

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

**DERON ANDREW KUSKI**

Plaintiff

- and -

**JASON FORBES, CARLOS CARDOSO  
and ROBERT WASYLYSHEN**

Defendants

**AMENDED STATEMENT OF CLAIM**

AMENDED THIS 17 DAY OF OCT 2003  
PURSUANT TO RULE 70  
DAY OF A.D.

CLERK OF COURT  
*[Signature]*

1. The Plaintiff, Deron Andrew Kuski, is a lawyer and resides at the City of Regina, in the Province of Saskatchewan.

2. The Defendants, Jason Forbes ("Forbes") and Carlos Cardoso ("Cardoso"), were at all material times on-duty members of the Edmonton City Police Service, and thought to be residing at the City of Edmonton, in the Province of Alberta.

3. The Defendant, Robert Wasylyshen, was at all material times the Chief of Police of the Edmonton Police Service.

4. On August 4, 2002, at approximately 1:30 a.m., the Plaintiff and two companions were in Edmonton and were detained by Forbes and Cardoso. The Plaintiff and his companions had crossed the street against a red pedestrian light in a crosswalk at a controlled intersection (82 Avenue and 105 Street), with no traffic visible in either direction. At the time, the Plaintiff observed the Defendants, Forbes and Cardoso, on the other side of the street, but was unconcerned. Upon

reaching the other side of the street, Forbes and Cardoso approached the Plaintiff and his two companions. Forbes asked the Plaintiff for identification, which the Plaintiff advised he did not have. Forbes asked the Plaintiff if he could search him, to which the Plaintiff responded "no, what for". Forbes then immediately and without further discussion or warning, placed the Plaintiff in handcuffs and kned the Plaintiff on the side of his left knee. The handcuffs were applied without resistance, although the Plaintiff was shocked at the aggressive move towards him, all of which occurred within 10 seconds after first being approached by Forbes and Cardoso. Forbes then shoved the Plaintiff away from his two companions and towards an entrance to an adjacent building. The Plaintiff feared that he was going to be further assaulted.

5. Forbes is a strong, muscular, athletic police officer, trained in marshal arts and personal combat. He applied force where none was necessary, as the Plaintiff had not committed an offence (other than j-walking) and offered no resistance to him. The assault occurred so quickly that the Plaintiff had no opportunity to respond or resist. He was not told what he was being arrested for, or that he was even being arrested at the time of being handcuffed and kned.

6. The said assault was wanton and malicious. The Plaintiff suffered injury to his knee as a result of the intentional act of Forbes in assaulting him.

7. After cuffing the Plaintiff as aforesaid, Forbes then unlawfully reached into the Plaintiff's pockets and removed the contents, including cash, a bank card, a Visa card and a driver's license. He then advised the Plaintiff that he would be taken to the Police Station as he had to appear before a Justice of the Peace to be released because he was from out of the Province. The Plaintiff was read his rights, although at no time was the Plaintiff informed of what he was being arrested for. The Plaintiff was placed in a police cruiser and detained in a cell at the Old Strathcona Police Station for approximately one hour before being released. The Plaintiff was not charged with any offences, and Forbes and Cardoso only referred to the alleged resistance of the Plaintiff to the arrest as a

possible charge at any point. The Plaintiff was never advised of what he was being arrested for in the first place, and ultimately left the Police Station with citations for jaywalking and refusing to identify oneself to a police officer, pursuant to Municipal By-law 5590, Section 401(1) and Section 165 of the *Highway Traffic Act*.

8. Because the Plaintiff was never asked his identity at any time, the latter citation is without merit and constitutes a malicious prosecution.

9. Upon being released from the Police Station at approximately 2:30 a.m., the Plaintiff was taken out the front doors and locked out. Cardoso advised that a taxi had been called for him as the Plaintiff had requested. The temperature was near 0°C and the Plaintiff had only jeans and a golf shirt on. After about 10 minutes outside the station, the Plaintiff knocked and requested re-entry until the taxi arrived. Re-entry was denied by the police officer answering the door, despite the Plaintiff's complaint about the cold. After a taxi had not shown up for at least one hour, the Plaintiff solicited and obtained a ride to his hotel with a pizza delivery girl. He paid her \$20.00. The Defendants were reckless and malicious in abandoning the Plaintiff in the cold in an unfamiliar city without arranging appropriate transportation, especially given the unlawful arrest and false imprisonment as aforesaid.

10. The actions of the Defendants, Forbes and Cardoso, were deliberate and/or negligent with respect to the above-mentioned incident in that:

- (a) Forbes and Cardoso acted in concert and had no lawful reason to arrest or search the Plaintiff, and at no time advised the Plaintiff what he was being arrested for or the grounds for the requested search;

- (b) Forbes applied an excessive amount of physical force in restraining the Plaintiff, including kneeling the Plaintiff and tightening the handcuffs excessively;
- (c) Forbes conducted an unlawful search of the Plaintiff once he was handcuffed by removing the contents of all the Plaintiff's pockets without his consent;
- (d) Acting in concert, Forbes and Cardoso placed the Plaintiff in the back of a police cruiser (beside another arrested individual), and detained the Plaintiff in the cells at the Police Station for approximately one hour before releasing him with the aforesaid citation;
- (e) Forbes cited the Plaintiff for failing to identify himself to a police officer when requested, despite the fact that the Plaintiff at no time was asked his identity, nor did the Plaintiff ever refuse to provide his identity. The only question asked regarding identity was whether the Plaintiff had identification, which he did not believe he had because he did not have his wallet with him;
- (f) The Defendants, Forbes and Cardoso, released the Plaintiff by sending him out the doors of the Old Strathcona Police Station, and locked him out after allegedly contacting a taxi, as requested by the Plaintiff. The temperature was approximately 0°C and the Plaintiff had only a golf shirt and jeans on, and the taxi did not come by the time the Plaintiff arranged a ride to his hotel with a pizza delivery girl over one hour later.

11. The Defendants, Forbes and Cardoso, acting in concert, have committed the following torts, all of which has caused damage to the Plaintiff:

- (a) negligence;
- (b) assault and battery;
- (c) unlawful arrest;
- (d) trespass to the person;
- (e) false imprisonment;
- (f) malicious prosecution; and
- (g) reckless abandonment.

12. In the course of the incident described above, the Defendants, Forbes and Cardoso, have infringed the constitutionally guaranteed rights and freedoms of the Plaintiff as provided by the *Canadian Charter of Rights and Freedoms*, including the following:

- (a) Section 7 right to liberty by virtue of the false imprisonment;
- (b) Section 7 right to security of the person by virtue of the reckless abandonment of the Plaintiff;
- (c) Section 8 right to be secure against unreasonable search or seizure;
- (d) Section 9 right not to be arbitrarily detained or imprisoned; and
- (e) Section 10 right to be informed promptly of the reasons for an arrest or detention.

13. The Plaintiff claims against the Defendant, Robert Wasylshen, pursuant to Section 39(2) of the *Police Act*, R.S.A. 2000, c.P-17.

14. As a result of the said torts and Charter breaches, the Plaintiff has sustained, *inter alia*, the following damages, particulars of which will be proven at trial:

- (a) pain and suffering;
- (b) loss of enjoyment of life;
- (c) loss of bodily function;
- (d) humiliation and loss of dignity; and

- (e) unspecified monetary damages pursuant to Section 24 of the *Canadian Charter of Rights and Freedoms*.

15. As a further result of the said assault, the Plaintiff has incurred special damages, full particulars of which cannot be presently ascertained, but will be proven at trial.

16. The Plaintiff seeks aggravated, exemplary, and punitive damages. The gross lack of judgment and the mishandling of the occurrence resulting in the injury to the Plaintiff is so far from appropriate, normal conduct by trained police officers or anyone, and the impact upon the Plaintiff so significant in terms of humiliation and loss of dignity, that aggravated damages are appropriate. Punitive damages are mandated to demonstrate to the Defendants and other peace officers in Edmonton and elsewhere that this level of conduct, this absence of training or capacity, and dereliction of duty and failure to exercise good judgment will not be tolerated by the Canadian public and the Canadian judicial system.


17. The Plaintiff therefore claims:

- (a) general damages in the amount of \$5,000.00;
- (b) special damages in an amount to be proven at trial;
- (c) damages pursuant to Section 24 of the *Canadian Charter of Rights and Freedoms* in the amount of \$25,000.00;
- (d) exemplary and punitive damages in the amount of \$10,000.00;
- (e) aggravated damages in the amount of \$10,000.00;
- (f) costs of the within action; and
- (g) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at the City of Edmonton, in the Province of Alberta, this 26<sup>th</sup> day of August, 2003 AND DELIVERED BY Messrs. Miller Thomson LLP, Barristers and Solicitors, 2700 Commerce Place, 10155 - 102 Street, Edmonton, Alberta T5J 4G8, AND BY Messrs. McDougall Gauley, Barristers and Solicitors, 700 Royal Bank Building, 2010 - 11<sup>th</sup> Avenue, Regina, Saskatchewan, S4P 0J3, Solicitors for the Plaintiff, whose address for service is in care of the said Solicitors.

THIS STATEMENT OF CLAIM is issued out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Edmonton, at the City of Edmonton, in the Province of Alberta, this 26<sup>th</sup> day of August, 2003.

“John Bachinski”  
CLERK OF THE COURT



ACTION NO. 0303 15417

**NOTICE TO THE DEFENDANTS:**

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Edmonton, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

**WARNING:** If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by the Solicitors for the Plaintiff whose name and address for service is:

c/o Miller Thomson LLP  
Barristers and Solicitors  
2700 Commerce Place  
10155 - 102 Street  
Edmonton, Alberta  
T5J 4G8

The Plaintiff's address is:  
Regina, Saskatchewan

The Defendants' address so far as known to the Plaintiff is:  
Edmonton, ALBERTA



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GORDON J. KUSKI