

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARIO BAPTISTE JUNIOR

Plaintiff

-and-

**BELLEVILLE POLICE SERVICES BOARD, CHIEF OF POLICE RON GIGNAC, &
JOHNS-DOE, CONSTABLE PAUL FYKE, CONSTABLE JEFF SMITH, CONSTABLE
KELY DODDS & CONSTABLE JILL McAULEY**

Defendants

AMENDED STATEMENT OF DEFENCE

1. The Defendant Belleville Police Services Board (hereinafter referred to as “the Board”), the Defendant Ron Gignac (hereinafter referred to as “Former Chief Gignac”), the Defendants Constable Paul Fyke (“Constable Fyke”), Constable Jeff Smith (“Constable Smith”), Constable Kyle, incorrectly spelled in the style of cause as Kely, Dodds (“Constable Dodds”) & Constable Jill McAuley (“Constable McAuley”) (Constables Fyke, Smith, Dodds and McAuley who are hereinafter collectively referred to as “Officer Defendants”) and all of them together (hereinafter collectively referred to as the “Defendants”) admit the allegations contained in paragraphs 8, 9, 10 and 11 of the Fresh as Amended Statement of Claim.
2. The Defendants deny the balance of the allegations contained in the Statement of Claim and put the Plaintiff to the strict proof thereof.

3. The Defendants state that some or all of the Plaintiff's claims as against them are barred by operation of the *Limitations Act, 2002*, S.O. 2002, Chapter 24, particularly with respect to the claims contained in the second amended Statement of Claim.
4. The Defendants further state that the Johns Doe defendants were released from the action, by agreement of both parties, in the Amended Statement of Claim.
5. With respect to paragraph 4 of the Statement of Claim, the Board is a police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O., 1990, c.P-15, as amended (the "Act"). The Board is responsible for supervising the operations of the Belleville Police Service, which provides policing services for the City of Belleville.
6. With respect to paragraph 6 of the Statement of Claim, Former Chief Gignac retired from his role as Chief of Police in October 2020.
7. The Belleville Police Service consists of approximately 94 uniformed officers and approximately 65 civilian employees. The Belleville Police Service is directed by Chief Mike Callaghan and Deputy Chief Chris Barry, both of whom report directly to the Board.
8. With respect to paragraph 21 of the Statement of Claim, the Officer Defendants deny that the Plaintiff, Mario Baptiste, was known to any of them prior to November 2019. Further, the Officer Defendants deny that any of them had any knowledge of his status as a Mohawk man prior to or on November 15, 2019.
9. On November 15, 2019, Constable Fyke attended at the Lowe's Home Improvement Store ("Lowe's") located at 219 Millennium Parkway in the City of Belleville, Ontario. While paying for his purchases, Constable Fyke overheard a Lowe's employee requesting assistance with a possible theft. Constable Fyke

identified himself to Lowe's staff and advised that he would assist in observing the three males brought to his attention by staff (the "Suspects"). The Suspects have since been identified as the plaintiff, Mario Baptiste, Matthew Bolton and an anonymized minor male (the "Minor").

10. Constable Fyke was advised by staff that the Suspects had been behaving suspiciously, appearing to keep lookout while in the store, and that there were concerns about a "distraction" theft. Constable Fyke was further advised that one of the Suspects, a male "in a white hat", had removed from a display and consumed a beverage while in the store that had not been paid for.
11. Constable Fyke then left the store. In the parking lot, he observed a beige pick-up truck bearing Ontario license plate number AY449075. He then observed the Minor, who it has since been discovered was unlicensed, drive the truck at higher than normal speed from the east side of the parking lot to the western front entrance. The remaining two Suspects, being the Plaintiff and Matthew Bolton ("Mr. Bolton"), exited through the front entrance and entered the truck.
12. Based on the information provided by Lowe's staff and his own observations, Constable Fyke had reasonable belief that a theft or thefts had occurred.
13. After observing the Suspects leaving the parking lot, Constable Fyke called Belleville Police Services dispatch to report the incident and request assistance in identifying the Suspects and investigating the suspected theft or thefts.
14. Constable Fyke followed the Suspects to a Taco Bell restaurant (the "Restaurant") located at 336 North Front Street. Several other officers, together with Constable Fyke, arrived at on the scene at the same time or shortly thereafter.

15. The Officer Defendants attended in the Restaurant. Constable Fyke spoke with Constable Smith, explained what he had observed, and asked Constable Smith to detain the Suspects until he could speak further with Lowe's staff.
16. Constable Smith observed a male with a white hat sitting inside the restaurant with two other males, who Constable Fyke had identified as the Suspects. Constable Smith then entered the Restaurant and advised the Suspects that they were under arrest for theft. He further further advised them that the Belleville Police Service was investigating the theft of a drink at Lowe's and possibly further thefts.
17. The Suspects argued that they had receipts and one of the Suspects produced a receipt showing three items that had been purchased. No evidence was provided by the Suspects to show that any of them had paid for the beverage. Constable Smith advised the Suspects that if there had been a miscommunication, they would all be released unconditionally.
18. Mr. Bolton and the Minor willingly identified themselves and were arrested without incident. Each was taken to a police vehicle to facilitate further investigation.
19. The Plaintiff remained seated and refused to identify himself, stating only that his name was Mario. The Plaintiff continued to refuse to stand-up, despite repeated requests from Constable Smith. When Constable Smith took the Plaintiff by the arm, he began to resist arrest.
20. Despite repeated requests to comply and to stop resisting arrest, the Plaintiff continually and physically resisted the officers' efforts to take custody of him. The officers were eventually able to place the Plaintiff on the ground and secure each hand with a different set of handcuffs. After the Plaintiff was secured, the Defendant Officer's examined the Plaintiff and saw that his breathing had become labored.

21. The officers immediately removed the handcuffs and began to administer medical assistance. Dispatch was called and requested to summon emergency medical services (“EMS”).
22. When EMS arrived at the Restaurant, they assumed care of the Plaintiff, who was awake and alert. EMS then transported the Plaintiff to Belleville General Hospital (“BGH”). He remained alert and responsive and spoke with at least one officer upon arrival.
23. At all material times, the Officer Defendants met the standard of care expected of a police officer.

The Officer Defendants plead and rely on the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.

24. At all material times, Former Chief Gignac properly discharged his duties as Chief of Police in accordance with the *Police Services Act* and Regulations and in a manner that meets the needs of the community.

Former Chief Gignac pleads and relies on the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.

25. At all material times, the Board properly discharged its responsibilities in accordance with the *Police Services Act* and Regulations.

The Board pleads and relies on the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.

26. The Defendants deny that the Plaintiff has sustained any damage or loss as alleged and put the Plaintiff to the strict proof thereof.

27. In the alternative, any loss that the Plaintiff may have incurred did not arise as a result of the conduct of any of the Defendants or any one for whom they may in law be responsible and the Plaintiff's claims for damages are therefore excessive and remote.
28. In the further alternative, the Plaintiff has failed to take appropriate or any steps to mitigate any loss or damage he may have incurred and as a result, the Defendants are not liable to the Plaintiff for any of the damages claimed to have been sustained.
29. The Defendants state that the Officer Defendants had reasonable grounds to arrest the Plaintiff and used only as much force as was reasonably necessary in the circumstances. The Defendants plead and rely on Sections 25 and 27 of the *Criminal Code*, R.S.C. 1985, c. C-46.
30. The Defendants state that any injuries the Plaintiff sustained as a result of the force used by officers to effect the arrest were caused or contributed to by the Plaintiff's own negligence and willful acts, the particulars of which are as follows:
 - a) He created the dispute and/or committed such acts as required the intervention of the police;
 - b) He was intoxicated or under the influence of drugs;
 - c) He failed to obey reasonable commands from uniformed police officers;
 - d) He resisted arrest when he knew or ought to have known that by doing so, he or the officers involved could be injured;
 - e) He failed to act reasonably under the circumstances;
 - f) He failed to exercise reasonable care for his own safety;
 - g) He was uncooperative, combative, and verbally abusive; and

h) He is the author of his own misfortune.

i) Such further and other particulars as will discovered in the conduct of this litigation.

The Defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

31. The Defendants plead that the claim for misfeasance in public office as pleaded discloses no cause of action.
32. The Defendants deny that there was deliberate unlawful conduct by the Defendants in the exercise of public function.
33. The Defendants deny that they were aware that the conduct is unlawful and likely to injure the Plaintiff.
34. The Defendants deny that their actions were the legal cause of the Plaintiff's injuries.
35. The Defendants deny the Plaintiff's claim in respect of any allegation of conspiracy and plead that it fails to disclose a reasonable cause of action and ought to be struck.
36. The Defendants deny that any of their actions were conducted with any malice or bad faith, ill will or for any improper purpose.
37. The Defendants deny that the actions taken by the Defendants infringed on any Constitutional rights of the Plaintiff. All actions taken by the Defendants were reasonable and in lawful execution of their duties and responsibilities. The Defendants plead and rely on Sections 31 and 42 of the *Police Services Act* RSO 1990 c.P-15, as amended.

38. In the alternative, the Defendants plead that to the extent the Plaintiff's rights under the *Charter* were infringed, such infringement was not deliberate or a result of any mala fides of the Defendants and occurred only as result of the good faith execution of the Defendants' statutory and common law duties and accordingly the Plaintiff is not entitled to any damages pursuant to the *Charter*.
39. The Defendants deny that there were any acts or omissions on their parts that would warrant an award of aggravated, exemplary or punitive damages, as they acted in good faith in the execution of their duties and responsibilities at all material times.
40. The Defendants submit that the Plaintiff's claims as against these Defendants should be dismissed, with costs against the Plaintiff.

DATE: September 29, 2022

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-and- BELLEVILLE POLICE SERVICES BOARD ET AL
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Court File No. CV-19-00000446-0000

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BELLEVILLE

AMENDED STATEMENT OF DEFENCE

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