

Court File No. *CW-11-16889*

ONTARIO
SUPERIOR COURT OF JUSTICE



BETWEEN:

**DR. TYCEER ABOUHASSAN, FATNA ABOUHASSAN, AMNI
KADRI, and MARIAM ASSAF**

Plaintiffs

-and-

**DETECTIVE DAVE VANBUSKIRK, STAFF SERGEANT MIKE
LAPORTE, DETECTIVE KENT MCMILLAN, SERGEANT AL
PIZZICAROLI, INSPECTOR RANDY GOULD, POLICE,
DETECTIVE SERGEANT PAUL BRIDGEMAN, DETECTIVE
SERGEANT PATRICK KEANE, POLICE CONSTABLE JOHN DOE,
POLICE CONSTABLE JANE DOE, THE WINDSOR POLICE
SERVICES BOARD, and CHIEF OF POLICE GARY SMITH**

Defendants

STATEMENT OF CLAIM

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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States 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, JUDGEMENT 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 \$100.00 for costs and have the costs assessed by the court.

29th Sept
Date: September 27, 2011

Issued by

J. Lamy
Local registrar

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

To:

Detective Dave Van Buskirk
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Staff Sergeant Mike Laporte
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Detective Kent McMillan
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Sergeant Al Pizzicaroli
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Inspector Randy Gould
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Staff Sergeant Paul Bridgeman
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Detective Sergeant Patrick Keane
c/o Windsor Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

Chief of Police Gary Smith
c/o Windsor Regional Police Headquarters
150 Goyeau Street
P.O. Box 60
Windsor, ON N9A 6J5

And To:

The Windsor Police Services Board
The Corporation of the City of Windsor
c/o Windsor Regional Police Headquarters
150 Goyeau Street
P.O. Box 60

Windsor, ON N9A 6J5

And To:

The Registrar of this Honourable Court

CLAIM

1. The plaintiff, Dr. Tyceer Abouhassan, 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 \$5,000,000.00;
 - 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 ss 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 HST payable pursuant to the *Excise Act*; and
 - h) Such further and other relief as this Honourable Court deems just.

2. The plaintiffs, Fatna Abouhassan, Amni Kadri and Mariam Assaf, 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) 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) Damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*;
- g) Pre and post judgment interest pursuant to section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43;
- h) Their costs of this action on a solicitor and client basis, together with HST payable pursuant to the *Excise Act*; and
- i) Such further and other relief as this Honourable Court deems just.

INTRODUCTION

3. Dr. Tyceer Abouhassan ("Dr. Abouhassan") is a 38 year old doctor specializing in endocrinology. On April 22, 2010, he was gratuitously and viciously assaulted by Detective David Van Buskirk ("Van Buskirk") of the Windsor Police Service. Dr. Abouhassan's injuries included a fractured nose, a laceration on his left eyelid which required suturing, a swollen and bruised face, bruising to his chest and ribs, a concussion, a detached retina, and diplopia, all caused by repeated blows to his face, head and chest area.

4. In a general occurrence report prepared by Van Buskirk to support a charge of assault police against Dr. Abouhassan, he falsely claimed that Dr. Abouhassan had initially struck him. Unbeknownst to Van Buskirk, there was a video that captured the altercation from beginning to end. There were also civilian eye witnesses who witnessed the altercation.

5. The video and the eyewitness accounts are all consistent in confirming that Dr. Abouhassan was attacked by Van Buskirk with no provocation from Dr. Abouhassan. At no time was Dr. Abouhassan ever able to even defend himself, much less attack Van Buskirk.

6. Despite the irrefutable video evidence and the consistent eye witness accounts, (no eye witness supports Van Buskirk's version of events), the defendants Bridgeman and McMillan, pursued a sham criminal investigation of Dr. Abouhassan, laying a charge of assault police against him despite the evidence to the contrary. These defendants, along with Detective Sergeant Patrick Keane, first conspired to cover for Van Buskirk through the charge against Dr. Abouhassan and

then conspired to offer to withdraw the charge if Dr. Abouhassan agreed not to commence proceedings against Van Buskirk.

7. The Plaintiffs state that the actions of the police defendants support a claim for punitive damages as these facts demonstrate the pervasive and malicious operation of the Windsor Police culture against an innocent member of the public.

8. Eventually, Van Buskirk was arrested and charged with assault causing bodily harm and public mischief.

THE PARTIES

9. The plaintiff, Dr. Tyceer Abouhassan, was at all material times 37 years old. He is a resident of the City of Windsor in Essex County. The plaintiffs state that Dr. Abouhassan was the victim of assault and battery, malicious prosecution, misfeasance in public office, negligence, negligent investigation, conspiracy and false imprisonment by the defendant police officers.

10. The plaintiff, Fatna Abouhassan is the mother of the plaintiff, Dr. Abouhassan. She resides in the City of Windsor.

11. The plaintiff, Amni Kadri is the sister of the plaintiff, Dr. Abouhassan. She resides in the City of Mississauga.

12. The plaintiff, Mariam Assaf is the sister of the plaintiff, Dr. Abouhassan. She resides in the City of Windsor.

13. The defendant, Van Buskirk, is a resident of the Province of Ontario and was at all material times a Detective with the Windsor Police Service. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The plaintiffs' state that Van Buskirk committed assault and battery against Dr. Abouhassan, and acting individually and/or collectively with the other police defendants committed the torts of malicious prosecution, misfeasance in public office, negligence, nervous shock and false imprisonment.

14. The defendant, Staff Sergeant Mike Laporte (hereafter "Laporte"), is a resident of the Province of Ontario and was at all material times a Staff Sergeant with the Windsor Police Service. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The plaintiffs state that Laporte, acting individually and/or collectively with the other police defendants committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

15. The defendant, Detective Kent McMillan, is a resident of the Province of Ontario and was at all material times a Detective with the Windsor Police Service and was the police officer in charge of the management of the criminal investigation against Dr. Abouhassan. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The defendant McMillan, acting individually and/or collectively with the other police defendants, committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

16. The defendant, Sergeant Al Pizzicaroli (hereafter "Pizzicaroli"), is a resident of the Province of Ontario and was at all material times a Sergeant with the Windsor Police Service. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The defendant Pizzicaroli, acting individually and/or collectively with the other police defendants, committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

17. The defendant, Inspector Randy Gould (hereafter "Gould"), is a resident of the Province of Ontario and was at all material times an Inspector with the Windsor Police Service and was the Officer in Charge of the Criminal Investigations Branch which oversaw the investigation against Dr. Abouhassan. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The defendant Gould, acting individually and/or collectively with the other police defendants committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

18. The defendant, Staff Sergeant Paul Bridgeman (hereafter "Bridgeman"), is a resident of the Province of Ontario and was at all material times a Staff Sergeant with the Windsor Police Service

and is one of four officers in charge of the Criminal Investigative Branch. Bridgeman was the investigative supervisor with respect to the criminal investigation against Dr. Abouhassan. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The defendant Bridgeman, acting individually and/or collectively with the other police defendants committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

19 The defendant, Detective Sergeant Patrick Keane (hereafter "Keane"), is a resident of the Province of Ontario and was at all material times a Police Constable with the Windsor Police Service. As such, this defendant was and continues to be employed by the defendant, the Windsor Police Services Board. The defendant Keane, acting individually and/or collectively with the other police defendants committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

20 The defendant Police Officers John and Jane Doe, whose identities are unknown to the plaintiffs and 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 Windsor Police Service and as such were and continue to be employed by the defendant, the Windsor Police Services Board. These defendants, acting individually and/or collectively with the other police defendants, committed the torts of malicious prosecution, misfeasance in public office, false imprisonment, conspiracy and negligent investigation.

21 The defendant, Chief Gary Smith (hereafter "Chief") was at all material times the Chief of Police of the Windsor Police Service and is responsible at law for the selection, training, supervision, direction and control of police officers employed by the Windsor Police Service.

22 The defendant, the Windsor Police Services Board (hereafter the "Board") is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the city of Windsor. 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 Windsor Police Service, including the defendant police officers and the Chief.

THE FACTS

23. Dr. Abouhassan grew up in Windsor, Ontario, and attended medical school at the University of Ottawa. Upon completing his medical degree, Dr. Abouhassan moved to London, Ontario to complete his endocrinology fellowship at St. Joseph's Hospital.

24. On April 22, 2010, Dr. Abouhassan caught a VIA Rail train from London, Ontario, travelling to Windsor, Ontario to visit his family. Dr. Abouhassan boarded the train in London at 2:30 pm and arrived in Windsor at 4:25 pm.

25. Once he arrived at the Windsor train station, Dr. Abouhassan decided that he would jog to the Jackson Park Medical Centre to inquire about office space, as he was in the process of scouting locations to open his medical practice.

26. On April 22, 2010, Van Buskirk's daughter was participating in a tennis lesson at the Parkside Tennis Club. After the lesson, a male, described as white, 35-40ish, 5'9", skinny build, 150-160 lbs, unshaven, glasses, short salt and pepper hair, wearing a green t-shirt and black faded Levis jeans, approached Van Buskirk's daughter and began speaking to her. The male was asked to leave the premises by Parkside employees. The male was later seen approaching Mrs. Van Buskirk's vehicle when she picked up her daughter from the tennis club.

27. Van Buskirk's daughter apprised him of the incident and Van Buskirk took it upon himself to attend at the tennis club to investigate further. On route to the tennis club, Van Buskirk saw Dr. Abouhassan jogging towards Jackson Park Medical Centre and followed him.

28. When Dr. Abouhassan arrived at Jackson Park Medical Centre, he placed his back-pack on the window sill and began searching through it for his cell phone. While he was searching for his

phone, he was approached from behind by Van Buskirk. Van Buskirk was not dressed in uniform and at no time during the encounter did Van Buskirk identify himself as a police officer.

29. Van Buskirk asked Dr. Abouhassan why he had just been running through the park and Dr. Abouhassan informed Van Buskirk that he had not been running through the park and asked Van Buskirk who he was. Van Buskirk then asked Dr. Abouhassan why he had been harassing a girl in the park and Dr. Abouhassan told him that he had not harassed anyone and again asked Van Buskirk to identify himself. Van Buskirk did not identify himself as a police officer.

30. Van Buskirk pushed Dr. Abouhassan up against the glass window and began punching him in the head and the face. Dr. Abouhassan did not consent to the said application of force. As a result of the beating, Dr. Abouhassan fell to the ground, unconscious. Van Buskirk continued to punch Dr. Abouhassan once he was on the ground and unable to protect himself in any way. The force used by Van Buskirk was unlawful, excessive and unreasonable.

31. When Dr. Abouhassan regained consciousness, he overheard Van Buskirk on the phone with his wife. Van Buskirk placed two other calls, one reporting that an officer had been assaulted and requesting a prisoner transport vehicle and an ambulance and the other to an unknown individual.

32. Van Buskirk sat Dr. Abouhassan up on the curb and began searching his back-pack while they waited for Van Buskirk's wife to arrive at the parking lot. When Van Buskirk's wife arrived, she advised him that Dr. Abouhassan was not the man she had seen earlier at the tennis club. Van Buskirk had neither reasonable grounds nor reasonable suspicion to detain and search Dr. Abouhassan, before or after he arrested him.

33. Following the unlawful detention, search and assault, an ambulance arrived on the scene and Dr. Abouhassan was transported to Hôtel Dieu Grace Hospital's emergency room. Dr. Abouhassan was escorted to the hospital by Constable Stock. Constable Stock was present at the hospital with Dr. Abouhassan until he was relieved by other officers.

34. At the hospital, there were approximately 15 uniformed officers standing outside of Dr. Abouhassan's emergency room. The number of officers present at the hospital was witnessed by hospital staff, specifically Dr. Abouhassan's emergency room physicians, Dr. Vail and Dr. Saad.

35. It was only while Dr. Abouhassan was at the hospital and was being taken for x-rays and a CT scan that he was advised that he was in police custody and would have to be escorted by an officer. The defendant Pizzicaroli attended at Hôtel Dieu Grace Hospital emergency room to relieve Constable Stock and for the sole purpose of unlawfully detaining Dr. Abouhassan in police custody. Later that evening, the defendant Laporte attended at the hospital and served Dr. Abouhassan with a "promise to appear".

36. As a result of the assault against Dr. Abouhassan by Van Buskirk, Dr. Abouhassan suffered a broken nose. In addition, his eyelid was split open, he had a concussion, severe facial bruising and suffered a detached retina.

37. Despite the fact that defendants Pizzicaroli and Laporte were aware that Dr. Abouhassan had suffered serious bodily injuries as a result of the unlawful assault by Van Buskirk, none of the defendants contacted the Special Investigations Unit ("S.I.U.") as required by the *Police Services Act Regulations*. On May 11, 2010, Dr. Abouhassan contacted the S.I.U. to report the assault.

38. Van Buskirk knowingly provided a false occurrence report in order to justify his illegal assault, detention and search of Dr. Abouhassan and to further the malicious prosecution of Dr. Abouhassan. Van Buskirk noted in his occurrence report that his gun and badge were clearly visible. Van Buskirk stated that he identified himself as Windsor Police and asked Dr. Abouhassan if he had just been at the tennis club. Van Buskirk stated that it was at this time that Dr. Abouhassan reached out and grabbed Van Buskirk by the shirt and hit Van Buskirk in the face with his right fist. In an attempt to defend himself, Van Buskirk stated that he then hit Dr. Abouhassan once which caused Dr. Abouhassan to fall to the ground. At this time, Van Buskirk stated that he advised Dr. Abouhassan that he was under arrest for assault police.

39. The defendant McMillan was assigned to review and investigate the incident between Dr. Abouhassan and Van Buskirk. McMillan reviewed the videotapes from the Jackson Park Health Centre and spoke to numerous civilian witnesses. The video corroborates the accounts given by the civilian witnesses about the assault. The video shows Van Buskirk approaching Dr. Abouhassan at which time there is a short conversation. The video then shows Van Buskirk grabbing Dr. Abouhassan by his neck and then Van Buskirk punching Dr. Abouhassan with his right fist in the head. The video shows Dr. Abouhassan putting his hands up in the air in attempt to defend himself from the blows. Van Buskirk is shown punching Dr. Abouhassan two more times before Dr. Abouhassan falls to the ground. When Dr. Abouhassan is on the ground, the video shows Van Buskirk standing over him and it appears that he again strikes Dr. Abouhassan in the head. At no time does the video show Dr. Abouhassan striking or attempting to strike Van Buskirk. Despite having the video and eye witness evidence to the contrary, McMillan created an occurrence report alleging that Dr. Abouhassan had assaulted Van Buskirk in order to aide Van Buskirk's cover up.

40. In an attempt to aid in the cover up, two Windsor Police Officers contacted Dr. Abouhassan's criminal lawyer in an attempt to broker deals to withdraw the charge against Dr. Abouhassan in exchange for Dr. Abouhassan not making a complaint about Van Buskirk. Dr. Abouhassan was informed by his criminal lawyer, Anthony Barile, that he received two calls regarding offers from officers with the Windsor Police Service; one from a Senior Detective on Monday April 26, 2010, and the other from a Sergeant on Friday April 30, 2010.

41. The first offer that was presented to Mr. Barile came from the defendant Detective Sergeant Patrick Keane. Keane informed Mr. Barile that the charges against Dr. Abouhassan would be withdrawn if he agreed not to file a complaint against Van Buskirk. Mr. Barile presented the offer to Dr. Abouhassan on Tuesday April 27, 2010, at Mr. Barile's office. Dr. Abouhassan was accompanied by his cousin, Rachid Abouzenni, and his uncle, Gassan Abouhassan.

42. The second offer was received on Friday April 30, 2010. This offer was presented by the defendant Detective Sergeant Paul Bridgeman. Bridgeman offered to withdraw the charges if Dr. Abouhassan agreed not to initiate criminal proceedings against Van Buskirk. Mr. Barile presented this offer to Dr. Abouhassan on Saturday May 1, 2010, at Mr. Barile's office. Dr. Abouhassan

attended the May 1, 2010, meeting with his friend, Mr. Eddie Kadri, and a private investigator working on the matter, Mr. Peter Coloufis.

43. Dr. Abouhassan refused both offers. Although Dr. Abouhassan was given a "promise to appear" when he was released from the hospital, an Information was not sworn against him until May 4, 2010, after he refused to accept the offers. The charges against Dr. Abouhassan were stayed by the Crown on June 15, 2010.

44. On May 11, 2010, Dr. Abouhassan filed a complaint with the Office of the Independent Police Review Director ("OIPRD") alleging misconduct on the part of Van Buskirk, McMillan and Bridgeman in relation to the April 22, 2010, assault against Dr. Abouhassan by Van Buskirk and the subsequent laying of charges against Dr. Abouhassan for assault police. The complaint was investigated by OIPRD investigators and the investigators concluded the following:

- a) That Van Buskirk committed the offences of discreditable conduct, excessive use of force, unlawful arrest and deceit;
- b) That McMillan committed the offence of discreditable conduct and deceit; and
- c) That Bridgeman committed the offence of discreditable conduct and neglect of duty.

45. On October 22, 2010, Dr. Abouhassan filed a subsequent complaint with the OIPRD alleging misconduct on the part of Keane and Bridgeman with respect to their attempts to broker a deal to withdraw the charges against Dr. Abouhassan in exchange for him agreeing not to pursue criminal charges against Van Buskirk. The complaint was investigated by OIPRD investigators and the allegations against Kean and Bridgeman were substantiated and both were charged with discreditable conduct under the *Police Services Act*.

LIABILITY OF VAN BUSKIRK

Assault

46. The plaintiffs state that the defendant Van Buskirk committed an assault on Dr. Abouhassan. In particular, and without restricting the generality of the foregoing, this defendant

intentionally applied force to the person of Dr. Abouhassan 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 Dr. Abouhassan.

Abuse of Public Office/ Misfeasance in Public Office

47. The defendant Van Buskirk is a holder of public office. The plaintiffs repeat and rely upon the facts as set out above and state that the defendant Van Buskirk deliberately violated the law in committing an assault on Dr. Abouhassan.

48. The plaintiffs further state that Van Buskirk knowingly provided a false occurrence report to the investigating officers in order to justify his unlawful assault, detention and search of Dr. Abouhassan and to initiate a malicious prosecution against Dr. Abouhassan.

49. Van Buskirk's conduct, as detailed in paragraphs 28-31 and paragraph 37-38, was deliberate, unlawful conduct done in bad faith in the exercise of public functions. The plaintiffs state that Van Buskirk was aware or was reckless as to the fact that his conduct was unlawful and likely to injure Dr. Abouhassan. Without restricting the generality of the foregoing, Van Buskirk knowingly and maliciously violated sections 122, 139, 140 and 266 of the *Criminal Code of Canada*. In addition, the plaintiffs state that Van Buskirk failed to act in accordance with the duties outlined in section 42 of the *Police Services Act* and engaged in misconduct as defined in section 80(1) of the *Police Services Act*. In addition, the plaintiffs state that Van Buskirk violated sections 2(a), 2(c), 2(d), 2(f) and 2(g) of the Code of Conduct (Ontario Regulation 268/10). As such, the plaintiffs state that Van Buskirk is liable for misfeasance in public office.

Malicious Prosecution

50. The plaintiffs state that the prosecution of Dr. Abouhassan was carried out maliciously, without reasonable and probable grounds and for the unlawful purpose of injuring Dr. Abouhassan. The plaintiffs state that this misconduct by Van Buskirk was deliberate and actuated by malice. Having caused injuries and/or losses to the plaintiff, Van Buskirk is liable to the plaintiff, for malicious prosecution. Without restricting the generality of the aforementioned unreasonable and malicious conduct of Van Buskirk, the conduct includes the following:

- i. The charges were stayed;
- ii. The charges laid against Dr. Abouhassan were initiated and were continued in the absence of reasonable and probable grounds;
- iii. The proceeding against Dr. Abouhassan was actuated by malice for the purpose of covering up Van Buskirk's unlawful assault; and
- iv. Dr. Abouhassan suffered embarrassment and loss of reputation, was deprived of his liberty and experienced financial loss including the cost of defending against the criminal prosecution.

Negligence

51. The plaintiffs state that Van Buskirk owed a duty of care to Dr. Abouhassan to take reasonable care for his safety. The plaintiffs state that Van Buskirk breached the duties of care he owed to Dr. Abouhassan and accordingly, is liable in negligence to the plaintiffs. The plaintiff states that the injuries he suffered arose as a direct result of the negligence of this defendant. The plaintiff states that the negligent actions and/or inaction of this defendant as plead herein each and/or collectively caused the injuries to the plaintiff, a consequence this defendant knew or ought to have known would occur as a result of his negligence.

False Imprisonment

52. The plaintiff states that Van Buskirk falsely imprisoned Dr. Abouhassan by intentionally confining him by force; first, when he forcibly restrained him and second, when he placed him in the ambulance under police escort and thereafter had him detained by various police officers at the hospital. The plaintiff states that the defendant Van Buskirk had no legal justification to detain or imprison Dr. Abouhassan.

Nervous Shock

53. The plaintiffs state that the defendant Van Buskirk's assault on Dr. Abouhassan caused the plaintiffs Fatna Abouhassan, Amni Kadri, and Mariam Assaf to suffer nervous shock. The plaintiffs state that the defendant Van Buskirk knew or ought to have known that the plaintiffs Fatna

Abouhassan, Amni Kadri, and Mariam Assaf would suffer nervous shock upon viewing Dr. Abouhassan's injuries. After Dr. Abouhassan was released from the hospital and returned home to his family, the plaintiffs suffered severe emotional distress in seeing the condition that Dr. Abouhassan was in as a result of the assault by Van Buskirk. The plaintiffs further state that the defendant Van Buskirk knew or ought to have known that his unlawful conduct, in assaulting and battering Dr. Abouhassan, would cause nervous shock to plaintiffs Fatna Abouhassan, Amni Kadri, and Mariam Assaf.

54. Without restricting the generality of the foregoing, the plaintiffs Fatna Abouhassan, Amni Kadri, and Mariam Assaf, continue to suffer anxiety, depression and physical and psychological conditions arising from the unlawful conduct of the defendant Van Buskirk.

LIABILITY OF THE INVESTIGATING OFFICERS

55. The investigating officers are comprised of the defendants McMillan, Laporte, Pizzicaroli, Gould, Bridgeman, Keane and Officers Jane and John Doe. The investigating officers were responsible for the entirety of the investigation into the incidents of April 22, 2010, and were responsible for the continuation of the baseless charges against Dr. Abouhassan.

Abuse of Public Office/ Misfeasance in Public Office

56. 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 police officers deliberately violated the law in assisting in the prosecution of a man they knew was innocent or were reckless to the fact that he was innocent. The plaintiffs' further state that the investigating officers violated the law in refusing to investigate what they knew, or out to have known, was conduct that amounted to a criminal assault and public mischief by Van Buskirk.

57. In addition, the plaintiffs state that the defendant McMillan created inaccurate occurrence reports alleging that Dr. Abouhassan had assaulted Van Buskirk when he had video and eye witness evidence contradicting the claims of Van Buskirk. The plaintiffs state that the defendant Bridgeman, after viewing the video of the assault on numerous occasions, knew or ought to have known that the statement of events given by Van Buskirk was false and that Dr. Abouhassan had

not assaulted Van Buskirk. Despite this evidence, Bridgeman approved the charges against Dr. Abouhassan.

58. The plaintiffs' state that the defendants Pizzicaroli and Laporte, despite having knowledge that Dr. Abouhassan suffered serious bodily injuries as a result of the assault by Van Buskirk, deliberately chose not to contact the S.I.U. as required by the *Police Services Act Regulations*.

59. The plaintiffs further state that the defendants Bridgeman and Keane, deliberately and maliciously attempted to coerce Dr. Abouhassan not to lay criminal charges or a complaint against Van Buskirk in exchange for the Windsor Police Service withdrawing the unlawful criminal charges against Dr. Abouhassan.

60. The investigating police officers' conduct, as detailed in the above paragraphs, was deliberate, unlawful conduct done in bad faith in the exercise of public functions. The plaintiffs state that the investigating police officers were aware or were reckless to the fact that the 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 sections 122, 139, 140 of the *Criminal Code of Canada*. The plaintiffs state that the investigating officers failed to act in accordance with the duties outlined in section 42 of the *Police Services Act* and engaged in misconduct as defined in section 80(1) of the *Police Services Act*. In addition, the plaintiffs state that these defendants violated sections 2(a), 2(c), 2(d), 2(f) and 2(g) of the Code of Conduct (Ontario Regulation 268/10). As such, the plaintiffs state that the investigating police officers are liable for misfeasance of public office.

Malicious Prosecution

61. The plaintiffs state that the prosecution of Dr. Abouhassan was carried out maliciously, without any reasonable or probable grounds and for the unlawful purpose of injuring Dr. Abouhassan. The plaintiffs state that this misconduct by the investigating police officers was deliberate and actuated by malice. Having caused injuries and/or losses to the plaintiff, the investigating police officers are liable to the plaintiff, for malicious prosecution. Without restricting the generality of the aforementioned unreasonable and malicious conduct of the investigating police officers, the conduct includes the following:

Negligent Investigation

63. The plaintiffs further state that the investigating police officers negligently investigated Van Buskirk's account of the April 22, 2010 assault. Further, the plaintiffs state that the investigating officers ignored video and eye witness evidence that was contrary to the account given by Van Buskirk of the assault. The plaintiffs state that when the investigating police officers embarked on an investigation of Dr. Abouhassan and the assault of April 22, 2010, 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 Dr. Abouhassan were stayed on June 15, 2010. The plaintiffs state that the investigating police officers breached the ongoing duty of care that they owed to Dr. Abouhassan and, accordingly, are liable for negligent investigation.

64. The plaintiffs state that the harm suffered by Dr. Abouhassan arose as a direct result of the negligence of the investigating police officers at the pre and post charge stages. The plaintiffs state that the negligent actions and/or inactions of these defendants as plead 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. These defendants 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 that did not have reasonable and probable grounds;
- ii. These defendants relied solely on the statements of Van Buskirk and willfully ignored video and eye witness evidence that contradicted Van Buskirk's statements;
- iii. Upon learning of the contradictory video and eye witness evidence of the April 22, 2010 assault, these defendants failed to determine whether there were reasonable and probable grounds to believe that the plaintiff had committed the alleged crime;

- 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 Windsor 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.

Conspiracy

65. The defendants McMillan, Gould, Bridgeman and Keane, acting individually and/or collectively entered into an agreement, constituting a conspiracy, to unlawfully cause and maintain the baseless charge against Dr. Abouhassan.

66. The essential elements of this plan involved unlawfully charging Dr. Abouhassan and producing false police reports thereby maintaining the malicious prosecution against Dr. Abouhassan.

67. In addition, these defendants conspired to obstruct justice in attempting to broker a deal with Dr. Abouhassan in which he would agree not press charges against Van Buskirk in exchange for the baseless criminal charges against him being withdrawn.

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

69. These defendants knew or ought to have known that compliance with the agreement would place Dr. Abouhassan at risk for injury.

LIABILITY OF THE CHIEF AND THE BOARD

Vicarious Liability

70. 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

71. 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 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 were insufficiently trained in conflict resolution and de-escalation techniques with the public;
- (iii) 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;
- (iv) The Board and Chief knew or ought to have known that the defendant officers were unfit to perform duties reasonably expected of police officers; and

- (v) 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*.

DAMAGES

72. The plaintiffs state that as a direct result of the actions of the defendants, Dr. Abouhassan suffered and continues to suffer from severe physical injuries, some of the particulars being:

- (i) Severe facial bruising, lacerations and abrasions;
- (ii) Detached retina;
- (iii) Broken nose, and bruising to his chest and ribs;
- (iv) Diplopia; and
- (v) Concussion and post-concussion syndrome.

73. The plaintiffs state that as a direct result of the unlawful conduct of the defendants, the plaintiff, Dr. Abouhassan, 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.

74. The plaintiffs state that as a direct result of the actions of the defendants, Dr. Abouhassan suffered a loss of income, some of the particulars being:

- i. At all relevant times, Dr. Abouhassan was an endocrine fellow at St. Joseph's Hospital in London, Ontario. The injuries Dr. Abouhassan suffered as result of the April 22, 2010, assault resulted in a six-month delay in Dr. Abouhassan being able to commence operating his own private medical practice; and
- ii. As a result of the loss of reputation, Dr. Abouhassan was deprived of numerous opportunities to gain further employment through referrals from other doctors.

75. The plaintiffs further state that as a direct result of the actions of the defendants against Dr. Abouhassan, the plaintiffs, Fatna Abouhassan, Amni Kadri, and Mariam Assaf, suffered and continue 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.

76. The plaintiffs plead and rely upon the relevant provisions of the *Family Law Act*. In particular, these plaintiffs, Fatna Abouhassan, Amni Kadri, and Mariam Assaf, enjoyed and continue to enjoy a close and loving relationship with Dr. Abouhassan and as such suffered a loss of care, guidance and companionship as a result of the injuries incurred by Dr. Abouhassan.

77. The plaintiffs state that the defendants are additionally liable for violations of Dr. Abouhassan's rights pursuant to sections 7, 8, 9, 10(a), and 12 of the *Canadian Charter of Rights and Freedoms*, by virtue of the facts pleaded aforesaid.

78. In particular, the plaintiffs state that contrary to section 7 of the *Charter*, Dr. Abouhassan was deprived of his rights to liberty and security of the person in a manner that contravened the principles of fundamental justice. The plaintiffs further state that Dr. Abouhassan was subject to an unreasonable search and seizure, contrary to section 8 of the *Charter*, owing to the unlawful search of Dr. Abouhassan's back-pack conducted by the defendant Van Buskirk. The plaintiffs further state that, contrary to section 9 of the *Charter*, Dr. Abouhassan was arbitrarily detained as a result of the conduct of the defendants. The plaintiffs further state that the defendants did not promptly inform Dr. Abouhassan of the reasons for his arrest and detention, contrary to section 10(a) of the *Charter*. The plaintiffs further state that Dr. Abouhassan was subjected, contrary to section 12 of the *Charter*, to cruel and unusual treatment by virtue of the conduct of the defendants.

79. 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.

80. 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.

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

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

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

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

85. The plaintiffs propose that this action be tried in the City of Windsor.

DATE:

September 27, 2011

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Court File No: ~~09-383001~~
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ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced in Windsor

STATEMENT OF CLAIM

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