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August 22, 2014

RECEIVED
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VIA FACSIMILE

Mr. Julian Falconer
Falconers LLP
10 Alcorn Avenue
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Toronto, ON M4V 3A9

Dear Mr. Falconer:

**Re: Toronto Police Services Board et al ats Sahar Bahadi et al
Court File No. CV-13-490686
Our Matter No.: 017523.000702**

Please find enclosed our clients' Statement of Defence which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,

BORDEN LADNER GERVAIS LLP

*Borden Ladner Gervais
per:ti*

per: Kevin McGivney
KAM/ti
Encls.

TOR01: 5685888: v1

Court File No. CV-13-490686

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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 DEFENDANTS,
POLICE CHIEF WILLIAM BLAIR,
TORONTO POLICE SERVICES BOARD, OFFICER JOHN DOE AND
OFFICER JANE DOE**

1. The Defendants Police Chief William Blair, Toronto Police Services Board and Officers John Doe and Jane Doe ("these Defendants") have insufficient knowledge to admit or to deny the allegations or claims made in paragraphs 8 and 9 of the Statement of Claim and put the Plaintiffs to the strict proof thereof.

2. Except to the extent expressly admitted hereinafter, these Defendants deny the balance of the allegations or claims made in the Statement of Claim and put the Plaintiffs to the strict proof thereof.

3. These Defendants plead that paragraphs 7, 42 and 43 of the Statement of Claim are improper and ought to be struck from the Statement of Claim as they are either irrelevant or constitute, at best, the inappropriate pleading of evidence contrary to the Rules of Civil

Procedure and inserted for the purpose of rhetoric and colour. These Defendants reserve all rights to seek to strike such paragraphs notwithstanding the delivery of this Statement of Defence.

4. Concerning the allegations in paragraph 10 of the Statement of Claim, these Defendants admit that on July 27, 2013, P.C. James Forcillo was a member of the Toronto Police Service. These Defendants otherwise deny the allegations in the said paragraph.

5. Concerning the allegations made in paragraphs 11, 39, 40, 41 and 44 of the Statement of Claim, these Defendants admit that the Board is a police services board and plead that the duties and responsibilities of the Board are as set out in section 31 of the *Police Services Act*, R.S.O. 1990, Chapter P. 15, as amended (the "*Act*"). Pursuant to sections 31(3) and 31(4) of the *Act*, these Defendants specifically deny that the Board has any jurisdiction over specific operational decisions such as those impugned in this action and that the Board is precluded from, and has no role in, supervising individual police officers.

6. The Board specifically denies that in the circumstances alleged it owed any direct private law duty of care to the Plaintiffs. These Defendants plead that pursuant to section 50(1) of the *Act*, the Board is liable for torts committed by police officers in the course of their employment. These Defendants deny that any such torts were committed by any members of the Toronto Police Service in the circumstances alleged in the Statement of Claim.

7. Concerning the allegations made in paragraphs 13, 39, 40 and 41 of the Statement of Claim, these Defendants admit that William Blair was at all material times Chief of Police of the Toronto Police Service with the duties and responsibilities of a Chief of Police as set out in Section 42 of the *Police Services Act*. These Defendants plead that in the circumstances alleged in the Statement of Claim there is no reasonable cause of action pleaded against William Blair and the action should therefore be struck out as against him.

8. These Defendants have no knowledge of the identity of the officer referred to in the Statement of Claim as Jane Doe and plead that in any event the Statement of Claim does not plead any reasonable cause of action against the said defendant.

9. These Defendants plead that if the Plaintiffs sustained the injuries or damages as alleged in the Statement of Claim, or at all, which is not admitted but expressly denied, then the same were not caused by any fault, neglect, negligence or breach of duty on the part of these Defendants or on the part of anyone for whom these Defendants may be held legally responsible.

10. These Defendants plead that on July 26, 2013 Toronto Police communications received calls from passengers on a westbound Dundas Street TTC streetcar reporting an attack by a man who was holding a knife while on the streetcar. This man was later identified as Mr. Yatim.

11. These Defendants plead that the streetcar stopped on Dundas Street at Bellwoods Avenue, where passengers fled the streetcar. Mr. Yatim remained on the streetcar near the front doors, still brandishing the switchblade knife.

12. In response to the emergency call, Toronto Police officers arrived on the scene, at which time Mr. Yatim was still on the streetcar, near the front doors, wielding the knife. The officers made numerous requests for Mr. Yatim to drop the knife, but while acknowledging the requests he aggressively refused to do so. When he started to make his way out of the streetcar towards the officers, to stop the threat to himself, other officers and bystanders PC Forcillo discharged his firearm at Mr. Yatim.

13. After falling to the floor of the street car, Mr. Yatim continued to brandish the knife in a dangerous manner and was ultimately brought under control with the use of a conducted energy weapon by the defendant officer, John Doe who arrived upon the scene after P.C. Forcillo had discharged his firearm.

14. These Defendants deny any assault, battery or any other tortious conduct in respect of Mr. Yatim and they put the Plaintiffs to the strict proof thereof.

15. These Defendants plead that at all material times, the members of the Toronto Police Service who were compelled to interact with Mr. Yatim used no more force than was reasonably necessary and that they at all times acted in a competent, professional and appropriate manner, in good faith, without malice or any other improper purpose, in compliance with their duties and obligations as police officers pursuant to the provisions of the *Police Services Act* and at common law and they put the Plaintiffs to the strict proof otherwise.

16. These Defendants plead and rely upon the provisions of Section 25 of the *Criminal Code* and plead that any force used in respect of Mr. Yatim was justified and they put the Plaintiffs to the strict proof otherwise.

17. These Defendants specifically plead that any relevant training provided members of the Toronto Police Service who were engaged with Mr. Yatim was in accordance with appropriate and prevailing standards and they put the Plaintiffs to the strict proof otherwise. In the alternative, these Defendants plead that any damages sustained by the Plaintiffs, are not as a result of a failure or deficiency in respect of any training made available to the defendant officers for which these Defendants could be held responsible.

18. These Defendants specifically deny that at any time they or any member of the Toronto Police Service was motivated by malice, bad faith, dishonesty or improper purpose in respect of Mr. Yatim or the reference of their public duties and plead that in fact at all material times the members of the Toronto Police Service acted in good faith in the performance of their duties as police officers.

19. These Defendants specifically plead that the allegations made in paragraph 42 and 43 of the Statement of Claim are improper and should be struck out as they constitute an inappropriate pleading of what at best could be considered evidence. These Defendants further plead that the allegations made in paragraph 42 and 43 are irrelevant in the context of a civil claim as a recommendations from a Coroner's Inquest are advisory in nature, have no binding or legal effect and establish no applicable legal standard. Further and in the alternative, these Defendants deny any alleged refusal to consider or appropriately respond to the recommendations referenced and plead that in fact any such recommendations have been taken seriously and responded to appropriately.

20. These Defendants plead and rely upon the provisions of Section 31 of the *Coroner's Act*, R.S.O. 1990, c. C. 37, as amended.

21. These Defendants further plead that if the Plaintiffs sustained any injuries or damages as alleged in the Statement of Claim or at all, which is not admitted but expressly denied, then the same were contributed to by the actions of Mr. Yatim himself in respect of his own conduct set

out above including his voluntary consumption of an intoxicating substance which caused or contributed to his irrational and dangerous behaviour.

22. These Defendants deny that in the circumstances alleged in the Statement of Claim, that the Estate of Mr. Yatim sustained any damages for which a claim could in law be sustained and put the Plaintiffs to the strict proof otherwise.

23. These Defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended and claim contribution and indemnity from the Estate of Mr. Yatim in respect of any finding of liability or award of damages that may be made as against these Defendants or against anyone for whom these Defendants may be found in law responsible.

24. These Defendants further plead and rely upon the provisions of Section 61(3) of the *Family Law Act* and plead that any successful claim of Sahar Bahadi and Sara Ann Yatim ("the *Family Law Act* Plaintiffs") are subject to a discount to the degree of the contributory actions of Mr. Yatim.

25. These Defendants plead that insofar as the Plaintiffs or any of them make damages claims pursuant to Section 61(1) of the *Family Law Act* that the claims made for aggravated, exemplary or punitive damages are not available and ought to be struck out.

26. These Defendants deny that the Plaintiffs sustained the injuries or damages as alleged in the Statement of Claim and put the Plaintiffs to the strict proof thereof.

27. In the alternative, these Defendants plead that the damages claimed by the Plaintiffs are over stated, too remote, are not recoverable at law and have not been mitigated by the Plaintiffs.

28. These Defendants specifically deny that in the circumstances alleged in the Statement of Claim, the Plaintiffs are entitled to any punitive, aggravated or exemplary damages and they put the Plaintiffs to the strict proof thereof.

29. These Defendants therefore ask that this action be dismissed as against them, and given the unfounded nature of the allegations of malice and misconduct made against them, seek their costs.

Dated: August 22, 2014

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AND P.C JAMES FORCILLO
TO:

Court File No. CV-13-490686

SAHAR BAHADI, et al.
Plaintiffs

- and -

POLICE CONSTABLE JAMES FORCILLO et al
Defendants

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STATEMENT OF DEFENCE OF THE
DEFENDANTS, POLICE CHIEF WILLIAM
BLAIR, TORONTO POLICE SERVICES
BOARD, JOHN DOE AND JANE DOE

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John Doe and Jane Doe

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If you did not receive all the pages, please call the undersigned operator as soon as possible.

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Lawyers | Patent & Trade-mark Agents

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