



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

**FAY FAGAN on her own behalf, and as the Estate Trustee of the Estate of
CHADD MAX FACEY, GARFIELD FACEY, RENAE FACEY, TANISHA
HUTTON, and NICOLE HUTTON**

Plaintiffs

-and-

**POLICE CONSTABLE CALVIN AU, POLICE CONSTABLE
GURMAKH BENNING, TORONTO POLICE SERVICE
RETIRED CHIEF JAMES RAMER, TORONTO POLICE
SERVICES BOARD, PEEL REGIONAL POLICE SERVICES
BOARD, PEEL REGIONAL POLICE SERVICE CHIEF
NISHAN DURAIAPPAH, PEEL REGIONAL POLICE
SERVICE OFFICERS JOHN AND JANE DOE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 Plaintiffs' lawyer or, 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 or 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 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 \$2,000.00 for costs, within the time for service 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 \$400.00 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: April 26, 2023

Issued by
Local Registrar

Address of
Court Office: Superior Court of Justice
7755 Hurontario Street
Brampton, Ontario, L6W 4T1

**TO: CONSTABLE CALVIN AU
Toronto Police Service – 55 Division
101 Coxwell Ave
Toronto, ON M4L3B3**

**AND TO: CONSTABLE GURMAKH BENNING
Toronto Police Service – 55 Division
101 Coxwell Ave
Toronto, ON M4L3B3**

- AND TO: TORONTO POLICE SERVICE CHIEF OF POLICE JAMES RAMER
(RETIRED)
c/o Toronto Police Headquarters
40 College Street
Toronto, ON M5G 2J3**
- AND TO: TORONTO POLICE SERVICES BOARD
c/o Chair Jim Hart
40 College Street
Toronto, ON M5G 2J3**
- AND TO: PEEL REGIONAL POLICE SERVICES BOARD
c/o Chair Ron Chatha
10 Peel Centre Drive
Brampton, ON L6T 4B9**
- AND TO: PEEL REGIONAL POLICE SERVICE CHIEF OF POLICE
NISHAN DURAIAPPAH
c/o Peel Regional Police Headquarters
7150 Mississauga Road
Mississauga, ON L5N 8M5**
- AND TO: PEEL REGIONAL POLICE SERVICE OFFICERS JOHN
AND JANE DOE
c/o Peel Regional Police Headquarters
7150 Mississauga Road
Mississauga, ON L5N 8M5**
- AND TO: THE REGISTRAR OF THIS HONOURABLE COURT**

CLAIM

OVERVIEW

1. The Plaintiff, the Estate of Chadd Max Facey, claims:
 - a. General damages in the amount of \$7,000,000.00 (seven million dollars);
 - b. Special damages in a sum to be disclosed before trial;
 - c. Punitive and/or exemplary damages in the amount of \$1,000,000.00 (one million dollars);
 - d. Aggravated damages in the amount of \$1,000,000.00 (one million dollars);
 - e. Damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;
 - 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. Their costs of this action on a substantial indemnity basis, together with Harmonized Sales Tax payable pursuant to the *Excise Act*; and
 - h. Such further and other relief as this Honourable Court deems just.
2. The Plaintiffs, Fay Fagan, Garfield Facey, Renae Facey, Tanisha Hutton, and Nicole Hutton each claim:
 - a. General damages in the amount of \$3,000,000.00 (three million dollars);
 - b. Special damages in a sum to be disclosed before trial;
 - c. Punitive and/or exemplary damages in the amount of \$1,000,000.00 (one million dollars);
 - d. Aggravated damages in the amount of \$1,000,000.00 (one million dollars);

- e. 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);
- f. Damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”);
- g. Pre- and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
- h. Their costs of this action on a substantial indemnity basis, 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

3. On April 26, 2021, Chadd Max Facey (“Chadd”) was only 19 years old when he was violently assaulted by two off-duty Toronto Police Service (“TPS”) Constables, Calvin Au (“Constable Au” or “Defendant Au”), and Gurmakh Benning (“Constable Benning” or “Defendant Benning”).
4. Chadd had posted an Apple Watch for sale on the website Kijiji. The two police constables travelled to Brampton, in the area around Highway 50 and Bellchase Trail, to meet with Chadd to purchase the watch.
5. After paying for the Apple Watch, Constables Au and Benning inspected the watch and believed it to be counterfeit. In response to their suspicions, Constables Au and Benning pursued Chadd in their automobile, and once they caught up to him, they violently assaulted him with kicks and punches to his face and head. Constables Au and Benning continued to assault Chadd until a male bystander approached the area, at which point the two constables fled the scene in their automobile.

6. Constables Au and Benning did not provide any medical assistance or first aid to Chadd despite knowing that he sustained serious injuries because of their assault. They made no attempts to call for any medical help whatsoever for Chadd. They also did not report to their supervisor or their delegate that they had assaulted a member of the public, as required by their statutory duty.
7. Chadd suffered serious head injuries as a result of the assault committed by Constables Au and Benning. Chadd was taken to Brampton Civic Hospital (“BCH”) at the request of his mother later that day where he ultimately died as a result of these head injuries.
8. Constable Au has been charged with one count of manslaughter and one count of aggravated assault contrary to sections 236(b) and 268 of the *Criminal Code*, in respect of Chadd’s death.
9. The Plaintiffs seek damages against the Defendants for assault/battery; conspiracy; intentional infliction of emotional distress; negligence; misfeasance in public office; and breaches of Chadd’s rights pursuant to sections 7, 9, 12, and 15 of the *Charter*.

Peel Police Involvement

10. Chadd’s death was classified as a sudden death, and as such, the Peel Regional Police Service (“PRPS”) was called to investigate. Officers John and Jane Doe were assigned to investigate Chadd’s death.
11. Officer John and Jane Doe became aware that Constables Au and Benning were Toronto Police Service Officers. Officers John and Jane Doe delayed providing this information to their supervisor to avoid having the assault committed against Chadd by Au and Benning be investigated by the Special Investigations Unit (“SIU”).

12. Officer John and Jane Doe were seeking to protect their fellow police officers, Constables Au and Benning, for the criminal conduct they engaged in by committing the violent assault against Chadd.

THE PARTIES

13. The estate of Chadd Facey is represented by Fay Fagan.

14. Chadd was born on October 11, 2001. At the time his death, Chadd was 19 years old. He was taking psychology courses and working as a sales associate at Canadian Tire.

15. The plaintiff, Fay Fagan, is Chadd's mother. Fay is a registered practical nurse and is 60 years old. Garfield Facey is Chadd's father. Renae Facey is Chadd's sister. Fay, Garfield, and Renae lived with Chadd in Brampton, Ontario. At all times, each of these Plaintiffs enjoyed a close and loving relationship with Chadd.

16. Tanisha Hutton and Nicole Hutton are Chadd's sisters. They also enjoyed a close and loving relationship with Chadd.

17. The Defendant, Constable Au, is a resident of the Province of Ontario, and was at all material times a Police Constable with the TPS, 55 Division. This defendant was initially off-duty on April 26, 2021. This defendant was and continues to be employed by the defendant, the Toronto Police Services Board ("TPSB"). Defendant Au participated in the violent assault on Chadd and failed to notify his police Chief, the Peel Regional Police, or the SIU of Chadd's serious injuries. Au additionally failed to provide medical assistance to Chadd following the assault. Defendant Au, acting individually and/or collectively with the other police Defendants, committed assault/battery, conspiracy, intentional infliction of emotional distress, negligence, misfeasance in public office, and *Charter* breaches against Chadd.

18. The Defendant, Constable Benning, is a resident of the Province of Ontario, and was at all material times a Police Constable with the TPS, 55 Division. This defendant was initially off-duty on April 26, 2021. This defendant was and continues to be employed by the defendant, the TPSB. Defendant Benning participated in the violent assault on Chadd and failed to notify his police Chief, the Peel Regional Police, or the SIU of Chadd's serious injuries. Constable Benning also failed to render medical aid to Chadd following the assault. Defendant Benning, acting individually and/or collectively with the other police Defendants committed assault/battery, conspiracy, intentional infliction of emotional distress, negligence, misfeasance in public office, and *Charter* breaches against Chadd.
19. The Defendant, Chief James Ramer ("Retired Chief Ramer") was at all material times the Chief of Police of the TPS. Pursuant to Part VI, section 41 of the *PSA*, Retired Chief Ramer was statutorily charged with and responsible in law for, *inter alia*, 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 Chadd or to instruct a delegate to do so. Retired Chief Ramer committed the torts of negligent supervision and training, and misfeasance in public office.
20. The Defendant, the Toronto Police Services Board (the "TPSB"), is constituted as a municipal police services board pursuant to the *Police Services Act*, R.S.O. 1990, c. P. 15 (the "*PSA*") and was at all material times responsible for the provision of police services, law enforcement, and crime prevention in the city of Toronto.
21. The TPSB is a statutory body which, by virtue of section 50 (1) of the *PSA* and common law, is liable for the torts and violations of the *Charter* committed by the members of the

TPS in the course of their employment or in the purported course of their employment, including the Defendant TPS police officers and the TPS Chief of Police.

22. The Defendants, Peel Regional Police Service Officers John and Jane Doe, whose identities are unknown to the Plaintiffs, are residents of the Province of Ontario. These Defendants were at all material times police officers with the PRPS and as such were and continue to be employed by the PRPS Board. Officers John and Jane Doe, who investigated the sudden death of Chadd, failed to immediately notify the SIU that Chadd had suffered a violent assault by Constable Au and Constable Benning, who are both members of the TPS. Officers John and Jane Doe acting individually and/or collectively with the other police Defendants, committed the torts of conspiracy and misfeasance in public office as they did not immediately share information that the assault was committed by two police constables.
23. The defendant, Chief Nishan Duraiappah (“Chief Duraiappah”) was at all material times the Chief of Police of the PRPS. Pursuant to Part VI, section 41 of the *PSA*, he is statutorily charged with and responsible in law for, *inter alia*, the selection, training, supervision, direction, and control of police officers employed by the PRPS. He failed to notify the SIU of the serious injuries to Chadd or to instruct a delegate to do so. Chief Duraiappah committed the torts of negligent supervision and misfeasance in public office.
24. The defendant, the Peel Regional Police Services Board (the "PRPSB"), is constituted as a municipal police services board pursuant to the *PSA* and was at all material times responsible for the provision of police services, law enforcement, and crime prevention in regional municipality of Durham. The PRPSB is a statutory body which, by virtue of

section 50 (1) of the *PSA*, is liable for the torts and violations of the *Charter* committed by the members of the Peel Regional Police Service (“PRPS”), including the DRPS Chief of Police and Officers John and Jane Doe.

THE FACTS

Assault by Defendant Officers

25. On April 26, 2021, Constables Au and Benning travelled to Brampton, Ontario to purchase an Apple Watch that was advertised online on Kijiji by Chadd. Au and Benning met with Chadd in the area of Highway 50 and Bellchase Trail at approximately 3:00pm.
26. Constables Au and Benning paid for the Apple Watch and upon inspection of the watch, but prior to leaving the scene, they believed that it was counterfeit and demanded their money back. Chadd fled the scene, and the officers pursued him.
27. Defendants Au and Benning hunted Chadd in their vehicle. Once they caught up to Chadd, they left their vehicle and continued to chase him on foot. They demanded that Chadd return the money they had paid for the Apple Watch. Together, Au and Benning attempted to rob Chadd of the money and when he would not release it, they violently assaulted him.
28. Chadd fell to the ground and struggled to get up. As Chadd struggled, Au and Benning continued the assault, punching and kicking Chadd multiple times in the head. Chadd was unable to protect himself from this vicious assault. The force used by Officers Au and Benning was unlawful, excessive, and unreasonable.
29. It was not until a male bystander approached the area, that Au and Benning stopped assaulting Chadd, fled to their car, and drove away.

30. Neither Officer Au nor Officer Benning provided Chadd with any medical assistance despite it being clear that they had injured him during the assault.
31. Instead, Constables Au and Benning concealed the assault that they committed against Chadd. They did not notify their supervisor at the Toronto Police Service to inform them that they had been involved in a physical assault with a member of the public. They did not notify the Special Investigations Unit (“SIU”) that they assaulted a member of the public, despite their statutory duty to do so. Further, they did not inform Peel Regional Police Service (“PRPS”) that an incident had occurred in their jurisdiction in which two police officers had assaulted a member of the public.
32. Constable Benning made an initial call to 9-1-1 stating that there had been a ‘Kijiji deal gone wrong’ but did not identify himself or Constable Au as police officers, did not indicate that they had assaulted a member of the public, did not indicate that Chadd had suffered serious physical injuries as a result of the assault, and ultimately told the 9-1-1 call-taker that the incident was ‘resolved’.
33. As a result of the vicious assault by Officers Au and Benning, Chadd suffered serious physical injuries, including head injuries, and succumbed to these injuries on April 26, 2021.

Events Following Altercation

34. Fay Fagan, Chadd’s mother, returned home after work and found Chadd sitting in the front passenger seat of a friend’s vehicle. Fay could tell, upon seeing her son, that something was wrong with Chadd. Fay observed Chadd to be confused, disoriented, and slipping in and out of consciousness. She also noted a bruise or ‘hematoma’ on his forehead.

35. Fay called an ambulance to transport Chadd to the Brampton Civic Hospital (“BCH”). Fay and other family were unable to travel with Chadd to the hospital due to COVID-19 restrictions in place at the time. Chadd arrived at the Emergency Department at approximately 6:00pm.
36. Upon arrival at the BCH, Chadd was taken for testing and later experienced a seizure lasting approximately one minute.
37. Later that evening, Chadd experienced trouble breathing and had to be intubated. Doctors experienced difficulties with the intubation, which led to CPR being commenced. Despite the efforts of the medical staff, Chadd did not show signs of improving and suffered cardiac arrest. He was pronounced dead shortly after.

Intentional Inaction of Defendant Officers

38. The postmortem examination of Chadd’s body was completed two days later on April 29, 2021. The PRPS was notified of the death by the BCH and commenced an investigation into Chadd’s death.
39. Despite knowing that Chadd was suffering from serious injuries as a result of the violent assault they had committed against him, neither Constable Au nor Benning remained at the scene or made any attempt to get medical assistance for Chadd. Instead, they fled to their vehicle and left the scene to avoid detection.
40. Defendants Au and Benning did not notify their employer of the assault that they had inflicted on Chadd, or the fact that he had suffered serious medical injuries as a result.
41. Constable Benning made a 9-1-1 call but did not identify himself or Constable Au as being police officers. Constable Benning then provided the 9-1-1 call-taker with false

information that the incident was resolved and did not mention the assault against Chadd or the injuries that Chadd had sustained.

Peel Regional Police Investigation of Chadd's Death

42. Constables Au and Benning also did not notify the PRPS that an assault on a civilian had taken place in their jurisdiction and that police officers were responsible for the assault. Instead, they actively concealed their involvement in the assault.

43. As part of the PRPS investigation into Chadd's death, PRPS collected Chadd's cell phone as evidence. In a review of Chadd's phone records, the PRPS found Constable Benning's phone number and made the connection that Constable Benning was a TPS Officer.

44. However, PRPS did not immediately inform the TPS that two of their officers had assaulted a member of the public, which led to a death, as a result of injuries sustained in the assault. It was not until several months later that the PRPS informed TPS that Constables Au and Benning had been involved in the assault against Chadd and that Chadd had died as a result of his injuries.

Investigations into the Conduct of Constables Au and Benning

45. On August 24, 2021, the TPS notified the SIU of the assault committed by Constables Au and Benning and that Chadd had suffered serious physical injuries, which he later died from, because of the assault. This was almost four full months after Chadd was assaulted and led to his subsequent death. As per the mandate of the SIU, they commenced an investigation to determine if criminal charges were warranted against either Constables Au or Benning in respect of the violent assault they committed against Chadd.

46. The TPS has filed disciplinary proceedings against both Constable Au and Benning. Both officers are facing six (6) charges each – one charge of misconduct, two charges of neglect of duty, and three charges of insubordination.

47. On February 10, 2023, the SIU charged Constable Au with one count of manslaughter and one count of aggravated assault. The SIU did not charge Defendant Benning.

LIABILITY OF DEFENDANTS AU AND BENNING

Assault/Battery

48. Defendants Au and Benning committed an aggravated and brutal assault on Chadd. In particular, and without restricting the generality of the foregoing, Defendants Au and Benning intentionally applied force to the person of Chadd in the absence of his consent; force that was excessive, unreasonable, and not justifiable at law. The Defendants Au and Benning applied force against Chadd with malice, and as a result Chadd suffered serious injuries.

49. Defendants Au and Benning knew or ought to have known that the force applied in the circumstances would be excessive and would/could cause serious injury. It is further alleged that the assault and battery was without just cause. As a result of the assault and battery, Chadd had to be taken to the hospital and ultimately succumbed to his injuries.

Conspiracy

50. Defendants Au and Benning, worked together for the purpose of evading law enforcement for their assault on Chadd, by taking steps and making efforts to conceal the assault they committed on Chadd on the afternoon of April 26, 2021. Defendants Au and Benning, working together, intentionally took actions to cover up their criminal conduct and to avoid taking responsibility for the assault and resulting injuries to Chadd.

51. Defendants Au and Benning deliberately failed to report the assault to the PRPS, who had jurisdiction in the area the assault occurred.
52. Defendants Au and Benning also deliberately chose not to contact the SIU, take the necessary steps to notify their Chief of Police, or to delegate another person to contact the SIU as required by O. Reg. 267/10, despite the knowledge that Chadd suffered serious injuries on April 26, 2021.
53. Even after the PRPS launched a criminal investigation into Chadd's death, Defendant Au and Defendant Benning still did not notify their employer that they were the ones who committed the assault on Chadd. It was not until August 2021, almost four months after the assault, until the TPS learned of the assault that occurred before reporting it to the SIU.
54. Following the physical altercation with Chadd and the two officers, Defendant Benning allegedly called 9-1-1 and referred to a "Kijiji deal that had gone bad". However, Defendant Benning did not identify himself as a police officer on the call, and ultimately told the call taker that the matter was resolved. By not identifying himself to the 9-1-1 call taker, Defendant Benning further concealed both his and Constable Au's assault on Chadd.
55. Defendants Au and Benning failed to discharge their statutory obligations for the unlawful purpose of protecting themselves from criminal charges related to the assault, and later on the death, of Chadd Facey.

Intentional Infliction of Emotional Distress

56. The assault on Chadd by Defendant Au and Defendant Benning, caused the Plaintiffs Fay Fagan, Garfield Facey, Renae Facey, Tanisha Hutton, and Nicole Hutton nervous shock and emotional distress.
57. The Plaintiffs state that Constables Au and Benning knew or ought to have known that these Plaintiffs would suffer emotional distress upon learning of the assault and seeing Chadd following the assault. The Plaintiffs suffered further emotional distress as a result of not being able to accompany Chadd to the hospital, and not being able to be with him in his final moments.
58. Without restricting the generality of the foregoing, the Plaintiffs Fay Fagan, Garfield Facey, Renae Facey, Tanisha Hutton, and Nicole Hutton continue to suffer anxiety, depression, physical, and psychological injuries arising from the unlawful conduct of Constables Au and Benning which resulted in Chadd's death.

Negligence

59. Defendant Au and Defendant Benning breached the duty of care they owed to Chadd as a member of the public, and accordingly, they are liable for their negligence to Chadd's estate. Chadd's injuries arose as a direct result of the actions and/or inactions of Defendants Au and Benning. The negligent actions and/or inactions of Defendant Benning as plead herein each and/or collectively caused injury to Chadd, a consequence that Defendants Au and Benning knew or ought to have known would occur as a result of his negligence.
60. Without restricting the foregoing, the particulars of said negligence of Defendants Au and Benning are as follows:

- a. Defendants Au and Benning negligently and aggressively applied force in circumstances in which he knew or ought to have known that his actions would injure Chadd;
- b. Defendants Au and Benning failed at all material times to exercise the standard of care required by their position as police officers with the TPS Board;
- c. Defendant Au and Benning acted with reckless disregard for the life and safety of Chadd;
- d. Defendants Au and Benning were incompetent and unable to carry out the duties of a police officer. They 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 a police officer;
- e. Defendants Au and Benning refused to report the assault he committed against Chadd to their supervisor or anyone at the TPS, or to the SIU as was their statutory duty; and
- f. Defendants Au and Benning did not provide any medical assistance to Chadd despite the fact that Chadd clearly suffered injuries as a result of the aggravated assault.

Misfeasance in Public Office

61. Defendants Au and Benning are holders of public office. The Plaintiffs repeat and rely upon the statements above and state that Defendants Au and Benning deliberately violated the law for the purpose of injuring Chadd.
62. The conduct of Constables Au and Benning, as set out above, was deliberate, unlawful, and undertaken in bad faith in the exercise of public functions. The Plaintiffs state that

Constables Au and Benning were aware or were reckless as to the fact that their conduct was unlawful and likely to injure Chadd. Without restricting the generality of the foregoing, Defendants Au and Benning knowingly:

- a. Committed the offence of breach of trust of a public officer; and
- b. Committed the offence of assault.

63. In addition, the Plaintiffs state that Defendants Au and Benning failed to act in accordance with the duties outlined in s. 42 of the *Police Services Act* (“PSA”) and engaged in misconduct as defined in s. 80(1) of the *PSA*.

64. The Plaintiffs also state that Defendants Au and Benning violated ss. 2(a), 2(c), 2(d), 2(g), and 2(i) of the *Code of Conduct*, Schedule to O. Reg 268/10. Defendants Au and Benning are therefore liable for misfeasance in public office.

Breach of the Canadian Charter of Rights and Freedoms

65. Defendants Au and Benning are also liable for violations of Chadd’s rights pursuant to sections 7, 9, 12 and 15 of the *Charter*.

66. Without restricting the generality of the foregoing, Chadd was deprived of his rights to life, liberty, and security of the person in a manner that contravened the principles of fundamental justice, as set out in section 7 of the *Charter*.

67. Chadd was arbitrarily detained by the Constables Au and Benning, contrary to section 9 of the *Charter*. Further, Chadd was subject to cruel and unusual punishment by Defendants Au and Benning, contrary to section 12 of the *Charter* when he was violently assaulted.

68. Without restricting the generality of the foregoing, Chadd 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 section 15(1) of the *Charter* as a result of his race.

LIABILITY OF CHIEF OF THE TORONTO POLICE SERVICE

Negligent Supervision and Training

69. Retired Chief Ramer, who was the Chief of Police at the material time, owed a duty of care to the Plaintiffs to ensure that Defendants Au and Benning were properly trained for and supervised in respect of their duties as police officers. Retired Chief Ramer breached this standard of care and was negligent in supervising the Defendants Au and Benning. The negligent actions and/or inactions of Retired Chief Ramer caused injuries to the Plaintiffs, a consequence he knew or ought to have known would occur as a result of his negligence.

70. Without restricting the generality of the foregoing, some of the particulars of the negligence of Retired Chief Ramer include:

- a. Retired Chief Ramer knew or ought to have known that the Defendant Officers were insufficiently trained to be dealing with the public;
- b. Retired Chief Ramer knew or ought to have known that the Defendant Officers suffered psychological and/or psychiatric problems rendering them unfit to be police officers;
- c. Retired Chief Ramer knew or ought to have known that the Defendant Officers were unfit to perform duties reasonably expected of police officers;
- d. Retired Chief Ramer failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *PSA*; and

- e. Retired Chief Ramer 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 Chadd.

LIABILITY OF TORONTO POLICE SERVICES BOARD

Vicarious Liability

71. The Plaintiffs state that the TPS Board is responsible for the torts and *Charter* violations of Defendant Au and Defendant Benning, as pleaded herein, by virtue of s. 50(1) of the *PSA*.

LIABILITY OF PRPS OFFICERS JOHN AND JANE DOE

Conspiracy

72. Officers John and Jane Doe were aware that Chadd had been assaulted by members of the TPS. Officers John and Jane Doe delayed notifying the TPS of this, despite this information becoming available because of their investigation into Chadd's death.
73. Officers John and Jane Doe also deliberately chose to wait to contact both the TPS and the SIU, despite being required to do so by O. Reg 267/10, and despite the knowledge that Chadd suffered severe injuries that he ultimately died from.
74. It was not until almost four months after the assault on Chadd that Officers John and Jane Doe informed the TPS that two of its members were involved in the assault on Chadd. TPS informed the SIU on August 24, 2021.
75. Officers John and Jane Doe failed to discharge their statutory obligations of reporting the assault for the unlawful purpose of protecting Constable Au and Constable Benning from criminal charges related to the assault, and later, the death of Chadd Facey.

76. Officers John and Jane Doe delayed notifying the TPS and/or the SIU of the involvement of Constable Au and Benning in order to aid them in attempting to escape criminal liability for their conduct.

Misfeasance in Public Office

77. Officers John and Jane Doe are holders of public office. The Plaintiffs repeat and rely upon the statements above and state that Officers John and Jane Doe violated the law and failed to fulfill their statutory obligations as they delayed in informing both the TPS and the SIU of the assault committed against Chadd by Constable Au and Constable Benning.

78. Officers John and Jane Doe deliberately chose to delay in contacting the SIU or to take the necessary steps for the Chief of Police or their delegate to contact the SIU as required by O. Reg 267/10, despite the knowledge that Chadd had suffered and died from serious injuries that resulted from the assault committed against him by Constable Au and Constable Benning.

79. The conduct of Officers John and Jane Doe, as set out above, was deliberate, unlawful, and undertaken in bad faith in the exercise of their public functions as police officers.

LIABILITY OF CHIEF OF THE PEEL REGIONAL POLICE SERVICE

Negligent Supervision and Training

80. Chief Duraiappah owed a duty of care to the Plaintiffs to ensure that Officers John and Jane Doe were properly trained for and supervised in respect of their duties as police officers. Chief Duraiappah breached this standard of care and was negligent in supervising Officers John and Jane Doe. The negligent actions and/or inactions of Chief Duraiappah caused injuries to the Plaintiffs, a consequence he knew or ought to have known would occur as a result of his negligence.

81. Without restricting the generality of the foregoing, some of the particulars of the negligence of Chief Duraiappah include:

- a. Chief Duraiappah knew or ought to have known that the Officers John and Jane Doe were insufficiently trained to be conducting sudden death investigations;
- b. Chief Duraiappah knew or ought to have known that the Officers John and Jane Doe had a pro-police bias and that they would delay the reporting of criminal conduct of other police officers;
- c. Chief Duraiappah knew or ought to have known that Officers John and Jane Doe were unfit to perform duties reasonably expected of police officers;
- d. Chief Duraiappah failed to ensure that Officers John and Jane Doe carried out their duties in accordance with the provisions of the *PSA*; and
- e. Chief Duraiappah 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 Chadd.

LIABILITY OF PEEL REGIONAL POLICE SERVICE BOARD

Vicarious Liability

82. The Plaintiffs state that the PRPS Board is responsible for the torts and *Charter* violations of Officers John and Jane Doe, as pleaded herein, by virtue of s. 50(1) of the *PSA*.

DAMAGES

83. As a direct result of the violent assault committed by Defendants Au and Benning, Chadd suffered from serious head injuries and required emergency medical treatment. Defendants Au and Benning not only committed the assault on Chadd, but failed to

provide him medical assistance when he needed it. Chadd later died from the injuries he sustained during the violent assault.

84. Chadd suffered significant and excruciating pain as a result of the assault. He was disoriented, had slurred speech, and experienced an altered level of consciousness, slipping into unconsciousness many times following the assault. Chadd also had bruises to his head, face, and neck.

85. The assault was an unlawful use of force by Constables Au and Benning. As a direct result, Fay Fagan, Garfield Facey, Renae Facey, Tanisha Hutton, and Nicole Hutton suffered and continue to suffer severe emotional, psychological, and/or mental trauma. These injuries are a consequence that Constables Au and Benning knew or ought to have known would result from their wrongful actions and/or omissions, examples of which are:

- a. Depression;
- b. Anxiety;
- c. Nervousness and irritability;
- d. Insomnia and sleep disturbances; and
- e. Nightmares and flashbacks.

86. The Plaintiffs plead and rely upon the relevant provisions of the *Family Law Act*. Fay Fagan, Garfield Facey, Renae Facey, Tanisha Hutton, and Nicole Hutton previously enjoyed a close and loving relationship with Chadd, and have suffered a loss of care, guidance, and companionship because of Chadd's death.

87. The Defendants are liable for violations of Chadd's rights pursuant to ss. 7, 9, 12, and s. 15(1) of the *Charter* by virtue of the facts pleaded aforesaid.

88. Without restricting the generality of the foregoing, Chadd was deprived of his rights to life, liberty, and security of the person in a manner that contravene the principles of fundamental justice contrary to s. 7 of the *Charter*.

89. Chadd was arbitrarily detained by Defendant Au and Defendant Benning, contrary to s. 9 of the *Charter* when they continued their vicious assault, and he was prevented from getting off the ground.

90. Chadd was also subject to cruel and unusual punishment by Constables Au and Benning, contrary to s. 12 of the *Charter*, by virtue of the assault that they committed against him.

91. 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.

92. By reason of the facts set out herein, and, the highhanded, shocking, and contemptuous conduct of Constables Au and Benning, the Plaintiffs claim exemplary, aggravated, and/or punitive damages.

93. If the Plaintiffs succeed in proving that one of the *Charter* rights as set out above has been breached, the Plaintiffs seek *Charter* damages.

94. The Plaintiffs plead that they are entitled to a remedy that this Honorable Court considers appropriate and just in the circumstances.

CONCLUSION

95. The Plaintiffs further plead and rely upon the provisions of:

- a. *The Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982 c 11;
- b. *Limitations Act*, 2002, S.O. 2002, c 24 Sch B;

- c. *Comprehensive Ontario Police Services Act*, 2019 S.O. 2019, c. 1;
- d. *Police Services Act*, R.S.O. 1990, c. P. 15;
- e. *Criminal Code*, R.S.C. 1985, c. C-46;
- f. *Canadian Charter of Rights and Freedoms*; and
- g. the *Negligence Act*, R.S.O., c. N.1 as amended.

96. The Plaintiffs propose that the trial of this matter occur in Brampton, Ontario.

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**FAY FAGAN ON BEHALF OF THE ESTATE
OF CHADD MAX FACEY ET AL.**
PLAINTIFFS

-and-

TORONTO POLICE SERVICE BOARD ET AL.
DEFENDANTS

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceedings Commenced in Brampton, Ontario

STATEMENT OF CLAIM

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