

QV-11-438741

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

AMANDA MANON on her own behalf and as the Litigation Administrator of the Estate of
Alexander Manon, Deceased, LUISA MANON, ALEJANDRO MANON and
DAYANA MANON

Plaintiffs

-and-

POLICE SERVICES BOARD, CONSTABLE MICHAEL ADAMS,
MARTIN BLOWER, TORONTO POLICE SERVICE OFFICERS JOHN
JANE DOE, and CHIEF OF POLICE WILLIAM BLAIR

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

If you are served in another province or territory of Canada or in the United States of
America, the period for serving and filing your statement of defence is forty days. If you are
served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent
to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten
more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN
AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF
YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID
OFFICE.

IF YOU PAY THE PLAINTIFFS CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs claim and \$1,000 for costs and have the costs assessed by the court.

Date: November 3, 2011

Issued by  Local registrar

Address of Court office: Ontario Superior Court of Justice
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: TORONTO POLICE SERVICES BOARD
Chair Alok Mukherjee
40 College Street
Toronto, ON
M5G 2J3

AND TO: CHIEF OF POLICE WILLIAM BLAIR
Toronto Police Service
40 College Street
Toronto, ON M5J 2J3

AND TO: Constable Michael Adams
Toronto Police Service
31 Division
40 Norfinch Dr.
Toronto, ON M3N 1X1

AND TO: Constable Stuart Blower
Toronto Police Service
31 Division
40 Norfinch Dr.
Toronto, ON M3N 1X1

AND TO: TORONTO POLICE SERVICE OFFICERS JOHN AND/OR JANE DOE
Toronto Police Service Headquarters
40 College Street
Toronto, ON M5J 2J3

AND TO: This Honourable Court

CLAIM

1. The plaintiff, the Estate of Junior Alexander Manon, claims:

- a. Damages for assault, battery, misfeasance in public office and negligence in the amount of \$1,000,000.00 (one million dollars);
- b. Special damages in an amount to be determined with particulars to be provided prior to trial;
- c. Punitive, exemplary and/or aggravated damages in the amount of \$500,000.00 (five hundred thousand dollars);
- d. Pre- and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- e. Costs of this action on a substantial indemnity scale; together with HST payable pursuant to the *Excise Act*;
- f. Such further and other relief as this Honourable Court deems just.

2. The plaintiffs, Amanda Manon, Luisa Manon, Alejandro Manon, and Dayana Manon, claim:

- a. Damages for nervous shock and misfeasance in public office in the amount of \$1,000,000.00 (one million dollars);
- b. Special damages in an amount to be determined with particulars to be provided prior to trial;
- c. Punitive, exemplary and/or aggravated damages in the amount of \$500,000.00 (five hundred thousand dollars);
- d. 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);

- 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. Costs of this action on a substantial indemnity scale; together with HST payable pursuant to the *Excise Act*;
- g. Costs of legal representation at the Inquest into the Death of Junior Alexander Manon;
- h. Such further and other relief as this Honourable Court deems just.

INTRODUCTION

3. This claim arises from events which occurred in the early evening of May 5, 2010. Junior Alexander Manon was travelling in a vehicle in the area of Steeles Avenue and Founders Road in the City of Toronto with his friend, Kevin Faudar, when the vehicle was sandwiched by two Toronto Police Service police cruisers and pulled over.

4. Junior Manon and his friend Kevin Faudar were questioned by the officers and both were cooperative with the police questioning. The officers determined that Junior Manon would be arrested for driving with a suspended license. When the police attempted to arrest Junior Manon, he began running across Steeles Avenue and was chased by the police officers. When the police officers finally caught up with Junior Manon they wrestled him to the ground where the officers repeatedly struck Junior Manon in the head with a police walkie-talkie and closed fists. Junior Manon lay on the ground in the prone position while officers applied their full body weight to his back.

5. Once Junior Manon was unresponsive, instead of assessing his condition, the police handcuffed him and continued to hold him face down on the ground while they applied pressure to his neck and back area. When police finally checked for a pulse, the pulse was very faint and

an ambulance was called. When the ambulance arrived on the scene, Junior Manon had no vital signs. Junior Manon was pronounced dead at the hospital.

6. The cumulative effect of the chase by police, the impact of the violent assaults, and the restraint, caused Junior Manon to collapse, lose consciousness and die. The defendant officers knew, or ought to have known, that serious injuries, death and other damages were the likely result of their acts and omissions.

THE PARTIES

7. Junior Alexander Manon ("Junior Manon") was born on December 29, 1991, and was a resident of the City of Toronto in the Province of Ontario. Junior Manon was a healthy young man with no history of any medical problems.

8. Luisa Manon was Junior Manon's mother. Junior Manon resided with his mother, his father Alejandro Manon and his sister Amanda Manon. Dayana Manon was Junior Manon's sister. All of these plaintiffs enjoyed a close and loving relationship with Junior Manon. Luisa Manon, Alejandro Manon, Amanda Manon and Dayana Manon are all residents of the City of Toronto.

9. The defendant, Constable Michael Adams, was at all material times employed by the Toronto Police Service and is a resident of the Province of Ontario. The tortious actions of Constable Michael Adams, acting individually or collectively with other police officers, whose identities are unknown to the plaintiffs, resulted in Junior Manon's injuries, suffering and ultimate death.

10. The defendant, Constable Stuart Blower, was at all material times employed by the Toronto Police Service and is a resident of the Province of Ontario. The tortious actions of Constable Stuart Blower, acting individually or collectively with other police officers, whose identities are unknown to the plaintiffs, resulted in Junior Manon's suffering and ultimate death.

-11. The defendant police officers John Doe and/or Jane Doe are one or more officers who, at all material times, were employed by the Toronto Police Service. The defendants' identity is unknown to the plaintiffs and is within the unique knowledge of the defendants. The tortious actions of the defendant(s), acting individually or collectively with other police officers, whose identities are unknown to the plaintiffs, resulted in Junior Manon's injuries, suffering and ultimate death.

12. The defendant Chief of Police William Blair (hereinafter "Chief Blair"), was at all material times the Chief of Police of the Toronto Police Service and was responsible for the supervision, training, direction and control of police officers employed by the Toronto Police Service, including the defendant police officers John and/or Jane Doe.

13. The defendant Toronto Police Services Board (hereinafter "Police Services 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 Toronto. 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 breaches of the *Charter* committed by members of the Toronto Police Service, including the defendant police officers and the Chief.

The events of May 5, 2010

14. In and around 6:30 p.m. on May 5, 2010, Junior Manon and his friend, Kevin Faudar, were riding in a car travelling west on Steeles Avenue in the City of Toronto. Junior Manon was driving the vehicle and Kevin Faudar was sitting in the front passenger seat. The vehicle stopped at a red light at the intersection of Keele Street and Steeles Avenue.

15. Two police cruisers pulled along either side of Junior Manon's vehicle at the red light. When the light turned green, Junior Manon proceeded through the light and the police cruisers then indicated for him to pull over. Junior Manon pulled the car over in front of a bus shelter at the intersection of Steeles Avenue and Founders Road. The defendant police officers approached the vehicle and requested identification from both Junior Manon and Kevin Faudar.

16. Junior Manon and Kevin Faudar provided the defendant police officers with their identification. One of the defendant police officers returned to his cruiser to run a check on Junior Manon and Kevin Faudar, while the other defendant police officer stayed and continued to speak with Junior Manon and Kevin Faudar. Junior Manon recognized one of the defendant police officers, as it was alleged that on a previous occasion, Junior Manon had spit in the defendant police officer's face.

17. The defendant officer returned to the vehicle and informed Junior Manon that he was going to be arrested as he was driving with a suspended license. The officer instructed Junior Manon to step out of the vehicle and move to the rear of the vehicle. Junior Manon complied with the officer's command and moved to the rear of the vehicle.

18. When the officer attempted to place handcuffs on Junior Manon, he slipped out of the grasp of the officer and began running across the street. The officer who had the previous altercation with Junior Manon screamed, "yeah!", and began chasing Junior Manon across the street.

19. The officers caught up with Junior Manon across the street in a grassy area on Founders Road. As Junior Manon was running he stumbled to the ground and one of the officers who had his hand on Junior Manon's shoulder stumbled. The officer then placed himself on Junior Manon's back to restrain him.

20. Junior Manon was lying face down on the ground, while one officer was positioned over him with his arm applying pressure to Junior Manon's neck and head. As Junior Manon lay helpless on the ground with one or both officers applying their weight on top of his back, the officers repeatedly punched Junior Manon's face, head and neck area both with closed fists and with a police "walkie talkie".

21. The officers continued to apply punches to Junior Manon's face, head and neck, until he lay motionless beneath them. The officers then placed Junior Manon in handcuffs, prior to checking for a pulse.

22. Junior Manon lay motionless in handcuffs when officers turned him over and felt that his pulse was weak and he was drifting in and out of consciousness. An ambulance was called and when the paramedics arrived on the scene they found that Junior Manon was without vital signs. Junior Manon was rushed to hospital where he was pronounced dead.

23. The *post-mortem* report prepared by the Province's Chief forensic pathologist concluded that the cause of death was positional asphyxia following struggle and exertion.

Liability of the Defendant Police Officers

a. Assault and Battery

24. The officers intentionally applied force to the person of Junior Manon without his consent.

25. The force used upon Junior Manon was not justifiable at law. The force applied was excessive and unreasonable in the circumstances. This force was applied in circumstances where the officers knew or ought to have known that the said force was excessive and would and/or could cause serious injuries, death and other damages.

b. Misfeasance in Public Office

26. The officers are holders of a public office. The plaintiffs repeat and rely upon the facts as set out above and state that the officers deliberately violated the law in committing an assault and unlawful restraint on Junior Manon. In the alternative, the officers were reckless and/or wilfully blind to whether their actions violated the law.

27. The officers acted with malice and/or for an improper purpose in that they knew, or were recklessly indifferent to whether, their actions would probably cause injury to the plaintiffs and their actions did so cause injury to the plaintiffs. Without restricting the generality of the foregoing, these officers' actions were motivated by anger at the conduct of Junior Manon in attempting to leave the scene and/or the prior altercation with one of the officers.

28. The conduct of the officers constitutes misfeasance in public office.

d. Negligence

29. The officers owe a duty of care to individuals they detain, arrest and/or imprison.

30. The officers breached the duty of care they owed to Junior Manon and the other plaintiffs and, accordingly, are liable in negligence to the plaintiffs. The injuries and suffering of Junior Manon, arose as a direct result of the negligence of these defendants. The negligent actions and/or inactions of the officers as plead herein each and/or collectively caused serious injuries, death and other damages to Junior Manon and/or injury to the plaintiffs, a consequence the officers knew or ought to have known would occur as a result of their negligence.

31. Without restricting the generality of the foregoing, some of the particulars of the negligence of the defendant police officers are as follows:

- a. They employed force in circumstances in which they knew or ought to have known that their actions would cause harm to the plaintiffs;
- b. They employed restraint techniques which they knew or ought to have known were not sanctioned by their use of force training and could likely result in serious injury or death to Junior Manon;
- c. They ignored their use of force training regarding proper restraint positions, in that they knew or ought to have known that restraining Junior Manon in the position he was in on the ground, had a real risk of injury or death to Junior Manon;
- d. They failed to initiate emergency care for Junior Manon in circumstances in which they knew or ought to have known that he was in medical distress;
- e. They failed at all material times to exercise the standard of care required by their position as police officers with the Toronto Police Service;
- f. The defendant officers acted with reckless disregard for the life of Junior Manon; and
- g. They 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.

e. Nervous Shock

32. The plaintiffs state that the defendant officers' assault on Junior Manon caused the plaintiffs Louisa Manon, Alejandro Manon, Amanda Manon and Dayana Manon to suffer nervous shock. The plaintiffs state that the defendant officers knew or ought to have known that the plaintiffs Louisa Manon, Alejandro Manon, Amanda Manon and Dayana Manon would

suffer nervous shock upon learning of the brutal assault and restraints which caused Junior Manon serious injuries, death and other damages. The plaintiffs further state that the defendant officers, knew or ought to have known that their unlawful conduct, in assaulting and restraining Junior Manon and causing him serious injuries, death and other damages, would cause nervous shock to the plaintiffs Louisa Manon, Alejandro Manon, Amanda Manon and Dayana Manon.

33. Without restricting the generality of the foregoing, the plaintiffs Louisa Manon, Alejandro Manon, Amanda Manon and Dayana Manon, continue to suffer anxiety, depression and physical and psychological conditions arising from the unlawful conduct of the defendant police officers.

Liability of Chief Blair and the Police Services Board

34. The defendants Chief Blair and the Police Services Board 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.

35. Chief Blair and the Police Services Board breached this duty of care, and were negligent in supervising the defendant police officers. The negligent actions and/or inaction of the Chief and the Police Services Board caused injury to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of their negligence.

36. Without restricting the generality of the foregoing, some of the particulars of the negligence of Chief Blair and the Police Services Board are as follows:

- a. They knew or ought to have known that the defendant police officers were insufficiently trained to be dealing with members of the public;
- b. They knew or ought to have known that the defendant police officers were insufficiently or incorrectly trained in proper restraint techniques;

- c. They knew or ought to have known that in 1995, Dr. James Young, then Chief Coroner for Ontario, released a memo warning of the dangers of restraining individuals on their stomach while applying pressure to their chest area. Despite knowledge of this memo, Chief Blair and the Police Services Board failed to ensure that the defendant police officers were adequately trained regarding the known fatal risks involved in certain restraint techniques and failed to implement training in proper techniques for restraint;
- d. They 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;
- e. They knew or ought to have known that the defendant officers were unfit to perform duties reasonably expected of police officers;
- f. They failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *Police Services Act*;
- g. They failed to maintain appropriate supervision and control over the defendant police officers;
- h. They knew or ought to have known that the defendant officers were incompetent/and or insufficiently skilled police officers having regard to their training, experience and record of previous incidents of improper or inappropriate conduct. In addition, the Chief and the Police Services Board knew or ought to have known that the defendant officers have engaged in similar excessive uses of force in the past and continue to engage in excessive uses of force; and

- i. They knew or ought to have known that the defendant officers have all been subject to numerous public and internal complaints for their excessive use of force.

Vicarious Liability of the Board

37. The plaintiffs state that the Board is responsible for the torts 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, and at common law.

Damages

38. The plaintiffs state that the negligence and intentional torts of the defendants individually and/or collectively caused serious injuries, death and other damages to Junior Manon.

39. The Estate of Junior Manon claims the damages in paragraph 1 herein pursuant to section 38 of the *Trustee Act*, R.S.O. 1990, c. T.23 arising from the defendants' assault, battery, misfeasance in public office and negligence as plead aforesaid.

40. The plaintiffs have suffered, and continue to suffer psychologically and emotionally as a direct result of the conduct of the defendants as plead aforesaid. The damages suffered by these plaintiffs are all consequences which the defendants intended or knew, or ought to have known, would result from their wrongful conduct in causing the death of Junior Manon.

41. The plaintiffs plead and rely upon the relevant portions of the *Family Law Act*, R.S.O. 1990, c. F.3. In particular, Junior Manon's mother, father and two sisters enjoyed a close and loving relationship with Junior and have suffered the loss of his guidance, care and companionship as a result of his wrongful death. These plaintiffs have also suffered pecuniary loss.

42. The plaintiffs have been out-of-pocket as a direct result of the wrongful acts of the defendants, including, and without restricting the generality of the foregoing:

- a. Funeral and associated expenses; and
- b. Legal fees in respect of proceedings other than the herein claimed, including a Coroner's Inquest.

43. As a direct result of the defendants' negligence, arising from the death of Junior Manon, the plaintiffs feel compelled to participate in an inquest into his death. It was foreseeable to the defendants that by contributing to the death of Junior Manon that his family would feel compelled to actively participate, through counsel, in an inquest to uncover all the circumstances surrounding his death.

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

45. The plaintiffs rely upon the *Negligence Act*, R.S.O. 1990, c. N.1. as amended, the *Police Services Act*, R.S.O. 1990, c. P.16, as amended; the *Criminal Code of Canada* and the *Family Law Act*, R.S.O. 1990, c. F.3.

46. The Plaintiffs propose that this action be tried in Toronto, Ontario.

DATE: November 3, 2011

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Plaintiffs

-and-

Toronto Police Services Board, et. al.
Defendants

Court File No: **QV-11-438791**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings Commenced in Toronto

STATEMENT OF CLAIM

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