

No. 45480/79, 49357/80,
54529/80 Consolidated
as 54529/80

IN THE SUPREME COURT OF ONTARIO

B E T W E E N :

ROSEMARY JOHNSON et al

- and -

HAROLD ADAMSON et al

R E C O R D

1. Writ No. 45481/79 issued November 8, 1979, Rosemary Johnson et al v. Adamson Commissioners Inglis Cargnelli and Officers unknown.

(Affidavit of service of writ
45481/79 by David Chorner.
Affidavit dated April 16/80)

2. Notice of Motion dated November 8, 1979 - to disclose names of Officers.

3. Affidavit of Charles Campbell in Support dated November 8/79.

(Motion adjourned sine die upon
voluntary agreement of counsel
to disclose names)

4. Appearance dated November 13, 1979 entered on behalf of of Harold Adamson November 13, 1979 to Writ No. 45481/79.

5. Cross-examination of Charles Campbell on December 19, 1979 regarding affidavit of November 8, 1979.

6. Writ No. 49357/80 issued February 18, 1980. Rosemary Johnson et al v. Adamson Commissioners Inglis Cargnelli additional police officers and ambulance drivers - except Dicks.

7. Notice of Motion dated March 25, 1980 to consolidate Writ No. 45481/79 and 49357/80.

Affidavit in support by J. Fyshe dated March 27, 1980.

8. Notice of Motion dated March 25, 1980 to substitute "Gary Dicks" for "other officers".

Affidavit in support by J. Fyshe dated March 24, 1980.

9. Order of Master Garfield dated April 18, 1980 consolidated statement of claim writ no.'s 45481/79 and 49357/80 served.

10. Writ no. 54529/80 dated June 18, 1980. Rosemary Johnson et al v. Dicks and Adamson.

(Affidavit of service of Richard
McEachin dated June 30, 1980.)

11. Statement of Claim in writ no. 54529/80 served with the writ.

12. Appearance dated June 30th, 1980 to writs 45481/79 and 49357/80 consolidated.

13. Appearance dated July 7, 1980 to Writ 54529/80.

14. Notice of Motion dated July 18, 1980 returnable August 15, 1980 re writ 54529/80.

15. Affidavit in support by W.H. Osmond Doyle to stay civil proceed.
16. Affidavit in support by Clyde Bynoe dated July 17, 1980.
17. Affidavit in support by Robert Carter dated July 17, 1980.
18. Notice of Motion dated July 18, 1980, returnable August 15, 1980 to stay in actions 45481/79 and 49357/80 consolidated; to stay civil proceedings; affidavits of Bynoe and Carter referred to above in support.
19. Notice of Motion dated July 18, 1980 returnable August 15, 1980 in 54529/80; re Public Authorities Protection Act and Dicks.
20. Notice of Motion dated July 18, 1980 returnable August 15, 1980 in 45481/80 consolidated; re "negligence and control management operation of a police force" and re pleadings.
21. Affidavit Gemma Trott dated August 12, 1980 in 54529/80 re stay application and affidavit of Eric Thompson in 45481/79 and 49357/80 re stay application.
22. Affidavit of Jim Fyshe dated August 12, 1980 re stay application.
23. Affidavit of Jim Fyshe dated August 13, 1980 re Public Authorities Protections Act.

Motions August 15 adjourned for cross-examination of Fyshe by Madame Justice Van Camp.
24. Cross-examination of James Fyshe on his affidavit sworn August 12, 1980 at Special Examiners on August 27, 1980.
25. Cross-examination of Jim Fyshe on his affidavit sworn August 13, 1980 at Special Examiners on August 27, 1980.
26. Notice of Motion re 45481/79 and 49357/80; motions of August 15, 1980 now returnable September 18, 1980.
27. Notice of Motion re 54529/80 motions of August 15, 1980 now returnable September 18, 1980.

Filed on Return of this Motion September 18, 1980:

Record: by Applicants/Defendants/Police

Authorities: relied on by Applicants/ Defendants/ Police

Authorities relied on by Respondents/Plaintiffs Johnsons.
28. Order of Dupont J. September 18, 1980 in 54529/80 to consolidate with 45481/79 and 49357/80.

(Now consolidated and known as
Rosemary Johnson et al and
Harold Adamson et al No. 54529/80)

29. Order Justice Dupont J. September 18, 1980 in 54529/80 to stay; application dismissed.
30. Order Dupont J. September 18, 1980 in 45481/79 and 49357/80, to stay; dismissed on conditions.
31. Order Dupont J. September 19, 1980 in 54529/80 re "negligence in control management operation of the police force"; action upheld.
32. Statement of Claim in consolidated action delivered October, 1980.
33. Notice of Motion dated _____ returnable March 4, 1981; re "negligence in control management and operation of the police force".
34. Supplementary Notice of Motion dated February 9, 1980 returnable March 4, 1981, re pleadings.

Filed on return of this motion were:

Record by Applicants/Defendants/Police;

Supplementary Record: Respondents/
Plaintiffs/Johnsons

Memorandum of Law: Applicants/Defendants/
Police

Memorandum of Law: Respondents/Plaintiffs/
Johnsons

Authorities: relied upon by Applicants/
Defendants/ Police

Authorities: relied upon by Respondents/
Plaintiffs/Johnsons

Order of Montgomery J. March 19, 1981.

Notice of Appeal dated at Toronto March 16, 1981.

35. Order of Montgomery J. dated April 29, 1981.

Supplementary Notice of Appeal dated July 16, 1981.

Notice of application for Leave to Appeal dated July 16, 1981.

Writs 45481/79, 49357/80 and
54529/80 consolidated

SUPREME COURT OF ONTARIO

B E T W E E N :

ROSE MARIE JOHNSON, LESCELLE ANNE-MARIE COLE,
ALBERT JUNIOR JOHNSON AND LINDEN ANTHONY JOHNSON
by their next friend, LEMONA JOHNSON, and the said
LEMONA JOHNSON personally, and the said
LEMONA JOHNSON as the Administrator of the
estate of ALBERT JOHNSON

Plaintiffs

- and -

HAROLD ADAMSON, METROPOLITAN BOARD OF COMMISSIONERS
OF POLICE, WILLIAM INGLIS, WALTER CARGNELLI, GARY DICKS

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

(Writs issued November 8th, 1979, February 18th,
1980 and June 18th, 1980, respectively)

1. The Plaintiff Lemona Johnson is the widow of the late Albert Johnson and presently resides at 28 Manchester Avenue in the City of Toronto.

2. The Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson are the children of the late Albert Johnson and presently reside with their mother at 28 Manchester Avenue in the City of Toronto.

3. The Defendant Harold Adamson was at all material times Chief of Police for the Metropolitan Toronto Police and is responsible in law for the tortious acts of all police officers pursuant to the Police Act, R.S.O. 1970, c. 351 and amendments thereto.

4. The Defendants William Inglis, Walter Cargnelli, Gary Dicks were at all material times, police officers employed by the Metropolitan Toronto Police Force.

5. The Defendant The Board of Commissioners of Police is a Board constituted pursuant to the provisions of the Police Act, R.S.O. 1970, c.351 and amendments thereto and responsible for the policing and maintenance of law and order in the Municipality of Metropolitan Toronto.

6. On the 29th day of January, 1980, the Surrogate Court of the Judicial District of York issued Letters of Administration of the estate of Albert Johnson to Lemona Johnson, one of the Plaintiffs herein.

7. On Sunday, August 26th, 1979, the Defendants Inglis, Cargnelli and Dicks attended at the home of Albert Johnson at 28 Manchester Avenue and spoke with him peacefully and without

incident in the alleyway behind the said house. Albert Johnson denied the officers entry upon his property.

8. Shortly thereafter, Albert Johnson went into his house and locked the door of his house behind him.

9. The Defendants Inglis, Cargnelli and Dicks then trespassed upon the property of Albert Johnson and Lemona Johnson without lawful excuse by walking in and about the back garden and side alleyway.

10. The Defendants Inglis and Cargnelli and such further and other police officers as the evidence may disclose, then further trespassed upon the Johnson property by unlawfully, violently and without warning entering the Johnson home purporting to arrest Albert Johnson.

11. It is alleged and the fact is that neither the Defendants Inglis, Cargnelli or Dicks, nor any other police officers, had at this time or any subsequent time any reasonable or probable grounds for arresting Albert Johnson and did commit a false arrest against him.

12. In the course of this purported arrest by the Defendants Inglis and Cargnelli, the Defendants Inglis and

Cargnelli severely assaulted Albert Johnson causing him injury and humiliation. The Defendants used unnecessary and undue force to effect their purported arrest.

13. In the course of the beating by the Defendants Inglis and Cargnelli, Albert Johnson managed to evade them and went directly to the second floor of his house.

14. At approximately this time, the Defendant Dicks entered the Johnson house.

15. Albert Johnson presented no threat to the person or safety of these Defendants or any other person and was by this point distraught by reason of the attack upon him by the Defendant officers.

16. Albert Johnson then came down the stairs to surrender himself peacefully.

17. As he descended the stairs, or at the foot of the stairs, Albert Johnson was shot by one or more of the Defendants Inglis, Cargnelli and Dicks.

18. The Plaintiffs allege that the Defendants Inglis, Cargnelli and Dicks were motivated throughout by personal

animosity and racial bias and had no honest or sincere belief that they were acting in accordance with their professional duties and privileges.

19. The Plaintiffs Lemona Johnson, Administrator of the Estate of Albert Johnson and Lemona Johnson in her own right, claim against the Defendants Inglis, Cargnelli and Dicks jointly and severally, for trespass as set out herein.

20. The Plaintiff Lemona Johnson, Administrator of the Estate of Albert Johnson claims that the Defendants Inglis, Cargnelli and Dicks, jointly and severally, committed assault and battery and false arrest, negligence and/or excessive undue use of force against Albert Johnson as set out herein.

21. The Plaintiff Lemona Johnson, in her own right, and as next friend of her infant children and co-Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson, claims against the Defendants Inglis, Cargnelli and Dicks, jointly and severally, for damages under the Family Law Reform Act, R.S.O. 1979, c. 59, for the wrongful death as set out herein of Albert Johnson who provided to them financial support and sustenance.

22. The Plaintiff Lemona Johnson as next friend of the infant Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson, and in her own right, claims against the Defendants Inglis, Cargnelli and Dicks, jointly and severally, for negligence causing them nervous shock, trauma and neurotic affliction, as witnesses to the tortious deeds committed against Albert Johnson as set out herein.

23. The particulars of the negligence of the Defendants Inglis, Cargnelli together with such other officers as may be disclosed by the evidence are as follows:

- a) that they allowed their judgment as peace officers to be influenced by racial prejudice;
- b) that they used unreasonable, unnecessary and undue force to arrest Albert Johnson;
- c) that they failed to use reasonable intelligence and common sense befitting their professional responsibilities in dealing with Albert Johnson, as a distraught person;
- d) that they failed to use reasonable intelligence and common sense befitting their professional

responsibilities in appraising any danger to themselves or any other person at the time Albert Johnson was shot;

- e) that they allowed their judgment as police officers to be influenced by their personal animosity for Albert Johnson;
- f) that they provoked the distraught behaviour of Albert Johnson by unnecessary force, unlawful entry, assault, false arrest and racial insult; and
- g) that they were careless and demonstrated a lack of skill in the use of their fire arms.

24. The particulars of the alleged undue use of force are as follows:

- a) it was unnecessary to smash the rear door of the home of Albert Johnson in order to gain entry and effect an arrest since no notice of their entry or attempt to identify themselves was given to the occupants of the Johnson home;

- b) it was unnecessary to assault Albert Johnson and beat him in order to effect an arrest;
- c) no reasonable and diligent efforts were made to persuade Albert Johnson to surrender himself peacefully;
- d) Albert Johnson presented no threat or danger to any persons at any time and the use of fire arms by the Defendants was unnecessary and unwarranted; and
- e) none of the Defendants employed or attempted to employ any non-violent methods to subdue Albert Johnson.

25. After he had been shot, Albert Johnson lay dying in his home for a considerable period of time prior to his removal and transfer to the Toronto Western Hospital.

26. Pursuant to the provisions of the Police Act, the Defendant the Board of Commissioners of Police and its Chief Administrator Harold Adamson were required to provide and maintain a police force that was adequate in accordance with the particular needs of the City of Toronto.

27. The Defendants Harold Adamson and the Board of Commissioners of Police failed to take any reasonable steps, or took unreasonable and inadequate steps, to train the police officers under their command in the techniques of non-violent arrest, and the techniques of dealing with emotionally disturbed individuals in a non-provocative fashion. The Plaintiffs allege that this failure to train police officers was a cause of the undue use of force of the Defendants Inglis and Cargnelli when they entered the Johnson home. It is alleged that such failure to train police officers caused, or contributed to the false arrest, and death of Albert Johnson.

28. The Defendants Harold Adamson and the Board of Commissioners of Police failed to implement or implemented an unreasonable and deficient system among the officers under their command for dealing with mentally ill members of the public. It is alleged that the Defendants Inglis, Cargnelli and Dicks were advised by their superior officers, or by their fellow constables in 14 Division, that the deceased Albert Johnson was a mentally ill person dangerous to his family, and based their actions in attempting to arrest him on August 26, 1979 on that information.

29. In fact, Albert Johnson was no threat to the safety of any members of his family, and various members of the Metropolitan Police Force had been so advised by the Plaintiff Lemona Johnson on all occasions when the matter was discussed between them and the Plaintiff Lemona Johnson.

30. It is alleged that it is or should be a routine matter of police administrations to record and analyze the behaviour of emotionally disturbed members of the public who cause difficulty to the police, and to advise local police officers of the appropriate manner of dealing with such "non-criminal" problems. It is alleged that 14 Division had no such system for performing this function, or that it was inadequate, and incompetently run. It is alleged that the members of 14 Division did not fulfill their responsibilities to report incidence with Albert Johnson from May 1979 to August 1979 in accordance with the dictates of such a system. It is alleged that no directions or incompetent and negligent directions were given to the Constables of 14 Division regarding the appropriate manner of dealing with Albert Johnson in a non-violent fashion. It is alleged that because of the failure to perform this routine police function Albert Johnson was "labelled" as a dangerous mentally ill person by station house "gossip". It is alleged that the failure of this routine police function was known, or ought to have been known to

Chief Adamson and the Board of Commissioners of Police. It is alleged that the failure of Chief Adamson and the Board of Commissioners of Police to ensure that this routine police function was in fact being carried out in 14 Division was a cause, or contributed to, the false arrest, assault and death of Albert Johnson.

31. The Plaintiffs allege that the Defendants Harold Adamson, Chief of Police and the Board of Commissioners of Police were negligent in the control, management and operation of the police force. The particulars of this negligence are as follows:

- a) they failed to take reasonable steps to train constables regarding non-violent arrest;
- b) they failed to take reasonable steps to ensure the competence of constables for duty;
- c) they failed to take reasonable steps to ensure routine police functions regarding mentally ill persons were operative in 14 Division.

32. Albert Johnson was a factory worker and at the time of his death, the supporter of his wife and family. As a result of his death, the Plaintiffs are deprived of his income and support as well as his guidance, care and companionship.

33. The infant Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson suffered emotional trauma as a result of the loss of their father and the tortious acts committed against him in their presence.

34. Albert Johnson experienced pain and suffering and humiliation from the trespass, assault and battery, false arrest, negligence and undue use of force by the Defendants.

35. The Plaintiff Lemona Johnson, Administrator of the estate of Albert Johnson and Lemona Johnson in her own right under the provisions of the Family Law Reform Act, R.S.O. 1978, c. 59, claims for such expenses incurred by her or on her behalf as are related to the death of Albert Johnson.

36. The Plaintiffs further claim as follows:
- a) Lemona Johnson in her own right claims the sum of \$75,000.00, arising from the unlawful trespass on her home by the Defendant Police officers;
 - b) Lemona Johnson in her own right and as next friend of the infant Plaintiffs under the Family Law Reform Act claims the sum of \$500,000.00 for damages arising from the trespass, false arrest, assault and battery and negligence in the control, maintenance and operation of a police force, as may be apportioned by this Honourable Court;
 - c) Lemona Johnson as next friend of the infant Plaintiffs claims the sum of \$750,000.00 for negligence against them, resulting in emotional trauma;
 - d) Lemona Johnson as Administrator of the estate of Albert Johnson claims the sum of \$750,000.00 for trespass, assault and battery, false arrest, negligence causing death and undue force and negligence in the control, maintenance and operation of a police force;

- e) the costs of this action;
- f) such further and other relief as this Honourable Court may deem just and proper.

The Plaintiffs propose that this action be tried in the City of Toronto, in the Judicial District of York.

DELIVERED at Toronto this day of ,
1982, by ILER, CAMPBELL, 136 Simcoe Street, Suite 201, Toronto,
Ontario, Solicitors for the Plaintiffs.

IN THE SUPREME COURT OF ONTARIO

B E T W E E N :

ROSE MARIE JOHNSON, LESCELLE ANNE-MARIE COLE,
ALBERT JUNIOR JOHNSON and LINDEN ANTHONY JOHNSON
by their next friend, LEMONA JOHNSON, and the said
LEMONA JOHNSON personally, and the said LEMONA
JOHNSON as the Administrator of the estate of
ALBERT JOHNSON

Plaintiffs

- and -

HAROLD ADAMSON, METROPOLITAN BOARD OF COMMISSIONERS
OF POLICE, WILLIAM INGLIS, WALTER CARGNELLI, GARY
DICKS

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

(Writs issued November 8th, 1979, February 18th, 1980
and June 18th, 1980, respectively)

1. The Plaintiff Lemona Johnson is the widow of the late Albert Johnson and presently resides at 28 Manchester Avenue in the City of Toronto.
2. The Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson are the children of the late Albert Johnson and presently reside with their mother at 28 Manchester Avenue in the City of Toronto.
3. The Defendant Harold Adamson was at all material times Chief of Police for the Metropolitan Toronto Police and is responsible in law for the tortious acts of all police officers pursuant to the Police Act, R.S.O. 1970, c.351 and amendments thereto.
4. The Defendant Willaim Inglis, Walter Cargnelli, Gary

Dicks were, at all material times, police officers employed by the Metropolitan Toronto Police Force.

5. The Defendant The Board of Commissioners of Police is a Board constituted pursuant to the provisions of the Police Act, R.S.O. 1970, c.351 and amendments thereto and responsible for the policing and maintenance of law and order in the Municipality of Metropolitan Toronto.

6. On the 29th day of January, 1980, the Surrogate Court of the Judicial District of York issued Letters of Administration of the estate of Albert Johnson to Lemona Johnson, one of the Plaintiffs herein.

7. On Sunday, August 26th, 1979, the Defendants Inglis, Cargnelli and Dicks attended at the home of Albert Johnson at 28 Manchester Avenue and spoke with him peacefully and without incident in the alleyway behind the said house. Albert Johnson denied the officers entry upon his property.

8. Shortly thereafter, Albert Johnson went into his house and locked the door of his house behind him.

9. The Defendants Inglis, Cargnelli and Dicks then trespassed upon the property of Albert Johnson and Lemona Johnson without lawful excuse by walking in and about the back garden and side alleyway.

10. The Defendants Inglis and Cargnelli and such further and other police officers as the evidence may disclose, then further trespassed upon the Johnson property by unlawfully, violently, and without warning entering the Johnson home purporting to arrest Albert Johnson.

11. It is alleged and the fact is that neither the Defendants Inglis, Cargnelli or Dicks, nor any other police officers, had at this time or any subsequent time any reasonable or probable grounds

for arresting Albert Johnson and did commit a false arrest against him.

12. In the course of this purported arrest by the Defendants Inglis and Cargnelli, the Defendants Inglis and Cargnelli severely assaulted Albert Johnson causing him injury and humiliation. The Defendants used unnecessary and undue force to effect their purported arrest,

13. In the course of the beating by the Defendants Inglis and Cargnelli, Albert Johnson managed to evade them and went directly to the second floor of his house.

14. At approximately this time, the Defendant Dicks entered the Johnson house.

15. Albert Johnson presented no threat to the person or safety of these Defendants or any other person and was by this point distraught by reason of the attack upon him by the Defendant officers.

16. Albert Johnson then came down the stairs to surrender himself peacefully.

17. As he descended the stairs, or at the foot of the stairs, Albert Johnson was shot by one or more of the Defendants Inglis, Cargnelli and Dicks.

18. The Plaintiffs allege that the Defendants Inglis, Cargnelli, and Dicks were motivated throughout by personal animosity and racial bias and had no honest or sincere belief that they were acting in accordance with their professional duties and privileges.

19. The Plaintiffs further allege that the Defendants the Chief of Police and the Board of Commissioners of Police, from and after May 12th, 1979, permitted the late Albert Johnson to be subjected to repeated harassment by officers under their command including the Defendants Inglis, Cargnelli and Dicks. In particular, the Plaintiffs allege that the deceased Albert Johnson was, between May 12th, 1979 and August 26th, 1979, subjected to repeated racial taunts and provocation and unjustified, repeated threats of arrest by members of 14 Division, including the Defendant officers in this action, the precise dates of which are unknown to the Plaintiffs at this time. Further, he was arrested without cause by peace officers of 13 and 14 Division on the following dates: May 12th, June 11th, June 14th, July 12th and such further and other dates as are known to the Defendants.

20. These actions, set out in Paragraph 19 above, at the time and dates referred to in Paragraph 19, caused the late Albert Johnson to fear for his life at the hands of the police. Further, the Plaintiffs allege that these actions constituted a campaign by 14 Division to have Albert Johnson incarcerated, regardless of lawful cause and the Defendants Inglis, Cargnelli and Dicks were acting in furtherance of this campaign on August 26th, 1979. Further, the Plaintiffs allege that the Defendants Chief of Police and The Board of Commissioners of Police knew or ought to have known that this campaign was occurring, that it was negligent or improper police practice and that it would cause, or contribute to the death of Albert Johnson.

21. The Plaintiffs Lemona Johnson, Administrator of the Estate of Albert Johnson and Lemona Johnson in her own right, claim against the Defendants Inglis, Cargnelli and Dicks, jointly and severally, for trespass as set out herein.

22. The Plaintiff Lemona Johnson, Administrator of the Estate of Albert Johnson claims that the Defendants Inglis, Cargnelli and Dicks, jointly and severally, committed assault and battery and false arrest, negligence and/or excessive undue use of force against Albert Johnson as set out herein.

23. The Plaintiff Lemona Johnson, in her own right, and as next friend of her infant children and co-Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson, claims against the Defendants Inglis, Cargnelli and Dicks, jointly and severally, for damages under the Family Law Reform Act, R.S.O. 1978, c.59, for the wrongful death as set out herein of Albert Johnson who provided to them financial support and sustenance.

24. The Plaintiff Lemona Johnson as next friend of the infant Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson, and in her own right, claims against the Defendants Inglis, Cargnelli and Dicks, jointly and severally, for negligence causing them nervous shock, trauma and neurotic affliction, as witnesses to the tortious deeds committed against Albert Johnson as set out herein.

23 ← 25. The particulars of the negligence of the Defendants Inglis, Cargnelli together with such other officers as may be disclosed by the evidence are as follows:

- a) that they allowed their judgement as peace officers to be influenced by racial prejudice;
- b) that they used unreasonable, unnecessary and undue force to arrest Albert Johnson;
- c) that they failed to use reasonable intelligence and common sense befitting their professional responsibilities in dealing with Albert Johnson, as a distraught person;
- d) that they failed to use reasonable intelligence and common sense befitting their professional responsibilities in appraising any danger to themselves or any other person at the time Albert Johnson was shot;
- e) that they allowed their judgment as police officers to be influenced by their personal animosity for Albert Johnson;
- f) that they provoked the distraught behaviour of Albert Johnson by unnecessary force, unlawful entry, assault, false arrest and racial insult; and
- g) that they were careless and demonstrated a lack of skill

in the use of their fire arms.

24 — 26. The particulars of the alleged undue use of force are as follows:

- a) it was unnecessary to smash the rear door of the home of Albert Johnson in order to gain entry and effect an arrest since no notice of their entry or attempt to identify themselves was given to the occupants of the Johnson home;
- b) it was unnecessary to assault Albert Johnson and beat him in order to effect an arrest;
- c) no reasonable and diligent efforts were made to persuade Albert Johnson to surrender himself peacefully;
- d) Albert Johnson presented no threat or danger to any persons at any time and the use of fire arms by the Defendants was unnecessary and unwarranted; and
- e) none of the Defendants employed or attempted to employ any non-violent methods to subdue Albert Johnson.

25 — 27. After he had been shot, Albert Johnson lay dying in his home for a considerable period of time prior to his removal and transfer to the Toronto Western Hospital.

26 — 28. Pursuant to the provisions of the Police Act, the Defendant the Board of Commissioners of Police and its Chief Administrator Harold Adamson were required to provide and maintain a police force that was adequate in accordance with the particular needs of the City of Toronto.

29. Before his death, the deceased Albert Johnson complained to the Human Rights Commission about racial harassment by members of the Metropolitan Toronto Police Force. This complaint was forwarded to the Defendants, the Chief of Police and the Board of Commissioners of Police.

30. The Defendants Harold Adamson, Chief of Police and the Board of Commissioners of Police are responsible for reasonable effective management of all aspects of the Metropolitan Toronto Police Force. The Plaintiffs allege that the complaint filed by the deceased Albert Johnson was ignored. The Plaintiffs allege that reasonable diligence in the investigation of this complaint would have revealed the pattern of police harassment, and that it would have been reasonably foreseeable that false arrest, assault, negligence and undue use of force between the police in 14 Division and Albert Johnson would take place.

31. The Defendants Harold Adamson and the Board of Commissioners of Police failed to take any reasonable steps, or took unreasonable and inadequate steps, to train the police officers under their command in the techniques of non-violent arrest, and the techniques of dealing with emotionally disturbed individuals in a non-provocative fashion. The Plaintiffs allege that this failure to train police officers was a cause of the undue use of force of the Defendants Inglis and Cargnelli when they entered the Johnson home. It is alleged that such failure to train police officers caused, or

contributed to the false arrest, assault, and death of Albert Johnson.

27 — 32. The Defendants Harold Adamson and the Board of Commissioners of Police were responsible for maintaining the police force at a reasonable level of competence, and they failed to implement personnel procedures or implemented inadequate or unreasonable personnel procedures, to ensure that all constables under their command were fit for duty and were not unstable, prone to violence, or given to racial bias. It is alleged and the fact is that one or all of the Defendants constables Inglis, Cargnelli or Dicks were unfit for duty. It is alleged that such failing by the Defendants Harold Adamson and the Board of Commissioners of Police caused or contributed to the false arrest, assault and death of Albert Johnson.

28 — 33. The Defendants Harold Adamson and the Board of Commissioners of Police failed to implement or implemented an unreasonable and deficient system among the officers under their command for dealing with mentally ill members of the public. It is alleged that the Defendants Inglis, Cargnelli and Dicks were advised by their superior officers, or by their fellow constables in 14 Division, that the deceased Albert Johnson was a mentally ill person dangerous to his family, and based their actions in attempting to arrest him on August 26, 1979 on that information.

29 — 34. In fact, Albert Johnson was no threat to the safety of any members of his family, and various members of the Metropolitan Police Force had been so advised by the Plaintiff Lemona Johnson on all occasions when the matter was discussed between them and the Plaintiff Lemona Johnson.

30 — 35. It is alleged that it is or should be a routine matter of police administration to record and analyze the behaviour of emotionally disturbed members of the public who cause difficulty to the police, and to advise local police officers of the

appropriate manner of dealing with such "non-criminal" problems, is alleged that 14 Division had no such system for performing this function, or that it was inadequate, and incompetently run. It is alleged that the members of 14 Division did not fulfill their responsibilities to report incidence with Albert Johnson from May 1979 to August 1979 in accordance with the dictates of such a system. It is alleged that no directions or incompetent and negligent directions were given to the Constables of 14 Division regarding the appropriate manner of dealing with Albert Johnson in a non-violent fashion. It is alleged that because of the failure to perform this routine police function Albert Johnson was "labelled" as a dangerous mentally ill person by station house "gossip". It is alleged that the failure of this routine police function was known, or ought to have been known to Chief Adamson and the Board of Commissioners of Police. It is alleged that the failure of Chief Adamson and the Board of Commissioners of Police to ensure that this routine police function was in fact being carried out in 14 Division was a cause, or contributed to, the false arrest, assault and death of Albert Johnson.

36. The Plaintiffs allege that the Defendants Harold Adamson, Chief of Police and the Board of Commissioners of Police were negligent in the control, management and operation of the police force. The particulars of this negligence are as follows:

- a) they failed to take reasonable steps to deal with racism in 14 Division;
- b) they failed to take reasonable steps to investigate the complaints by Albert Johnson of police harassment;
- c) they failed to take reasonable steps to train constables regarding non-violent arrest;
- d) they failed to take reasonable steps to ensure the competence of constables for duty;
- e) they failed to take reasonable steps to ensure routine police functions regarding mentally ill persons were operative in 14 Division;
- f) they allowed or failed to take reasonable steps to stop a campaign by the officers of 14 Division to incarcerate Albert Johnson.

32 37. Albert Johnson was a factory worker and at the time of his death, the supporter of his wife and family. As a result of his death, the Plaintiffs are deprived of his income and support as well as his guidance, care and companionship.

33 38. The infant Plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson suffered emotional trauma as a result of the loss of their father and the tortious acts committed against him in their presence.

34 39. Albert Johnson experienced pain and suffering and humiliation from the trespass, assault and battery, false arrest, negligence and undue use of force by the Defendants.

35 40. The Plaintiff Lemona Johnson, Administrator of the estate of Albert Johnson and Lemona Johnson in her own right under the provisions of the Family Law Reform Act, R.S.O. 1978, c.59, claims for such expenses incurred by her or on her behalf as are related to the death of Albert Johnson.

41. The Plaintiffs further claim as follows:

- a) Lemona Johnson in her own right claims the sum of \$75,000.00, arising from the unlawful trespass on her home by the Defendant Police officers;
- b) Lemona Johnson in her own right and as next friend of the infant Plaintiffs under the Family Law Reform Act claims the sum of \$500,000.00 for damages arising from the trespass, false arrest, assault and battery and negligence causing death, and undue force and negligence in the control, maintenance and operation of a police force, as may be apportioned by this Honourable Court;
- c) Lemona Johnson as next friend of the infant Plaintiffs claims the sum of \$750,000.00 for negligence against them, resulting in emotional ^{ak}trauma ~~trauma~~ 5

- d) Lemona Johnson as Administrator of the estate of Albert Johnson claims the sum of \$750,000.00 for trespass, assault and battery, false arrest, negligence causing death and undue force and negligence in the control, maintenance and operation of a police force;
- e) the costs of this action;
- f) Such further and other relief as this Honourable Court may deem just and proper.

The Plaintiffs propose that this action be tried in the City of Toronto, in the Judicial District of York.

DELIVERED at Toronto this day of , 1982,
by ILER, CAMPBELL, 136 Simcoe Street, Suite 201, Toronto, Ontario
Solicitors for the Plaintiffs.

IN THE SUPREME COURT OF ONTARIO

B E T W E E N:

ROSEMARIE JOHNSON, LESCELLE ANNE-MARIE COLE, ALBERT JUNIOR JOHNSON and LINDEN ANTHONY JOHNSON by their next friend, LEMONA JOHNSON, and the said LEMONA JOHNSON personally, and the said LEMONA JOHNSON as the Administrator of the estate of ALBERT JOHNSON

Plaintiffs

- and -

HAROLD ADAMSON, METROPOLITAN BOARD OF COMMISSIONERS OF POLICE, WILLIAM INGLIS, WALTER CARGNELLI, GARY DICKS

Defendants

STATEMENT OF DEFENCE

1. Except for such admissions as are hereinafter specifically made, the defendants deny every allegation in the Statement of Claim and put the plaintiff to the strict proof thereof.
2. The defendant Harold Adamson admits that at all material times he was the Chief of Police, Metropolitan Police Force, and that the defendants William Inglis, Walter Cargnelli and Gary Dicks were members of the said Force acting in the performance or purported performance of their duties as police officers.
3. The defendant Metropolitan Board of Commissioners of Police is the board of commissioners of police for the Municipality of Metropolitan Toronto established pursuant to the provisions of the Municipality of Metropolitan Toronto Act, R.S.O. 1980, c.314, and exercising duties and powers conferred upon it by that Act and by the provisions of the Police Act, R.S.O. 1980, c.381.
4. Neither the defendant Harold Adamson nor the defendant Metropolitan Board of Commissioners of Police, have personal knowledge of the facts of the

incident or incidents which are the subject-matter of this action.

5. The defendants have no knowledge as to whether or not the plaintiffs Rose Marie Johnson, Lescelle Anne-Marie Cole, Albert Junior Johnson and Linden Anthony Johnson are the "children" of the deceased Albert Johnson within the meaning of that term as used in the Family Law Reform Act, R.S.O. 1970, c.152, and put the plaintiffs to the strict proof thereof.

6. On August 26th, 1979, at about 12:12 p.m., the Metropolitan Police Force received a telephone call from a citizen reporting a disturbance emanating from the rear of premises known as 28 Manchester Avenue in the City of Toronto. The caller reported that a man at that location was "ranting and raving and screaming and threatening people, and gets up on the roof sometimes, waves a knife around", and requested the police to attend. The caller identified the man causing the disturbance as one Albert Johnson.

7. At about 12:39 p.m. on the same day, each of the defendants William Inglis, Walter Cargnelli and Gary Dicks, acting in the course of their duties as police officers, wearing police uniforms, and driving police scout cars, received a radio call to the effect that Albert Johnson was causing a disturbance in the lane at the rear of premises known as 28 Manchester Avenue, in the City of Toronto.

8. The three said defendants, in response to the said call, attended at the said premises, where they saw Albert Johnson enter a garage at the rear of the said premises.

9. The three said defendants approached Albert Johnson, and advised him that they had received a complaint that he had caused a disturbance.

10. At that time, the said defendants noticed that there was a wood fire burning inside the said garage, and that there was flammable material in close proximity to this fire, creating a situation of possible danger. One or more of the said defendants drew this fact to the attention of Albert Johnson.

11. Albert Johnson then began to shout obscene and derogatory remarks at the three said defendant police officers in a very loud voice, thereby causing a

disturbance. At that time there were members of the public in the laneway and elsewhere in the vicinity well within hearing distance of his shouting.

12. The three defendant police officers at no time said anything to Albert Johnson to provoke the obscenities and abusive remarks directed at them by him.

13. Albert Johnson then began to close the overhead door to the garage, under which the said defendant police officers were standing, requiring one or more of them to hold the door up to avoid being struck by it. At this time Albert Johnson made obscene, derogatory and threatening remarks to the said defendants.

14. Albert Johnson then ran through the garage and into the back yard of the house at 28 Manchester Avenue, where he continued to shout obscene remarks at the said police officers in a very loud voice, which shouting was well within hearing distance of persons in the laneway and elsewhere in the vicinity.

15. At that point, Albert Johnson entered the said house, and locked the back door.

16. The said three defendant police officers then went to the front of the said house.

17. Albert Johnson then came out the front door and shouted more obscene and derogatory remarks at the said police officers. He then went back inside, closing the front door.

18. The defendant Gary Dicks then returned to his police scout car, while the defendants William Inglis and Walter Cargnelli walked along the sidewalk to the east of the house, intending to check the fire in the garage in the interests of public safety.

19. As the said two defendants walked by a window on the east side of the house at 28 Manchester Avenue, they heard the sound of a woman and children screaming and of Albert Johnson shouting.

20. At that time Albert Johnson appeared at the screen of the said window, in an extremely agitated state, and spat through the screen at the defendant William Inglis, causing a large quantity of saliva to hit the said defendant in the face.

21. Due to the appearance and past conduct of the said Albert Johnson, and due to the fact that the defendants William Inglis and Walter Cargnelli could hear children and a woman in the house screaming, the said defendants formed the opinion that the said Albert Johnson was apparently suffering from mental disorder of a nature or quality that was likely to result in serious bodily harm to one or more persons, and that immediate action was necessary to prevent such bodily harm from occurring.

22. At that time, the said defendants William Inglis and Walter Cargnelli decided to take the said Albert Johnson into custody for the purposes contained in and pursuant to the powers conferred upon them by, the Mental Health Act, R.S.O. 1980, c.262, and by the Criminal Code, R.S.C. 1970, c C-34.

*S 25 -> justification
S -> Mentally ill -> of code*

23. The said two defendant police officers then attended at the back door of the said house, and knocked on it, requesting Albert Johnson to open the door. Albert Johnson refused to open the door, and addressed an obscene remark to the said police officers.

24. The defendant Walter Cargnelli then, lawfully and for the purpose of performing his duties as a police officer, forced open the said door, using no more force than was reasonably necessary to accomplish this purpose.

25. The defendants William Inglis and Walter Cargnelli lawfully entered the kitchen of the said house, at which time the defendant William Inglis advised Albert Johnson that he was under arrest.

26. When the defendants William Inglis and Walter Cargnelli attempted to take Albert Johnson into custody, he broke away from them and began to swing his fists at them and to push them. He then threw the contents of a pot of food, which had been cooking on the stove, at the said defendants, striking them. He then

reached for a pot of boiling water, in an apparent attempt to throw it at them as well.

27. The said defendant police officers, having reasonable grounds to take Albert Johnson into custody, and using no more force than was reasonably required in the circumstances, continued their attempts to effect that purpose. Albert Johnson continued to resist such attempts, striking the two said defendant police officers on several occasions.

28. The defendant police officer Gary Dicks lawfully entered the house, for the purpose of assisting the other said defendants in their attempt to take Albert Johnson into custody.

29. Albert Johnson then fled from the room and proceeded to go upstairs to the second floor of the said house.

30. The three defendant police officers then went to the bottom of the stairs.

31. At that point, Albert Johnson appeared at the top of the stairs, holding the plaintiff Rose Marie Johnson in front of him over the stair railing, causing a situation of apparent danger to her.

32. Albert Johnson then threw a large bottle down the stairway, striking the defendant Gary Dicks, on the left hip.

33. Albert Johnson then released the plaintiff Rose Marie Johnson, who was taken to a position of safety by the plaintiff Lemona Johnson.

34. At that point, Albert Johnson appeared at the top of the stairs holding in both hands a utensil or weapon consisting of a sharpened metal blade on the end of a long wooden tape-encased handle. He began to descend the stairs toward the three defendant police officers while holding this object over his head in the manner of a weapon. The object is referred to hereinafter as the "weapon".

35. Despite several entreaties made by the defendant William Inglis and Albert Johnson to put down the weapon, Albert Johnson continued to advance down the stairs toward the defendant police officers.

36. The defendant William Inglis attempted to back away as Albert Johnson approached, but, as the former came closer to him, apprehended that his life or the life of others might be in danger, and drew his service revolver to defend himself against any attack by Albert Johnson with the said weapon.

37. Albert Johnson, while continuing to advance closer to the defendant police officers, began to raise the weapon over his head with both hands. Fearing for his life, and having reasonable and probable grounds to believe that Albert Johnson was about to attack him with the weapon, the defendant William Inglis raised his revolver and fired one shot, while lunging into the doorway from the hallway to the front living room.

38. Albert Johnson then jumped to the bottom of the stairs and lunged forward toward the defendant William Inglis, still holding the weapon over his head with both hands in a manner indicating that he intended to throw or swing the said weapon at the said defendant.

39. The defendant William Inglis, fearing for his life and having reasonable and probable cause to believe that Albert Johnson intended to inflict immediate and serious bodily harm to him, for the purpose of protecting himself, discharged his service revolver a second time in the direction of Albert Johnson.

40. Shortly thereafter, Albert Johnson dropped the weapon and fell to the floor.

41. Immediately after Albert Johnson's falling to the floor, the defendant Walter Cargnelli instructed an officer arriving on the scene to summon an ambulance by means of the radio in such officer's police scout car, and this instruction was carried out forthwith.

42. The ambulance was called at approximately 12:53, and arrived on the scene at approximately 12:57 p.m. At that time, first aid was administered to Albert Johnson, and he was taken to hospital at approximately 1:02 p.m. At 7:30 p.m. on August 26th, 1979, Albert Johnson was pronounced dead at Toronto Western Hospital.

43. Notwithstanding the generality of paragraph 1 herein, the defendants William Inglis and Walter Cargnelli specifically deny:

- (1) that they at any time used unnecessary force in attempting to take Albert Johnson into custody;
- (2) that Albert Johnson at any time indicated an intention to surrender himself peacefully to them;
- (3) that they were motivated by any personal animosity or racial bias toward Albert Johnson or acted for any purpose other than a bona fide intention to perform their duties as police officers, and in self-defence against an unlawful and unprovoked attack upon them by Albert Johnson;
- (4) that they used unreasonable, unnecessary and undue force to arrest Albert Johnson;
- (5) that they failed to use reasonable intelligence and common sense befitting their professional responsibilities in dealing with Albert Johnson;
- (6) that they failed to use reasonable intelligence and common sense befitting their professional responsibilities in appraising any danger to themselves or any other person at the time Albert Johnson was shot;
- (7) that they used or committed any unnecessary force, unlawful entry, assault, false arrest or racial insult against Albert Johnson; and
- (8) that they were careless and demonstrated a lack of skill in the use of their firearms.

44. The defendant Gary Dicks used no force whatsoever against Albert Johnson at any time.

45. Neither of the defendants Walter Cargnelli or Gary Dicks discharged his service revolver at any time.

46. The defendants William Inglis, Walter Cargnelli and Gary Dicks plead that on the basis of the information and evidence available to them at the time, they acted at all times in compliance with the duties imposed upon them by law as police officers, and that had they failed to take the steps they did for the purpose of preserving the peace, for the protection of human life, and, for the purpose of attempting to obtain professional medical assistance for Albert Johnson, they would have been in breach of such duties.

47. The defendants William Inglis, Walter Cargnelli and Gary Dicks plead that their action and any force used by them was necessary, justified and lawful, and rely upon the Police Act, section 57; Regulation 790/80 to the Police Act, sections 6, 8 and 9; the Criminal Code, sections 25,27, 31, 34, 37, 171, 246, and 450; the Mental Health Act, section 11; and the Interpretation Act, R.S.O. 1980, c.219, section 27(b)..

48. The said defendants plead that any injuries sustained by Albert Johnson were caused by his own unreasonable and unlawful conduct, as outlined herein.

49. With respect to paragraphs 16, 17 and 18 of the statement of claim, the defendants William Inglis and Walter Cargnelli were, on November 13th, 1980, acquitted by a court of law, composed of a judge and jury, of committing culpable homicide, to wit manslaughter, by means of an unlawful act, by criminal negligence or by causing a human being, by threats or fear of violence or by deception, to do anything that causes his death. The said charge arose out of the incident of August 26th, 1979, which is the subject-matter of this action, and the plaintiffs Lemona Johnson, Rose Marie Johnson and Lescelle Anne-Marie Cole in giving evidence on behalf of the Crown against the said defendants made allegations against them similar to those made in the statement of claim herein.

50. The defendants Harold Adamson and Metropolitan Board of Commissioners of Police deny that they at any time caused or permitted the deceased Albert Johnson to be subjected to harassment or falsely arrested by police officers, as alleged in paragraphs 19 and 20 of the statement of claim or at all, nor do they have knowledge of any such harassment or false arrest having taken place.

51.. With respect to the alleged arrest without cause of Albert Johnson on May 12th, 1979, this incident is the subject matter of another action in this Honourable Court (Writ No. 45480, issued November 8th, 1979), in which the plaintiff herein, Lemona Johnson as administrator ad litem of the estate of Albert Johnson, is the plaintiff, and the defendants herein, Harold Adamson and Metropolitan Board of Commissioners of Police, together with one other police officer, are the defendants. Pleadings in that case have been completed, but no discoveries or trial have yet been held. No action has been commenced with respect to any of the other incidents alleged in paragraphs 19 and 20 of the statement of claim.

52. The defendants Harold Adamson and Metropolitan Board of Commissioners of Police deny that the law imposes upon them such duties as alleged or implied in paragraphs 30, 31, 32, 33, 35 and 36 of the statement of claim, for the benefit of individual members of the public or at all; further or in the alternative the said defendants deny that they breached any duty imposed upon them by law as owed to individual members of the public; further, or in the further alternative, the said defendants deny that any acts or failure to perform acts by them constituted a breach of any legal duty owed by them to Albert Johnson or the plaintiffs; and further, or in the further alternative, the said defendants deny that any acts or failure to act committed by them caused or contributed to damages or injuries alleged to have been suffered by Albert Johnson or by the plaintiffs herein.

53. The defendants Harold Adamson and Metropolitan Board of Commissioners of Police are not masters, employers or principals of the defendants Inglis, Cargnelli and Dicks, who are in law independent officers of the Crown exercising original authority as law enforcement officers, and therefore, apart from the full protection afforded to the plaintiffs by section 24(1) of the Police Act in respect of the alleged torts committed by individual police officers, are not otherwise liable to the plaintiffs in respect of such alleged tortious conduct by such officers, nor, by virtue of the statutory functions performed by the defendant Metropolitan Board of Commissioners of Police or the public duties performed by a chief of police, are they liable to the plaintiffs in their personal capacities.

54. The defendants Harold Adamson and Metropolitan Board of Commissioners of Police plead that the statement of claim herein raises no cause of action as against them, with the exception of any possible claim against the said Harold Adamson pursuant to section 24(1) of the Police Act, and, subject to such latter exception plead that this action should be dismissed as against them for this reason.

55. The defendants Harold Adamson and Metropolitan Board of Commissioners of Police plead that the allegations against them contained in the statement of claim herein, with the exception of any possible claim against the defendant Harold Adamson based upon section 24(1) of the Police Act, are unnecessary, scandalous, prejudicial and delaying to the trial of the action with respect to the single factual incident which forms the subject-matter of this action, and an abuse of the process of this Honourable Court.

56. With respect to paragraphs 29 and 30 of the statement of claim, the defendants admit that a letter from the Ontario Human Rights Commission dated August 15th, 1979, and enclosing a statement dated May 24th, 1979 signed by Albert Johnson, containing allegations with respect to an incident which occurred on May 12th, 1979, was received at Metropolitan Toronto Police Headquarters on August 22nd, 1979, and was forwarded to the Citizen Complaints Bureau, to which it was addressed, on August 24th, 1979. However, by the time that the latter Bureau received the said complaint, the incident of August 26th, 1979 had occurred, and the Ontario Provincial Police were conducting an investigation of both incidents, and therefore no further action was taken by the Citizen Complaint Bureau in response to the said letter from the Ontario Human Rights Commission, which was the only such letter received by the Police from such Commission.

57. The defendants deny that the plaintiffs suffered the nervous shock, trauma, emotional trauma and neurotic affliction as set out in the statement of claim or at all and further or in the alternative, plead that any such shock, trauma or affliction which they may have suffered were caused by the unreasonable and unlawful conduct of the deceased Albert Johnson, and not by any acts of the defendants.

58. The defendants deny that the plaintiffs or Albert Johnson suffered damages as alleged in the statement of claim or at all, and put the plaintiffs to the strict proof thereof.

59. The defendants deny that Albert Johnson was at the time of his death a factory worker or that he was employed at all, and further deny that the plaintiffs suffered damages as alleged in paragraph 37 of the statement of claim or at all.

60. The defendants plead and rely upon the Public Authorities Protection Act, R.S.O. 1980, c.406, and particularly section 11 of that Act. Specifically, the defendants Gary Dicks and Harold Adamson plead that the action herein as against the said defendant Gary Dicks and as against the defendant Harold Adamson with respect to allegations against the said Gary Dicks, was commenced on June 18th, 1980 with respect to a cause of action alleged to have arisen on August 26th, 1979, and is therefor statute-barred. The said defendants and the defendant Metropolitan Board of Commissioners of Police plead that such action or part of the action as against them should for that reason be dismissed.

61. The defendants submit that this action should be dismissed with costs.

DELIVERED at Toronto this 23rd day of August 1982.

A.P.G. JOY, Q.C.,
City Hall,
Toronto, Ontario

Solicitor for the
Defendants

TO: The Clerk of this Court

AND TO: Iler, Campbell
Barristers and Solicitors,
136 Simcoe Street,
Suite 201,
Toronto, Ontario
Solicitors for the Plaintiffs