

Court File No.: 782-17

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

STATEMENT OF DEFENCE

1. The Defendants admit the allegations contained in paragraphs 5, 6, 7, 8, 9, and 99 of the Third Fresh as Amended Statement of Claim.
2. The Defendants deny each and every other allegation contained in the Third Fresh as Amended Statement of Claim, unless expressly admitted herein.
3. The Defendants have insufficient knowledge to either admit or deny the allegations contained in paragraphs 2, 3, 4, 10, 11, 12, 13, 14, 15, and 16 of the Third Fresh as Amended Statement of Claim.
4. The Defendant, London Police Services Board (“LPSB”), is constituted pursuant to the provisions of the *Police Services Act*, R.S.O. 1990 c. P15, as amended. The liability of the LPSB, in relation to the activities of London Police Service officers is set out in s.50 of this *Act*.
5. The Defendants, Paul Gambriel, Bruce William Charteris and John Doe Police Officers, were at all material times members of the London Police Service (the “LPS”).

Standing

6. The Defendants deny that the Plaintiff, Barbra Schlifer Commemorative Clinic (the "Clinic") has standing to bring this action. The Clinic has no connection to the individual Plaintiffs and has suffered no loss.

7. The Defendants deny that any of the Plaintiffs have standing to seek the relief requested in paragraphs 1(a), (d), (e) and (f) of the Third Fresh as Amended Statement of Claim.

Limitations Defences

8. The Defendants state that the Plaintiff Williams' claim is statute barred as having been commenced beyond the two-year anniversary of the investigation at issue.

9. The Defendants state that any relief claimed with respect to investigations of sexual assault allegations prior to October 11, 2015 are statute barred as having been commenced beyond the two-year anniversary of the investigation and classification.

10. The Defendants plead and rely on the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, as amended.

The Williams Incident

11. On or about October 16, 2010 at approximately 3:30 a.m., LPS Officer, Antoni Uchmanowicz, was dispatched to 1151 Richmond Street in London, Ontario (Delaware Hall Residence at Western University) regarding a reported sexual assault.

12. On this attendance, Officer Uchmanowicz spoke to the Plaintiff, Ava Williams ("Williams"), and several of her friends and was informed that:

- (a) on October 15, 2010, Williams and two female friends had attended a keg party at 1247 Richmond Street in London, Ontario;
- (b) Williams had been drinking vodka throughout the evening and was intoxicated;

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- (c) at some point during the evening, Williams met a male, with whom she engaged in consensual kissing; Williams did not know this male but provided a description of him;
- (d) at some point during the evening, Williams and the male engaged in non-consensual vaginal intercourse on the outside north side of the residence;
- (e) several individuals discovered Williams and the male having intercourse and began taking photos of them; and,
- (f) the male left the area and some other individuals assisted Williams into a taxi and sent her home.

13. At approximately 4:40 a.m., LPS Officer, Norman Ossau, having received this information from Officer Uchmanowicz, attended 1247 Richmond Street with Officers Steven Vanberkel and Daniel Boyco to continue the investigation. He observed numerous drink containers on the ground consistent with a keg party.

14. Officers Ossau and Vanberkel spoke to certain occupants of 1247 Richmond Street. One occupant informed the officers that Matthew Nash ("Nash") had been intimate with a female outside to the side of the house and a number of partygoers had seen them. He provided the officers with Williams' cell phone and some clothing items that he had found outside.

15. Officers Ossau and Boyco attended at a neighbouring home at 1253 Richmond Street and located a condom package and a condom at the front porch and garden of that home. Officer Boyco interviewed certain occupants of 1253 Richmond Street all of whom advised that they had not seen anything related to the alleged incident.

16. The scene at 1247 and 1253 Richmond Street was secured, processed for evidence and cleared by forensics.

17. Officer Uchmanowicz transported Williams to University Hospital where she was medically cleared, and then to St. Joseph's Hospital to have a sexual assault kit administered.

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18. After the medical examination, Williams attended LPS headquarters and was interviewed by Officer Paul Gambriel. During this interview, Williams stated:

- (a) she had been drinking alcohol and was intoxicated arriving at 1247 Richmond Street;
- (b) she paid for entry to the party that allowed her to drink from a keg there;
- (c) she also brought her own alcohol which she did not allow out of her sight;
- (d) she was certain she could not have been drugged;
- (e) she did not recall kissing Nash or how she got to the side of the residence with him;
- (f) she did not recall having her clothes removed;
- (g) she blacked out for a period of time and then remembered Nash sexually assaulting her at the side of the residence; and,
- (h) she recalled several people standing around and that that's how the incident ended.

19. On October 17, 2010, Officer Gambriel left a phone message for Nash at his last known phone number and asked him to contact police regarding this incident.

20. On October 17, 2010, Williams' father contacted Officer Gambriel and advised him that Williams did not want to proceed further with the incident, did not want police going through her belongings that had been seized, and requested that these belongings be returned to Williams.

21. On October 20 and 26, 2010, Officer Gambriel attended Nash's last known address but was unable to locate him.

22. On October 20 and 28, 2010, Officer Gambriel called Nash's last known phone number and again left a message for him to contact police regarding this incident.

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23. On or about October 21, 2010, Williams, of her own volition, attended LPS headquarters and retrieved her personal belongings which were being held as evidence in the investigation.

24. On November 10, 2010, Nash attended LPS headquarters and was interviewed by Officer Gambriel. During this interview, Nash stated:

- (a) he met Williams at the party;
- (b) both were drinking alcohol;
- (c) after brief conversation, his interaction with Williams quickly progressed to sexual behavior;
- (d) Williams was very forward and participated in the initiation of the physical aspect of the encounter by lifting her shirt to show him her breasts;
- (e) both decided to leave the party to get a cab to go somewhere more private;
- (f) Williams told him she wanted to have sex with him;
- (g) as they left, both decided not to wait for the cab and engaged in consensual intercourse at the side of the house;
- (h) they were discovered by other partygoers who started taking pictures of them;
- (i) Williams seemed upset at being discovered and thought Nash had been involved with the bystanders taking photos of them, which he denied;
- (j) he tried to find his clothes and went back into the residence; and,
- (k) some girls, who he assumed were Williams' friends, helped Williams into a cab and she left.

25. Nash was advised that charges would not be laid but he was warned regarding sexual assault.

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26. On November 13, 2010, Officer Gambriel contacted Williams to inquire whether it was still her intention not to proceed with charges. She confirmed that she did not want to proceed with charges or to participate in any judicial process regarding the incident.

27. Based on Williams' wishes to no longer participate in the investigation, and in light of her intention not to cooperate, it was concluded that reasonable and probable grounds did not exist to charge Nash.

28. The LPS received no complaints about its investigation into the alleged sexual assault concerning Williams and, in particular, received no complaints concerning Officer Gambriel's method or manner of investigation. No complaint was filed with the Ontario Independent Police Review Director (the "OIPRD"). The LPS was not aware of any concern or complaint from any source until a Globe and Mail article was published on February 3, 2017.

The Doe Incident

29. On February 19, 2016 at approximately 5:00 a.m., LPS Officer, Adam Wissink, was dispatched to [REDACTED] [REDACTED] in London, Ontario regarding what was reported to be a sexual assault.

30. The complainant, [REDACTED], had called the LPS because he believed his girlfriend, the Plaintiff, Jane Doe ("Doe"), might have been sexually assaulted by her boss, Barry MacMillan ("MacMillan"), at her workplace, Gusto's Bar. [REDACTED] reported that Doe had arrived home from work that night approximately three and half hours later than usual and that she was not wearing pants or undergarments under her coat.

31. Officer Wissink spoke to Doe, who informed him that:

- (a) she was upset because she was arguing with [REDACTED], who had accused her of sleeping with her boss, MacMillan;
- (b) she was employed at Gusto's Bar and had been since August 2015;

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- (c) she was supposed to end her shift at 10:30 p.m. but had to work late and had not finished until 11:30 p.m.;
 - (d) she stayed after the bar closed and had drinks with a co-worker and MacMillan;
 - (e) she had several alcoholic drinks before they all left the bar at 12:30 a.m.;
 - (f) she walked straight home afterward; she was sure she was wearing pants to walk home, but may not have been wearing underwear;
 - (g) she did not have any sexual interaction with MacMillan; and,
 - (h) she was not hurt and did not require assistance.
32. Officer Wissink then spoke to [REDACTED] separately, who informed him that:
- (a) he had been waiting for Doe to come home;
 - (b) he went to Gusto's Bar around 2:30 a.m. to check on Doe. He peered through the window and believed he observed two people at the bar engaging in sexual behavior;
 - (c) he returned to Gusto's Bar again around 3:30 a.m. and saw two people sitting at the bar;
 - (d) Doe returned home around 4:30 a.m. She was wearing a long coat. He was unsure if she was wearing pants;
 - (e) he accused Doe of sleeping with MacMillan;
 - (f) he found Doe's pants and underwear balled up in her coat pocket; and,
 - (g) he wanted Doe to go to the hospital to get checked for drugs and sexual activity.

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33. Officer Wissink encouraged Doe to attend the hospital and offered to transport her there. Doe declined and remarked that she might go in the morning. Officer Wissink advised her not to shower and to put her pants and underwear in a plastic bag.

34. On February 20, 2016 at approximately 8:30 p.m., LPS Officer, Tanya Schwarz, was dispatched to [REDACTED] in response to a second report regarding the same incident.

35. On this attendance, Officer Schwarz spoke with the complainant, Doe's mother, [REDACTED], who informed her that:

- (a) in the morning of February 19, 2016, Doe had asked her to take her to the hospital as she believed that she may have been sexually assaulted;
- (b) she took Doe to St. Joseph's Hospital in London where a sexual assault kit was completed; and,
- (c) Doe now wished to report a sexual assault related to the incident that police had investigated the previous morning.

36. Officer Schwarz spoke to Doe who stated:

- (a) she was at her place of work, Gusto's Bar, in the early hours of February 19, 2016;
- (b) she stayed after her shift to have a drink with one of her co-workers and with her boss, MacMillan;
- (c) the three of them had two shots of vodka then her co-worker left;
- (d) she had two more shots, poured by MacMillan. She believed this drink had more alcohol in it, took MacMillan longer to make, and tasted different;
- (e) she had a fifth shot, which she poured, and did not remember anything after that until she arrived home;

- (f) she vaguely recalled being bent over the bar with her right arm behind her back but did not recall what was happening at that point;
- (g) she arrived home upset because [REDACTED] was upset but she could not understand why;
- (h) she did not understand what had happened during the four hours before arriving home and could not recall why she returned home without her pants or underwear on; and,
- (i) the next morning, she had difficulty locating a tampon she had inserted the previous night, eventually finding it wedged deep inside her vagina.

37. Statements were also obtained from [REDACTED], from the co-worker, and from [REDACTED].

38. On February 21, 2016 at approximately 3:30 p.m., Doe attended LPS headquarters and was interviewed by Officer Bruce Charteris. During this interview, Doe stated:

- (a) she had no further memories of the night at the bar other than having her arm held behind her back while leaning over the bar; and,
- (b) she did not recall engaging in any sexual activity.

39. On February 24, 2016, Doe signed a medical release of information allowing the LPS to obtain her medical records to learn the status of any drugs or alcohol in her system at the time of the alleged offence. At this time, Doe informed LPS officers that she had been to a follow up medical appointment and had learned that no drugs were found in her system other than cannabis, which she admitted to using periodically.

40. On February 26, 2016, LPS Officers Cameron Halliday and Charteris attended at Gusto's Bar to speak to MacMillan. MacMillan provided these officers with a copy of Gusto's Bar's video surveillance that captured the incident.

41. Officer Charteris reviewed the video. It depicted Doe and MacMillan engaging in various sexual acts which appeared consensual and, in particular:

- (a) Doe and MacMillan taking turns performing oral sex on each other;
- (b) Doe initiating sexual intimacy with MacMillan, such as leaning in to kiss him and reaching for his crotch;
- (c) Doe and MacMillan having sexual intercourse while Doe is bent over the bar;
- (d) Doe and MacMillan both hiding when a figure is seen at the window (likely [REDACTED]);
- (e) Doe moving around of her own volition;
- (f) Doe periodically on her phone, both before and after sexual behavior; and,
- (g) Doe smiling and laughing with MacMillan.

42. On February 27, 2017, Officer Charteris attended at Doe's father's residence to speak to Doe. He informed her of the contents of the video and that the only drug the hospital found in her blood was cannabis. Doe confirmed again that she had no memories of any sexual interaction with MacMillan.

43. A full drug screen of Doe's blood and urine was conducted by the Centre of Forensic Sciences. This report revealed trace elements of alcohol in her blood, alcohol in her urine, and THC in her blood and urine. It was consistent with Doe's medical record.

44. Based on the investigation, it was concluded that there were not reasonable and probable grounds to charge MacMillan and no charge was laid.

45. The OIPRD received a complaint from Doe about the LPS's investigation into her alleged sexual assault and, in particular, that Officer Charteris' decision not to charge MacMillan constituted misconduct. The OIPRD investigated this complaint and found it to be unsubstantiated.

Training, Policies and Practices for Responding to Victims of Sexual Assault

46. Training relating to sexual assault investigations prior to 2017 was conducted in accordance with Provincial Adequacy Standards and as provided by the Ontario Police College and Provincial Crown's Office.

47. Commencing in January 2016, members of the LPS have received and continue to receive training related to trauma-informed investigation and interviewing techniques.

48. Commencing in March 2017, members of the LPS and community partners have received and continue to receive training with respect to the Philadelphia Model.

Unfounded Classification and Implementation of Review Program

49. In 2017, the LPS conducted a review of all sexual assault investigations between 2010 and 2016 that resulted in a coding/classification of "unfounded" to determine the appropriateness of the classification. During this period, investigations had been coded as "unfounded" in circumstances where:

- (a) the investigation did not reach the threshold of reasonable grounds required to lay a criminal charge;
- (b) the incident was reported to the LPS but the complainant and/or victim did not want to participate in an investigation or did not want to proceed further in the investigation; or,
- (c) the allegation was proven to be false with corroborating evidence other than from the accused, or the complainant admitted to making a false complaint.

50. In the Williams case, the "unfounded" classification was a direct result of Williams' decision to withdraw from the investigative process and of her desire not to proceed with charges.

51. In Doe's case, the investigation did not reach the threshold of reasonable grounds to lay a criminal charge.

52. As a result of the review, the definitions and application of certain clearance codes, including the clearance code "unfounded", were amended and clarified.

Advisory Committee and Community Case Review

53. In February 2017, the LPS identified the need to develop a long-term strategy to ensure consistent and enhanced training across the entire justice system and community at large with respect to responding to victims of sexual violence.

54. As a result, the LPS, with the support and advice of community partners, created an advisory committee comprised of community representatives and LPS members to discuss, develop and implement such a strategy.

55. The Advisory Committee is comprised of independent experts in sexual assault, frontline service providers, women's legal advocates, members of the LPS, representatives from Western University and Fanshawe College, community members with lived experience, representatives from the Middlesex London Crown Attorney's Office and representatives from the Ministry of the Attorney General.

56. As part of this initiative, the Defendants, in conjunction with its community partners, implemented a London-specific model for reviewing its sexual assault investigations, informed by the Philadelphia Model (the "Community Case Review Program").

57. The Community Case Review Committee is presently comprised of community services providers and advocates including representatives from Anova, Atlohsa Native Family Healing Services Inc., Carrefour des Femmes du Sud-Ouest de L'Ontario, London Abused Women's Centre, and the Muslim Resource Centre for Social Support and Integration, Bellehumeur Law and the LPS.

58. The Community Case Review Committee is tasked with reviewing all LPS sexual assault reports where charges were not laid, including cases classified as "unfounded".

59. The Community Case Review Program has no end date. It is for an indefinite term. It is not dependent on external funding and is at no additional cost to the LPS. The LPS has no intention to end this review program. The commitment was made by LPS to participate in the review program before any funding for training was secured and the LPSB committed to any shortfalls associated with training costs.

London Police Services Board – Sexual Assault Investigation Policy

60. The LPSB is the independent civilian oversight and governance body responsible for establishing the priorities, objectives and policies for the LPS.

61. Commencing in January of 2018, the LPSB sought community input and feedback into updating their sexual assault investigation policy with a view to ensuring the updated policy was victim-centered and trauma-informed. Input was received from community advocacy groups, and community members with lived experience or expertise.

62. On January 17, 2019, the LPSB approved its new policy related to sexual assault investigations. The policy requires the Chief of Police to:

- (a) establish and maintain trauma informed and victim/survivor centered procedures for undertaking and managing investigations into sexual offences;
- (b) ensure the provision of on-going training and skills development for all LPS members that have contact with victims/survivors of sexual assault including topics on consent, privilege and power, trauma informed approaches and gender bias and rape myths;
- (c) work with community organizers, hospitals and local Crown to ensure a coordinated response to victims/survivors of sexual assault;
- (d) ensure the establishment of a Sexual Assault Advisory Committee;
- (e) ensure the establishment of a Victim Advocate Case Review Program; and,

- (f) explore the possibility of establishing third party reporting systems.

Statutory Authority for Oversight

63. The Defendants state that the remedies sought by the Plaintiffs in paragraphs 1(d), (e) and (f) seek to usurp the existing legislative scheme for supervision of the LPS practice and procedure and are, therefore, unavailable at law to the Plaintiffs.

64. The Defendants state that the Court has no jurisdiction to wrest authority for implementing and supervising police policy and procedure from the legislatively-appointed bodies. In particular:

- (a) the Solicitor-General has the sole the authority to monitor, inspect and review services provided by the LPS;
- (b) the Ontario Civilian Police Commission is the sole authority to investigate and dispose of complaints made about the policies of or services provided by the LPS and its members;
- (c) the Lieutenant Governor in Council is the sole authority to direct the Commission to inquire into and report to on any matter relating to law enforcement; and,
- (d) the Independent Police Review Director is the sole authority to review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public regarding the LPSB or members of its police service.

Absence of Negligence and Breach of Duty

65. At all material times the Defendants acted in accordance with their duties and responsibilities as set out in the *Police Services Act*, and the *Criminal Code*, R.S.C. 1985, Chap. C-46, as amended.

66. The Defendants deny that they conducted a negligent investigation into the sexual assault allegations of the individual Plaintiffs. The Defendant officers received the complaints, heard from the Plaintiffs, alleged perpetrators and witnesses, and collected and considered all available physical evidence.

67. The Defendants plead that at all material times they were acting in the good faith performance of their duties, in accordance with the circumstances of the situation and appropriate police procedures, and without any malice, want of care, negligence or breach of duty.

68. The Defendants state that the officers' actions were reasonable based on the totality of the circumstances presented to them at the time such actions were taken and were not motivated by stereotypical rape myths.

69. The Defendants state that the police have a common law duty to investigate crimes and maintain the peace. The police must follow the information they obtain through their investigations and are entitled to apprehend people involved in crimes. The police may only arrest and charge people where reasonable and probable grounds exist to do so.

70. The Defendants plead and rely on the provisions of the *Negligence Act*, R.S.O. 1990 chapter N1, as amended, and, in particular, s. 3 of that *Act*.

Charter Claims

71. The Defendants state that the facts of this case do not support a claim being asserted under the *Charter* and, in particular, deny that the facts underpinning these claims support any allegations, or any relief, under ss. 15 or 24 of the *Charter*. None of the Defendants discriminated against either Plaintiff on the basis of any of the enumerated grounds and none of the alleged reliance on so-called stereotypical beliefs or myths played a material part in the investigation of the Plaintiffs' complaints of sexual assault or in the disposition of the complaints.

72. There is no basis and no substance to the allegation of systemic discrimination between 2010 and 2016 nor does any of the Plaintiffs have standing to make such allegation.

Damages

73. The Defendants deny that the Plaintiffs have suffered the injuries, losses or damages alleged in the Third Fresh as Amended Statement of Claim, or at all, and put the Plaintiffs to the strict proof thereof.

74. The Defendants state that the damages claimed are excessive and too remote to be recoverable in law and have not been mitigated by the Plaintiffs.

75. The Defendants state that if the Plaintiffs did suffer any losses or damages, which is specifically denied, they were not caused by the Defendants.

76. The Defendants state that the injuries described in the Third Fresh as Amended Statement of Claim were caused or contributed to by the Plaintiffs' and/or their respective assailants' actions.

77. The Defendants state that the Plaintiffs have not suffered any special damages.

78. The Defendants state that the facts plead and provable in this case do not support a claim for punitive or aggravated damages. The Defendants at no time engaged in harsh, vindictive, reprehensible or malicious conduct towards any of the Plaintiffs.

Relief Requested

79. The Defendants state that even if the Plaintiffs have standing to seek the relief requested, which is specifically denied, it would be inequitable and contrary to the public interest for this Honourable Court to grant any of the relief claimed.

80. The Defendants state that the relief sought at paragraphs 1(d) and (e) of the Third Fresh as Amended Statement of Claim are moot. The Defendants plead and rely on the doctrine of mootness.

Disposition

81. The Defendants state that this action should therefore be dismissed with costs on a full indemnity basis.

April 25, 2019

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Proceeding commenced at LONDON

STATEMENT OF DEFENCE

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