

COURT FILE No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MADISON ARSENEAULT-MARTIN, A MINOR BY HER LITIGATION GUARDIAN
SHIRLEY MARTIN, SHIRLEY MARTIN AND ANDREW ARSENEAULT**

PLAINTIFFS

AND

**THE CORPORATION OF THE CITY OF WINDSOR, CHRIS MCLEAN, THE GREATER
ESSEX COUNTY DISTRICT SCHOOL BOARD, LAURIE DUMAINE
AND STEPHANIE TRAMONTOZZI**

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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 the Legal Aid Office.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court

DATE: March 1, 2017

ISSUED BY:

REGISTRAR

**ADDRESS OF
COURT OFFICE:**

**245 WINDSOR AVENUE
WINDSOR, ONTARIO
N9A 1J2**

**TO: THE CORPORATION OF THE CITY OF WINDSOR
Corporate Services, Legal Department
350 City Hall Square West, Room 203
Windsor, Ontario N9A 7K6**

**AND TO: CHRIS McLEAN
C/O THE CORPORATION OF THE CITY OF WINDSOR
Corporate Services, Legal Department
350 City Hall Square West, Room 203
Windsor, Ontario N9A 7K6**

**AND TO: THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD
451 Park Street West
Windsor, Ontario N9A 6K1**

**AND TO: LAURIE DUMAINE
C/O THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD
451 Park Street West
Windsor, Ontario N9A 6K1**

**AND TO: STEPHANIE TRAMONTOZZI
C/O THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD
451 Park Street West
Windsor, Ontario N9A 6K1**

CLAIM

1. The Plaintiff, **MADISON ARSENEAULT-MARTIN**, a minor by her litigation guardian, **SHIRLEY MARTIN** (hereinafter referred to as "**MADISON**") claims:
 - a. General Damages in the amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)**;
 - b. Special Damages incurred and estimated to date but not limited to the sum of **FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$550,000.00)**; and
 - c. Such further and other special damages as may be incurred, the amounts of which will be furnished to the Defendants.

2. The Plaintiff, **SHIRLEY MARTIN** (hereinafter referred to as "**SHIRLEY**") claims:
 - (a) Damages pursuant to the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, in the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**;
 - (b) Special Damages incurred and estimated to date but not limited to the sum of **TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00)**; and
 - (c) Such further and other special damages as may be incurred, the amounts of which will be furnished to the Defendants.

3. The Plaintiff, **ANDREW ARSENEAULT** (hereinafter referred to as "**ANDREW**") claims:
 - (d) Damages pursuant to the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, in the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**;
 - (e) Special Damages incurred and estimated to date but not limited to the sum of **TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00)**; and
 - (f) Such further and other special damages as may be incurred, the amounts of which will be furnished to the Defendants.

4. Each Plaintiff claims:
 - (a) Pre-Judgment interest on the amounts awarded pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (b) Costs of this action on a substantial indemnity basis, including applicable H.S.T; and
- (c) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

5. The Plaintiff, **MADISON** is a minor who resides with her parents in the City of Windsor, in the County of Essex and Province of Ontario. At all material times, **MADISON** was a grade eight student at **GORDON MCGREGOR PUBLIC SCHOOL** (hereinafter referred to as "The School"), located at 1646 Alexis, in the City of Windsor. At all material times, **MADISON** was also a person to whom all of the Defendants owed a duty of care.
6. The Plaintiffs, **SHIRLEY** and **ANDREW**, are the parents of the minor Plaintiff, **MADISON**, and were at all material times persons to whom the Defendants owed a duty of care.
7. The Defendant, **THE CORPORATION OF THE CITY OF WINDSOR** (hereinafter referred to as "**THE CITY**") is a corporation duly incorporated pursuant to the provisions of the *Municipal Act*, S.O. 2001 c.25. At all material times, **THE CITY** owned, maintained, and exercised control and responsibility over the property known as the "Ford Test Track", located at 3001 Seminole Street in the City of Windsor and Province of Ontario, at which the subject below-noted trip and fall occurred.
8. The Defendant, **CHRIS MCLEAN** (hereinafter referred to as "**MCLEAN**") is an individual, who the Plaintiffs believe resides in the City of Windsor and Province of Ontario. At all material times, **MCLEAN**, was an employee of **THE CITY** and was responsible for maintaining the Ford Test Track. He was specifically responsible for erecting and supervising the equipment used to paint lines on the soccer field at the Ford Test Track on May 25, 2016.

9. The Defendants, **LAURIE DUMAINE** and **STEPHANIE TRAMONTOZZI** (hereinafter referred to as the "**TEACHERS**") were at all material times teachers employed by the **THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD** to instruct and supervise students, including **MADISON**, at The School. They were specifically responsible for the instruction, care and supervision of **MADISON** on May 25, 2016 at the time of the subject trip and fall. The Plaintiffs believe the **TEACHERS** reside in the City of Windsor and Province of Ontario.
10. The Defendant, **THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD** (hereinafter referred to as "**THE SCHOOL BOARD**"), is the owner and occupier of the elementary school operating as The School, in the City of Windsor and Province of Ontario. At all material times, **THE SCHOOL BOARD** had responsibility for and control over the activities conducted at and for The School, as well as the conduct of its servants, agents, and/or employees and the safety, protection, and wellbeing of students who attended The School.
11. **THE SCHOOL BOARD** is obligated to ensure that every school under its charge is conducted in accordance with the provisions of the *Education Act*, R.S.O. 1990, c.E.2 and the regulations passed thereunder. The said Board is further obligated pursuant to the said statute to appoint for each school that it operates a principal and an adequate number of teachers, all of whom shall be qualified according to the provisions of the *Education Act* and regulations passed thereunder.

THE TRIP AND FALL

12. On or about the 25th day of May, 2016, **MADISON** was a student in The School's grade eight physical education class. She was being instructed and supervised by one or both of the Defendants, the **TEACHERS**. **MADISON**'s class was being held at the Ford Test track, which is located behind The School.
13. At or around the same time, the Defendant, **McLEAN** was using and/or had set up

equipment to paint lines on the soccer field, which included the following:

- a. a golf club that had been modified by removing the club head and welding the remnant metal shaft to form a pointed edge;
 - b. string; and
 - c. a metal stake.
14. The string was tightly affixed and set low to the ground between the modified golf club and the metal stake. No markers or warning signs were used to demarcate the area.
15. While using the track during her physical education class and despite exercising all due care and caution, **MADISON** tripped on the low-lying string affixed between the golf club and stake. As a result thereof, the golf club became dislodged from the ground and struck **MADISON** in the head, resulting in **MADISON** falling to the ground and sustaining serious and permanent personal injuries, the particulars of which are more fully detailed below.

ALLEGATIONS OF NEGLIGENCE

16. The aforesaid fall and resulting injuries to **MADISON** were caused solely by the negligence of **THE DEFENDANTS**, the particulars of which negligence are as follows:
- a. As to the negligence of **THE CITY**:
 - i. failing to provide reasonably safe premises for use by **MADISON**;
 - ii. employing equipment that is inherently dangerous and unsafe;
 - iii. failing to instruct properly, or at all, its servants, agents, or employees to use proper and reasonable safety procedures and consider safety measures when performing maintenance and other work;
 - iv. failing to implement or follow a reasonable system to alert pedestrians to the presence of the low-lying wire and other equipment;

- v. failing to follow industry standards or similar guidelines that govern maintenance work procedures in areas where pedestrians and children frequent;
 - vi. failing to address properly, or at all, the inherent dangers posed by the equipment used for the maintenance work;
 - vii. failing to post adequate signage or any signage alerting pedestrians to the maintenance work at the park in question and in the surrounding area;
 - viii. creating or allowing to exist a situation of danger which was unknown to **MADISON** but which could have been reasonably foreseen;
 - ix. failing to take all reasonable steps necessary to avoid the exposure of **MADISON** to an unreasonable risk of harm and injuries of the very type of which were sustained; and
 - x. other allegations of negligence the particulars of which are not currently within the Plaintiffs' knowledge.
- b. As to the negligence of **MCLEAN**, for whose negligence **THE CITY** is in law responsible:
- i. failing to maintain the Ford Test Track in a safe and reasonably prudent manner;
 - ii. creating or perpetrating a situation of danger from which **MADISON**, despite all reasonable effort and precaution on her part, was unable to extricate herself;
 - iii. employing equipment that is inherently dangerous and unsafe;
 - iv. failing to follow industry standards or similar guidelines that govern maintenance work procedures in areas where pedestrians and children frequent;
 - v. failing to post adequate signage or any signage alerting pedestrians to the maintenance work at the park in question and in the surrounding area;
 - vi. creating or allowing to exist a situation of danger which was unknown to **MADISON** but which could have been reasonably foreseen;

- vii. failing to take all reasonable steps necessary to avoid the exposure of **MADISON** to an unreasonable risk of harm and injuries of the very type of which were sustained;
 - viii. failing to monitor or demarcate the area in which maintenance work was being conducted to warn pedestrians of the pending work and equipment in the area;
 - ix. being an incompetent worker on the occasion in question, lacking in reasonable skill and self-command and who ought not to have used such methods when performing maintenance work; and
 - x. other allegations of negligence the particulars of which are not presently within the Plaintiffs' knowledge.
- c. As to the negligence of **THE SCHOOL BOARD**:
- i. failing to take reasonable or any care to ensure that **MADISON** would be reasonably safe while at the Ford Test Track;
 - ii. hiring the Defendants, the **TEACHERS**, to supervise and instruct students when it knew, or should have known, that they were incapable of doing so;
 - iii. failing to provide adequate personnel resources to its' **TEACHERS** to supervise and instruct its' students;
 - iv. failing to properly instruct its' **TEACHERS** in the methods of properly maintaining supervision when off school grounds, in particular at the Ford Test Track, so as to prevent injury from occurring;
 - v. failing to instruct its' **TEACHERS** to inspect the Ford test track prior to and/or during its' use to ensure a safe local for its' students;
 - vi. failing to notify **THE CITY** of the school's use of the Ford Test Track to ensure the area was reasonably safe for use by the students;
 - vii. failing to act in accordance with its own policy regarding supervision when not on school grounds;
 - viii. failing to educate its students on safety procedures when off school grounds, when it knew or ought to have known that the maintenance work at the Ford Test Track presented a danger for pedestrians, including its' school children; and

- ix. other allegations of negligence the particulars of which are not currently within the Plaintiffs' knowledge.
- d. As to the negligence of the **TEACHERS**, for whose negligence the school is in law responsible:
- i. failing to take reasonable, or any, care to ensure that **MADISON** would be reasonably safe while at the Ford Test Track;
 - ii. failing to adequately supervise **MADISON**, with whose care and safety they were charged;
 - iii. failing to take sufficient or any measures to prevent students from occupying the area near the maintenance work at the Ford Test Track on May 25, 2016, when it knew or ought to have known that the maintenance work presented a danger for school children;
 - iv. failing to ensure that a system of supervision was established when holding physical education classes at the Ford Test Track and in the surrounding area;
 - v. failing to properly maintain or implement any reasonable system of inspection of the Ford Test Track prior to and during it's use;
 - vi. failing to warn **MADISON** that the park in question was in a dangerous state;
 - vii. failing to provide any kind of warning to **MADISON** of the danger in question; and
 - viii. other allegations of negligence the particulars of which are not currently within the Plaintiffs' knowledge.
17. Alternatively, the Plaintiffs state that the aforementioned condition of the subject Ford Test Track constituted a dangerous and hidden trap and nuisance of which the Defendants were or ought reasonably to have been aware and which they permitted to exist.

MADISON'S INJURIES, SYMPTOMS, AND DAMAGES

18. As a result of the aforementioned fall, **MADISON** sustained serious and permanent

personal injuries including, but not limited to a penetrating brain injury of the right parietal bone with extensive subarachnoid hemorrhage, large intraparenchymal hemorrhage to the right frontotemporal lobe, extensive intraventricular hemorrhage with dense blood visible through the lateral ventricles including the 3rd and 4th ventricles, and a right parietal skull fracture with displaced fragments. In addition, **MADISON** suffered numerous contusions, abrasions and lacerations along with spraining, straining and tearing of the muscles, tendons, ligaments, discs, nerves and vessels through her body. **MADISON'S** injuries and impairments have caused and continue to cause her severe pain, discomfort, limitation of movement and concurrent disability.

19. As a result of the aforesaid injuries, **MADISON** has required imaging including CT scans, MRIs and x-rays, and the attention of medical specialists. She has also required emergency surgery and hospitalization and continues to require prescribed medication, and rehabilitation therapy.
20. As a result of **MADISON'S** aforesaid injuries, she has experienced and will continue to experience pain, suffering, and limitation of movement and function in the affected areas. **MADISON** continues to suffer from symptoms which include, but are not limited to, the following:
 - a. left sided hemiparesis to the upper and lower extremity with sensory and motor weakness;
 - b. deconditioning and disuse atrophy on the left side;
 - c. headaches;
 - d. impaired vision;
 - e. chronic pain on the left side of her body;
 - f. left facial droop and numbness;
 - g. left foot drop;

- h. two loose and bruised teeth, along with upper and lower teeth discomfort when biting and with cold drinks;
 - i. sleep disturbances and nightmares;
 - j. cognitive impairment;
 - k. anxiety; and
 - l. depression.
21. **MADISON** remains under the care of medical specialists, continues to suffer and require treatment and to date the full extent of her injuries, disabilities and future treatment as yet have not been fully determined. In addition, she has received and will continue to receive medication and rehabilitation therapy. **MADISON** has incurred expenses and will incur further expenses in the future for this treatment and other forms of treatment, the full particulars of which are not yet known. **MADISON** will continue to suffer from the effects of her injuries for an indefinite period of time.
22. **MADISON** has been unable to carry on her normal tasks of living and has lost the enjoyment of life. She will continue to suffer from the effects of her injuries and will continue to lose enjoyment of life for the balance of her natural life. She has suffered from traumatic, emotional and nervous upset and her manner of living has been changed. She has also been restricted in her ability to function in her daily activities.
23. As a result of the effects of **MADISON'S** injuries on the activities of her daily living, the Plaintiffs have incurred considerable costs and will incur considerable future costs for medical, rehabilitation and house and home care assistance.
24. **MADISON** is unable to perform household and handyman chores for herself to the extent that she was able to do so before the fall and resultant injuries and will require assistance in the future to complete such chores.

25. As a result of the aforesaid injuries and consequent disabilities, **MADISON'S** schooling has been interrupted and she has been prevented from continuing with her self-employment as a baker and from working in any capacity. **MADISON'S** competitive position and advantage in the labour market has been compromised and reduced, and as such **MADISON** claims from **THE DEFENDANTS** for the income lost to date and in the future on that account, as well as for her loss of earning capacity for future income.
26. As a result of the negligence of **THE DEFENDANTS**, the Plaintiffs have suffered pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time.

FAMILY LAW ACT DAMAGES

27. **SHIRLEY** and **ANDREW** claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, including but not limited to the following:
- a. compensation for the loss of care, guidance and companionship that they might reasonably have expected to receive from **MADISON** had the subject fall not occurred;
 - b. compensation for nursing, housekeeping and other related services which they have provided and will continue to provide to **MADISON** as a result of the subject fall; and
 - c. compensation for out-of-pocket and travel expenses incurred as a result of the subject fall.
28. The Plaintiffs plead and rely upon the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; the *Family Law Act*, R.S.O. 1990, c. F.3; the *Occupiers' Liability Act*, RSO 1990 c O.2, the *Municipal Act, 2001*, SO 2001, c 25, the *Education Act*, R.S.O. 1990, c.E.2 and the *Negligence Act*; R.S.O. 1990, c. N.1.

The Plaintiffs propose that this action be tried in the City of Windsor, in the County of Essex and Province of Ontario.

DATE OF ISSUE: MARCH 1, 2017

**JENNIFER BEZAIRE – LSUC #0466845Q
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SOLICITORS FOR THE PLAINTIFFS

Court File No.:

ARSENEAULT-MARTIN ET AL
PLAINTIFF

V.

CITY OF WINDSOR ET AL
DEFENDANTS

ONTARIO
SUPREME COURT OF JUSTICE
PROCEEDINGS COMMENCED AT WINDSOR

STATEMENT OF CLAIM

JENNIFER BEZAIRE – LSUC #046845Q
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File No.: 17464