

*[Signature]*  
REGISTRAR SUPERIOR COURT OF JUSTICE  
GREFFIER COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

**BETWEEN:**

**DAFONTE MILLER, LEISA LEWIS, KAMICAYA PEARCE,  
LATAIJAH LEWIS, KAMAYA LEWIS by her litigation guardian  
LEISA LEWIS, AND KAMICAYA PEARCE JR by his litigation  
guardian KAMICAYA PEARCE**

**Plaintiffs**

**-and-**

**POLICE CONSTABLE MICHAEL THERIAULT, CHRISTIAN  
THERIAULT, DETECTIVE JOHN THERIAULT, PC JENNIFER  
BOWLER, PC BARBARA ZABDYR, PC JUSTINE GENDRON, PC  
RYAN JEFFS, PC SEAN MCQUOID, PC VILLENA, PC ALLISON  
LAMB, PC THOMPSON, DETECTIVE CONSTABLE CRAIG  
WILLIS, SERGEANT RAYNER, SERGEANT ANDREWS,  
SERGEANT A. CHMELOWSKY, SERGEANT ELLIOTT,  
INSPECTOR WAGENBERG, DURHAM REGIONAL POLICE  
SERVICE OFFICERS JANE AND JOHN DOE, TORONTO POLICE  
SERVICE OFFICERS JANE AND JOHN DOE, DURHAM  
REGIONAL POLICE SERVICE CHIEF OF POLICE PAUL  
MARTIN, DURHAM REGIONAL POLICE SERVICES BOARD,  
TORONTO POLICE SERVICE CHIEF MARK SAUNDERS, and  
TORONTO POLICE SERVICES BOARD**

**Defendants**

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**AMENDED STATEMENT OF CLAIM**

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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 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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 PLAINTIFFS' CLAIM, and \$2000.00 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 plaintiffs' claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: ~~December 21, 2018~~ *Dec 21, 2018* Issued by *eg* ..... S. Gethin  
~~February 13, 2019~~ Local registrar

Address ~~Ontario Superior Court of Justice~~  
~~245 Windsor Ave~~  
~~Windsor, ON N9A 1J2~~

Superior Court of Justice  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, ON M5G 1E6

To:  
  
Constable Michael Theriault  
Toronto Police Service  
42 Division  
242 Milner Ave.  
Scarborough, ON M1S 5C4

**And To:**

Christian Theriault  
18 Erickson Drive  
Whitby, ON L1N 8Z4

**And To:**

Detective John Theriault  
Professional Standards  
c/o Toronto Police Headquarters  
40 College Street  
Toronto, ON M5G 2J3

**And To:**

Toronto Police Service Officers John and Jane Doe  
c/o Toronto Police Headquarters  
40 College Street  
Toronto, ON M5G 2J3

**And To:**

Toronto Police Service Chief of Police Mark Saunders  
c/o Toronto Police Headquarters  
40 College Street  
Toronto, ON M5G 2J3

**And To:**

Toronto Police Services Board  
Chair Andrew Pringle  
40 College Street  
Toronto, ON M5G 2J3

**And To:**

A/Sgt. A. Chmelowsky (Badge #3252)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

A/Inspector Wagenberg (Badge #971)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Sergeant Rayner (Badge #3647)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Sergeant Elliott (Badge #953)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Sergeant Andrews  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Sean McQuoid (Badge #3140)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Jennifer Bowler (Badge #3340)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,

Whitby, ON L1N 5R5

**And To:**

Constable Justine Gendron (Badge #3687)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Ryan Jeffs (Badge #887)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Allison Lamb (Badge #3710)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Barbara Zabdyr (Badge #3291)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Villena (Badge #3339)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Constable Thompson (Badge #3214)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Detective Constable Craig Willis (Badge #3047)  
Durham Regional Police Service  
Central West Division  
480 Taunton Road East,  
Whitby, ON L1N 5R5

**And To:**

Durham Regional Police Services Officers John and Jane Doe  
Regional Headquarters  
605 Rossland Road East, Box 911  
Whitby, ON L1N 0B8

**And To:**

Durham Regional Police Services Chief, Paul Martin  
Regional Headquarters  
605 Rossland Road East, Box 911  
Whitby, ON L1N 0B8

**And To:**

Durham Regional Police Services Board  
Chair, Roger Anderson  
Regional Headquarters  
605 Rossland Road East, Box 911  
Whitby, ON L1N 0B8

**And To:**

The Registrar of this Honourable Court

**CLAIM**

1. The plaintiff, Dafonte Miller, claims:
  - a) General damages in the amount of \$1,000,000.00 (one million dollars);
  - b) Special damages in a sum to be disclosed before trial;
  - c) Punitive and/or exemplary damages in the amount of \$50,000.00;
  - d) Aggravated damages in the amount of \$50,000.00;
  - e) Damages pursuant to s. 24(1) of *the Canadian Charter of Rights and Freedoms*;
  - f) Pre- and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - g) His costs of this action on a solicitor and client basis, together with HST payable pursuant to the *Excise Act*; and
  - h) Such further and other relief as this Honourable Court deems just.
  
2. The plaintiff, Leisa Lewis claims:
  - a) General Damages in the amount of \$100,000.00 (one hundred thousand dollars);
  - b) Special damages in a sum to be disclosed before trial;
  - c) Punitive and/or exemplary damages in the amount of \$50,000.00;
  - d) Aggravated damages in the amount of \$50,000.00;
  - e) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$100,000.00;

- f) Pre- and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - g) Her costs of this action on a solicitor and client basis, together with HST payable pursuant to the *Excise Act*; and
  - h) Such further and other relief as this Honourable Court deems just.
3. The plaintiffs, Kamicaya Pearce, Lataijah Lewis, Kamaya Lewis, and Kamicaya Pearce Jr., each claim:
- a) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$250,000.00;
  - b) Pre- and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - c) Their costs of this action on a solicitor and client basis, together with HST payable pursuant to the *Excise Act*; and
  - d) Such further and other relief as this Honourable Court deems just.

## **INTRODUCTION**

4. On December 28, 2016, Dafonte Miller (“Dafonte”) was a 19-year-old, African-Canadian young man with no criminal record who had never had any conflict with police. In the early morning hours, Dafonte and two of his friends were walking down a street in a sub-division in Whitby, Ontario. They were going to another friend’s home to meet up and hang out.

5. Sometime in or around 2:40am on December 28, 2016, Dafonte and his two friends walked past a house located at 18 Erickson Drive in Whitby. As they were walking past the house, the defendants PC Michael Theriault of the Toronto Police Service (“TPS”) and his brother Christian Theriault were sitting in the garage, drinking beer and smoking cigarettes.

6. PC Theriault identified himself to Dafonte and his friends as an off-duty police officer and questioned them on what they were doing in the neighbourhood. Dafonte continued walking past the house.

7. PC Theriault and Christian Theriault pursued Dafonte. They caught up with Dafonte and brutally assaulted him, including repeatedly striking him with an aluminum pipe. They caused severe physical injuries to Dafonte, which include but are not limited to a broken wrist, fractured nose, fractured orbital bone, and such severe damage to his left eye that he has permanently lost sight in that eye and has had it removed. Once PC Theriault and Christian Theriault had beaten Dafonte into unconsciousness, PC Theriault placed Dafonte under arrest and restrained him until Durham Regional Police Service (“DRPS”) officers arrived on scene.

8. Both Christian Theriault and PC Theriault provided statements to the DRPS. They falsely claimed that Dafonte had struck them both repeatedly with the metal pipe and that they were afraid for their lives. Neither Christian Theriault nor PC Theriault sustained injuries consistent with the force they alleged Dafonte used against them.

9. Despite the obvious circumstances, including Dafonte’s physical condition and the lack of injuries to PC Theriault and his brother Christian Theriault, DRPS Constable Bowler placed Dafonte in handcuffs and charged him with two counts of assault with a weapon, possession of a dangerous weapon, theft under \$5000, and possession of marijuana. The defendant officers from the DRPS

failed to properly interview any of the individuals who witnessed the altercation from their homes, including the homeowners of 113 Erickson Drive, who had placed a call to 911 and witnessed much of the altercation.

10. Although it was clearly apparent that PC Theriault had placed himself on duty when he pursued and arrested Dafonte, and that PC Theriault had inflicted serious injuries on Dafonte, neither the DRPS nor the TPS notified the Special Investigations Unit (“SIU”) as required by O. Reg. 267/10, *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*. The defendants TPS Chief Saunders, DRPS Chief Martin, and their officers and delegates, failed to discharge their statutory obligations for the unlawful purpose of protecting PC Theriault and Christian Theriault from criminal charges relating to the assault.

11. On May 5, 2017, the Crown withdrew the false charges against Dafonte that the DRPS had issued and prosecuted.

12. On April 11, 2017, after the dereliction of duty by the defendants TPS Chief Saunders, DRPS Chief Martin, and their delegates and officers, Dafonte notified the SIU of his serious injuries himself, through counsel. The SIU promptly commenced an investigation.

13. On July 21, 2017, the SIU jointly charged PC Michael Theriault and his brother Christian Theriault with criminal offences. The charges against each of them include aggravated assault, assault with a weapon, and public mischief.

14. The plaintiffs state that the actions of the defendants support a claim for punitive damages, as these facts demonstrate intentional, malicious, high-handed, and oppressive conduct by both the TPS and the DRPS against an innocent member of the public.

**THE PARTIES**

15. The plaintiff Dafonte Miller was at all material times 19 years old. He is a resident of the Town of Whitby in the Regional Municipality of Durham. The plaintiffs state that Dafonte was the victim of assault and battery, malicious prosecution, misfeasance in public office, negligence, negligent investigation, false imprisonment, and violations of his rights under ss. 7, 8, 9, 10, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (“the Charter”).

16. The plaintiff Leisa Lewis is Dafonte Miller’s mother. She resides in the Town of Whitby and at all material times enjoyed a close and loving relationship with Dafonte.

17. The plaintiff Kamicaya Pearce is Dafonte’s step-father. He resides in the Town of Whitby and at all material times enjoyed a close and loving relationship with Dafonte.

18. The plaintiff Lataijah Lewis is Dafonte’s sister. She resides in the Town of Whitby and at all material times enjoyed a close and loving relationship with Dafonte.

19. The plaintiff Kamaya Lewis is Dafonte’s sister. She resides in the Town of Whitby and at all material times enjoyed a close and loving relationship with Dafonte.

20. The plaintiff Kamicaya Pearce Jr. is Dafonte’s step-brother. He resides in the Town of Whitby and at all material times enjoyed a close and loving relationship with Dafonte.

21. The defendant PC Michael Theriault is a resident of the Province of Ontario and was at all material times a Police Constable with the TPS, 42 Division. This defendant was initially off-duty on December 28<sup>th</sup>, 2016, but placed himself on duty by pursuing Dafonte and then placing him under arrest. This defendant was and continues to be employed by the defendant, the Toronto Police Services Board (“the TPS Board”). PC Theriault committed assault and battery and *Charter* breaches

against Dafonte, acting individually and/or collectively with his brother Christian Theriault. Additionally, this defendant, acting individually and/or collectively with the other police defendants, committed the torts of malicious prosecution, abuse of process, misfeasance in public office, negligence, intentional infliction of emotional distress, false imprisonment, and conspiracy.

22. The defendant, Christian Theriault, is a resident of the Province of Ontario. Christian Theriault, acting individually and/or collectively with his brother, PC Michael Theriault, committed the torts of assault and battery, malicious prosecution, abuse of process, intentional infliction of emotional distress, false imprisonment, and conspiracy.

23. The defendant John Theriault is a resident of the Province of Ontario and is the father of Michael Theriault and Christian Theriault. At all material times, John Theriault was, and continues to be, a detective with the Toronto Police Service, working in the Professional Standards Unit. This defendant was and continues to be employed by the Toronto Police Services Board. John Theriault improperly inserted himself into the investigation for the sole purpose of ensuring his sons escaped criminal liability for their actions. John Theriault, acting individually and/or collectively with the other police defendants, committed the torts of abuse of process, misfeasance in public office, and conspiracy.

24. The defendant A/Sgt. A. Chmelowsky (“Chmelowsky”) is a resident of the Province of Ontario and was at all material times an Acting Sergeant with the DRPS. This defendant was and continues to be employed by the defendant, the Durham Regional Police Services Board (“the DRPS Board”). Chmelowsky was the highest-ranking police officer on scene when Dafonte was taken into custody by the DRPS. Chmelowsky failed to notify the SIU of the serious injuries to Dafonte or take necessary steps for a chief of police or his delegate to notify the SIU. Chmelowsky, acting

individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

25. The defendant Police Constable Jennifer Bowler (“Bowler”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Bowler, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

26. The defendant Police Constable Zabdyr (“Zabdyr”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DPRS Board. Zabdyr, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

27. The defendant, Police Constable Justine Gendron (“Gendron”), is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Gendron, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

28. The defendant Police Constable Ryan Jeffs (“Jeffs”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Jeffs, acting individually and/or collectively with the

other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

29. The defendant Police Constable Allison Lamb (“Lamb”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Lamb, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

30. The defendant Police Constable Villena (“Villena”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Lamb, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

31. The defendant Police Constable Sean McQuoid (“McQuoid”) is a resident of the Province of Ontario and was at all material times a Constable with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. McQuoid, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

32. The defendant A/Inspector Wagenberg (“Wagenberg”) is a resident of the Province of Ontario and was at all material times an Inspector with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Wagenberg attended the scene as a supervising officer, yet failed to notify the SIU of the serious injuries to Dafonte or take necessary steps for a chief of police or his delegate to notify the SIU. Wagenberg, acting individually and/or collectively

with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

33. The defendant Sergeant Rayner (“Rayner”) is a resident of the Province of Ontario and was at all material times a Sergeant with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Rayner was a supervising officer in respect of this incident, yet failed to notify the SIU of the serious injuries to Dafonte or take necessary steps for a chief of police or his delegate to notify the SIU. Rayner, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

34. The defendant Sergeant Andrews (“Andrews”) is a resident of the Province of Ontario and was at all material times a Sergeant with the DRPS. This defendant was and continues to be employed by the defendant, the DRPS Board. Andrews was a supervising officer in respect of this incident, yet failed to notify the SIU of the serious injuries to Dafonte or take necessary steps for a chief of police or his delegate to notify the SIU. Andrews, acting individually and/or collectively with the other police defendants, committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

35. The defendants DRPS Police Officers John and Jane Doe, whose identities are unknown to the plaintiffs and are within the unique knowledge of the defendants, are residents of the Province of Ontario. These defendants were at all material times police officers with the DRPS and as such were and continue to be employed by the defendant, the DRPS Board. These defendants, acting individually and/or collectively with the other police defendants, committed the torts of negligent

investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

36. The defendants TPS Police Officers John and Jane Doe, whose identities are unknown to the plaintiffs and are within the unique knowledge of the defendants, are residents of the Province of Ontario. These defendants were at all material times police officers with TPS and as such were and continue to be employed by the defendant, the TPS Board. These defendants were notified of the actions of PC Theriault and the serious injuries sustained by Dafonte and nevertheless failed to notify the SIU of the serious injuries to Dafonte or take necessary steps for a chief of police or his delegate to notify the SIU. Acting individually and/or collectively with the other defendants, these defendants committed the torts of negligent investigation, malicious prosecution, abuse of process, misfeasance in public office, false imprisonment, and conspiracy.

37. The defendant Chief Paul Martin ("Chief Martin") was at all material times the Chief of Police of the DRPS. He was responsible at law for the selection, training, supervision, direction and control of police officers employed by the DRPS. He failed to notify the SIU of the serious injuries to Dafonte or to instruct a delegate to do so. Chief Martin committed the torts of negligent supervision and training, and misfeasance in public office.

38. The defendant Chief Mark Saunders ("Chief Saunders") was at all material times the Chief of Police of the Toronto Police Service. He was responsible at law for the selection, training, supervision, direction and control of police officers employed by the TPS. He failed to notify the SIU of the serious injuries to Dafonte or to instruct a delegate to do so. Chief Saunders committed the torts of negligent supervision and training, and misfeasance in public office.

39. The defendant the DRPS Board is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15 ("*PSA*"). This defendant was at all material times responsible for the provision of police services, law enforcement, and crime prevention in the regional municipality of Durham. The DRPS Board, pursuant to s. 50(1) of the *PSA* and the common law, is liable in respect of torts and violations of the *Charter* committed by members of the DRPS, including the defendant DRPS police officers and the DRPS Chief of Police.

40. The defendant the TPS Board is a municipal police services board incorporated pursuant to the provisions of the *PSA*. This defendant was at all material times responsible for the provision of police services, law enforcement, and crime prevention in the city of Toronto. The TPS Board, pursuant to s. 50(1) of the *PSA* and the common law, is liable in respect of torts and violations of the *Charter* committed by members of the TPS, including the defendant TPS police officers and the TPS Chief of Police.

## **THE FACTS**

41. Dafonte Miller is now 21 years old. He is an African-Canadian young man who grew up in the Durham Region. Dafonte does not have any criminal record and had no prior history with police. At the time of the incident on December 28, 2016, Dafonte was 19 years old and working as a general labourer at Janetville Convenience. At the time, Dafonte was exploring his options for post-secondary school, including the possibility of taking classes at Durham College in Oshawa, Ontario.

42. On December 28, 2016, Dafonte and two of his friends, AJ and Bradley, were walking to meet with friends who lived in Whitby.

43. During their walk, they passed 18 Erickson Drive, which was the residence of the defendants PC Theriault and his brother Christian Theriault. Both PC Theriault and Christian Theriault were sitting in the garage with the garage door open. PC Theriault and Christian Theriault were smoking cigarettes and drinking beer. As Dafonte and his friends walked past the open garage, the Theriault brothers asked if they lived in the area. Dafonte replied that they lived down the road. PC Theriault asked why they were in the area. Dafonte asked why they were being questioned. PC Theriault responded that he was an off-duty police officer and could ask whatever questions he pleased.

44. Dafonte and his friends were surprised by the questioning. They were not causing any problems and had walked around subdivisions in Whitby without any issues in the past. Dafonte and his friends did not respond to PC Theriault's question and continued walking toward the home of their friend.

45. Suddenly, Dafonte's friends began running. Dafonte turned around and saw PC Theriault and Christian Theriault running towards him. Fearing for his safety, Dafonte began running away. PC Theriault and Christian Theriault continued to chase him. At no time did PC Theriault issue any police commands, instruct Dafonte to stop, or advise him that he was under arrest for any criminal offense.

46. Christian Theriault caught up to Dafonte first and grabbed him by his sweater. Dafonte attempted to pull away and asked why they were chasing him. PC Theriault and Christian Theriault informed Dafonte that they had seen kids in their vehicle about two hours earlier. Dafonte repeatedly advised that they had the wrong guy and that he had never been in their vehicle.

47. PC Theriault and Christian Theriault threw Dafonte to the ground and began kicking him in or around his head and his back. Christian Theriault placed Dafonte in a "headlock". PC Theriault

then struck Dafonte in or around the head and face with his fists and with a metal pipe that he had taken from his garage for the purpose of unlawfully assaulting Dafonte with a weapon.

48. At some point during the beating, Dafonte was able to escape from the headlock. Once he broke free, PC Theriault struck Dafonte in the face with the metal pipe approximately ten times.

49. Dafonte, terrified that he would be beaten to death, struggled to make his way to the front door of 113 Erickson Drive. He began banging on the door and yelling for the occupants to help him and/or call 9-1-1.

50. PC Theriault and Christian Theriault pulled Dafonte away from the front door at 113 Erickson Drive and continued to strike him in the face with the metal pipe. Dafonte made it down the front steps of the house and collapsed on the hood of the vehicle parked in the driveway. PC Theriault and Christian Theriault continued to strike Dafonte with the metal pipe and with their fists.

51. Dafonte collapsed on the ground and was able to retrieve his phone from his pants pocket and placed a call to 9-1-1. PC Theriault took the phone from Dafonte and advised the 9-1-1 dispatcher that he was an off-duty police officer and that he had a suspect in custody for a break and enter into his vehicle.

52. PC Theriault held Dafonte on the ground by placing one knee in Dafonte's neck and the other in his back. Dafonte repeatedly told PC Theriault that he was having trouble breathing, and PC Theriault told him to "shut the fuck up."

53. PC Theriault had neither reasonable grounds nor reasonable suspicion to pursue Dafonte, to detain him, or to use any force against him.

54. The defendants Bowler and Zabdyr were the first DRPS officers to arrive on the scene after the unlawful assault and detention of Dafonte by PC Theriault and Christian Theriault. The defendant Bowler placed Dafonte in handcuffs and dragged him up from the ground by pulling on the handcuffs. Dafonte's left eye was badly damaged and he was bleeding profusely. PC Bowler placed Dafonte on the hood of the vehicle parked in the driveway of 113 Erickson Drive. Dafonte was then unlawfully searched by PC Bowler.

55. Following an unreasonable delay, during which they delivered no medical care, police eventually called an ambulance.

56. Dafonte was transported to Lakeridge Hospital Oshawa in handcuffs. He remained handcuffed in police custody at the hospital until a nurse requested that the handcuffs be removed so that she could treat Dafonte.

57. Dafonte underwent a CT Scan. Doctors determined that his left eye was no longer intact and that there was a high likelihood that he would lose all vision in his left eye. His right eye was also damaged. In addition, Dafonte suffered a broken nose, broken orbital bone, fractured right wrist, and other injuries.

58. At approximately 7:30 am on December 28, 2016, Dafonte was transported by ambulance from Lakeridge Hospital Oshawa to Bowmanville Hospital to undergo surgery on his left eye. Dafonte remained in the custody of DRPS officers Lamb, Villena, Willis and Thompson during his transport to Bowmanville hospital. He was released from police custody at approximately 8:30am on December 28, 2016, on a promise to appear.

59. DRPS officers subsequently contacted TPS Officers John and Jane Doe. They advised that a TPS officer had apprehended a suspect who suffered severe physical injuries. TPS Officers John

and Jane Doe failed to notify the SIU or take necessary steps for a chief of police or his delegate to notify the SIU as required by O. Reg. 267/10.

60. Although all the defendants were or became aware that Dafonte had suffered serious bodily injuries as a result of the unlawful assault by PC Theriault and Christian Theriault, not one contacted the SIU or took necessary steps to ensure that a chief of police or delegate contacted the SIU as required by O. Reg. 267/10. The defendants intentionally covered up the assault for the unlawful purpose of protecting PC Theriault and Christian Theriault from criminal liability.

61. The defendant DRPS officers also intentionally and/or negligently conducted an inadequate investigation of Dafonte and, with PC Theriault, maliciously prosecuted Dafonte for the unlawful purpose of protecting PC Theriault and Christian Theriault from criminal liability.

62. When the defendant DRPS officers arrived on the scene, the only full statements they took from any witnesses were from PC Theriault and Christian Theriault. The defendants were aware that at least two other individuals living on Erickson Drive called 9-1-1, including the owner of 113 Erickson Drive where much of the assault took place. The defendants did not take adequate statements from any witnesses except the perpetrators of the assault.

63. The defendant DRPS officers failed to adequately interview PC Theriault and Christian Theriault with respect to the circumstances of the assault, including Dafonte's serious injuries and the absence of injuries to PC Theriault and Christian Theriault.

64. The defendant DRPS officers canvassed the home of PC Theriault and Christian Theriault and took photographs of the truck that they alleged Dafonte had broken into. At no time did the defendants investigate such basic information as whether the door to the vehicle was locked, whether

there were any visible or other signs of an attempt to break into the vehicle, or the quantity of change alleged to have been taken from the vehicle.

65. PC Theriault and Christian Theriault knowingly provided false statements to DRPS officers in order to justify their illegal assault and detention of Dafonte and to further the malicious prosecution of Dafonte. PC Theriault stated that he was unable to advise Dafonte that he was a police officer. He also stated that Dafonte struck both him and his brother repeatedly with the metal pipe, despite the brothers having no injuries. PC Theriault failed to advise the DRPS officers that he had struck Dafonte numerous times with the metal pipe. He admitted in his statement that he had placed Dafonte under arrest. PC Theriault falsely stated that Dafonte had the metal pipe and that PC Theriault had feared for his life and the life of his brother Christian.

66. Additionally, Detective John Theriault repeatedly contacted DRPS investigators to gain information relating to the status of the investigation and to provide additional false information about injuries suffered by his son Christian to aid in the concealment of the crimes committed by his sons, PC Theriault and Christian Theriault, against Dafonte Miller.

67. Knowing the charges against Dafonte were fabricated, the defendant DRPS officers continued the prosecution against Dafonte for the unlawful purpose of protecting PC Theriault and Christian Theriault from criminal liability.

68. On May 5, 2017, the Crown withdrew all charges against Dafonte.

69. On April 11, 2017, Dafonte Miller contacted the SIU through counsel to report the assault.

70. On July 18, 2017, the SIU charged PC Theriault with aggravated assault, assault with a weapon, and public mischief. On July 21, 2017, the SIU charged Christian Theriault with aggravated assault, assault with a weapon, and public mischief.

71. Dafonte has since undergone multiple surgeries to his left eye. He has lost all sight in that eye. The vision in his right eye remains blurry and strained. In addition, Dafonte has suffered severe emotional and psychological harm. This harm continues to the present, as a result of the vicious and unprovoked attack perpetrated against him by PC Theriault and Christian Theriault, the baseless charges laid against him, and the malicious prosecution carried out against him by the DRPS.

### **LIABILITY OF PC THERIAULT AND CHRISTIAN THERIAULT**

#### ***Assault***

72. The defendants PC Theriault and Christian Theriault committed an assault on Dafonte. In particular, and without restricting the generality of the foregoing, these defendants intentionally applied force to the person of Dafonte in the absence of his consent, which force was excessive, unreasonable and not justifiable at law. These defendants applied the force with malice and with the intention of injuring Dafonte and they did cause serious injuries to Dafonte.

#### ***Malicious Prosecution***

73. The prosecution of Dafonte was initiated and pursued maliciously, without reasonable and probable grounds and for the unlawful purpose of further injuring Dafonte. The plaintiffs state that this misconduct was deliberate, actuated by malice, and caused injuries and/or losses to Dafonte.

Without restricting the generality of the foregoing, the elements of the malicious prosecution by PC Theriault and Christian Theriault include the following:

- i. They initiated the charges against Dafonte through their statements to police;
- ii. They initiated and continued the charges against Dafonte in the absence of reasonable and probable grounds;
- iii. They were actuated by malice in pursuing the prosecution of Dafonte for the unlawful purpose of covering up their unlawful assault;
- iv. The charges were withdrawn by the Crown on May 5, 2017; and
- v. Dafonte suffered embarrassment and loss of reputation, was deprived of his liberty and experienced financial loss and psychological harm as a result of the criminal prosecution.

### ***Abuse of Process***

74. The plaintiffs repeat and rely on the statements above and state that PC Theriault and Christian Theriault committed an abuse of process by intentionally initiating and prosecuting false criminal charges against Dafonte for the improper purpose of covering up their own criminal misconduct.

### ***False Imprisonment***

75. PC Theriault and Christian Theriault falsely imprisoned Dafonte by intentionally confining him by force after unlawfully detaining, assaulting, and arresting him. These defendants had no legal justification to detain, arrest, or imprison Dafonte.

*Nervous Shock*

76. The assault on Dafonte by PC Theriault and Christian Theriault caused the plaintiffs Leisa Lewis, Kamicaya Pearce, Lataijah Lewis, Kamaya Lewis, Kamicaya Pearce Jr., and Marcia Williams to suffer nervous shock. The plaintiffs state that PC Theriault and Christian Theriault knew or ought to have known that these plaintiffs would suffer nervous shock upon viewing Dafonte's injuries. After Dafonte was released from the hospital and returned home to his family, the plaintiffs suffered severe emotional distress at seeing his condition.

77. Without restricting the generality of the foregoing, the plaintiffs, Leisa Lewis, Kamicaya Pearce, Lataijah Lewis, Kamaya Lewis, and Kamicaya Pearce Jr., continue to suffer anxiety, depression, and physical and psychological injuries arising from the unlawful conduct of PC Theriault and Christian Theriault.

*Negligence*

78. The plaintiffs state that when PC Theriault placed himself on duty and pursued Dafonte, he owed a duty of care to Dafonte to take reasonable care for his safety. PC Theriault breached the duty of care that he owed to Dafonte and is liable in negligence. The plaintiffs suffered their injuries as a direct result of this negligence. The negligent actions and/or inaction of this defendant as pleaded herein each and/or collectively caused injuries to the plaintiffs, a consequence PC Theriault knew or ought to have known would occur as a result of his negligence.

***Abuse of Public Office/ Misfeasance in Public Office***

79. The defendant PC Theriault is a holder of public office. The plaintiffs repeat and rely upon the statements above and state that the defendant PC Theriault deliberately violated the law for the purpose of injuring Dafonte.

80. Without restricting the generality of the foregoing, PC Theriault intentionally detained, assaulted, and arrested Dafonte, knowing he was acting unlawfully. PC Theriault then knowingly provided false statements to investigating officers to justify his unlawful conduct and to initiate a malicious prosecution against Dafonte.

81. PC Theriault's conduct, as set out above, was deliberate, unlawful, and undertaken in bad faith in the exercise of public functions. The plaintiffs state that PC Theriault was aware or was reckless as to the fact that his conduct was unlawful and likely to injure Dafonte. Without restricting the generality of the foregoing, PC Theriault knowingly and maliciously violated ss. 122, 140, and 266 of the *Criminal Code*, RSC 1985, c. C-46. In addition, the plaintiffs state that PC Theriault failed to act in accordance with the duties outlined in s. 42 of the *PSA* and engaged in misconduct as defined in s. 80(1) of the *PSA*. In addition, the plaintiffs state that PC Theriault violated ss. 2(a), 2(c), 2(d), 2(g), and 2(i) of the Code of Conduct, Schedule to O. Reg. 268/10. PC Theriault is liable for misfeasance in public office.

***Conspiracy***

82. As further particularized below, PC Theriault and Christian Theriault engaged in a conspiracy with the investigating officers for the purpose of covering up their criminal conduct and further injuring Dafonte.

**LIABILITY OF DETECTIVE JOHN THERIAULT*****Abuse of Public Office/ Misfeasance in Public Office***

83. The defendant Detective John Theriault is a holder of public office. Without restricting the generality of the foregoing, John Theriault intentionally provided false and misleading information to DRPS officers about injuries sustained by his son Christian Theriault in order to assist his sons in escaping criminal liability. Furthermore, Detective John Theriault failed to alert his employer, TPS Board, that his son PC Theriault had been involved in an incident with a member of the public that resulted in serious bodily injury, such that the SIU could be notified and an investigation undertaken. Detective Theriault knowingly provided misleading statements to investigating officers and to his employer TPS to assist his sons in escaping criminal liability.

84. PC Theriault's conduct, as set out above, was deliberate, unlawful, and undertaken in bad faith in the exercise of public functions. The plaintiffs state that PC Theriault was aware or was reckless as to the fact that his conduct was unlawful and likely to injure Dafonte. Without restricting the generality of the foregoing, Detective Theriault knowingly and maliciously violated ss. 122 and 140 of the *Criminal Code*, RSC 1985, c. C-46. In addition, the plaintiffs state that Detective Theriault failed to act in accordance with the duties outlined in s. 42 of the *PSA* and engaged in misconduct as defined in s. 80(1) of the *PSA*. In addition, the plaintiffs state that Detective Theriault violated ss. 2(1)(a)(viii); 2(1)(c)(ii), (v), (vii); 2(1)(d)(ii); 2(1)(f)(v); and 3 of the Code of Conduct, Schedule to O. Reg. 268/10. PC Theriault is liable for misfeasance in public office.

***Conspiracy***

85. As further particularized below, Detective Theriault engaged in a conspiracy with PC Theriault, Christian Theriault and the investigating officers for the purpose of covering up his sons' criminal conduct and further injuring Dafonte.

**LIABILITY OF THE INVESTIGATING OFFICERS**

86. The investigating officers are comprised of the defendants Chmelowsky, McQuoid, Jeffs, Gendron, Zabdyr, Bowler, Wagenberg, Rayner, Andrews, Villena, Lamb, DRPS Officers Jane and John Doe, and TPS Officers Jane and John Doe. The investigating officers were responsible for investigating the incidents of December 28, 2016 and prosecuting the baseless charges against Dafonte.

***Abuse of Public Office/ Misfeasance in Public Office***

87. The investigating police officers are holders of public office. The plaintiffs repeat and rely upon the facts as set out above and state that the investigating officers deliberately violated the law in refusing to investigate what they knew or ought to have known was conduct that amounted to criminal assault and public mischief by PC Theriault and Christian Theriault.

88. The investigating police officers deliberately violated the law by prosecuting Dafonte despite knowing or being reckless to the fact that he was innocent.

89. The investigating officers, despite having knowledge that Dafonte had suffered serious bodily injuries as a result of the assault by PC Theriault, deliberately violated the law by failing to contact

the SIU or take necessary steps to ensure that a chief of police or delegate contacted the SIU as required by O. Reg. 267/10.

90. The investigating police officers' conduct, as set out above, was deliberate, unlawful conduct undertaken in bad faith in the exercise of public functions. The investigating officers were aware or were reckless to the fact that their conduct was unlawful and likely to cause injury to the plaintiffs. Without restricting the generality of the foregoing, the investigating officers deliberately and flagrantly violated ss. 122 and 140 of the *Criminal Code*, RSC 1985, c. C-46. The plaintiffs state that the investigating officers failed to act in accordance with the duties outlined in s. 42 of the *PSA* and engaged in misconduct as defined in s. 80(1) of the *PSA*. In addition, the plaintiffs state that these defendants violated sections 2(a), 2(c), and 2(g) of the Code of Conduct, Schedule to O. Reg. 268/10. The investigating police officers are liable for misfeasance in public office.

### ***Malicious Prosecution***

91. The plaintiffs state that the investigating officers prosecuted Dafonte maliciously, without reasonable and probable grounds, and for the unlawful purpose of injuring Dafonte. The plaintiffs state that this misconduct was deliberate, actuated by malice, and caused injuries and/or losses to the plaintiffs. Without restricting the generality of the foregoing, the elements of the malicious prosecution by the investigating police officers include the following:

- i. The officers initiated and continued the charges against Dafonte absent reasonable and probable grounds;
- ii. The officers were actuated by malice in pursuing the false charges against Dafonte without adequate investigation, after viewing the severe injuries to Dafonte and

the absence of injuries to PC Theriault and Christian Theriault, and knowing that the version of events provided by those defendants was incapable of being true;

- iii. The charges against Dafonte were withdrawn by the Crown; and
- iv. Dafonte suffered embarrassment and loss of reputation, was deprived of his liberty, and experienced financial loss and psychological harm as a result of the criminal prosecution.

### ***False Imprisonment***

92. The plaintiffs state that the investigating officers individually and/or collectively falsely imprisoned Dafonte by intentionally confining him or having other officers confine him while he was receiving treatment at the hospital for his injuries. The plaintiffs further state that the defendants Zabdyr, Jeffs, Lamb and Villena attended at the hospital for the sole purpose of maintaining the false imprisonment of Dafonte. The plaintiffs state that the defendant police officers had no legal justification to detain or imprison Dafonte.

### ***Conspiracy***

93. The defendants PC Theriault, Christian Theriault, Detective John Theriault, Chmelowsky, McQuoid, Jeffs, Gendron, Zabdyr, Bowler, Wagenberg, Rayner, Andrews, Villena, Lamb, DRPS Officers Jane and John Doe and TPS Officers Jane and John Doe, acting individually and/or collectively entered into an agreement, constituting a conspiracy, to unlawfully cause and maintain the baseless charges against Dafonte and to protect PC Theriault and Christian Theriault from criminal prosecution.

94. The essential elements of the conspiracy involved reliance upon false witness statements by PC Theriault and Christian Theriault, failure to conduct an adequate investigation, unlawful initiation and prosecution of charges against Dafonte, and failure to notify the SIU.

95. All of these defendants had knowledge of the agreement. The defendants knew or ought to have known that laying and maintaining unjustified charges against Dafonte was unlawful.

96. These defendants knew or ought to have known that compliance with the agreement would and did place Dafonte at risk for injury.

### ***Negligent Investigation***

97. The investigating police officers negligently investigated PC Theriault and Christian Theriault's account of the December 28, 2016, assault. The investigating officers failed to properly interview eyewitnesses to the assault. They failed to reasonably interview PC Theriault or Christian Theriault or scrutinize their statements. Without limiting the generality of the foregoing, the investigating officers failed to question or test the veracity of PC Theriault and Christian Theriault's statements despite flagrantly contradictory evidence. When the investigating police officers began investigating Dafonte, they owed him a duty of care to engage in the investigation in a competent and professional manner. That duty of care was a continuing duty that did not end until the charges against Dafonte were withdrawn on May 5, 2017. The investigating police officers breached that duty of care and are liable for negligent investigation.

98. The plaintiffs suffered harm as a direct result of the investigating police officers' negligence at the pre- and post-charge stages. The negligent actions and/or inactions of these defendants as pleaded herein each and/or collectively caused the damages to the plaintiffs, a consequence these

defendants knew or ought to have known would occur as a direct result of their negligence. Without restricting the generality of the foregoing, the particulars of the negligent investigation and prosecution are, *inter alia*, as follows:

- (i) The investigating officers breached their duty of care by failing to carry out even the most rudimentary investigation before effecting arrest, and then initiating and continuing a prosecution without reasonable and probable grounds;
- (ii) These defendants relied solely on the statements of PC Theriault and Christian Theriault and willfully or recklessly ignored evidence that contradicted PC Theriault and Christian Theriault's statements;
- (iii) As the investigation proceeded, including the discovery of contradictory evidence, these defendants failed to reconsider whether there were reasonable and probable grounds to support the prosecution;
- (iv) These defendants willfully ignored the accounts of independent witnesses;
- (v) These defendants failed at all material times to exercise the standard of care required by their position as police officers with the Durham Regional Police Service; and
- (vi) These defendants 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.

**LIABILITY OF THE DURHAM REGIONAL POLICE SERVICE CHIEF*****Negligent Supervision and Training***

99. Chief Martin 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. Chief Martin breached this standard of care and was negligent in supervising the defendant police officers. The negligent actions and/or inaction of Chief Martin caused injuries to the plaintiffs, a consequence he knew or ought to have known would occur as a result of his negligence. Without restricting the generality of the foregoing, some of the particulars of this negligence include:

- (i) Chief Martin knew or ought to have known that the defendant police officers were insufficiently trained to be dealing with the public;
- (ii) Chief Martin 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;
- (iii) Chief Martin knew or ought to have known that the defendant officers were unfit to perform duties reasonably expected of police officers;
- (iv) Chief Martin failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *PSA*; and
- (v) Chief Martin failed to carry out his duties under the *PSA* and O. Reg. 267/10 to notify the SIU or instruct a delegate to notify the SIU of the serious injuries sustained by Dafonte.

**LIABILITY OF DURHAM REGIONAL POLICE SERVICES BOARD*****Vicarious Liability***

100. The plaintiffs state that the DRPS Board is responsible for the torts and *Charter* violations of the defendant police officers, as pleaded herein, by virtue of s. 50(1) of the *PSA*.

**LIABILITY OF TORONTO POLICE SERVICE OFFICERS JANE AND JOHN DOE*****Abuse of Public Office/ Misfeasance in Public Office***

101. TPS Officers Jane and John Doe deliberately chose not to contact the SIU or take necessary steps for a chief of police or delegate to contact the SIU as required by O. Reg. 267/10, despite knowledge that Dafonte suffered serious bodily injuries.

102. Jane and John Doe's conduct was deliberate, unlawful, and undertaken in bad faith in the exercise of public functions. Jane and John Doe were aware or were reckless to the fact that their conduct was unlawful and likely to cause injury to the plaintiffs. Without restricting the generality of the foregoing, Jane and John Doe deliberately and flagrantly violated ss. 122 of the *Criminal Code*, RSC 1985, c C-46. They failed to act in accordance with the duties outlined in s. 42 of the *PSA* and engaged in misconduct as defined in section 80(1) of the *PSA*. These defendants violated sections 2(a), and 2(c), of the Code of Conduct, Schedule to O. Reg. 268/10. Jane and John Doe are liable for misfeasance in public office.

**LIABILITY OF THE TORONTO POLICE SERVICE CHIEF*****Negligent Supervision and Training***

103. Chief Saunders owed a duty of care to the plaintiffs to ensure that the defendant PC Theriault was properly trained for and supervised in respect of his duties as a police officer. The plaintiffs state that Chief Saunders breached this standard of care and was negligent in supervising the defendant, PC Theriault. The negligent actions and/or inaction of Chief Saunders caused injuries to the plaintiffs, a consequence he knew or ought to have known would occur as a result of his negligence. Without restricting the generality of the foregoing, some of the particulars of this negligence include:

- (i) Chief Saunders knew or ought to have known that PC Theriault was insufficiently trained to be dealing with the public;
- (ii) Chief Saunders knew or ought to have known that PC Theriault was insufficiently trained in conflict resolution and de-escalation techniques with the public;
- (iii) Chief Saunders knew or ought to have known that PC Theriault suffered from psychological and/or psychiatric problems rendering him unfit to be a police officer;
- (iv) Chief Saunders knew or ought to have known that PC Theriault was unfit to perform duties reasonably expected of police officers; and
- (v) Chief Saunders failed to notify the SIU of the serious injuries to Dafonte or to instruct a delegate to notify the SIU, as required by the *PSA* and O. Reg. 267/10.

**LIABILITY OF TORONTO POLICE SERVICES BOARD*****Vicarious Liability***

104. The TPS Board is responsible for the torts and *Charter* violations of the defendant police officers, as pleaded herein, by virtue of s. 50(1) of the *PSA*.

**DAMAGES**

105. As a direct result of the defendants' actions and/or omissions, Dafonte suffered and continues to suffer from severe physical injuries, some of the particulars being:

- (i) Severe facial bruising, lacerations and abrasions;
- (ii) Detached and split left eyeball;
- (iii) Total loss of sight in his left eye;
- (iv) Blurred vision in his right eye;
- (v) Fractured wrist and fractured orbital bones;
- (vi) Broken nose and bruising to his chest and ribs; and
- (vii) Concussion and post-concussion syndrome.

106. As a direct result of the unlawful conduct of the defendants, Dafonte suffered and continues to suffer severe emotional, psychological and/or mental trauma, some of the particulars being:

- (i) Depression;
- (ii) Anxiety;
- (iii) Nervousness and irritability;
- (iv) Mood disorders;
- (v) Insomnia and sleep disturbances; and

(vi) Nightmares and flashbacks.

107. As a direct result of the actions of the defendants, Dafonte suffered a loss of income. At all relevant times, Dafonte worked as a general labourer. The injuries Dafonte suffered as result of the December 28, 2016, assault resulted in Dafonte being unable to continue any employment as a general labourer.

108. At the time of the assault, Dafonte was actively pursuing opportunities to return to school. As a result of the injuries he sustained, he has had to defer any possibility of returning to school and has significantly delayed any prospect of future employment.

109. As a direct result of the defendants' conduct towards and against Dafonte, the plaintiffs, Leisa Lewis, Kamicaya Pearce, Lataijah Lewis, Kamaya Lewis, and Kamicaya Pearce Jr., suffered and continue to suffer emotional, psychological and/or mental trauma. These injuries are a consequence the defendants knew or ought to have known would result from their wrongful actions and/or omissions.

110. The plaintiffs plead and rely upon the relevant provisions of the *Family Law Act*. In particular, Leisa Lewis, Kamicaya Pearce, Lataijah Lewis, Kamaya Lewis, and Kamicaya Pearce Jr., enjoyed and continue to enjoy a close and loving relationship with Dafonte and suffered a loss of care, guidance, and companionship as a result of Dafonte's injuries.

111. The defendants are liable for violations of Dafonte's rights pursuant to ss. 7, 8, 9, 10(a), 12 and 15 of the *Charter*.

112. Without restricting the generality of the foregoing, Dafonte was deprived of his rights to liberty and security of the person in a manner that contravened the principles of fundamental justice,

contrary to s. 7 of the *Charter*. Dafonte was subject to an unreasonable search and seizure, conducted by the defendant Bowler, contrary to s. 8 of the *Charter*. Dafonte was arbitrarily detained by the defendants, contrary to s. 9 of the *Charter*. The defendants did not promptly inform Dafonte of the reasons for his arrest and detention, contrary to s. 10(a) of the *Charter*. Dafonte was subjected to cruel and unusual punishment by the defendants, contrary to s. 12 of the *Charter*. Dafonte was denied equality before and under the law, and denied the right to the equal protection and equal benefit of the law without discrimination, contrary to s. 15(1) of the *Charter*.

113. The plaintiffs plead and rely upon the *Charter*, in particular s. 24(1), and state that the plaintiffs are entitled to a remedy that this Honourable Court considers appropriate and just in the circumstances.

114. The plaintiffs claim exemplary, aggravated and/or punitive damages as a result of the facts set out herein and in particular the highhanded, shocking, and contemptuous conduct of the defendants.

115. The plaintiffs plead and rely upon the *Negligence Act*, R.S.O. 1990, c. N.1 as amended.

116. The plaintiffs plead and rely upon the *Police Services Act*, R.S.O. 1990, c. P.15 as amended and the regulations thereunder.

117. The plaintiffs plead and rely upon the *Criminal Code*, R.S.C. 1985, c. C-46, as amended.

118. The plaintiffs plead and rely upon the *Canadian Charter of Rights and Freedoms* (Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11).

119. The plaintiffs propose that this action be tried in the City of Toronto.

**DATE:** December 21, 2018

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PLAINTIFFS**

-and-

**POLICE CONSTABLE MICHAEL THERIAULT ET AL.  
DEFENDANTS**

Court File No: CV-18-00611510-0000

ONTARIO SUPERIOR COURT OF JUSTICE

Proceedings to commence in **TORONTO**

**AMENDED STATEMENT OF CLAIM**

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