

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SAHAR BAHADI, on her own behalf and as the Administrator
of the Estate of SAMMY ADIB YATIM, Deceased, and SARA
ANN YATIM by her litigation guardian, SAHAR BAHADI**

Plaintiffs

-and-

**POLICE CONSTABLE JAMES FORCILLO, POLICE CHIEF
WILLIAM BLAIR, TORONTO POLICE SERVICES BOARD,
OFFICER JOHN DOE AND OFFICER JANE DOE**

Defendants

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 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$50,000 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 \$400 for costs and have the costs assessed by the court.

Date: October 11th, 2013

Issued by


.....
Local registrar Y. Grant
 Registrar

Address of Ontario Superior Court of Justice
Court office: 393 University Avenue, 10th floor
 Toronto, Ontario
 M5G 1E6

TO: TORONTO POLICE SERVICES BOARD
40 College Street,
Toronto, Ontario
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AND TO: POLICE CHIEF WILLIAM BLAIR
40 College Street,
Toronto, Ontario
M5G 2J3

AND TO: POLICE CONSTABLE JAMES FORCILLO
14th Division
350 Dovercourt Road,
Toronto, Ontario
M6J 3E3

AND TO: OFFICER JOHN DOE
40 College Street,
Toronto, Ontario
M5G 2J3

AND TO: OFFICER JANE DOE
40 College Street,
Toronto, Ontario
M5G 2J3

CLAIM

1. The plaintiff, the Estate of Sammy Adib Yatim, claims:
 - a. Damages for negligence, assault, battery, and misfeasance in public office in the amount of \$2,000,000.00 (two million dollars);
 - b. Special damages in a sum to be disclosed before trial;
 - c. Punitive damages in the amount of \$1,000,000.00 (one million dollars);
 - d. Aggravated and exemplary damages in the amount of \$1,000,000.00 (one million dollars);
 - e. Pre- and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and section 31 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
 - f. Costs of this action on a substantial indemnity scale; together with Harmonized Sales Tax payable pursuant to the *Excise Act*;
 - g. Such further and other relief as this Honourable Court deems just.

2. The plaintiffs Sahar Bahadi and Sara Ann Yatim, by her litigation guardian, claim:
 - a. Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$1,000,000.00 (one million dollars);
 - b. Damages for negligent infliction of mental distress in the amount of \$1,000,000.00 (one million dollars);
 - c. Special damages in a sum to be disclosed before trial;
 - d. Aggravated and/or exemplary damages in the amount of \$1, 000,000.00 (one million dollars);
 - e. Punitive damages in the amount of \$1, 000,000.00 (one million dollars);
 - f. Pre and post judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 and section 31 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
 - g. Costs of legal representation at an Inquest into the Death of Sammy Adib Yatim;
 - h. Costs of this action on a substantial indemnity scale, together with Harmonized Sales Tax payable pursuant to the *Excise Act*; and

- i. Such further and other relief as this Honourable Court deems just.

INTRODUCTION

4. In the early morning hours of July 27, 2013, Sammy Adib Yatim (hereafter “Sammy”), an 18 year old resident of Toronto, Ontario, was shot and killed on a Toronto Transit Commission streetcar by the defendant P.C. James Forcillo. Sammy, who had just finished high school, was experiencing a period of emotional disturbance at the time he was shot.
5. At the time of the shooting, Sammy was alone in a streetcar that was surrounded by approximately twenty police officers who are employed by the Toronto Police Services Board. One of these officers, P.C. Forcillo, discharged his firearm nine times in the direction of Sammy, striking him eight times in total. None of the other attending police officers discharged their firearms.
6. After Sammy had been mortally wounded and lay defenceless on the floor of the streetcar, Officer John Doe fired his TASER into Sammy.
7. The defendant P.C. Forcillo has been charged with second-degree murder in relation to the shooting of Sammy Adib Yatim.

THE PARTIES

8. Sammy Adib Yatim, who at all material times was 18 years old and a resident of the City of Toronto, in the Province of Ontario, died intestate. He was a high school student at the time of his death.

9. The plaintiffs, Sahar Bahadi and Sara Ann Yatim D.O.B.; June 25, 1996, are residents of the City of Toronto and are respectively the mother and sister of Sammy Adib Yatim. They enjoyed a close and loving relationship with their son and brother, and were dependent on him for care, companionship and guidance.
10. The defendant, P.C. Forcillo, is a resident of the Province of Ontario and was at all material times employed as a police officer with the Toronto Police Service. This defendant intentionally shot and killed Sammy Adib Yatim without justification or excuse. In the alternative, this defendant recklessly and/or negligently shot Sammy Adib Yatim and thereby caused his death. This defendant is liable to the plaintiffs for assault and battery, misfeasance in public office, negligence and causing nervous shock.
11. The defendant, the Toronto Police Services Board (hereafter the “Board”) is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the City of Toronto. The Board, by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c.P.15 as amended, and the common law, is liable in respect of torts committed by employees of the Toronto Police Service.
12. The defendants, John Doe and Jane Doe, are residents of the Province of Ontario and were, at all material times, employed as police officers with the Toronto Police Service. One of these defendants shot a TASER at the plaintiff. These defendants are liable to the plaintiffs for assault and battery, misfeasance in public office, negligence and causing nervous shock. These defendants’ identities are known to the defendants and remain unknown to the plaintiffs.

13. The defendant, Police Chief William Blair, was the Chief of the Toronto Police Service at all relevant times. As such, he was responsible for supervising subordinate officers, for ensuring that they were acting competently as police officers, and was responsible for ensuring that proper training, policies and procedures were in place. This defendant committed the tort of negligent supervision when he failed to ensure that proper training, policies and procedures were in place and failed to ensure that his subordinate officers complied with such training, policies and procedures as did exist.

THE EVENTS OF JULY 27, 2013

14. In the early morning hours of July 27, 2013, Sammy was travelling on the 505 Dundas streetcar westbound. While on the streetcar, Sammy suffered an acute emotional disturbance. As a result of interactions between Sammy and other passengers, the operator of the streetcar stopped the vehicle at Dundas Street West and Bellwoods Avenue in the City of Toronto. All of the passengers exited the streetcar, followed by the operator. Sammy remained alone on the streetcar. He was in possession of a small folding knife. Police were contacted to respond. At all times, the streetcar doors remained open.
15. Approximately twenty uniformed officers attended the scene, including the defendant P.C. Forcillo. At all relevant times, Sammy stayed alone within the confines of the streetcar. It was apparent to the defendant police officers, from their own observations and from information obtained from the scene, that Sammy was suffering from an emotional disturbance.

16. The defendant P.C. Forcillo pointed his firearm at Sammy, while he and the other defendant police officers shouted at Sammy to drop his knife. P.C. Forcillo discharged his firearm three times in the direction of Sammy, causing Sammy to fall backwards onto the floor of the streetcar. After several seconds, during which Sammy remained motionless on the floor, P.C. Forcillo discharged his firearm a further six times. In all, Sammy was struck by eight rounds fired by P.C. Forcillo.
17. When Sammy was shot, he was confined and alone in the streetcar that was surrounded by numerous police officers. He did not assault or approach the officers, nor make any move to leave the streetcar. He offered no resistance, provocation or any other justification or excuse for the shooting by the defendant. P.C. Forcillo.
18. Immediately following the shooting, Police Officer John Doe approached Sammy and shot him with his TASER. Sammy posed absolutely no threat to the defendant police officers at the time that he was tasered.
19. The TASER was discharged by Police Officer John Doe in circumstances where he knew or ought to have known that Sammy was dead or dying and posed no threat or risk of danger. Discharging the TASER in these circumstances was contrary to training, policy and procedure.
20. Sammy was transported to St. Michael's Hospital in Toronto where he was pronounced dead by medical staff on July 27, 2013.

LIABILITY OF THE DEFENDANT POLICE OFFICERS**a. Assault and Battery**

26. The defendant officers intentionally and/or recklessly and negligently applied force to the person of Sammy Adib Yatim without his consent.

27. As regards the defendant P.C. Forcillo, he intentionally applied deadly force to the person of Sammy Adib Yatim.

28. The defendant, Officer John Doe, intentionally applied force to the person of Sammy Adib Yatim in the form of a TASER without his consent, knowing that Sammy was already dead or dying and that Sammy posed no threat to anyone and that the use of the TASER in these circumstances was contrary to training, policy and procedure.

29. The force used upon Sammy was not justifiable at law. The force applied was excessive and unreasonable in the circumstances and caused physical injury and death. Force was applied in circumstances where the officers knew or ought to have known that the said force was excessive and would and/or could cause serious injuries, death and other damages, which did indeed occur.

b. Misfeasance in Public Office

30. The defendant police officers are holders of a public office. The plaintiffs repeat and rely upon the facts as set out above and state that the officers deliberately violated the law in committing an assault on Sammy. In the alternative, the officers were reckless and/or wilfully blind to whether their actions violated the law.
31. The officers acted with malice and/or for an improper purpose in that they knew, or were recklessly indifferent to whether their actions would probably cause injury to the plaintiffs and their actions did so cause injury to the plaintiffs. The officers had no reasonable basis for discharging a firearm and a TASER to the person of Sammy Adib Yatim.
32. The conduct of the officers constitutes misfeasance in public office.

d. Negligence

35. The defendant police officers owe a duty of care to individuals they detain, arrest and/or imprison.
36. The officers breached the duty of care they owed to the plaintiffs and, accordingly, are liable in negligence to the plaintiffs. The injuries and suffering of the plaintiffs arose as a direct result of the negligence of these defendants. The negligent actions and/or inactions of the officers as plead herein each and/or collectively caused Sammy's injuries and his death, and injuries to the other plaintiffs, a consequence the officers knew or ought to have known would occur as a result of their negligence.

37. Without restricting the generality of the foregoing, some of the particulars of the negligence of the defendant police officers are as follows:
- a. They employed unnecessary and unreasonable force in circumstances in which they knew or ought to have known that their actions would cause harm to the plaintiffs;
 - b. They failed to initiate emergency medical care for Sammy in circumstances in which they knew or ought to have known that he was critically injured by them, was in medical distress, and likely to die;
 - c. They failed at all material times to exercise the standard of care required by their position as police officers with the Toronto Police Service;
 - d. The defendant officers acted with reckless disregard for the life of Sammy; and
 - e. They were incompetent to carry out the duties of police officers and lacked the reasonable care, skill, ability and training necessary to perform the duties of a police officer, and ought not to have been assuming the responsibilities and obligations of their positions.

e. Nervous Shock

38. The plaintiffs, Sahar Bahadi and Sara Ann Yatim, plead that, as a result of the actions of the defendants, they suffered nervous shock. The defendant officers knew or ought to have known that these plaintiffs would suffer nervous shock upon learning of the circumstances of Sammy's death. The plaintiffs further state that the defendant officers knew or ought to have known that their unlawful conduct in assaulting and shooting Sammy and causing him serious injuries and death, would cause nervous shock to these plaintiffs. Without restricting the generality of the foregoing, these plaintiffs continue to suffer anxiety, depression and

physical and psychological conditions arising from the unlawful conduct of the defendant police officers.

LIABILITY OF CHIEF BLAIR AND THE POLICE SERVICES BOARD

39. The defendants Chief Blair and the Police Services Board owed a duty of care to the plaintiffs to ensure that the defendant police officers were properly trained for, and supervised in respect of, their duties as police officers.
40. Chief Blair and the Police Services Board breached this duty of care, and were negligent in supervising the defendant police officers. The negligent actions and/or inaction of the Chief and the Police Services Board caused injury to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of their negligence.
41. Without restricting the generality of the foregoing, some of the particulars of the negligence of Chief Blair and the Police Services Board are as follows:
 - a. They knew or ought to have known that the defendant police officers were insufficiently trained to be dealing with members of the public;
 - b. They knew or ought to have known that the defendant police officers were insufficiently trained in conflict resolution and de-escalation techniques in respect of dealing with emotionally disturbed persons;
 - c. They knew or ought to have known that the defendant police officers suffered from psychological and/or psychiatric problems rendering them unfit to be police officers;

- d. They knew or ought to have known that the defendant officers were unfit to perform duties reasonably expected of police officers;
 - e. They failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *Police Services Act*;
 - f. They failed to maintain appropriate supervision and control over the defendant police officers;
 - g. They knew or ought to have known that the defendant officers were incompetent/and or insufficiently skilled police officers having regard to their training, experience and record of previous incidents of improper or inappropriate conduct. In addition, the Chief and the Police Services Board knew or ought to have known that the defendant officers have engaged in similar excessive uses of force in the past and continue to engage in excessive uses of force;
 - h. They knew or ought to have known that the defendant officers have all been subject to numerous public and internal complaints for their excessive use of force.
42. The plaintiffs state and the fact is that the Chief and the Board have refused to implement recommendations from multiple Coroner's Inquests aimed at avoiding death in similar circumstances. In particular, the defendants have refused to implement the jury's recommendations in the *Inquest into the death of Edmond Yu*, *The Inquest into the death of Lester Donaldson* and the *Inquest into the death of Wayne Williams*, on the issue of training police officers in crisis resolution when dealing with emotionally disturbed persons.

43. These defendants have also refused to implement jury recommendations from the above-noted inquests to provide adequate training to police officers on use of force as it relates to emotionally disturbed persons. They have refused to implement mobile crisis intervention teams as recommended by the juries in the above-noted inquests, to provide support for police officers interacting with emotionally disturbed persons.

VICARIOUS LIABILITY OF THE BOARD

44. The plaintiffs state that the Board is responsible for the torts of the defendant police officers, as plead aforesaid, by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c. P.15 as amended, and at common law.

DAMAGES

45. The plaintiffs state that the negligence and intentional torts of the defendants individually and/or collectively caused serious injuries, death and other damages to Sammy.
46. The plaintiffs state that the negligence and intentional torts of the defendants individually and/or collectively caused serious injuries, nervous shock and other damages to Sahar Bahadi and Sara Ann Yatim.
47. The Estate of Sammy Adib Yatim claims the damages in paragraph 1 pursuant to section 38 of the *Trustee Act*, R.S.O. 1990, c. T.23, arising from the defendants' assault, battery, misfeasance in public office and negligence. The Estate claims punitive damages for the use

of the Taser at a time when Sammy was dying. In these circumstances, use of the Taser was cruel, shocking and completely unwarranted.

48. The plaintiffs have suffered, and continue to suffer psychologically and emotionally as a direct result of the conduct of the defendants. The damages suffered by these plaintiffs are all consequences which the defendants intended or knew, or ought to have known, would result from their wrongful conduct in causing the death of Sammy Adib Yatim.
49. The plaintiffs plead and rely upon the relevant portions of the *Family Law Act*, R.S.O. 1990, c. F.3. In particular, Sammy's mother and sister enjoyed a close and loving relationship with him and have suffered the loss of his guidance, care and companionship as a result of his wrongful death. These plaintiffs have also suffered pecuniary loss.
50. The plaintiffs have been out-of-pocket as a direct result of the wrongful acts of the defendants, including, and without restricting the generality of the foregoing:
 - a. Funeral and associated expenses; and
 - b. Legal fees in respect of proceedings other than the herein claimed, including a Coroner's Inquest.
51. As a direct result of the defendants' negligence, arising from the death of Sammy, the plaintiffs feel compelled to participate in an inquest into his death. It was foreseeable to the defendants that by contributing to the death of Sammy that his family would feel compelled to actively participate, through counsel, in an inquest to uncover all the circumstances surrounding his death.

52. By reason of the facts set out herein, and in particular the highhanded, shocking, contemptuous conduct of the defendants, the plaintiffs claim exemplary, aggravated and/or punitive damages.
53. The plaintiffs rely upon the *Negligence Act*, R.S.O. 1990, c. N.1. as amended, the *Police Services Act*, R.S.O. 1990, c. P.16, as amended, the *Trustee Act*, R.S.O., 1990 C.T. 23, and the *Family Law Act*, R.S.O. 1990, c. F.3.
54. The Plaintiffs propose that this action be tried in Toronto, Ontario.

DATE: October 11th, 2013

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SAHAR BAHADI ET AL.

Plaintiffs

-and- POLICE CONSTABLE JAMES FORCILLO ET AL.

Defendants

Court File No.

CV-13-490686

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Commenced in Toronto

Statement of Claim

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