

Court File No. 00-CV-193186

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MILOS MARKOVIC, NATASA MARKOVIC
and 1145959 ONTARIO LIMITED carrying on business
as MAESTRO PIZZA PLUS**

Plaintiffs

- and -

**MIKE ABBOTT, ROBERT CORREA, DANIEL ROSS,
CHRIS HIGGINS, ANITA MANCUSO, DARREN COX, MARK DENTON
PEDRO DIAZ, JOHN MACIEK, THE TORONTO POLICE SERVICES BOARD,
DAVID BOOTHBY, CHIEF OF POLICE OF THE TORONTO POLICE SERVICE and
THE TORONTO POLICE SERVICE**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS
THE TORONTO POLICE SERVICES BOARD and DAVID BOOTHBY,
CHIEF OF POLICE OF THE TORONTO POLICE SERVICE**

1. These defendants admit the allegations contained in paragraphs 2, 4, 5, 7 except for the last 8 words, 8, 29, 31, 33 except that the amount of the Canadian funds was \$127,395.00, 34 and 37 of the Amended Statement of Claim.

2. These defendants deny the allegations contained in paragraph 6, the last 8 words of paragraph 7, the second sentence of paragraph 17, paragraphs 28, 45, 46, 47 and 48 of the Amended Statement of Claim.

3. These defendants have no personal knowledge of the allegations contained in the remainder of the Amended Statement of Claim.

4. These defendants plead that the Toronto Police Service is not a legal entity.

5. The defendant the Toronto Police Services Board, hereinafter referred to as "the Board", pleads that:

- (a) if it is determined that the acts of the defendant officers were done in pursuance or execution or intended execution of any statutory or other public duty or authority, or in respect of any alleged neglect or default in the execution of any such duty or authority, the action, other than claims arising from the Canadian Charter of Rights and Freedoms, is statute barred pursuant to the *Public Authorities Protection Act*, R.S.O. 1990, ch. P. 37, s.7;
- (b) if it is determined that any of the defendant officers misappropriated money or property from the plaintiffs or assaulted the plaintiff Milos Markovic when he had his hands in the air and when he had not tried to escape from or resist the officers, such conduct is not in the course of the officers' employment and therefore the said defendant is not liable for such conduct;

- (c) if it is determined that any of the defendant officers misappropriated money or property, such money and property was obtained by the sale of illegal drugs and is not recoverable in law. The Board relies upon the doctrine known to law as *ex turpi causa*.

6. These defendants plead that if the plaintiffs have suffered the injuries, damages, or loss alleged in the Statement of Claim, which is not admitted but expressly denied, then such was not caused by any fault, neglect, negligence or breach of duty on the part of the defendant officers.

7. These defendants plead and rely upon the *Police Services Act*, R.S.O. 1990, ch. P. 15, s.42 and the Criminal Code, R.S. c.C-34, s.25.

8. These defendants deny that the plaintiffs have suffered the damages alleged in the Statement of Claim and, in the alternative, plead that the damages claimed are excessive, too remote and have not been mitigated by the plaintiffs.

9. The Board denies that any conduct of the defendant officers amounted to or resulted in a breach of the plaintiffs' Charter rights.

10. These defendants therefore submit that the action be dismissed with costs.

January 18, 2001

H.W.O. DOYLE

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Solicitors for the Defendants

The Toronto Police Services Board and
David Boothby, Chief of the
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Solicitors for the Plaintiffs

BETWEEN:

MILOS MARKOVIC, NATASA MARKOVIC, et al

Plaintiffs

and

MIKE ABBOTT, ROBERT CORRE et al

Defendants

(Short title of proceeding)

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ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE OF THE
DEFENDANTS THE TORONTO POLICE
SERVICES BOARD and DAVID BOOTHBY,
CHIEF OF THE TORONTO POLICE SERVICE**

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