

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

WALSH

ERIN MICHAEL WALSH and ANGELA

Plaintiffs

- and -

**THE PROVINCE OF NEW BRUNSWICK,
WILLIAM McCARROLL, THE
CORPORATION OF THE CITY OF ST.
JOHN, ALLEN BODECHON in his capacity
as Chief of Police of St. John and ALLEN
BODECHON personally, CLARENCE
COGSWELL in his capacity as Chief Police
of St. John and CLARENCE COGSWELL
personally, CHARLES BREEN in his
capacity as Chief of Police of St. John and
CHARLES BREEN personally, DAVID
SHERWOOD in his capacity as Chief of
Police of St. John and DAVID SHERWOOD
PERSONALLY, ERIC FERGUSON in his
capacity as Chief of Police of St. John and
ERIC FERGUSON personally, THE
ROYAL CANADIAN MOUNTED POLICE
and the ATTORNEY GENERAL OF
CANADA**

Defendants

**AFFIDAVIT OF JOEL PAYNE
(SWORN MARCH 31, 2009)**

I, Joel Payne, of the City of Vancouver, Province of British Columbia, MAKE

OATH AND SAY:

1. I am a third year law student at the University of New Brunswick Law School. Upon my graduation this spring I will be clerking with the British Columbia Court of Appeal. Following my clerkship with the Court I have been hired to complete my articles with the law firm of Fasken Martineau in Vancouver, British Columbia.

2. I have personal knowledge of the matters to which I depose in this affidavit. In those circumstances where I rely upon information provided to me by others, I state the source of my information which I verily believe to be true.

3. On Tuesday March 17, 2009 I attended at Ludlow Hall at the University of New Brunswick Law School with my classmates Shane Martinez and Dave Steele for the purposes of hearing the Attorney General of New Brunswick, T.J. Burke ("Attorney General") speak to a public assembly of law students from 11:30 am to 12:30 pm.

4. At the conclusion of the Attorney General's speech he opened the floor to questions from the students attending. During this question and answer period my classmate Shane Martinez asked the Attorney General to explain the Province of New Brunswick's opposition to the issue of compensation for Erin Walsh case. The Attorney General responded that he doesn't talk about any case that is still before the Court.

5. Notwithstanding the Attorney General's initial refusal to talk about the Erin Walsh case, he went on to say that the one thing he will comment on is that there are "numerous, numerous, numerous, numerous, numerous" things about this case

that the public hasn't had the opportunity to see yet and that when this case is over with and when the Court has heard all the evidence there will be a whole new light on things.

6. I was the next student given the opportunity to ask the Attorney General a question. Following up on my classmate's questions I asked the Attorney General about his position on ex gratia payments generally for those wrongfully convicted. The Attorney General responded generally with a hypothetical example then wove back into the Erin Walsh case repeating his previous point to Mr. Martinez saying that he was very aware of lots of facts that the public is not aware and that the "Court of Appeal doesn't delve into, or isn't supposed to anyhow, be delving into all the facts in particular cases – and they don't go through the hundreds and hundreds of pages of transcripts in any particular case."

7. I responded to the Attorney General's comments with respect to new evidence not being canvassed by the New Brunswick Court of Appeal by saying that the Province could have presented this evidence and that the Attorney General of the Province had the opportunity to present any facts that may show Erin Walsh was not wrongfully convicted at the Court of Appeal. The Attorney responded by saying no they couldn't and that when "...you go to the Court of Appeal you are arguing a Reference that has been made by the national Minister of Justice on an issue."

8. After the Attorney General's talk, he attended a reception held in the student lounge. I attended as well and had the opportunity to speak with the Attorney

General again about the Erin Walsh case. This would have been between 12:30 pm and 1:00 pm.

9. During this conversation I gave the Attorney General a copy of the Robins' Report on compensation for Stephen Truscott and told him that there is a very good discussion about ex gratia compensation and the problems associated with requiring factual innocence as a condition of compensation. The Attorney General told me, amongst other things, that I should go look at the file at the courthouse. He then asked me if I knew why Walsh was in Saint John in the first place and told me that Walsh was there for a drug deal involving 5 pounds of speed.

10. The Attorney General then added that Walsh had killed before or that he suspected that Walsh had killed before.

11. After my conversation with the Attorney General concluded I immediately walked to the library area of the law school to speak to my two classmates, Shane Martinez and Dave Steele, to tell them what the Attorney General said to me regarding the Walsh case. This would have been approximately 1 pm.

12. At 3:44 pm I recorded my recollection of my conversation with the Attorney General.

13. I have been advised by counsel to Mr. Walsh, and verily believe, that a letter was written on Mr. Walsh's behalf on March 23, 2009 ("Demand for Apology") to the Attorney General demanding an apology from the Attorney General for unfounded allegations of murder.

14. I have also been advised by counsel to Mr. Walsh, and verily believe, that the

Attorney General responded to the Demand for Apology on March 24, 2009. In this letter the Attorney General, through counsel, takes the position that "No allegations were made in connection with another murder."

15. The Attorney General's March 24, 2009 denial with respect to his allegation that Erin Walsh had committed a prior murder is not consistent with my independent recollection of our conversation on March 17, 2009, my notes of this conversation generated at 3:44 pm on March 17, 2009, my conversation with my two classmates Shane Martinez and Dave Steele minutes afterward on March 17, 2009, or my sworn recollection contained herein.

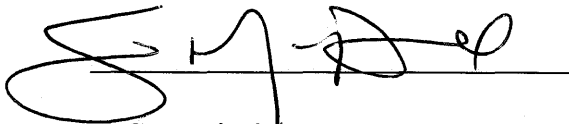
16. I will attend any and all proceedings in respect of this matter or any other related matters and provide the evidence contained in this affidavit under oath and subject to cross-examination.

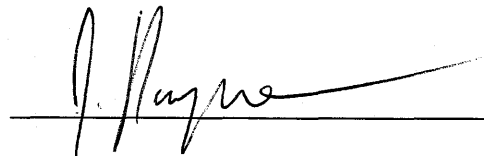
SWORN before me at the City of)

Fredericton, in the Province of)

New Brunswick, this 31st day of)

March, 2009)


A Commissioner etc.


JOEL PAYNE