



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

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August 22, 2014

BY FAX

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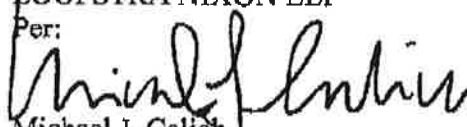
Borden Ladner Gervais LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4
Attention: Kevin McGivney

Dear Counsel:

**Re: Police Constable James Forcillo et al. ats.
Shar Bahadi, as Administrator of Estate for Sammy Yatim
Court File No. CV-13-490686
Our File No.: TORF315**

We are retained on behalf of the Defendant Police Constable James Forcillo in connection with the above captioned action. Enclosed please find our client's Statement of Defence which is served pursuant to the *Rules of Civil Procedure*.

Yours very truly,

LOOPSTRA NIXON LLP
Per:

Michael J. Calich

MJC/kd
Encl.

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Court File No: CV-13 -490686

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**SAHAR BAHADI, on her own behalf and as the Administrator
of the Estate of SAMMY ADIB YATIM, Deceased, and SARA
ANN YATIM by her litigation guardian, SAHAR BAHADI**

Plaintiffs

-and-

**POLICE CONSTABLE JAMES FORCILLO, POLICE CHIEF
WILLIAM BLAIR, TORONTO POLICE SERVICES BOARD,
OFFICER JOHN DOE AND OFFICER JANE DOE**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANT,
POLICE CONSTABLE JAMES FORCILLO**

1. This Defendant, Police Constable James Forcillo, admits the allegations set out in the first sentence of paragraph 10, the last sentence of paragraph 11, the first sentence of paragraph 13 and the first sentence of paragraph 18 of the Statement of Claim.
2. This Defendant has no direct knowledge or insufficient knowledge to plead as to the allegations set out in paragraphs 8, 9, 12, the second and third sentences of paragraph 13, the last sentence of paragraph 18 and paragraphs 19 and 20 of the Statement of Claim.
3. This Defendant denies the balance of the allegations set out in the Statement of Claim save and except as may be hereinafter specifically admitted.

4. This Defendant pleads that the allegations set out in paragraph 7 of the Statement of Claim are in law improperly pleaded and should be struck.

5. Regarding the allegations set out in paragraphs 11 and 13 of the Statement of Claim, this Defendant admits that at all material times the Toronto Police Services Board was a police services board and Police Chief William Blair was the Chief of Police of the Toronto Police Service, pursuant to the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, (the "Act"), with responsibilities and obligations, respectively, as set out therein.

6. This Defendant pleads that if the Plaintiffs have sustained or are entitled to any of the damages claimed in the Statement of Claim, which is not admitted but denied, the same were not caused by any fault, neglect, negligence or breach of duty on the part of this Defendant or anyone for whom he is in law responsible.

7. This Defendant pleads that on July 26, 2013, shortly before midnight, he was on duty in uniform in the course of his employment as a police constable with the Toronto Police Service operating a police scout car near the intersection of College Street and Shaw Street in the City of Toronto. He and his partner received a "hot shot" police radio communication advising that a male armed with a knife had attacked a woman on a westbound TTC streetcar near Dundas Street West and Grace Street.

8. The location of the reported incident was nearby. This Defendant and his partner were compelled to attend the location immediately to fulfil their duties pursuant to the *Act*, which included locating and engaging with the suspect identified in the radio call.

9. With emergency signals activated, this Defendant drove southbound on Shaw Street, turned left heading eastbound on Dundas Street West and observed a stationary westbound TTC streetcar near Bellwoods Avenue.

10. This Defendant drove the police cruiser eastbound on Dundas Street West and brought the cruiser to a halt facing eastbound immediately in front of, and blocking, the stationary westbound streetcar.

11. This Defendant observed numerous persons near the streetcar, and no other police officers. He was advised that the suspect was still on the streetcar.

12. This Defendant was obliged to take up a position between persons on the sidewalk and any armed suspect who might be on the street car and accordingly moved in front of the sidewalk a short distance from the open front door of the streetcar.

13. This Defendant pleads that he was possessed of sufficient information to make a lawful warrantless arrest of the suspect and believed on reasonable grounds that it was necessary to draw his firearm to protect himself and members of the public against the risk of serious bodily harm posed by an armed suspect who had reportedly attacked at least one person with a knife.

14. This Defendant observed and made direct eye contact with an adult male at the top of the stairs of the streetcar, later identified as the deceased, Sammy Yatim. The male appeared to be in his twenties, of medium height and build, holding a switchblade knife in his right hand with a narrow blade approximately five inches long held upright in the air.

15. This Defendant states that he perceived himself to be in a vulnerable position with little time to react given the short distance between them.

16. Regarding the allegations in paragraph 14 of the Statement of Claim, this Defendant could not be certain whether anyone remained on the streetcar as this could not be visually confirmed from his position.

17. With his service firearm pointed at the suspect, this Defendant ordered the suspect several times to drop the knife. The suspect appeared to be physically in control of himself and to hear and understand the police commands.

18. The suspect demonstrated no signs of being prepared to co-operate and to the contrary looked directly at this Defendant and responded several times in an aggressive and defiant manner.

19. Contrary to the allegations in paragraph 15 of the Statement of Claim, the cause of the suspect's conduct was not apparent.

20. This Defendant considered it necessary to ensure that the suspect remained on the streetcar, where he posed less of a risk and might be apprehended more efficiently. Accordingly, this Defendant focused his full attention on the suspect, who remained close to the open front door and capable of attempting to depart the streetcar.

21. This Defendant called for a Sergeant with a taser.

22. To discourage the suspect from attempting to leave the streetcar, this Defendant warned the suspect not to move forward. The suspect paused and remained stationary for a period of several seconds. Contrary to the allegations in paragraph 17 of the Statement of Claim, the suspect suddenly moved in a deliberate motion toward the open front door of the streetcar with the knife held out.

23. To protect against possible serious bodily harm to himself or others should the suspect depart the streetcar, this Defendant discharged his firearm toward the suspect.

24. The suspect initially fell down and then began raising himself, looking at this Defendant and continuing to hold the knife upright despite commands that he drop the knife, whereupon this Defendant again discharged his firearm toward the suspect.

25. Regarding the allegations set out in paragraph 14 of the Statement of Claim, this Defendant states that the operator of the TTC streetcar earlier had to escape the street car, while being threatened by the suspect, having remained onboard after passengers had piled out the front door in fear of the suspect.

26. This Defendant denies that emotional illness was the cause of the suspect's behaviour and if and to the extent the Plaintiffs allege otherwise, puts the Plaintiffs to the strict proof thereof.

27. This Defendant pleads that at all material times he acted in a reasonable, competent and professional fashion without negligence and in good faith, in compliance with his training and his duties and obligations as a police officer pursuant to the provisions of the *Act* and at common law.

28. This Defendant pleads that at all material times he used no more force than was reasonably necessary in the circumstances. This Defendant pleads and relies upon the provisions of sections 25 and 27 of the *Criminal Code* and pleads that in the circumstances he was justified in respect of the force which he was compelled to use.

29. This Defendant further pleads that if the Plaintiffs sustained or are entitled to the damages claimed in the Statement of Claim, which is not admitted but denied, the same were contributed to by the actions of the deceased, Sammy Yatim, the particulars of which include:

- a. engaging in violent criminal conduct, including attacking one or more persons with a knife and threatening many persons while armed with a knife;
- b. conducting himself in a threatening and aggressive manner toward police officers while armed with a knife;
- c. refusing to comply with lawful demands by police officers to drop the knife and not to move toward the open door of the street car;
- d. resisting lawful arrest; and
- e. consuming street drugs which affected his conduct and judgment.

30. This Defendant pleads and relies upon the provisions of the *Negligence Act* and of section 61(3) of *Family Law Act*, R.S.O. 1990, c.F.3, as amended and pleads that any successful claim of the Plaintiffs pursuant to the said *Family Law Act* is subject to reduction to the extent of the contributory actions of the deceased Sammy Yatim.

31. This Defendant further pleads and relies upon the provisions of section 61 of *Family Law Act* and pleads that the Plaintiffs claiming pursuant thereto are not entitled to claim punitive, aggregated or exemplary damages and such claims ought to be struck out.

32. This Defendant denies the Plaintiffs' claims for damages as set out in the Statement of Claim and in the alternative pleads that the amounts claimed in damages are excessive and not recoverable at law.

33. This Defendant therefore respectfully asks that this action be dismissed with costs.

Date: August 22, 2014

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TO: POLICE CHIEF WILLIAM BLAIR

TO: TORONTO POLICE SERVICES BOARD

TO: OFFICER JOHN DOE

TO: OFFICER JANE DOE

BAHADI et al
Plaintiffs

v.

POLICE CONSTABLE JAMES FORCILLO et al
Defendants

Court File: CV-13-490686

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
TORONTO

STATEMENT OF DEFENCE

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FACSIMILE TRANSMISSION PAGE**Date: August 22, 2014**

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