

**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*

SETTLEMENT AGREEMENT

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

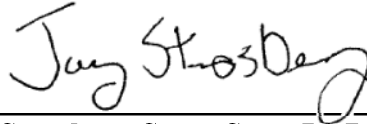
IN WITNESS WHEREOF, this Settlement Agreement has been executed by the undersigned, on behalf of each of the Parties, and is effective as at March 26, 2021.

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.

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

“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

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

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

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:

Koskie Minsky LLP 20 Queen Street West Suite 900, Box 52 Toronto, Ontario M5H 3R3 Phone: 1-844-819-8501 (toll free) Email: youthconfinementclassaction@kmlaw.ca	Strosberg Sasso Sutts LLP 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

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.

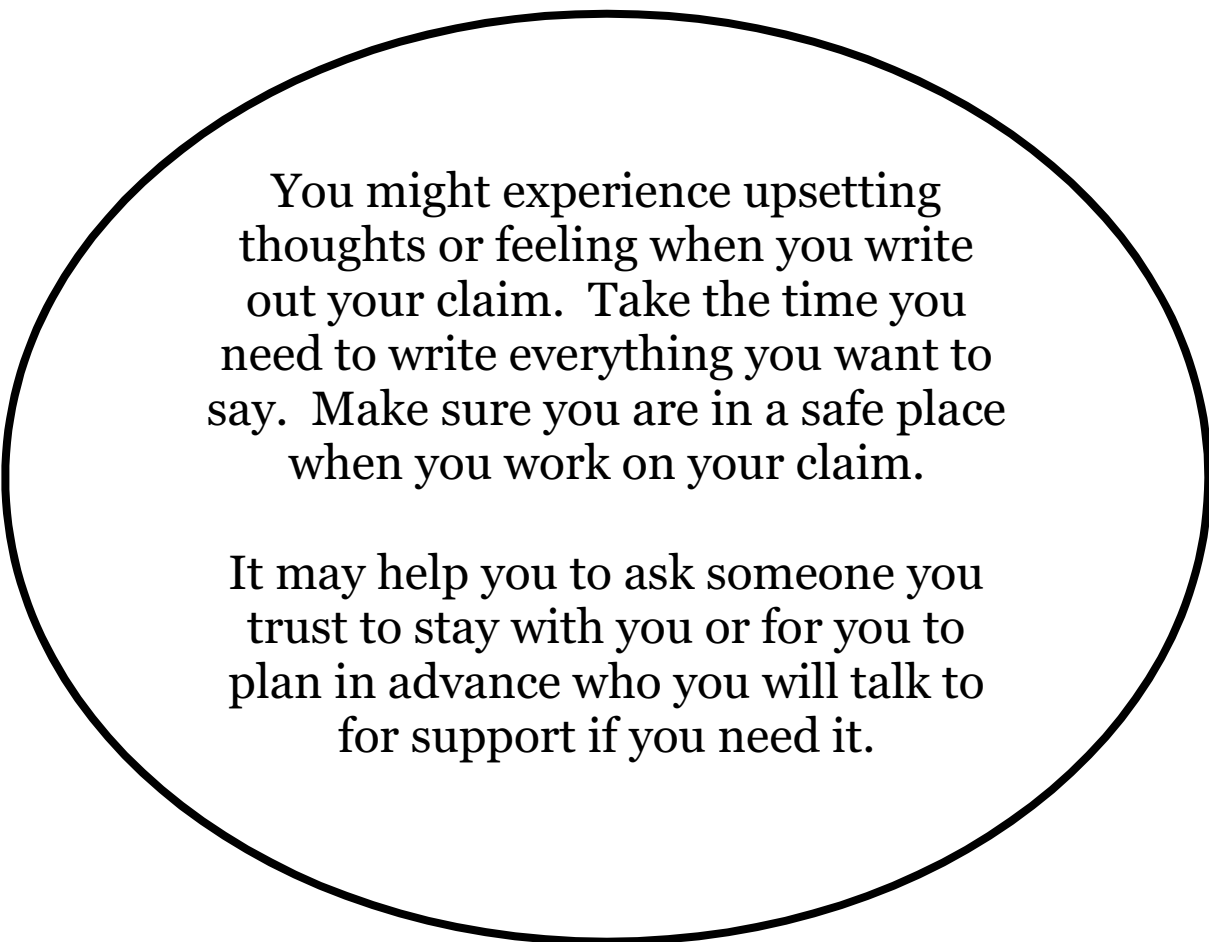
This Claim Form has 5 parts:

- 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

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

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

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

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

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

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

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

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

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

CLAIM 1

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

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

- 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

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

"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".

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

Class Action Settlement Claims Process

CLAIM 2

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

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

- 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

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

"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".

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

Class Action Settlement Claims Process

CLAIM 3

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

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

- 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

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

"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".

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

Please go to the next page.



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

***** 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

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

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

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

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

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.

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

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.

SCHEDULE "C"

AMENDED THIS Jan 4/19 PURSUANT TO
NOTICE PEREIRA J.
CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02
☒ THE ORDER OF
L'ORDONNANCE DU
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 ^{2nd} 4, 2015

Issued by _____

Local registrar

Address of court office 393 University Ave. 10th 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
8th 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

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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

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