

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**AVA WILLIAMS, JANE DOE, and
BARBRA SCHLIFER COMMEMORATIVE CLINIC**

Plaintiffs

- and -

**LONDON POLICE SERVICES BOARD, PAUL GAMBRIEL,
BRUCE WILLIAM CHARTERIS and JOHN DOE POLICE
OFFICERS**

Defendants

FRESH AS AMENDED 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 \$5,000.00 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 _____, 2017

Issued by _____
Local registrar

Address of
court office

80 Dundas Street
London ON N6A 6B3

TO: **London Police Services Board**
Paul Gambriel
Bruce Charteris
John Doe Police Officers
c/o Paul Strickland
Siskinds LLP
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London, ON N6A 3V8

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Lawyers for the Defendants

CLAIM

1. The plaintiffs claim:

- a. a declaration that the manner in which the defendants investigated sexual assault allegations and the resulting dismissal of such allegations as “unfounded” between 2010 and 2017 (the “**Impugned Action**”) unjustifiably infringes s.15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;
- b. a declaration that the manner in which the defendants investigated the sexual assault allegations of the Plaintiffs Ava Williams and Jane Doe and the resulting dismissal of their allegations as “unfounded” unjustifiably infringed s.15 of the *Charter*;
- c. damages pursuant to s.24(1) of the *Charter* for the Plaintiffs Ava Williams and Jane Doe;
- d. an order requiring the London Police Service on a yearly basis to allow an external review by a Court-appointed review panel composed of independent experts in sexual assault, including frontline service providers and women’s legal advocates, to review all London Police Service sexual assault cases closed in that year as “unfounded” and a random sample of those closed under other codes;

- e. an order directing the said panel to assess whether the London Police Service are investigating the crime of sexual assault in accordance with the law and the judgment of this Court and to report its findings to the Court;
- f. an order allowing the Court to retain jurisdiction to make such further and continuing orders as it deems just and appropriate;
- g. costs, including full indemnity costs and applicable taxes on those costs; and
- h. such further and other relief as this Honourable Court deems just.

The Parties

- 2. The plaintiff, Ava Williams, is a university student.
- 3. The plaintiff, Jane Doe, is a resident of London, Ontario. Between approximately August 2015 and February 20, 2016, Jane Doe was employed as a dishwasher at G [REDACTED] in London, Ontario.
- 4. The plaintiff, Barbra Schlifer Commemorative Clinic (the "Clinic"), is a registered charitable organization incorporated in 1981 by letters patent pursuant to the laws of Ontario, with a registered office located at 489 College Street, Suite 503, Toronto, Ontario, M6G 1A5.

5. The defendant, the London Police Services Board, is responsible for overseeing the London Police Service (the “LPS”), which serves the City of London, in the Province of Ontario.
6. The defendant Paul Gambriel was a detective of the LPS and was the lead investigator in the plaintiff Williams’ sexual assault file. He is now a staff sergeant with the LPS.
7. The defendant, Bruce William Charteris, was a detective of the LPS and was the lead investigator in the plaintiff Jane Doe’s sexual assault file.
8. The defendants John Doe Police Officers are officers that were involved in the plaintiffs’ files.
9. The defendants Paul Gambriel, Bruce William Charteris and the John Doe Police Officers are known as the “Police Officers”.

The Clinic

10. The Clinic was established to commemorate the life and work of Barbra Schlifer, an Osgoode Hall law student who was sexually assaulted and murdered on the night of her call to the Bar on April 11, 1980.
11. The Clinic is a multi-disciplinary, front-line service provider to women who have experienced violence, including sexual violence. The Clinic provides legal advice and representation, professional counselling, and language interpretation services to women from a broad cross-section of racial, ethno-cultural, and socio-economic backgrounds. The Clinic’s objective is to support women who

have experienced violence by, among other things, offering avenues, including legal representation, for redressing the harms they have suffered. Since 1985, the Clinic has assisted more than 60,000 women.

12. The Clinic has intervened in a number of landmark cases about sexual assault, including at the Supreme Court of Canada in *R. v. Seaboyer*; *R. v. Gayme*, [1991] 2 S.C.R. 577, *R. v. N.S.* 2012 SCC 72 and *R. v. Quesnelle*, 2014 SCC 46. The Clinic also intervened in the recent inquiry pursuant to s. 63(1) of the *Judges Act* regarding the Honourable Justice Robin Camp.
13. In March 2017, the Clinic intervened at the Ontario Superior Court of Justice in the cases of *R. v. Ururyar* 2017 ONSC 4428 and *S.C. v. N.S.* (2017 ONSC 353) in cases involving systemic issues for women who report sexual assault. The Clinic was granted intervener standing in these cases on the basis of its legal and front-line expertise in violence against women. Similarly, the Clinic intervened in *Kanthisamy v. Minister of Citizenship and Immigration*, 2015 SCC 61, on the basis of its expertise in gender based violence experienced by newcomer women.
14. The Clinic engages in various public advocacy initiatives, including public legal education, professional development of legal professionals, clinical education for law students, and law reform. The Ontario Ministry of the Attorney General selected the Clinic as the sole community organization to provide independent legal advice to victims of sexual assault in a three year pilot project under the province's *Sexual Violence and Harassment Action Plan*. The breadth of services and activities engaged in by the Clinic is unique in Canada amongst social service organizations.

15. The Clinic routinely assists women whose reports of sexual assault to the police have been deemed unfounded.
16. The Clinic has long advocated for training of police on rape myths, gender bias in sexual assault investigations, and the neurobiology of trauma. The Clinic has similarly advocated for improved collaboration among police, the courts and social-service providers who work with victims, and for greater accountability by police where sexual assault investigations are closed as unfounded.

Public Interest Standing

17. Ms. Williams and Jane Doe have private interest standing but also public interest standing to seek the relief sought on behalf of all women who had their sexual assault claims dismissed as unfounded by the defendants between 2010 and 2017. The individual Plaintiffs the Clinic, separately and together, have sufficient interest to be granted public interest standing, in that:
 - a. the claim raises a serious constitutional challenge relating to how the defendants rely on rape myths in their treatment of sexual assault victims in assessing claims of sexual assault;
 - b. as victims of the defendants' actions, Ms. Williams and Jane Doe have a serious and genuine interest in the subject matter of the litigation;
 - c. the subject matter of the litigation is of interest to all women who have been subject to the Impugned Action, and is of interest to all sexual assault complainants across the country and to the general public;

- d. the Clinic has demonstrated a serious and genuine interest in the subject matter of this litigation;
- e. the Clinic provides direct services to those who have a direct and personal stake in these proceedings;
- f. the Clinic has expertise in the factual and legal issues raised in this claim;
- g. the resources and expertise of the Clinic confirm its capacity to bring forward the claim and to ensure that the issues will be presented in a concrete and well-developed factual and legal setting;
- h. the claim is a systemic challenge that differs in scope from an individual challenge to a discrete issue;
- i. the claim raises matters of public interest that transcend the interest of any single sexual assault complainant;
- j. the high rates of unfounding, including by the London Police Service, are of direct interest and concern to the Clinic and the women the Clinic serves. The Clinic as a public interest Plaintiff seeks a public interest remedy to address the serious systemic issues plead herein, in which the jurisdiction with the highest rates of unfounding is failing to respond to the needs and circumstances of survivors of sexual assault;
- k. most women who have been subjected to the Impugned Action do not know their complaint was classified as “unfounded” or that they have been victimized by the systemic discrimination as plead herein; and
- l. the claim is a reasonable and effective means to bring the matter before the court.

The Plaintiff Williams' Sexual Assault Complaint

18. On October 16, 2010, a man (the "Assailant") unknown to Ms. Williams raped her at a location in London, Ontario after a party.
19. Ms. Williams was 18 years old at the time. She attended a "keg party" at a house where she brought her own mix drink containing approximately 10 shots of vodka. She was intoxicated by the time she got to the party.
20. Ms. Williams remembers attending the party with some friends and watching people play drinking games.
21. At some point that night she was separated from her friends. Ms. Williams recalls going to the washroom in the house and finishing her drink.
22. At some point that night Ms. Williams met the Assailant. She remembers that they engaged in consensual kissing outside the house. She does not recall how they got outside. There is then a period of time that Ms. Williams cannot recall the details as she was so intoxicated.
23. However, Ms. Williams does recall that the Assailant attempted to push her head down forcing her to perform oral sex. She refused. Ms. Williams recalls the Assailant grabbing and spreading her legs and engaging in vaginal intercourse. She was on the ground and he was on top. Ms. Williams clearly recalls saying "no" multiple times and telling him that he was hurting her. She recalls him saying that he did not want to hurt her, but the Assailant did not stop the assault.

24. Ms. Williams recalls several people pointed cellphones at her during the incident. The Assailant then ran away, leaving his wallet behind.
25. Two women found Ms. Williams naked, crying, covered in dirt, near a pine tree at the north corner of the house where the party was.
26. Ms. Williams was taken to the hospital for a sexual assault examination. An initial statement was taken by a constable of the LPS at approximately 4:15 a.m.
27. A full interview began at 12:38 p.m. at LPS's headquarters. The interview lasted approximately 35 minutes. Det. Paul Gambriel was the interviewer.
28. During the interview, Det. Paul Gambriel relied on sexual stereotypes and stereotypical myths about sexual assault and sexual assault complainants that have been explicitly rejected by courts and legislation, such as the stereotype that women who consume alcohol are likely to consent to sex, that women often lie about rape as a consequence of post-sex regret, and that women who engage in consensual kissing are more likely to consent to oral sex or sexual intercourse with men they just met. For example, Det. Gambriel said during the interview, which is recorded on video:
 - a. "While you were downstairs though, you were making out with this guy before you went outside... is there any reason you did not tell the police officer that?"
 - b. "The kissing was consensual?"

- c. "If you don't recall so much of what is occurring outside, how do you recall the fact that you told him 'no'?"
- d. "So you black out and you don't remember anything, but then you suddenly come to and you are able to tell him to stop and that you don't want this to occur?"
- e. "We have the clothing and it's not torn or anything."
- f. "Sometimes what actually occurred and what got reported sometimes gets blurred a little bit. And even when you are telling me this, you are able to tell me, despite going through quite a night, keeping your composure. But it's at the point where everyone is taking your pictures and standing around that you become very, very upset. Which leads me to wonder was it consensual up until that point. And it's not so much the sex that's the issue. It's the voyeurism on everybody else's part with the cameras. Do you see what I am saying?"
- g. "One of the things I need to clarify is how you can [*sic*] remember most of what's going on in the party, important factors such as: what was said between you and this guy, how you got outside, how your clothes were removed. All of that is blacked out, and then suddenly you recall telling him to stop it. Whether people are intoxicated or whether it is drug or whether it's a combination of both, it is not a sudden loss of memory and then a sudden regaining of memory, it's a gradual - and it's a gradual. I

don't know how you can block out one specific aspect of the night but remember the rest."

- h. "You get very emotional when you tell me about everyone standing around with the cameras and the cell phones... I'm wondering if that's the crux of the matter, if that's the main focal point of this investigation?"
- i. "Maybe the sex was consensual, and it wasn't until everyone shows up and interrupts and has these cameras out, that now it has become a significant issue for you and for this other party involved."
- j. "You have been very forthright with regards to the amount of alcohol, and that's going to impair your judgment."
- k. "And we did come across people at the party that really don't know you and don't know him, but, like I said, saw you in the basement with him making out, and what appeared to be on the side of the house, consensual sex, until it was discovered that all these cameras are around, all these people are around."
- l. "Is it possible, given the scenario, that it started off consensual?"
- m. "Is it possible, he did not realize at some point that it stopped being consensual?"
- n. "We did locate your underwear. And it appeared there was some discharge in it... is it a possibility that it is lubricant?"

29. Despite the clear and unequivocal evidence from Ms. Williams that she told the assailant “no” and to stop as he continued to sexually assault her, and the fact that Ms. Williams was too intoxicated to be capable of consent, Det. Gambriel repeatedly and insistently reframed the situation as one that was consensual.
30. On November 13, 2010, the LPS closed Ms. Williams’ file as “unfounded”. The file notes the suspect was given a warning, which indicates the LPS was able to identify the Assailant.
31. More recently, after an investigation by the Globe and Mail about the statistics and prevalence of unfounded sexual assault claims including statistics from the LPS (the results of which were published February 3, 2017), the LPS reclassified Ms. Williams’ claim as a founded allegation, and the investigation is ongoing.
32. The LPS has however cleared Det. Gambriel of any professional misconduct in his handling of Ms. Williams’ complaint.

The Plaintiff Jane Doe’s Report of Sexual Assault

33. In the early hours of February 19, 2016, Jane Doe was raped by B [REDACTED] M [REDACTED] (“M [REDACTED]”). At the time, M [REDACTED] was the owner of G [REDACTED] (“G [REDACTED]”), where Jane Doc worked as a dishwasher. He was 67 years of age; she was 19.
34. On February 18, 2016, Jane Doe worked a shift at G [REDACTED]. After the bar closed for the night, Jane Doe stayed and had two drinks with her co-worker K.H.. M [REDACTED] was also present. Having a drink after shift was part of the culture at G [REDACTED] and Jane Doe frequently stayed for a drink with other staff.

35. K.H. went home sometime after midnight, leaving Jane Doe alone with M[REDACTED]. This was the first time since Jane Doe had commenced employment at G[REDACTED], that she was alone with M[REDACTED] after closing. M[REDACTED] poured Jane Doe two additional drinks. The second drink poured by M[REDACTED] didn't feel the same as the others, but at the time Jane Doe thought that was because she had already had a few drinks. When Jane Doe remarked that M[REDACTED] had used a lot of alcohol in the second drink, M[REDACTED] remarked that he was trying to "fuck [her] up."
36. Jane Doe poured herself a third drink and does not recall anything that occurred afterward. She can hold her alcohol and had never before lost awareness as a result of only five drinks.
37. At approximately 2:00 a.m., Jane Doe's boyfriend C.M. became concerned that she had not returned home. It was unusual for Jane Doe not to have returned home from work by 1:00 a.m. at the latest, so C.M. went to look for Jane Doe at G[REDACTED]. Through the window, he observed two people engaged in sexual activity at approximately 2:30am; he returned a second time at approximately 3:30am but did not see anyone, although M[REDACTED] vehicle was still in the driveway.
38. At 4:40 a.m. on February 19, Jane Doe arrived home. Prior to her return home, C.M. was upset and worried about her safety, as well as worried that Jane Doe was the person engaged in sexual activity with M[REDACTED]. When Jane Doe arrived home, she spoke incoherently and was confused. She did not have her wallet, cell phone or purse, all of which had been left at G[REDACTED]. She was not wearing pants or underwear, and was not aware of her lack of clothing. She was also not aware of the time and because she was upset and confused she kept trying to leave the apartment, despite the fact that she was naked from the waist down under her coat. C.M. prevented her from leaving. C.M., who had been Jane Doe's partner for two years at this point, described Jane Doe as "not herself" and that he had "never seen her like this."

39. C.M. became concerned that Jane Doe had been sexually assaulted by M [REDACTED] and contacted the LPS. Two officers spoke with Jane Doe at 5:18 a.m.. She was unaware of the time and was still not wearing pants or underwear while speaking to the officers. When the time of the night/morning and her state of undress were drawn to her attention by the officers, Jane Doe was shocked. She declined to accompany the officers to the hospital and went to bed. She has only a vague recollection of the officers attending her home in the early hours of February 19, 2016, but remembers feeling extremely tired and just wanting to go to sleep. In her conversation with the police officers in this state, she denied any sexual contact with M [REDACTED]. The police notes indicate her response was that M [REDACTED] was "almost 70 years old" and "gross."
40. Jane Doe awoke at approximately 10:30 a.m on February 19, 2016. She was menstruating and went to the bathroom to change her tampon. Upon attempting to remove her tampon from the night before, she discovered that it was wedged deep inside her vagina. At this point, Jane Doe realized that she had been sexually assaulted and became distraught. With the help of her mother, she attended the Sexual Assault Centre, where a sexual assault kit was collected.
41. On February 20, 2016, Jane Doe reported the assault to the police. An officer took statements from Jane Doe; her mother, E.W.; her boyfriend, C.M.; and her co-worker, K.H.. The officer observed that Jane Doe had extensive bruising on her cheek, under her chin, lower back, right forearm, left upper arm and both knees. Jane Doe and K.H. both advised the officer that there was video surveillance at G [REDACTED] and that the LPS should obtain the video.
42. On February 21, 2016, Det. Bruce Charteris of the Sexual Assault and Child Abuse Section assumed responsibility for the investigation and spoke with Jane Doe. Among other questions, Det. Charteris asked Jane Doe if she had "felt she had to report the incident as sex assault to save face" with her boyfriend. Det. Charteris did not ask Jane Doe why, if covering up cheating was Jane Doe's objective, she had not put her pants on before she had returned home.

43. During this interview, Det. Charteris acknowledged that he knew M [REDACTED], who was a former [REDACTED]
44. During this interview, Jane Doe also repeated to Det. Charteris that he should obtain the video surveillance from G [REDACTED] on the night in question.
45. Approximately five days later (on or about February 26, 2016), Det. Charteris questioned M [REDACTED], who acknowledged that he had sexual involvement with Jane Doe on the date in question. M [REDACTED] alleged that the sexual contact was consensual. He suggested that Jane Doe might be afraid to tell her mother what had happened and that he thought the complaint would culminate in a "financial shakedown", thus implying that the report was false and improperly motivated by financial gain. M [REDACTED] agreed to provide a download of the video surveillance to Det. Charteris and indicated that he had already made a copy of it and had watched it with his lawyer.
46. M [REDACTED] had previously stated to E.W. who had confronted M [REDACTED] on February 19, 2016, when she attended at G [REDACTED] to collect Jane Doe's belongings, and *prior* to M [REDACTED] being interviewed by police, words to the effect of: "I am so sorry, but it's not what it looks like."
47. On February 27, 2016, Det. Charteris obtained and reviewed the surveillance recording. Based on the contents of the recording, Det. Charteris decided that the sexual interaction was consensual and made the decision to close the file, despite the fact that Jane Doe's blood and urine analysis had not yet been sent to the laboratory for testing.
48. On February 28, 2016, Det. Charteris informed Jane Doe of his determination that no crime had occurred. Det. Charteris advised Jane Doe that the sexual activity on the video "appeared" consensual. No explanation was provided as to how, by viewing a video, Det. Charteris was able to determine Jane Doe's state of mind and whether she had consented to any sexual activity observed.

49. In his meeting with Jane Doe on February 28, 2016, Det. Charteris suggested to her that she was not being truthful because she had "buyer's remorse." He stated to her "you're not telling the truth, are you" and told her that what happened "was consensual." He further told her that the incident was embarrassing, that she did not need to tell anyone about it, and that he would not want his daughter to ruin her reputation by publicizing this type of news, thus making Jane Doe feel ashamed, embarrassed, stigmatized, disbelieved, and like she was at fault for M ██████ conduct.
50. Det. Charteris further told Jane Doe that she should see a doctor about her report that she had no memory of the night. Jane Doe understood Det. Charteris to be suggesting that she was a liar, 'crazy' and/or troubled and/or unstable, and that she needed to get medical help to deal with the fact that she had made a false report to the police in an attempt to avoid the consequences of a consensual sexual encounter.
51. On March 3, 2016, Det. Charteris informed M ██████ that no criminal act was observed on the video, even though the laboratory results had still not been obtained by the LPS.
52. Laboratory testing of Jane Doe's blood and urine revealed alcohol and tetrahydrocannabinol. Laboratory testing was not done for Rohypnol and various other "date rape" drugs.
53. In response to a complaint made by Jane Doe to the Office of the Independent Police Review Director ("OIPRD) about the handling of her investigation, Det. Charteris asserted that he knew that Jane Doe had not been drugged by M ██████ because with "typical" date rape drugs "the victims normally have a full recollection of the incident but are incapacitated and are unable to move or give consent." Det. Charteris further asserted that in his experience, victims who are intoxicated by alcohol "normally" have "some recollection of the interaction" and "do not have a large block of time where they do not remember anything." Based on his purported expertise on the effects of drugs or alcohol on women,

Det. Charteris concluded that Jane Doe was lying both about her lack of memory and the non-consensual nature of the sex.

54. The OIPRD report also suggested that because Jane Doe had the support of her mother and legal counsel in challenging the investigation, it was not Jane Doe who was “driving” the initial report to the police or the OIPRD complaint.
55. The OIPRD dismissed Jane Doe’s complaint of professional misconduct against Det. Charteris.
56. Despite repeated requests by Jane Doe, her mother and her legal counsel, the London Police Service refused to show Jane Doe the surveillance video in question, citing “privacy” reasons.
57. At no time did Det. Charteris or any other member of the LPS take seriously Jane Doe’s clear and unequivocal statements that she did not and would never have consented to sex with M [REDACTED] and the clear evidence that Jane Doe did not consent to sex because she was – whether voluntarily or involuntarily – rendered incapable of consent due to intoxication from alcohol and/or drugs.

Victims of Sexual Assault

58. The vast majority of sexual assault victims are females. The vast majority of sexual offenders are male.
59. Further, women possessing certain enumerated or analogous grounds protected by s. 15 of the *Charter* are more likely to be victims of sexual assault:
 - a. girls and younger women are more likely to be victims of sexual assault;
 - b. women who have drug addiction are more likely to be victims of sexual assault;

- c. Indigenous women are more likely to be victims of sexual assault; and
 - d. women who are homeless are more likely to be victims of sexual assault, and women who are homeless are disproportionately more likely to be Indigenous or have a mental or physical disability.
60. Victims of sexual assaults are significantly more likely to be sexually assaulted by someone known to the victim than by strangers.

Statistics on Unfounded Sexual Assault Complaints

61. From 2010-2014, the LPS dismissed 690 out of 2,278 complaints of sexual assault as unfounded. The unfounded rate during this period is 30% (the “**Unfounded Rate**”).
62. A claim classified as “unfounded” is a category that the LPS and many law enforcement agencies use to conclude that no crime occurred, which usually means that the complainant was simply not believed. The determination is often based on stereotypical conceptions about women and about sexual assault victims.
63. The Unfounded Rate of the LPS is significantly higher than the average unfounded rate of sexual assault allegations in law enforcement agencies across the country.
64. The Unfounded Rate of the LPS is significantly higher than unfounded rates of physical assault allegations made to the LPS during the same time period.

65. The Unfounded Rate of the LPS is significantly higher than false report rates of sexual assault found by researchers on the issue.
66. The Unfounded Rate reflects systemic sex discrimination against Ms. Williams, Jane Doe and other women who have made complaints of sexual assault during this same time period.
67. Until the Globe and Mail published its reports in February and March 2017, Ms. Williams and Jane Doe were not aware nor could they have been aware that they were victims of this systemic discrimination.

The Finding that Ms. Williams' and Jane Doe's Complaints were Unfounded

68. Ten common sexual assault stereotypes are listed by L'Heureux-Dubé J., dissenting in part, in *R. v. Seaboyer*; *R. v. Gayme*, [1991] 2 S.C.R. 577 at 651-53.
69. The act of classifying Ms. Williams' claim as unfounded was based on a number of stereotypes listed by L'Heureux-Dubé J., including but not limited to:
 - a. "*Struggle and Force: Woman As Defender of Her Honor*. There is a myth that a woman cannot be raped against her will, that if she really wants to prevent a rape she can."
 - Det. Gambriel emphasized to Ms. Williams that her clothing was not torn and that she did not remember how her clothes came off, implying that she did not struggle and therefore consented.
 - b. "*General Character: Anything Not 100 Percent Proper and Respectable....* Being on welfare or drinking or drug use could be used to discredit anyone, but where women are involved, these issues are used to imply that the

woman consented to sex with the defendant or that she contracted to have sex for money.”

- Det. Gambriel, while commending Ms. Williams for being forthright in telling him that she was intoxicated, throughout the interview reminded her about the amount of alcohol she had consumed. There is an implication that she brought this on herself due to her intoxication, and may have led the Assailant on only to then forget that she did in fact consent. He also relies on “twin myths” reasoning that promiscuous women (in this case, the intoxicated plaintiff who consented to kissing with a stranger) are more likely to consent to sex and in any event are less worthy of belief.
- c. *“Emotionality of Females.* Females are assumed to be ‘more emotional’ than males. The expectation is that if a woman is raped, she will get hysterical during the event and she will be visibly upset afterward. If she is able to ‘retain her cool,’ then people assume that ‘nothing happened’....”
- Det. Gambriel distorted Ms. Williams’ evidence in suggesting that it was the voyeurism that was the crux of the complaint. He improperly relied on the fact she was able to calmly tell him about the incident, but suggested to her that she got emotional when she started to talk about the people taking pictures of her.
- d. *“The Female Under Surveillance: Is the Victim Trying to Escape Punishment?... It is assumed that the female’s sexual behavior, depending on her age, is under the surveillance of her parents or her husband, and also more generally of the community. Thus, the defense argues, if a woman says she was raped it must be because she consented to sex that she was not supposed to have. She got caught, and now she wants to get back in the good graces of whomever’s surveillance she is under.”*

- Again, Det. Gambriel believed or implied that it was the voyeurism that was the crux of the matter, and that Ms. Williams got “caught” doing something she should not have been doing.
- e. “*Sexual Reputation: The Madonna-Whore Complex*.... women... are categorized into one-dimensional types. They are maternal or they are sexy. They are good or they are bad. They are madonnas or they are whores.”
- The fact that he commented on the discharge found in Ms. Williams’ underwear reinforces the idea that he believed that the Ms. Williams had been aroused and had therefore consented to the assault.
70. The interview displayed Det. Gambriel’s ignorance of the law of consent. He allowed stereotypical rape myths to overwhelm the fact that:
- a. Ms. Williams clearly remembered saying “no”;
 - b. he failed to consider her capacity to consent and that there could be no consent if she was intoxicated to the point of not being capable of giving consent; and
 - c. even if there was consent at the start of the incident, that consent was clearly revoked when Ms. Williams said “no”.
71. In any of these three scenarios, the allegation should have been founded and charges against the Assailant should have been laid.
72. The interview was clearly slanted towards disbelieving Ms. Williams.

73. The finding that Jane Doe's complaint was unfounded was similarly informed by discriminatory assumptions and stereotypes about sexual assault complainants.
74. In particular, Det. Charteris:
 - a. Suggested to Jane Doe in his very first interview with her, that she was lying about the events in order to "save face" with her boyfriend, thus relying on and perpetuating the discriminatory assumption that women lie about sexual assault in order to avoid responsibility for a sexual encounter or out of embarrassment or regret;
 - b. Suggested to Jane Doe that she was lying about the sexual assault because she didn't want her mother to know about the sex;
 - c. Suggested to Jane Doe that her situation was embarrassing and could ruin her reputation, thus placing stigma and blame on a nineteen year old victim;
 - d. Suggested to Jane Doe that she should see a doctor about her report that she was sexually assaulted but did not remember the events, thus relying on and perpetuating the assumption not only that women who report sexual assault are untruthful, but that they are mentally and emotionally unstable and unreliable;
 - e. Assumed Jane Doe was consenting because she purportedly did not appear to struggle or resist on the video. Further, Det. Charteris made this assumption that Jane Doe "appeared" to be consenting to sex as recorded on a surveillance video, despite Jane Doe's and C.M.'s evidence that Jane Doe did not consent to the sex and/or did not have the capacity to consent to the sex.
75. From his very first interaction with Jane Doe, and even before he had watched the surveillance video or had spoken to MacMillan, Det. Charteris blamed Jane Doe

for the rape and assumed she was lying because she was embarrassed or didn't want others to think the sex was consensual.

76. Like Det. Gambriel, Det. Charteris relied on his own purported expertise in the effects of drugs and alcohol on memory to support his discriminatory belief that a woman who reports rape but does not recall the events, is lying.
77. Det. Charteris' interactions with Jane Doe were clearly slanted towards disbelieving Jane Doe and caused Jane Doe serious harm, including by directly suggesting to her that she should feel embarrassment and shame, that she was untruthful, and that she should seek medical help because of the nature of her report.
78. The LPS did not properly investigate Ms. Williams' and Jane Doe's complaint because the Plaintiffs did not fit the ideal rape victim and the ideal rape case, with such ideals being based on outdated and improper stereotypical myths about sexual assault and sexual assault complainants.

Systemic Failures in Training and Policy and Culture

79. In addition to the stereotypes discussed above, the defendants in assessing sexual assault complaints relied on discredited sexual assault stereotypes in Canadian law, including in the cases of *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 O.R. (3d) 487 (ONSC); *R. v. Ewanchuk*, [1999] 1 S.C.R. 330; and *R. v. Esau*, [1997] 2 S.C.R. 777. These stereotypes include but are not limited to:

- a. women lie about being raped;
 - b. women are not reliable reporters of events;
 - c. women are prone to exaggerate;
 - d. women falsely report rape to get attention;
 - e. women who resist or say "no" may in fact be consenting;
 - f. women fantasize about being rape victims;
 - g. women are consenting when they are passive or incapable of communicating;
 - h. women consent when they are not modestly dressed;
 - i. drunken women are likely to consent, but are likely to forget they did consent;
 - j. women invite or provoke rape; and
 - k. women who have been truly raped would be hysterical.
80. The LPS has not provided any, or any adequate, training, policies, supervision, or oversight to its Police Officers regarding the use of sexual stereotypes and stereotypical myths about sexual assault and sexual assault complainants.

81. The LPS has not provided any, or any adequate, training, policies, supervision, or oversight to its Police Officers regarding how to appropriately interview victims of sexual assault.
82. The LPS's failures in providing training, policy guidance, supervision, or oversight include but are not limited to failures to ensure that officers, in their investigatory functions:
 - a. identify and set aside unconscious bias;
 - b. attend to the psychological and neurobiological effects of trauma on perception and memory;
 - c. respond appropriately to sexual assaults committed against women who have mental disabilities;
 - d. attend to the psychological and neurobiological effects of drug and alcohol use on perception and memory;
 - e. attend to the psychological and neurobiological effects of mental illness on perception and memory;
 - f. respond appropriately to sexual assault committed against women who are homeless;
 - g. attend to the psychological effects of homelessness on perception and memory;

- h. attend to the psychological and neurobiological effects of sleep deprivation on perception and memory; and
 - i. respond appropriately to the victimization of Indigenous women in Canadian society.
83. The LPS has not provided any or any adequate training to its Police Officers about the law of sexual assault and the law of consent.
84. Due to the failure of the LPS in providing any or any adequate training and policies, supervision, or oversight, or, in the alternative, in light of the training it provides and the culture or ethos in the LPS that exists, its Police Officers are not properly equipped to assess the credibility of sexual assault victims, resulting in continued systemic discrimination against sexual assault victims in general and against Ms. Williams and Jane Doe in particular.

Section 15 of the *Charter*

85. The manner in which the defendants investigated sexual assault allegations and the resulting dismissal of such allegations as “unfounded” between 2010 and 2017, including the investigation and dismissal of Ms. Williams’ and Jane Doe’s allegations, unjustifiably infringes s.15(1) of the *Charter*, which states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical ability.

86. The defendants' actions created a distinction on the basis of enumerated grounds, namely, sex, age, and in respect of some women race, mental and physical disability and the intersection of these grounds.
87. The defendants' actions caused Ms. Williams, Jane Doe, and all sexual assault complainants between 2010 and 2017, disadvantage as they were not believed and their complaints were categorized as unfounded. The defendants' actions caused Ms. Williams and Jane Doe to experience further disadvantage and harms (as defined below).
88. The distinction perpetuated prejudice and stereotyping on the basis of enumerated grounds. The defendants' actions were both a result of, and perpetuate, outdated and discredited sexual stereotypes and stereotypical myths about sexual assault and sexual assault complainants.
89. The defendants' actions constitute discrimination including systemic sex discrimination.
90. Systemic discrimination claims concern the operation and impact of policies, practices and systems over time, often a long period of time, and involve the interwoven amalgam of conduct, actions, inaction, policies, practices, systems and attitudes that together result in differential treatment and discriminatory impact.
91. The LPS unfounded 690 incidents of sexual assault over a four year period.
92. The statistics reveal that the Unfounded Rate of the LPS is significantly higher than both the average rate of unfounded sexual assaults in law enforcement

agencies across the country, and is significantly higher than valid false report rates of sexual assault. Critically, the Unfounded Rate is almost 19 times higher than the physical assault unfounded rate. These statistics are a clear sign of the operation of discriminatory practices, based on rape myths, in determining whether sexual assault cases are worthy of further attention.

93. The LPS handling of sexual assault claims reveals a pattern of discriminatory conduct and attitudes against victims of sexual assault.
94. The LPS has failed to provide any, or any adequate, training, policies, supervision, or oversight to its officers in relation to discrediting sexual stereotypes and stereotypical myths about sexual assault and sexual assault complainants.
95. This systemic discrimination has resulted in differential and disadvantaged treatment of sexual complainants like Ms. Williams and Jane Doe, who are disproportionately young and vulnerable women.
96. The interviews with Ms. Williams and Jane Doe displayed the use of and reliance on stereotypical rape myths by LPS Detectives, all of which have been explicitly rejected by the courts, and which are a product of this systemic discrimination.
97. The actions of the LPS therefore constitute a breach of s. 15, in that they create a disadvantage for women, including Ms. Williams and Jane Doe, and perpetuate prejudices and stereotypes about sexual assault victims like the Plaintiffs.

98. The infringement of s.15 cannot be justified pursuant to s.1 of the *Charter* for reason that it is not prescribed by law and, in any event, would not be in compliance with the balance of s.1, the onus of which lies on the defendants.

Section 24(1) of the *Charter*

99. Section 24(1) provides a personal remedy against unconstitutional government action.

100. Ms. Williams' and Jane Doe's s.15 *Charter* rights have been infringed.

101. As a result of the infringement, Ms. Williams and Jane Doe have suffered from a wide variety of adverse effects, including but not limited to:

- a. psychological and emotional injury;
- b. a loss of self-worth or self-esteem;
- c. embarrassment and humiliation;
- d. a loss of trust in law enforcement officers and agencies;
- e. a loss of credibility in the eyes of the LPS;
- f. fear for her future well being and security of person;
- g. a loss of belief in the administration of justice;
- h. loss of engagement in their communities (including the educational institution/campus); and

- i. out of pocket expenses to be particularized,

(the “Harms”).

- 102. The purpose of awarding damages pursuant to s.24(1) of the *Charter* is to compensate Ms. Williams and Jane Doe for loss, to vindicate *Charter* rights, and to deter future *Charter* breaches.
- 103. Damages are appropriate and just in this case given the harm to Ms. Williams and Jane Doe, the systemic nature of the *Charter* breaches, and the pervasiveness of the stereotypical and discriminatory acts that occur in law enforcement agencies nationwide. Continuing *Charter* breaches by the defendants due to systemic discrimination against victims of sexual assault deter victims from reporting crimes to law enforcement agencies and permit perpetrators to continue to commit sexual violence with impunity.
- 104. The problem of unfounded sexual assaults, and the use of and reliance on rape myths by law enforcement agencies, has been known to experts in sexual assault and by courts for decades.
- 105. Despite calls for reform in Ontario and across Canada, statistics show that fewer women are reporting sexual assaults and that unfounded rates remain vastly disproportionate and erratically reported and applied across police services.
- 106. Experts in the area of sexual assault advocate for a case review model first established in Philadelphia, which requires police forces to invite an independent and external review team of frontline service providers and women’s legal

advocates to review all unfounded sexual assault cases and ensure accountability and transparency in how police deal with sexual assault complaints and complainants (the “**Philadelphia Model**”).

107. The LPS has not implemented the Philadelphia Model. The LPS has not attempted to provide additional oversight by experts in the area of sexual violence in regards to how sexual assault files are classified and the impact of rape myths.
108. The plaintiffs therefore seek the remedies set out in paragraphs 1(d), (e) and (f) above as the just and appropriate relief required to ensure that the systemic discrimination is addressed in a meaningful way.
109. The plaintiffs also seek the declaratory relief set out above in paragraph 1(a) pursuant to both ss.24 and 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, to vindicate the s.15 rights of those who have been subjected to the Impugned Action.

Place of Trial

110. The plaintiffs propose that this action be heard in London, Ontario.

October 11, 2017

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Court File No: 782/17

ONTARIO
SUPERIOR COURT OF JUSTICE
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STATEMENT OF CLAIM

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