

COURT FILE NUMBER:

1503 - 19491

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF EDMONTON



PLAINTIFF: JUSTIN LEE MUTCH

DEFENDANTS: CHANTEL DICKNER, ARTHUR SZAWLOWSKI, MITCHELL DAVIE, ANDREW MELNEY, TIM VAN DER LOOP, PAUL LEE, MICHAEL HICKEY, DANIEL TAMES, BRADLEY LEBRITTON, DANIELLE SMITH, SID KINGMA, DWAYNE DEXX WILLIAMS, JEFFREY WEDMAN, GRAHAM FLORENCE, STEVE BARAGAR, EDMONTON NORTHLANDS and ROD KNECHT, CHIEF OF THE EDMONTON POLICE SERVICE

DOCUMENT:

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

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NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

1. At all material times, the Plaintiff Justin Lee Mutch was residing in Edmonton, Alberta.
2. At all material times, Chantel Dickner ("Dickner"), Arthur Szawlowski ("Szawlowski"), Mitchell Davie ("Davie"), Andrew Melney ("Melney"), Tim Van Der Loop ("Van Der Loop"), Paul Lee ("Lee"), Daniel Tames ("Tames"), Danielle Smith ("Smith"), Dwayne Dexe Williams ("Williams"), Bradley LeBritton ("LeBritton"), Graham Florence ("Florence"), Steve Baragar ("Baragar"), Jeffrey Wedman ("Wedman"), Sid Kingma ("Kingma"), and Michael Hickey ("Hickey") (collectively, the "EPS Members") were members of the Edmonton Police Service (the "EPS") and acting under the direction and control of Rod Knecht, the Chief of Police of the EPS (the "Chief"), and in the purported performance of the duties of the Chief.

3. At all material times, Rexall Place was owned and operated by Edmonton Northlands ("Northlands"), a company incorporated as a not for profit organization.

4. At all material times, Alex Esguerra ("Esguerra") and Nadege Mogue ("Mogue") were security guards at Rexall Place ("Rexall Security Guards"), employed by Northlands.

5. At all material times, the EPS Members were paid agents to act as police officers by Northlands.

6. On or about December 28th, 2013, the Plaintiff attended an Oilers hockey game at Rexall Place with a friend.

7. As the hockey game progressed, the Plaintiff grew frustrated with the play of the Oilers, He caught himself swearing, and apologized to the fans sitting around him. At approximately 10:30 PM, as the game went into overtime, Mogue approached the Plaintiff and, without any discussion, ordered that the Plaintiff go with him. The Plaintiff immediately collected his belongings and followed Mogue out of the rink area.

8. Mogue and Esguerra then passed the Plaintiff over to Van Der Loop and Lee so they could escort him out of Rexall place, and both roughly grabbed the Plaintiff by his arms, causing bruises. The officers did not take any steps to explain what they were doing or why, just that he had to leave. There was no justification for evicting the Plaintiff, and it was known that the Plaintiff had a companion at the game and it was very cold outside.

9. As Van Der Loop and Lee were leading the Plaintiff out of Rexall place, the Plaintiff became frustrated that the officers were not listening to him and that they would not allow him to contact his friend who was at the game with him. It was at this point that Lee turned to Van Der Loop and stated "We need to take him down." Without warning, Lee conducted a foot sweep which caused the Plaintiff to fall head first onto a hard surface, as each officer was holding on to one of his arms. Both officers knew that the Plaintiff was impaired by alcohol. Neither officer broke the Plaintiff's fall.

10. As a result of falling face first into the floor or ground, the Plaintiff's glasses were pushed sharply into his face, which caused deep bruises around his eyes and it is highly likely that this also caused him to sustain a concussion. The Plaintiff was then handcuffed. Neither of the officers advised the Plaintiff of the reason for arrest or of any of his *Charter* rights, and he was not given an opportunity to speak to a lawyer.

11. Following this arrest, the Plaintiff was taken back into Rexall place to a holding room, operated jointly by Northlands and the EPS. The officers involved at this stage include Tames, Davie, Hickey, and Smith.

12. None of these officers told the Plaintiff why he was being detained, or advised him of his s. 10(b) *Charter* rights, or allowed him to call a lawyer, despite the fact that the Plaintiff asked to speak to a lawyer. This was a gross breach of the client's rights to ss. 10(a) and (b) of the *Charter*.

13. During the time the Plaintiff was detained in the holding room, the Plaintiff tried to tell the officers about police brutality, but the concerns raised by the Plaintiff were ignored. He was, unjustifiably, chained to a bench.

14. A police van was called to take the Plaintiff downtown. As the officers were escorting the Plaintiff to the van, which was parked across the street from Rexall Place, the officers dropped the Plaintiff to the ground several times.

15. Hickey utilized a painful use of force method known as a joint manipulation while escorting the Plaintiff to the van.

16. When the Plaintiff was put inside the van, Davie conducted several WWE-style elbow drops to the Plaintiff in the chest, face and head as hard as he could, with the intent to hit the Plaintiff in the head, and with no regard to whether those blows would cause a head injury to the Plaintiff. As a result, the Plaintiff lost consciousness.

17. After the Plaintiff was taken away, Hickey directed that the Plaintiff be charged with two counts of assaulting a peace officer.

18. Hickey was the superior officer who was responsible for overseeing the EPS Members at Northlands, and he failed to protect the Plaintiff from and contributed to the mistreatment of the Plaintiff by the EPS Members.

19. The van then transported the Plaintiff to the Downtown Division holding cells, arriving at approximately 11:30pm. The officers present removed the Plaintiff from the van and placed a spit net over his head, which caused the Plaintiff to panic. This was unnecessary and excessive, as the Plaintiff was not spitting at any of the officers. The

Plaintiff stated he was willing to walk on his own with the officers' guidance. Szawlowski, Melney, Williams, LeBritton, Florence, Baragar and Wedman responded forcefully by carrying the Plaintiff by his legs and handcuffs into cell D-06.

20. The Plaintiff has a history of sciatic nerve problems and back pain, which made this type of handling excruciatingly painful. He informed the officers that this was the case, but they rejected each of his requests to allow him to walk on his own.

21. Szawlowski, Melney, Wedman, LeBritton, Florence, Baragar and Williams roughly carried the Plaintiff into the cell by his handcuffs, and the same officers held him down with unnecessary force as they removed his shoes, jacket, rings and crucifix.

22. During this time, Szawlowski, Melney, Wedman, LeBritton, Florence, Baragar, and Williams, or any one or more of them, kneeled or stood on the Plaintiff's back, thighs, ankles and legs, which caused him extreme pain. The Plaintiff cried out for help. One officer responded by kneeling on the Plaintiff's throat. The Plaintiff lost consciousness and eventually woke to find an officer kneeling on his head.

23. Szawlowski, Melney, Wedman, LeBritton, Florence, Baragar, and Williams then chained the Plaintiff to a fixed bar in the wall, and then left the Plaintiff in the cell with his hands cuffed behind his back. While he was restrained, the chain was very short and the Plaintiff's handcuffs were placed tightly enough to cause him discomfort and he lost sensation in his hands and arms. The use of the bull ring and the tightness of the handcuffs was unnecessary and excessive.

24. Kingma was the superior officer who improperly approved the charges and the use of the fixed restraint bar and failed to protect the Plaintiff from the mistreatment by the other EPS Members.

25. At approximately 12:00 midnight, Dickner told the Plaintiff what he was charged with, and read the Plaintiff's his s. 10(b) *Charter* right. The Plaintiff stated that he wanted to talk to a lawyer immediately, however he was not given the opportunity to do so until 3:20am. This delay in advising the Plaintiff of these rights, and not giving the Plaintiff the opportunity to speak to a lawyer forthwith was in breach of ss. 10(a) and (b) of the *Charter*.

26. At approximately 12:30am, the Plaintiff urgently needed to use the washroom. He spent 30 minutes repeatedly requesting that he be permitted to do so. Finally, acting on his urgent need to urinate, the Plaintiff gradually and painfully maneuvered to remove his pants. He was unable to remove his underwear in time, however, and was eventually forced to urinate on himself. The Plaintiff was left to lie in this state for nearly two more hours before he was finally moved to another cell and his hand cuffs were removed.

27. The Plaintiff was left in the Temporary Holding Facility cell for nearly three hours, in breach of EPS policy.

28. Throughout the course of the interactions between the Plaintiff and the EPS members, the Plaintiff was described in a dehumanizing way, in the presence of the Plaintiff, in that he was referred to as a “gorilla”, a “zoo animal” and the officers were laughing at him.

29. The Plaintiff signed an Undertaking and a Promise to Appear and was released from police custody at approximately 4:30am.

30. In all, the Plaintiff was detained for approximately for approximately 6.5 hours in breach of s. 9 of the *Charter*, s. 495 of the *Criminal Code*, and EPS policy.

31. The retrieval of evidence, being the CCTV recording from the EPS/Rexall Security lock-up at Rexall place was never done, and the video was ultimately overwritten. This was done in breach of the Plaintiff’s rights to s. 7 and 11(d) of the *Charter*.

32. The EPS Members, or any of them, laid the charges against the Plaintiff with the knowledge that the charges were without merit. The EPS Members, or any of them, supported said false charges with reports that contain untrue allegations against and observations of the Plaintiff.

33. All of the force that was used was unreasonable and all of the misconduct was in breach of EPS policy.

34. As a result of the actions of the Defendants or any one or more of them, the Plaintiff:

- a. Suffered painful personal injuries, both physical and psychological;
- b. Suffered physical injuries including what was likely a head injury, cuts, bruises, and injuries to his wrists;
- c. Required medical attention for dizziness, headaches, and blurred vision;
- d. Was charged with criminal offences that he had to defend, and pay legal fees and disbursements;
- e. Suffers from distrust of law enforcement officials;
- f. Is unable to participate in certain physical activities due to the constant pain in his wrists;
- g. Suffers pain in his wrists, which affects his ability to work as a welder and caused, and will continue to cause loss of income;
- h. Was detained unlawfully for approximately 6.5 hours; and
- i. Suffered severe mental anguish, humiliation and injury to dignity;

all of which were foreseeable consequences of the Defendants' actions.

35. The conduct of the Defendants, or any one or more of them, constitutes an arbitrary and malicious punishment, is a malicious exercise of authority, and is conduct in breach of EPS policy.

36. The Defendants' conduct further constituted a breach the Plaintiff's rights at common law and pursuant to s. 7, s. 9, s. 10, s. 11(d) and s. 12 of the *Charter*, and entitles the Plaintiff to a remedy pursuant to s. 24 of the *Charter* and damages.

37. Further, the conduct of the Defendants, or any one or more of them, constituted a flagrant abuse of their authority, was high-handed and malicious, and warrants an award of aggravated and punitive damages.

38. The Chief of Police is jointly liable for the actions of the EPS Members pursuant to the *Police Act*, R.S.A. 2000, c. P-17, s. 39.

39. Northlands is liable for the misconduct of the Rexall Security Guards and the EPS Members under the *Occupier's Liability Act*, Chapter O-4.

40. The Plaintiff proposes that the trial of this action be held in the Law Courts Building, in the City of Edmonton, in the Province of Alberta.

41. The Plaintiff anticipates that the trial of this matter will not require more than 25 days.

Remedy sought:

42. The Plaintiff claims:

- (a) Damages against the Defendants, including aggravated and punitive damages, in the amount of \$500,000.00;
- (b) Such further or other relief as this Honourable Court considers appropriate and just to provide a meaningful remedy to the Plaintiff pursuant to s. 24(1) of the *Charter*;
- (c) Costs of this action on a solicitor and own client basis;
- (d) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1; and
- (a) Such further or other relief as this Honourable Court deems just.

DATED at the City of Edmonton, in the Province of Alberta, this 23rd day of December, 2015, AND DELIVERED BY ENGEL LAW OFFICE, solicitors for the Plaintiff, whose address for service is in care of his said solicitors at 200, 10209 - 97th Street, Edmonton, Alberta T5J 0L6.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.