

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**C.S.**

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD**

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900  
Toronto ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca  
Tel: 416-542-6298

**STROSBERG SASSO SUTTS LLP**  
1561 Ouellette Avenue  
Windsor, ON N8X 1K5

**Jay Strosberg** LSO#: 47288F  
jay@strosbergco.com  
Tel: 519-561-6285

**Patricia Speight** LSO#: 26380C  
pas@strosbergco.com  
Tel: 519-561-6213

**Scott Robinson** LSO#: 65689W  
srobinson@strosbergco.com  
Tel: 519-561-6227

Lawyers for the Plaintiff

**TO: ATTORNEY GENERAL FOR ONTARIO**  
Crown Law Office – Civil  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M7A 2S9

**Christopher Wayland** LSO#: 42381O  
christopher.wayland@ontario.ca  
Tel: 416-326-4177

**Jonathan Sydor** LSO#: 421831R  
jonathan.sydor@ontario.ca  
Tel: 416-326-4171

**Heather McIvor** LSO#: 58665H  
heather.mcivor@ontario.ca  
Tel: 416-212-1478

Lawyers for the Defendant

**TABLE OF CONTENTS**

<b>TAB</b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE</u></b>
1.	Notice of Motion, August 23, 2021	<b>1</b>
2.	Affidavit of Catherine MacDonald, sworn August 23, 2021	<b>19</b>
	<b>Exhibit A</b> – Statement of Claim	<b>21</b>
	<b>Exhibit B</b> – Second Fresh as Amended Statement of Claim	<b>41</b>
	<b>Exhibit C</b> – Order re Certification	<b>64</b>
	<b>Exhibit D</b> – Settlement Agreement	<b>88</b>
	<b>Exhibit E</b> – Notice Plan	<b>162</b>
	<b>Exhibit F</b> – Long Form Notice	<b>166</b>
	<b>Exhibit G</b> – Short Form Notice	<b>176</b>

Court File No. CV-16-534895-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

C.S.

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION  
(Pre-Approval Motion)**

**THE PLAINTIFF** will make a motion to the Honourable Justice Perell, on a date to be determined, at Osgoode Hall, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- ☒ In writing under subrule 37.12.1(1) because it is on consent
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☐ By video conference.

**THE MOTION IS FOR:**

- (a) An order approving the form and content of the short and long form pre-approval notices (collectively "**Pre-Approval Notice**") attached at Schedules "A" and "C" to this Notice of Motion;

- (b) An order approving the means by which Pre-Approval Notice will be disseminated to the Class described at Schedule "B" to this Notice of Motion; and,
- (c) Such further or other orders as this Honourable Court deems just and appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) This class proceeding was commenced by Statement of Claim issued on November 4, 2015;
- (b) After numerous interlocutory motions and appeals to the Court of Appeal for Ontario, the exchange of certification records and numerous cross-examinations, the parties consented to certification. This Honourable Court issued a certification order on December 17, 2018;
- (c) The parties began discussing the prospect of settlement in 2020, including the exchange of relevant data and information. A formal mediation was scheduled with Linda Rothstein of Paliare Roland Rosenberg Rothstein LLP as mediator. Mediation sessions took place over March 26 and 27, 2021. Further mediation sessions took place on May 17, 2021;
- (d) In August 2021, the parties finalized a settlement with a total value of \$15 million;
- (e) The settlement approval motion is returnable on October 14, 2021;
- (f) The parties propose a workable and effective plan for dissemination of Pre-Approval Notice to the Class in the manner described in the Notice Plan attached at Schedule "B" to this Notice of Motion;
- (g) The Notice Plan applies the same avenues of notice as were employed for notice of certification;

- (h) The proposed Notice Plan is a reasonable method of notifying the Class of the proposed settlement and the hearing to approve settlement;
- (i) The parties will appoint Epiq, which will implement and consult on Pre-Approval Notice and which will receive objections or expressions of support from members of the Class. Epiq was the certification notice and opt-out administrator in this matter; and
- (j) Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT  
THE HEARING OF THE MOTION:**

- (a) Affidavit of Catherine MacDonald, sworn August 23, 2021; and
- (b) Such further and other materials as counsel may advise and this Honourable court may permit.

August 23, 2021

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900  
Toronto ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca  
Tel: 416-542-6298

**STROSBURG SASSO SUTTS LLP**  
1561 Ouellette Avenue  
Windsor, ON N8X 1K5

**Jay Strosberg** LSO#: 47288F  
jay@strosbergco.com  
Tel: 519-561-6285

**Patricia Speight** LSO#: 26380C  
pas@strosbergco.com  
Tel: 519-561-6213

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Tel: 519-561-6227

Lawyers for the Plaintiff

**TO: ATTORNEY GENERAL FOR ONTARIO**  
Crown Law Office – Civil  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M7A 2S9

**Christopher Wayland** LSO#: 42381O  
christopher.wayland@ontario.ca  
Tel: 416-326-4177

**Jonathan Sydor** LSO#: 421831R  
jonathan.sydor@ontario.ca  
Tel: 416-326-4171

**Heather McIvor** LSO#: 58665H  
heather.mcivor@ontario.ca  
Tel: 416-212-1478

Lawyers for the Defendant

## SCHEDULE “A”

### SHORT FORM NOTICE

*Were You Incarcerated in an Ontario Youth Justice Facility Between April 1, 2004 and December 17, 2018?*

*Were You Placed In Secure Isolation?*

#### **You may be entitled to Money in a Class Action Settlement**

You are entitled to make a claim for damages if all of the items on the following list apply to you:

1. You were placed alone in a designated room or area at any one of more of the following Youth Justice Facilities: Bluewater Youth Centre; Brookside Youth Centre; Cecil Facer Youth Centre; Donald Doucet Youth Centre; Invictus Youth Centre; Justice Ronald Lester Youth Centre; Roy McMurtry Youth Centre; Sprucedale Youth Centre; Toronto Youth Assessment Centre;
2. Your placement alone in the designated room or area lasted at least 6 consecutive hours;
3. You were not released at the earliest possible time;
4. Your placement alone in the designated room or area took place when you were 17 years old or younger; and
5. Your placement alone in the designated room or area took place sometime between April 1, 2004 and December 17, 2018.

You could be entitled to between \$1000 and \$40,000 per placement, depending on the length of time and the circumstances surrounding your placement.

Please note that the following placement or placements alone in a designated room or area do not count towards the class definition and do not make you a Class Member:

1. Segregation by reason of a lock-down at a Youth Justice Facility; and
2. The routine locking in your room overnight at a Youth Justice Facility.

The Ontario Superior Court of Justice will decide whether to approve the settlement on October 14, 2021. It will be heard on Zoom. The link for the hearing will be posted on [website] when available. You may file an objection or a statement in support of the settlement.

To learn more about the settlement and how to make a statement in support or an objection, go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].



**SCHEDULE “B”  
NOTICE PLAN**

<b>Publication</b>	<b>Unit Type/Size</b>
Globe & Mail	¼ Page
National Post	¼ Page
Toronto Star	¼ Page
Ottawa Citizen	¼ Page
The Windsor Star	¼ Page
The Hamilton Spectator	¼ Page
London Free Press	¼ Page
Kingston Whig-Standard	¼ Page
The Chronicle-Journal	¼ Page
Belleville Intelligencer	¼ Page
Kingston Heritage	¼ Page
Napanee Guide	¼ Page
Northumberland Today.com-TH	¼ Page
Quinte Community Newspaper Group	¼ Page
Brampton Guardian-TH	¼ Page
Burlington Post/Flamborough Review	¼ Page
Caledon Citizen	¼ Page
Cambridge Times-TH	¼ Page
Georgetown/Acton Ind. Free Press	¼ Page
Glanbrook Gazette	¼ Page
Grimsby/Lincoln/West Lincoln NewsNow	¼ Page
Guelph Tribune-TH	¼ Page

Hamilton Community News	¼ Page
King Weekly Sentinel	¼ Page
Kitchener Post	¼ Page
Markham Economist & Sun	¼ Page
Milton Canadian Champion	¼ Page
Mississauga News-TH	¼ Page
Oakville Beaver-TH	¼ Page
Richmond Hill/Thornhill Liberal	¼ Page
Toronto, All Metroland Publications	¼ Page
Vaughan Citizen	¼ Page
Alexandria Glengarry News	¼ Page
Armprior Chronicle-Guide	¼ Page
Carleton Place/Almonte Canadian Gazette	¼ Page
Chesterville Record	¼ Page
Kanata Kourier-Standard	¼ Page
Kemptville Advance	¼ Page
Manotick News	¼ Page
Nepean/Barrhaven News	¼ Page
Orleans News	¼ Page
Ottawa East News	¼ Page
Ottawa South News	¼ Page
Ottawa West News	¼ Page
QC Aylmer Bulletin d'Aylmer	¼ Page
QC Chelsea/Buckingham	¼ Page
West Quebec Post	¼ Page
Smith Falls Record News	¼ Page

Stittsville News	¼ Page
West Carleton Review	¼ Page
Winchester Press	¼ Page
Ayr News	¼ Page
Brantford	¼ Page
Brant News	¼ Page
Exeter Times-Advocate Weekender	¼ Page
Forest/Watford Standard Guide-Advocate	¼ Page
Ingersoll Times	¼ Page
London, the Londoner	¼ Page
Norwich Gazette	¼ Page
Parkhill/Glencoe Gazette Transcript & Free Press	¼ Page
St Mary's Journal Argus Weekender	¼ Page
St. Thomas/Elgin Weekly News	¼ Page
Strathroy Age Dispatch	¼ Page
Tavistock Gazette	¼ Page
Tillsonburg Independent News	¼ Page
West Lorne West Elgin Chronicle	¼ Page

### **Press Release**

North American distribution of an English and French press release via the CNW Newswire. 400 words in English and in French

### **Stakeholders**

Provision of the Short Form and Long Form Notice to John Howard Society, Elizabeth Fry Society, and Office of the Public Guardian and Trustee.

**SCHEDULE “C”****LONG FORM NOTICE**

A SETTLEMENT HAS BEEN REACHED THAT WILL BENEFIT THOSE WHO WERE HELD IN  
SECURE ISOLATION IN MANY ONTARIO YOUTH JUSTICE FACILITIES

**FOR MORE INFORMATION, VISIT [www.TBD.ca](http://www.TBD.ca)**

**YOU MAY ALSO CONTACT LAWYERS AT: 1-800-XXX-XXXX**

A settlement been reached with the Province of Ontario. This Settlement was reached following negotiations between the Province of Ontario and class action lawyers for the Class.

The Settlement must be approved by the Court to become effective.

If approved, the Province has agreed to offer money to compensate you if you were held in Youth Segregation for more than 6 consecutive hours. The amount of compensation you could receive will depend on how long you spent in Youth Segregation and the circumstances surrounding your placement.

Your rights and options—and the deadlines to exercise them—are explained in this Notice. Additional information is available at [www.TBD.ca](http://www.TBD.ca)

**PLEASE READ THIS NOTICE CAREFULLY.  
YOUR RIGHTS UNDER THE SETTLEMENT ARE AFFECTED EVEN IF YOU DO NOTHING.**

## Ontario Youth Segregation Class Action

OFFICIAL COURT COMMUNICATION

### WHAT THIS NOTICE CONTAINS

#### CLASS ACTION QUESTIONS .....

A	What are my options in the Settlement? .....	1
B	What are the Class Actions about? .....	1
C	Why am I receiving this Notice? .....	1

#### CLASS MEMBERSHIP QUESTIONS .....

D	Am I included in the Settlement? .....	2
E	What benefits can I receive? .....	2
F	How much money can I get? .....	3
G	How can I make a claim in the Settlement? .....	3
H	What supporting documents will be needed to make a claim? .....	4

#### SETTLEMENT PROCESS QUESTIONS .....

I	If I am a Class Member, what rights am I giving up? .....	4
J	How can I express support for, or object to, the Settlement? .....	5
K	Can I attend the Settlement approval hearing? .....	6
L	Who is my lawyer / Class Counsel? .....	6
M	How will Class Counsel be paid? .....	6
N	How do I get more information? .....	7

## Ontario Youth Segregation Class Action

OFFICIAL COURT COMMUNICATION

### CLASS ACTION QUESTIONS

#### A. WHAT ARE MY OPTIONS IN THE SETTLEMENT?

If you think you are included in the Settlement, you have the following options:

<b>LEARN MORE ABOUT THE SETTLEMENT AND WHETHER YOU MAY BE ELIGIBLE</b>	<p><b>STEP 1:</b> Visit <a href="http://www.TBD.ca">www.TBD.ca</a>.</p> <p><b>STEP 2:</b> Determine whether you are included in the Settlement by contacting <b>1-800-xxx-xxxx</b>.</p> <p><b>STEP 3:</b> Determine whether you may be eligible under the Settlement, and learn more about the estimated benefits that you may be eligible for by reviewing this notice and/or calling Class Counsel.</p>
<b>COURT APPROVAL OF THE SETTLEMENT</b>	<p>The Settlement is subject to approval by the Ontario Superior Court of Justice. The approval hearing has been scheduled for <b>October 14, 2021</b> before the Court. It will be heard on Zoom. The link for the hearing will be posted on <a href="#">[website]</a> when available. These hearings are public and you are welcome to attend at your own cost.</p>
<b>OBJECT TO THE SETTLEMENT BEFORE IT IS APPROVED</b>	<p>If you support the Settlement, you may provide your views in writing so they are received by the Notice Administrator by <b>October 7, 2021</b>. If you do not like the Settlement, you can deliver your objection in writing by the same date. Your support or objection will be delivered to the Court and considered at the approval hearing for the Settlement.</p>
<b>PARTICIPATE IN THE SETTLEMENT</b>	<p>If you wish to make a claim for benefits, you do not need to take any action at this time. The period to submit a claim will not begin until after the Settlement is approved by the Court. If approved, additional details will be provided regarding when and how claims can be submitted.</p>

#### B. WHAT IS THE CLASS ACTION ABOUT?

The class action seeks damages and other relief on behalf of those who, while under the age of 18, were held in a Youth Justice Facility and were isolated for longer than 6 consecutive hours.

This class action is known as: *C.S. v. Ontario* before the Ontario Superior Court of Justice.

#### C. WHY AM I RECEIVING THIS NOTICE?

This Notice summarizes the Settlement, which affects your legal rights if you are a Class Member. Receipt of this Notice does not mean that you are a Class Member.

If you are a Class Member, this Notice informs you of your legal rights and options. These options include participating in the Settlement and, if you wish, supporting or objecting to the Settlement. You can also attend the upcoming public hearing before the Court, which will determine whether the Settlement should be approved.

**Ontario Youth Segregation Class Action**

OFFICIAL COURT COMMUNICATION

**CLASS MEMBERSHIP QUESTIONS****D. AM I INCLUDED IN THE SETTLEMENT?**

You may be included in the Settlement if you were segregated at a Youth Justice Facility while under the age of 18, alone in a designated room or area, for more than 6 consecutive hours ("Youth Segregation").

You are not included if you experienced:

- (a) segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) the routine locking down of youth in their rooms overnight at a Youth Justice Facility, as authorized by statute.

The Youth Justice Facilities included in the Settlement are:

Bluewater Youth Centre  
Brookside Youth Centre  
Cecil Facer Youth Centre  
Donald Doucet Youth Centre  
Invictus Youth Centre  
Justice Ronald Lester Youth Centre  
Roy McMurtry Youth Centre  
Sprucedale Youth Centre  
Toronto Youth Assessment Centre

The period of time covered by this class action and the Settlement is April 1, 2004 to December 17, 2018.

You may only make a claim for compensation if you were isolated or segregated at one of the above facilities during the relevant time period.

**E. WHAT BENEFITS CAN I RECEIVE?**

If approved by the Court, the Settlement will provide Class Members with **money for time spent in Youth Segregation**.

You will need to make a claim after the Settlement is approved. You can make more than one claim if you were placed in Youth Segregation more than once.

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

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There are four categories of benefits:

“Category 1 Claim” applies when a Class Member alleges that he or she was placed in Youth Segregation for between 6 and up to 72 consecutive hours;

“Category 2 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for between 72 hours and 5 consecutive days;

“Category 3 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for between 6 and 14 consecutive days;

“Category 4 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for 15 or more consecutive days;

#### **F. HOW MUCH MONEY CAN I GET?**

- 1) Category 1 Claimants are entitled to \$1000 per placement in Youth Segregation of between 6 and up to 72 hours.
- 2) Successful Category 2 Claims are entitled to \$5000 per placement in Youth Segregation between 72 hours and 5 consecutive days.
- 3) Successful Category 3 Claims are entitled to \$12,000 per placement in Youth Segregation between 6 and 14 consecutive days.
- 4) Successful Category 4 Claims are entitled to a minimum of \$35,000 and a maximum of \$40,000, for each placement of 15 consecutive days or more in Youth Segregation. The exact figure will depend on the number of claimants who make a claim.

#### **G. HOW CAN I MAKE A CLAIM IN THE SETTLEMENT?**

If you wish to make a claim for benefits under the Settlement, you do not need to take any action at this time. The period to submit a claim will not begin until after the Settlement is approved by the Court on October 14, 2021. If the Settlement is approved, notice and additional details will be provided regarding when claims can begin to be submitted and the steps you will need to take to make a claim. After the Settlement is approved, you will have 9 months to submit a claim.

If the Settlement is approved, the process for Class Members receiving their benefit(s) involves four steps:



## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

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- 1) Class Members will obtain information about the options available to them through a website and through further notices and the Claim Form;
- 2) Once a Class Member is ready to submit a Claim, the Class Member will, by the claims submission deadline, submit a Claim Form to the Claims Administrator that contains certain information about the Class Member's time in Youth Segregation. The Claim Form shall require a Claimant to sign and declare that information submitted is true and correct based on knowledge and belief. A Consent included with the Claim Form will also need to be signed to allow for the Class Member's relevant Youth Records to be obtained.
- 3) The parties will obtain the Class Member's Youth Records that are relevant to their time spent in Youth Segregation. Permission must be provided to obtain a Court Order from a judge of the Youth Justice Court to retrieve the Youth Records.
- 4) The Class Member's eligibility or ineligibility to participate in the claims process will be determined by the Claims Administrator.
- 5) For Category 1 Claims, the Administrator will determine whether the Class Member was in Youth Segregation for more than 6 and up to 72 consecutive hours. If they satisfy this criteria, the Administrator will issue a damages payment to the Class Member.
- 6) For Category 2, Category 3 and Category 4 Claims, the Administrator will transfer the Class Member's Youth Records to a retired Superior Court of Justice judge, Mr. Casey Hill. Mr. Hill will review the events described in the Claimant's Claim Form and will also review the available Youth Records. Mr. Hill will determine whether the Class Member was appropriately placed in Youth Segregation due to immediate likelihood to cause serious property damage or to cause another person serious bodily harm, whether the Class Member was "overheld", or whether the Youth Records are inadequate to justify placement.

#### **H. WHAT SUPPORTING DOCUMENTS WILL BE NEEDED TO MAKE A CLAIM?**

To submit a claim for benefits under the Settlement (if approved by the Court), you will need to provide the following information and supporting documents:

- Identity Document – Valid driver's license or other government-issued photo identification;
- Claim Form – You will need to provide a written statement that describes the events surrounding your placement in Youth Segregation and the justification for your placement, as described to you at the time. You will also have to describe how long you were kept in Youth Segregation and how many times you were placed in Youth Segregation.
- Consent – You will need to read and sign the Consent included with the Claim Form to give permission for your relevant Youth Records to be obtained in relation to your Claim Form.

**Ontario Youth Segregation Class Action**

OFFICIAL COURT COMMUNICATION

**SETTLEMENT PROCESS QUESTIONS****I. IF I AM A CLASS MEMBER, WHAT RIGHTS AM I GIVING UP?**

A settlement is an agreement to resolve legal claims, and usually involves compromises by both sides. Settlements end all or part of a lawsuit while allowing the parties to avoid the costs and risks of a trial. A settlement also allows the parties to avoid the very significant time delays of further litigation.

If the Settlement is approved by the Court, you will release the Province of Ontario from the Class Action claims. Releasing someone from a claim means giving up the right to sue them.

All Class Members are bound by a general release that will take effect whether they claim benefits or not. Class Members who wish to participate in the settlement program must make their claim before the claims submission deadline. After the Settlement is approved, you will have 9 months to submit a claim.

The above is only a summary of the general release and individual release. The Settlement Agreement sets out and describes these releases, so read them carefully. If you have any questions, you can talk to Class Counsel for free. You can also talk to your own lawyer, at your own expense, if you have questions about what this means. The Settlement Agreement is available at [www.TBD.ca](http://www.TBD.ca).

**J. HOW CAN I EXPRESS SUPPORT FOR, OR OBJECT TO, THE SETTLEMENT?**

You may also file a statement of support in favour of the Settlement if you wish to tell the Court that you support the terms of Settlement.

Before objecting, it is recommended that you [visit www.TBD.ca](http://www.TBD.ca) to get more information about the Settlement or talk to Class Counsel for free. You can also talk to your own lawyer at your own expense.

If you are a Class Member and have comments about, or disagree with, any aspect of the Settlement that applies to you, you may express your views to the Court by submitting a personally signed written document as provided below.

Your statement of support or objection should include:

- Your name, mailing address, telephone number and e-mail address (if applicable);
- Details about your placement in Youth Segregation, including when and in what institution this took place;
- A statement that you support or object to the Settlement;
- The reasons you support or object to the Settlement, along with any supporting materials;

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

- Whether you intend to appear in person or through a lawyer at a Settlement approval hearing, and if appearing through a lawyer, the name, address, telephone number and e-mail address of your lawyer; and
- Your signature.

Your expression of support or objection must be received by no later than [redacted] at:

Mail or Courier to: [redacted]	E-Mail to: [redacted]
<b>DO NOT SEND OBJECTIONS DIRECTLY TO THE COURT</b>	

**Note: Objecting to the Settlement simply means telling the Court that you do not like something about the Settlement. Objecting does not disqualify you from making a claim nor does it make you ineligible to receive benefits under the Settlement.**

If you deliver a statement of support or objection to the Settlement, you do not have to come to Court to talk about it. As long as you submit your written statement of support or objection on time, the Court will receive it. Should you wish to speak at a hearing, you must indicate your wish to do so in your written objection. You can hire a lawyer to appear on your behalf at your own expense. As the Settlement is an agreement between the Plaintiff and the Province of Ontario, Class Counsel will not be advocating on behalf of objectors at the hearings.

### **K. CAN I ATTEND THE SETTLEMENT APPROVAL HEARINGS?**

Yes. Before determining whether to approve the Settlement, the Court will hold the following hearing:

- The Ontario Superior Court of Justice will hold a Settlement approval hearing on October 14, 2019 at 10:00 AM. The hearing will take place virtually, over Zoom. The link for the hearing will be posted on [redacted] when available.

The hearings may move to a different date or time. Visit [www.TBD.ca](http://www.TBD.ca) or call Class Counsel for current information.

At these hearings, the Court will consider whether the Settlement is fair, reasonable and in the best interests of the Class. Class Counsel will answer any questions the Court may have about the Settlement. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

You are welcome to attend the hearings at your own expense, but you are not required to attend.

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

#### **L. WHO IS MY LAWYER / CLASS COUNSEL?**

The law firms representing all Class Members are listed below:

<b>Koskie Minsky LLP</b> 20 Queen St. West, Suite 900 Box 52 Toronto, ON M5H 3R3	<b>Strosberg Sasso Sutts</b> 1561 Ouellette Avenue Windsor, Ontario N8X 1K5
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You will not be charged for contacting these lawyers. Class Counsel can be reached by telephone at:

- Canadian residents except for Québec: 1-800-XXX-XXXX or 1-800-XXX-XXXX; and
- Québec residents and French inquiries: 1-800-XXX-XXXX

#### **M. HOW WILL CLASS COUNSEL BE PAID?**

C.S. and Class Counsel entered into a retainer agreement at the commencement of this litigation. As is the ordinary practice in Ontario class proceedings, Class Counsel is entitled to be paid a percentage of the settlement funds. No Class Member has to pay any money directly to Class Counsel in order to take part in the claims process.

The amount of money payable to Class Counsel will be the subject of a separate hearing and the Honourable Justice Perell will be required to approve Class Counsel's fee request.

#### **N. HOW DO I GET MORE INFORMATION?**

This Notice is only a summary of some of the terms of the Settlement. If there is a conflict between this Notice and the Settlement, the Settlement applies.

For more information about your legal rights under the Settlement, you may also consult Class Counsel at no charge by calling:

- 1-800-XXX-XXXX or 1-800-XXX-XXXX; and

In addition, information about the options Class Members may have, is available at [www.TBD.ca](http://www.TBD.ca).

C.S.                      Her Majesty the Queen in Right of Ontario  
Plaintiff              and              Defendant

Court File No.: CV-16-534895-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF MOTION**

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900  
Toronto ON M5H 3R3

**James Sayce** LSO#: 58730M

jsayce@kmlaw.ca

Tel: 416-542-6298

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Lawyers for the Plaintiff

Court File No. CV-16-534895-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

C.S.

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF CATHERINE MACDONALD  
(Sworn August 23, 2021)**

I, Catherine MacDonald, of the Town of Port Perry, in the Province of Ontario  
MAKE OATH AND SAY:

1. I am a legal assistant with Koskie Minsky LLP, co-Class Counsel in this matter, and as such I have knowledge of the matters to which I hereinafter swear.
2. Attached at **Exhibit "A"** is a copy of the Statement of Claim in this matter. The latest version of the pleading is the Second Fresh as Amended Statement of Claim attached at **Exhibit "B"**.
3. Attached at **Exhibit "C"** is a copy of the certification order dated December 17, 2018.
4. Attached at **Exhibit "D"** is a copy of the executed settlement agreement.
5. Attached at **Exhibit "E"** is a copy of the proposed "Phase 1" notice plan.
6. Attached at **Exhibit "F"** is a copy of the proposed "Phase 1" Long Form Notice.
7. Attached at **Exhibit "G"** is a copy of the proposed "Phase 1" Short Form Notice.

8. I swear this affidavit in support of the Phase 1 Notice approval motion and for no other or improper purpose.

SWORN before me by video-conference in accordance with O. Reg. 431/20 due to the COVID-19 pandemic at the Municipality of Clarington, in the Regional Municipality of Durham, the Deponent being in the Town of Port Perry, in the Province of Ontario, this 23<sup>rd</sup> day of August, 2021.



Catherine MacDonald



---

A Commissioner for taking Affidavits (*or as may be*)

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

***THIS IS EXHIBIT “A” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
IN THE TOWN OF PORT PERRY, IN THE PROVINCE OF ONTARIO, THIS  
23<sup>RD</sup> DAY OF AUGUST, 2021.***



---

***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023



Court File No.: CV-15-22921-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

P.M.

Plaintiff

- and -

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**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 \$20,000 for 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 \$400.00 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.

Date: November 4, 2015

Issued by

  
Local registrar

Address of court office 245 Windsor Avenue  
Windsor, ON N9A 1J2

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO**  
Crown Law Office – Civil Law  
720 Bay Street  
8<sup>th</sup> Floor  
Toronto, ON M5G 2K1  
Tel: 416-325-8535  
Fax: 416-326-4181

## CLAIM

1. The plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the plaintiff as representative plaintiff;
- (b) a declaration that the defendant breached its fiduciary duty to the plaintiff and the Class through the establishment, funding, operation, management, administration, supervision and control of the Facilities (defined below);
- (c) a declaration that the defendant is liable to the plaintiff and the Class for the damages caused by its breach of its common law duty in relation to the establishment, funding, operation, management, administration, supervision and control of the Facilities;
- (d) damages for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (e) punitive damages in the amount of \$25 million;
- (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the plaintiff;
- (h) the costs of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
- (i) such further and other relief as this Honourable Court may deem just.

## OVERVIEW

2. Under the watch of the Province of Ontario, children are regularly subjected to lengthy periods of solitary confinement. This practice constitutes cruel, degrading and inhuman punishment and is wholly inappropriate for children in all circumstances.

3. This solitary confinement (or as it is euphemistically referred to by the Crown, ‘Secure Isolation’) takes place in Ontario’s Youth Justice Facilities (“**Facilities**”, further defined below) while children are under the Crown’s exclusive control and care.

4. Throughout the history of the operation of the Facilities, those caring for children have treated them with utter disregard and indifference.

5. The defendant’s legislated mandate is to rehabilitate, rather than punish, the children under its care in the Facilities. The Crown’s policies and practices with regards to the use of solitary confinement cause it to fail in this mandate and are contrary to its duty to promote the reasonable well-being of children

## THE PARTIES

6. The plaintiff, P.M., is a resident of Ontario. While he was a minor, P.M. was incarcerated at the Genest Detention Centre for Youth in London, Ontario. While incarcerated, he was subjected to lengthy periods of solitary confinement on a regular basis.

7. The defendant, Her Majesty the Queen in right of the Province of Ontario (the “**Crown**”) is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27.

8. The Crown, through and with its agents, servants and employees, was at all material times responsible for the operation, funding and supervision of the Facilities pursuant to *Canadian Youth Criminal Justice Act* S.C. 2002 c. 1 and the *Ontario Child and Family Services Act*, R.S.O. 1990, c. C. 11. The Ministry of Children and Youth (the “**Ministry**”) is responsible for the care of the children living or incarcerated in the Facilities.

9. The following institutions shall be referred to collectively as the Facilities:

- (a) Bluewater Youth Centre;
- (b) Portage Youth Centre;
- (c) Craigwood Youth Services (Woodview Unit);
- (d) JJ Kelso Centre;
- (e) Near North Youth Centre;
- (f) Pinegar Youth Centre;
- (g) Sundance;
- (h) Donald Doucet Youth Centre;
- (i) Kennedy House Youth Services;
- (j) Genest Detention Centre For Youth;
- (k) Ge-Da-Gi Binez Youth Centre;
- (l) Peninsula Youth Centre;
- (m) Arrell Youth Centre;
- (n) Justice Ronald Lester Youth Centre;
- (o) Ray of Hope (Hope Manor);
- (p) Brookside Youth Centre;
- (q) Cecil Fader Youth Centre;
- (r) William E. Hay Youth Centre;
- (s) Sprucedale Youth Centre;
- (t) Syl Apps Youth Centre;

- (u) Roy McMurtry Youth Centre;
- (v) Sterling B. Campbell House; and,
- (w) York Detention Centre.

10. Many of the Facilities are operated directly by the Ministry, however, some are operated by transfer payment agencies which are non-profit organizations, using Crown funds and with Crown oversight. The Crown owes the same duty of care and fiduciary duty to children residing or incarcerated in all Facilities.

11. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons who, while under the age of 18, were subjected to solitary confinement at one of the Facilities between January 1, 2007 and the present day (the “**Class**” or “**Class Members**”).

#### **MISTREATMENT OF CHILDREN – SOLITARY CONFINEMENT**

12. Solitary confinement is the practice of locking a person in a specially designated room or cell to isolate him or her from others for an extended period of time.

13. Substantial health problems develop when a person is subjected to solitary confinement, including anxiety, depression, anger, worsening of pre-existing medical conditions, lethargy, insomnia, palpitations, anorexia, increased risk of self-harm and suicide, as well as harmful and permanent changes in brain activity.

14. There are unique issues with regards to solitary confinement for young people. Time passes more slowly for children, and solitary confinement impacts brain structure, development and long-term function. Children are more vulnerable than adults causing greatly exaggerated negative impacts from solitary confinement.

15. International organizations such as Human Rights Watch, the World Health Organization and the United Nations have issued strong condemnation of the use of solitary confinement on juveniles. For example, Rule 67 of the 1990 United Nations *Rules for the Protection of Juveniles Deprived of Their Liberty* expressly states:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated as recently as 2011:

With respect to young people, 'the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates Article 7 of the *International Covenant on Civil and Political Rights* and article 16 of the *Convention Against Torture*.

## **STATUTORY 'AUTHORITY' UNDER THE ACT**

16. Under the Ontario *Child and Family Services Act*, R.S.O. 1990, c. C. 11 (the “**Act**”), solitary confinement is only to be employed in the Facilities in circumstances where a child’s conduct indicates that he or she is likely in the immediate future to cause serious property damage or serious bodily harm to another person. It can only be used when no less restrictive method of restraining the child is practicable. Once the crisis has subsided, the child must be immediately removed from solitary confinement.

17. Depending on whether the child is under 16 years of age, or over 16 years, different rules apply regarding maximum time periods spent in secure isolation. Children under 16 cannot be held in secure isolation for more than eight hours in one day or 24 hours in any week. Children over 16 years old can only be held in solitary confinement continuously for up to 72 hours (three days), however, a provincial director may approve a longer period in solitary confinement.

18. Children must be advised of their right of access to the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement.

19. In practice, the Crown and its agents regularly breach their own policies as set out above. The Crown and its agents:

- (a) keep children in solitary confinement long after a ‘crisis’ has passed;

- (b) place children in solitary confinement when there is no threat to others or property;
- (c) in the case of children under 16, regularly hold them in isolation for longer than 8 hours a day or 24 hours per week;
- (d) do not advise children of their rights to contact the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement;
- (e) deny children access to the Provincial Advocate for Children and Youth or a lawyer when they request it;
- (f) in the case of children over 16, regularly holds them in solitary confinement for more than 72 hours without regional director approval;
- (g) applies its discretion improperly in determining the length of a child's stay in solitary confinement; and,
- (h) the provincial director applies improper discretion in approving stays of over 72 hours for children over 16.

20. Throughout the class period, the staff and administrators at the Facilities treated the Class Members with contempt, prejudice and indifference. They subjected the Class Members to extended periods of solitary confinement, ignoring the significant negative impacts that such conditions would have on them.

21. The exposure of children to solitary confinement for any period is, in all circumstances, unacceptable, inappropriate and actionable. The policies of the Crown in this regard are improper and any carrying out of such policies does not constitute an acceptable exercise of discretion by the Crown.



## KNOWLEDGE OF THE CROWN

22. The Crown knew or ought to have known of the extensive and improper use of cruel, inhuman and degrading punishments, such as the use of extended periods of solitary confinement on children at the Facilities.

23. In 2012, the Ontario Auditor General released a report highlighting that in many of the Facilities, solitary confinement was being improperly used. Specifically, solitary confinement was being used more often, and for longer periods, than in some of the Facilities than in others. Recognizing that solitary confinement was being employed improperly and recklessly, the Auditor General recommended that the Ministry of Children and Youth Services:

...identify behaviour management techniques other than secure isolation that have been used successfully by agency-operated facilities to prevent or manage undesirable behaviour...

24. In 2013, the Ontario Provincial Advocate for Children and Youth released a report entitled *"It Depends Who's Working. The Youth Reality at the Roy McMurtry Youth Centre"* in which concerns were raised about:

- (a) "quiet and calm" youth were not being released from solitary confinement per Act requirements;
- (b) staff were not properly exploring alternatives to solitary confinement;
- (c) solitary confinement being used as a consequence of poor behaviour;
- (d) the majority of youth were refused contact with the Provincial Advocate for Children and Youth's Office, contrary to the Act, after being subjected to solitary confinement;
- (e) the majority of youth were not advised of their rights to contact the Provincial Advocate for Children and Youth's office, after being subjected to solitary confinement; and,

- (f) youth complained of lack of food, unsanitary cells and improper withholding of items that would facilitate the practice of religion while being held in solitary confinement.

25. In 2015, the Ontario Advocate for Children and Youth released a report titled *It's A Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities*. In it, many concerns about the use of solitary confinement at the Facilities were raised. For example, the report stated:

...it is recognized that young people's brains continue to develop into their mid-twenties. Indeed, the protections of a youth criminal justice system reflect an international acceptance of the immature brain of the adolescent. Considered a critical time period for mental health, adolescence is a stage marked by vulnerability. Substantial evidence from the research on the use of secure isolation with adults documents the harmful effects of prolonged isolation.... the use of secure isolation with adolescents presents considerable risk. Such an intrusive and risky intervention must only be used with heightened safeguards...

26. Despite the above reports' findings and recommendations, the Crown has continued to use solitary confinement in an inappropriate and unreasonable manner.

#### **THE CROWN'S FIDUCIARY DUTY**

27. All children who resided or were incarcerated at the Facilities were under the authority and care of the Crown, with the Crown as their guardian, and were persons to whom the Crown owed fiduciary duties. These duties included, but were not limited to, the duty to ensure the safety and reasonable care of Class Members, the duty to protect Class Members from harm while residing or incarcerated at the Facilities and the duty to protect the Class from intentional torts perpetrated on them while at the Facilities.

28. Class Members had a reasonable expectation that the Crown would act in their best interests with respect to their care and in the operation of the Facilities by virtue of the following:

- (a) the involvement of the Crown in establishing, operating and overseeing the Facilities;
- (b) the long standing dependence of Class Members on the Crown;

- (c) the fact that the Class Members were children;
- (d) the fact that the Facilities' environment were themselves further disabling to Class Members, physically, emotionally and psychologically; and,
- (e) the vulnerabilities of many Class Members as many of them suffer from psychological and psychiatric disabilities and illnesses of varying degrees.

29. At all material times, the children who resided and/or were incarcerated at the Facilities were entirely and exclusively within the power and control of the Crown and were subject to the unilateral exercise of the Crown's power or discretion. By virtue of the relationship between these children and the Crown, being one of trust, reliance and dependence by the Class Members, the Crown owed a fiduciary duty to ensure that children were treated respectfully, fairly, safely and in all ways consistent with the obligations of a party standing *in loco parentis* to an individual under their care or control.

30. As result of its sole jurisdiction over the operation and oversight of the Facilities, the Crown owed a fiduciary duty to the Class Members which include, but are not limited to the duty to exercise its unilateral discretion properly and effectively and in the best interests of the children, taking into consideration the class members' vulnerability and the Crown's relative position of power, trust and control in the relationship.

### **THE CROWN BREACHED ITS FIDUCIARY DUTY TO THE CLASS**

31. The Crown operated or caused to be operated the Facilities whose residents, including the plaintiff and the other Class Members, were regularly subjected to cruel, inhuman and degrading punishment in the form of solitary confinement. The Crown knew of, or was wilfully blind to, the use of solitary confinement and the negative impacts this practice would have on Class Members.

32. The Class Members were entitled to rely and did rely upon the Crown, to their detriment, to fulfill their fiduciary duty. The particulars of the Crown's breach of its fiduciary duty include, but are not limited to:

- (a) failing to take a proper and good faith interest in the operation and supervision of the Facilities, despite its quasi-parental, or *in loco parentis*, role in respect of the students under its responsibility;
- (b) using of solitary confinement for extended periods on the Class Members;
- (c) failing to provide adequate health care to Class Members before and after instituting solitary confinement;
- (d) failing to ensure that physical, emotional and psychological harm would not befall the Class Members;
- (e) failing to protect Class Members from persons, things or acts that would endanger or be injurious to their health and well-being
- (f) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;
- (g) failing to properly supervise the Facilities, including its administration and activities;
- (h) failing to properly, effectively and in good faith supervise the Facilities and the conduct of its employees and agents to ensure that Class Members would not suffer harm;
- (i) failing to provide proper and reasonable treatment for Class Members after being subjected to solitary confinement;
- (j) failing to provide a safe environment, and in particular, one free from physical, emotional and psychological harm;
- (k) failing to provide adequate financial resources or support to properly care and provide for Class Members;

- (l) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Facilities with regards to the use of solitary confinement on children; and,
- (m) failing to safeguard the psychological, physical and emotional needs of the Class.

33. The Class Members suffered damages as a result of the above-noted breaches, the particulars of which are set out in paragraphs 41 to 45, below.

### **THE CROWN'S DUTY OF CARE**

34. The Crown created, planned, established, set up, initiated, operated, controlled and/or regulated the Facilities during the class period.

35. Amongst other things, the Crown was solely responsible for:

- (a) the management, operation and administration of the Ministry during the class period;
- (b) the administration of the Act as well as any other statutes relating youth justice facilities and all regulations promulgated under these statutes during the class period;
- (c) the promotion of the health, safety and well-being of Class Members during the class period;
- (d) properly and effectively supervising the Facilities and the conduct of its agents and employees to ensure that Class Members would not suffer unreasonable harm;
- (e) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, its employees, servants, officers and agents and its predecessors during the class period;

- (f) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and/or auditing of the Facilities during the class period;
- (g) the care and supervision of all members of the Class while they resided at or were incarcerated in the Facilities during the class period and for the supply of all the necessities of life to Class Members, *in loco parentis*, during the class period; and,
- (h) inspection and supervision of the Facilities and all activities that took place therein during the class period.

36. The Crown owed a common law duty to the Class Members as a result of its relationship of proximity. The harm and damages suffered by the Class Members were reasonably foreseeable as a result of the Crown's acts and omissions, constituting a breach of the common law duty.

#### **THE CROWN'S NEGLIGENCE**

37. The Crown breached its duty of care to Class Members in its establishment, operation, regulation, financing, supervision and control of the Facilities.

38. The Crown breached its common law duties to the class through its negligent failure to properly supervise the operations and staff of the Facilities. Furthermore, in many circumstances, the policies themselves do not constitute a *bona fide* operation of discretion and are grossly unreasonable and negligent under the circumstances.

39. In particular, the Crown acted negligently by:

- (a) subjecting Class Members to solitary confinement;
- (b) failing to provide Class Members with access to a lawyer and/or the Provincial Advocate for Children and Youth once placed in solitary confinement;

- (c) failing to recognize that extended periods in solitary confinement constitute cruel, degrading or inhuman punishment;
- (d) failing to remove Class Members from solitary confinement in a timely fashion in order to avoid permanent injury;
- (e) over-relying on solitary confinement as a deterrent within the Facilities;
- (f) failing to provide adequate medical and mental health care for Class Members before and after being subjected to solitary confinement;
- (g) failing to investigate or report ongoing harm suffered by Class Members;
- (h) failing to set or implement standards of conduct for its employees and agents to ensure that no employee or agent would endanger the health or well-being of any Class Member
- (i) failing to implement adequate policies for recognizing and reporting potential harm to Class Members via use of solitary confinement;
- (j) failing to adequately supervise the Facilities, including their administration and activities;
- (k) failing to adequately, properly and effectively supervise the conduct of its employees, representatives and agents to ensure that the Class Members would not suffer unreasonable harm;
- (l) failing to use reasonable care to ensure the safety, well-being and protection of Class Members;
- (m) failing to properly exercise discretion in determining an appropriate length of time for Class Members to spend in solitary confinement;
- (n) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Facilities and their use of solitary confinement;

- (o) failing to provide proper and reasonable medical and/or psychological/psychiatric treatment for Class Members after learning of their exposure to solitary confinement;
- (p) failing to respect Class Members' religious practices and rights during incarceration in solitary confinement; and,
- (q) permitting unhealthy and inappropriate punishments to be perpetrated against the Class.

40. The Class Members suffered damages as a result of the Crown's negligence, the particulars of which are set out in paragraphs 41 to 45, below.

#### **DAMAGES SUFFERED BY THE CLASS**

41. The Crown knew, or ought to have known, that as a consequence of its operation, care and control of the Facilities in breach of its fiduciary duty and in a negligent manner, the Class would suffer immediate and long-term physical, mental, emotional, psychological and spiritual harm.

42. Members of the Class were traumatized by their experiences arising from their attendance and residence at the Facilities. As a result of the Crown's breach of its fiduciary duty and its negligence, the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) impaired mental development;
- (d) impaired ability to participate in normal family affairs and relationships;
- (e) alienation from family members;
- (f) depression, anxiety, emotional distress and mental anguish;



- (g) development of new mental, psychological and/or psychiatric disorders;
- (h) pain and suffering;
- (i) a loss of self-esteem and feelings of humiliation and degradation;
- (j) an impaired ability to obtain employment, resulting either in lost or reduced income and ongoing loss of income;
- (k) an impaired ability to deal with persons in positions of authority;
- (l) an impaired ability to trust other individuals or sustain relationships;
- (m) a requirement for medical or psychological treatment and counselling;
- (n) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (o) loss of friendship and companionship; and,
- (p) the loss of general enjoyment of life.

43. As a result of these injuries, the Class Members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. Class Members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of the Crown's conduct for which they claim complete indemnity, compensation and payment from the Crown for such services.

44. The plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that Class Members were being physically, emotionally and psychologically abused but permitted the abuse to occur. Further, the Crown is strictly liable in tort for the damages enumerated herein as the Crown was aware that its operation, management and control of the Facilities was in breach of all parental standards and in breach of the duties it owed to the Class Members.

45. Further, by virtue of its quasi-parental, or *in loco parentis*, responsibility for the safety, care and control of residents, the Crown is vicariously liable for the harms perpetrated upon students by its employees, representatives and agents.

# **PUNITIVE/AGGRAVATED DAMAGES**

46. The high-handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Crown breached its fiduciary duty and duty of good faith owed to children incarcerated in the facilities.

47. Over a period of years, the plaintiff and the other Class Members were treated in a manner that could only result in significant mental and emotional impacts for vulnerable children. The cruel, inhuman and degrading punishments to which the Class Members were exposed have violated their rights and altered the paths of their lives.

48. In these circumstances, the plaintiff and the other Class Members request aggravated or punitive damages.

November 4, 2015

**Koskie Minsky LLP**  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert LSUC#: 30942Q**  
Tel: 416-595-2117  
Fax: 416-204-2889  
**James Sayce LSUC#: 58730M**  
Tel: 416-542-6298  
Fax: 416-204-2809

**Sutts Strosberg LLP**  
600-251 Goyeau St.  
Windsor, ON N9A 6V4

**Jay Strosberg LSUC#:47288F**  
Tel: 519-561-6203  
Fax: 519-561-6203

**Patricia Speight LSUC#:26380C**  
Tel: 519.561.6213  
Fax: 519.561.2475

Lawyers for the Plaintiff

P.M.  
Plaintiff and

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO  
Defendant

040  
CV-15-22921 CF  
Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR  
Proceedings under the *Class Proceedings Act*, 1992

**STATEMENT OF CLAIM**

**Koskie Minsky LLP**  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

**Kirk Baert LSUC#: 30942O**  
Tel: 416.595.2117/ Fax: 416.204.2889  
**James Sayce LSUC#: 58730M**  
Tel: 416.542.6298/ Fax: 416.204.2809

**SUTTS, STROSBERG LLP**  
600-251 Goyeau Street  
Windsor, ON N9A 6V4

**Jay Strosberg LSUC#: 47288F**  
Tel: 519.561.6285/ Fax: 519.561.6203  
**Patricia Speight LSUC#: 26380C**  
Tel: 519.561.6213/ Fax: 519.561.2475

Lawyers for the Plaintiff

***THIS IS EXHIBIT “B” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
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23<sup>RD</sup> DAY OF AUGUST, 2021.***



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Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

AMENDED THIS Jan 4/19 PURSUANT TO  
 MODIFIÉE CONFORMÉMENT À  
☒ RULE/LA RÈGLE 26.02  
☒ THE ORDER OF Pereira J.  
 L'ORDONNANCE DU  
 DATED / FAIT LE 17/18

Court File No.: CV-16-543895-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

REGISTRAR  
 SUPERIOR COURT OF JUSTICE  
 GREFFIER  
 COUR SUPÉRIEURE DE JUSTICE

C.S.

Plaintiff

- and -

HER MAJESTY THE QUEEN  
 IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992***SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

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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 \$20,000 for 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 \$400.00 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.

Sylvia Slaunwhite

Date: November <sup>2<sup>nd</sup></sup> 4, 2015

Issued by \_\_\_\_\_

Local registrar

Address of court office 393 University Ave. 10<sup>th</sup> Floor  
Toronto, ON M5G 1E6

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO**  
Crown Law Office – Civil Law  
720 Bay Street  
8<sup>th</sup> Floor  
Toronto, ON M5G 2K1  
Tel: 416-325-8535  
Fax: 416-326-4181

**CLAIM**

## 1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as the representative Plaintiff;
- (b) a declaration that the Defendant breached its fiduciary duty to the Plaintiff and the Class through the establishment, funding, operation, management, administration, supervision and/or control of Youth Justice Facilities (defined below);
- (c) a declaration that the Defendant is liable to the Plaintiff and the Class for the damages caused by its breach of its common law duty in relation to the establishment, funding, operation, management, administration, supervision and/or control of the Youth Justice Facilities;
- (d) a declaration that the Defendant has violated the Plaintiff's and Class members' rights under sections 7, 9 and/or 12 of the *Canadian Charter of Rights and Freedoms*;
- (e) a declaration that the practices and/or failures of the Defendant in the care and custody of the Plaintiff and Class members constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the *Canadian Charter of Rights and Freedoms*;
- (f) damages or such other remedy as the Court may consider just and appropriate pursuant to section 24 of the *Canadian Charter of Rights and Freedoms*;
- (g) damages for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (h) punitive damages in the amount of \$25 million;
- (i) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- (j) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
- (k) the costs of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
- (l) such further and other relief as this Honourable Court may deem just.

## OVERVIEW

2. Under the watch of the Province of Ontario, children are regularly subjected to lengthy periods of solitary confinement. This practice constitutes cruel, degrading and inhuman punishment and is wholly inappropriate for children in all circumstances.

3. This solitary confinement (or as it is euphemistically referred to by the Crown, 'Secure Isolation' or 'Secure De-Escalation') currently takes place in Ontario's Youth Justice Facilities (further defined below) while children are under the Crown's exclusive control and care.

4. Throughout the history of the operation of the Youth Justice Facilities, those caring for children have treated them with utter disregard and indifference.

5. The Defendant's legislated mandate is to rehabilitate, rather than punish, the children under its care in the Youth Justice Facilities. The Crown's policies and practices with regards to the use of solitary confinement cause it to fail in this mandate and are contrary to its duty to promote the reasonable well-being of children.

## THE PARTIES

6. The Plaintiff, C.S. is a resident of Ontario. While C.S. was under the age of 18, he was incarcerated at Roy McMurtry Youth Centre and Brookside Youth Centre, Youth Justice Facilities operated by the Defendant. While incarcerated, C.S. was subject to lengthy periods of solitary confinement on a regular basis. As a result of his time in solitary confinement, C.S. has sustained psychological and physical harm.



7. The Defendant, Her Majesty the Queen in right of the Province of Ontario (the “**Crown**”) is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27.

8. The Crown, through and with its agents, servants and employees, was at all material times responsible for the operation, funding and supervision of the Facilities pursuant to Canadian *Youth Criminal Justice Act*, S.C. 2002 c. 1, the Ontario *Child and Family Services Act*, R.S.O. 1990, c. C. 11 and the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1. The Ministry of Children, Community and Social Services, formerly the Ministry of Children and Youth Services, (the “**Youth Ministry**”) is solely responsible for the care of the children living or incarcerated in the Youth Justice Facilities.

9. The below institutions shall be referred to collectively as the “**Youth Justice Facilities**”:

- (a) Bluewater Youth Centre
- (b) Brookside Youth Centre
- (c) Cecil Facer Youth Centre
- (d) Donald Doucet Youth Centre
- (e) Invictus Youth Centre
- (f) Justice Ronald Lester Youth Centre
- (g) Roy McMurtry Youth Centre
- (h) Sprucedale Youth Centre
- (i) Toronto Youth Assessment Centre

10. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons, who, while under the age of 18, were, between April 1, 2004 and December 17, 2018, placed in Youth Segregation at the Youth Justice Facilities.

**"Youth Segregation"** means the segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than 6 consecutive hours without any meaningful human contact.

**"Youth Segregation"** does not include:

- (a) Segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) The routine locking of a youth in their rooms overnight at Youth Justice Facilities, as authorized by statute.

### **MISTREATMENT OF CHILDREN – SOLITARY CONFINEMENT**

11. Solitary confinement is the practice of locking a person in a specially designated room or cell to isolate him or her from others for an extended period of time.

12. Substantial health problems develop when a person is subjected to solitary confinement, including anxiety, depression, anger, worsening of pre-existing medical conditions, lethargy, insomnia, palpitations, anorexia, increased risk of self-harm and suicide, as well as harmful and permanent changes in brain activity.

13. There are unique issues with regards to solitary confinement for young people. Time passes more slowly for children, and solitary confinement impacts brain structure, development and long-term function. Children are more vulnerable than adults causing greatly exaggerated negative impacts from solitary confinement.

14. International organizations such as Human Rights Watch, the World Health Organization and the United Nations have issued strong condemnation of the use of solitary confinement on juveniles. For example, Rule 67 of the 1990 United Nations *Rules for the Protection of Juveniles Deprived of Their Liberty* expressly states:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated as recently as 2011:

With respect to young people, 'the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates Article 7 of the *International Covenant on Civil and Political Rights* and article 16 of the *Convention Against Torture*.

## STATUTORY 'AUTHORITY' UNDER THE ACTS

15. Under the Ontario *Child and Family Services Act*, R.S.O. 1990, c. C. 11 (the "CFSA") and the *Child, Youth and Family Services Act, 2017* S.O. 2017, c. 14 (The "CYFSA"), and their regulations, solitary confinement is only to be employed in the Youth Justice Facilities in circumstances where a child's conduct indicates that he or she is likely in the immediate future to cause serious property damage or serious bodily harm to another person. It can only be used when no less restrictive method of restraining the child is practicable. Once the crisis has subsided, the child must be immediately removed from solitary confinement. All children placed in solitary confinement must be released within one hour unless the person in charge of the Youth Justice Facility approves a longer length of stay in writing and records the reasons for not restraining the child by a less restrictive method.

16. Under the CFSA, depending on whether the child is under 16 years of age, or over 16 years old, different rules apply regarding maximum time periods spent in secure isolation. Children under 16 cannot be held in secure isolation for more than eight hours in one day or 24 hours in any week. Children over 16 years old can only be held in solitary confinement continuously for up to 72 hours (three days), however, a provincial director may approve a longer period in solitary confinement.

17. Similarly to the CFSA, the CYFSA outlines certain procedures and exceptions to the use of 'secure de-escalation'. Significant discretion is afforded to the agents of the Crown in deciding whether to hold a child in solitary confinement, or to release that child from solitary confinement.

18. Children must be advised of their right of access to the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement.

19. In practice, the Crown and its agents regularly breached the CFSA, and continue to breach the CYFSA and their regulations. The Crown and its agents' breaches include the following:

- (a) keeping children in solitary confinement long after a 'crisis' has passed;
- (b) placing children in solitary confinement when there is no threat to others or property;
- (c) in the case of children under 16, regularly holding them in isolation for longer than 8 hours a day or 24 hours per week;
- (d) not advising children of their rights to contact the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement;
- (e) denying children access to the Provincial Advocate for Children and Youth or a lawyer when they request it;
- (f) in the case of children over 16, regularly holding them in solitary confinement for more than 72 hours in breach of the CFSA and 24 hours a day or more than 24 hours in a week in breach of the CYFSA without regional/provincial director approval;
- (g) applying their discretion improperly in determining the length of a child's stay in solitary confinement; and,
- (h) in the case of the provincial director, applying improper discretion in approving stays of over 72 hours for children over 16 under the CFSA (and 24 hours per day and/or up to 24 hours in a week under the CYFSA).

20. Throughout the class period, the staff and administrators at Youth Justice Facilities treated the Class Members with contempt, prejudice and indifference. They subjected the Class Members to extended periods of unlawful solitary confinement, ignoring the significant negative impacts that such conditions would have on them. These failures were caused exclusively by the failures of the Defendant including the failure to create,

implement and approve adequate policies to protect Class Members and the failure to oversee and inspect the Youth Justice Facilities.

21. The exposure of children to solitary confinement for any period beyond six hours, in all circumstances, is unacceptable, inappropriate and actionable. The policies of the Crown in this regard, and/or the lack thereof, are improper and any carrying out of such policies does not constitute an acceptable exercise of discretion by the Crown.

## KNOWLEDGE OF THE CROWN

22. The Crown knew or ought to have known of the extensive and improper use of cruel, inhuman and degrading punishments, such as the use of extended periods of solitary confinement on children at the Youth Justice Facilities.

23. In 2012, the Ontario Auditor General released a report highlighting that in many of the Youth Justice Facilities, solitary confinement was being improperly used. Specifically, solitary confinement was being used more often, and for longer periods, in some of the Youth Justice Facilities than in others. Recognizing that solitary confinement was being employed improperly and recklessly, the Auditor General recommended that the Ministry of Children and Youth Services:

...identify behaviour management techniques other than secure isolation that have been used successfully by agency-operated facilities to prevent or manage undesirable behaviour...

24. In 2013, the Ontario Provincial Advocate for Children and Youth released a report entitled "*It Depends Who's Working. The Youth Reality at the Roy McMurtry Youth Centre*" in which concerns were raised about:

- (a) "quiet and calm" youth were not being released from solitary confinement per Act requirements;
- (b) staff were not properly exploring alternatives to solitary confinement;
- (c) solitary confinement being used as a consequence of poor behaviour;

- (d) the majority of youth were refused contact with the Provincial Advocate for Children and Youth's Office, contrary to the CYSA, after being subjected to solitary confinement;
- (e) the majority of youth were not advised of their rights to contact the Provincial Advocate for Children and Youth's office, after being subjected to solitary confinement; and,
- (f) youth complained of lack of food, unsanitary cells and improper withholding of items that would facilitate the practice of religion while being held in solitary confinement.

25. In 2015, the Ontario Advocate for Children and Youth released a report titled *It's A Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities*. In it, many concerns about the use of solitary confinement at the Youth Justice Facilities were raised. For example, the report stated:

...it is recognized that young people's brains continue to develop into their mid-twenties. Indeed, the protections of a youth criminal justice system reflect an international acceptance of the immature brain of the adolescent. Considered a critical time period for mental health, adolescence is a stage marked by vulnerability. Substantial evidence from the research on the use of secure isolation with adults documents the harmful effects of prolonged isolation.... the use of secure isolation with adolescents presents considerable risk. Such an intrusive and risky intervention must only be used with heightened safeguards...

26. Despite the above reports' findings and recommendations, the Crown has continued to use solitary confinement in an inappropriate and unreasonable manner, with an absence of adequate policies and/or oversight to control its use.

#### **THE CROWN'S FIDUCIARY DUTY**

27. All children who resided or were incarcerated at the Youth Justice Facilities were under the authority and care of the Crown, with the Crown as their guardian, and were persons to whom the Crown owed fiduciary duties. These duties included, but were not limited to, the duty to ensure the safety and reasonable care of Class Members, the duty to protect Class Members from harm while residing or incarcerated at Youth Justice Facilities

and the duty to protect the Class from intentional torts perpetrated on them while at the Youth Justice Facilities.

28. Class Members had a reasonable expectation that the Crown would act in their best interests with respect to their care and in the operation of the Youth Justice Facilities by virtue of the following:

- (a) the involvement of the Crown in establishing, operating and overseeing the Youth Justice Facilities;
- (b) the long standing dependence of Class Members on the Crown;
- (c) the fact that the Class Members were children;
- (d) the fact that the Youth Justice Facilities' environments were themselves further disabling to Class Members, physically, emotionally and psychologically; and,
- (e) the vulnerabilities of many Class Members as many of them suffer from psychological and psychiatric disabilities and illnesses of varying degrees.

29. At all material times, the children who resided and/or were incarcerated at the Youth Justice Facilities were entirely and exclusively within the power and control of the Crown and were subject to the unilateral exercise of the Crown's power or discretion. By virtue of the relationship between these children and the Crown, being one of trust, reliance and dependence by the Class Members, the Crown owed a fiduciary duty to ensure that children were treated respectfully, fairly, safely and in all ways consistent with the obligations of a party standing *in loco parentis* to an individual under their care or control.

30. As result of its sole jurisdiction over the operation and oversight of the Youth Justice Facilities , the Crown owed a fiduciary duty to the Class Members which includes, but is not limited to the duty to exercise its unilateral discretion properly and effectively and in the best interests of the children, taking into consideration the Class Members' vulnerability and the Crown's relative position of power, trust and control in the relationship.

**THE CROWN BREACHED ITS FIDUCIARY DUTY TO THE CLASS**

31. The Crown operated or caused to be operated the Youth Justice Facilities whose residents, including the Plaintiff and the other Class Members, were regularly subjected to cruel, inhuman and degrading punishment in the form of solitary confinement. The Crown knew of, or was wilfully blind to, the use of solitary confinement and the negative impacts this practice would have on Class Members.

32. The Class Members were entitled to rely and did rely upon the Crown, to their detriment, to fulfill its fiduciary duty. The particulars of the Crown's breach of its fiduciary duty include, but are not limited to:

- (a) failing to take a proper and good faith interest in the operation and supervision of the Youth Justice Facilities, despite its quasi-parental, or *in loco parentis*, role in respect of the children under its responsibility;
- (b) using of solitary confinement for extended periods on the Class Members;
- (c) failing to ensure that physical, emotional and psychological harm would not befall the Class Members;
- (d) failing to protect Class Members from persons, things or acts that would endanger or be injurious to their health and well-being;
- (e) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;
- (f) failing to properly supervise the Youth Justice Facilities, including their administration and activities;
- (g) failing to properly, effectively and in good faith supervise the Youth Justice Facilities and the conduct of its employees and agents to ensure that Class Members would not suffer harm;
- (h) failing to provide proper and reasonable treatment for Class Members after being subjected to solitary confinement;



- (i) failing to provide a safe environment, and in particular, one free from physical, emotional and psychological harm;
- (j) failing to provide adequate financial resources or support to properly care and provide for Class Members;
- (k) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Youth Justice Facilities with regards to the use of solitary confinement on children; and,
- (l) failing to safeguard the psychological, physical and emotional needs of the Class.

33. The Class Members suffered damages as a result of the above-noted breaches, the particulars of which are set out in paragraphs 45 to 53, below.

#### **THE CROWN'S DUTY OF CARE**

34. The Crown created, planned, established, set up, initiated, operated, controlled, oversaw and/or regulated the Youth Justice Facilities during the class period.

35. Amongst other things, the Crown was solely responsible for:

- (a) the management, operation and administration of the Ministry during the class period;
- (b) the administration of the CFSA, the CYFSA as well as any other statutes relating to youth justice facilities and all regulations promulgated under these statutes during the class period;
- (c) the promotion of the health, safety and well-being of Class Members during the class period;
- (d) properly and effectively supervising the Youth Justice Facilities and the conduct of its agents and employees to ensure that Class Members would not suffer unreasonable harm;

- (e) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, its employees, servants, officers and agents and its predecessors during the class period;
- (f) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, oversight and/or auditing of the Youth Justice Facilities during the class period;
- (g) the care and supervision of all members of the Class while they resided at or were incarcerated in the Youth Justice Facilities during the class period and for the supply of all the necessities of life to Class Members, *in loco parentis*, during the class period; and,
- (h) inspection and supervision of the Youth Justice Facilities and all activities that took place therein during the class period.

36. The Crown owed a common law duty to the Class Members as a result of its relationship of proximity. The harm and damages suffered by the Class Members were reasonably foreseeable as a result of the Crown's acts and omissions, constituting a breach of the common law duty.

#### **THE CROWN'S NEGLIGENCE**

37. The Crown breached its duty of care to Class Members in its establishment, operation, regulation, financing, supervision and/or control of the Youth Justice Facilities.

38. The Crown breached its common law duties to the Class through its negligent failure to properly supervise the operations and staff of the Youth Justice Facilities. Furthermore, in many circumstances, the policies themselves do not constitute a *bona fide* operation of discretion and are grossly unreasonable and negligent under the circumstances.

39. In particular, the Crown acted negligently by:

- (a) subjecting Class Members to solitary confinement;

- (b) failing to ensure that Class Members have access to a lawyer and/or the Provincial Advocate for Children and Youth once placed in solitary confinement;
- (c) failing to recognize that extended periods in solitary confinement constitute cruel, degrading or inhuman punishment;
- (d) failing to ensure that Class Members are removed from solitary confinement in a timely fashion in order to avoid permanent injury;
- (e) allowing for the over-reliance on solitary confinement as a deterrent within the Youth Justice Facilities;
- (f) failing to investigate or report ongoing harm suffered by Class Members;
- (g) failing to set or implement standards of conduct for its employees and agents to ensure that no employee or agent would endanger the health or well-being of any Class Member;
- (h) failing to implement adequate policies for recognizing and reporting potential harm to Class Members via use of solitary confinement;
- (i) failing to adequately supervise the Youth Justice Facilities, including their administration and activities;
- (j) failing to provide policies or frameworks by which discretion can be properly exercised to adequately, properly and effectively supervise the conduct of its employees, representatives and agents to ensure that the Class Members would not suffer unreasonable harm;
- (k) failing to use reasonable care to ensure the safety, well-being and protection of Class Members;
- (l) failing to properly exercise discretion in determining an appropriate length of time for Class Members to spend in solitary confinement;

- (m) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Youth Justice Facilities and their use of solitary confinement;
- (n) failing to provide proper and reasonable medical and/or psychological/psychiatric treatment for Class Members after learning of their exposure to solitary confinement;
- (o) failing to ensure that Class Members' religious practices and rights during incarceration in solitary confinement are respected; and,
- (p) permitting unhealthy and inappropriate punishments to be perpetrated against the Class.

40. The Class Members suffered damages as a result of the Crown's negligence, the particulars of which are set out in paragraphs 46 to 51, below.

#### **BREACHES OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS**

41. The conditions particularized above violate the basic human rights of the Class Members and, as such, constitute a violation of their rights under Sections 7, 9 and 12 of the *Charter of Rights and Freedoms* ("*Charter*").

42. The Plaintiff states that the conditions at the Youth Justice Facilities during the class period violate the rights of class ~~Plaintiffs~~ members to be held in custody in a humane and safe facility and, as such, constitute cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Charter*. Further, the conditions at the Youth Justice Facilities and the conduct of the Defendant violate the right of the Class to life, liberty and security of the person, contrary to section 7.

43. The Plaintiff states that the over-reliance on solitary confinement constitutes arbitrary restraint or detention and as such constitutes a breach of Section 9 of the *Charter*.

44. The Plaintiff pleads that the Class is entitled to damages pursuant to Section 24(1) of the *Charter*.

## DAMAGES SUFFERED BY THE CLASS

45. The Plaintiff's claim, and the claim of each Class Member, is limited to the amount of the Plaintiff's or other Class Member's damages that would be apportioned to the Defendant in accordance with the relative degree of fault that is attributable to the Defendant. The Plaintiff's claim is against the Defendant for those damages that are attributable to its proportionate degree of fault, and he does not seek, on his own behalf or on behalf of the Class, any damages that are found to be attributable to the fault or negligence of any other person, or for which the Defendant could claim contribution or indemnity. For greater certainty, without limiting the foregoing, and notwithstanding paras 50 and 54, the Plaintiff does not seek, on his own behalf or on behalf of the Class, any damages for which the Crown is vicariously liable as a result of harms perpetrated on residents in the Youth Justice Facilities that are operated by Third Parties and their agents and employees, whether or not acting within the authority granted to them by the Crown, for which the Crown could claim contribution or indemnity.

46. The Crown knew, or ought to have known, that as a consequence of its operation, care and/or control of the Youth Justice Facilities in breach of its fiduciary duty, in a negligent manner and in a manner that infringed upon the Class's *Charter* rights, the Class would suffer immediate and long-term physical, mental, emotional, psychological and spiritual harm.

47. Members of the Class were traumatized by their experiences arising from their attendance and residence at the Youth Justice Facilities.. As a result of the Crown's breach of its fiduciary duty and its negligence, the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) impaired mental development;
- (d) impaired ability to participate in normal family affairs and relationships;

- (e) alienation from family members;
- (f) depression, anxiety, emotional distress and mental anguish;
- (g) development of new mental, psychological and/or psychiatric disorders;
- (h) pain and suffering;
- (i) a loss of self-esteem and feelings of humiliation and degradation;
- (j) an impaired ability to obtain employment, resulting either in lost or reduced income and ongoing loss of income;
- (k) an impaired ability to deal with persons in positions of authority;
- (l) an impaired ability to trust other individuals or sustain relationships;
- (m) a requirement for medical or psychological treatment and counselling;
- (n) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (o) loss of friendship and companionship; and,
- (p) the loss of general enjoyment of life.

48. As a result of these injuries, the Class Members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. Class Members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of the Crown's conduct for which they claim complete indemnity, compensation and payment from the Crown for such services.

49. The Plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that Class Members were being physically, emotionally and psychologically abused but permitted the abuse to occur. Further, the Crown is strictly liable in tort for the damages enumerated herein as the Crown was aware that its operation,

management and control of the Youth Justice Facilities was in breach of all parental standards and in breach of the duties it owed to the Class Members.

50. Further, by virtue of its quasi-parental, or *in loco parentis*, responsibility for the safety, care and control of residents, the Crown is vicariously liable for the harms perpetrated upon residents by its employees, representatives and agents.

#### **PUNITIVE/AGGRAVATED DAMAGES**

51. The high-handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Crown breached its fiduciary duty and duty of good faith owed to children incarcerated in the Youth Justice Facilities.

52. Over a period of years, the Plaintiff and the other Class Members were treated in a manner that could only result in significant mental and emotional impacts for vulnerable children. The cruel, inhuman and degrading punishments to which the Class Members were exposed have violated their rights and altered the paths of their lives.

53. In these circumstances, the Plaintiff and the other Class Members request aggravated or punitive damages.

#### ***LIMITATIONS ACT, 2002***

54. The Plaintiff pleads and relies on s. 16(1)(h.2) of the *Limitations Act, 2002* on his own behalf and on behalf of the Class because the conduct described above constitutes assault by Crown agents while Class Members were minors, the Crown had charge of Class Members, the Crown was in a position of trust or authority in relation to Class Members, and Class Members were financially, emotionally, physically or otherwise dependent on the Crown. In the alternative, the Plaintiff pleads that every instance of the use of solitary confinement on Class Members by Crown agents constitutes the tort of assault.

#### **PLACE OF TRIAL**

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

November 4, 2015

**Koskie Minsky LLP**  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert LSUC#: 30942Q**  
Tel: 416-595-2092  
Fax: 416-204-2889

**James Sayce LSUC#: 58730M**  
Tel: 416-542-6298  
Fax: 416-204-2809

**Strosberg Sasso Sutts LLP**  
600-251 Goyeau St.  
Windsor, ON N9A 6V4

**Jay Strosberg LSUC#:47288F**  
Tel: 519-561-6203  
Fax: 519-561-6203

**Patricia Speight LSUC#:26380C**  
Tel: 519.561.6213  
Fax: 519.561.2475

Lawyers for the Plaintiff



**SCHEDULE "A"**

1. Bluewater Youth Centre
2. Brookside Youth Centre
3. Cecil Facer Youth Centre
4. Donald Doucet Youth Centre
5. Invictus Youth Centre
6. Justice Ronald Lester Youth Centre
7. Roy McMurtry Youth Centre
8. Sprucedale Youth Centre
9. Toronto Youth Assessment Centre

C.S.  
Plaintiff

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO  
Defendant

Court File No.: CV-16-543895-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceedings under the *Class Proceedings Act*, 1992

**SECOND FRESH AS AMENDED**  
**STATEMENT OF CLAIM**

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

**Kirk Baert LSUC#: 309420**  
Tel: 416.595.2092/ Fax: 416.204.2889  
**James Sayce LSUC#: 58730M**  
Tel: 416.542.6298/ Fax: 416.204.2809

**SUTTS, STROSBURG LLP**  
600-251 Goyeau Street  
Windsor, ON N9A 6V4

**Jay Strosberg LSUC#: 47288F**  
Tel: 519.561.6285/ Fax: 519.561.6203  
**Patricia Speight LSUC#: 26380C**  
Tel: 519.561.6213/ Fax: 519.561.2475

Lawyers for the Plaintiff

***THIS IS EXHIBIT “C” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
IN THE TOWN OF PORT PERRY, IN THE PROVINCE OF ONTARIO, THIS  
23<sup>RD</sup> DAY OF AUGUST, 2021.***

A handwritten signature in blue ink, appearing to be 'ma' followed by a stylized flourish.

---

***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

Court File No.: CV-16-543895A1CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE PERELLÉ

BETWEEN:



)  
)  
)

MONDAY, THE 17<sup>th</sup>  
DAY OF DECEMBER, 2018

C.S.

Plaintiff

- and -

**HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the plaintiff for certification, was heard on this day;

**ON READING**, the motion records of the plaintiff and the defendant, and on hearing the submissions of the lawyer(s) for the plaintiff and defendant;

**AND ON BEING ADVISED** that the defendant does not oppose the motion;

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6;

2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as:

all persons who, while under the age of 18, were, between April 1, 2004 and December 17, 2018, placed in Youth Segregation at Youth Justice Facilities that were directly operated only by the Ministry of Children and Youth Services, which are listed at Appendix "A" hereto (the "Youth Justice Facilities").

**“Youth Segregation”** means the segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than 6 consecutive hours without any meaningful human contact.

**“Youth Segregation”** does not include:

- (a) segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) the routine locking of youth in their rooms overnight at Youth Justice Facilities, as authorized by statute.

3. **THIS COURT ORDERS AND DECLARES** that the common issues be and are hereby certified as:

- (a) Did the defendant owe class members a duty of care to not, under any circumstances, place them in Youth Segregation at Youth Justice Facilities during the class period? If yes, did the defendant breach this duty of care by permitting the use of Youth Segregation at Youth Justice Facilities during the class period?
- (b) If the answer to common issue (a) is no, were there systemic uses of Youth Segregation at Youth Justice Facilities during the class period that fell below the standard of care and, if so, what were they?
- (c) If the answer to common issue (b) is yes, did the defendant breach a duty of care to class members by permitting and/or failing to take reasonable steps to prevent those uses?
- (d) Did the defendant owe class members a fiduciary duty to not, under any circumstances, place them in youth Segregation at Youth Justice Facilities during the class period? If yes, did the defendant breach this duty by permitting the use of Youth Segregation at Youth justice Facilities during the class period?
- (e) If the answer to common issue (d) is no, were there systemic uses of Youth Segregation at Youth Justice Facilities during the class period that fell below the standard of care and, if so, what were they?
- (f) If the answer to common issue (e) is yes, did the defendant breach a fiduciary duty to class members by permitting and/or failing to take reasonable steps to prevent those uses?
- (g) Did placement of class members in Youth Segregation at Youth Justice Facilities during the class period amount in all instances to a deprivation of class members' liberty and/or security of the person under s. 7 of the *Charter*?

- (h) If the answer to common issue (g) is no, were there systemic uses of Youth Segregation at Youth Justice Facilities during the class period that amounted to deprivations of class members' liberty and/or security of the person under s. 7 of the *Charter* and, if so, what were those systemic uses?
- (i) If the answers to common issues (g) or (h) are yes, did any of those uses fail to accord with the principles of fundamental justice and, if so, what were those uses?
- (j) Did placement of class members in youth Segregation at Youth Justice Facilities during the class period amount in all instances to a breach of the class members' s. 9 *Charter* rights?
- (k) If the answer to common issue (j) is no, were there systemic uses of Youth Segregation at Youth Justice Facilities during the class period that violated s. 9 of the *Charter* rights and if so, what were those uses?
- (l) Did placement of class members in Youth Segregation at Youth Justice Facilities during the class period amount in all instances to a breach of the class members' s. 12 *Charter* rights?
- (m) If the answer to common issue (l) is no, were there systemic uses of Youth Segregation at Youth Justice Facilities during the class period that violated s. 12 of the *Charter* and, if so, what were those uses?
- (n) If the answer to any of common issues (i), (j), (k), (l) or (m) are yes, are the defendant's actions saved by s. 1 of the *Charter*?
- (o) Is the defendant immune from liability in respect of any of the foregoing common issues?
- (p) Are any of the foregoing common issues non-justiciable?
- (q) If the answer to any of common issues (i), (j), (k), (l), or (m) is yes and the answer to common issues (n) is no, are damages available to class members under s. 24(1) of the *Charter*?
- (r) If the answer to any of common issues (a), (b), (c), (d), or (q) is "yes", can the Court make an aggregate assessment of the damages suffered by all class members as part of the common issues trial?
- (s) If the answer to any of common issues (a), (b), (c) or (d), or (q) is "yes", was the defendant guilty of conduct that justifies an award of punitive damages?

- (t) If the answer to common issue (s) is "yes", what amount of punitive damages ought to be awarded?
4. **THIS COURT ORDERS AND DECLARES** that C.S. is hereby appointed as the representative plaintiff for the class members.
5. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP and Strosberg Sasso Sutts LLP be and are hereby appointed as class counsel ("**Class Counsel**").
6. **THIS COURT ORDERS** that Crawford Class Action Services (the "**Administrator**") be and is hereby appointed as the Administrator.
7. **THIS COURT ORDERS** that class members shall be notified that this proceeding has been certified as a class proceeding as follows:
- (a) by the Administrator placing, within thirty (30) days of the date of this Order, the Publication Notice found in **Schedule "A"** in the newspapers set out in **Schedule "B"** attached hereto, or a French language version which is to be agreed upon by the parties, in ¼ of a page size in the weekend edition of each paper, if possible;
  - (b) by the Administrator distributing the Publication Notice to all Ontario offices of the Elizabeth Fry Society and the John Howard Society;
  - (c) by the defendants posting the Publication Notice in a conspicuous place within each currently operational facility listed in paragraph 2, in common areas, making it possible for class members to see it;
  - (d) by posting the Publication Notice and Long Form Notice set out in **Schedule "C"**, and the French language translations of these documents which are to be agreed upon by the parties, on Class Counsel's and the Administrator's website;
  - (e) by the Administrator delivering the Publication Notice and Long Form Notice to the Public Guardian and Trustee;
  - (f) by the Administrator forwarding the Publication Notice and Long Form Notice to any Class Member who requests it;
  - (g) by the Administrator establishing a toll-free support line within Ontario to provide assistance to class members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of class members;



8. **THIS COURT ORDERS** that the expense of the notice in paragraph 7 and the Administrator's responsibilities herein shall be borne equally by the plaintiff and the defendant, subject to review and readjustment by agreement or order at the termination of this proceeding.
9. **THIS COURT ORDERS** that a class member may opt out of the class proceeding by delivering a signed opt-out coupon, a copy of which is attached as **Schedule "D"** or some other legible request to opt out, by 90 days after notice published (the "**Opt-Out Deadline**"), sent to the Administrator, at the following address:
- CRAWFORD & COMPANY**  
3-505, 133 Weber St. North  
Waterloo, Ontario N2J 3G9  
**Attention: Youth Segregation Class Action**
10. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.
11. **THIS COURT ORDERS** that if a Class member has delivered an opt-out coupon to the Administrator, he or she may withdraw his or her opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that he or she wishes to withdraw the opt-out.
12. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt-Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.
13. **THIS COURT ORDERS** that no other proceeding may be commenced in Ontario in respect of the subject matter of this action without leave of this court.
14. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this proceeding.

ENTERED AT / INSCRIPT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 17 2018

PER / PAR:

*My*

*Perel J*



Appendix "A"

Bluewater Youth Centre

Brookside Youth Centre

Cecil Facer Youth Centre

Donald Doucet Youth Centre

Invictus Youth Centre

Justice Ronald Lester Youth Centre

Roy McMurtry Youth Centre

Sprucedale Youth Centre

Toronto Youth Assessment Centre

**SCHEDULE "A"****PUBLICATION NOTICE**

*Were You Incarcerated in an Ontario Youth Justice Facility Between April 1, 2004 and December 17, 2018?*

*A lawsuit may affect you. Please read this carefully.*

A class action is proceeding in the Ontario Court of Justice on behalf of people who were placed in segregation while under the age of 18 in certain Youth Justice Facilities in Ontario where those placements occurred between April 1, 2004 and December 17, 2018.

You are a member of the Class if all of the items on the following list apply to you:

1. You were placed alone in a designated room or area at any one of more of the following facilities: Bluewater Youth Centre; Brookside Youth Centre; Cecil Facer Youth Centre; Donald Doucet Youth Centre; Invictus Youth Centre; Justice Ronald Lester Youth Centre; Roy McMurtry Youth Centre; Sprucedale Youth Centre; Toronto Youth Assessment Centre;
2. Your placement alone in the designated room or area lasted at least 6 consecutive hours;
3. You had no meaningful human contact during your placement alone in the designated room or area;
4. Your placement alone in the designated room or area took place when you were 17 years old or younger; and
5. Your placement alone in the designated room or area took place sometime between April 1, 2004 and December 17, 2018.

Please note that the following placement or placements alone in a designated room or area do not count towards the class definition and do not make you a Class member:

1. segregation by reason of a lock-down at a Youth Justice Facility; and
2. the routine locking in your room overnight at a Youth Justice Facility.

If you are a Class member, you have a choice of whether or not to stay in the Class.

**Option 1: Stay in the class action:** To stay in the class action, you do not have to do anything. If money or benefits are obtained, you will be notified about how to make a claim. You will be legally bound by all orders and judgments in the class action, and you will not be able to sue Ontario separately about the legal claims in this case.

**Option 2: Get out of the class action:** If you want to remove yourself from the class action, you must submit an opt out form by [insert opt out deadline]. Opt out forms are available here: [website]. You can also opt out by writing to the Administrator of this class action at the address below and informing them that you want to be removed from this class action. Be sure to include your name, address, telephone number and/or email address in the letter and have it post

marked by [insert deadline] If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP and Strosberg, Sasso, Sutts LLP ("Class Counsel") to represent the Class. You don't have to pay Class Counsel to participate. If they get money or benefits for the Class, they may ask for lawyers' fees and costs which would be deducted from any money obtained or to be paid separately by Ontario.

For more information about your rights, go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].

**SCHEDULE "B"**

<b>Publication</b>	<b>Unit Type/Size</b>
Globe & Mail	¼ Page
National Post	¼ Page
Toronto Star	¼ Page
Ottawa Citizen	¼ Page
The Windsor Star	¼ Page
The Hamilton Spectator	¼ Page
London Free Press	¼ Page
Kingston Whig-Standard	¼ Page
The Chronicle-Journal	¼ Page
Belleville Intelligencer	¼ Page
Kingston Heritage	¼ Page
Napanee Guide	¼ Page
Northumberland Today.com-TH	¼ Page
Quinte Community Newspaper Group	¼ Page
Brampton Guardian-TH	¼ Page
Burlington Post/Flamborough Review	¼ Page
Caledon Citizen	¼ Page
Cambridge Times-TH	¼ Page
Georgetown/Acton Ind. Free Press	¼ Page
Glanbrook Gazette	¼ Page
Grimsby/Lincoln/West Lincoln NewsNow	¼ Page
Guelph Tribune-TH	¼ Page
Hamilton Community News	¼ Page

King Weekly Sentinel	¼ Page
Kitchener Post	¼ Page
Markham Economist & Sun	¼ Page
Milton Canadian Champion	¼ Page
Mississauga News-TH	¼ Page
Oakville Beaver-TH	¼ Page
Richmond Hill/Thornhill Liberal	¼ Page
Toronto, All Metroland Publications	¼ Page
Vaughan Citizen	¼ Page
Alexandria Glengarry News	¼ Page
Armstrong Chronicle-Guide	¼ Page
Carleton Place/Almonte Canadian Gazette	¼ Page
Chesterville Record	¼ Page
Kanata Courier-Standard	¼ Page
Kemptville Advance	¼ Page
Manotick News	¼ Page
Nepean/Barrhaven News	¼ Page
Orleans News	¼ Page
Ottawa East News	¼ Page
Ottawa South News	¼ Page
Ottawa West News	¼ Page
QC Aylmer Bulletin d'Aylmer	¼ Page
QC Chelsea/Buckingham	¼ Page
West Quebec Post	¼ Page
Smith Falls Record News	¼ Page

Stittsville News	¼ Page
West Carleton Review	¼ Page
Winchester Press	¼ Page
Ayr News	¼ Page
Brantford	¼ Page
Brant News	¼ Page
Exeter Times-Advocate Weekender	¼ Page
Forest/Watford Standard Guide-Advocate	¼ Page
Ingersoll Times	¼ Page
London, the Londoner	¼ Page
Norwich Gazette	¼ Page
Parkhill/Glencoe Gazette Transcript & Free Press	¼ Page
St Mary's Journal Argus Weekender	¼ Page
St. Thomas/Elgin Weekly News	¼ Page
Strathroy Age Dispatch	¼ Page
Tavistock Gazette	¼ Page
Tillsonburg Independent News	¼ Page
West Lorne West Elgin Chronicle	¼ Page

### Press Release

North American distribution of an English and French press release via the CNW Newswire. 400 words in English and in French

## SCHEDULE "C"

## LONG FORM NOTICE

## **Were You Incarcerated in an Ontario Youth Justice Facility Between April 1, 2004 and December 17, 2018?**

**If YES, A Class Action May Affect Your Rights.**

*A Court authorized this notice. You are not being sued.*

- You could be affected by a class action involving Youth Justice Facilities.
- You are a member of the Class if all of the items on the following list apply to you:
  - You were placed alone in a designated room or area at any one of more of the following facilities: Bluewater Youth Centre; Brookside Youth Centre; Cecil Facer Youth Centre; Donald Doucet Youth Centre; Invictus Youth Centre; Justice Ronald Lester Youth Centre; Roy McMurtry Youth Centre; Sprucedale Youth Centre; Toronto Youth Assessment Centre;
  - Your placement alone in the designated room or area lasted at least 6 consecutive hours;
  - You had no meaningful human contact during your placement alone in the designated room or area;
  - Your placement alone in the designated room or area took place when you were 17 years old or younger; and
  - Your placement alone in the designated room or area took place at any time between April 1, 2004 and December 17, 2018.
- Please note that the following types of placement alone in a designated room or area do not count towards the class definition and do not make you a Class member:

- segregation by reason of a lock-down at a Youth Justice Facility; and
  - routine locking in your room overnight at a Youth Justice Facility.
- **If you know someone who you believe is a Class member who cannot read this notice please share this information with them.**
- The Court has not decided whether Ontario did anything wrong, and there still has to be a court case about whether Ontario did anything wrong. There is no money available to Class members now and no guarantee there will ever be any money awarded. However, if you are a Class member your rights are affected, and you have a choice to make now. This notice is to help you make that choice.



YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
<b>DO NOTHING</b>	<p><b>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</b></p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Ontario on your own about the same legal claims in this lawsuit.</p>
<b>REMOVE YOURSELF (OPT OUT)</b>	<p><b>Get out of this lawsuit and get no benefits from it. Keep rights.</b></p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue Ontario on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

- Lawyers must prove the claims against Ontario at a trial or a settlement must be agreed. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **[90 days from publication date of notice]**

**WHAT THIS NOTICE CONTAINS****BASIC INFORMATION.....Page 1**

1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

**YOUR RIGHTS AND OPTIONS.....Page 5**

7. What happens if I do nothing?
8. What if I don't want to be in the Class?

**THE LAWYERS REPRESENTING YOU.....Page 6**

9. Do I have a lawyer in the case?
10. How will the lawyers be paid?

**A TRIAL.....Page 6**

11. How and when will the Court decide who is right?
12. Will I get money after the trial?

**GETTING MORE INFORMATION .....Page 7**

13. How do I get more information?

## BASIC INFORMATION

### 1. Why is there a notice?

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are a Class member, you may have legal rights and options before the Court decides whether the claims being made against Ontario on your behalf are correct. This notice explains all of these things.

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *C.S. v. Ontario*, Court File No. CV-16-543895A1CP. The person who sued is called the Plaintiff. Ontario is the Defendant.

### 2. What is this lawsuit about?

In the lawsuit, the plaintiff says that Ontario improperly subjected inmates to youth segregation. The plaintiff says that such youth segregation constitutes systemic negligence, breaches of fiduciary duty, and breaches inmates' rights under the *Canadian Charter of Rights and Freedoms*. Ontario denies these claims. The Court has not decided whether the Plaintiff or Ontario is right. The lawyers for the Plaintiff will have to prove their claims in Court.

**If you are having a difficult time dealing with these issues you can call [number] (TTY: [number]) for assistance.**

### 3. Why is this a class action?

In a class action, a person called the “Representative Plaintiff” (in this case, C.S.) sues on behalf of people who have similar claims. This group of people is called a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.



#### 4. Who is a member of the Class?

The Class includes:

all persons who, while under the age of 18, were, between April 1, 2004 and December 17, 2018, placed in Youth Segregation at Youth Justice Facilities that were directly operated only by the Ministry of Children and Youth Services, which are listed at Appendix "A" hereto (the "Youth Justice Facilities").

**"Youth Segregation"** means the segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than 6 consecutive hours without any meaningful human contact.

**"Youth Segregation"** does not include:

- (a) segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) the routine locking of youth in their rooms overnight at Youth Justice Facilities, as authorized by statute.

#### Appendix "A"

- Bluewater Youth Centre
- Brookside Youth Centre
- Cecil Facer Youth Centre
- Donald Doucet Youth Centre
- Invictus Youth Centre
- Justice Ronald Lester Youth Centre
- Roy McMurtry Youth Centre
- Sprucedale Youth Centre
- Toronto Youth Assessment Centre

#### 5. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class. He is also asking for lawyers' fees and costs, plus interest.

#### 6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Ontario did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, there will be another notice about how Class members can ask for a share.

The class action has received financial support from the Class Proceedings Fund. There will be a levy that reduces the amount of any award or settlement funds to which Class Members may become entitled that is the sum of the amount of any financial support paid from the Fund and 10 per cent of the amount of the award or settlement funds payable to Class Members, if any.

## YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by **[90 days from notice publication date]**

### 7. What happens if I do nothing at all?

If you do nothing you will automatically remain in the lawsuit. You will be bound by all Court orders and judgments in the class action, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.

### 8. What if I don't want to be in the Lawsuit?

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders or judgements in the class action and you keep your right to sue Ontario separately as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *C.S. v. Ontario*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. Whether you use a letter or an Opt Out Form, you must mail your request to be removed from the class action, which must be postmarked by no later than **[90 days from notice publication date]** to: [address], or by email at: [email].

Call **[number]** (TTY: **[number]**) if you have any questions about how to get out of the Class.

## THE LAWYERS REPRESENTING YOU

### **9. Do I have a lawyer in the case?**

Yes. The Court has appointed Koskie Minsky LLP and Strosberg, Sasso, Sutts LLP from Toronto to represent you and other Class Members as “Class Counsel.” You will not be personally charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

### **10. How will the lawyers be paid?**

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

## A TRIAL

### **11. How and when will the Court decide who is right?**

If the lawsuit is not dismissed or settled, the Plaintiff will have to prove his claims at a trial that will take place in Toronto. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or Ontario is right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

### **12. Will I get money after the trial?**

If the Plaintiff obtains money or benefits as a result of a trial or settlement, there will be another notice about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, [website], as it becomes available.

## GETTING MORE INFORMATION

### 13. How do I get more information?

You can get more information at [website], by calling toll free at [number] (TTY: [number]), or writing to: [address], or by email at: [email].



## SCHEDULE "D" – OPT OUT FORM

To: ●  
**c/o Crawford Class Action Services**  
 3-505, 133 Weber Street North  
 Waterloo, Ontario  
 N2J 3G9  
 Email: [EMAIL]@crawco.ca

This is **NOT** a claim form. Completing this OPT OUT COUPON will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

Court File No.: CV-16-543895A1CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

C.S.

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

**I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.**

I understand that any individual claim I may have must be commenced within a specified limitation period or it will be legally barred. I understand that I must mail this opt-out form before \_\_\_\_\_ or else it will not be valid.

I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Date \_\_\_\_\_

Name of Class Member: \_\_\_\_\_

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Signature of Class Member Opting Out or  
 Guardian of Property (if applicable)

Telephone: \_\_\_\_\_

Name of Witness:  
 \_\_\_\_\_

Name of Guardian of Property (if applicable):  
 \_\_\_\_\_

Telephone: \_\_\_\_\_

C.S. v. HMQ

Court File No.: CV-16-543895-00CP

	<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b>  Proceeding commenced at Toronto</p>
	<p><b>ORDER</b></p>
	<p><b>KOSKIE MINSKY LLP</b> 900-20 Queen Street West Toronto ON M5H 3R3</p>
	<p><b>Kirk M. Baert (LS#: 309420)</b> Tel: (416) 595-2092 / Fax: (416) 204-2889 <b>James Sayce (LS#: 58730M)</b> Tel: (416) 542-6298 / Fax (416) 204-2809</p>
	<p><b>STROSBERG SASSO SUTTS LLP</b> 1561 Ouellette Avenue Windsor ON N8X 1K5</p>
	<p><b>Jay Strosberg (LS#: 47288F)</b> Tel: (519) 561-6285 / Fax (866) 316-5308 <b>Patricia Speight (LS#:26380C)</b> Tel: (519) 561-6213 / Fax (519) 561-6203</p>
	<p>Lawyers for the Plaintiff</p>

***THIS IS EXHIBIT “D” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
IN THE TOWN OF PORT PERRY, IN THE PROVINCE OF ONTARIO, THIS  
23<sup>RD</sup> DAY OF AUGUST, 2021.***



---

***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

Court File No. CV-16-534895-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

C.S.

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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**SETTLEMENT AGREEMENT**

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**WHEREAS** the plaintiff brought the within action (the “Action”) under the *Class Proceedings Act, 1992* in respect the defendant’s alleged use of Youth Segregation in specified Youth Justice Facilities;

**AND WHEREAS** the Action was certified as a class proceeding on December 17, 2018;

**AND WHEREAS** counsel for the parties to this Settlement Agreement have conducted a thorough analysis of the claims and have taken into account the extensive burdens and expense of litigation, including the risks of proceeding to summary judgment and/or trial;

**AND WHEREAS**, in consideration of all of the circumstances, and after extensive arms' length negotiations with the assistance of an experienced mediator, the parties, through this Settlement Agreement, seek to resolve all issues in the Action;

**AND WHEREAS**, after investigation, the Representative Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable, and in the best interests of the Class Members;

**AND WHEREAS**, the Parties agree that the purpose of this Settlement Agreement is to resolve all issues in the Action by compensating Class Members for specified material departures from the relevant statutory protections;

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## Definitions

1. The following definitions apply in this Settlement Agreement:

- (a) “Action” has the meaning set out above;
- (b) “Administration Costs” means all costs to administer and distribute the Settlement Fund including the costs and professional fees of the Claims Administrator and of the Claims Adjudicator (as that expression is defined in the Compensation Plan), the costs of implementing the Notice Plan, and the cost of dissemination of Notice of Settlement Approval Hearing and Notice of Settlement Approval, and all taxes applicable thereto;
- (c) “Approval Hearing” means the hearing at the Court to approve the Settlement;
- (d) “Approval Order” means the order approving the Settlement and the Settlement Agreement;
- (e) “Approved Claim” means Category 1, 2, 3, or 4 Approved Claims, within the meaning of the Compensation Plan;
- (f) “Certification Order” means the Order of Perell J. dated December 17, 2018 certifying the Action as a class proceeding;
- (g) “Claim” means the claim made by a Claimant by filing a Claim Form and Consent with the Claims Administrator in accordance with the procedure in the Compensation Plan;
- (h) “Claim Form and Consent” means a written claim from a Claimant seeking compensation from the Settlement Fund, together with a consent to the release of the Claimant’s Youth Records, in the form attached hereto as Schedule “B”;
- (i) “Claimant” means a Class Member (as defined below) who has submitted a Claim Form and Consent within the time specified herein;
- (j) “Claims Administrator” means Epiq;
- (k) “Class Counsel” means Koskie Minsky LLP and Strosberg Sasso Sutts LLP;
- (l) “Class Member” has the meaning set out in the Certification Order save and except that the expression “Youth Segregation” therein shall have the meaning set out in an Amended Certification Order, to be taken out on consent at the same time as the Approval Hearing is heard, as follows:

“**Youth Segregation**” means the segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than

6 consecutive hours.

**“Youth Segregation”** does not include

- (a) segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) the routine locking down of youth in their rooms overnight at a Youth Justice Facility, as authorized by statute.”
- (m) “CPF Levy” means the Class Proceedings Fund levy pursuant to O. Reg. 771/92;
- (n) “Compensation Plan” means the plan detailing how compensation is to be paid to Claimants, attached as Schedule “A” to this Settlement Agreement;
- (o) “Counsel Fee” means an amount awarded to Class Counsel as payment for fees, disbursements and applicable taxes, to be paid from the Settlement Fund, as approved by the Court;
- (p) “Court” means the Ontario Superior Court of Justice;
- (q) “Court Approval Date” means the later of:
  - (i) 31 days after the date on which the Court issues the Approval Order; and
  - (ii) The disposition of any appeals from the Approval Order or the expiry of any applicable appeal periods if no appeal is initiated;
- (r) “HMQ” means Her Majesty the Queen in right of Ontario;
- (s) “Notice of Approval of Settlement” means the Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the claims process;
- (t) “Notice of Settlement Approval Hearing” means the Court-approved notice to the Class Members advising that the Settlement will be considered by the Court;
- (u) “Notice Plan” means the plan created by agreement of the parties and approved by the Court to disseminate the Notice of Approval of Settlement and Notice of Settlement Approval Hearing to the Class Members;
- (v) “Releasees” means HMQ and all of its employees, servants, agents, Ministers, members of the Executive Council under the *Executive Council Act*, officers, insurers, representatives, and assigns;
- (w) “Settlement” means this Settlement Agreement reached between the parties to resolve all issues in the Action as approved by the Court.

- (x) “Settlement Agreement” means this agreement, as executed by the parties or their representatives, including the schedules hereto;
- (y) “Settlement Fund” means \$15 million, which HMQ has agreed to pay in full settlement of the Action, inclusive of Claims, CPF Levy, Counsel Fee, disbursements, Administration Costs, Notice Plan costs, and all applicable taxes, subject to Court approval.

### **Settlement Fund**

2. The Settlement Fund will be used to pay the Approved Claims, Administration Costs, Notice Plan costs, CPF Levy, Counsel Fee, any honourarium to be awarded to the Representative Plaintiff, and all applicable taxes in accordance with this Settlement Agreement in full and final settlement of the Action.
3. HMQ shall pay to Class Counsel the Counsel Fee, disbursements, and applicable taxes as approved by the Court promptly, but before the latter of the following events: i) thirty (30) days after Court approval of Counsel Fee; or, ii) thirty (30) days after the Court Approval Date.
4. HMQ shall pay the Administration Costs and Notice Plan costs as they come due. HMQ shall make one payment to the Administrator for the global compensation to all Claimants in accordance with the Compensation Plan when calculated and determined and one payment for the CPF Levy within thirty (30) days of the Court's order with respect to the CPF Levy.
5. The Settlement Fund shall accrue interest at the rate of 2% per annum, commencing on the Court Approval Date, forming part of the Settlement Fund, to the date that HMQ delivers final payment of the total claims amount to the Claims Administrator.
6. The Settlement Fund shall be paid as follows:
  - (a) First, to satisfy the Counsel Fee and applicable taxes in the amount approved by the Court;
  - (b) Second, to pay Administration Costs;
  - (c) Third, to pay the CPF Levy; and
  - (d) Fourth, to pay Approved Claims in accordance with the Compensation Plan.

Any amount remaining in the Settlement Fund after all of the above payments have been made will be returned to HMQ.

### **Communications**

7. The parties, including counsel and the Representative Plaintiff, agree that, when commenting publicly on the Action or the Settlement, they shall:

- (a) Inform the inquirer that the Action has been settled to the satisfaction of all parties;
- (b) Inform the inquirer that it is the view of the parties that the Settlement is fair, reasonable and in the best interests of the Class Members; and
- (c) Decline to comment in a manner that casts the conduct of any party in a negative light, disparages any party, or reveals anything said during the settlement negotiations.

### **Court Approval**

8. As soon as practical after execution of this Settlement Agreement, the parties shall advise the Court, seek to schedule the Approval Hearing at the earliest possible opportunity, and seek Court approval of the Notice Plan and of timing of the dissemination of Notice of Settlement Approval Hearing.

9. The parties agree to file motion materials, as necessary, with respect to the Approval Hearing and counsel shall act reasonably and in good faith on the content of such motion materials.

10. Class Counsel shall bring a motion for court approval of its requested Counsel Fee and reimbursement of disbursements, and all applicable taxes, to be heard immediately after the Approval Hearing. Class Counsel shall not seek a Counsel Fee that is greater than 33% of the Settlement Fund. The Defendant shall take no position on the quantum of Counsel Fee sought by Class Counsel.

### **Release**

11. As at the Court Approval Date, each Class Member, whether or not he or she submits a Claim or receives compensation in accordance with the Compensation Plan, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised, and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims relating to or arising out of the Second Fresh as Amended Statement of Claim in the Action. The Second Fresh as Amended Statement of Claim is attached as Schedule "C".

12. As at the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, asserting against the Releasees, or any of them, any claims relating to or arising out of the Second Fresh as Amended Statement of Claim in the Action.



13. As at the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, against any person or entity that could or does result in a claim over against the Releasees, or any of them, for contribution and/or indemnity at common law, or equity, or under the provisions of the *Negligence Act* and the amendments thereto, or under any successor legislation thereto, or under the *Rules of Civil Procedure*, relating to or arising out of the Second Fresh as Amended Statement of Claim in the Action. It is understood and agreed that if such Class Member commences such an action or takes such proceedings, and the Releasees, or any of them, are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees.

14. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Settlement Agreement may be pleaded in the event that any such claim, action, complaint, or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint, or proceeding on a summary basis and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Settlement Agreement.

#### **No Admissions, No Use**

15. This Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to this Settlement Agreement, are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or its Schedules, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind by the parties of the truth of any fact alleged or of the validity of any claim or defence that has been, could have been or in the future might be asserted in any litigation, Court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement. For greater clarity, HMQ denies the truth of the allegations in the Action and denies any liability whatsoever.

#### **Termination**

16. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall have no force or effect, save and except for this section, which shall survive termination.

#### **General**

17. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

18. This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, on consent of the parties, and with Court approval.

19. This Settlement Agreement may be signed by the parties in counterpart which shall have the same effect and enforceability as a single executed document

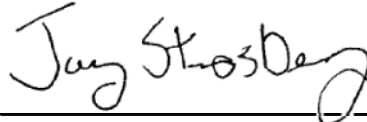
**IN WITNESS WHEREOF**, this Settlement Agreement has been executed by the undersigned, on behalf of each of the Parties, and is effective as at March 26, 2021.

Date: August 18, 2021



**Koskie Minsky LLP, Counsel for the Plaintiff**

Date: August 18, 2021



**Strosberg Sasso Sutts LLP, Counsel for the Plaintiff**

Date:



**Christopher A. Wayland, Counsel, for the Defendant**

(I have the authority to bind Her Majesty the Queen in right of Ontario)

## **Schedule “A” – Compensation Plan**

### **Definitions**

1. All defined terms in the Settlement Agreement are applicable to the Compensation Plan. In addition, the following definitions apply:

- (a) “Category 1 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in YS for between 6 and up to 72 consecutive hours;
- (b) “Category 2 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in YS for between 72 hours and 5 consecutive days;
- (c) “Category 3 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in YS for between 6 and 14 consecutive days;
- (d) “Category 4 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in YS for 15 or more consecutive days;
- (e) “Claims Adjudicator” means Hon. S. Casey Hill (ret.), to be paid for all work that the Claims Adjudicator is to perform in respect of this Compensation Plan;
- (f) “Eligible Claim” has the meaning prescribed at paragraph 5 of this Compensation Plan;
- (g) “Excluded Claim” means a Claim by a person who: (i) has previously and validly opted out of the Action in writing; or, (ii) who has previously settled a claim against HMQ or has executed a release in favour of HMQ in relation to any matters that are the subject of the Action;
- (h) “Final”, in respect of a decision, disposition, or determination, means that the decision, disposition, or determination is final and binding and not subject to reconsideration or appeal or to review by any Court or tribunal;
- (i) “Inadequate Record” means a record that is substantially incomplete or unreliable on a point material to an Eligible Claim. For greater certainty, the adequacy of the record is to be determined on the basis of the record itself, and without reference to any inconsistency that may arise between the record and the Claim Form and Consent. A determination of whether a record is an Inadequate Record is not to be based on the credibility of the Claimant.
- (j) “Overheld” may arise in one of two ways, and means a Claimant who was either held in YS for a period of time after:

- (i) the Claimant ceased to be likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm. For greater certainty, this may be inferred where the Youth Records lack particulars of a reason that would justify the Claimant's continued placement in YS on this basis; or
- (ii) there was a practicable less restrictive method of restraining the Claimant and that practicable less restrictive method is reflected in the Youth Records.

Further, and for greater certainty, a Claimant who was held in YS for such period of time because the Claimant fell asleep and was not removed from YS until after the Claimant awoke as demonstrated by the Youth Records, was not Overheld;

- (k) "SI Log" has the meaning set out at paragraph 9 of this Compensation Plan;
- (l) "Youth Justice Facility" has the same meaning as in the Certification Order;
- (m) "Youth Record(s)" means any record pertaining to a Claimant, kept pursuant to the *Youth Criminal Justice Act*, S.C. 2002, c. 1;
- (n) "YS" means Youth Segregation, as defined in the Certification Order, as amended.

### **Claims Procedure**

2. HMQ shall make one global payment to the Claims Administrator to carry out distributions to the Claimants in accordance with the determinations made by the Claims Administrator and/or Claims Adjudicator, as set out below.

3. Any Claimant who wishes to claim compensation shall deliver to or otherwise provide to the Claims Administrator a Claim Form and Consent, together with proof of his or her identity and date of birth in the form of a copy of a birth certificate, driver's license, passport, or other official Government-issued identification ("Identity Document"), within nine (9) months of the publishing of Notice of Approval of Settlement. If the Claims Administrator does not receive a Claim Form and Consent and Identity Document from a Claimant by that deadline, then the Claimant shall not be eligible to submit a Claim. The Claims Administrator shall review each Claim Form and Consent for completeness and shall advise a Claimant, no later than five (5) business days after receipt of the Claim Form and Consent, if the Claim Form and Consent is incomplete. The Claimant shall complete the Claim Form and Consent within the later of (i) thirty days (30) days from the date that the Claims Administrator advises them that their Claim Form and Consent is incomplete or (ii) the deadline to submit a Claim Form and Consent and supporting documentation set out in the first sentence of this paragraph, failing which the Claim will be dismissed.

4. A Claimant may not submit more than one Claim per YS placement. If more than one Claim Form and Consent is submitted in respect of the same YS placement, the Claims Administrator or the Claims Adjudicator will treat all such Claim Form and Consents as one Claim. If a Claim Form and Consent makes reference to more than one YS placement, then the Claims Administrator or the Claims Adjudicator shall treat the Claim Form and Consent as containing multiple Claims without the need for the Claimant to submit separate Claims Form and Consents for each placement.

5. The Claims Administrator shall review each Claim Form and Consent and verify that the Claim satisfies all the conditions set out in this paragraph, and therefore that it is an Eligible Claim, as follows:

- a) The Claims Administrator shall verify: (i) that the Claimant has alleged that he or she was placed in YS, during the class period as defined in the Certification Order, for at least 6 consecutive hours at one of the Youth Justice Facilities; (ii) that the Claimant has purported to provide information, if any is known to the Claimant or to the extent that information was communicated by Youth Justice Facility staff to the Claimant, as to his or her alleged conduct that caused him or her to be placed in YS and as to why he or she was kept in YS for longer than 6 hours; (iii) that the Claimant's identity and date of birth are both corroborated by the supplied Identity Document; (iv) that, based on the date of birth so provided, the Claimant was 17 years old or younger at the time of the alleged YS placement; and (v) that the Claim is not an Excluded Claim; and
- b) Further, for a Claim brought on behalf of a Claimant's estate, the Claims Administrator shall verify that the individual filing the Claim has the requisite authority to do so.

6. If the Claims Administrator is not satisfied that the Claim is an Eligible Claim, the Claims Administrator shall dismiss the Claim. The dismissal of the Claim at this stage shall be final and binding and not subject to any reconsideration or appeal, or to review by any Court or tribunal.

7. If the Claims Administrator is satisfied that the Claim is an Eligible Claim, the Claims Administrator shall review the Claim to determine whether the Claimant alleges that the YS placement was a Category 1, Category 2, Category 3, or Category 4 Claim. If it is not clear which category the Claimant is alleging, the Claim and the Youth Records shall be reviewed by the Claims Adjudicator to determine the correct category of Claim.

8. The Claims Administrator shall go on to consider all Category 1 Claims pursuant to the procedure prescribed at paragraphs 9-19, below. The Claims Administrator shall send all Category 2, 3, and 4 Claims to the Claims Adjudicator to be considered by the Claims Adjudicator pursuant to the procedure prescribed at paragraphs 20-30, below.

***Claims Procedure – Category 1 Claims***

9. Upon determining that an Eligible Claim is a Category 1 Claim, the Claims Administrator shall send the Claim Form and Consent to Class Counsel and to HMQ, along with a request that HMQ provide to the Claims Administrator a copy of the Claimant's Youth Records that may be relevant to the Eligible Claim, including the relevant Secure Isolation or Secure De-escalation log ("SI Log").

10. If no Youth Records are located for the Claimant, or if the Youth Records do not document that the Claimant was at the Youth Justice Facility specified in the Claim within the timeframe specified in the Claim, the Claims Administrator shall dismiss the Claim. The dismissal of the Eligible Claim at this stage is Final.

11. If the Claims Administrator is satisfied that the Youth Records document that the Claimant was at the Youth Justice Facility specified in the Claim at the time specified in the Claim, but no SI Log can be located for that Youth Justice Facility at that time, the Claims Administrator shall follow the procedure at paragraph 13 below without regard to paragraph 12, below. If the Claims Administrator is satisfied that the Youth Records document that the Claimant was at the Youth Justice Facility specified in the Claim at the time specified in the Claim, and an SI Log exists for that Youth Justice Facility at that time, the Claims Administrator shall follow the procedure specified at paragraph 12, below.

12. If the Claims Administrator is satisfied that the Youth Records document that the Claimant was at the Youth Justice Facility specified in the Claim at the time specified in the Claim, and an SI Log exists for that Youth Justice Facility at that time, the Claims Administrator shall review the relevant SI Log to determine whether it documents that the Claimant was placed in YS for between 6 and up to 72 hours as set out in the Claim Form and Consent. If the relevant SI Log does not document that the Claimant was placed in YS for between 6 and up to 72 hours as set out in the Claim, but other documentation in the Youth Records indicate that the Claimant was placed in YS between 6 and up to 72 hours, the Claims Administrator shall follow the procedure specified at paragraph 13, below. If neither the SI Log nor other documentation in the Youth Records document any placement in YS for between 6 and up to 72 hours, then the Claims Administrator shall dismiss the Eligible Claim. However, if the SI Log or other documentation in the Youth Records document a placement in YS for more than 72 hours, the Claims Administrator shall treat the Claim as an Eligible Claim in Category 2, 3, or 4, based on the length of placement in YS, and follow the procedure set out in paragraph 20 below. The dismissal of the Eligible Claim at this stage is Final. If the relevant SI Log documents that the Claimant was placed in YS for between 6 and up to 72 hours as set out in the Claim, the Claims Administrator shall go on to follow the procedure set out at paragraph 13 below.

13. If the Eligible Claim is not dismissed pursuant to paragraph 12, above, the Claims Administrator shall go on to consider the Claimant's explanation, in the Claim Form and Consent, as to why he or she was placed in YS and why he or she was kept in YS for more than 6 hours.

14. If the Claims Administrator is satisfied that the conduct described in the Claim Form and Consent, if true, does not indicate that the Claimant was likely, in the immediate future at the time of their placement into YS, to cause serious property damage or to cause another person serious bodily harm, it will be an Approved Category 1 Claim.

15. If the Claims Administrator is not so satisfied, but is satisfied that the Claimant alleges that he or she was Overheld, the Claims Administrator shall approve the Claim, and it will be an Approved Category 1 Claim.

16. In applying the criteria set out in the two preceding paragraphs, the Claims Administrator shall assume that the allegations made on the Claim Form and Consent are true and will not engage in any assessment of the veracity of same.

17. If the Claims Administrator is of the view that (i) the conduct described by the Claimant, if true, indicates that the Claimant was likely, in the immediate future at the time of their placement into YS, to cause serious property damage or to cause another person serious bodily harm, and (ii) that the Claimant has not alleged that he or she was Overheld, the Claims Administrator shall dismiss the Claim.

18. All of the Claims Administrator's decisions to approve Claims pursuant to paragraphs 14 or 15 above, or to dismiss Claims pursuant to paragraph 17 above, are Final.

19. A Claimant shall be eligible for a payment of \$1,000 out of the Settlement Fund for each of that Claimant's Approved Category 1 Claims.

#### ***Claims Procedure – Category 2, 3, and 4 Claims***

20. Upon determining that an Eligible Claim is a Category 2, 3, or 4 Claim, the Claims Administrator shall send the Claim Form and Consent to Class Counsel, HMQ, and the Claims Adjudicator, along with a request that HMQ provide to the Claims Administrator a copy of the Claimant's Youth Records that may be relevant to the Eligible Claim, including the relevant SI Log.

21. Upon receipt of the Claimant's Youth Records from HMQ, the Claims Administrator shall review the Claimant's Youth Records. If no Youth Records are located for the Claimant, the Claims Administrator shall inform the Claimant that no Youth Records exist. In such circumstances, the Claimant shall have thirty (30) days to submit other proof to the Claims Administrator with respect to their time in a Youth Justice Facility, including sentencing or other documentation, which would suggest that the Claimant's Youth Records were lost or destroyed. In such circumstances, if the Claims Administrator is satisfied that the Youth Records were lost or destroyed, the procedure at paragraph 24 shall apply. If no such proof is provided within thirty (30) days, then the Claim shall be dismissed. If the Claims Administrator determines that the Claimant was not held in a Youth Justice Facility during the class period, the Claim shall be dismissed. The dismissal of the Eligible Claim at this stage shall be Final.

22. If Youth Records are located for the Claimant, the Claims Administrator shall send the Youth Records and the Claim Form and Consent to the Claims Adjudicator. The Claims Adjudicator shall review same with a view to determining whether the Youth Records are Inadequate Records.

23. If the Claims Adjudicator concludes that the Claimant's Youth Records are Inadequate Records, the Claims Adjudicator shall follow the procedure set out at paragraph 24, below. If the Claims Adjudicator does not conclude that the Claimant's Youth Records are Inadequate Records, the Claims Adjudicator shall follow the procedure prescribed at paragraphs 25-30, below.

***Procedure – Inadequate Records***

24. If the Claims Adjudicator concludes that the Claimant's Youth Records are Inadequate Records, the Claims Adjudicator shall follow the following procedure:

- (a) If the Claims Adjudicator is satisfied that the conduct described in the Claim Form and Consent, if true, does not indicate that the Claimant was likely, in the immediate future at the time of their placement into YS, to cause serious property damage or to cause another person serious bodily harm it will be an Approved Claim.
- (b) If the Claims Adjudicator is not so satisfied but is satisfied that the Claimant alleges that he or she was Overheld, the Claims Adjudicator shall approve the Eligible Claim, and it will be an Approved Claim.
- (c) In applying the criteria set out in the two preceding subparagraphs, the Claims Adjudicator shall assume that the allegations made on the Claim Form and Consent are true and will not engage in any assessment of the veracity of same;
- (d) If the Claims Adjudicator is of the view that (i) the conduct described by the Claimant, if true, indicates that the Claimant was likely, in the immediate future at the time of their placement into YS, to cause serious property damage or to cause another person serious bodily harm, and (ii) that the Claimant has not alleged that he or she was Overheld, the Claims Adjudicator shall dismiss the Eligible Claim;
- (e) If the Claims Adjudicator approves an Eligible Claim pursuant to this paragraph, the Claims Adjudicator shall categorize the Claim as a Category 2, 3, or 4 Approved Claim based solely on the alleged length of YS placement as set out in the Claim Form and Consent;
- (f) All approvals or dismissals of Eligible Claims pursuant to this paragraph, and categorizations of Approved Claims as Approved Category 2, 3, or 4 Claims, are Final.



***Procedure – records not Inadequate Records***

25. If the Claims Adjudicator does not conclude that the Claimant's Youth Records are Inadequate Records, the Claims Adjudicator shall review the Claimant's Youth Records and note the reasons given therein for the YS placement and for the duration of same.

26. If the Claims Adjudicator is satisfied that the Claimant's Youth Records document that the Claimant was placed in YS for conduct that should not have given rise to an apprehension that that the Claimant was likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, then the Claims Adjudicator shall approve the Eligible Claim, which shall then become an Approved Claim. If the Claims Adjudicator is not so satisfied, the Claims Adjudicator shall follow the procedure prescribed at paragraph 27 below.

27. If the Claims Adjudicator does not approve the Eligible Claim pursuant to paragraph 26, above, the Claims Adjudicator shall go on to consider whether the Claimant's Youth Records document that the Claimant was Overheld. If the Claims Adjudicator is satisfied that the Claimant's Youth Records document that the Claimant was Overheld, then, the Claims Adjudicator shall approve the Claim and it shall be an Approved Claim. Otherwise, the Claims Adjudicator shall dismiss the Claim.

28. If the Youth Records confirm a placement of fifteen (15) days or longer in YS, the Claims Adjudicator shall presume that the Claim is an Approved Category 4 Claim, unless this presumption is rebutted by (i) reliable evidence in the Youth Records that the Claimant was regularly released from YS for four (4) hours or more per day, during which time they had access to meaningful human contact; or (ii) reliable evidence in the Youth Records that a psychiatric professional recommended a continued placement in YS for fifteen (15) days or longer.

29. If the Claims Adjudicator approves an Eligible Claim pursuant to paragraphs 26, 27 or 28, the Claims Adjudicator shall categorize the claim as an Approved Category 2, 3, or 4 Claim depending on the length, according to the Youth Records, of the Claimant's YS placement.

30. The Claims Adjudicator's decisions to dismiss or approve Eligible Claims pursuant to paragraphs 26, 27 or 28 are Final.

***Procedure – All Claims***

31. All of the Claims Administrator's and Claims Adjudicator's determinations are Final. The Claims Administrator and Claims Adjudicator will not give reasons in respect of any decision each of them may make.

32. The Claims Adjudicator shall notify Class Counsel, HMQ's Counsel, and the Claims Administrator in writing of the disposition of each Eligible Claim.

33. The Claims Administrator shall advise each Claimant of the disposition of each of the Claimant's Claims and that the disposition is Final.

34. A Claimant shall be eligible for a payment of \$1,000 out of the Settlement Fund for each of that Claimant's Approved Category 1 Claims, for a payment of \$5,000 out of the Settlement Fund for each of that Claimant's Approved Category 2 Claims, for a payment of \$12,000 out of the Settlement Fund for each of that Claimant's Approved Category 3 Claims, and for a payment of \$35,000 out of the Settlement Fund for each of that Claimant's Approved Category 4 Claims.

36. If there are insufficient funds in the Settlement Fund to pay all Approved Claims in full, the amounts payable for Approved Category 1, 2, 3, and 4 Claims shall be adjusted downward such that each Approved Claim receives a proportionate share of the Settlement Fund.

38. If there are funds remaining in the Settlement Fund after all Approved Claims are paid in full, each Claimant with an Approved Category 4 Claim will receive a *pro rata* top-up, to a maximum of \$5,000, from funds remaining in the Settlement Fund.

39. The Claims Administrator shall advise HMQ and Class Counsel of the amounts to be awarded to each Claimant and the global compensation amount required to satisfy those payments. HMQ shall provide one payment of the global compensation amount to the Claims Administrator and the Claims Administrator shall provide the individual compensation payments to the Claimants in the manner indicated in the Claim Form and Consents, within 30 days, and shall provide a copy to Class Counsel.

40. Any amounts awarded to each Claimant that are distributed but go unclaimed within twelve (12) months shall revert to HMQ, to the extent possible.

41. The Parties shall reach an agreement on the most efficient and cooperative manner to obtain the Youth Records, including any necessary court appearances, motions, applications or other processes.

## **CLAIM FORM AND CONSENT**

The parties to this lawsuit have entered into a settlement. This claims process is part of that settlement. There are different types of harm for which compensation will be provided.

In order to make a claim in the claims process of this settlement you must complete: (1) this Claim Form, and (2) the Consent included later in this form.

Please be sure to read this entire Claim Form before filling it out.

Before you fill out this form, you should also read the Settlement Agreement and the Compensation Plan attached to it as Schedule "A". These documents provide information and guidance on how to complete this form.

**Class Action Settlement Claims Process**

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## **Who should fill out this Claim Form?**

This Claim Form is only for those individuals who, while under the age of 18, were placed in “Youth Segregation” for more than 6 consecutive hours at some point(s) between April 1, 2004 and December 17, 2018, at the following “Youth Justice Facilities”:

Bluewater Youth Centre  
Brookside Youth Centre  
Cecil Facer Youth Centre  
Donald Doucet Youth Centre  
Invictus Youth Centre  
Justice Ronald Lester Youth Centre  
Roy McMurtry Youth Centre  
Sprucedale Youth Centre  
Toronto Youth Assessment Centre

**Class Action Settlement Claims Process**

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“Youth Segregation” means segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than 6 consecutive hours.

Youth Segregation does not include:

Segregation by reason of a lock-down at a Youth Justice Facility; and

The routine locking down of youth in their rooms overnight at a Youth Justice Facility, as authorized by statute.

**What is the deadline for submitting this Claim Form and Consent once completed?**

All claims will be reviewed and assessed by the Claims Administrator, as appointed by the Court. All Claim Form and Consents must be received by the Claims

**Class Action Settlement Claims Process**

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Administrator by **XXX date, 2022**. After that date, it will be too late for your claim to be considered.

**What information do I send and where do I send it?**

In order to make a claim, by the deadline, you must fill out and send in:

1. The Claim Form;
2. The Consent included in the Claim Form; and
3. Your Identity Document.

Your Identity Document must be a copy of a document that proves your identity and date of birth (e.g. birth certificate, driver's license, passport, or other official Government-issued identification).

Keep a copy of your Claim Form and Consent for your records once completed.

**Class Action Settlement Claims Process**

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Once you have completed the Claim Form and the Consent included as part of it, and you have your Identity Document ready to go with it, please send it all to the Claims Administrator. You can send in your information by:

**Mail:** XXX

**Email:** XXX

**Fax:** XXX

All information you submit is confidential and will only be used for the claims process.

The Claims Administrator may contact you to gather more or other information if your Claim Form is incomplete. If you are contacted, you will then have 30 days to finish completing your Claim Form with the requested information and return it to the Claims Administrator or your claim will be dismissed.

**Class Action Settlement Claims Process**

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Please read the Claim Form carefully. Ask for help if you do not understand. You can ask a trusted support person for help. You can contact Class Counsel for help with the Claim Form:

<b>Koskie Minsky LLP</b> 20 Queen Street West Suite 900, Box 52 Toronto, Ontario M5H 3R3 <b>Phone: 1-844-819-8501 (toll free)</b> <b>Email:</b> <b>youthconfinementclassaction@kmlaw.ca</b>	<b>Strosberg Sasso Sutts LLP</b> 1561 Ouellette Avenue Windsor, Ontario N8X 1K5 Phone: 1-866-229-5323, ext. 296 Email: youthconfinement@strosbergco.com
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**Class Action Settlement Claims Process**

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**Are you a guardian making a claim on behalf of someone else?**

Please use the name of the individual who was admitted to Youth Segregation to fill in the form.

Set out the basis for your authority to submit the claim on that individual's behalf.

**This Claim Form has 5 parts:**

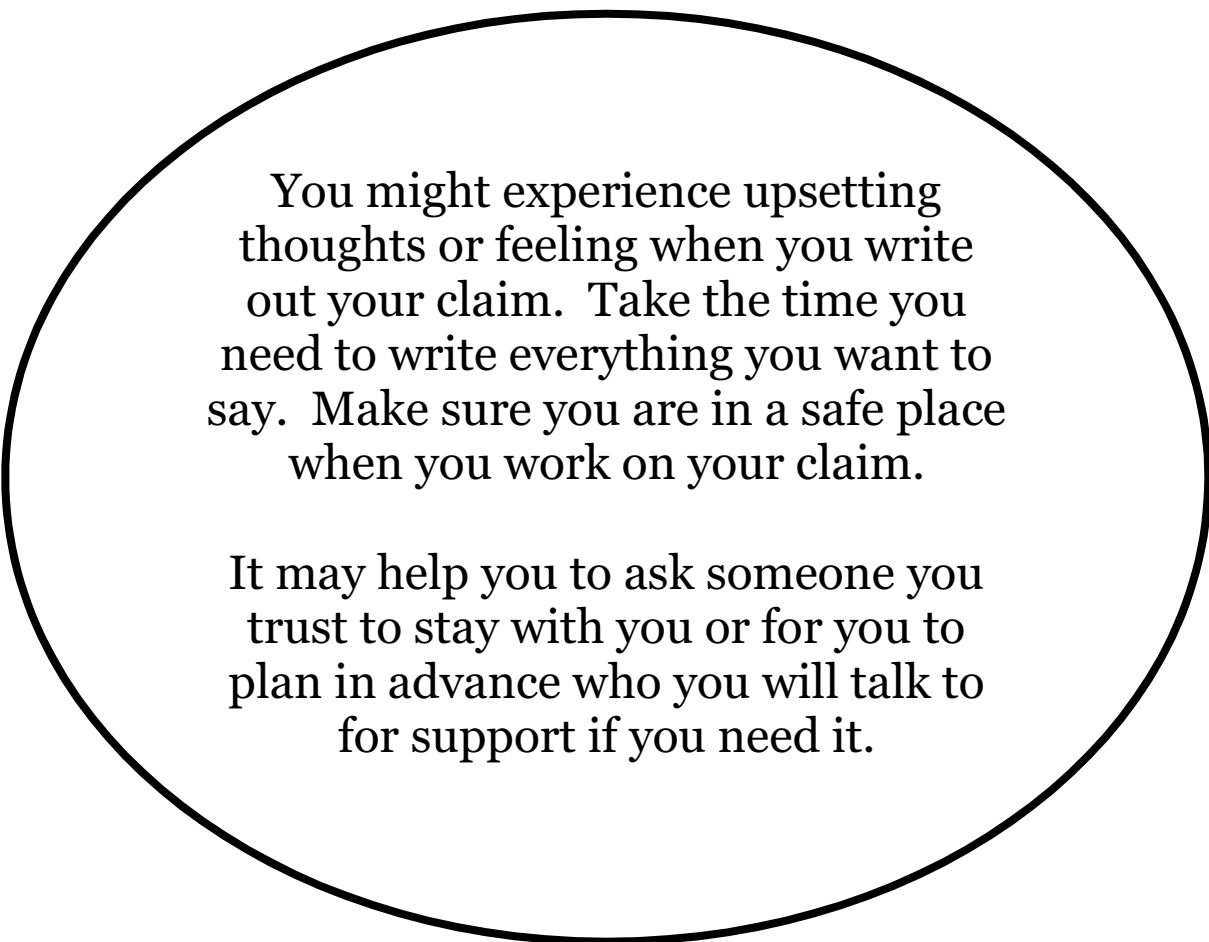
- 1. Your current personal information.**
- 2. Information about the claims process and what you need to include in your claim.**
- 3. A place for you to make and explain your claim(s).**
- 4. A place for you to affirm the truth of your claim, to the best of your recollection.**
- 5. The Consent that must be filled out so that your relevant Youth Records can be released to the Claims Administrator for your claim to be reviewed and assessed.**

**Read all of this Claim Form. Then you will know what parts you must fill in. Make sure you give yourself enough time before the deadline to remember and write what happened and to get any documents you may need to refresh your memory for your claim.**

**Class Action Settlement Claims Process**

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The completed Claim Form and all other required information noted above must be received by the Claims Administrator by **XXX, 2022**.



You might experience upsetting thoughts or feeling when you write out your claim. Take the time you need to write everything you want to say. Make sure you are in a safe place when you work on your claim.

It may help you to ask someone you trust to stay with you or for you to plan in advance who you will talk to for support if you need it.

**Class Action Settlement Claims Process**

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**PART 1**

**Your personal information**

First name: \_\_\_\_\_

Middle name: \_\_\_\_\_  
Leave this blank if you do not have a middle name.

Last name: \_\_\_\_\_

Any previous name(s) used: \_\_\_\_\_  
Could you have been placed in Youth Segregation with a different name?  
Leave this blank if you did not have any other names.

Date of birth (day, month, year): \_\_\_\_\_

**Your current address and contact information**

Street and number: \_\_\_\_\_

Apartment number if you have one: \_\_\_\_\_

**Class Action Settlement Claims Process**

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City or town: \_\_\_\_\_

Province: \_\_\_\_\_

Country: \_\_\_\_\_

Postal code: \_\_\_\_\_

Phone **or** TTY number: \_\_\_\_\_

Email address: \_\_\_\_\_

Leave this blank if you do not have an email address.

**\*\*\* REMEMBER: You must also submit a copy of an Identity Document which proves your identity and date of birth. Please ensure your name and date of birth stated on this form matches that information in your Identity Document \*\*\***

**Class Action Settlement Claims Process**

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## **PART 2**

### **Compensation available in the claims process**

Category of claim	Time spent in Youth Segregation	Amount awarded if claim approved
Category 1	Between 6 and up to 72 consecutive hours	\$1,000
Category 2	Between 72 hours and 5 consecutive days	\$5,000
Category 3	Between 6 and 14 consecutive days	\$12,000
Category 4	For 15 or more consecutive days	\$35,000

Other important compensation information to note:

If you were placed in Youth Segregation more than once, you are potentially eligible for compensation

**Class Action Settlement Claims Process**

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based on each placement (the process for making multiple claims on a single Claim Form is explained further below).

If there are not enough funds in the Settlement Fund to pay all approved claims in full, the amounts payable for Approved Category 1, 2, 3, and 4 Claims will be adjusted downward such that each approved claim receives a proportionate share of the Settlement Fund.

If there are funds remaining in the Settlement Fund after all approved claims are paid in full, each Claimant with an Approved Category 4 Claim will also receive a top-up payment, to a maximum of \$5,000, from funds remaining in the Settlement Fund.

## **Steps that will be followed in the claims process**

1. You must send in your completed Claim Form and Consent, with a copy of your Identity Document, to the Claims Administrator by the deadline.
2. Once the Claims Administrator gets your information, it will verify that your claim is an “Eligible Claim” and determine what category your claim will fall into. If you have an Eligible Claim, a request will then be made for your relevant Youth Records to be released so they can be consulted as part of your claim.
3. If your Youth Records do not show that you were held in a Youth Justice Facility or placed in Youth Segregation, or if they show that you were placed in Youth Segregation for less than 6 consecutive hours, your claim will be dismissed.



**Class Action Settlement Claims Process**

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4. If your Youth Records show you were placed in Youth Segregation but for a shorter or longer time than you write on this Claim Form, this may affect whether your claim is adjudicated as a Category 1, 2, 3 or 4 claim.
5. If your claim is assessed as a Category 1 claim, the Claims Administrator will decide whether you get compensation based on what you write on this Claim Form. Everything you write will be assumed to be true.
6. If your claim is assessed as a Category 2, 3 or 4 claim, the Claims Adjudicator will decide whether you get compensation based on what you write on this Claim Form and the information in your Youth Records.
7. If your claim is successful, you will be awarded compensation depending on the category of claim that your claim falls into.

**Class Action Settlement Claims Process**

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8. Once your claim has been decided, the Claims Administrator will advise you of the decision. That decision is final and not subject to appeal. You will not get reasons for the decision.
9. Any amounts awarded to each claimant that are distributed but go unclaimed within twelve (12) months, will no longer be available. So if your claim is approved, be sure to receive and deposit your payment as soon as possible.

### **PART 3**

**Important information about making your claim is provided below. Please read all of it.**

You can only submit one claim per each placement in Youth Segregation.

**Class Action Settlement Claims Process**

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If more than one claim is submitted for the same Youth Segregation placement, all such claims will be treated as one claim.

But you can make a claim for each separate Youth Segregation placement you experienced. If you experienced more than one Youth Segregation placement, you are encouraged to explain each of your claims on this Claim Form. You can attach extra written pages if you need more space.

You are not required to submit a separate Claim Form and Consent for each Youth Segregation placement.

**Class Action Settlement Claims Process**

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**Make your claim(s) here:**

Fill out the blanks below. Put as much detail as you can.

If you need to attach extra pages, do it.

The spaces below provide room for you to make up to 3 separate claims. **But there is no limit to the number of separate claims you can make. If you have more than 3 separate claims to make, attach extra pages so you can explain those claims too.** If you do this, be sure to answer each of the questions below for each separate claim.

**Class Action Settlement Claims Process**

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*CLAIM 1*

- a) What Youth Justice Facility were you in when you were placed in Youth Segregation?

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- b) What days/month/year were you placed in Youth Segregation there? Please explain to the best you can remember or were told.

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- c) Were you placed in Youth Segregation for more than 6 consecutive hours? (If no, then you will not be compensated for this claim) Please explain to the best you can remember or were told.

**Class Action Settlement Claims Process**

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- d) How long did this placement in Youth Segregation last? Please explain to the best you can remember or were told.

- e) Why were you placed in Youth Segregation? Please explain to the best you can remember or were told.

- f) Do you think you were "Overheld" in Youth Segregation? Please explain to the best you can remember or were told.

**Class Action Settlement Claims Process**

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"Overheld" means you continued to be held in Youth Segregation even after you were no longer an immediate threat to property or a person, or after there was a less restrictive method available to restrain your behaviour. But if you continued to be held in Youth Segregation only because you fell asleep, and you were removed once you woke up, you were not "Overheld".

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If you need more space, please attach extra pages to continue.

**Class Action Settlement Claims Process**

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**CLAIM 2**

- a) What Youth Justice Facility were you in when you were placed in Youth Segregation?

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- b) What days/month/year were you placed in Youth Segregation there? Please explain to the best you can remember or were told.

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- c) Were you placed in Youth Segregation for more than 6 consecutive hours? (If no, then you will not be compensated for this claim) Please explain to the best you can remember or were told.



**Class Action Settlement Claims Process**

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- d) How long did this placement in Youth Segregation last? Please explain to the best you can remember or were told.

- e) Why were you placed in Youth Segregation? Please explain to the best you can remember or were told.

- f) Do you think you were "Overheld" in Youth Segregation? Please explain to the best you can remember or were told.

**Class Action Settlement Claims Process**

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"Overheld" means you continued to be held in Youth Segregation even after you were no longer an immediate threat to property or a person, or after there was a less restrictive method available to restrain your behaviour. But if you continued to be held in Youth Segregation only because you fell asleep, and you were removed once you woke up, you were not "Overheld".

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If you need more space, please attach extra pages to continue.

**Class Action Settlement Claims Process**

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*CLAIM 3*

- a) What Youth Justice Facility were you in when you were placed in Youth Segregation?

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- b) What days/month/year were you placed in Youth Segregation there? Please explain to the best you can remember or were told.

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- c) Were you placed in Youth Segregation for more than 6 consecutive hours? (If no, then you will not be compensated for this claim) Please explain to the best you can remember or were told.

**Class Action Settlement Claims Process**

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- d) How long did this placement in Youth Segregation last? Please explain to the best you can remember or were told.

- e) Why were you placed in Youth Segregation? Please explain to the best you can remember or were told.

- f) Do you think you were "Overheld" in Youth Segregation? Please explain to the best you can remember or were told.

**Class Action Settlement Claims Process**

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"Overheld" means you continued to be held in Youth Segregation even after you were no longer an immediate threat to property or a person, or after there was a less restrictive method available to restrain your behaviour. But if you continued to be held in Youth Segregation only because you fell asleep, and you were removed once you woke up, you were not "Overheld".

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If you need more space, please attach extra pages to continue.

**Please go to the next page.**



**Class Action Settlement Claims Process**

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## **PART 4**

### **Solemn Oath / Affirmation:**

**You must swear/affirm that the information you provided above (and attached on another page if used) is true and that you have set out your recollection to the best of your ability.**

It is against the law to swear an oath or affirm something that is not true to the best of your knowledge or recollection.

**"I solemnly swear/affirm that this information is true."**

Today's date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

**Class Action Settlement Claims Process**

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**\*\*\* You do NOT need your Youth Records in order to make a claim in this claims process. Once you submit a claim and consent to the confidential release of your Youth Records to the Claims Administrator, your Youth Records will be consulted to decide your claim. \*\*\***

**Please go to the next page.**



## **PART 5**

### **Consent to release of your Youth Records**

#### CONSENT

I, \_\_\_\_\_ (print name), as the young person to whom the Youth Records relate, authorize agents for Her Majesty the Queen in right of Ontario ("HMQ") to access and provide to the Claims Administrator a copy of my Youth Records that may be relevant to my claim(s) submitted in this settlement claims process, including but not limited to the relevant Secure Isolation or Secure De-escalation log ("SI Log").

In providing this free and informed consent, I understand the following:

Some or all of the relevant information in my Youth Records is subject to the *Youth Criminal Justice Act* and may require an order from the Youth Justice Court, for which this consent will be used.

My Youth Records are in the custody and control of HMQ.



**Class Action Settlement Claims Process**

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I, as the claimant, request that HMQ access and provide to the Claims Administrator a copy of my Youth Records that may be relevant to my claim.

HMQ, as the custodian of my Youth Records, agrees to my request that HMQ access and provide to the Claims Administrator a copy of my Youth Records that may be relevant to my claim.

All information in my Youth Records that is accessed and provided to the Claims Administrator as part of my claim will remain strictly confidential and be used only for the purposes of the claims process. No information will be made public, including information protected by s. 118 of the *Youth Criminal Justice Act*.

The persons to whom access to my Youth Records will be given and those receiving information about the content of the Youth Records have a valid and substantial interest in the Youth Records.

It is desirable and necessary that my Youth Records be made available, in the manner described, in the interest of the proper administration of justice.

Disclosure of my Youth Records as a whole or in part is not prohibited under any other Act of Parliament or of the Legislature of the Province of Ontario.

**Class Action Settlement Claims Process**

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My Youth Records are to be disclosed and copied for the purpose only of my claim(s) submitted as part of the settlement claims process.

I understand that I can refuse to sign this Consent form if I want, but that I cannot submit a claim in this settlement claims process if I do not sign this Consent form.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Go to **End of Form** if you  
filled in this form by yourself.

**Class Action Settlement Claims Process**

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**Only answer these questions if you filled in this form for someone else who was placed in Youth Segregation, or for their estate.**

What is your name? \_\_\_\_\_

What is your address? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What is your telephone **or** TTY number?

\_\_\_\_\_

What is your email address? \_\_\_\_\_

**Class Action Settlement Claims Process**

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What is your relationship with the individual who was placed in Youth Segregation for whom you are making a claim?

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What is the basis of your authority to make a claim on behalf of the individual who was placed in Youth Segregation? Attach copies of any documents setting out this authority.

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## **End of Form**

You must send in the Claim Form, the Consent included in it, and your Identity Document to the Claim Administrator. These documents must be received by the Claim Administrator by the deadline which is **XXX date**.

You may send the Claim Form and all required documents by email, fax or regular mail to:

**Mail:** **XXX**

**Email:** **XXX**

**Fax:** **XXX**

**Class Action Settlement Claims Process**

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**If your completed Claim Form and required documents are not received by the Claims Administrator by **XXX date**, you will not get any compensation.**

Keep a copy of everything you send.

For regular mail, write down the date you put the form in the mailbox. Keep that date with your copy.

For fax, keep the confirmation sheet that shows the date you sent the fax.

For email, keep the email. It has the date on it.

Do **not** send the form to the Court.

AMENDED THIS Jan 4/19 PURSUANT TO  
 MODIFIÉ CE CONFORMÉMENT À  
☒ RULE/LA RÈGLE 26.02  
☒ THE ORDER OF Pereira J.  
 L'ORDONNANCE DU 17/18  
 DATED / FAIT LE 17/18

Court File No.: CV-16-543895-00CP

REGISTRAR  
 SUPERIOR COURT OF JUSTICE  
 GREFFIER  
 COUR SUPÉRIEURE DE JUSTICE

ONTARIO  
 SUPERIOR COURT OF JUSTICE

C.S.

Plaintiff

- and -

HER MAJESTY THE QUEEN  
 IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992***SECOND FRESH AS AMENDED 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 \$20,000 for 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 \$400.00 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.

Sylvia Slaunwhite

Date: November <sup>2<sup>nd</sup></sup> 4, 2015

Issued by \_\_\_\_\_

Local registrar

Address of court office 393 University Ave. 10<sup>th</sup> Floor  
Toronto, ON M5G 1E6

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO**  
Crown Law Office – Civil Law  
720 Bay Street  
8<sup>th</sup> Floor  
Toronto, ON M5G 2K1  
Tel: 416-325-8535  
Fax: 416-326-4181



**CLAIM**

## 1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as the representative Plaintiff;
- (b) a declaration that the Defendant breached its fiduciary duty to the Plaintiff and the Class through the establishment, funding, operation, management, administration, supervision and/or control of Youth Justice Facilities (defined below);
- (c) a declaration that the Defendant is liable to the Plaintiff and the Class for the damages caused by its breach of its common law duty in relation to the establishment, funding, operation, management, administration, supervision and/or control of the Youth Justice Facilities;
- (d) a declaration that the Defendant has violated the Plaintiff's and Class members' rights under sections 7, 9 and/or 12 of the *Canadian Charter of Rights and Freedoms*;
- (e) a declaration that the practices and/or failures of the Defendant in the care and custody of the Plaintiff and Class members constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the *Canadian Charter of Rights and Freedoms*;
- (f) damages or such other remedy as the Court may consider just and appropriate pursuant to section 24 of the *Canadian Charter of Rights and Freedoms*;
- (g) damages for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (h) punitive damages in the amount of \$25 million;
- (i) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- (j) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
- (k) the costs of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
- (l) such further and other relief as this Honourable Court may deem just.

## OVERVIEW

2. Under the watch of the Province of Ontario, children are regularly subjected to lengthy periods of solitary confinement. This practice constitutes cruel, degrading and inhuman punishment and is wholly inappropriate for children in all circumstances.

3. This solitary confinement (or as it is euphemistically referred to by the Crown, 'Secure Isolation' or 'Secure De-Escalation') currently takes place in Ontario's Youth Justice Facilities (further defined below) while children are under the Crown's exclusive control and care.

4. Throughout the history of the operation of the Youth Justice Facilities, those caring for children have treated them with utter disregard and indifference.

5. The Defendant's legislated mandate is to rehabilitate, rather than punish, the children under its care in the Youth Justice Facilities. The Crown's policies and practices with regards to the use of solitary confinement cause it to fail in this mandate and are contrary to its duty to promote the reasonable well-being of children.

## THE PARTIES

6. The Plaintiff, C.S. is a resident of Ontario. While C.S. was under the age of 18, he was incarcerated at Roy McMurtry Youth Centre and Brookside Youth Centre, Youth Justice Facilities operated by the Defendant. While incarcerated, C.S. was subject to lengthy periods of solitary confinement on a regular basis. As a result of his time in solitary confinement, C.S. has sustained psychological and physical harm.

7. The Defendant, Her Majesty the Queen in right of the Province of Ontario (the “**Crown**”) is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27.

8. The Crown, through and with its agents, servants and employees, was at all material times responsible for the operation, funding and supervision of the Facilities pursuant to Canadian *Youth Criminal Justice Act*, S.C. 2002 c. 1, the Ontario *Child and Family Services Act*, R.S.O. 1990, c. C. 11 and the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1. The Ministry of Children, Community and Social Services, formerly the Ministry of Children and Youth Services, (the “**Youth Ministry**”) is solely responsible for the care of the children living or incarcerated in the Youth Justice Facilities.

9. The below institutions shall be referred to collectively as the “**Youth Justice Facilities**”:

- (a) Bluewater Youth Centre
- (b) Brookside Youth Centre
- (c) Cecil Facer Youth Centre
- (d) Donald Doucet Youth Centre
- (e) Invictus Youth Centre
- (f) Justice Ronald Lester Youth Centre
- (g) Roy McMurtry Youth Centre
- (h) Sprucedale Youth Centre
- (i) Toronto Youth Assessment Centre

10. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons, who, while under the age of 18, were, between April 1, 2004 and December 17, 2018, placed in Youth Segregation at the Youth Justice Facilities.

**"Youth Segregation"** means the segregation at a Youth Justice Facility of a person under the age of 18 alone in a designated room or area for more than 6 consecutive hours without any meaningful human contact.

**"Youth Segregation"** does not include:

- (a) Segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) The routine locking of a youth in their rooms overnight at Youth Justice Facilities, as authorized by statute.

### **MISTREATMENT OF CHILDREN – SOLITARY CONFINEMENT**

11. Solitary confinement is the practice of locking a person in a specially designated room or cell to isolate him or her from others for an extended period of time.

12. Substantial health problems develop when a person is subjected to solitary confinement, including anxiety, depression, anger, worsening of pre-existing medical conditions, lethargy, insomnia, palpitations, anorexia, increased risk of self-harm and suicide, as well as harmful and permanent changes in brain activity.

13. There are unique issues with regards to solitary confinement for young people. Time passes more slowly for children, and solitary confinement impacts brain structure, development and long-term function. Children are more vulnerable than adults causing greatly exaggerated negative impacts from solitary confinement.

14. International organizations such as Human Rights Watch, the World Health Organization and the United Nations have issued strong condemnation of the use of solitary confinement on juveniles. For example, Rule 67 of the 1990 United Nations *Rules for the Protection of Juveniles Deprived of Their Liberty* expressly states:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated as recently as 2011:

With respect to young people, 'the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates Article 7 of the *International Covenant on Civil and Political Rights* and article 16 of the *Convention Against Torture*.

## STATUTORY 'AUTHORITY' UNDER THE ACTS

15. Under the Ontario *Child and Family Services Act*, R.S.O. 1990, c. C. 11 (the "CFSA") and the *Child, Youth and Family Services Act, 2017* S.O. 2017, c. 14 (The "CYFSA"), and their regulations, solitary confinement is only to be employed in the Youth Justice Facilities in circumstances where a child's conduct indicates that he or she is likely in the immediate future to cause serious property damage or serious bodily harm to another person. It can only be used when no less restrictive method of restraining the child is practicable. Once the crisis has subsided, the child must be immediately removed from solitary confinement. All children placed in solitary confinement must be released within one hour unless the person in charge of the Youth Justice Facility approves a longer length of stay in writing and records the reasons for not restraining the child by a less restrictive method.

16. Under the CFSA, depending on whether the child is under 16 years of age, or over 16 years old, different rules apply regarding maximum time periods spent in secure isolation. Children under 16 cannot be held in secure isolation for more than eight hours in one day or 24 hours in any week. Children over 16 years old can only be held in solitary confinement continuously for up to 72 hours (three days), however, a provincial director may approve a longer period in solitary confinement.

17. Similarly to the CFSA, the CYFSA outlines certain procedures and exceptions to the use of 'secure de-escalation'. Significant discretion is afforded to the agents of the Crown in deciding whether to hold a child in solitary confinement, or to release that child from solitary confinement.

18. Children must be advised of their right of access to the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement.

19. In practice, the Crown and its agents regularly breached the CFSA, and continue to breach the CYFSA and their regulations. The Crown and its agents' breaches include the following:

- (a) keeping children in solitary confinement long after a 'crisis' has passed;
- (b) placing children in solitary confinement when there is no threat to others or property;
- (c) in the case of children under 16, regularly holding them in isolation for longer than 8 hours a day or 24 hours per week;
- (d) not advising children of their rights to contact the Provincial Advocate for Children and Youth or a lawyer when they are placed in solitary confinement;
- (e) denying children access to the Provincial Advocate for Children and Youth or a lawyer when they request it;
- (f) in the case of children over 16, regularly holding them in solitary confinement for more than 72 hours in breach of the CFSA and 24 hours a day or more than 24 hours in a week in breach of the CYFSA without regional/provincial director approval;
- (g) applying their discretion improperly in determining the length of a child's stay in solitary confinement; and,
- (h) in the case of the provincial director, applying improper discretion in approving stays of over 72 hours for children over 16 under the CFSA (and 24 hours per day and/or up to 24 hours in a week under the CYFSA).

20. Throughout the class period, the staff and administrators at Youth Justice Facilities treated the Class Members with contempt, prejudice and indifference. They subjected the Class Members to extended periods of unlawful solitary confinement, ignoring the significant negative impacts that such conditions would have on them. These failures were caused exclusively by the failures of the Defendant including the failure to create,

implement and approve adequate policies to protect Class Members and the failure to oversee and inspect the Youth Justice Facilities.

21. The exposure of children to solitary confinement for any period beyond six hours, in all circumstances, is unacceptable, inappropriate and actionable. The policies of the Crown in this regard, and/or the lack thereof, are improper and any carrying out of such policies does not constitute an acceptable exercise of discretion by the Crown.

## KNOWLEDGE OF THE CROWN

22. The Crown knew or ought to have known of the extensive and improper use of cruel, inhuman and degrading punishments, such as the use of extended periods of solitary confinement on children at the Youth Justice Facilities.

23. In 2012, the Ontario Auditor General released a report highlighting that in many of the Youth Justice Facilities, solitary confinement was being improperly used. Specifically, solitary confinement was being used more often, and for longer periods, in some of the Youth Justice Facilities than in others. Recognizing that solitary confinement was being employed improperly and recklessly, the Auditor General recommended that the Ministry of Children and Youth Services:

...identify behaviour management techniques other than secure isolation that have been used successfully by agency-operated facilities to prevent or manage undesirable behaviour...

24. In 2013, the Ontario Provincial Advocate for Children and Youth released a report entitled "*It Depends Who's Working. The Youth Reality at the Roy McMurtry Youth Centre*" in which concerns were raised about:

- (a) "quiet and calm" youth were not being released from solitary confinement per Act requirements;
- (b) staff were not properly exploring alternatives to solitary confinement;
- (c) solitary confinement being used as a consequence of poor behaviour;

- (d) the majority of youth were refused contact with the Provincial Advocate for Children and Youth's Office, contrary to the CYSA, after being subjected to solitary confinement;
- (e) the majority of youth were not advised of their rights to contact the Provincial Advocate for Children and Youth's office, after being subjected to solitary confinement; and,
- (f) youth complained of lack of food, unsanitary cells and improper withholding of items that would facilitate the practice of religion while being held in solitary confinement.

25. In 2015, the Ontario Advocate for Children and Youth released a report titled *It's A Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities*. In it, many concerns about the use of solitary confinement at the Youth Justice Facilities were raised. For example, the report stated:

...it is recognized that young people's brains continue to develop into their mid-twenties. Indeed, the protections of a youth criminal justice system reflect an international acceptance of the immature brain of the adolescent. Considered a critical time period for mental health, adolescence is a stage marked by vulnerability. Substantial evidence from the research on the use of secure isolation with adults documents the harmful effects of prolonged isolation.... the use of secure isolation with adolescents presents considerable risk. Such an intrusive and risky intervention must only be used with heightened safeguards...

26. Despite the above reports' findings and recommendations, the Crown has continued to use solitary confinement in an inappropriate and unreasonable manner, with an absence of adequate policies and/or oversight to control its use.

#### **THE CROWN'S FIDUCIARY DUTY**

27. All children who resided or were incarcerated at the Youth Justice Facilities were under the authority and care of the Crown, with the Crown as their guardian, and were persons to whom the Crown owed fiduciary duties. These duties included, but were not limited to, the duty to ensure the safety and reasonable care of Class Members, the duty to protect Class Members from harm while residing or incarcerated at Youth Justice Facilities



and the duty to protect the Class from intentional torts perpetrated on them while at the Youth Justice Facilities.

28. Class Members had a reasonable expectation that the Crown would act in their best interests with respect to their care and in the operation of the Youth Justice Facilities by virtue of the following:

- (a) the involvement of the Crown in establishing, operating and overseeing the Youth Justice Facilities;
- (b) the long standing dependence of Class Members on the Crown;
- (c) the fact that the Class Members were children;
- (d) the fact that the Youth Justice Facilities' environments were themselves further disabling to Class Members, physically, emotionally and psychologically; and,
- (e) the vulnerabilities of many Class Members as many of them suffer from psychological and psychiatric disabilities and illnesses of varying degrees.

29. At all material times, the children who resided and/or were incarcerated at the Youth Justice Facilities were entirely and exclusively within the power and control of the Crown and were subject to the unilateral exercise of the Crown's power or discretion. By virtue of the relationship between these children and the Crown, being one of trust, reliance and dependence by the Class Members, the Crown owed a fiduciary duty to ensure that children were treated respectfully, fairly, safely and in all ways consistent with the obligations of a party standing *in loco parentis* to an individual under their care or control.

30. As result of its sole jurisdiction over the operation and oversight of the Youth Justice Facilities , the Crown owed a fiduciary duty to the Class Members which includes, but is not limited to the duty to exercise its unilateral discretion properly and effectively and in the best interests of the children, taking into consideration the Class Members' vulnerability and the Crown's relative position of power, trust and control in the relationship.

## THE CROWN BREACHED ITS FIDUCIARY DUTY TO THE CLASS

31. The Crown operated or caused to be operated the Youth Justice Facilities whose residents, including the Plaintiff and the other Class Members, were regularly subjected to cruel, inhuman and degrading punishment in the form of solitary confinement. The Crown knew of, or was wilfully blind to, the use of solitary confinement and the negative impacts this practice would have on Class Members.

32. The Class Members were entitled to rely and did rely upon the Crown, to their detriment, to fulfill its fiduciary duty. The particulars of the Crown's breach of its fiduciary duty include, but are not limited to:

- (a) failing to take a proper and good faith interest in the operation and supervision of the Youth Justice Facilities, despite its quasi-parental, or *in loco parentis*, role in respect of the children under its responsibility;
- (b) using of solitary confinement for extended periods on the Class Members;
- (c) failing to ensure that physical, emotional and psychological harm would not befall the Class Members;
- (d) failing to protect Class Members from persons, things or acts that would endanger or be injurious to their health and well-being;
- (e) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;
- (f) failing to properly supervise the Youth Justice Facilities, including their administration and activities;
- (g) failing to properly, effectively and in good faith supervise the Youth Justice Facilities and the conduct of its employees and agents to ensure that Class Members would not suffer harm;
- (h) failing to provide proper and reasonable treatment for Class Members after being subjected to solitary confinement;

- (i) failing to provide a safe environment, and in particular, one free from physical, emotional and psychological harm;
- (j) failing to provide adequate financial resources or support to properly care and provide for Class Members;
- (k) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Youth Justice Facilities with regards to the use of solitary confinement on children; and,
- (l) failing to safeguard the psychological, physical and emotional needs of the Class.

33. The Class Members suffered damages as a result of the above-noted breaches, the particulars of which are set out in paragraphs 45 to 53, below.

#### **THE CROWN'S DUTY OF CARE**

34. The Crown created, planned, established, set up, initiated, operated, controlled, oversaw and/or regulated the Youth Justice Facilities during the class period.

35. Amongst other things, the Crown was solely responsible for:

- (a) the management, operation and administration of the Ministry during the class period;
- (b) the administration of the CFSA, the CYFSA as well as any other statutes relating to youth justice facilities and all regulations promulgated under these statutes during the class period;
- (c) the promotion of the health, safety and well-being of Class Members during the class period;
- (d) properly and effectively supervising the Youth Justice Facilities and the conduct of its agents and employees to ensure that Class Members would not suffer unreasonable harm;

- (e) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, its employees, servants, officers and agents and its predecessors during the class period;
- (f) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, oversight and/or auditing of the Youth Justice Facilities during the class period;
- (g) the care and supervision of all members of the Class while they resided at or were incarcerated in the Youth Justice Facilities during the class period and for the supply of all the necessities of life to Class Members, *in loco parentis*, during the class period; and,
- (h) inspection and supervision of the Youth Justice Facilities and all activities that took place therein during the class period.

36. The Crown owed a common law duty to the Class Members as a result of its relationship of proximity. The harm and damages suffered by the Class Members were reasonably foreseeable as a result of the Crown's acts and omissions, constituting a breach of the common law duty.

#### **THE CROWN'S NEGLIGENCE**

37. The Crown breached its duty of care to Class Members in its establishment, operation, regulation, financing, supervision and/or control of the Youth Justice Facilities.

38. The Crown breached its common law duties to the Class through its negligent failure to properly supervise the operations and staff of the Youth Justice Facilities. Furthermore, in many circumstances, the policies themselves do not constitute a *bona fide* operation of discretion and are grossly unreasonable and negligent under the circumstances.

39. In particular, the Crown acted negligently by:

- (a) subjecting Class Members to solitary confinement;

- (b) failing to ensure that Class Members have access to a lawyer and/or the Provincial Advocate for Children and Youth once placed in solitary confinement;
- (c) failing to recognize that extended periods in solitary confinement constitute cruel, degrading or inhuman punishment;
- (d) failing to ensure that Class Members are removed from solitary confinement in a timely fashion in order to avoid permanent injury;
- (e) allowing for the over-reliance on solitary confinement as a deterrent within the Youth Justice Facilities;
- (f) failing to investigate or report ongoing harm suffered by Class Members;
- (g) failing to set or implement standards of conduct for its employees and agents to ensure that no employee or agent would endanger the health or well-being of any Class Member;
- (h) failing to implement adequate policies for recognizing and reporting potential harm to Class Members via use of solitary confinement;
- (i) failing to adequately supervise the Youth Justice Facilities, including their administration and activities;
- (j) failing to provide policies or frameworks by which discretion can be properly exercised to adequately, properly and effectively supervise the conduct of its employees, representatives and agents to ensure that the Class Members would not suffer unreasonable harm;
- (k) failing to use reasonable care to ensure the safety, well-being and protection of Class Members;
- (l) failing to properly exercise discretion in determining an appropriate length of time for Class Members to spend in solitary confinement;

- (m) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Youth Justice Facilities and their use of solitary confinement;
- (n) failing to provide proper and reasonable medical and/or psychological/psychiatric treatment for Class Members after learning of their exposure to solitary confinement;
- (o) failing to ensure that Class Members' religious practices and rights during incarceration in solitary confinement are respected; and,
- (p) permitting unhealthy and inappropriate punishments to be perpetrated against the Class.

40. The Class Members suffered damages as a result of the Crown's negligence, the particulars of which are set out in paragraphs 46 to 51, below.

#### **BREACHES OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS**

41. The conditions particularized above violate the basic human rights of the Class Members and, as such, constitute a violation of their rights under Sections 7, 9 and 12 of the *Charter of Rights and Freedoms* ("*Charter*").

42. The Plaintiff states that the conditions at the Youth Justice Facilities during the class period violate the rights of class ~~Plaintiffs~~ members to be held in custody in a humane and safe facility and, as such, constitute cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Charter*. Further, the conditions at the Youth Justice Facilities and the conduct of the Defendant violate the right of the Class to life, liberty and security of the person, contrary to section 7.

43. The Plaintiff states that the over-reliance on solitary confinement constitutes arbitrary restraint or detention and as such constitutes a breach of Section 9 of the *Charter*.

44. The Plaintiff pleads that the Class is entitled to damages pursuant to Section 24(1) of the *Charter*.

## DAMAGES SUFFERED BY THE CLASS

45. The Plaintiff's claim, and the claim of each Class Member, is limited to the amount of the Plaintiff's or other Class Member's damages that would be apportioned to the Defendant in accordance with the relative degree of fault that is attributable to the Defendant. The Plaintiff's claim is against the Defendant for those damages that are attributable to its proportionate degree of fault, and he does not seek, on his own behalf or on behalf of the Class, any damages that are found to be attributable to the fault or negligence of any other person, or for which the Defendant could claim contribution or indemnity. For greater certainty, without limiting the foregoing, and notwithstanding paras 50 and 54, the Plaintiff does not seek, on his own behalf or on behalf of the Class, any damages for which the Crown is vicariously liable as a result of harms perpetrated on residents in the Youth Justice Facilities that are operated by Third Parties and their agents and employees, whether or not acting within the authority granted to them by the Crown, for which the Crown could claim contribution or indemnity.

46. The Crown knew, or ought to have known, that as a consequence of its operation, care and/or control of the Youth Justice Facilities in breach of its fiduciary duty, in a negligent manner and in a manner that infringed upon the Class's *Charter* rights, the Class would suffer immediate and long-term physical, mental, emotional, psychological and spiritual harm.

47. Members of the Class were traumatized by their experiences arising from their attendance and residence at the Youth Justice Facilities.. As a result of the Crown's breach of its fiduciary duty and its negligence, the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) impaired mental development;
- (d) impaired ability to participate in normal family affairs and relationships;

- (e) alienation from family members;
- (f) depression, anxiety, emotional distress and mental anguish;
- (g) development of new mental, psychological and/or psychiatric disorders;
- (h) pain and suffering;
- (i) a loss of self-esteem and feelings of humiliation and degradation;
- (j) an impaired ability to obtain employment, resulting either in lost or reduced income and ongoing loss of income;
- (k) an impaired ability to deal with persons in positions of authority;
- (l) an impaired ability to trust other individuals or sustain relationships;
- (m) a requirement for medical or psychological treatment and counselling;
- (n) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (o) loss of friendship and companionship; and,
- (p) the loss of general enjoyment of life.

48. As a result of these injuries, the Class Members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. Class Members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of the Crown's conduct for which they claim complete indemnity, compensation and payment from the Crown for such services.

49. The Plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that Class Members were being physically, emotionally and psychologically abused but permitted the abuse to occur. Further, the Crown is strictly liable in tort for the damages enumerated herein as the Crown was aware that its operation,



management and control of the Youth Justice Facilities was in breach of all parental standards and in breach of the duties it owed to the Class Members.

50. Further, by virtue of its quasi-parental, or *in loco parentis*, responsibility for the safety, care and control of residents, the Crown is vicariously liable for the harms perpetrated upon residents by its employees, representatives and agents.

### **PUNITIVE/AGGRAVATED DAMAGES**

51. The high-handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Crown breached its fiduciary duty and duty of good faith owed to children incarcerated in the Youth Justice Facilities.

52. Over a period of years, the Plaintiff and the other Class Members were treated in a manner that could only result in significant mental and emotional impacts for vulnerable children. The cruel, inhuman and degrading punishments to which the Class Members were exposed have violated their rights and altered the paths of their lives.

53. In these circumstances, the Plaintiff and the other Class Members request aggravated or punitive damages.

### ***LIMITATIONS ACT, 2002***

54. The Plaintiff pleads and relies on s. 16(1)(h.2) of the *Limitations Act, 2002* on his own behalf and on behalf of the Class because the conduct described above constitutes assault by Crown agents while Class Members were minors, the Crown had charge of Class Members, the Crown was in a position of trust or authority in relation to Class Members, and Class Members were financially, emotionally, physically or otherwise dependent on the Crown. In the alternative, the Plaintiff pleads that every instance of the use of solitary confinement on Class Members by Crown agents constitutes the tort of assault.

### **PLACE OF TRIAL**

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

November 4, 2015

**Koskie Minsky LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert LSUC#: 30942Q**

Tel: 416-595-2092

Fax: 416-204-2889

**James Sayce LSUC#: 58730M**

Tel: 416-542-6298

Fax: 416-204-2809

**Strosberg Sasso Sutts LLP**

600-251 Goyeau St.

Windsor, ON N9A 6V4

**Jay Strosberg LSUC#: 47288F**

Tel: 519-561-6203

Fax: 519-561-6203

**Patricia Speight LSUC#: 26380C**

Tel: 519.561.6213

Fax: 519.561.2475

Lawyers for the Plaintiff

**SCHEDULE "A"**

1. Bluewater Youth Centre
2. Brookside Youth Centre
3. Cecil Facer Youth Centre
4. Donald Doucet Youth Centre
5. Invictus Youth Centre
6. Justice Ronald Lester Youth Centre
7. Roy McMurtry Youth Centre
8. Sprucedale Youth Centre
9. Toronto Youth Assessment Centre

C.S.  
Plaintiff

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF ONTARIO  
Defendant

Court File No.: CV-16-543895-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceedings under the *Class Proceedings Act*, 1992

**SECOND FRESH AS AMENDED**  
**STATEMENT OF CLAIM**

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

**Kirk Baert LSUC#: 309420**  
Tel: 416.595.2092/ Fax: 416.204.2889  
**James Sayce LSUC#: 58730M**  
Tel: 416.542.6298/ Fax: 416.204.2809

**SUTTS, STROSBURG LLP**  
600-251 Goyeau Street  
Windsor, ON N9A 6V4

**Jay Strosberg LSUC#: 47288F**  
Tel: 519.561.6285/ Fax: 519.561.6203  
**Patricia Speight LSUC#: 26380C**  
Tel: 519.561.6213/ Fax: 519.561.2475

Lawyers for the Plaintiff

***THIS IS EXHIBIT “E” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
IN THE TOWN OF PORT PERRY, IN THE PROVINCE OF ONTARIO, THIS  
23<sup>RD</sup> DAY OF AUGUST, 2021.***

A handwritten signature in blue ink, appearing to be 'ma', is written above a horizontal line.

***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

## NOTICE PLAN

Publication	Unit Type/Size
Globe & Mail	¼ Page
National Post	¼ Page
Toronto Star	¼ Page
Ottawa Citizen	¼ Page
The Windsor Star	¼ Page
The Hamilton Spectator	¼ Page
London Free Press	¼ Page
Kingston Whig-Standard	¼ Page
The Chronicle-Journal	¼ Page
Belleville Intelligencer	¼ Page
Kingston Heritage	¼ Page
Napanee Guide	¼ Page
Northumberland Today.com-TH	¼ Page
Quinte Community Newspaper Group	¼ Page
Brampton Guardian-TH	¼ Page
Burlington Post/Flamborough Review	¼ Page
Caledon Citizen	¼ Page
Cambridge Times-TH	¼ Page
Georgetown/Acton Ind. Free Press	¼ Page
Glanbrook Gazette	¼ Page
Grimsby/Lincoln/West Lincoln NewsNow	¼ Page
Guelph Tribune-TH	¼ Page

Hamilton Community News	¼ Page
King Weekly Sentinel	¼ Page
Kitchener Post	¼ Page
Markham Economist & Sun	¼ Page
Milton Canadian Champion	¼ Page
Mississauga News-TH	¼ Page
Oakville Beaver-TH	¼ Page
Richmond Hill/Thornhill Liberal	¼ Page
Toronto, All Metroland Publications	¼ Page
Vaughan Citizen	¼ Page
Alexandria Glengarry News	¼ Page
Armprior Chronicle-Guide	¼ Page
Carleton Place/Almonte Canadian Gazette	¼ Page
Chesterville Record	¼ Page
Kanata Kourier-Standard	¼ Page
Kemptville Advance	¼ Page
Manotick News	¼ Page
Nepean/Barrhaven News	¼ Page
Orleans News	¼ Page
Ottawa East News	¼ Page
Ottawa South News	¼ Page
Ottawa West News	¼ Page
QC Aylmer Bulletin d'Aylmer	¼ Page
QC Chelsea/Buckingham	¼ Page
West Quebec Post	¼ Page
Smith Falls Record News	¼ Page

Stittsville News	¼ Page
West Carleton Review	¼ Page
Winchester Press	¼ Page
Ayr News	¼ Page
Brantford	¼ Page
Brant News	¼ Page
Exeter Times-Advocate Weekender	¼ Page
Forest/Watford Standard Guide-Advocate	¼ Page
Ingersoll Times	¼ Page
London, the Londoner	¼ Page
Norwich Gazette	¼ Page
Parkhill/Glencoe Gazette Transcript & Free Press	¼ Page
St Mary's Journal Argus Weekender	¼ Page
St. Thomas/Elgin Weekly News	¼ Page
Strathroy Age Dispatch	¼ Page
Tavistock Gazette	¼ Page
Tillsonburg Independent News	¼ Page
West Lorne West Elgin Chronicle	¼ Page

### **Press Release**

North American distribution of an English and French press release via the CNW Newswire. 400 words in English and in French

### **Stakeholders**

Provision of the Short Form and Long Form Notice to John Howard Society, Elizabeth Fry Society, and Office of the Public Guardian and Trustee.



***THIS IS EXHIBIT “F” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
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23<sup>RD</sup> DAY OF AUGUST, 2021.***



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***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

**LONG FORM NOTICE**

A SETTLEMENT HAS BEEN REACHED THAT WILL BENEFIT THOSE WHO WERE HELD IN  
SECURE ISOLATION IN MANY ONTARIO YOUTH JUSTICE FACILITIES

**FOR MORE INFORMATION, VISIT [www.TBD.ca](http://www.TBD.ca)**

**YOU MAY ALSO CONTACT LAWYERS AT: 1-800-XXX-XXXX**

A settlement been reached with the Province of Ontario. This Settlement was reached following negotiations between the Province of Ontario and class action lawyers for the Class.

The Settlement must be approved by the Court to become effective.

If approved, the Province has agreed to offer money to compensate you if you were held in Youth Segregation for more than 6 consecutive hours. The amount of compensation you could receive will depend on how long you spent in Youth Segregation and the circumstances surrounding your placement.

Your rights and options—and the deadlines to exercise them—are explained in this Notice. Additional information is available at [www.TBD.ca](http://www.TBD.ca)

**PLEASE READ THIS NOTICE CAREFULLY.  
YOUR RIGHTS UNDER THE SETTLEMENT ARE AFFECTED EVEN IF YOU DO NOTHING.**

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

#### WHAT THIS NOTICE CONTAINS

#### CLASS ACTION QUESTIONS .....

A	What are my options in the Settlement? .....	1
B	What are the Class Actions about? .....	1
C	Why am I receiving this Notice? .....	1

#### CLASS MEMBERSHIP QUESTIONS .....

D	Am I included in the Settlement? .....	2
E	What benefits can I receive? .....	2
F	How much money can I get? .....	3
G	How can I make a claim in the Settlement? .....	3
H	What supporting documents will be needed to make a claim? .....	4

#### SETTLEMENT PROCESS QUESTIONS .....

I	If I am a Class Member, what rights am I giving up? .....	4
J	How can I express support for, or object to, the Settlement? .....	5
K	Can I attend the Settlement approval hearing? .....	6
L	Who is my lawyer / Class Counsel? .....	6
M	How will Class Counsel be paid? .....	6
N	How do I get more information? .....	7

## Ontario Youth Segregation Class Action

OFFICIAL COURT COMMUNICATION

### CLASS ACTION QUESTIONS

#### A. WHAT ARE MY OPTIONS IN THE SETTLEMENT?

If you think you are included in the Settlement, you have the following options:

<p><b>LEARN MORE ABOUT THE SETTLEMENT AND WHETHER YOU MAY BE ELIGIBLE</b></p>	<p><b>STEP 1:</b> Visit <a href="http://www.TBD.ca">www.TBD.ca</a>.</p> <p><b>STEP 2:</b> Determine whether you are included in the Settlement by contacting 1-800-xxx-xxxx.</p> <p><b>STEP 3:</b> Determine whether you may be eligible under the Settlement, and learn more about the estimated benefits that you may be eligible for by reviewing this notice and/or calling Class Counsel.</p>
<p><b>COURT APPROVAL OF THE SETTLEMENT</b></p>	<p>The Settlement is subject to approval by the Ontario Superior Court of Justice. The approval hearing has been scheduled for <b>October 14, 2021</b> before the Court. It will be heard on Zoom. The link for the hearing will be posted on <a href="#">[website]</a> when available. These hearings are public and you are welcome to attend at your own cost.</p>
<p><b>OBJECT TO THE SETTLEMENT BEFORE IT IS APPROVED</b></p>	<p>If you support the Settlement, you may provide your views in writing so they are received by the Notice Administrator by <b>October 7, 2021</b>. If you do not like the Settlement, you can deliver your objection in writing by the same date. Your support or objection will be delivered to the Court and considered at the approval hearing for the Settlement.</p>
<p><b>PARTICIPATE IN THE SETTLEMENT</b></p>	<p>If you wish to make a claim for benefits, you do not need to take any action at this time. The period to submit a claim will not begin until after the Settlement is approved by the Court. If approved, additional details will be provided regarding when and how claims can be submitted.</p>

#### B. WHAT IS THE CLASS ACTION ABOUT?

The class action seeks damages and other relief on behalf of those who, while under the age of 18, were held in a Youth Justice Facility and were isolated for longer than 6 consecutive hours.

This class action is known as: *C.S. v. Ontario* before the Ontario Superior Court of Justice.

#### C. WHY AM I RECEIVING THIS NOTICE?

This Notice summarizes the Settlement, which affects your legal rights if you are a Class Member. Receipt of this Notice does not mean that you are a Class Member.

If you are a Class Member, this Notice informs you of your legal rights and options. These options include participating in the Settlement and, if you wish, supporting or objecting to the Settlement. You can also attend the upcoming public hearing before the Court, which will determine whether the Settlement should be approved.

**Ontario Youth Segregation Class Action**

OFFICIAL COURT COMMUNICATION

**CLASS MEMBERSHIP QUESTIONS****D. AM I INCLUDED IN THE SETTLEMENT?**

You may be included in the Settlement if you were segregated at a Youth Justice Facility while under the age of 18, alone in a designated room or area, for more than 6 consecutive hours ("Youth Segregation").

You are not included if you experienced:

- (a) segregation by reason of a lock-down at a Youth Justice Facility; and
- (b) the routine locking down of youth in their rooms overnight at a Youth Justice Facility, as authorized by statute.

The Youth Justice Facilities included in the Settlement are:

Bluewater Youth Centre  
Brookside Youth Centre  
Cecil Facer Youth Centre  
Donald Doucet Youth Centre  
Invictus Youth Centre  
Justice Ronald Lester Youth Centre  
Roy McMurtry Youth Centre  
Sprucedale Youth Centre  
Toronto Youth Assessment Centre

The period of time covered by this class action and the Settlement is April 1, 2004 to December 17, 2018.

You may only make a claim for compensation if you were isolated or segregated at one of the above facilities during the relevant time period.

**E. WHAT BENEFITS CAN I RECEIVE?**

If approved by the Court, the Settlement will provide Class Members with **money for time spent in Youth Segregation**.

You will need to make a claim after the Settlement is approved. You can make more than one claim if you were placed in Youth Segregation more than once.

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

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There are four categories of benefits:

“Category 1 Claim” applies when a Class Member alleges that he or she was placed in Youth Segregation for between 6 and up to 72 consecutive hours;

“Category 2 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for between 72 hours and 5 consecutive days;

“Category 3 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for between 6 and 14 consecutive days;

“Category 4 Claim” means an Eligible Claim in which the Claimant alleges that he or she was placed in Youth Segregation for 15 or more consecutive days;

#### **F. HOW MUCH MONEY CAN I GET?**

- 1) Category 1 Claimants are entitled to \$1000 per placement in Youth Segregation of between 6 and up to 72 hours.
- 2) Successful Category 2 Claims are entitled to \$5000 per placement in Youth Segregation between 72 hours and 5 consecutive days.
- 3) Successful Category 3 Claims are entitled to \$12,000 per placement in Youth Segregation between 6 and 14 consecutive days.
- 4) Successful Category 4 Claims are entitled to a minimum of \$35,000 and a maximum of \$40,000, for each placement of 15 consecutive days or more in Youth Segregation. The exact figure will depend on the number of claimants who make a claim.

#### **G. HOW CAN I MAKE A CLAIM IN THE SETTLEMENT?**

If you wish to make a claim for benefits under the Settlement, you do not need to take any action at this time. The period to submit a claim will not begin until after the Settlement is approved by the Court on October 14, 2021. If the Settlement is approved, notice and additional details will be provided regarding when claims can begin to be submitted and the steps you will need to take to make a claim. After the Settlement is approved, you will have 9 months to submit a claim.

If the Settlement is approved, the process for Class Members receiving their benefit(s) involves four steps:

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

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- 1) Class Members will obtain information about the options available to them through a website and through further notices and the Claim Form;
- 2) Once a Class Member is ready to submit a Claim, the Class Member will, by the claims submission deadline, submit a Claim Form to the Claims Administrator that contains certain information about the Class Member's time in Youth Segregation. The Claim Form shall require a Claimant to sign and declare that information submitted is true and correct based on knowledge and belief. A Consent included with the Claim Form will also need to be signed to allow for the Class Member's relevant Youth Records to be obtained.
- 3) The parties will obtain the Class Member's Youth Records that are relevant to their time spent in Youth Segregation. Permission must be provided to obtain a Court Order from a judge of the Youth Justice Court to retrieve the Youth Records.
- 4) The Class Member's eligibility or ineligibility to participate in the claims process will be determined by the Claims Administrator.
- 5) For Category 1 Claims, the Administrator will determine whether the Class Member was in Youth Segregation for more than 6 and up to 72 consecutive hours. If they satisfy this criteria, the Administrator will issue a damages payment to the Class Member.
- 6) For Category 2, Category 3 and Category 4 Claims, the Administrator will transfer the Class Member's Youth Records to a retired Superior Court of Justice judge, Mr. Casey Hill. Mr. Hill will review the events described in the Claimant's Claim Form and will also review the available Youth Records. Mr. Hill will determine whether the Class Member was appropriately placed in Youth Segregation due to immediate likelihood to cause serious property damage or to cause another person serious bodily harm, whether the Class Member was "overheld", or whether the Youth Records are inadequate to justify placement.

#### **H. WHAT SUPPORTING DOCUMENTS WILL BE NEEDED TO MAKE A CLAIM?**

To submit a claim for benefits under the Settlement (if approved by the Court), you will need to provide the following information and supporting documents:

- Identity Document – Valid driver's license or other government-issued photo identification;
- Claim Form – You will need to provide a written statement that describes the events surrounding your placement in Youth Segregation and the justification for your placement, as described to you at the time. You will also have to describe how long you were kept in Youth Segregation and how many times you were placed in Youth Segregation.
- Consent – You will need to read and sign the Consent included with the Claim Form to give permission for your relevant Youth Records to be obtained in relation to your Claim Form.

**SETTLEMENT PROCESS QUESTIONS****I. IF I AM A CLASS MEMBER, WHAT RIGHTS AM I GIVING UP?**

A settlement is an agreement to resolve legal claims, and usually involves compromises by both sides. Settlements end all or part of a lawsuit while allowing the parties to avoid the costs and risks of a trial. A settlement also allows the parties to avoid the very significant time delays of further litigation.

If the Settlement is approved by the Court, you will release the Province of Ontario from the Class Action claims. Releasing someone from a claim means giving up the right to sue them.

All Class Members are bound by a general release that will take effect whether they claim benefits or not. Class Members who wish to participate in the settlement program must make their claim before the claims submission deadline. After the Settlement is approved, you will have 9 months to submit a claim.

The above is only a summary of the general release and individual release. The Settlement Agreement sets out and describes these releases, so read them carefully. If you have any questions, you can talk to Class Counsel for free. You can also talk to your own lawyer, at your own expense, if you have questions about what this means. The Settlement Agreement is available at [www.TBD.ca](http://www.TBD.ca).

**J. HOW CAN I EXPRESS SUPPORT FOR, OR OBJECT TO, THE SETTLEMENT?**

You may also file a statement of support in favour of the Settlement if you wish to tell the Court that you support the terms of Settlement.

Before objecting, it is recommended that you [visit www.TBD.ca](http://www.TBD.ca) to get more information about the Settlement or talk to Class Counsel for free. You can also talk to your own lawyer at your own expense.

If you are a Class Member and have comments about, or disagree with, any aspect of the Settlement that applies to you, you may express your views to the Court by submitting a personally signed written document as provided below.

Your statement of support or objection should include:

- Your name, mailing address, telephone number and e-mail address (if applicable);
- Details about your placement in Youth Segregation, including when and in what institution this took place;
- A statement that you support or object to the Settlement;
- The reasons you support or object to the Settlement, along with any supporting materials;



## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

- Whether you intend to appear in person or through a lawyer at a Settlement approval hearing, and if appearing through a lawyer, the name, address, telephone number and e-mail address of your lawyer; and
- Your signature.

Your expression of support or objection must be received by no later than [redacted] at:

Mail or Courier to: [redacted]	E-Mail to: [redacted]
<b>DO NOT SEND OBJECTIONS DIRECTLY TO THE COURT</b>	

**Note: Objecting to the Settlement simply means telling the Court that you do not like something about the Settlement. Objecting does not disqualify you from making a claim nor does it make you ineligible to receive benefits under the Settlement.**

If you deliver a statement of support or objection to the Settlement, you do not have to come to Court to talk about it. As long as you submit your written statement of support or objection on time, the Court will receive it. Should you wish to speak at a hearing, you must indicate your wish to do so in your written objection. You can hire a lawyer to appear on your behalf at your own expense. As the Settlement is an agreement between the Plaintiff and the Province of Ontario, Class Counsel will not be advocating on behalf of objectors at the hearings.

### **K. CAN I ATTEND THE SETTLEMENT APPROVAL HEARINGS?**

Yes. Before determining whether to approve the Settlement, the Court will hold the following hearing:

- The Ontario Superior Court of Justice will hold a Settlement approval hearing on October 14, 2019 at 10:00 AM. The hearing will take place virtually, over Zoom. The link for the hearing will be posted on [redacted] when available.

The hearings may move to a different date or time. Visit [www.TBD.ca](http://www.TBD.ca) or call Class Counsel for current information.

At these hearings, the Court will consider whether the Settlement is fair, reasonable and in the best interests of the Class. Class Counsel will answer any questions the Court may have about the Settlement. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

You are welcome to attend the hearings at your own expense, but you are not required to attend.

## Ontario Youth Segregation Class Action

### OFFICIAL COURT COMMUNICATION

#### **L. WHO IS MY LAWYER / CLASS COUNSEL?**

The law firms representing all Class Members are listed below:

<b>Koskie Minsky LLP</b> 20 Queen St. West, Suite 900 Box 52 Toronto, ON M5H 3R3	<b>Strosberg Sasso Sutts</b> 1561 Ouellette Avenue Windsor, Ontario N8X 1K5
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You will not be charged for contacting these lawyers. Class Counsel can be reached by telephone at:

- Canadian residents except for Québec: 1-800-XXX-XXXX or 1-800-XXX-XXXX; and
- Québec residents and French inquiries: 1-800-XXX-XXXX

#### **M. HOW WILL CLASS COUNSEL BE PAID?**

C.S. and Class Counsel entered into a retainer agreement at the commencement of this litigation. As is the ordinary practice in Ontario class proceedings, Class Counsel is entitled to be paid a percentage of the settlement funds. No Class Member has to pay any money directly to Class Counsel in order to take part in the claims process.

The amount of money payable to Class Counsel will be the subject of a separate hearing and the Honourable Justice Perell will be required to approve Class Counsel's fee request.

#### **N. HOW DO I GET MORE INFORMATION?**

This Notice is only a summary of some of the terms of the Settlement. If there is a conflict between this Notice and the Settlement, the Settlement applies.

For more information about your legal rights under the Settlement, you may also consult Class Counsel at no charge by calling:

- 1-800-XXX-XXXX or 1-800-XXX-XXXX; and

In addition, information about the options Class Members may have, is available at [www.TBD.ca](http://www.TBD.ca).

***THIS IS EXHIBIT “G” REFERRED TO IN THE  
AFFIDAVIT OF CATHERINE MACDONALD SWORN BEFORE ME BY  
VIDEO-CONFERENCE IN ACCORDANCE WITH O. REG 431/20 DUE TO  
THE COVID-19 PANDEMIC AT THE MUNICIPALITY OF CLARINGTON, IN  
THE REGIONAL MUNICIPALITY OF DURHAM, THE DEPONENT BEING  
IN THE TOWN OF PORT PERRY, IN THE PROVINCE OF ONTARIO, THIS  
23<sup>RD</sup> DAY OF AUGUST, 2021.***



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***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.***

Michelle Nicole Alexander, a Commissioner, etc.,  
Province of Ontario, for Koskie Minsky LLP,  
Barristers and Solicitors.  
Expires August 28, 2023

## SHORT FORM NOTICE

*Were You Incarcerated in an Ontario Youth Justice Facility Between April 1, 2004 and December 17, 2018?*

*Were You Placed In Secure Isolation?*

### **You may be entitled to Money in a Class Action Settlement**

You are entitled to make a claim for damages if all of the items on the following list apply to you:

1. You were placed alone in a designated room or area at any one of more of the following Youth Justice Facilities: Bluewater Youth Centre; Brookside Youth Centre; Cecil Facer Youth Centre; Donald Doucet Youth Centre; Invictus Youth Centre; Justice Ronald Lester Youth Centre; Roy McMurtry Youth Centre; Sprucedale Youth Centre; Toronto Youth Assessment Centre;
2. Your placement alone in the designated room or area lasted at least 6 consecutive hours;
3. You were not released at the earliest possible time;
4. Your placement alone in the designated room or area took place when you were 17 years old or younger; and
5. Your placement alone in the designated room or area took place sometime between April 1, 2004 and December 17, 2018.

You could be entitled to between \$1000 and \$40,000 per placement, depending on the length of time and the circumstances surrounding your placement.

Please note that the following placement or placements alone in a designated room or area do not count towards the class definition and do not make you a Class Member:

1. Segregation by reason of a lock-down at a Youth Justice Facility; and
2. The routine locking in your room overnight at a Youth Justice Facility.

The Ontario Superior Court of Justice will decide whether to approve the settlement on October 14, 2021. It will be heard on Zoom. The link for the hearing will be posted on [\[website\]](#) when available. You may file an objection or a statement in support of the settlement.

To learn more about the settlement and how to make a statement in support or an objection, go to [\[website\]](#), call toll-free [\[number\]](#) (TTY: [\[number\]](#)) or write to [\[address\]](#), or by email at: [\[email\]](#).

C.S.                      Her Majesty the Queen in Right of Ontario  
Plaintiff              and              Defendant

Court File No.: CV-16-534895-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at TORONTO

**AFFIDAVIT OF CATHERINE MACDONALD**

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900  
Toronto ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca  
Tel: 416-542-6298

**SUTTS, STROSBURG LLP**  
1561 Ouellette Ave.  
Windsor, ON N8X 1K5

**Jay Strosberg** LSO#: 47288F  
jay@strosbergco.com  
**Patricia Speight** LSO#: 26380C  
pas@strosbergco.com  
**Scott Robinson** LSO#: 65689W  
srobinson@strosbergco.com

Lawyers for the Plaintiff

**C.S.**  
Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**  
Defendant

Court File No. CV-16-534895-00CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD**

**KOSKIE MINSKY LLP**

900-20 Queen St West  
Toronto ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca

**SUTTS, STROSBURG LLP**

1561 Ouellette Ave.  
Windsor, ON N8X 1K5

**Jay Strosberg** LSO#: 47288F  
jay@strosbergco.com

**Patricia Speight** LSO#: 26380C  
pas@strosbergco.com

**Scott Robinson** LSO#: 65689W  
srobinson@strosbergco.com

Lawyers for the Plaintiff