

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

TIM McLEAN,

Plaintiff,

-and-

VINCE WEIGUANG LI,
GREYHOUND CANADA TRANSPORTATION CORP.
and THE ATTORNEY GENERAL OF CANADA,

Defendants.

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it in this Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Manitoba.

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

Amended this 8th day of May
2009 on Requisition

L. RANVILLE
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA
COURT OF QUEEN'S BENCH
WINNIPEG CENTRE

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$300 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$300 for costs and have the costs assessed by the Court.

**"J. LONSDALE"
DEPUTY MINISTER
COURT OF QUEEN'S BENCH
FOR MANITOBA**

"September 2, 2008"

Issued by: _____
Deputy Registrar
100C - 408 York Avenue
Winnipeg, MB R3C 0P9

TO: VINCE WEIGUANG LI
c/o Winnipeg Remand Centre
141 Kennedy St.
Winnipeg, MB R3C 4N5

AND TO: GREYHOUND CANADA TRANSPORTATION CORP.
877 Greyhound Way SW,
Calgary, Alberta.

AND TO: THE ATTORNEY GENERAL OF CANADA
c/o DEPARTMENT OF JUSTICE CANADA
301 - 310 Broadway
Winnipeg, MB R3C 0S6

CLAIM

1. The Plaintiff claims in respect to each of the Defendants:
 - a. General damages for wrongful acts, neglect, or default causing death, including but not restricted to loss of guidance, care and companionship of the deceased, Tim McLean Jr.;
 - b. Special damages including damages for funeral expenses to be determined at the trial of the within action;
 - c. Aggravated and/or exemplary damages;
 - d. Interest and costs pursuant to the provisions of *The Court of Queen's Bench Act, R.S.M. 1987* and amendments thereto;
 - e. Costs; and
 - f. Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Tim McLean, resides in the City of Winnipeg at 6621 Betsworth Avenue, in the Province of Manitoba and is the father of Tim McLean Jr., deceased.

3. The within action is brought by the Plaintiff on his own behalf as the father of the deceased and on behalf of the following parties pursuant to s. 5(1) of *The Fatal Accidents Act, R.S.M. 1987 c. F50* and amendments thereto upon which he pleads and on which he relies:

Name	Address	Relationship to Deceased
Carol A. deDelly	[REDACTED]	Mother
Kendall deDelly	[REDACTED]	Brother
Kathryn McLean	[REDACTED]	Sister
Amanda Corrigan	[REDACTED]	Sister
Donald McLean	[REDACTED]	Brother
Vana Smart	[REDACTED]	Sister
Jade Reimer	[REDACTED]	Sister
Nadine McLean	[REDACTED]	Step-Mother
Tim deDelly	[REDACTED]	Step-Father
Rose Marie McLean	[REDACTED]	Grandmother
Paul Fedoruk	[REDACTED]	Grandfather
Beebe Fedoruk	[REDACTED]	Grandmother

4. The Defendant Vince Weiguang Li (hereinafter referred to as the "Defendant Li") is a resident of Edmonton and is charged with the second degree murder in the death of Tim McLean Jr., the deceased.

5. The Defendant Greyhound Canada Transportation Corp., (hereinafter referred to as the "Defendant Greyhound") is a prominent operator of inter-provincial coach services in Canada. Based in Calgary, it is a subsidiary of Britain's FirstGroup plc, linked with Dallas-based Greyhound Lines; also known as Greyhound USA.

6. The Defendant, Attorney General of Canada (hereinafter referred to as the "Defendant Canada") is the Defendant in whose name proceedings may be taken against Her Majesty in right of Canada pursuant to section 23(1) and section 2 of the *Crown Liability and Proceedings Act*, R.S.C. 1990, c. C-50.

7. The Royal Canadian Mounted Police, (hereinafter referred to as the "RCMP") is a police force consisting of officers and other members and is an agency of the Crown falling under the direction and control of the Attorney General of Canada. The Attorney General, with the approval of the Governor in Council, entered into an agreement, (hereinafter referred to as "Policing Contract") with the Government of Manitoba through its respective Ministry, the Attorney General of Manitoba, for the use or employment of the RCMP for policing in Manitoba.

8. Pursuant to the Policing Contract, the RCMP located a detachment in the City of Portage la Prairie from which the RCMP were to provide policing services to the City of Portage la Prairie and outlying communities. The Plaintiff pleads and relies on the *Royal Canadian Mounted Police Act* R.S., c. R-9, s.1 and amendments thereto, and, in particular, but not limited to, sections 18, 20 and 37. The Plaintiff further pleads and relies upon the *Provincial Police Act* R.S.M. 1987, c P150 and amendments thereto and, in particular but not limited to, sections 4, 5, 15(1), 15(2), 16, 17, 18, 19 and 20.

9. The Defendant Canada is responsible in law for the actions and omissions of the Government of Canada, the Minister of Public Safety, the Minister of Transportation, the RCMP, and the servants and agents of the Government of Canada.

10. The Defendant Canada is constitutionally responsible, pursuant to s. 91 of the *Constitution Act, 1867*, to regulate the transportation of passengers as it relates to buses travelling between provinces. The Defendant Canada is also responsible for public safety, national security and critical infrastructure protection including ground transportation. The Plaintiff pleads and relies upon the *Canada Transportation Act, 1996, c. 10* and amendments and, in particular, but not limited to, sections 3 and 5. The Plaintiff further pleads and relies upon the *Motor Vehicle Transportation Act, 1985, c.29 (3rd Supp)* and amendments and, in particular, but not limited, to sections 3 and 3.1.

11. The claims of the Plaintiff arise from, *inter alia*, events which transpired on or about July 30, 2008, near the City of Portage la Prairie, in the Province of Manitoba.

12. The deceased, Tim McLean Jr., was travelling on a bus owned and operated by the Defendant Greyhound from Edmonton to Winnipeg, and was asleep when he was stabbed by the Defendant Li with a large hunting knife in an unprovoked attack. The Defendant Li then beheaded the deceased, mutilated his body and performed acts of cannibalism.

13. The Plaintiff states that the RCMP were at the scene of the incident for approximately 5 hours without attempting to arrest or remove the Defendant Li from the bus while he remained alone with and defiled the body of the deceased, Tim Mclean Jr., despite the other passengers and the driver all having departed the bus.

14. The RCMP arrested the Defendant Li after he finally exited on his own through the rear window of the bus.

15. The Plaintiff states that the actions of the Defendant Li give rise to claims for assault, battery and wrongful death. In addition, the Plaintiff states that by mutilating the body and performing acts of cannibalism, the Defendant Li caused the Plaintiff and his family distress and mental suffering.

16. The Plaintiff further says and alleges that the wrongful death of Tim McLean Jr. resulted from the carelessness, recklessness and negligence of the Defendant Greyhound, particulars of which, *inter alia*, are as follows:

- a. In failing to put in place security measures as it relates to the safety of the passengers on board Greyhound buses;
- b. in failing to ensure the security and safety of passengers on board Greyhound buses;
- c. in failing to use appropriate strategies to ensure the safety of the passengers on board Greyhound buses; and
- d. in failing to provide adequate training or adequate ongoing training to its employees to ensure the safety of the passengers.

16.1 The Defendant Greyhound owed a duty of care to the deceased Tim McLean Jr. to ensure that he was travelling in a safe and secure environment free from harm, bodily injury or death; and, specifically free from the presence and threat of weapons or sharp instruments capable of inflicting bodily injury or death.

16.2 The Defendant Greyhound knew or ought to have known that it was necessary to implement systems in their bus operations to provide for passenger security and safety.

16.3 The Defendant Greyhound knew or ought to have known that there were no security measures in place to prevent a passenger, specifically the Defendant Li, from boarding the bus with weapons or sharp instruments on their person or in their carry-on-luggage and that the passengers were thereby at risk and in imminent danger at any given moment.

16.4 The Defendant Greyhound knew or ought to have known that its driver was neither trained nor equipped to deal with the violent actions of the Defendant Li, which is a gross failure on the part of the Defendant Greyhound, and that failure grossly contributed to the suffering and death of the deceased Tim McLean Jr.

17. The Plaintiff states that the Defendant Canada, the Minister of Public Safety and the Minister of Transportation, owes a duty of care to the passengers on board buses traveling between provinces to ensure their safety and, specifically, a duty of care was owed to the deceased Tim McLean Jr.

17.1 The Plaintiff states that pursuant to the *Canada Transportation Act* and the *Motor Vehicle Transportation Act*, the Defendant Canada has primary responsibility for national transportation security and for assuring that Canada's transportation system meets the highest practicable safety and security standards.

17.2 The Plaintiff further states that pursuant to section 5, paragraph (b), of the *Canada Transportation Act*:

the objectives of a safe and secure transportation system are most likely to be achieved when regulation and public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation.

18. The Plaintiff says and alleges that the Defendant Canada breached its duty of care in that the Government of Canada, the Minister of Public Safety, the Minister of Transportation, and the servants and agents of the Government of Canada have failed to or refuse to regulate properly the use of inter-provincial buses transporting passengers to ensure their safety.

19. The Plaintiff says and the fact is that the Defendant Canada knew or ought to have known that previous violent incidents occurred in the past and continue to occur involving Greyhound buses particulars of which, *inter alia*, are as follows:

- a. On April 7, 1989, a gunman of Lebanese descent hijacked a Greyhound bus and enroute to New York and forced it to drive to the Parliament buildings in Ottawa. The man claimed to be a member of the Lebanese Liberation Front and demanded that Syrian forces withdraw from Lebanon;
- b. On March 7, 2000, a pregnant woman was attacked on a Greyhound bus traveling through London, Ontario. Police said that the woman did not know her attacker;
- c. On December 23, 2000, the man grabbed the wheel of a Greyhound bus traveling near Thunder Bay, Ontario, causing the

bus to swerve and to land in a ditch. All 32 passengers aboard were injured, and a 74-year-old woman later died of her injuries;

- d. On February 17, 2007, a Greyhound bus was driving through the Lloydminster, Alberta, when someone threw something at the bus carrying 52 passengers. The bus driver pulled over and got out of the bus, and was then attacked by a group of men;
- e. On December 24, 2007, a 27-year-old man aboard a Greyhound bus was stabbed after an argument with another passenger near Tweed, Ontario. The attacker, a 37-year-old American man is charged with attempted murder;
- f. And as recently as August 20, 2008, a 30-year-old man aboard a Greyhound bus threatened to behead two other passengers on a trip between Fort McMurray and Edmonton. The bus driver apparently did nothing to prevent or stop the unruly passenger. The attacker now faces numerous charges including assault and uttering threats.

20. It is clear from the foregoing that the Defendant Canada omitted and continues to omit putting in place appropriate safety regulations, guidelines or any requirements to ensure that similar violent incidents would be prevented, despite that it knew or ought to have known that the deceased Tim McLean Jr. was at risk of harm from attack at any time and that irreparable harm did in fact occur.

20.1 The Plaintiff states that subsection 5(b) of the Canada Transportation Act, as set out above, recognizes that a safe and secure transportation system are best achieved with regulation and public intervention when competition or market forces have failed to do so. The Plaintiff further states that the Defendant Canada

knew or ought to have known that industry on its own, specifically the Defendant Greyhound, had not taken measures to create a safe and secure system for inter-city bus travel.

20.2 The Plaintiff also states that subsection 5(b) of the Canada Transportation Act, as set out above, articulates that, with respect to safety and security, one form of transportation is not to be unduly favoured, or its advantages inherently reduced, over another mode of transportation.

20.3 The Plaintiff states that in terms of safety and security for passengers, inter-city bus travel has been unduly disfavoured and its advantages inherently reduced as opposed to other modes of public transportation. The Plaintiff alleges that the Defendant Canada's actions and omissions, in neglecting the safety and security of passengers on Greyhound buses, created an even greater risk of harm for the deceased Tim McLean Jr.

20.4 The Plaintiff states that the Defendant Canada knew or ought to have known of the serious history of violence and attacks on buses, and that in addition to the aforementioned history of violence, the Defendant Canada knew or ought to have known of the bus traveling public's concern with respect to safety as a result of its prior Canada-wide bus-safety consultations.

20.5 The Plaintiff states that in a purported exercise of their statutory duties the Defendant Canada, the Minister of Transport and the Minister of Public Safety have, over the course of the past 10 years, undertaken various consultations, studies, reports, funding contribution programs and other operational activities with respect to bus and transit security.

20.6 The Plaintiff alleges that the operational activities of the Defendant Canada, the Minister of Transport and the Minister of Public Safety have been carried out or implemented in an ineffective and negligent manner and they did

not serve to fulfill the duty of care owed to the deceased Tim McLean Jr, and they substantially contributed to the harm and damage that occurred.

21. The Plaintiff says that the RCMP failed to take any measures to remove the Defendant Li from the bus thereby allowing him to defile the body of the deceased.

22. The Plaintiff says that the RCMP failed to adhere to proper and established arresting procedures required by law and further breached their statutory duties owing to the Plaintiff by failing to observe the standards of conduct required by law. The Plaintiff says that the RCMP knew or ought to have known that their acts and conduct amounted to a wanton disregard and/or total repudiation of the statutory duties incumbent upon members of the RCMP. The Plaintiff relies on the provisions of the Royal Canadian Mounted Police Act R.S., c. R-9, s.1, specifically sections 18 and 37. The Plaintiff further relies on Provincial Police Act R.S.M. 1987, c P150, specifically sections 4 and 5.

23. The Plaintiff further states that the members of the RCMP present at the scene of the incident breached their professional duty of care owing to the Plaintiff by failing to conduct the arrest in accordance with policing standards. The Plaintiff states that the RCMP knew or ought to have known that such breaches of their duty of care would cause irreparable damages and injury to the Plaintiff and his family.

24. The Plaintiff says and alleges that the Defendant Canada contributed through its negligence and omission to the wrongful death of Tim McLean Jr.

24.1 The Plaintiff further alleges that the acts and omissions of the Defendant Canada violated the right to life, liberty and security of the person of the deceased Tim McLean Jr, and the right not to be deprived thereof except in

accordance with the principles of fundamental justice as guaranteed by section 7 of Canadian Charter of Rights and Freedoms, Constitution Act, 1982.

25. The Plaintiff states that as a result of the action of one or more of the Defendants he and the persons he sues on behalf of have suffered mental and emotional distress and special damages, and will adduce particulars of the damages at the trial of the within action.

26. Tim McLean was survived by the following:
- a. His father, Tim McLean Sr., Mechanic
 - b. His mother, Carol deDelly, School Bus Driver;
 - c. His step-mother, Nadine McLean, Nurse;
 - d. His step-father, Tim deDelly, Public Works Administrator for the R.M. of Cartier;
 - e. His brother, Kendall deDelly, Gas Attendant;
 - f. His sister, Kathryn McLean, Insurance Broker;
 - g. His sister, Amanda Corrigan, Cashier;
 - h. His brother, Donald McLean, Student;
 - i. His sister, Vana Smart, Nurse;
 - j. His sister, Jade Reimer, Hair Stylist;
 - k. His grandmother, Rose Marle McLean, retired;
 - l. His grandmother, Beebe Fedoruk, retired;
 - m. His grandfather, Paul Fedoruk, retired.

27. By reason of his death, the Plaintiff and the persons he sues on behalf of, including his father, mother, step-mother, step-father, grandfather, grandmothers, brothers and sisters have been deprived of Tim McLean Jr.'s guidance, care and companionship.

28. The Plaintiff pleads and relies upon *The Fatal Accidents Act*, R.S.M. 1987 c. F50 and all amendments thereto.

Dated: September 2, 2008

PROBER LAW OFFICES
387 Broadway
Winnipeg, MB R3C 0V5
Jay Prober
Co-counsel for the Plaintiff

BOOTH DENNEHY LLP
Barristers and Solicitors
Avocats et Notaires
387 Broadway
Winnipeg, MB R3C 0V5
J. R. Norman Boudreau
Co-counsel for the Plaintiff