



Court File No.:

27764/18

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**TIMOTHY MITCHELL, NICHOLAS MITCHELL, MARKY MITCHELL,
SYDNEY BENWELL, PARKER BENWELL-FISHER (a minor by their litigation guardian Sydney
Benwell), AMY LEE CAMPBELL, DASH CAMPBELL (a minor by their litigation guardian Amy
Lee Campbell), KING CAMPBELL (a minor by their litigation guardian Amy Lee Campbell),
THOR CAMPBELL (a minor by their litigation guardian Amy Lee Campbell), TYSON
CAMPBELL, NEVAEH CAMPBELL (a minor by their litigation guardian Tyson Campbell),
TRYSTON CAMPBELL (a minor by their litigation guardian Tyson Campbell), SERENITY
CAMPBELL (a minor by their litigation guardian Tyson Campbell), GLORIA BARBER, DONNA
JAASKELAINEN, CHARLES MITCHELL, DONALD MITCHELL, HERBERT MITCHELL,
KENNETH MITCHELL, ROGER MITCHELL, and CHERYL MOWBRAY**

Plaintiffs

- and -

**SAULT STE. MARIE POLICE SERVICES BOARD,
STAFF SERGEANT KEN HRUSKA, CONSTABLE MATTHEW KEATING,
and JOHN DOE SAULT STE. MARIE POLICE SERVICE OFFICERS**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the
plaintiff. The claim made against you is set out in the following pages.**

**IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for
you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil
Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve
it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY
DAYS** after this statement of claim is served on you, if you are served in Ontario.**

**If you are served in another province or territory of Canada or in the United States of
America, the period for serving and filing your statement of defence is forty days. If you are
served outside Canada and the United States of America, the period is sixty days.**

**Instead of serving and filing a statement of defence, you may serve and file a notice of
intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to**

ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: March ²⁷, 2018

Issued by July Bat
Local registrar

Address of court office 420 Queen Street East, 5100
Sault Ste. Marie, ON P6A 6W2 127 - B

TO: Sault Ste. Marie Police Services Board
580 Second Line East
Sault Ste. Marie, Ontario P6B 4K1

AND TO: Staff Sergeant Ken Hruska
580 Second Line East
Sault Ste. Marie, Ontario P6B 4K1

AND TO: Constable Matthew Keating
580 Second Line East
Sault Ste. Marie, Ontario P6B 4K1

AND TO: John Doe Sault Ste. Marie Police Service officers
580 Second Line East
Sault Ste. Marie, Ontario P6B 4K1

CLAIM

1. THE PLAINTIFFS CLAIM:

- (a) aggravated and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000);
- (b) special damages for the plaintiffs loss of time, and interruption in business and routine of life;
- (c) out-of-pocket expenses incurred, details of which will be provided at trial;
- (d) costs on a substantial indemnity basis, including or in addition to costs for 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 (*Courts of Justice Act*);
- (e) pre-judgment interest pursuant to s. 128 of the *Courts of Justice Act*;
- (f) post-judgment interest pursuant to s. 129 of the *Courts of Justice Act*; and
- (g) such further and other relief as may be claimed or awarded.

2. THE PLAINTIFF TIMOTHY MITCHELL CLAIMS:

- (a) General damages in the amount of TWO MILLION DOLLARS (\$2,000,000) for false arrest, assault and battery, negligent investigation, malicious prosecution, misfeasance in public office, and malicious breach of public duty; and
- (b) in addition, and/or in the alternative, general damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for breaches of ss. 7, 9, and 10(b) of the *Charter*.

3. THE PLAINTIFFS NICHOLAS MITCHELL, MARKY MITCHELL, SYDNEY BENWELL, PARKER BENWELL-FISHER, AMY LEE CAMPELL, DASH CAMPBELL, KING CAMPBELL, THOR CAMPBELL, TYSON CAMPBELL,

**NEVAEH CAMPBELL, TRYSTON CAMPBELL, SERENITY CAMPBELL,
GLORIA BARBER, DONNA JAASKELAINEN, CHARLES MITCHELL,
DONALD MITCHELL, HERBERT MITCHELL, KENNETH MITCHELL,
ROGER MITCHELL, and CHERYL MOWBRAY CLAIM**

- (a) damages in the amount of THREE MILLION DOLLARS (\$3,000,000) pursuant to the *Family Law Act*, R.S.O. 1990, CHAPTER F.3 (*Family Law Act*); and
- (b) damages for intentional infliction of mental suffering, nervous shock, malicious breach of public duty, misfeasance of public office, and negligence.

THE PARTIES

- 4. The plaintiff Timothy Mitchell (Mr. Mitchell) is 56 years old and resides in Sault Ste. Marie, Ontario.
- 5. The plaintiffs Nicholas Mitchell (Nicholas) and Marky Mitchell (Marky) are children of Mr. Mitchell and reside with Mr. Mitchell in Sault Ste. Marie.
- 6. The plaintiffs Sydney Benwell, Amy Lee Campbell, and Tyson Campbell are children of Mr. Mitchell. They do not reside with Mr. Mitchell in Sault Ste. Marie.
- 7. The plaintiffs Dash Campbell, age 5, King Campbell, age 1, Thor Campbell, age 3, Nevaeh Campbell, age 5, Tryston Campbell, age 7, Serenity Campbell, age 3, and Parker Benwell-Fisher, age 1, are grandchildren of Mr. Mitchell.
- 8. The plaintiffs Gloria Barber, Donna Jaaskelainen, Charles Mitchell, Donald Mitchell, Herbert Mitchell, Kenneth Mitchell, Roger Mitchell, and Cheryl Mowbray are siblings of Mr. Mitchell.
- 9. All plaintiffs collectively other than Mr. Mitchell are hereafter referred to as “the Family”.
- 10. The defendant Sault Ste. Marie Police Services Board (SSMPSB) was at all material times the employer of all members of the Sault Ste. Marie Police Service (SSMPS). The SSMPSB is liable for torts committed by members of the SSMPS in the course of their

employment, pursuant to s. 50(1) of the *Police Services Act*.

11. The defendants Staff Sergeant Ken Hruska (S/Sgt. Hruska), Constable Matthew Keating (Cst. Keating), and John Doe SSMPS officers were at all material times members of the SSMPS and employed by the defendant SSMPSB.

CAUSE OF ACTION

Material Facts

12. On March 26, 2016, at approximately 9:45 p.m., SSMPS officers attended Mr. Mitchell's residence to investigate a complaint made by Mr. Mitchell's teenage son Nicholas. Mr. Mitchell lived in a detached home with Marky and Nicholas.
13. At least five officers were present including Sergeant Benton Bolduc, Constable Shaun Beaulieu, Constable Nicholas Pino, Constable Beau Neveau, and the defendant Cst. Keating.
14. At that time Mr. Mitchell was bound by the terms of a recognizance. One of the terms of the recognizance was that Mr. Mitchell was not to consume alcohol.
15. Four police officers entered Mr. Mitchell's residence including Cst. Keating. Cst. Keating looked around for thirty seconds and then approached Mr. Mitchell who was seated shirtless on a couch in the living room.
16. Mr. Mitchell was detained. Mr. Mitchell was facing at least four police officers who had entered his residence.
17. Cst. Keating believed that Mr. Mitchell had been drinking. Cst. Keating told Mr. Mitchell to stand, which he did. These were the first words spoken by Cst. Keating to Mr. Mitchell. Cst. Keating then grabbed Mr. Mitchell's left arm. Cst. Keating arrested Mr. Mitchell.
18. Contrary to police training, Cst. Keating made no effort to develop a rapport with Mr. Mitchell and he did not seek voluntary compliance from Mr. Mitchell in effecting his

arrest. Instead, he grabbed Mr. Mitchell's left wrist and pushed him onto a couch behind him. Cst. Keating failed to use appropriate and reasonable communication and instead rushed to arrest Mr. Mitchell. There was no urgency to the situation.

19. Cst. Keating was young and exercised regularly. He weighed over 260 pounds with his police equipment. He was part of an elite tactical unit of the SSMPS. In contrast, Mr. Mitchell was much older and weighed approximately 160-170 pounds.
20. Cst. Keating got over top of Mr. Mitchell and used his superior strength and weight advantage to restrain Mr. Mitchell against the couch. Mr. Mitchell was slightly intoxicated at the time, and he was surprised, disoriented and confused in light of the speed of the arrest and the force used against him.
21. Mr. Mitchell offered feeble resistance to the overwhelming size and strength of Constable Keating. Mr. Mitchell did not apply any harmful or dangerous force to Cst. Keating and Cst. Keating did not call for the assistance of the three officers observing the arrest and standing in close proximity.
22. After just 10-15 seconds on the couch, Cst. Keating delivered a fully extended and forceful closed-fisted punch to Mr. Mitchell's left torso. The force of the punch was so great that two or more of Mr. Mitchell's ribs were fractured and a lung was punctured. After the punch, Constable Neveau approached Mr. Mitchell and applied handcuffs.
23. Mr. Mitchell was transported in a police vehicle from his home to an SSMPS police station. At the station, he was moved into a booking area where he was interviewed.
24. During the interview, Mr. Mitchell was upset and complained about force used against him during the arrest. He told police that his ribs were broken. At that time, Cst. Keating subjected Mr. Mitchell to abusive, provocative and demeaning comments.
25. Cst. Keating called Mr. Mitchell an "old man". Furthermore, and contrary to police training, Cst. Keating made statements to Mr. Mitchell with the intention to provoke and belittle him. These statements served no purpose except to escalate the situation and increase the risk of further use of force by police. In sharp contrast, Constable Pino was

calm and spoke to Mr. Mitchell professionally and without anger.

26. S/Sgt. Hruska was the officer in charge at the police station. He witnessed some or all of Cst. Keating's abusive behaviour. Mr. Mitchell was in the booking area for approximately four minutes when S/Sgt. Hruska directed Cst. Keating to put Mr. Mitchell into a cell.
27. At the direction of S/Sgt. Hruska, Cst. Keating approached Mr. Mitchell who was sitting on a bench. Cst. Keating abruptly and forcibly pushed Mr. Mitchell from his seated position so that Mr. Mitchell went down on one knee. Mr. Mitchell was compliant, but complained about being "roughed up". Cst. Keating forcefully moved Mr. Mitchell down a corridor to the cell area and pushed him from behind once he was in a cell. Cst. Keating made a rude and abusive gesture to Mr. Mitchell after the cell door was closed.
28. Cst. Keating used force against Mr. Mitchell at the police station in a manner that was abrupt and aggressive. Cst. Keating did not first attempt to secure voluntary compliance using reasonable communication. Cst. Keating took no time or opportunity to assess whether Mr. Mitchell required any assistance in getting to his feet or moving down the corridor.
29. All of the events at the police station were captured on video surveillance.
30. Mr. Mitchell was charged with breaching his recognizance and obstructing police contrary to s. 145(3) and 129(a) of the *Criminal Code*, R.S.C., 1985, c. C-46 respectively.
31. At approximately 11 p.m., police officers at the station observed that Mr. Mitchell was in medical distress. An ambulance was called and he was taken to the Sault Area Hospital (SAH). He was assessed, but doctors did not diagnose the rib fractures. Mr. Mitchell was returned to the police station and held there overnight.
32. At approximately 9 a.m. on March 27, 2016, Mr. Mitchell was allowed to speak to a lawyer. He spoke with a duty counsel lawyer just prior to appearing before a justice of the peace at that police station via video. Mr. Mitchell was remanded into custody and he was taken to the Algoma Treatment and Remand Centre (ATRC).

33. The following day, March 28, 2016, Mr. Mitchell continued to experience pain in his left side. His neck was swollen and he was having difficulty swallowing and breathing. Staff at the ATRC arranged for Mr. Mitchell to return to the SAH.
34. At the hospital, a computed tomography (CT) scan was completed and doctors observed internal injuries. Air was escaping from Mr. Mitchell's lungs into other parts of his body. There was internal bleeding. Mr. Mitchell's health deteriorated and he developed septic shock, acute kidney failure, and an irregular heartbeat. He underwent numerous surgeries. He was in a coma for approximately nine weeks and came very close to dying. Mr. Mitchell remained in hospital for over three months.
35. Mr. Mitchell has developed serious health problems as a result of the injuries sustained during the arrest. Without limiting the foregoing, his continuing health problems include regular dizzy spells, memory loss, and fatigue. He has difficulty using the washroom. He has suffered an irreparable brain injury. He continues to have a bed sore. He developed a hernia. His hearing and eye sight have degraded. He experiences anxiety, insomnia and other psychological illness.
36. Marky and Nicholas were profoundly affected by the wrongful conduct of the police and the resulting injuries to their father. They continue to live with Mr. Mitchell. However, these two children have suffered a loss of care, guidance, and companionship. Nicholas had called police to the residence on March 26, 2016, for help. He did not anticipate that police would brutalize his father causing life threatening injuries. Nicholas witnessed at least some of the police use of force against his father in the living room. Marky and Nicholas have suffered psychological harm and mental distress as a result of the unlawful conduct of the defendants.
37. As a direct result of Mr. Mitchell's injuries, the close relationship he enjoyed with the Family prior to his arrest has since deteriorated. The Family has suffered a loss of care, guidance, and companionship, and they have incurred expenses from assisting Mr. Mitchell with his injuries, including travel expenses. The Family has suffered psychological harm and mental distress as a result of the unlawful conduct of the defendants.

38. Mr. Mitchell pleaded not guilty to the charges. After a trial in the Ontario Court of Justice, the honourable Justice J.P. Condon found that police breached Mr. Mitchell's rights contrary to ss. 7 and 10(b) of the *Charter*. Evidence gathered by police was excluded. Mr. Mitchell was found not guilty of both charges.
39. In his decision, the honourable Justice J.P. Condon found, in regards to Cst. Keating, that the force used during arrest and at the station was unlawful and that Cst. Keating's comments made at the police station were demeaning and substandard. The court further found that S/Sgt. Hruska took no action to curtail or express disapproval of the abusive comments directed at Mr. Mitchell by Cst. Keating.
40. Mr. Mitchell is now a target for police harassment. Since this incident, he has been repeatedly and unlawfully detained at the roadside while driving. Numerous John Doe SSMPS officers have been involved in these detentions. Mr. Mitchell has been issued provincial offence notices without lawful justification.

Basis for Claim

41. Considering all the circumstances, the force used against Mr. Mitchell during the arrest was excessive, unnecessary and unlawful. Mr. Mitchell was assaulted and battered by Cst. Keating.
42. The force used during the arrest was unlawful, considering all the circumstances, including but not limited to:
 - (a) Cst. Keating was in Mr. Mitchell's residence for no more than 30 seconds before he grabbed and arrested Mr. Mitchell;
 - (b) Cst. Keating punched Mr. Mitchell after just 10-15 seconds on the couch;
 - (c) Cst. Keating was on top of Mr. Mitchell using his weight to control him;
 - (d) Cst. Keating did not seek assistance from three other officers that were standing close by and observing the arrest;

- (e) the force of the punch was hard enough to break at least two ribs;
 - (f) Cst. Keating fully extended his arm when delivering the punch;
 - (g) Mr. Mitchell offered limited and feeble resistance;
 - (h) Cst. Keating weighed 90-100 pounds more than Mr. Mitchell and was younger, more physically fit, and much stronger;
 - (i) the failure of Cst. Keating to attempt the use of less forceful options, including open hand strikes; and
 - (j) the failure of Cst. Keating to develop a rapport with Mr. Mitchell, or to attempt reasonable communication and request voluntary compliance.
43. The use of force by Cst. Keating during the arrest was not inadvertent or an accident. Rather it was intentional and calculated.
44. The use of force by Cst. Keating during the arrest was unlawful and therefore the arrest of Mr. Mitchell was unlawful. Mr. Mitchell was falsely arrested. Mr. Mitchell was arbitrarily detained contrary to s. 9 of the *Charter*.
45. If Mr. Mitchell resisted arrest, he was justified in doing so, considering that the manner of the arrest was abrupt, aggressive, and excessively forceful. If Mr. Mitchell resisted arrest he did so only because he was confused and disoriented and taken by surprise.
46. Considering the circumstances, the use of force to move Mr. Mitchell from the booking area at the police station to a cell was excessive and unlawful. This force served no lawful purpose and was entirely gratuitous and malicious.
47. The use of force to move Mr. Mitchell to a cell amounts to an assault and battery. This assault and battery occurred in the context of Cst. Keating subjecting Mr. Mitchell to abusive and demeaning comments and gestures.
48. Cst. Keating was negligent and/or acted with malice in carrying out his duties. Without limiting the foregoing, the negligence and/or malice of Cst. Keating includes:

- (a) failing to conduct a reasonable and proper investigation of the alleged breach of Mr. Mitchell's recognizance;
 - (b) failing to comply with training that requires police to use reasonable communication with people under investigating;
 - (c) rushing to use force against Mr. Mitchell when other options were available;
 - (d) using excessive force against Mr. Mitchell on numerous occasions;
 - (e) subjecting Mr. Mitchell to demeaning, abusive, and provocative comments; and
 - (f) failing to provide Mr. Mitchell with his right to retain and instruct counsel without delay.
49. Cst. Keating's malice and ill intent is demonstrated clearly by his excessive use of force as well as outrageous and abusive comments and gestures at the police station.
50. S/Sgt. Hruska observed some or all of Cst. Keating's abusive comments at the police station, but he failed to intervene. S/Sgt. Hruska also failed to intervene after he observed the excessive force used by Cst. Keating. S/Sgt. Hruska ought to have intervened to stop the unlawful and abusive conduct of Cst. Keating. S/Sgt. Hruska ought to have directed a different police officer to deal with Mr. Mitchell.
51. S/Sgt. Hruska was responsible for prisoners at the police station. Despite the fact that Mr. Mitchell complained about police having broken his ribs, S/Sgt. Hruska did not ask Mr. Mitchell about any injuries before having him moved to a cell. S/Sgt. Hruska repeatedly breached the Mr. Mitchell's s. 10(b) *Charter* right by failing to allow him to retain and instruct counsel. S/Sgt. Hruska was negligent in carrying out his duties.
52. Mr. Mitchell was denied his right to retain and instruct counsel, contrary to s. 10(b) of the *Charter*.
53. The excessive use of force and abusive comments by Cst. Keating breached the Mr. Mitchell's s. 7 *Charter* right to security of the person.

54. Cst. Keating falsely arrested, assaulted, and battered Mr. Mitchell. Cst. Keating subjected Mr. Mitchell to abusive comments and gestures, and failed to provide Mr. Mitchell with his right to counsel. This conduct was unlawful, deliberate, and intended to cause harm to Mr. Mitchell. Cst. Keating was misfeasant in public office and malicious in the course of his public duties.
55. The use of unlawful force by Cst. Keating against Mr. Mitchell caused broken ribs and a punctured lung. As a result of these injuries, Mr. Mitchell developed further life threatening injuries. But for the excessive force used by Cst. Keating, Mr. Mitchell would not have suffered life threatening injuries. Cst. Keating's use of unlawful force caused Mr. Mitchell to suffer from life threatening injuries that developed after the arrest. Mr. Mitchell was physically and psychologically injured.
56. Mr. Mitchell claims that he is being harassed by members of the SSMPS. Since his arrest on March 26, 2016, he has been repeatedly detained at the roadside while driving. These detentions were arbitrary and contrary to s. 9 of the *Charter*. Provincial offence notices have been issued to Mr. Mitchell without lawful justification. This conduct is carried out by police in bad faith and with the malicious purpose of harassing and intimidating Mr. Mitchell. John Doe SSMPS officers have engaged in malicious prosecutions and malicious breaches of their public duties.
57. The unlawful conduct of the defendants has caused the Family to suffer injuries including psychological harm, shock, and mental distress. The Family claims damages pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3. (*Family Law Act*) including, but not limited to, lost care, guidance, and companionship that they would have received from Mr. Mitchell if he had not been injured. The Family claims out of pocket expenses incurred when assisting Mr. Mitchell.
58. The plaintiffs plead and rely on the principle of issue estoppel. The honourable Justice J.P. Condon found that Mr. Mitchell's rights were violated contrary to ss. 7 and 10(b) of the *Charter*. This decision was not appealed and is final and binding on the defendants.

DAMAGES

59. Mr. Mitchell has suffered damages, including:

- (a) physical injuries;
- (b) pain and suffering;
- (c) emotional and mental distress;
- (d) psychological injuries;
- (e) loss of liberty and security of the person;
- (f) indignity and humiliation;
- (g) loss of time and routine of life;
- (h) lost income and lost future income;
- (i) loss of life expectancy;
- (j) lost opportunity;
- (k) loss of enjoyment of life; and
- (l) special damages, including legal fees.

60. The Family claims that the unlawful conduct of the defendants has caused serious injuries, including psychological harm, nervous shock, mental suffering, and other damages.

61. The Family claims damages pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3.

62. The plaintiffs claim:

- (a) aggravated damages for malicious and oppressive conduct; and
- (b) punitive damages for abuse of authority, malicious purpose, and wilful and/or

grossly negligent conduct.

REMEDY SOUGHT

63. The plaintiffs claim damages in respect of the wrongful conduct of the defendants.
64. Mr. Mitchell claims damages pursuant to s. 24(1) of the *Charter* for the breach of his rights under ss. 7, 9, and 10(b).
65. The plaintiffs propose that this action be tried in Sault Ste. Marie, Ontario.

March 23, 2018

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Lawyers for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Sault Ste. Marie

STATEMENT OF CLAIM

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