report was widely publicized in the media and remained on searchable file at the Court of Queen’s Bench of Alberta for approximately eight years as was the Court of Queen’s Bench decision that quashed it.
22. In order to present a sensationalized and provocative report, the Defendants presented select commentators including a defence counsel of one of the convicted persons, an individual associated with a society for the wrongfully convicted and a forensic pathologist who commented without having actually reviewed the cases at issue and was simply reading from the judicially discredited so-called “Expert Panel Report.”
23. The Defendants were informed by many participants in the actual events including the Alberta Crown Prosecution Service, including a judge and police detectives and to the extent he was able to comment, Dr. Matshes, that it was presenting a wrong, incomplete, misleading and biased version of the events.
24. The CBC used various irresponsible journalistic tactics to seek to spin its tale including an attempted “ambush interview” of Dr. Matshes at his place of work notwithstanding any involvement of counsel on behalf of Dr. Matshes. The CBC did conduct an “ambush interview” of the Alberta Minister of Justice and Attorney General to create embarrassment and heighten the dramatic tension it was seeking to create. The CBC reporters presented only partial, misleading and inaccurate information to actual participants in the justice process including families of the deceased and persons convicted for those crimes suggesting there had been a miscarriage of justice.
25. In pursuing its sensational and provocative story the CBC failed to disclose that Dr. Matshes’ work had been reviewed and approved by the College of Physicians and Surgeons of Alberta.
26. In pursuing its sensational and provocative story the CBC failed to disclose that the subject cases had already been reviewed by Alberta Justice and it had been determined that there had been no miscarriages of justice.
27. “The Autopsy: What If Justice Got It Wrong”, the Radio Broadcast and the Internet Publications constitute a continuing defamatory publication by the Defendants each day the broadcasts and related material remains posted on the internet and accessible to the general public. Further, the Defendants allowed the defamatory materials to be in a format that could be copied by others and such posting has been copied and disseminated by others on other websites over the internet. As a result, the defamatory effect of the Defamatory Publications has been continuously multiplied and the Plaintiff has thereby suffered significant aggravated damages.
28. The CBC, Kelley and Cashore collaborated throughout the process of conceiving, producing, marketing, broadcasting, and publishing the defamatory contents of the

Defamatory Publications. The Defendants shared information and participated in material decisions concerning the production, collection and broadcast of these materials.

29. The CBC, as the employer or principal of Kelly and Cashore, is vicariously liable for their actions.
30. On March 16, 2020, the Defendants were provided with a Defamation Notice as contemplated by section 13 of the *Defamation Act* of Alberta concerning the Defamatory Publications.
31. Dr. Matshes acknowledges that the operation of the criminal justice system is a subject of general public interest. Dr. Matshes says however, that the Defendants' broadcast of the Story, the Radio Broadcast, and the related Internet Publications was deliberately and defamatorily focused upon sensationalism to attract and captivate audience interest with explicit and implicit suggestions that the work of Dr. Matshes on cases in the Alberta Courts had resulted in miscarriages of justice. Dr. Matshes says that the Defendants, and each of them, deliberately, recklessly, maliciously, and defamatorily, included and focused upon the sensationalism with a view to making the television and internet productions more provocative and interesting to its viewers, but in doing so the Defendants acted with reckless disregard to the truth.
32. Dr. Matshes says that the sensationalism, the inaccurate and defamatory information and advice obtained from persons presented in the broadcast was promoted by the Defendants to achieve notoriety and recognition for the production with reckless disregard for the truth, or, in the alternative, without due regard for the truth and without proper investigation of facts as particularized and stipulated in this claim.
33. Dr. Matshes says that the Defendants, and each of them, deliberately and maliciously and/or negligently overlooked the actual facts associated with the cases presented which were or should have been plainly apparent to the Defendants and/or each of them with basic due diligence.
34. Dr. Matshes says that the Story, the Radio Broadcast, and the Internet Publications are defamatory and puts the Defendants to the strict proof of the contents thereof and the resulting innuendo and allegations concerning the work of Dr. Matshes. Dr. Matshes says that in making the allegations of wrongful conviction and miscarriage of justice, the Defendants and each of them had a particularly high duty of care to verify, assess, and certify the facts and any opinions expressed before including it in any broadcast or publication because of the inherent inflammatory and defamatory nature of the sensational claims.
35. Dr. Matshes says that the CBC is a national broadcaster with a substantial audience and resources and, as such, has a particular responsibility to ensure accuracy and fair and responsible reporting. Dr. Matshes says that he and others had provided the CBC Defendants with due notice of the substantial and material errors contained in the Story, the Radio Broadcast, and Internet Publications before and after the materials were broadcast or published. In particular the Defendants were informed of a prior ruling of

the Alberta Court of Queen's Bench in Calgary Court File No, 1301-05703 which flatly and decisively contradicted the central theme of the Story. As such the Defendants and each of them are not entitled to rely upon any defence sounding in so-called "responsible communication", "responsible journalism" or "fair comment". In the face of the information provided by Dr. Matshes and others the Defendants and each of them ought to be held liable for punitive damages.

36. The Defendants have a duty to exercise the proper degree of diligence and the verification of the allegations associated with the sensationalism and the additional defamatory allegations and the Defendants breached such duty by failing to exercise diligence in the verification of the allegations associated with the Story and the Internet Publications. The Defendants defamed Dr. Matshes in that the publications and lowered the reputation and estimation of Matshes in the eyes of reasonable people and in the eyes of organizations and entities that he would deal with in his professional life. In the result, Matshes has suffered significant damages.

Malice

37. Dr. Matshes says that the Defendants dishonestly and irresponsibly gathered information with the intention and purpose to present a sensational and provocative story no matter the facts.
38. The CBC initially contacted Dr. Matshes in June 2019 at his place of business in San Diego, California, purporting to be preparing a story involving the unfounded and wrongful allegations in the media concerning forensic medical research undertaken by Dr. Matshes.
39. In fact, the CBC was always intending to create a sensational and provocative story suggesting Dr. Matshes' work as a forensic pathologist in Alberta in the years 2010 to 2011 had caused or contributed to a number of wrongful convictions in serious criminal cases then before the Courts of Alberta.
40. The Defendants, or any one of them, internally "pitched" a negative storyline against Matshes in the planning stages of "The Autopsy: What If Justice Got It Wrong". The sensationalism and the defamatory allegations in the "pitch" were accepted by the CBC and the other Defendants in the decision to proceed with the sensationalism and the Story. In other words, the Story proceeded the facts. In so doing, the Defendants intentionally focused their information gathering and verification processes to create a production based upon the unfair, unbalanced, and unverified sensationalism allegations failed to be diligent in the verification of the allegations performing the sensationalism and the additional defamatory allegations in order to further the "pitch". Matshes says that the CBC Defendants conduct does not constitute responsible communication to the public or responsible journalism.
41. The Defendants intentionally excluded information in the broadcasts and the website publications that would have been relevant to the audience in assessing the credibility of persons presented in the broadcast and of the central narrative of the stories.

42. The Defendants did not merely present the persons presented as part of “The Autopsy: What If Justice Got It Wrong”, the Radio Broadcast and Internet Publications but worked collaboratively with them in an effort to build a sensational and provocative commentary such that the CBC in advancing its narrative lost its objectivity necessary to be responsible journalist and broadcasters and failed to be diligent in publication of the sensationalism and the defamatory allegations.
43. The Defendants in the course of making “The Autopsy: What If Justice Got It Wrong” and the other Defamatory Publication adopted entirely the positions of the persons presented in the broadcast which tainted the approach of the Defendants in advancing the defamatory allegations.

Statutes Pleaded

44. The Plaintiff pleads the provisions of the *Defamation Act*, RSA 2000 c. D-7.

Damages

45. Dr. Matshes says that the combined effect of “The Autopsy: What If Justice Got It Wrong”, the Radio Broadcast and the Internet Publication have caused and continue to cause him significant and ongoing damages including damage to his personal and professional reputation, as well as ongoing mental and physical distress. Dr. Matshes says he is entitled to general damages as against the Defendants jointly and severally in the amount of \$5 million.
46. Dr. Matshes has suffered significant and ongoing financial and pecuniary loss and damages in relation to his professional career. Matshes expects to be able quantify those damages by the time at the trial. These damages are currently estimated in the amount of \$5 million.
47. **Dr. Matshes says that the conduct of the Defendants was and is outrageous, reckless, and deliberate.** The Defendants knew or ought to have known that Dr. Matshes was endeavouring to rebuild his professional career consequent to the matters referenced in his litigation with the Government of Alberta. The Defendants were intentional in their actions and reckless about the obvious severe consequences to Dr. Matshes. Dr. Matshes is entitled to aggravated and punitive damages in a further amount of \$5 million.
48. Dr. Matshes says that he is entitled to an order requiring the Defendants to preserve and produce their computer, telephone, text and email records relating to communications associated with these matters and to a further order entitling Matshes to inspect such records.
49. Dr. Matshes proposes that the trial of this Action be held at the Calgary Courts Centre in the city of Calgary, in the province of Alberta and says that it will take less than 20 days to try. Matshes requests a trial by jury.

50. Dr. Matshes says that the facts and circumstances of this case have a real and substantial connection to Alberta in that they involve matters related to criminal cases prosecuted in Alberta and concerning professional work undertaken in Alberta while he was employed by the Office of the Chief Medical Examiner. The defamatory publications referred to herein were broadcast and published worldwide including to Alberta. There are substantial grounds for service of this process outside of Alberta.

Remedies sought:

51. A declaration that “The Autopsy: What If Justice Got It Wrong”, the Radio Broadcast and the associated Internet Publications are defamatory to Dr. Matshes.
52. A declaration that the Defendants have defamed Dr. Matshes.
53. An order directing the CBC to remove the subject materials from the internet and refrain from further broadcast or publishing “The Autopsy: What If Justice Got It Wrong”, the Radio Broadcast and related Internet Publications referred to herein.
54. Judgment for general damages in the amount of \$5 million or such amount that this Honourable Court deems just.
55. Judgment for pecuniary damages that may be proven at the trial, presently estimated at \$5 million.
56. Judgment for aggravated and punitive damages in the amount of \$5 million or such amount that this Honourable Court deems just.
57. An order for preservation and inspection of the computer, telephone and email accounts operated by the Defendants.
58. Such further and other relief as this Honourable Court may deem just.
59. Costs on a solicitor and own-client basis.

WARNING

NOTICE TO THE DEFENDANTS

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 Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff'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 the Plaintiff(s) against you.