

Court File No.

F 5 0 8 - 1 5 7

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SAMUEL GUALTIERI and SANDRA GUALTIERI**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant



**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside of Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Issued by *Maureen Los*  
Local registrar

~~45 Main Street East  
Hamilton, Ontario~~

Superior Court of Justice  
Cour superieure de justice  
Box 399, 55 Munsee Street  
Cayuga, Ontario NOA 1E0

TO:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Crown Law Office – Civil Law

720 Bay Street, 8<sup>th</sup> Floor

Toronto, Ontario

M5G 2K1

**CLAIM**

1. The Plaintiffs claim for negligence against the Defendant:
  - a. special damages for the Plaintiff, Samuel Gualtieri, in the amount of \$500,000;
  - b. general damages for the Plaintiff, Samuel Gualtieri, in the amount of \$5,000,000;
  - c. damages for the Plaintiff, Sandra Gualtieri, in the amount of \$500,000 pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, for the following:
    - i. expenses incurred for the benefit of the Plaintiff, Samuel Gualtieri;
    - ii. an allowance for travel expenses incurred to transport the Plaintiff, Samuel Gualtieri during his treatment and recovery;
    - iii. an allowance for the value of nursing, housekeeping and other services provided for the Plaintiff, Samuel Gualtieri; and
    - iv. compensation for loss of guidance, care and companionship;
  - d. prejudgment interest in accordance with s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - e. postjudgment interest in accordance with s. 129 of the *Courts of Justice Act*;

- f. their costs on a substantial indemnity basis; and
  - g. such further and other relief as this court deems just.
2. The Plaintiff, Samuel Gualtieri, is a framer and home builder who resides in the County of Haldimand.
  3. The Plaintiff, Sandra Gualtieri, is the wife of Samuel Gualtieri.
  4. Samuel Gualtieri has been engaged in the business of providing framing services and custom home construction throughout Ontario since 1979.
  5. On January 29, 2007, Michelle Gualtieri, the daughter of the Plaintiffs, together with her fiancé, Kurtis Bottrell purchased a building lot at 15 Kyler Court, Caledonia, Ontario (the "Property").
  6. The Property was part of a subdivision development (the "Stirling Subdivision") that had been registered by a developer named John Kragten.
  7. On September 13, 2007, Samuel Gualtieri ("Mr. Gualtieri") was in the process of building a house on the Property as a new home for his daughter and future son-in-law, Kurtis Bottrell.
  8. On September 13, 2007, Mr. Gualtieri, arrived at the Stirling Subdivision to commence work on the house on the Property.
  9. Upon arriving at the Stirling Subdivision, Mr. Gualtieri found that there was a police barrier to the subdivision across Stirling Street. There were at least two unidentified Ontario Provincial Police ("OPP") officers near the barrier speaking to John Kragten and his partner.

10. Mr. Gualtieri then proceeded to the Property and discovered that a large number of native protestors had occupied the Property.
11. One of the protestors was on the roof of the house on the Property and was attempting to raise a native flag on the roof of the house.
12. Mr. Gualtieri had contracted bricklayers to work on the exterior of the house on the Property and the bricklayers had constructed scaffolding at the front of the house in order to conduct their work.
13. A native protestor was climbing on the scaffolding, which was creating an extremely unsafe working condition, and Mr. Gualtieri was concerned that someone was going to be hurt.
14. Mr. Gualtieri immediately called the man to get down because of the danger and a concern that the flag was going to do damage to the roof of the house.
15. When the protestor refused to come down, Mr. Gualtieri climbed up the scaffolding himself to compel the protestor to come down.
16. This incident was in clear view of at least two unidentified plain clothed OPP officers who were observing the incident and clearly saw that the Property had been occupied by numerous protestors.
17. The incident had been allowed to go on long enough for local media to arrive. A CH News crew arrived and video taped the protestor climbing on the roof of the house on the Property and attempted to raise the native flag. This all took place in the presence and clear sight of the OPP officers.
18. It would have been apparent to the officers, from the number of people on the Property, the fact that the house was clearly a construction site, the presence of

the reporters, the attempt by the protestor to raise the native flag on the roof of the house, and the actions of Mr. Gaultieri, that these protestors were trespassers on the Property and engaged in an act of private mischief to the Property.

19. Mr. Gaultieri locked up the house and left the site to get his crew of workers who were working at a difference job site. He picked up his nephews, Dominic Gaultieri and Dwayne Davies, and another employee, Eric Halili, and returned to the Property.
20. When Mr. Gaultieri returned to the Property at approximately 4:00 pm, the Stirling Street entrance continued to be blocked and several OPP officers were still on the Sterling Subdivision and in clear view of the Property.
21. When Mr. Gaultieri returned to the Property there were now several protestors who were inside the previously locked house.
22. Mr. Gaultieri went to the front of the house and yelled at them to get out the house.
23. Several of the trespassers then physically attacked Mr. Gaultieri. One of the trespassers picked up an oak railing and began to repeatedly beat Mr. Gaultieri over the head. Other trespassers began to viciously kick Mr. Gaultieri with their feet and hit him with their fists.
24. Mr. Gaultieri was beaten until he was unconscious.
25. The other members of the crew, Dominic Gaultieri, Dwayne Davies and Eric Halili attempted to assist Mr. Gaultieri, but were held back or threatened by the other trespassers. Mr. Halili was held in a chokehold by an unidentified trespasser.

26. A neighbour called 911 and when the Haldimand EMS arrived they found Mr. Gualtieri on the floor in a pool of blood.
27. The members of the Haldimand EMS attended to Mr. Gualtieri before any officer of the OPP despite the fact that the officers were on the site of the Sterling Subdivision.
28. Mr. Gualtieri was taken to West Haldimand General Hospital where he was treated in the Emergency Dept. by the attending physician, Dr. Nick Cloete. Dr. Cloete determined that Mr. Gualtieri needed a CAT scan and, after numerous attempts to find a hospital that was willing to admit Mr. Gualtieri, Mr. Gualtieri was taken to Hamilton General Hospital by ambulance and accompanied by Dr. Cloete to ensure that Mr. Gualtieri was admitted to the hospital.
29. Following the CAT scan Mr. Gualtieri was returned to West Haldimand General Hospital. The next day he was again transported by ambulance to West Haldimand General Hospital to conduct an MRI examination.
30. Mr. Gualtieri remained in intensive care at West Haldimand General Hospital for 2 days. Two full sets of x-rays were taken. On September 18, 2007 Mr. Gualtieri was transported by ambulance to Norfolk General Hospital for another CAT scan. He returned to West Haldimand General Hospital, where he remained until September 19, 2007, when he was discharged to recover at home.
31. As a result of the attack by the trespassers, Mr. Gualtieri suffered from the following injuries:
  - a. head trauma;
  - b. a badly bruised and swollen left jaw and left ear;

- c. blackened eyes almost swollen shut;
  - d. a left nasal fracture;
  - e. a left zygoma (cheekbone) fracture;
  - f. a left scapula (collarbone) fracture;
  - g. multiple bruises; and
  - h. trauma to the body.
32. Mr. Gualtieri continues to suffer from the following symptoms:
- a. post traumatic stress;
  - b. depression;
  - c. memory loss;
  - d. cognitive difficulties;
  - e. fatigue; and
  - f. vertigo.
33. Since the attack Mr. Gualtieri has not been able to return to work and is incapable of carrying on his business as a framer. He has lost income from his previously successful business and is currently relying upon short term disability payments from his private insurance coverage.



34. Sandra Gaultieri has been required to remain at his bedside of her husband. During his hospital stay and for a period of time following his discharge she has been required to feed and bathe Mr. Gaultieri and to monitor his visits.
35. Since the attack Mr. Gaultieri has lost the ability to engage in many activities that he enjoyed prior to the attack. Prior to his injuries Mr. Gaultieri was a highly ranked bowler, but has now lost the ability to bowl at his previous level. He was not able to engage in the planning of his daughter's engagement and wedding that was to follow the incident. He has not been able to do the regular day-to-day activities that he used to enjoy with his wife. He has been unable to care for and interact with his new grandson.
36. The Plaintiff, Sandra Gaultieri, since the attack has not received the same level of companionship with her husband that she experienced prior to the attack. She finds that her role since the attack is that of a care giver who is required to give constant attention to the care and recovery of her husband.
37. The Plaintiffs, as residents of Haldimand County, are entitled to the provision of police services by the OPP under a police services contract entered into between the OPP and Haldimand County under s. 10 of the *Police Services Act*, R.S.O. 1990, c. P.16.
38. Under s. 42 of the *Police Services Act*, police officers have the following duties:
  - a. preserving the peace;
  - b. preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
  - c. assisting victims of crime;

- d. apprehending criminals and other offenders and others who may lawfully be taken into custody; and
  - e. laying charges and participating in prosecutions
39. Under s. 41 of the *Police Services Act*, OPP Commissioner Julian Fantino, as chief of police of the officers present on the Sterling Subdivision, had a duty to ensure that members of the police force carry out their duties in accordance with *Police Services Act* and the regulations in a manner that reflected the needs of the community.
40. The Plaintiff state that the OPP police officers who were at the Sterling Subdivision when the attack upon Mr. Gualtieri took place knew that the protestors who were on the site were trespassers, had made threats, had a propensity for violence, and that the presence of the protestors imposed a danger to the occupiers of property within the Sterling Subdivision.
41. Despite this knowledge, the OPP officers who were present took no steps to remove the trespassers from the site or protect the occupiers of the Property from potential harm.
42. The Plaintiffs state that OPP Commissioner Fantino had instructed his officers not to remove the protestors who were occupying the Sterling Subdivision simply because they were native, despite the fact that they were clearly a danger to the occupiers of the properties within the Sterling Subdivision.
43. The Plaintiffs state that the instructions provided by Commissioner Fantino were contrary to his duties under s. 41 of the *Police Service Act* and were given for ulterior political motives rather than for the benefit of the local community of Haldimand County as required under the *Police Services Act* and the Haldimand Police Service Agreement.

44. The Plaintiffs state that the OPP officers who were present at the Sterling Subdivision at the time of the attack on Mr. Gaultieri were negligent in carrying out their duties under s. 42 of the *Police Services Act* as set out in paragraph 38.
45. The Plaintiffs state that had OPP Commissioner Fantino and the OPP officers at the Sterling Subdivision on September 13, 2007, were negligent in carrying out their duties under the *Police Services Act*, and that had they properly carried out their duties under the *Police Services Act* that Mr. Gaultieri would not have suffered any damages.
46. The Plaintiffs state that the Defendant, Her Majesty the Queen in right of Ontario, is responsible for the tortuous acts of her servants and agents under s. 5 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.
47. The Plaintiffs rely upon the provisions of s. 41 and 42 of the *Police Services Act*, S. 5 of the *Proceedings Against the Crown Act*, and the *Negligence Act*, R.S.O. 1990, c. N.1.

September 16, 2008

**FINDLAY McCARTHY LLP**  
66 James Street North  
Hamilton, Ontario  
L8R 2K5

**John W. Findlay**  
LSUC No.: 19502C

Tel: (905) 526-8943  
Fax: (905) 526-8696  
Email: [findlay@findlaymccarthy.com](mailto:findlay@findlaymccarthy.com)

Solicitors for the Plaintiffs

FS - 08-157

Court File No.

**SAMUEL GUALTIERI et al**

Plaintiff

v.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**Action Commenced in Cayuga**

---

**STATEMENT OF CLAIM**

---

**FINDLAY MCCARTHY LLP**  
Barristers and Solicitors  
66 James Street North  
Hamilton, Ontario  
L8R 2K5

**John W. Findlay**  
Tel: (905) 526-8943  
Fax: (905) 526-8696

Solicitors for the Plaintiffs