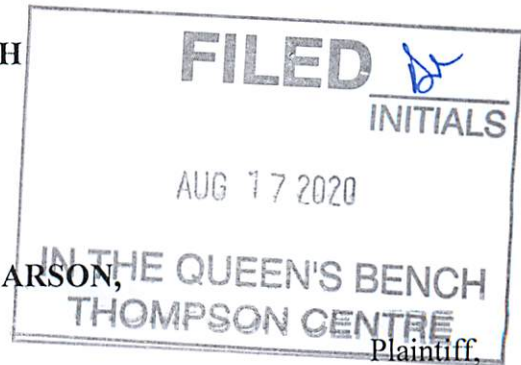


THE QUEEN'S BENCH
Thompson Centre



BETWEEN:

GENESTA SUMMER FLO GARSON,

- and -

THE CITY OF THOMPSON and GARRETT ALLEN and THOMAS WARKENTIN and
the ROYAL CANADIAN MOUNTED POLICE and JENELLE FAYE HULAN and
ATTORNEY GENERAL OF CANADA,

Defendants.

STATEMENT OF DEFENCE OF THE CITY OF THOMPSON, GARRETT ALLEN,
AND THOMAS WARKENTIN

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THE QUEEN'S BENCH
Thompson Centre

BETWEEN:

GENESTA SUMMER FLO GARSON,

Plaintiff,

- and -

THE CITY OF THOMPSON and GARRETT ALLEN and THOMAS WARKENTIN and
the ROYAL CANADIAN MOUNTED POLICE and JENELLE FAYE HULAN and
ATTORNEY GENERAL OF CANADA,

Defendants.

**STATEMENT OF DEFENCE OF THE CITY OF THOMPSON, GARRETT ALLEN,
AND THOMAS WARKENTIN**

1. The Defendants, The City of Thompson, Garrett Allen (“Allen”), and Thomas Warkentin (“Warkentin”) (collectively referred to as “these Defendants”) admit the allegations contained in paragraphs 2, 3, 4, 5, 7, 8, and 9 of the Statement of Claim.

2. These Defendants deny the allegations contained in paragraphs 6, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 42, 43, 44, 45, 46, 47, 48, and 49 of the Statement of Claim, and deny that the Plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim.

3. These Defendants have no knowledge of the allegations contained in paragraphs 10, 17, 18, 33, 34, 35, 36, 37, 38, 39, 40, and 41 of the Statement of Claim.

4. In reply to the allegations contained in paragraphs 12, 13, and 15 of the Statement of Claim, these Defendants admit that Allen and Warkentin handcuffed and detained the Plaintiff, but say that they had grounds to take the Plaintiff into custody pursuant to the *The Intoxicated Persons Detention Act*, CCSM c I90 and *The Police Services Act*, CCSM c P94.5, as the Plaintiff was located lying in the middle of a road in a severely intoxicated state such that she was a

danger to herself and others. A warrant for the Plaintiff's arrest was not required in the circumstances.

5. In reply to the allegations contained in paragraphs 14 and 15 of the Statement of Claim, these Defendants say that upon informing the Plaintiff that she was under arrest, the Plaintiff became combative with Allen and Warkentin and actively resisted arrest. Accordingly, the Plaintiff was taken to the ground in order for Allen and Warkentin to effectively and safely place the Plaintiff in handcuffs. These Defendants say that Allen and Warkentin used only as much force as was necessary to arrest the Plaintiff in the circumstances.

6. In reply to the allegations contained in paragraph 16 of the Statement of Claim, these Defendants admit that after the Plaintiff was placed in handcuffs, she was transported to the Thompson Royal Canadian Mounted Police ("RCMP") detachment by Allen and Warkentin. These Defendants say that Allen and Warkentin were authorized to take the Plaintiff to the Thompson RCMP detachment by virtue of *The Intoxicated Persons Detention Act*, CCSM c I90, and that it was necessary to do so as a result of the Plaintiff's level of intoxication at the time.

7. In reply to the allegations contained in paragraphs 19 and 20 of the Statement of Claim, these Defendants say that upon being detained, the Plaintiff was immediately informed by Allen of the reasons for her detention and of her right to retain and instruct counsel without delay. The Plaintiff indicated that she understood the reasons for her detention and that she wished to contact counsel. These Defendants say that the Thompson RCMP were responsible for providing the Plaintiff with an opportunity to retain and instruct counsel.

8. In reply to the allegations contained in paragraph 21 of the Statement of Claim, these Defendants:

- (a) deny that the Plaintiff was asked to remove her clothing in the lobby of the Thompson RCMP detachment, and say that upon arrival at the Thompson RCMP detachment, the Plaintiff was brought into the cell lodging area in order to be placed into a cell;
- (b) say that RCMP policy requires any person being placed into cells to be searched, and stipulates that the person may only wear one layer of clothing while in a cell.

Where the RCMP deem it to be necessary, females are asked to remove their bras for their own safety and the safety of others;

- (c) say that accordingly, the Plaintiff was directed to remove extraneous layers of her clothing, and due to her level of intoxication, was asked to remove her bra;
- (d) say that the Plaintiff took over twenty minutes to remove her clothing, and required continuous direction from Warkentin, Allen, and the Defendant Jenelle Faye Hulan (“Hulan”) in order to do so; and
- (e) deny that they violated the Plaintiff’s rights pursuant to the *Canadian Charter of Rights and Freedoms*, as alleged or at all.

9. In reply to the allegations contained in paragraph 22 of the Statement of Claim, these Defendants:

- (a) deny that Allen reached in to remove the Plaintiff’s belt or touched the Plaintiff’s waistline;
- (b) say the Plaintiff removed her own belt, assumed a fighting stance, and began to swing the belt. Warkentin attempted to take hold of the Plaintiff’s hand in order to take the belt from her, but was unsuccessful;
- (c) say the Plaintiff then swung the belt at Allen, striking him in the neck area;
- (d) say the Plaintiff attempted to strike Allen again, and he proceeded to issue a compliance strike to the Plaintiff’s facial area in order to prevent the Plaintiff from further assaulting Allen, Warkentin, or Hulan; and
- (e) say the Plaintiff fell against a wall and was then assisted to the ground safely by Allen, Warkentin, and Hulan in order to retrieve the belt.

10. In reply to the allegations contained in paragraph 23 of the Statement of Claim, these Defendants say that it was necessary for Warkentin and Allen to hold the Plaintiff for her own safety.

11. In reply to the allegations contained in paragraph 24 of the Statement of Claim, these Defendants deny that Allen punched the Plaintiff as alleged or at all. These Defendants say that the Plaintiff attempted to exit the cell she was placed in, and Allen stuck his foot out to prevent the Plaintiff from doing so and to allow Allen, Warkentin, and Hulan to close the cell door safely and quickly.

12. In reply to the allegations contained in paragraphs 25 and 26 of the Statement of Claim, these Defendants:

- (a) admit that emergency medical services attended to the RCMP detachment and transported the Plaintiff to the hospital; and
- (b) say that the actions of Allen were necessary in self-defence to the actions of the Plaintiff, and that Allen did not use any more force than was necessary in the circumstances.

13. In reply to the allegations contained in paragraphs 27, 28, and 32 of the Statement of Claim, these Defendants deny that they owed a duty of care to the Plaintiff as alleged or at all. In the alternative, if these Defendants did owe a duty of care to the Plaintiff, which is not admitted but expressly denied, these Defendants deny that they breached that duty of care, and deny that they were in any way negligent.

14. In reply to the allegations contained in paragraph 29 of the Statement of Claim, these Defendants deny that a strip search was conducted, and say, as described above, the Plaintiff was asked to remove all but one layer of her own clothing in the cell lodging area of the Thompson RCMP detachment.

15. In reply to the allegations contained in paragraphs 30 and 31 of the Statement of Claim, these Defendants deny “attacking” the Plaintiff, and say that their actions were necessary in self-defence to the actions of the Plaintiff as outlined above, and that they did not use any more force than was necessary in the circumstances.

16. In reply to the allegations contained in paragraphs 42 and 43 of the Statement of Claim, these Defendants deny that the Plaintiff has suffered injury or damage as alleged. In the

alternative, if the Plaintiff has suffered any injury or damage as alleged, these Defendants deny that any such injury or damage was the result of anything done or not done by them. Further, these Defendants say any alleged injury or damage suffered by the Plaintiff resulted from her own actions.

17. In reply to the allegations contained in paragraphs 44 and 45 of the Statement of Claim, these Defendants deny any egregious, high-handed, or reprehensible conduct on their behalf, and therefore deny that the Plaintiff is entitled to punitive damages or aggravated damages or exemplary damages.

18. In reply to the allegations contained in paragraph 46 of the Statement of Claim, these Defendants deny that they violated the Plaintiff's rights pursuant to the *Canadian Charter of Rights and Freedoms*, as alleged or at all.

19. In reply to the allegations contained in paragraph 47 of the Statement of Claim, these Defendants deny that their actions were motivated by discrimination on the basis of the Plaintiff's Aboriginal ancestry.

20. In reply to the whole of the Statement of Claim, these Defendants say that the Plaintiff, by her conduct, was solely responsible for what occurred on the evening in question.

21. These Defendants plead and rely upon *The Intoxicated Persons Detention Act*, CCSM c I90, *The Police Services Act*, CCSM c P94.5, and the *Criminal Code*, RSC 1985, c C-46.

22. For all of the above noted reasons, these Defendants submit that the Statement of Claim ought to be dismissed as against them with costs.

August 14, 2020

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