

Sue the police in Small Claims Court!



A Guide: do it yourself - or do it with help

Produced by: THE POLICE ACCOUNTABILITY SMALL CLAIMS COLLECTIVE

The POLICE ACCOUNTABILITY SMALL CLAIMS COLLECTIVE is a group of students, legal workers and activists who are holding the police accountable for their actions. If you have been abused by the police, contact us - we may be able to help you get the justice you deserve.

For more information call 416-531-2411 extension 248

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Introduction

a) Justice for survivors of police brutality and misconduct

If you are a survivor of police misconduct or brutality, you are not alone. Many people have a shared experience of being abused by the police. Unfortunately, people feel powerless when it comes to getting justice against the police. This guide is meant to empower you in pursuing an action against the police for an abuse suffered, and to help you try to achieve some form of justice by suing the police in Small Claims Court.

b) What is Small Claims Court?

Small Claims Court is supposed to be an accessible and easy way to get compensation for damages and injuries. The benefit of using small claims court is that you may not need a lawyer, and the costs of running your lawsuit are very small compared to a regular lawsuit (for court costs see section 1(f)). As well, the rules of Small Claims Court are more flexible, and a judge in Small Claims Court will not expect you to have the same legal knowledge as a lawyer.

Small claims court will only award damages up to \$10 000. If you have suffered very significant damages at the hands of the police you should talk to a lawyer about making a claim for a greater amount of compensation. For example, you might be entitled to a lot more compensation if the police assaulted you and broke your jaw, if you were raped by a police officer(s), or if you spent a long time in jail because the police fabricated evidence.

In Toronto, Small Claims Court is located at 47 Sheppard Ave. East 3rd floor (phone 416-326-3554). Outside of Toronto, check the blue pages in the phone book under "courts" or call 411. All forms and other general information are available from the clerk at each Small Claims Court.

Please note that as of January 1, 2004 the limitation period to bring an action against police officers and the Police Services Board has been extended to two years after the incident. This means that if less than two years has passed, you are still allowed to sue the police.

c) Do I need a lawyer to sue the police in Small Claims Court?

Suing the police is not like suing your neighbour. The police have vast resources and lots of money, and they will hire a lawyer to represent them. Although this may sound overwhelming, it is possible for you to pursue a lawsuit without a legal representative.

Reading this guide will help you decide what's best for you and if you should:

- sue the police on your own, or
- sue the police with help from a legal worker, or
- find someone to represent you in court to sue the police

d) Should you sue?

There are many factors to considering before you choose to sue the police. At the very least, your case against the police will have to include to following:

- **The Act** - The police must have done something to you that will be recognized under the law as wrong (against the law). Examples include assault, false arrest, and negligent investigation (for a full list see section 4). Sometimes the police do things that are upsetting and aggravating, but

these acts may be totally legal. For example, you probably won't be able to sue the police if an officer follows you for a while, or if an officer says something rude to you. In civil court (as opposed to family court or criminal court) an action that is against the law is called a 'tort'. We will explain more about torts later on.

- **Evidence** - In order to prove your claim, you will need evidence. Evidence comes in many forms. It could be the testimony of eye witnesses, photographs, or hospital records. Any evidence that proves that the police broke the law may help your case. The more evidence you have, the more likely that a judge will believe your side of the story.
- **Damages** - When you sue in court, you must show that you suffered harm -this can be physical, emotional, or financial. The courts call the harm you have suffered "damages." If you win your case, a court will award you compensation for the damages you have suffered. 'General damages' may include injuries, mental distress, loss of reputation, and interference with employment. If the actions of the police are malicious, oppressive, or they are deliberately negligent (meaning incompetent or stupid), a court may order them to pay 'aggravated damages' or 'punitive damages' in addition to general damages (for a full list of damages see chapter 4).

Even if you feel that you have a good legal case against the police, you should consider the following:

- **Targeting** - If you speak out against police misconduct you risk becoming a target. You should consider the risks that you face and take measures to protect yourself. Suing the police could also work in your favour. If the police know that you will take them to court if they mess with you, they may find someone else to bother. This is an important decision for you to make.
- **Time and effort** -If you are going to sue the police, your claim will take more than a year, and will require considerable effort. The police will use a lawyer, and will probably fight their hardest to defeat your claim. However, you should not be intimidated by the court system. It is possible to sue the police and win, but it will take time and effort. If you finally win, the police may appeal, and more of your time and effort will be required. That said, it is important to know that with sufficient time and effort, you can win your case.
- **Biases of the court system** - If you have had experience with the legal system, you know that judges can be biased. Police officers and judges are part of the same legal system, and therefore a judge may believe the word of police officer over yours. As well, a judge may be biased against you because of your class, gender, race, sexual orientation, age, citizenship, nationality, disability, political affiliations, etc. This is why good evidence to support your case is so important.

e) How much will a law suit cost me?

Small Claims Court is not free. Filing a claim with the court will cost you \$75. Setting a date for trial will cost \$100. There are also fees for other procedures such as making a motion or summoning a witness (see appendix 2). It is possible to avoid some of these fees if you complete an affidavit to prove that you have a low income (e.g. if you are on welfare, or ODSP). Talk to someone at a legal aid clinic about doing this affidavit.

If you lose your case at trial, the judge may award the police some of their legal costs. The Courts of Justice Act limits this amount to 15% of the claim. Therefore, if you sue for \$10,000, and you lose, a judge may award the police up to \$1,500. If you sue for \$5,000, and you lose, a judge may award the police up to \$750. This 15% is not automatically awarded to the winner. It is up to the judge to decide how much is fair. You can argue that you don't have much money and a judge may award less costs, or none at all. In rare cases the court can award more than 15%. This will happen if you upset the judge, for example, if the judge feels like you are wasting time or that your claim against the police had no merit.

f) Other ways of getting justice through the legal system.

Other than a lawsuit you might consider another legal route to getting justice. Each option has its pros and cons. You do not need to choose one or the other, and you may pursue all of these options at the same time. Very briefly, other legal options include:

- **Have the police charged in a criminal court** - If you have been the victim of a crime and the police won't lay charges, you can go to a provincial court and make a sworn statement before a Justice of the Peace. If there is some evidence of wrongdoing, the Justice of the Peace will lay a charge, and a crown attorney will investigate the case and decide whether or not to pursue the charges. This is very different than making a Small Claim. Criminal courts will not award damages or compensation to a survivor of police misconduct. But, a criminal court is allowed to punish police officers who break the law. If a police officer is found guilty of a criminal offence, they may lose their job. Remember, police are almost never convicted of criminal offences.
- **Launch a Human Rights Complaint** - According to the Ontario Human Rights Code, the police are not allowed to discriminate against you based on certain "prohibited grounds" such as race, sex, age, and disability, and others. To launch a human rights complaint, you will need to file a signed complaint within six months after an incident. You can contact the Human Rights Commission directly for more information on human rights complaints, or you can consult the 'Handbook to Surviving Bad Policing', or talk to a lawyer.
- **Make a Police complaint** - You must file your complaint within 6 months of the incident. Only a very small percentage of complaints ever amount to disciplinary action. The Scadding Court Community Centre will provide support to people who want to make complaints against the police. They are located at 707 Dundas St. West in Toronto and can be reached at (416)-392-0340.
- **Make a claim with the Criminal Injuries Compensation Board** - Anyone who has been injured through a criminal act of violence can apply to this board for up to \$25 000 compensation. Decisions may take up to 3 years. A student of law at Parkdale Community Legal Services may be able to help you with your claim.

You may decide to pursue justice outside of the legal system. You might join a group that is organizing in your community for police accountability. You could help to organize political activities that push for changes to the law and the system of policing. See the 'Handbook to Surviving Bad Policing' for a list of groups and other options.

g) Where can I get more information?

This guide will help you to understand the different stages one must go through in a Small Claim. It covers many of the most important issues you will face, but it does not give you all the information you will need! More research will be necessary if you are going to pursue a lawsuit on your own. To start, information can be found at:

- **The Police Accountability Library:** This guide is best used with the resources in the Police Accountability Library located at Parkdale Community Legal Services at 1266 Queen St. W, Toronto. To see the library call 416-531-2411 x248. See appendix 3 for a list of information that can be found in the library.
- **Small Claims Court:** If you have questions, you can also call or visit the Small Claims Court in your area. The workers at the court (court clerks) will not give legal advice, but they will give you advice about court procedure, forms, and other general information. They can give you a booklet called "How to Make Small Claims Court Work For You" which outlines many of the common court procedures and serves as a good resource for you in pursuing your case. Call the Toronto Small Claims Court - Superior Court of Justice 416-326-3554.
- **The Ministry of the Attorney General's web site:** This site has information about Small Claims Court. As well, all the necessary court forms can be downloaded.
<<http://www.attorneygeneral.jus.gov.on.ca/>>.

If you have considered all the above information and feel that you want to sue the police in Small Claims Court - read on!

2) Right after the incident - gathering evidence

In Small Claims Court, you will have to prove on the balance of probabilities (or "more likely than not") that the police broke the law. The more evidence you have, the greater the chance of winning your case. For example, it will be easier to prove that the police assaulted you if you have witnesses, photographs of a bruise on your face, and a doctor's report from a hospital. If your only evidence is your word, then your case may not be very strong. Remember, judges tend to believe the word of police officers.

- a) **Medical evidence** - If you have been injured by the police you should seek medical attention as soon as possible. Go to the emergency ward at a hospital or see your family doctor right away. Afterwards, you can request the doctor's notes, and you can use these notes as proof of your injuries. You may have to pay a fee to get a copy of these notes. When you arrive at the police station, make sure that the intake officer writes down your injuries. Ask them to write it down and make sure they do. If you are being held for bail court, insist that you be taken to the hospital. The only drawback to this is that going to the hospital may take a few hours and you may miss the daily ride to court. If that happens, you may be held an extra day at the station.
- b) **Pictures, video** - Take photographs and/or video of any injuries. Record the date that you took the photographs/video. You may also want to take photographs/video of the area where the incident occurred. This may help you to explain the incident to a judge. Whoever takes the photographs/video should attend your trial so they can testify that the images have not been altered in any way (if you take the photographs/video by yourself, this is not a concern). If you photograph your injuries, make sure that your face is in picture so no one can argue that the

pictures are fabricated. Use a new videotape so that you cannot be accused of modifying the original. Use a new roll of film, because you might have to present the negatives and all the other photos.

- c) **Witnesses** - Make a list of all the people who witnessed the incident. If possible, return to the sight of the incident and ask around for witnesses. If you are with a friend and the police take you into custody, tell your friend to get names and contact information of witnesses. Tell witnesses to go home and write a statement about what they saw. If a witness does not want to attend your trial, you can force them to attend by getting a summons. Ask the court workers (clerks) about how to do this. A witness who does not want to attend court may not provide the best evidence to support your case.
- d) **Documents** - Documents may include police notes, incident reports, news reports, affidavits, medical reports etc. Copies of documents must be given to the police lawyer at least 14 days before trial or a judge may not allow you to introduce them as evidence. If the police lawyer has documents (such as police notes) and you want them, you should request them in writing. If the lawyer won't give them to you, you will have to make a 'motion for production'. If you win your motion, a judge will order the police lawyer to release documents or other evidence to you.

3) Before going to court - some legal knowledge

To make a successful claim against the police you will need to have an understanding of the law and legal procedure. Here are some pointers.

a) The Law: legislation, common law, precedents

Suing the police is about getting justice in a 'court of law'. Law comes in a variety of forms, and it is important to understand each of them.

Legislation: This is what most people understand the law to be. Legislation is the laws and rules made by politicians. The Canadian Charter of Rights and Freedoms, the Criminal Code, and the Trespass to Property Act are examples of legislation.

The Common Law: When you go to court, a judge will decide if you have been wronged by the police and if you should receive compensation. A judge's decision will be based on previous decisions of other judges who have tried to settle this kind of dispute. The rules and guidelines established in these decisions are collectively known as the common law. It is law made by judges not politicians.

Judges and their common law will only recognize certain acts as wrong and worthy of compensation. These wrongful acts are called torts (see more on torts below). False arrest, assault, battery, and negligent investigation are all torts. To sue the police for a specific tort, like false arrest, you will have to know how the judges in the past have decided what is, and what is not, a false arrest.

Precedents - Previous court decisions are called precedents. Judges do not make decisions in isolation - they will make their decisions after considering the previous decisions of other judges (precedents). A judge in a lower court must follow the decisions of higher courts. Therefore, the

judge in a small claims court must follow a decision made in the an Ontario Superior Court, the Ontario Court of Appeal, and the Supreme Court of Canada. Decisions from other provinces may be used to support your case, but a judge in Ontario is not bound to follow them. To make a strong argument in court, you will have to be armed with precedents from these higher courts and you will have to argue that the principles outlined in each case supports your claim. Your precedents might include interpretations of legislation (such as the Charter or the Criminal Code) and will also include decisions about the common law.

When you read court decisions focus on the decision of the majority. Higher courts usually have a few judges, for example, the Supreme Court has nine. These courts will often have split decisions where some judges write dissenting/minority opinions. It is best to support your argument in court by using the decision of the majority.

b) More on torts

As stated above, judges will only recognize certain acts as wrong (against the law). These wrongful acts are called torts. A court can give you compensation if the police commit a tort against you. To make your claim against the police, you must take the facts of your situation and figure out what type of tort the police have committed against you. If you cannot fit the facts of your case into one of the recognized torts, you may not be able to sue. Here is a quick example.

Facts: police arrest you in front of your house. They think you are Jane Doe and they say you just stole a watch from a local mall and ran. You and your friends say they have the wrong person. Your mom comes out of your house and says you have been with her for the past few hours. They arrest you anyway. During the arrest the police make racist comments including "who cares if you're not the right person, you're all the same anyway." You resist arrest and they use excessive force to make the arrest. When you get to the station, the police search your wallet and find that they have the wrong person. You are released without charge.

Some of the torts that the police may have committed in this situation include:

| Tort | Reasons |
|---------------------|--|
| Negligence | The police were negligent in their investigation and failed to 1) consider relevant evidence of an alibi, 2) take into account statements from witnesses, 3) identify you before arrest. |
| False Arrest | The police did not have reasonable and probable grounds to believe that you had committed an offence. The police may have acted with other motives, such as racism. |
| Assault and Battery | The police arrested you when they had no legal right to do so. If you are falsely arrested, the arrest and any body search will both be grounds for assault and battery. And, the police used more force than was reasonable and necessary in the circumstances. |

This is just a brief example. Other torts may also apply to these facts. For each situation, you first need to look at all the different torts, and then secondly, you need to determine on the facts if a tort applies to case. Your case may be much more complicated.

c) Breaches of the Canadian Charter of Rights and Freedoms (AKA The Charter)

In Small Claims Court, you can also get compensation when the police infringe your rights as guaranteed under the Charter. In the above example, Jane might also claim that she was arbitrarily detained contrary to section 9 of the Charter and arbitrarily searched contrary to section 8.

For a more detailed look at the different torts and Charter breaches read chapter 4 of this guide.

4) Going to court - step 1: writing the “Statement of Claim”

a) Getting started: General information about the Statement of Claim

A lawsuit begins when the Plaintiff goes to the court clerk and files a “Statement of Claim”. You are the Plaintiff, and you are suing the Defendant police. You will need to make a claim against the police in writing. This document is called the Statement of Claim (sometimes called “Pleadings”). The Statement of Claim outlines the arguments you will make in court.

There is no one best way to write a Statement of Claim. Some are complex, some are more brief and to the point. You should look at other examples including the example in appendix 1. Then, you should choose the ones you prefer, and model your Statement of Claim on them.

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| <p>**Please be aware that if you are using an example Statement of Claim, it may not include many of the important facts and legal arguments that must be included in your Statement of Claim. Every Statement of Claim will be different.</p> |
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Generally, a Statement of Claim against the police is written in a series of numbered paragraphs and includes the following the sections outlined on the next page.

(Chart: Writing the Plaintiff’s Statement of Claim – see next page)

b) Writing the Plaintiff's Statement of Claim (also see example Statement of Claim in appendix 1)

| Heading | Description |
|---|---|
| "The Plaintiff's Claim" | <ul style="list-style-type: none"> - This introductory section should state the torts that will be argued, the relevant sections of the Charter, and amount and type of damages claimed. - See appendix 1 section 1. |
| "The Parties" | <ul style="list-style-type: none"> - The statement of claim must include the Plaintiff's name, and the name of all police officers involved. - You should also name the [Toronto] Police Services Board and point to s. 50(1) of the Police Services Act which states that the [Toronto] Police Services Board is liable for the unlawful acts of individual officers. - One line should state that the defendant police officers were employed by the defendant [Toronto] police Services Board. - See appendix 1 section 2 to 5. |
| "Background – General" | <ul style="list-style-type: none"> - Background information that may be useful to the judge. - See appendix 1 section 6 |
| "Cause of Action" or a specific title such as "The Tort Assault" or "The Arrest of the Plaintiff" | <ul style="list-style-type: none"> - Includes "Material Facts" and "Basis for Claim" (see below). - See appendix 1 section 7 to 32 |
| "Damages" | <ul style="list-style-type: none"> - The Statement of Claim must list all the damages suffered by the Plaintiff. - See appendix 1 section 33. |
| "Remedy Sought" | <ul style="list-style-type: none"> - The Statement of Claim must include directions to the court for what to do if you win. This section partially repeats what has been said in the first section. Here the Plaintiff must state how much money would compensate for the damages suffered. - The Plaintiff may ask for an apology, "The Plaintiff asks that an apology be given by the Defendants to the Plaintiff as allowed by the Rules of Small claims Court under the Courts of Justice Act Ontario Regs 258/98 as amended, Rule 1.03(2) and Rule 1.04." - Finally, the statement of claim should include "The Plaintiff proposes that this action be tried in [Toronto]." - See appendix 1 section 34 to 37. |

c) The Cause of Action

The “Cause of Action” is the part of the Statement of Claim where you state what causes you to bring this action against the police. Here you outline the facts of the case and say why you think the police broke the law. The Cause of Action must include:

- **Material Facts** (see below).
- **Basis for Claim**
 - you legal arguments
 - how the facts give rise to the **specific torts** and **Charter breaches**

When you have facts that show the police committed a tort or Charter breach, then you have a cause of action. Completing this section will be the most difficult part of the Statement of Claim.

Material Facts: These are the most essential and basic facts of your case. A material fact is essential to your case and without it, the lawsuit would fail. For example, if a Plaintiff sues for assault and battery after an illegal body search, it is a material fact that the Plaintiff did not consent to being searched. If the Plaintiff sues for false arrest, it may be a material fact that the arresting officer did not have a warrant. Your 'statement of claim' should only include the material facts, not all the specific details.

The following table will help you write the Cause of Action in your Statement of Claim.

How to use this table and write the Cause of Action:

- Read about the different torts decide which ones best match with the actions of the police and the evidence that you have.
- Use the examples below to write your Material Facts
- Use the examples below to write your Basis for Claim

Use the writing examples below as a guide. For a sample “Statement of Claim” see appendix 1.

(Table: Common Law Torts – see next page)

Table: Common law torts

| | |
|---|--|
| <p>Negligence The police cannot be negligent (stupid/incompetent) in the way they carry out their duties. To prove negligence, a Plaintiff must show that an investigator's conduct fell below that of a reasonably prudent officer. Examples of police negligence include: - negligent investigation - failure to seek medical attention for a person in custody.</p> | |
| Example Material facts | Example Basis for claim |
| PC Jones failed to identify the Plaintiff before arresting her. | PC Jones was negligent and failed to take the necessary steps to establish reasonable and probable grounds for arrest. |
| The Plaintiff was injured and PC Jones refused to take the Plaintiff to the hospital. | PC Jones was negligent and failed to provide the proper standard of care when he did not provide the Plaintiff with access to medical attention. |

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|--|
| <p>False Arrest and False Imprisonment No one is allowed to impose a physical restraint on a person except where authorized by law. To prove false arrest or imprisonment a person must show: - loss of liberty or total confinement, and - that the police were responsible for the loss of liberty, and - that you did not consent to the loss of liberty. Once these 3 points are established, the police will have to prove that the arrest was legal. To show that the arrest was legal, the police will try to prove that they had the legal right to arrest you. Arrest powers are found in the Criminal Code, the Highway Traffic, the Liquor Licence Act, Safe Streets Act and other legislation. If you are going to claim that you were falsely arrested, you should look at the specific legislation that the police used to justify arresting you. Some of the most important arrests powers include: Criminal Code s495. - Under s495(a) an officer can arrest without a warrant when he has reasonable and probably grounds to believe a person has, or is about to commit an indictable (serious) offence. - Under s495(b) an officer can arrest without a warrant if he has reasonable and probable grounds to believe that person is committing a criminal offence. For minor (summary) offences such as theft under, you cannot be arrested unless you are caught in the act. If you are found a few days later, an officer must have a warrant to arrest you.</p> |
|--|

- s495(2) outlines specific reasons that an officer must consider before he arrests without a warrant. Criminal Code s524(2).
- If you are on bail, an undertaking from the police station, or on probation, you can be arrested without a warrant under this section if an officer has reasonable and probable grounds to believe that you have breached your conditions.

Example Material Facts -- See Appendix 1

Example Basis for Claim -- Also see appendix 1

Assault and Battery

- Battery is the illegal application of force to someone.
- An assault takes place when there is the reasonable belief that battery will occur. An officer commits assault if he tells you that you better answer his questions or he will hurt you.

Assault and Battery: False Arrest

- The police will have to use some force to arrest you. If the police falsely arrest then the force they use will not be authorized by law, and therefore they will also have committed assault and battery.

Assault and Battery: Illegal Body Search

- If you have been lawfully arrested, the police have the right to search you.
- If you have been falsely arrested, any search will be illegal.
- If you are searched illegally, the police will have committed assault and battery.
- If you give consent for a search, it will be very difficult to show that the search was illegal.
- If you have been lawfully detained the police can 'pat you down'.

Assault and Battery: Strip Search

- Even if the police have the right to search you, they may not have the right to do a strip search.
- Strip searches will only be authorized by law where the police have reasonable grounds for concluding that a strip search is necessary given the specific circumstances of your arrest.
- The police must have reasonable grounds to believe that you are hiding drugs, a weapon, or evidence before they can perform a strip search [if you are being held overnight they will also have the right to strip search].
- Strip searches cannot be done as a matter of routine policy.

Also see section 8 of the Charter: unreasonable search and seizure.

[note: for illegal search of property see Trespass below]

Assault and Battery: Excessive Force

Sections 25 and 27 of the Criminal Code give police officers the right to use “as much forces as is reasonably necessary” to prevent crime. Section 34 of the Criminal Code gives and person the right to use force in self defence. Therefore, a police officer will

commit assault and battery if they use more force than is necessary (excessive force) and they were not acting in self defence. To establish unreasonable force, a Plaintiff need only show that force was used against him or her. The legal burden is then on the police to show that the level of force was reasonable. In court, an officer will have to prove that he:

- a) believed the force used was necessary, and
- b) believe the force used was not excessive given the level of danger, and
- c) had reasonable grounds to believe that the force was necessary, and
- d) had reasonable grounds to believe that the force was not excessive given the level of danger.

In answering these questions, the police must show why less force was not used.

Assault and Battery: Sexual Assault

Assault and battery also applies to sexual assault cases. Unlike regular assaults or battery, there can be no reasonable use of force in a sexualized way. Therefore, the police will not be able to show that sexual assault or battery was justified.

| | |
|---|--|
| Example Material Facts – Assault and Battery: False Arrest | Example Basis for Claim |
| <p>PC Jones arrested the Plaintiff without reasonable and probable grounds and in contravention of the standard required by the Criminal Code.</p> | <p>The Defendants assaulted and battered the Plaintiff when they arrested her without a warrant and without reasonable and probable grounds to believe that the Plaintiff had, or was about to commit an offence. The arrest of the Plaintiff was unlawful and therefore the force used to arrest the plaintiff was not authorized by law.</p> |
| Example Material Facts – Assault and Battery: Illegal Body Search | Example Basis for Claim |
| <p>PC Jones did not have a lawful reason to search the Plaintiff.</p> <p>PC Jones searched the Plaintiff against the Plaintiff's will and without consent.</p> | <p>PC Jones assaulted and battered the Plaintiff when he searched the Plaintiff without lawful reason and against the Plaintiff's will and without consent.</p> |
| <p>The Plaintiff was walking northbound on Lansdowne Ave. PC Jones approached the Plaintiff and questioned the Plaintiff about dealing drugs.</p> <p>PC Jones searched the Plaintiff's coat and pants pockets but found nothing of interest. The Plaintiff did not consent to the search conducted by PC Jones.</p> <p>PC Jones did not arrest the Plaintiff and did not charge the Plaintiff with any offence.</p> | <p>The search of the Plaintiff was unlawful and therefore the force used to search the Plaintiff was not authorized by law. PC Jones assaulted and battered the Plaintiff when he conducted a search without consent and without reasonable grounds or lawful justification.</p> |

| | |
|---|--|
| <p>PC Jones did not have a warrant to arrest or search the Plaintiff.</p> | |
| <p>Example Material Facts – Assault and Battery: Strip Search</p> | <p>Example Basis for Claim</p> |
| <p>The Plaintiff was involved in a peaceful sit-in and was arrested for trespassing. The Plaintiff was taken to Division 51 and strip searched by the Defendant PC Jones.</p> <p>The Plaintiff did not consent to the strip search. The Plaintiff asserted his right to not be search. PC Jones insisted that the Plaintiff did not have a choice.</p> <p>The Plaintiff was released from the station after issued a ticket and was held in custody for 2 hours.</p> <p>PC Jones did not have reasonable or probable grounds to believe that the Plaintiff was hiding drugs, a weapon, or evidence.</p> | <p>PC Jones did not have a valid objective when he searched the Plaintiff and therefore the search of the Plaintiff was unreasonable and unlawful.</p> <p>The strip search of the Plaintiff was unlawful and therefore the force, or implied force, used to carry out the strip search was unlawful. PC Jones assaulted and battered the Plaintiff when he conducted the strip search of the Plaintiff.</p> |
| <p>Example Material Facts – Assault and Battery: Sexual Assault</p> | <p>Example Basis for Claim</p> |
| <p>The Plaintiff was arrested for [insert Criminal Code offence] contrary to [insert section] of the Criminal Code. The Plaintiff was then transported to 52 Division by PC Jones. The Plaintiff was placed in an interview room and questioned by PC Jones. The Plaintiff exercised her right to remain silent. PC Jones continued to question the Plaintiff and threatened to sexually assault her if she did not answer his questions. PC Jones grabbed the Plaintiff’s breast.</p> | <p>PC Jones assaulted the Plaintiff when he threatened to sexually assault her for not answering questions. The Plaintiff believed, and there were reasonable grounds to believe, that PC Jones intended to sexually assault the Plaintiff.</p> <p>PC Jones assaulted and battered the Plaintiff when he grabbed her breast. The grabbing of the Plaintiffs breast by PC Jones was unnecessary and illegal. PC Jones acted with malice, and without a valid objective or regard for the law.</p> |
| <p>Example Material Facts – Excessive Force</p> | <p>Example Basis for Claim</p> |
| <p>PC Jones arrested the Plaintiff. During the arrest, PC Jones used pepper spray against the Plaintiff. PC Jones had no reason to use pepper spray against the Plaintiff. The Plaintiff was not resisting arrest.</p> <p>PC Jones used excessive and unreasonable force when he pepper sprayed the Plaintiff.</p> <p>PC Jones was not preventing the commission of an offence when he pepper sprayed the Plaintiff.</p> | <p>PC Jones used more force than was reasonably necessary when he pepper sprayed the Plaintiff. The pepper spraying of the Plaintiff was unlawful and contrary to section 25 and 27 of the Criminal Code [these sections give any person the right to prevent the commission of an offence using “as much force as is reasonably necessary.”]</p> |

Trespass

- If your residence is searched illegally, the police will have committed a trespass against you (and maybe negligent investigation – see above).
- Trespass is committed when the police enter your house, apartment, or car, without a lawful reason.
- The police may be able to search your residence or car after arresting you, even though you were not arrested there. They must have a valid objective to do this that flows from the arrest, such as public safety or protection or discovery of evidence.

Police may have lawful reason to enter a residence:

- when they have a search warrant.
- if they are invited inside,
- to prevent a breach of the peace,
- to protect life and property,
- if they are in 'hot pursuit',
- to arrest someone in the residence for an indictable offence, or
- to prevent the loss of evidence that relates to a serious offence.

Example Material Facts

PC Jones searched the residence of Plaintiff located at 123 ABC street.

PC Jones entered the residence of the Plaintiff through the front door, which was closed, but not locked.

PC Jones did not have reasonable grounds to believe that the individual he was pursuing was in the residence located at 123 ABC street.

PC Jones did not have a warrant to enter the residence at 123 ABC street.

PC Jones entered the residence of the Plaintiff without permission or consent. PC Jones did not knock or request permission to enter the residence of the Plaintiff.

Example Basis for Claim

PC Jones had no lawful reason or justification for entering the residence of the Plaintiff located at 123 ABC street, and PC Jones was therefore trespassing.

Malicious Prosecution

A Plaintiff will succeed in a claim for malicious persecution where they prove that:

- e) the proceedings (charges) were initiated by the defendant, and
- f) the proceedings terminated in favour of the Plaintiff (charges were dropped, stayed, withdrawn, or there was a conviction on other charges), and
- g) the police had no reasonable and probable cause for pressing charges (unlike false arrest, here the Plaintiff must prove this point), and
- h) the police acted with malice (bad intention), or that an important motivation of the police was something other than enforcing the law (like racism, a personal grudge, suppression of a protest, or because the person has a previous criminal record).

Example Material Facts

PC Jones failed to conduct a prudent investigation and did not consider all relevant evidence before arresting and imprisoning the Plaintiff. PC Jones made homophobic and discriminatory comments to the Plaintiff during the arrest and during the strip search.

The Plaintiff was charged with assault contrary to section 129(a) of the Criminal Code. PC Jones initiated the proceedings against the Plaintiff. PC Jones arrested and imprisoned the Plaintiff and provided the information used by the crown attorney to prosecute the case.

The matter proceeded to trial. The proceedings were terminated in favour of the Plaintiff on March 15, 2005 when Judge Johnson ruled at trial that the Plaintiff was not guilty of obstruct.

OR

The matter proceeded to trial. The proceedings were terminated in favour of the Plaintiff on March 15, 2005 when the charge of assault was withdrawn [or stayed, dropped].

Example Basis for Claim

PC Jones arrested and imprisoned the Plaintiff without reasonable and probable grounds.

The proceedings against the Plaintiff were initiated by PC Jones without lawful reason or purpose. PC Jones acted with malice and with improper motives including homophobia and racial bias. The prosecution of the Plaintiff by Jones was malicious.

Misfeasance in Public Office

- To succeed in a claim of misfeasance in public office a Plaintiff must prove that the police:
 - deliberately committed an illegal act, and
 - that the police were aware that their actions were unlawful and likely to injure the Plaintiff.
- Misfeasance in public office is a deliberate and wilful act by the police.
- Good tort to use when the police deliberately fabricate or hide evidence.
- Can also be used where the police exercise powers that they know that they do not possess. For example, the police may break into your house to look for evidence when they know they have no legal right to do so. Or, they may lie and say they have a search warrant when they don't.

Example Material Facts

PC Jones arrived at the residence of the Plaintiff when nobody was home.

PC Jones entered the residence of the Plaintiff without consent or permission of the lawful occupier.

PC Jones did not have a warrant. PC Jones had no grounds to believe that his entry into the residence of the Plaintiff was authorized by law.

PC Jones entered the residence of the Plaintiff with the full awareness that he had no legal right or lawful reason to do so.

Example Basis for Claim

PC Jones acted unlawfully and with full knowledge of his unlawful act. PC Jones acted wilfully and with the knowledge that by searching the residence of the Plaintiff he was likely to injure the Plaintiff. PC Jones' conduct was a deliberate and unlawful exercise of public function.

Table: Violations of the Canadian Charter of Rights and Freedoms

In addition to the above common law torts, the police may have also violated/breached your rights as guaranteed under the Charter of Rights. The law concerning the Charter is still developing because the Charter is a relatively new document. Some courts have granted awards for Charter breaches separately from awards for common law torts. Other courts have considered Charter breaches as an additional factor when considering damages for common law torts.

One important feature of the Charter is that there is no limitation period (time limit) for making a claim for a breach. On the other hand, a person must claim damages for common law torts within 2 years of the incident (as outlined in the Ontario Limitations Act).

The following table briefly outlines some of the Charter rights commonly breached by the police. You should read the Charter for a more detailed description of each section.

(Table: Violations of the Canadian Charter of Rights and Freedoms – see next page)

Table: Violations of the Canadian Charter of Rights and Freedoms

| Section | Charter rights guaranteed by the section | When you should include a Charter right | Example Basis for Claim |
|----------------|---|--|--|
| S2 | Fundamental freedoms -Free expression -Peaceful assembly -Free association | You should include these rights in your Statement of Claim if you think that the actions of the police were motivated by their intention to suppress your right to speak freely, to peaceful assembly, or to free association. Include this right if you are targeted because you are at a protest, taking photographs or observing the police, putting up posters, etc. | PC Jones acted maliciously and with improper motives including the intention of preventing the Plaintiff from exercising her Constitutional rights to express dissent and to associate freely as guaranteed under section 2 of the Charter of Rights and Freedoms. The arrest and imprisonment of the Plaintiff was undertaken with malice and in bad faith and in violation of the Plaintiff rights under the Charter of Rights and Freedoms. |
| S7 | Life, liberty and security | This section of the Charter should be included in most claims. Most of the torts outlined above involve a loss of liberty and security. | PC Jones arrested the Plaintiff without reasonable grounds and without lawful justification. The Plaintiff's was denied her right liberty and security as guaranteed under section 7 of the Canadian Charter of Rights and Freedoms. |
| S8 | Unreasonable search and seizure | After you show that you were searched, the police will have to justify the search. If a search is not: - authorized by law, and - conducted in a reasonable manner, the police will have committed unreasonable search and seizure. | PC Jones searched the Plaintiff without legal justification or reason. The search of the Plaintiff was not authorized by law and was therefore contrary to section 8 of the Canadian Charter of Rights and Freedoms. PC Jones strip searched the Plaintiff without legal justification or reason. PC Jones did not have reasonable grounds to believe that the Plaintiff |

| | | | |
|----|---------------------|--|---|
| | | <p>If you are searched for no reason, the search was not authorized by law.</p> <p>If the police search your residence without a warrant and without justification (see trespass above) the search is not authorized by law and is therefore unreasonable search and seizure.</p> <p>A strip search that is not authorized by law is an unreasonable search (see above Assault and battery: Illegal body search).</p> <p>If the police are searching a residence for something, they cannot begin to search for something else without reasonable grounds. For example, if the police do a search for a stolen TV, they can't look in a small jar for drugs.</p> | <p>possessed any evidence that would support the allegations made against her or weapons that might endanger the Plaintiff, an officer, or another person in custody. PC Jones did not have reasonable grounds to believe that a strip search was necessary. The strip search of the Plaintiff was contrary to section 8 of the Canadian Charter of Rights and Freedoms.</p> |
| S9 | Arbitrary Detention | <p>An unlawful arrest may not be an arbitrary detention. There must be some other aggravating factor to make an unlawful arrest arbitrary.</p> <p>For example, an arrest will be arbitrary if it is undertaken because an officer is biased towards a person of a different race, nationality or colour, or that</p> | <p>There were no reasonable or probable grounds to arrest the Plaintiff. PC Jones acted with improper motives including racial bias and personal animosity towards the Plaintiff. The arrest and imprisonment of the Plaintiff was undertaken with malice and in bad faith and in violation of the Plaintiff's rights under the Charter of Rights and Freedoms. The Plaintiff was arbitrarily detained contrary to section 9 of the</p> |

| | | | |
|-----|--|--|---|
| | | <p>there was a personal grudge between a police officer directed towards the person arrested.</p> <p>The total absence of reasonable grounds for arrest can support a case for arbitrary detention</p> | Canadian Charter of Rights and Freedoms. |
| S10 | <p>a) Informed of reason for arrest</p> <p>b) Access to council without delay and informed of this right</p> | <p>The police must tell you why you have been arrested.</p> <p>The police must let you get in touch with your lawyer or legal aid. If you assert your right to be silent, the police are not allowed to keep questioning you until they make reasonable efforts to allow you to speak to a lawyer.</p> | |
| S11 | a) Informed of the alleged offence after charge | Self explanatory | S. 11(a) of the Canadian Charter of Rights and Freedoms states that any person charged with an offence has the right to be informed without unreasonable delay of the specific offence. The Defendant PC Jones did not inform the Plaintiff that he was to be charged with “obstruct peace officer’ as required by s. 11(a) of the Canadian Charter of Rights and Freedoms. |
| S15 | Equality rights | <p>The police are not allowed to discriminate against you because of your race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p> <p>For example, the police may have breached this section of the Charter if they falsely arrest you</p> | PC Jones made racist comments to the Plaintiff. PC Jones acted with malice and improper motives, and discriminated against the Plaintiff based on her race and colour contrary to section 15 of the Canadian Charter of Rights and Freedoms. |

| | | | |
|-----|-----------------------------------|--|--|
| | | because of the colour or your skin, or if they abuse, or sexually assault, or fail to protect you because you are a woman or because you are queer. | |
| S24 | Enforcement of charter and remedy | This section of the Charter gives judges the authority to provide compensation for damages sustained due to Charter breaches. [Any Statement of Claim involving Charter breaches should include a line such as this under the section “Remedy sought”] | The Plaintiff further claims damages pursuant to s. 24(1) of the Charter of Rights and Freedoms for the breach of her rights under s. 2, 7, 9 and 11 of the Charter. [See example s. 34 of the appendix 1] |

d) Court forms

When you are finished writing the Statement of Claim you will have to visit the clerk at Small Claims Court to get a form entitled 'Plaintiff's Claim'. This form (and other Small Claims Court forms) is available online at:

<http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/sccforms.asp>

The Statement of Claim must be attached to this form. After you have completed the form, you must take it to the court clerk and pay \$75. You will need to give the clerk one copy for yourself, a copy for the court, and one copy for each Defendant. See the Police Accountability Library at Parkdale Community Legal Services for an example Plaintiffs Claim form.

e) Serving the Defendant with your Statement of Claim

After you have filed your claim with the Small Claims Court, you will have to serve (deliver) a copy to each Defendant.

Each defendant police officer can be mailed the plaintiff's claim at their work place. You will also need to serve the Police Services Board by mailing a copy of the claim to a member or officer of the Board. In Toronto, you should check web site of the Toronto Police Services board for current members at: <http://www.torontopoliceboard.on.ca/>. The mayor of Toronto is a member of the Board, and can be served at:

David Miller

Toronto City Hall, 2nd Floor, 100 Queen St. West, Toronto ON M5H 2N2

It can also be served on the Toronto Police Services Board at 40 College Street, Toronto, ON. M5G 2J3

You can serve the claim in person if you prefer. Putting the claim directly into the hands of a Defendant police officer may give you some personal satisfaction. However, it may be a lot easier to serve the officer by mail. It may be difficult to find a police officer. If you serve the parties personally, they will have 20 days to respond. If you serve by mail, the parties have 40 days to respond.

Outside of Toronto you will have find out who is on the local Police Services Board. Most police services will have a link on their web site to the Board and a list of members.

Documents that you intend to use in court can be attached to the Plaintiff's Claim. They can also be sent later to the lawyer who defends the police (see chapter 2(d) documents).

f) Affidavits of service

After serving a claim personally, or 20 days after mailing it, you will need to complete an 'affidavit of service' and file it with the clerk at Small Claims Court. You will need one 'affidavit of service' for each claim served on the Defendants.

An affidavit is a written statement that you swear is true. An 'affidavit of service' is a written statement where you swear that you have properly served the defendant police officers and the Board. You will need a lawyer to sign the affidavit. This service can be arranged for free or for a small fee at many community legal clinics. You may be able to arrange to have this service provided by a lawyer at Parkdale Community Legal Services by calling 416-531-2411 x248.

The 'affidavit of service' form can be picked up at Small Claims Court and is also available on the internet on the same site that offers other forms (see Section 4a).

5) Before the trial

a) Statement of Defence

All of the defendants must respond to your claim with 20 days (40 days if you served through the mail). The Plaintiff will receive a 'statement of Defence' which will outline how the police intend to defend against the claim. The Small Claims Court will mail you a copy of the Statement of Defence after it is filed.

b) Pre-trial

Before you have a trial, you must have a pre-trial – sometimes called a “settlement conference”. The pre-trial is a meeting with the police lawyer and a Small Claims Court Judge (your trial will not be heard by the same judge). At the pre-trial, the judge will try to convince you and the police lawyer to make a compromise and settle the claim. The police lawyer might make an offer to settle. You should not accept any offer without thinking it through first. If you are being represented by someone at the pre-trial, they should not accept a settlement without talking to you first.

The pre-trial will also be an opportunity to exchange any documents with the police lawyer. If you have not received all the police notes, video, or other evidence in the possession of the police, you should mention this at the pre-trial.

c) Amending your statement of claim (making changes)

After you have filed the Plaintiff's claim it is possible to make changes (amendments). You may decide to add additional torts, constitutional arguments, or material facts after doing further research. In order to amend the statement of claim you will have to go through the same procedure as when you first filed the claim (filing out the proper form, writing a new statement of claim, serving the parties, filing the affidavits of service). On the amended claim you should write on the top of the Plaintiff's Claim form "amended." On the amended statement of claim, you should underline all your additions and put a line through all the deletions so that they are obvious to the defendants. You will not need to pay another filing fee to make amendments to your claim.

d) Setting a trial date

After receiving the statement of Defence and after the pre-trial (if you have one), you will need to set a date for a trial. As with other court procedures, there is a specific form that you need to fill out called "Notice of Trial". Complete the front part of the form and make a one copy for the Plaintiff, one for the court, and one for each of the defendants. Next you will have to take this form in person to the Small Claims Court and pay the required \$100. The court will fill out the back page of the "Notice of Trial" form indicating the date and time of the trial and they will send a copy to the Plaintiff and every defendant.

6) Trial

a) List of characters

Every trial will have a Plaintiff and a representative, a Defendant(s) and a representative, a judge, a variety of witnesses. A lawyer will represent the police. The Plaintiff may self-represent, or

they may bring someone to represent them (this person does not have to be a lawyer). If you are representing yourself, you will also be witness. Only witnesses can introduce evidence (see below).

b) Evidence

In court, you will have to prove all of the things that you claim the police have done. This requires evidence. Evidence comes in many forms (see section 2). The most important type of evidence is the testimony of witnesses. All other evidence that you want to introduce in court will have to be done through a witness. You cannot wait till the end of a trial and then try to enter a doctor's report as evidence of an injury. Instead, when the Plaintiff is on the stand, she should present the doctor's report as part of her story about the injuries she suffered.

Not all evidence is admissible (allowed). As a general rule, a court will only allow evidence that is relevant to the case. Sometimes you might have to make an argument to the judge about why a certain piece of evidence is relevant.

Your best witnesses are people that witnessed an event first hand, not people who heard about how things happened. Although, the Small Claims Court allows this 2nd hand (hearsay) evidence the judge may not put a lot of weight on it. Some hearsay evidence is good such as doctors' reports and public documents such as newspaper articles.

c) Preparing your witnesses

Before the trial you will need to prepare all of your witnesses. You should know exactly what evidence you want from each witness. The evidence you want depends on the claim that you have made against the police. For example, you are making a claim for assault and battery due to an incident where police used excessive force during an arrest. A good witness might tell the court that:

- you were not resisting arrest, that in fact you had placed your hands behind your back and allowed the officers to cuff you, and
- they saw the officer kick you in the knee, knock you down, and they heard you shout in pain.

Make a list of questions that will help you get all the necessary information from a witness.

Practice in advance of the trial and make sure that the witness describes the incident and all the details. If you prepare in advance, you won't be surprised by anything the witness says on the stand.

d) Examination 'in chief'

At trial, your witnesses will go first, and afterwards the police will call their witnesses. If you call a witness to the stand, you will have the first chance to ask questions. This is called examination 'in chief'.

When you examine 'in chief' you are not allowed to ask leading questions. A leading question is a question where you basically provide the answer with the question. For example, "You saw the police officer punch me, isn't that right?" Instead, questions during examination 'in chief' must be 'open ended'. For example, a better way to ask the above question might be, "you said that you saw the officer approach me, could you tell the court what happened next?"

You may only get one opportunity to question a witness, so make sure your examination is complete.

e) Cross-examination

After the Plaintiff's witness are examined 'in chief', the police lawyer will be able to ask questions. This is called cross-examination. Questions during in cross-examination can be leading.

You will also get a chance to cross-examine the police witnesses after their lawyer questions them. You should try to discredit their version of events and attack their credibility. You might try to point to their police notes and ask why the story they gave on the stand is different. You might try to suggest that they weren't in a good position to see or hear certain events. There are many different strategies for questioning witnesses. For more details see the "The Fundamentals of Direct Examination: Basic Questioning Techniques" which can be found in the Police Accountability Library at Parkdale Community Legal Services.

f) Re-examination

After cross-examination, you or the police lawyer will have a final opportunity to ask a witness questions. You cannot introduce new evidence at this point. You may only ask questions that relate specifically to the cross-examination.

g) Other steps in the trial

- After you call your case (witnesses and documents), the police call their witnesses and documents.
- After all the witnesses have been called to testify, you have a chance to make your argument to the judge explaining how you have proved your case and why you should win.
- Then the police get to make their argument about why the case should be dismissed.
- Then you get a chance to respond to what the lawyer for the police said.

At the end of a trial the judge makes a decision. Sometimes this will happen right away, but usually the judge will "reserve" their judgement and send you their decision in writing. This may take a few months.

Appendix 1: Example Statement of Claim [with commentary]

Schedule “A” Plaintiff’s Claim

[Use numbered paragraphs, each paragraph containing one point, legal argument or fact.]

1. The Plaintiff claims:
 - a. general damages in the amount of TEN THOUSAND DOLLARS (\$10,000) for the assault and battery, false arrest, and false imprisonment of the Plaintiff;
 - b. in addition , and/or in the alternative, general damages in the amount of TEN THOUSAND DOLLARS (\$10,000) for breach of the Plaintiff’s rights under s. 2, s. 7, s. 8 and s.9 of the Charter of Rights and Freedoms flowing from the assault and battery, false arrest and false imprisonment of the Plaintiff;
 - c. in addition, and /or in the alternative, aggravated and punitive damages in the amount of TEN THOUSAND DOLLARS (\$10,000);
 - d. special damages for the Plaintiff’s loss of time, interruption in business and routine of life and for expenses relating to obtaining release form custody.
 - e. her out-of-pocket expenses incurred, details of which will be provided at trial;
 - f. her costs on a solicitor and client basis, including or in addition to costs for her disbursements, counsel fee, inconvenience and expense, and any other costs pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.43, and Rule 19 of the Rules of the Small Claims Court;
 - g. pre-judgement interest pursuant to the provision of the Courts of Justice Act, R.S.O. 1990, c.43, section 128;
 - h. post-judgement interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.43, section 129;
 - i. such further and other relief as may be claimed or awarded.

The Parties

2. The Plaintiff, Jane Doe is a 25 year old woman who lives at 123 ABC Street in the City of Toronto.
3. The Defendant Toronto Police Services Board was at all material times the employer of all police officers in the Toronto Police Service and, as such, is vicariously liable for the claims of the Plaintiff pursuant to s. 50 (1) of the Police Services Act, RSP 1990, C. p. 15.

4. The Defendant Constable Ray Cyst, badge #1234 (“Cyst”) was at all material times employed by the Defendant Toronto Police Services Board.
5. The Defendant Constable Hugh Goon, badge #4321 (“Goon”) was at all material times employed by the Defendant Toronto Police Services Board.

Background

6. [You might add information about your employment, background, family, lack of criminal record, or perhaps your involvement with a group that was organizing an event at which you were arrested etc. You also might want to explain the situation and events leading up to the incident].

Cause of Action

Material Facts

7. [The Cause of Action is the facts alleged (Material Facts) and legal arguments (Basis for Claim) to support your law suit. The first section of the Cause of Action should be called "Material Facts" and will outline the most essential and basic facts of your case. A material fact is essential to your case and without it, the lawsuit would fail. Remember to state the who, what, when, and where.]
8. [Provide a brief overview] On or about October 31, 2005, the Defendants Cyst and Goon arbitrarily detained and searched the Plaintiff, and assaulted and arrested and imprisoned the Plaintiff without a warrant and without legal authority.
9. [State the facts surrounding the incident] At approximately 5pm, the Plaintiff was walking eastbound on Bloor St., just west of Lansdowne Ave. The Defendants Cyst and Goon approached the Plaintiff in a police cruiser. The Defendants began to ask the Plaintiff questions concerning his activities and destination. The Plaintiff asserted her right to remain silent.
10. Without reason, the Defendants exited their vehicle and approached the Plaintiff. Together the Defendants grabbed the Plaintiff and pushed her against their vehicle. The Defendants searched the Plaintiff. The Plaintiff did not resist the search, but did assert that the police had no right to search her.
11. [State the reason given by the police for the arrest] The Plaintiff was informed that she was under arrest for “assault police”.
12. [The police can only act for legitimate law enforcement purposes. State any improper motives for the police action including personal grudges, racism, homophobia, classism etc] The Defendants made racist comments to the Plaintiff immediately prior to, and while arresting the Plaintiff.

13. [State what happened after the arrest and when you were released] The Plaintiff was taken to Division 14 and held against her will and without consent. The Plaintiff was placed in cell for approximately 5 hours and released after signing an Undertaking at approximately 10:30pm.
14. [Cite the specific offences that you were charged with] The Plaintiff was charged with “Assaulting a Police Officer” contrary to s. 270(1)(a) of the Criminal Code.
15. [State what happened with the charges] On December 11, 2005, the Plaintiff attended court at Old City Hall at 60 Queen St W in Toronto. The Plaintiff was informed that the charge of ‘assault police’ was to be withdrawn at the request of the Crown Attorney.
16. [Cite the specific police power or legal authority used to arrest you. Police have the power and legal authority to arrest people under many different laws. Arrest powers and legal authority are found in Criminal Code, the Trespass to Property Act, the Safe Streets Act, the Liquor Licence Act etc.]
17. [If you were arrested for an offence which was "straight summary" - meaning a less serious offence that is not an indictable or hybrid offence, then the police cannot arrest you without a warrant unless you are caught in the act. An example of a straight summary offence is "Unlawful Assembly" or “Theft Under”.]
18. [In this case, the person is arrested for “Assault” which is a hybrid offence, meaning an offence which can be a summary or an indictable offence. Hybrid offences are the most common type of offences, and when the police believe that this type of offence is, is about to be, or has been committed, they can arrest without a warrant even when you are not caught in the act. Here’s an example:]
19. The Defendants Cyst and Goon arrested the Plaintiff for “Assault Police Officer”. Pursuant to s. 270(2) of the Criminal Code, “Assault Police Officer” is a hybrid offence and therefore may be a summary or indictable offence.
20. S 495(1) of Criminal Code states:

495(1) A peace officer may arrest without warrant (a) a person who has committed an indictable offence, or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence; (b) a person whom he finds committing a criminal offence; or (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.
21. [State the fact that the police did not have the legal authority or power to arrest you. You must refer to the specific grounds needed for the arrest. In this case, the police could have arrested under s.495(1)(a) if they had reasonable grounds to believe that the Plaintiff had, or was about to commit an indictable (or hybrid offence), OR they could have arrested under s.495(1)(b) if they had reasonable grounds to believe that the Plaintiff was caught in the act of committing any criminal offence.]

22. At the time of her arrest, the Plaintiff was not engaged in any unlawful activity and the Defendants did not have reasonable and probable grounds to believe that she had committed a criminal offence or was about to commit a criminal offence.
23. At the time of the arrest of the Plaintiff, the Defendants did not reasonably believe that an arrest was necessary pursuant to the Criminal Code.
24. [The next section of your Cause of Action is the Basis for the Claim. Here you should outline your legal arguments and how the Material Facts above give rise to the **specific torts** and **Charter breaches**]

Basis for Claim

25. [False arrest and imprisonment] The Defendants breached the standard required by the Criminal Code when they arrested and imprisoned the Plaintiff. The arrest and imprisonment of the Plaintiff was unlawful.
26. [False arrest leading to assault and battery] The Defendants assaulted and battered the Plaintiff when they arrested her without a warrant and without reasonable and probable grounds to believe that the Plaintiff had, or was about to commit an offence. The force used to arrest the plaintiff was not authorized by law.
27. [Illegal search leading to assault and battery] The search of the Plaintiff was unlawful. The Defendants assaulted and battered the Plaintiff when they searched her without lawful justification and against her will and without consent.
28. [Unlawful imprisonment] The defendants imprisoned the Plaintiff for 5 hours without lawful justification and in contravention of the Criminal Code.
29. [Demonstrate malice and improper motives.] The Defendants acted with malice and improper motives included racial bias and prejudice. The Defendants acted without regard for the law.
30. [Arbitrary detention] The Plaintiff was arbitrarily detained contrary to s. 9 of the Canadian Charter of Rights and Freedoms.
31. [Arbitrary search and seizure] The search of the Plaintiff unlawful, arbitrary and contrary to s. 8 of the Canadian Charter of Rights and Freedoms. The Plaintiff was searched by the Defendants without regard for the law.
32. [Liberty and security- standard for most claims] The Plaintiff was denied her rights to liberty and security of the person, contrary to s. 7 of the Canadian Charter of Rights and Freedoms.

Damages

33. The Plaintiff has suffered damages, including:

- a. damages for loss of liberty, physical, emotional, and mental distress, and indignity;
- b. damages for loss to the Plaintiff's reputation;
- c. aggravated damages for the insulting, high handed, malicious and oppressive conduct of the Defendants;
- d. punitive damages for the Defendants' abuse of authority for a malicious purpose with wilful and and/grossly negligent disregard of the Plaintiff's rights;
- e. special damages for the Plaintiff's loss of time, interruption in business and routine of life and for expenses relating to obtaining release from custody.

Remedy Sought

34. [Compensation for torts committed by the police] Plaintiff claims damages in respect of the tortious conduct of the Defendants.
35. [Compensation for Charter violations] The Plaintiff further claims damages pursuant to s. 24(1) of the Charter of Rights and Freedoms for the breach of her rights under ss. 2, 7 and 9 of the Charter.
36. The Plaintiff states that her damages under each head of damages set out herein exceed TEN THOUSAND DOLLARS (\$10,000) respectively. The Plaintiff therefore claims damages, in total, in the maximum amount within the monetary jurisdiction of this honourable Court.
37. The Plaintiff proposes that this action be tried at Toronto.

Date: May 1, 2006

Jane Doe [or the agent of Jan Doe]

123 ABC Street

Toronto, Ontario

A1B 2C4

Tel: (416) 967-1111

Appendix 2

Fees are payable upon filing a claim in Small Claims Court and for most steps in a proceeding such as filing a motion and requesting a trial date. The number of steps in a proceeding varies from case to case. Some examples of fees that may apply are as follows:

| | |
|--|-------|
| Filing of a claim by an infrequent claimant | \$75 |
| Filing a notice of motion served on another party, a notice of motion without notice or a notice of motion for a consent order (except a notice of motion under the Wages Act) | \$40 |
| Issuing a summons to a witness | \$19 |
| Fixing of a date for trial by an infrequent claimant | \$100 |

There are also fees and allowances that you must pay to witnesses that you have summoned for their attendance and travel to court. In addition, you will have to pay for any interpreters you or your witnesses require, other than bilingual (English or French) interpretation and visual language interpretation, unless your fees are waived (see below).

If you are successful and are granted a judgment, the judgment may include the fees you have paid.

A list of [Small Claims Court fees](#) is available [on-line](#). You may also get a list of fees from any court office.

If you are not able to afford the court fees, you may be eligible to have fees waived. Information on [fee waiver](#) is available [on-line](#) and at any court office.

Appendix 3: The Police Accountability Library at Parkdale Community Legal Services

Essays and Booklets

- The Fundamentals of Direct Examination: Basic Questioning Techniques
- Handbook to Surviving BAD POLICING, 2nd edition
- How to Make Small Claims Court Work for You (also online).
- Civil Liability from a Police Perspective by Kevin McGivney and Adriana De Marco, 2001.
- Unchecked Power: The Constitutional Regulation of Arrest Reconsidered by James Stribopoulos in the McGill Law Journal, 2003.
- Police Powers: Stops and Searches.

Sample Legal Documents and Letters

- Plaintiffs Claim form
- Freedom of Information request to the Toronto Police
- Letter to police lawyer requesting complete disclosure of police notes
- Statement of Claim: Plaintiff v. Officer Ambrose Cheung of the Municipal Licensing and Standards Division of the City of Toronto
- Statement of Claim: Plaintiff v. Toronto Police Services Board et al.
- Statement of Claim: Plaintiff v. Waterloo Police Services Board et al.

Books

- Legal Aspects of Policing by Paul Ceyskens, Earls Court Press, 2004.

Legislation

- The Criminal Code of Canada
- The Canadian Charter of Rights and Freedoms
- The Police Services Act

Cases

- Odhavji Estate v. Woodhouse
- Nelles v. Ontario
- Oniel v. Toronto (Metropolitan) Police Force
- R v. Duguay, Murphy and Sevigny
- R v. Storrey
- R. v. Golden