

Form 11
[Rule 3.31]

COURT FILE NUMBER 1903-11921

COURT COURT OF QUEEN'S BENCH OF ALBERTA

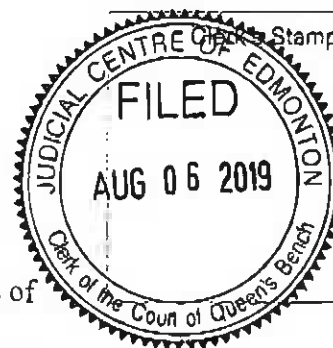
JUDICIAL CENTRE Edmonton

PLAINTIFF(S) IAN HAGUE, Executor of the Estate of Tim Hague (Deceased), and the ESTATE OF TIM HAGUE (Deceased)

DEFENDANT(S) THE CITY OF EDMONTON, EDMONTON COMBATIVE SPORTS COMMISSION, EDMONTON ECONOMIC DEVELOPMENT CORPORATION, PAT REID, LEN KOIVISTO, SHELBY KARPMAN, SHIRDI NULLIAH, DAVID AITKEN, 1259754 ALBERTA LTD., 1248345 ALBERTA LTD., and K.O. BOXING CANADA

DOCUMENT **STATEMENT OF DEFENCE OF 1259754 ALBERTA LTD., 1248345 ALBERTA LTD., and K.O. BOXING CANADA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Nathan J. Whitling
Aloneissi O'Neill
Hurley O'Keefe Millsap
300 MacLean Block
10110 - 107 Street
Edmonton, AB T5J 1J4
Phone: (780) 784-7500
Fax: (780) 421-4872
Email: whitling@libertylaw.ca

**Statement of facts relied on:**

1. The Defendants 1259754 ALBERTA LTD. ("1259754"), 1248345 ALBERTA LTD. ("1248345"), and K.O. BOXING CANADA (collectively "these Defendants") deny each and every allegation of fact and law contained in the Plaintiffs' Statement of Claim unless expressly admitted in writing.

2. These Defendants admit paragraphs 11 and 12 of the Statement of Claim.
3. These Defendants admit that 1248345 carried on business under the name of K.O. BOXING CANADA in the area of combative sports promotion. The Defendant 1248345 and the Defendant K.O. BOXING CANADA are together referred to herein as "K.O. BOXING".
4. In further answer to paragraph 13 of the Statement of Claim, and in answer to the entirety of the Statement of Claim as against 1259754, any general partnership that may be found to have existed between 1259754 and 1248345 terminated no later than December 31, 2010, beyond which point in time 1259754 ceased to have any involvement whatsoever in the operations and activities of K.O. BOXING. 1259754 has no knowledge of, involvement in, or responsibility for, any of the matters referred to in the Statement of Claim.
5. In answer to paragraph 14 of the Statement of Claim, these Defendants deny that they owed any duty of care to the Deceased as pleaded therein, or at all.
6. The events promoted by K.O. BOXING were subject to the rules and practices established by the Defendant the Edmonton Combative Sports Commission ("ECSC") and its agents. Those rules and practices required all participants, including the Deceased, to submit their medical records to physicians designated by the ECSC for assessment. K.O. BOXING was not provided with, and did not have access to, the medical records of participants such as the Deceased, and had no duty to collect, review, or assess the information contained in those records.
7. In answer to paragraph 25 of the Statement of Claim, these Defendants deny that they, or any of them, owed the Plaintiffs or the Deceased any duty to carry out the actions listed therein. In the alternative, K.O. BOXING took all the steps that a reasonable person in similar circumstances would have taken.
8. In specific answer to sub-paragraph 25(a) of the Statement of Claim, the medical documentation required for the Braidwood Fight was determined by the ECSC and provided to the ECSC and its designates by the Deceased. K.O. BOXING was not responsible for the collection or provision of that documentation, and had no right of access to the Deceased's private medical records.
9. In specific answer to sub-paragraph 25(b) of the Statement of Claim, at the time of the Braidwood Fight, the Deceased's complete fight history, and suspensions, if any, were not known or available to K.O. BOXING, and were within the exclusive control of the ECSC.
10. In specific answer to sub-paragraph 25(c) of the Statement of Claim, K.O. BOXING had no access to any of the Deceased's personal medical information, and no duty or ability to investigate or determine any medical condition that he may have had.
11. In specific answer to sub-paragraph 25(d) of the Statement of Claim, K.O. BOXING had no power or duty to determine the safety and emergency plans required for the event. The safety and emergency plans required by the ECSC were in place for the Braidwood Fight.

12. In specific answer to sub-paragraph 25(e)(g) and (h) of the Statement of Claim, the medical professionals, equipment, and ambulance required by the rules prescribed by the ECSC were in place for the event and approved by the ECSC.
13. In specific answer to sub-paragraph 25(f) of the Statement of Claim, these Defendants deny that the Deceased was unfit to fight at the time of the Braidwood Fight. In the alternative, K.O. BOXING did not know, and could not reasonably have known that the Deceased was unfit to fight. The Deceased specifically advised K.O. BOXING in writing shortly before the Braidwood Fight that he was in the healthiest condition and best shape of his life.
14. In specific answer to paragraph 28 of the Statement of Claim, it is the exclusive legal responsibility of the ECSC to approve the matches of the participants in the combative sports under the ECSC's jurisdiction. Additionally, the Deceased was not outmatched, grossly or otherwise, by Braidwood. The Deceased was a more experienced fighter than Braidwood, and had a fighting history which made him an appropriate match for Braidwood. The Deceased repeatedly emphasized to K.O. BOXING in writing that he was a more experienced fighter than Braidwood, and that he was certain that he would easily win the fight against Braidwood.

Any matters that defeat the claim of the plaintiffs:

15. At the time of the Braidwood Fight, the Deceased was an adult with the capacity to make decisions affecting his health and safety, and was an experienced fighter. The Deceased was fully aware of the risks necessarily inherent in combative sports, and expressly and implicitly agreed to assume full and exclusive legal responsibility for those risks.
16. The Deceased and K.O. BOXING entered into a written Boxing Agreement dated June 1, 2017, which included the following clause ("Clause 10"):
 - 10) The FIGHTER, heirs, dependants or any others, waives all liabilities to the promoter, facility, local boxing Commission, and local civil authorities that may result in any injury to the fighter as a result of his participation in this event.
17. In the event that Clause 10, above, is found to be ambiguous, the Deceased wrote a text to K.O. BOXING shortly before signing the Boxing Agreement, stating: "Freak accidents happen once in a while. I accept that when I sign the contract."

Remedy sought:

18. These Defendants request a Judgment dismissing the Plaintiffs' claim against these Defendants with costs.