


**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**HAFEEZ MOHAMED, OUMLA LAL, LORI ALEENA MOHAMED
(by her Litigation Guardian HAFEEZ MOHAMED), SASHA NAILA MOHAMED
(by her Litigation Guardian HAFEEZ MOHAMED), SAFFIR MOHAMMED,
and HAMIDAN MOHAMMED**

Plaintiffs

-and-



**THE DURHAM REGIONAL POLICE SERVICES BOARD, POLICE CONSTABLE
PRASANTH TELLA, POLICE CONSTABLE JASON SPOONER, POLICE CONSTABLE
MICHAEL NACCARATO, POLICE CONSTABLE BILL GARDINER, POLICE
CONSTABLE ANDRE WYATT, POLICE CONSTABLE ROBERTO SILIPO, SERGEANT
ROBERT FINDLAY, CHIEF OF POLICE VERN WHITE, POLICE OFFICER JOHN DOE,
and POLICE OFFICER JANE DOE**

Defendants

NOTICE OF ACTION

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, 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.

Date: May 21, 2008

Issued by
Local Registrar

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

TO: The Durham Regional Police Services Board
605 Rossland Road East
Whitby, ON L1N 0B8

AND TO: Police Constable Prasanth Tella
c/o The Durham Regional Police Services Board
605 Rossland Road East
Whitby, ON L1N 0B8

AND TO: Police Constable Jason Spooner
c/o The Durham Regional Police Services Board
605 Rossland Road East
Whitby, ON L1N 0B8

AND TO: Police Constable Michael Naccarato
c/o The Durham Regional Police Services Board
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AND TO: Police Constable Bill Gardiner
c/o The Durham Regional Police Services Board
605 Rossland Road East
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AND TO: Police Constable Andre Wyatt
c/o The Durham Regional Police Services Board
605 Rossland Road East
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AND TO: Police Constable Robert Silipo
c/o The Durham Regional Police Services Board
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AND TO: Sergeant Robert Findlay
c/o The Durham Regional Police Services Board
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AND TO: Chief of Police Vern White
c/o The Durham Regional Police Services Board
605 Rossland Road East
Whitby, ON L1N 0B8

AND TO: Police Officer John Doe
c/o The Durham Regional Police Services Board
605 Rossland Road East
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AND TO: Police Officer Jane Doe
c/o The Durham Regional Police Services Board
605 Rossland Road East
Whitby, ON L1N 0B8

CLAIM

1. The plaintiffs claim damages, including but not limited to general, special and punitive and aggravated damages, for assault, negligence, intentional infliction of mental distress, misfeasance in public office, negligent supervision, and violations of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, in respect of the use of force against Hafeez Mohamed by Constables Prasanth Tella, Jason Spooner, Michael Naccarato, and Bill Gardiner on May 23, 2006, and the subsequent investigation of this incident by members of the Durham Regional Police. The plaintiffs further seek their costs on a solicitor client basis, as well as pre- and post-judgment interest.

Date of Issue: May 21, 2008

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Solicitors for the Plaintiffs

CV-2018-0000184

Hafeez Mohamed et al.

-and-

The Durham Regional Police Services Board et al.

Plaintiffs

Defendants

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in Toronto

NOTICE OF ACTION

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Solicitors for the Plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**HAFEEZ MOHAMED, OUMLA LAL, LORI ALEENA MOHAMED
(by her Litigation Guardian HAFEEZ MOHAMED), SASHA NAILA MOHAMED
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Plaintiffs

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**THE DURHAM REGIONAL POLICE SERVICES BOARD, POLICE CONSTABLE
PRASANTH TELLA, POLICE CONSTABLE JASON SPOONER, POLICE CONSTABLE
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CONSTABLE ANDRE WYATT, POLICE CONSTABLE ROBERTO SILIPO, SERGEANT
ROBERT FINDLAY, CHIEF OF POLICE VERN WHITE, POLICE OFFICER JOHN DOE,
and POLICE OFFICER JANE DOE**

Defendants

CLAIM

(Notice of Action Issued May 21, 2008)

1. The plaintiff, Hafeez Mohamed, claims:
 - a) General damages in the amount of \$5,000,000.00 (five 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;
 - d) Aggravated damages in the amount of \$1,000,000.00;
 - e) Damages pursuant to s. 24(1) of *the Canadian Charter of Rights and Freedoms*;
 - f) Pre and post judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. 43;
 - g) His costs of this action on a solicitor and client basis, together with Goods and Services Tax payable pursuant to the *Excise Act*; and

h) Such further and other relief as this Honourable Court deems just.

2. The plaintiff, Oumla Lal, 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 \$1,000,000.00;
- d) Aggravated damages in the amount of \$1,000,000.00;
- e) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$200,000.00;
- f) Pre and post judgment interest pursuant to sections 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 Goods and Services Tax payable pursuant to the *Excise Act*; and
- h) Such further and other relief as this Honourable Court deems just.

3. The plaintiffs, Lori Aleena Mohamed, Sasha Naila Mohamed, Saffir Mohammed, and Hamidan Mohammed claim:

- 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) Aggravated damages in the amount of \$1,000,000.00;
- d) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$200,000.00;
- e) Pre and post judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43;
- f) Their costs of this action on a solicitor and client basis, together with Goods and Services Tax payable pursuant to the *Excise Act*; and
- g) Such further and other relief as this Honourable Court deems just.

INTRODUCTION

4. On May 23, 2006, Hafeez Mohamed (hereafter “Mr. Mohamed”) was severely beaten during the course of his arrest by police officers of the Durham Regional Police Service, Prasanth Tella, Jason Spooner, Michael Naccarato, and Bill Gardiner, and suffered severe injuries. Thereafter, these defendants failed to report the nature and cause of the plaintiff’s injuries either to their superiors, the Special Investigations Unit, or medical personnel, which resulted in the plaintiff not receiving proper medical treatment while in custody for a period of three days.

THE PARTIES

5. The plaintiff, Hafeez Mohamed, was at all material times 43 years old. He is a resident of the City of Pickering in the Region of Durham. The plaintiffs state that Mr. Mohamed was the victim of assault and battery, misfeasance in public office, negligence and breaches of the *Canadian Charter of Rights and Freedoms* (hereafter “the *Charter*”) by the defendant police officers.

6. The plaintiff, Oumla Lal is the spouse of the plaintiff, Hafeez Mohamed. She resides with her spouse in the City of Pickering.

7. The plaintiffs, Lori Aleena Mohamed and Sasha Naila Mohamed are the minor daughters of the plaintiffs Hafeez Mohamed and Oumla Lal. They reside with their parents in the City of Pickering.

8. The plaintiff Saffir Mohammed is the father of the plaintiff, Hafeez Mohamed. He resides in the Town of Ajax.

9. The plaintiff, Hamidan Mohammed is the mother of the plaintiff, Hafeez Mohamed. She resides in the Town of Ajax.

10. The defendant, Prasanth Tella (hereafter "P.C. Tella"), is a resident of the Province of Ontario and was at all material times a Police Constable with the Durham Regional Police Service. As such, this defendant was and continues to be employed by the defendant, the Durham Regional Police Services Board. The plaintiffs state that P.C. Tella, acting individually and/or collectively with the defendants Jason Spooner, Michael Naccarato and Bill Gardiner, committed assault and battery, misfeasance in public office, negligence and breaches of the *Charter* against the plaintiff, Hafeez Mohamed.

11. The defendant, Jason Spooner (hereafter "P.C. Spooner"), is a resident of the Province of Ontario and was at all material times a Police Constable with the Durham Regional Police Service. As such, this defendant was and continues to be employed by the defendant, the Durham Regional Police Services Board. The plaintiffs state that P.C. Spooner, acting individually and/or collectively with the defendants P.C. Tella, Michael Naccarato, and Bill Gardiner, committed assault and battery, misfeasance in public office, negligence and breaches of the *Charter* against the plaintiff, Hafeez Mohamed.

12. The defendant, Michael Naccarato (hereafter "P.C. Naccarato"), is a resident of the Province of Ontario and was at all material times a Police Constable with the Durham Regional Police Service. As such, this defendant was and continues to be employed by the defendant, the Durham Regional Police Services Board. The defendant P.C. Naccarato, acting individually and/or collectively with P.C. Tella, P.C. Spooner, and Bill Gardiner committed assault and battery, misfeasance in public office, negligence and breaches of the *Charter* against the plaintiff, Hafeez Mohamed.

13. The defendant, Bill Gardiner (hereafter "P.C. Gardiner"), is a resident in the Province of Ontario and was at all material times a Police Constable with the Durham Regional Police Service. As such, this defendant was and continues to be employed by the defendant, the Durham Regional Police Services Board. The defendant P.C. Gardiner, acting individually and/or collectively with P.C. Tella, P.C. Spooner, and P.C. Naccarato committed assault and battery, misfeasance in public office, negligence and breaches of the *Charter* against the plaintiff, Hafeez Mohamed

14. The defendants, Andre Wyatt (hereafter "P.C. Wyatt"), Robert Silipo (hereafter "P.C. Silipo") and Robert Findlay (hereafter "Sgt. Findlay"), are residents of the Province of Ontario and were at all material times police officers with the Durham Regional Police Service. As such, these defendants were and continue to be employed by the defendant, the Durham Regional Police Services Board. These defendants committed the torts of misfeasance in public office and negligence in respect of the plaintiff, Hafeez Mohamed.

15. The defendants Police Officer Jane Doe and Police Officer John 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 Durham Regional Police Service and as such were and continue to be employed by the defendant, the Durham Regional Police Services Board. These defendants, acting individually and/or collectively with the investigating police officers, committed the torts of misfeasance in public office and negligent investigation in respect of the plaintiff, Hafeez Mohamed.

16. The defendant, Vern White (hereafter “Chief”) was at all material times the Chief of Police of the Durham Regional Police Service and is responsible at law for the selection, training, supervision, direction and control of police officers employed by the Durham Regional Police Service.

17. The defendant, Durham Regional Police Services Board (hereafter the “Board”) is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the Region of Durham. The Board, by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c.P.15 as amended, and the common law, is liable in respect of torts and violations of the Charter committed by members of the Durham Regional Police Service, including the defendant police officers and the Chief.

THE FACTS

18. At approximately 11:40 p.m. on May 23, 2006, Hafeez Mohamed was operating his motor vehicle westbound on Kingston Road in the City of Pickering. Mr. Mohamed's ability to operate a motor vehicle was impaired by alcohol, and he was driving at a rate of speed that exceeded the applicable speed limit.

19. Hafeez Mohamed's driving came to the attention of P.C. Spooner and P.C. Naccarato who were on patrol in a marked police cruiser. These defendants began to follow Hafeez Mohamed's vehicle with the intention of conducting a vehicle stop. They were joined by P.C. Tella and P.C. Gardiner in a second marked police cruiser.

20. The defendants P.C. Spooner, P.C. Naccarato, P.C. Tella and P.C. Gardiner maintained their pursuit of Hafeez Mohamed for approximately three kilometres, after which time they executed a "rolling block" of Mr. Mohamed's vehicle. During this manoeuvre, Hafeez Mohamed's vehicle came into contact with the passenger door of the police cruiser occupied by P.C. Tella and P.C. Gardiner.

21. P.C. Spooner exited his police cruiser and approached the driver side door of Mr. Mohamed's vehicle. P.C. Spooner opened the driver side door of Mr. Mohamed's vehicle, and proceeded to remove Mr. Mohamed from the vehicle. As a result of the force applied by P.C. Spooner, Mr. Mohamed fell face down onto the ground.

22. P.C. Tella, P.C. Naccarato and P.C. Gardiner took control of Mr. Mohamed as he lay prone on the ground. Mr. Mohamed did not offer any intentional resistance to his arrest, and was not physically capable of offering any such resistance as a result of his severely impaired condition.

23. P.C. Gardiner held onto Mr. Mohamed's left hand for the purpose of assisting P.C. Tella applying the handcuffs to Mr. Mohamed's left wrist. P.C. Tella was positioned in a straddle position over Mr. Mohamed's waist area, while P.C. Naccarato held onto Mr. Mohamed's legs. These officers were unable to immediately handcuff Mr. Mohamed's right hand, as his entire right arm was pinned underneath his body. With Mr. Mohamed lying face down and restrained by at least three of the defendants, the defendant police officers repeatedly struck Mr. Mohamed with their fists in the upper body and head area causing severe injuries. These defendants then completed the handcuffing of Mr. Mohamed and placed him under arrest in the back of a police cruiser.

24. Sgt. Findlay arrived at the scene of the arrest at 11:50 p.m. Neither P.C. Spooner, P.C. Tella, P.C. Naccarato nor P.C. Gardiner reported to Sgt. Findlay that the officers had struck Mr. Mohamed in the head and upper body area. Sgt. Findlay was aware of Mr. Mohamed's injuries, but deliberately and/or negligently refrained from making any inquiries of the defendant police officers as to the cause of his injuries. None of these defendants took any steps to ensure that Mr. Mohamed received immediate medical attention for his injuries. Further, these defendants failed to take steps to cause the Ontario Special Investigations Unit to be notified of the use of force against Mr. Mohamed as required by section 113 of the *Police Services Act*.

25. The defendants transported Mr. Mohamed to 19 Division station. Forty-five minutes after his arrest, an ambulance attended to convey Mr. Mohamed to the hospital for medical attention. At no time did any of the defendants take steps to advise medical personnel of the nature of the force that was used against Mr. Mohamed during the course of the arrest.

26. P.C. Silipo was dispatched to attend the hospital for the purpose of documenting Mr. Mohamed's injuries. P.C. Silipo deliberately and/or intentionally refrained from investigating how Mr. Mohamed incurred his injuries, and in particular whether they were caused by the arresting police officers. P.C. Silipo also failed to take steps to cause the Ontario Special Investigations Unit to be notified of the use of force against Mr. Mohamed as required by section 113 of the *Police Services Act*.

27. P.C. Wyatt was dispatched to attend the hospital for the purpose of administering breath tests on Mr. Mohamed. Mr. Mohamed complained to P.C. Wyatt of his injuries. P.C. Wyatt deliberately and/or negligently refrained from investigating how Mr. Mohamed incurred his injuries, and in particular whether they were caused by the arresting officers. P.C. Wyatt failed to take steps to cause the Ontario Special Investigations Unit to be notified of the use of force against Mr. Mohamed as required by section 113 of the *Police Services Act*.

LIABILITY OF P.C. TELLA, P.C. SPOONER, P.C. NACCARATO AND P.C. GARDINER***Assault***

28. The plaintiffs state that the defendants P.C. Tella, P.C. Spooner, P.C. Naccarato, and P.C. Gardiner committed assault on Mr. Mohamed. In particular, and without restricting the generality of the foregoing, these defendants intentionally applied force to the person of Mr. Mohamed in the absence of his consent, which force was excessive, unreasonable and not justifiable at law. This force was applied with malice, and with the intention of injuring Mr. Mohamed, and/or with knowledge that the said force was excessive in the circumstances.

Abuse of Public Office/ Mifeseance in Public Office

29. The P.C. Tella, P.C. Spooner, P.C. Naccarato and P.C. Gardiner are holders of public office. The plaintiffs repeat and rely upon the facts as set out above and state that the defendants deliberately violated the law in committing an assault on Mr. Mohamed.

30. The plaintiffs further state that these defendants deliberately violated the law by failing to ensure that the Special Investigations Unit was notified concerning their use of force against Mr. Mohamed as required by section 113 of the *Police Services Act*. Having caused injuries and/or losses to the plaintiffs, these defendants are liable to the plaintiffs for abuse of public office and/or misfeasance in public office.

31. The conduct of these defendants was deliberate, unlawful conduct done in bad faith in the exercise of public functions. The plaintiffs state that these defendants were aware or were reckless as to the fact that this conduct was unlawful and likely to injure Mr. Mohamed. As such, the plaintiffs state that the defendant police officers are liable for misfeasance in public office.

Negligence

32. The plaintiffs state that these defendants owed a duty of care to Mr. Mohamed to take reasonable care for his safety, which duty of care increased once Mr. Mohamed became a person in the detention of the Durham Regional Police. Without restricting the generality of the foregoing, these defendants owed a duty to Mr. Mohamed to refrain from using force on his person unless absolutely necessary for the performance of their lawful duties. Furthermore, where such force was reasonably necessary, they owed a duty to use the least amount of force necessary to carry out their duties. These defendants also had a duty to advise the medical personnel responsible for treating Mr. Mohamed of the nature of the force used during the arrest, such that proper diagnosis and treatment of his injuries could be implemented.

33. The plaintiffs state that these defendants breached the duties of care they owed to Mr. Mohamed and accordingly, are liable in negligence to the plaintiffs. The plaintiffs state that the injuries they suffered arose as a direct result of the negligence of these defendants. The plaintiffs state that the negligent actions and/or inaction of these defendants as plead herein each and/or collectively caused the injuries to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of their negligence.

Nervous Shock

34. The plaintiffs state that these defendants' assault on Mr. Mohamed caused the plaintiff, Oumla Lal, to suffer nervous shock. The plaintiffs state that these defendants knew or ought to have known that Oumla Lal would suffer nervous shock upon viewing Mr. Mohamed's injuries. The plaintiffs further state that these defendants knew or ought to have known that their unlawful conduct, in assaulting and battering Mr. Mohamed, would cause nervous shock to Oumla Lal.

35. Without restricting the generality of the foregoing, the plaintiff, Oumla Lal, continues to suffer anxiety, depression and physical and psychological conditions arising from the unlawful conduct of these defendants.

LIABILITY OF THE SGT. FINDLAY, P.C. SILIPO AND P.C. WYATT

Abuse of Public Office/ Misfeasance in Public Office

36. The defendants Sgt. Findlay, P.C. Silipo, and P.C. Wyatt are holders of public office. The plaintiffs repeat and rely upon the facts as set out above and state that these police officers deliberately violated the law in refusing to investigate what they knew, or were reckless to the fact, was conduct that amounted to a criminal assault by their fellow police officers.

37. In addition, these defendants deliberately violated section 113 of the *Police Services Act* by intentionally refraining from causing the Special Investigations Unit to be notified regarding the police use of force that led to Mr. Mohamed's injuries. Having caused injuries and/or losses to the

plaintiffs, these defendants are liable to the plaintiffs for breach of public duty and/or misfeasance in public office.

38. The conduct of these defendants, as detailed in the above paragraphs, was deliberate, unlawful conduct done in bad faith in the exercise of public functions. The plaintiffs state that these defendants were aware or were reckless to the fact that the conduct was unlawful and likely to injure the plaintiffs. As such, the plaintiffs state that these defendants are liable for misfeasance in public office.

LIABILITY OF THE CHIEF AND THE BOARD

Vicarious Liability

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

Negligent Supervision and Training

40. In addition, the plaintiffs state that the Board and the Chief 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. The plaintiffs state that the Board and the Chief breached this standard of care, and were negligent in supervising the defendant police officers. The negligent actions and/or inaction of the Board and the Chief caused the injuries to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of its

negligence. Without restricting the generality of the foregoing, some of the particulars of this negligence are as follows:

- (i) The Board and Chief knew or ought to have known that the defendant police officers were insufficiently trained to be dealing with the public;
- (ii) The Board and Chief 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) The Board and Chief knew or ought to have known that the defendant officers were unfit to perform duties reasonably expected of police officers;
- (iv) The Board and the Chief failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *Police Services Act*; and
- (v) As of May 23, 2006, the Board knew or ought to have known that the defendant police officers were involved in the aforesaid incident with the plaintiff and the Board took no steps to inquire into the conduct of the officers.

Liability of John Doe and Jane Doe

41. The defendants, Police Officer John Doe and Police Officer Jane Doe, whose identities are unknown to the plaintiffs and are within the unique knowledge of the defendants, acting individually and/or collectively with the defendants, committed the torts of misfeasance in public office and negligence in respect of the plaintiff, Hafeez Mohamed.

DAMAGES

42. The plaintiffs state that as a direct result of the actions of the defendants, Mr. Mohamed incurred and continues to suffer from severe physical injuries, some of the particulars being:

- (i) a traumatic brain injury;

- (ii) a non-displaced fracture of several vertebrae of the neck;
- (iii) fracture of the floor of the left orbit;
- (iv) injuries to the upper extremities of the body, including but not limited to his head, neck and shoulder areas;
- (v) soft tissue damage to his chest and shoulder areas; and
- (vi) post concussion syndrome.

43. The plaintiffs state that as a direct result of the unlawful conduct of the defendants, the plaintiff, Mr. Mohamed, suffered and continues to suffer severe emotional, psychological and/or mental trauma, some of the particulars being:

- (i) Cognitive impairment;
- (ii) Persistent and debilitating headaches and dizziness;
- (iii) Blurred vision;
- (iv) depression;
- (v) anxiety;
- (vi) nervousness and irritability;
- (vii) mood disorders;
- (viii) insomnia and sleep disturbances; and
- (ix) nightmares and flashbacks.

44. The plaintiffs state that as a direct result of the actions of the defendants, Mr. Mohamed suffered a loss of income, the particulars of which will be disclosed prior to trial.

45. The plaintiffs further state that as a direct result of the actions of the defendants against Mr. Mohamed, the plaintiff, Oumla Lal, suffered and continues to suffer emotional, psychological

and/or mental trauma. These injuries are a consequence which the defendants knew or ought to have known would result from their wrongful conduct.

46. The plaintiffs plead and rely upon the relevant provisions of the *Family Law Act*. In particular, Oumla Lal, Lori Aleena Mohamed, Sasha Naila Mohamed, Saffir Mohamed, and Hamidan Mohamed enjoyed and continue to enjoy a close and loving relationship with Mr. Mohamed and as such suffered a loss of care, guidance and companionship as a result of the injuries incurred by Mr. Mohamed.

47. The plaintiffs state that the defendants are additionally liable for violations of Mr. Mohamed's rights pursuant to sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, by virtue of the facts pleaded aforesaid.

48. In particular, the plaintiffs state that contrary to section 7 of the *Charter* Mr. Mohamed was deprived of his rights to security of the person in a manner that contravened the principles of fundamental justice. The plaintiffs further state that Mr. Mohamed was subjected, contrary to section 12 of the *Charter*, to cruel and unusual treatment by virtue of the conduct of the defendants.

49. The plaintiffs plead and rely upon the *Canadian Charter of Rights and Freedoms*, in particular section 24(1), and state that the plaintiffs are additionally entitled to a remedy that this Honourable Court considers appropriate and just in the circumstances.

50. By reason of the facts set out herein, and in particular the highhanded, shocking, contemptuous conduct of the defendants, the plaintiffs claim exemplary, aggravated and/or punitive damages.

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

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

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

54. The plaintiffs plead and rely upon the *Canadian Charter of Rights and Freedoms*.

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

Date of Issue: June 20, 2008

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Solicitors for the Plaintiffs

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-and-

The Durham Regional Police Services Board et al.

Plaintiffs

Defendants

Court File No.: CV-08-00355187

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in Toronto

STATEMENT OF CLAIM

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