

Court File No: CV 18-00608885
-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

REECE MAXWELL-CRAWFORD



Plaintiff

- and -

**TORONTO TRANSIT COMMISSION, PATRICK BRUCE HENRY, MARK ANTHONY
ALARCON, PUNEET KUMAR MAHI, TORONTO POLICE SERVICES BOARD, and
TORONTO POLICE SERVICE OFFICERS JOHN DOE and JANE DOE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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.

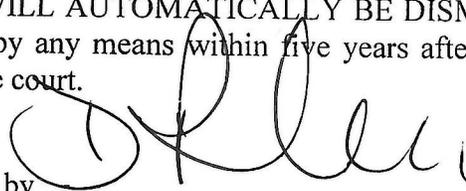
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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 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 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.

ISSUED Date NOV 14 2018 Issued by



Local registrar

393 University Avenue, *10th Floor*
Toronto ON M5H 1E6

TO: TORONTO TRANSIT COMMISSION
1900 Yonge Street
Toronto, ON M4S 1Z2

AND TO: PATRICK BRUCE HENRY
c/o Toronto Transit Commission
1900 Yonge Street
Toronto, ON M4S 1Z2

AND TO: MARK ANTHONY ALARCON
c/o Toronto Transit Commission
1900 Yonge Street
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AND TO: PUNEET KUMAR MAHI
c/o Toronto Transit Commission
1900 Yonge Street
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AND TO: TORONTO POLICE SERVICES BOARD
40 College Street
Toronto, ON M5G 2J3

AND TO: OFFICERS JOHN DOE AND JANE DOE
c/o Toronto Police Services Board
40 College Street
Toronto, ON M5G 2J3

CLAIM

1. The Plaintiff, Reece Maxwell-Crawford, claims:
 - a. general and aggravated damages in the amount of \$250,000.00;
 - b. a declaration that his rights as enshrined in the *Canadian Charter of Rights and Freedoms* were infringed, and damages for violation of those rights pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$250,000.00;
 - c. damages for breach of his rights as guaranteed by the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 in the amount of \$150,000.00;
 - d. special damages in a sum to be disclosed before trial;
 - e. punitive and/or exemplary damages in the amount of \$100,000.00;
 - f. pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - g. costs of this action on a substantial indemnity basis; and
 - h. such further and other relief as this Honourable Court deems just.

INTRODUCTION

2. On February 18, 2018, the Plaintiff, Reece Maxwell-Crawford (“**Mr. Maxwell-Crawford**” or the “**Plaintiff**”), was assaulted without justification or warning by a Toronto Transit

Commission Fare Inspector while exiting the 512 St. Clair streetcar. After Mr. Maxwell-Crawford resisted the initial assault, he was further assaulted and illegally detained by three Toronto Transit Commission Fare Inspectors who threw Mr. Maxwell-Crawford to the ground face first and pinned him there by kneeling on his back, arms and legs for several minutes. Several Toronto Police Service officers then arrived and continued the illegal detention and assault. At no time did the Defendants have grounds to arrest or detain Mr. Maxwell-Crawford or have any justification for the use of force. Mr. Maxwell-Crawford was eventually released without any charges under the Toronto Transit Commission's bylaws or otherwise.

3. The Plaintiff asserts that the illegal, violent and entirely unjustified treatment suffered by him was the result of racial profiling, racial bias and discrimination. Mr. Maxwell-Crawford states that he was specifically targeted for no reason other than the fact that he was a young black man with his hood up.

4. Mr. Maxwell-Crawford brings this lawsuit to affirm and vindicate his civil rights that were violated by the Defendants' discriminatory and racially biased actions and to seek compensation for the severe physical and psychological injuries suffered by him.

THE PARTIES

5. The Plaintiff, Reece Maxwell-Crawford, was at all material times 19 years old and a resident of the City of Toronto. Mr. Maxwell-Crawford was the victim of assault, battery, false imprisonment, and negligence. Mr. Maxwell-Crawford suffered a breach of his rights as guaranteed by ss. 7, 9, 10 and 15 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") and by s. 1 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 ("**Human Rights Code**").

6. The Defendant, Toronto Transit Commission (“TTC”), is a board of the City of Toronto and a public transport agency that operates bus, subway and streetcar services in Toronto. The TTC was at all material times responsible for the deployment of TTC fare inspectors on TTC routes.

7. The Defendants, Patrick Bruce Henry, Mark Anthony Alarcon and Puneet Kumar Mahi (collectively, the “TTC Fare Inspectors”), are residents of the Province of Ontario and were at all material times employed as TTC Fare Inspectors. The Plaintiff states that the above TTC Fare Inspectors acting individually and/or collectively with the other Defendants committed the torts of battery, assault, false imprisonment, and negligence, and breached Mr. Maxwell-Crawford’s rights as guaranteed by ss. 7, 9, 10 and 15 of the *Charter* and by s. 1 of the *Human Rights Code*. The Plaintiff states that the TTC is responsible in law for the wrongs committed by the TTC Fare Inspectors, and responsible in law for its own negligence.

8. The Defendant, Toronto Police Services Board (“TPSB”), is the agency responsible for the Toronto Police Service, and is liable in respect of torts committed by members of the police force in the course of their employment.

9. The Defendant Officers, John Doe and Jane Doe (collectively, the “TPSB Officers”), are residents of Ontario and employed as officers with the Toronto Police Service. Their identities are currently unknown to the Plaintiff, but are known to the Defendant TPSB. The Plaintiff states that the TPSB Officers acting individually and/or collectively with the other Defendants committed the torts of battery, assault, false imprisonment, and negligence, and breached Mr. Maxwell-Crawford’s rights as guaranteed by ss. 7, 9, 10 and 15 of the *Charter* and s. 1 of the *Human Rights*

Code. The Plaintiff states that the TPSB is responsible in law for the wrongs committed by the TPSB Officers.

THE EVENTS OF FEBRUARY 18, 2018

10. At approximately 4:27 p.m. on February 18, 2018, Mr. Maxwell-Crawford lawfully boarded the westbound 512 streetcar at St. Clair West Station.
11. The three TTC Fare Inspectors were riding on the same streetcar. The Plaintiff is not able at this time to identify the TTC Fare Inspectors individually by name, and therefore will refer to the defendant TTC Fare Inspectors as “**Fare Inspector 1,**” “**Fare Inspector 2,**” and “**Fare Inspector 3**”.
12. At all material times, the TTC Fare Inspectors were heading back to the TTC’s Hillcrest Complex in order to end their shift after having finished active inspection duty for the day. Because the TTC Fare Inspectors were not on active duty, they were not conducting proof of payment inspections and had no reason to engage with passengers.
13. As soon as Mr. Maxwell-Crawford boarded the streetcar, Fare Inspector 1 took an immediate and targeted interest in Mr. Maxwell-Crawford for no reason other than the fact that he was a young black man with his hood up. The Plaintiff alleges that Fare Inspector 1’s targeting of Mr. Maxwell-Crawford was discriminatory and a product of racial profiling.
14. When Mr. Maxwell-Crawford boarded the streetcar, he did not wish to engage with anyone. He had his hood up, was listening to music on his headphones and was minding his own business.

15. As soon as Mr. Maxwell-Crawford boarded the streetcar, Fare Inspector 1 began staring at Mr. Maxwell-Crawford in a hostile, aggressive and relentless manner. Fare Inspector 1 continued to aggressively stare at Mr. Maxwell-Crawford for the entire length of the journey – a total time of almost four minutes. At various points, and while aggressively staring at Mr. Maxwell-Crawford, Fare Inspector 1 made dismissive facial expressions, shook his head and directed comments at Mr. Maxwell-Crawford despite the fact that it was obvious that Mr. Maxwell-Crawford was wearing headphones, could not hear him and did not want to engage. Throughout this time, Fare Inspector 1 was standing a few feet in front of Mr. Maxwell-Crawford.

16. Fare Inspector 1 had no reason whatsoever to engage with Mr. Maxwell-Crawford in any manner. Fare Inspector 1 was not inspecting whether Mr. Maxwell-Crawford or anyone else had proof of purchase of their fare, nor was he exercising any of his other duties as a TTC Fare Inspector. In all of the circumstances, it was obvious that Mr. Maxwell-Crawford did not want to be bothered. He had every right to be left alone.

17. At approximately 4:28 p.m., Fare Inspector 2 joined Fare Inspector 1, and stood in front of Mr. Maxwell-Crawford and also began staring at him.

18. At approximately 4:31 p.m., Fare Inspector 3 joined Fare Inspector 1 and Fare Inspector 2, and also stood facing Mr. Maxwell-Crawford. At this point, three TTC Fare Inspectors had arrayed themselves a few feet from Mr. Maxwell-Crawford in an intimidating and confrontational manner.

19. Throughout the entire journey, Mr. Maxwell-Crawford had done nothing to attract the attention or concern of the TTC Fare Inspectors or anyone else. He did nothing other than stand passively with his arms by his side with a neutral expression on his face.

20. At approximately 4:32 p.m., Mr. Maxwell-Crawford turned around and exited the streetcar. The TTC Fare Inspectors exited the streetcar behind him. Mr. Maxwell-Crawford then re-entered the streetcar, before deciding to exit again. Throughout this entire time, Fare Inspector 1 made a concerted point of continuing to stare at Mr. Maxwell-Crawford.

21. As Mr. Maxwell-Crawford exited the streetcar a second time he was in no way acting aggressively. He walked slowly in the direction of the TTC Fare Inspectors, with his hands by his side in a neutral and non-threatening manner.

22. Suddenly and without warning, Fare Inspector 1 violently pushed Mr. Maxwell-Crawford with great force, knocking him off his feet and sending him flying backwards and back onto the streetcar. Mr. Maxwell-Crawford got up and resisted and defended himself against this violent and wholly unexpected attack. The TTC Inspectors then grabbed Mr. Maxwell-Crawford and threw him face first to the ground of the concrete streetcar platform. The three TTC Inspectors then totally constrained Mr. Maxwell-Crawford's movement by kneeling with full weight on his back, twisting and pinning his left shoulder, holding his right arm behind his back, and pinning his legs to the ground. As a result of the violence of the attack, Mr. Maxwell-Crawford's headphones were sent flying off his head and he lost a shoe.

23. Throughout the detention (which involved three grown men kneeling with full weight on Mr. Maxwell-Crawford), it was obvious that Mr. Maxwell-Crawford was in great pain, discomfort and distress. Throughout the detention, Mr. Maxwell-Crawford stated clearly and repeatedly, "you are hurting me," "I'm in pain," "get off of me," "let me go," and "I didn't do anything." Several members of the public became very concerned about the treatment of Mr. Maxwell-Crawford and pleaded with TTC Inspectors to stop their assault and detention of Mr. Maxwell-Crawford. Despite

the pleas of Mr. Maxwell-Crawford and members of the public, the TTC Inspectors continued their violent and complete detention of Mr. Maxwell-Crawford, including by continuing to kneel with full weight on his back and legs, for over five minutes.

24. Several TPSB officers then arrived and continued and participated in the illegal detention and assault of Mr. Maxwell-Crawford. TPSB officers together with the TTC Fare Inspectors kept Mr. Maxwell-Crawford pinned face first to the ground for several more minutes before TPSB placed handcuffs on Mr. Maxwell-Crawford and escorted him to a police cruiser, where he was further detained for approximately thirty more minutes.

25. After discussion with TTC Fare Inspectors regarding what happened, it became clear to the TPSB officers that there were no grounds to detain or arrest Mr. Maxwell-Crawford. TPSB Officers then released Mr. Maxwell-Crawford unconditionally and without charge.

26. The Defendants knew or should have known that Mr. Maxwell-Crawford had sustained injuries as a result of the assault and detention. In particular, it was obvious that Mr. Maxwell-Crawford had suffered a head injury. Despite this knowledge, none of the Defendants took any steps to ensure that Mr. Maxwell-Crawford received timely medical care. Instead, upon release, he was left to make his way home on his own.

CAUSES OF ACTION

Assault and Battery

27. The Plaintiff states that Defendant TTC Fare Inspectors committed assault and battery against Mr. Maxwell-Crawford by violently pushing him, and by throwing and pinning him face first to the ground. The TTC Fare Inspectors intentionally applied force to the person of Mr.

Maxwell-Crawford in the absence of his consent. This force was excessive, unreasonable and not justifiable at law. Moreover, this force was applied with the intention of injuring Mr. Maxwell-Crawford.

28. The Plaintiff states that the TPSB officers committed assault and battery against Mr. Maxwell-Crawford by pinning him face first to the ground. The TPSB officers intentionally applied force to the person of Mr. Maxwell-Crawford in the absence of his consent. This force was excessive, unreasonable and not justifiable at law.

False Imprisonment

29. The Plaintiff states that the TTC Fare Inspectors falsely imprisoned Mr. Maxwell-Crawford by intentionally confining him by force by pinning him face first to the ground. The Plaintiff states that the TTC Fare Inspectors had no legal justification to detain or imprison Mr. Maxwell-Crawford.

30. The Plaintiff states that the TPSB officers falsely imprisoned Mr. Maxwell-Crawford by intentionally confining him by force by pinning him face first to the ground, and by detaining him in handcuffs. The Plaintiff states that the TPSB officers had no legal justification to detain or imprison Mr. Maxwell-Crawford.

Negligence of TTC Fare Inspectors

31. The TTC Fare Inspectors owed a duty of care to the public and to Mr. Maxwell-Crawford. The Defendants knew or ought to have known that if they carried out their duties negligently, they could reasonably cause the kind of harm that was in fact suffered by Mr. Maxwell-Crawford.

32. The Defendants' conduct fell below what is reasonably expected of competent TTC fare inspectors. The TTC Fare Inspectors breached their duty to act with reasonable care by:

- a. Allowing their personal biases, including their biases against young black men, to influence their conduct and their interactions with Mr. Maxwell-Crawford;
- b. Acting improperly, aggressively and unprofessionally in their interactions with Mr. Maxwell-Crawford;
- c. Using force against Mr. Maxwell-Crawford without lawful justification;
- d. Detaining Mr. Maxwell-Crawford without lawful justification;
- e. Failing to listen and respond to Mr. Maxwell-Crawford's repeated insistence that he was being hurt when the TTC Fare Inspectors detained him by kneeling with full weight on his back;
- f. Failing to abide by the Transit Enforcement Unit Code of Conduct; and
- g. Such further and other particulars as may become apparent and Counsel may advise.

Charter Breaches

33. The Defendants breached Mr. Maxwell-Crawford's rights as enshrined in the *Charter*, including those enshrined in sections 7 (the right to life liberty and security of the person), 9 (the right to be free from arbitrary detention or imprisonment), 10 (rights upon arrest or detention), and 15 (right to equal protection and benefit of the law).

34. The acts of each of the Defendants are not demonstrably justified in a free and democratic society.

35. Mr. Maxwell-Crawford is entitled to a declaration that his *Charter* rights were infringed.

36. Mr. Maxwell-Crawford is also entitled to a monetary remedy pursuant to section 24(1) of the *Charter* against the TTC and the TPSB in order to:

- a. compensate Mr. Maxwell-Crawford for pain and suffering;
- b. compensate Mr. Maxwell-Crawford for loss of dignity and reputation;
- c. vindicate Mr. Maxwell-Crawford's fundamental human rights; and
- d. deter systematic violations of a similar nature.

Human Rights Abuses and Racial Profiling

37. In their interactions with Mr. Maxwell-Crawford, the TTC Fare Inspectors engaged in racial profiling and discrimination contrary to the provisions of the *Charter* and the *Human Rights Code*. In particular, the TTC Fare Inspector's actions were motivated by racial stereotypes based on the fact that Mr. Maxwell-Crawford was a young black man with his hood up.

38. The TTC Fare Inspectors were duty-bound not to discriminate against Mr. Maxwell-Crawford, including based on the grounds enumerated in the *Human Rights Code*. The TTC Fare Inspectors breached this duty.

Negligent Supervision and Training of TTC Fare Inspectors

39. The Defendant, TTC, owed a duty of care to ensure that the TTC Fare Inspectors were properly trained and supervised in respect of their duties. The TTC knew or ought to have known that if it failed to properly train or supervise TTC Fare Inspectors, that members of the public could suffer harm of the sort actually suffered by the Plaintiff.

40. The TTC breached the duty of care it owed to the public through its negligence, the particulars of which are as follows:

- a. The TTC knew or ought to have known that the TTC Fare Inspectors were insufficiently trained in the areas of anti-discrimination, racial bias, and human rights;
- b. The TTC knew or ought to have known that the TTC Fare Inspectors were insufficiently trained regarding how to properly interact with the public;
- c. The TTC knew or ought to have known that the TTC Fare Inspectors were insufficiently trained in conflict resolution and de-escalation techniques;
- d. The TTC knew or ought to have known that the TTC Fare Inspectors were insufficiently trained regarding the appropriate use of force, and appropriate detention techniques;
- e. The TTC knew or ought to have known that systemic racism and racial discrimination was a problem within the TTC, and in particular the Transit

Enforcement Unit, and yet failed to have and/or implement adequate policies, and procedures to address and eliminate such systemic racism and racial discrimination;

- f. In light of the above, the TTC failed to properly direct, control, monitor, supervise and train the TTC Fare Inspectors;
- g. In light of the above, the TTC failed to ensure that the TTC Fare Inspectors carried out their duties appropriately and lawfully; and
- h. Such further and other particulars as may become apparent and counsel may advise.

Vicarious Liability

41. The Plaintiff states that the TTC is vicariously liable for the torts, *Charter* violations and *Human Rights Code* violations of the TTC Inspectors, as pleaded above.

42. The Plaintiff states that the TPSB is vicariously liable for the torts, *Charter* violations and *Human Rights Code* violations of the TPSB Officers, as pleaded above, by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c. P.15 as amended.

DAMAGES

43. The Plaintiff claims compensation for the damages suffered by him as detailed below.

44. As a result of the wrongful conduct of the Defendants pleaded herein (and in particular the assault and detention), Mr. Maxwell-Crawford has suffered the following harms and injuries, which have caused, or materially contributed to, ongoing pain, suffering and loss of enjoyment of life:

- a. physical injuries, including (but not limited to) a traumatic brain injury, injuries to the upper extremities of the body including (but not limited to) his head, neck and shoulder area, soft tissue damage to his chest and shoulder areas, and post-concussion syndrome;
- b. emotional and psychological harm;
- c. impairment of mental and emotional health and well-being;
- d. anxiety and depression;
- e. post-traumatic stress disorder or symptoms analogous to post-traumatic stress disorder;
- f. recurrent nightmares, sleep disturbances and insomnia;
- g. difficulties with memory, concentration and clear thinking; and
- h. a general loss of enjoyment of life.

45. As a result of these harms and injuries, Mr. Maxwell-Crawford has suffered or will suffer expenses and costs, including expenses related to medical and psychological care.

46. The wrongful conduct of the Defendants has derailed Mr. Maxwell-Crawford's educational and vocational plans, impaired his ability to earn an income and caused a delay of entry into the workforce. Mr. Maxwell-Crawford has suffered an economic loss in the form of lost income both in the past and in the future.

47. Mr. Maxwell-Crawford's *Charter* rights were infringed by the Defendants and he is entitled to compensatory and exemplary damages pursuant to s. 24(1) of the *Charter* to vindicate his rights.

48. The wrongful conduct of the Defendants are of such a reprehensible nature as to warrant an award of aggravated and/or punitive damages in order to deter the Defendants, or those similarly situated, from taking such wrongful acts in the future.

APPLICABLE STATUTES, ETC.

49. The Plaintiff pleads and relies upon the following statutes, including any amendments or regulations thereto:

- a. *Negligence Act*, R.S.O. 1990, c. N. 1;
- b. *Police Services Act*, R.S.O. 1990, c. P. 15;
- c. *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A.;
- d. *Human Rights Code*, RSO 1990, c H.19; and
- e. *Canadian Charter of Rights and Freedoms*.

50. The Plaintiff proposes that this action be tried in the City of Toronto.

DATE: November 14, 2018

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TORONTO TRANSIT COMMISSION et al:

Court File No:

Toronto Transit Commission

CV-17-0060885

Defendants

et al

-0000

Plaintiff

Reece Maxwell and
Crawford

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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