Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

A.A.

Plaintiff

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

Proceeding under the *class Proceedings Act, 1992*, S.O. 1992, c. C.6

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 lawyers 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 l8B 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.

Date: Issued by:_____
Local Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO:
Crown Law Office (Civil Law)
Ministry of the Attorney General
McMurtry-Scott Building 8th Floor
720 Bay Street Toronto
Ontario M7A 2S9

CLAIM

1. The plaintiff, A.A., claims on her own behalf and on behalf of other members of the class:

(a) an order pursuant to the *class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing her as the representative plaintiff for the class;

(b) a declaration that His Majesty the King in right of Ontario is liable in breach of fiduciary duty, negligence, intrusion upon seclusion, assault, and battery;

(c) a declaration that Ontario is directly and vicariously liable for the impugned acts and omissions of its officers, employees, and agents;

(d) a declaration that Ontario breached the class members' rights under sections 7, 8, 9, and 12 of the *Canadian Charter of Rights and Freedoms* ("***Charter***");

(e) general damages in an amount that this Honourable Court deems just;

(f) special damages for the harm and injury caused to the plaintiff and class members;

(g) aggregate damages under section 24(1) of the *Charter* to remedy the breaches of the class members' *Charter* rights, and to compensate for the base level of harm caused by Ontario's equitable and common law breaches of the class members' rights in an amount to be determined by this Honourable Court;

(h) punitive, exemplary and aggravated damages in the amount of $20,000,000;

(i) an order directing the procedure for determination of the individual issues following the common issues trial;

(j) pre-judgment and post judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, or as otherwise ordered by this Honourable Court;

(k) costs of this action on a substantial indemnity basis;

(l) costs of notice and class administration; and

(m) such further and other relief as this Honourable Court deems just.

The Plaintiff

2. The plaintiff, A.A., is an Ontario resident and during all material times was a "young person" under the *Youth Criminal Justice Act*, S.C. 2002, c. 1 ("***YCJA***"). Her name and identity are protected by, amongst others, s. 110 of the *YCJA*.

3. A.A. was born in 2004. She immigrated to Canada in 2013 as a child where she lived and grew up with her mother in a marginalized urban community in Toronto.

4. In 2021 and 2022, A.A. was arrested and charged on 14 Informations as a young person. The charges pertained to various offences under the *Criminal Code* and the *Controlled Drugs and Substances Act*. At the time, she was 17 years old.

5. Upon her latest arrest in June 2022, A.A. was taken to a police station where she was fully strip searched.

6. She was kept in secure detention at the police station until she was transferred in a police van, without ever being out of sight of police officers or correctional staff, the next day to a secure female custody facility in Kingston, Ontario, called the Sundance program at the St. Lawrence Youth Association ("**Sundance**"). Sundance is a gender specific secure custody observation and detention center for female offenders 12-17 years of age.

7. Upon her arrival at Sundance, A.A. was again strip searched by two staff members. This was a routine, suspicionless strip search as there were no reasonable or probable grounds that such a search was necessary to ensure safety within Sundance. She had been in custody since the last strip search the day before. She was offered no choice or less invasive means of search. She was advised such strip searches were routine and required by protocol.

8. A.A. was told to enter a room, undress, and put on a small towel before opening the door. After she opened the door, two female staff members conducted her strip search. First, A.A. was told to shake out her hair. Then the staff members inspected behind her ears and made her open her mouth. A.A. was next told to lift her arms, drop her towel, and spin around naked so that the officers conducting her search could see every part of her body. Finally, and most degrading of all, A.A. was told to squat naked and cough three times while the officers conducting her search watched her.

9. A.A. was then told to remain in a state of complete undress for some time while the officers logged in information about her naked body. She stood there waiting for them.

10. This search was typical of the Sundance routine strip searches.

11. The experience of being strip searched was invasive, embarrassing, anxiety provoking, degrading, humiliating, and caused A.A. psychological and mental injury.

12. A.A. was then kept in pre-trial custody at Sundance. She started dreading anything that would result in a strip search. She nevertheless had to leave the facility for health/medical and dental appointments on several occasions.

13. In November of 2022, A.A. underwent a colonoscopy procedure at a hospital. She understood that if she was left unattended during the procedure, she would have to be subject to a full body strip search upon return to the facility, which she dreaded.

14. The preparation for this procedure required her to take laxatives and use the washroom while she was outside of Sundance. Knowing that this meant she would be strip searched, A.A. pleaded with the two Sundance staff members accompanying her to allow her to use the

washroom with the door open to avoid being strip searched. One Sundance staff member allowed her to use the bathroom in handcuffs instead and told her that the staff member would "think about" whether she would be searched or not.

15. Also to avoid a strip search, A.A. agreed to have the Sundance staff member present with her during the entirety of the colonoscopy procedure. The staff entered the room where the colonoscopy took place, positioned herself behind A.A. next to the hospital staff performing the procedure, and fully watched the colonoscopy procedure to A.A.'s humiliation.

16. When A.A. returned to Sundance after her colonoscopy, she was still subjected to a strip search but was allowed to keep the small towel on and not to be in a state of complete undress, despite never being out of sight of her staff members. and despite their agreement to permit her to use the washroom with the door open to avoid a strip search. At the time, she was still recovering from the sedation she received and an invasive medical procedure. Given her vulnerable state – still under the influence of medically administered drugs – and the betrayal of her trust, A.A. found this routine strip search even more degrading, humiliating, anxiety provoking, and harmful. It shattered what little trust she had left in the staff of Sundance, agents of Ontario upon whom she was completely dependent and reliant for her care and custody.

17. Because of the routine strip searches, A.A. avoided leaving the secure area within Sundance, including forgoing visits from family, friends, or pursuing opportunities that would have furthered her rehabilitation. Apart from her lawyer and two counsellors, A.A. had no visitors while in custody for approximately a year. She did not want her mother to visit her in custody because A.A. would be subject to a full body strip search afterwards and would rather

avoid that experience than have a visit from her mother—despite the fact that visits took place in rooms equipped with windows allowing staff to supervise them the entire time.

18. She was also informed that if she ever left the secure area in Sundance and was out of sight of the staff members, for instance to use the washroom, she would be strip searched upon her return.

19. These strip searches were mandatory even though Sundance was equipped with metal detecting wands and a "Boss Chair" – a whole body, non-intrusive scanner designed to detect small weapons or contraband metal objects concealed in abdominal cavity, rectal / vaginal cavity, nasal/oral cavities, and the shin area – neither of which required individuals to undress to be checked for contraband like metal objects.

20. During the approximately one year that she was detained at Sundance, A.A. saw many girls, some as young as 13, be subjected to the same routine strip searches. None of these searches resulted in the discovery of a contraband.

21. A.A. ultimately brought a constitutional challenge to the strip searches and stay the charges against her under s. 24 of the *Charter*. The crown in response stayed the charges before A.A.'s application could be decided.

The Class

22. The plaintiff seeks to represent the following class:

> All persons who were detained in secure youth custody or temporary detention at a secure custody youth facility in the Province of Ontario between April 1, 2003, and the present.

The Defendant

23. The Defendant, His Majesty the King in right of Ontario, is responsible for the implementation and supervision of the youth justice system in the Province of Ontario.

The Youth Justice System in Ontario

24. The youth justice system is separate from the adult justice system and is meant to recognize that youth have different needs from adults.

25. On April 1, 2003, the *YCJA* came into force, completely replacing the previous legislation, and promising a new era in youth justice and in the treatment of youth in custody. Under s. 30 of the *YCJA*, amongst others, the best interests of the young person are a key determinant in their detention and incarceration.

26. At the provincial level, the youth justice system is under the portfolio of the Minister and Ministry of Children and Youth Services (the "**Minister**" and "**Ministry**") rather than the Solicitor General. The system is meant to hold youth accountable and assist them in working with their families and the community to rehabilitate them.

27. The Ontario youth justice system is governed primarily by the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 ("***CYFSA***") and the federal *YCJA*.

28. Young persons under the *CYFSA* meet the statutory definition of "child", which means a "person younger than 18". The paramount purpose of the *CYFSA* and Ontario's assumed obligations thereunder (similar to the *CYFSA*'s predecessor legislation, the *Child and Family Services Act*, R.S.O. 1990, c. C.11) is "to promote the best interests, protection and well-being of children", including the plaintiff and the class.

29. Youth who are arrested can be detained pending bail. Youth who are convicted may receive a custodial sentence.

30. When youth are detained, they may be placed in open custody or secure custody facilities. These facilities are supposed to provide for the youth left in their care and to permit them to serve their sentence (if convicted) in a manner that is in their best interests, respects their *Charter* rights, and does not cause harm to them.

Ontario's Responsibility for Secure Custody Facilities

31. Ontario implements the youth justice system through the Ministry and Minister, which are responsible for administering the *CYFSA*. The role of the Ministry is to "improve outcomes for children, youth, families and individuals who need support". The Ministry is responsible for providing community and custodial programs for Ontario youths. The Ministry is also responsible for administering the *YCJA* in Ontario. This includes the implementation of the *CYFSA* and *YCJA*.

32. The Ministry delivers Youth Justice Services, including secure custody/detention of young persons aged 12-18. Under circumstances, such children after reaching the age of majority and in the years that follow, are allowed to remain at a youth custody facility. When a young person is charged or convicted, their placement in a secure custody facility is determined by the Ministry Provincial Director (on behalf of the lieutenant governor in council of the province), who is an agent of Ontario. Each child placed in a secure custody facility is a "child in care" as defined in s. 2 of the *CYFSA*.

33. Ontario is responsible for all "places of secure custody" and "places of secure temporary detention" (which are defined in the *CYFSA*) and indeed directly operates the majority of the secure youth custody facilities in Ontario.

34. Secure youth custody facilities are designated as "children's residences" as defined in s. 243 the *CYFSA* and subject to licensing requirements. Specifically, secure youth custody facilities are subject to the residential licensing regime applicable to all "children's residences" pursuant to Part IX of the *CYFSA* and regulations promulgated thereunder.

Ontario's Domestic and International Law Obligations in Secure Youth Custody Facilities

35. In Ontario, children's residences, including secure youth custody facilities, are subject to a strict licencing scheme administered by the Minister. Ontario is responsible for administering the *CYFSA*, including the licencing scheme, in accordance with the preamble of that *Act* which confirms that:

> The Government of Ontario acknowledges that children are individuals with rights to be respected and voices to be heard.
>
> The Government of Ontario is committed to the following principles:

> Services provided to children and families should be child-centred.
>
> Children and families have better outcomes when services build on their strengths. Prevention services, early intervention services and community support services build on a family's strengths and are invaluable in reducing the need for more disruptive services and interventions.
>
> Services provided to children and families should respect their diversity and the principle of inclusion, consistent with the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.
>
> Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families.
>
> Services to children and families should, wherever possible, help maintain connections to their communities.
>
> In furtherance of these principles, the Government of Ontario acknowledges that the aim of the *Child, Youth and Family Services Act, 2017* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child.

36. The preamble to both the *CYFSA* and the *YCJA* incorporate The United Nations Convention on the Rights of the Child ("**Convention**").

37. The Convention is thus adopted and incorporated into Ontario law and its provisions bind the Crown. The Convention includes multiple provisions that particularize the responsibility of Ontario for ensuring that youth detainees are treated in a manner that respects their *Charter* and common law rights.

38. For example, Articles 2 and 3 of the Convention confirm that Ontario must ensure that "services and facilities responsible for the care or protection of children" conform with the standard of care without any discrimination of any kind:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

…

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

39. The Convention also requires Ontario to ensure that the privacy rights of children in secure youth custody facilities are safeguarded. Specifically, Article 16 of Convention requires Ontario to ensure that their rights to privacy are not arbitrarily or unlawfully interfered with:

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

40. Ontario is also responsible for protecting all children in secure youth custody facilities. Article 19 of Convention requires Ontario to "take all appropriate legislative, administrative, social and educational measures" to protect young persons from physical or mental abuse:

> **Article 19**
>
> 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

41. Article 20 of Convention confirms that Ontario must provide special protection and assistance in the event that a child, like young persons under the *YCJA* placed in secure youth custody facilities, is deprived of their family environment:

> **Article 20**
>
> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to **special protection and assistance** provided by the State. … [emphasis added]

42. Article 37 of Convention requires Ontario to ensure children are not subjected to cruel, inhuman, or degrading treatment or punishment. The same Article requires Ontario to ensure that children deprived of their liberty, like children placed in secure youth custody facilities, are treated with humanity and respect:

Article 37

States Parties shall ensure that:

…

(c) Every child deprived of liberty shall be **treated with humanity and respect for the inherent dignity of the human person**, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; …[emphasis added]

43. Article 40 of Convention requires Ontario to ensure that children subject to criminal proceedings have their "privacy fully respected at all stages the proceedings":

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

…

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

…

(vii) To have his or her privacy fully respected at all stages of the proceedings.

44. Regardless of the particular institution and whether a facility is directly operated or non-directly administered, all are equally bound by the *Charter*, statutory, and common law

obligations pleaded and relied upon herein. All secure detention facilities, whether directly or indirectly operated, perform some of the most intrusive state-specific function in criminal justice: the incarceration of youth pursuant to criminal law. Ontario is responsible at law for ensuring that that unique state function and the constitutional and legal obligations that arise from that state function are discharged in accordance with the law for both the directly administered and non-directly administered secure youth custody facilities. In other words, the plaintiff and class members' claims herein are directly aimed at Ontario's state conduct impugned herein, and Ontario cannot hide behind private entities that Ontario contracted with and licensed to perform that unique state function on Ontario's behalf.

The Impugned Routine, Suspicionless Strip Searches

45. Strip searches are among the most invasive acts that the state can impose on an individual in Canada. Their use is limited and subject to strict constitutional restrictions due to their inherently humiliating, degrading, devastating, upsetting, and traumatic effects on those subjected to them.

46. The experience of being strip searched has been likened to "visual rape". They are highly intrusive no matter how they are conducted and they are one of the most significant invasions of privacy that the state can subject a person to.

47. This has long been recognized in reports commissioned by various Canadian and provincial governmental authorities, academic literature, and for this reason, strip searches cannot be carried out simply as a matter of routine policy.

48. The effects of traumatic events, like strip searches, are more pronounced in children. They are more likely to develop long-term issues following strip searches. These effects are further magnified in individuals with past histories of trauma or mental illness, who are overrepresented in secure custody facilities in Ontario.

49. Strip searches are more degrading, humiliating, and painful for individuals who are part of systemically marginalized or stigmatized communities. This includes racialized and marginalized individuals, such as First Nations, who are also overrepresented in secure youth custody facilities. In many cultures and religions with modesty traditions, a strip search is perceived by the subject as no less intrusive and traumatic than sexual assault.

50. Routine strip searches are unconstitutional and serve no security purpose, given their highly invasive nature and the availability of proportionate alternatives.

51. The mere possibility that a person may be concealing contraband on their person is insufficient to justify a strip search, particularly without resort to less intrusive means, such as metal detecting devices or a frisk beforehand.

Routine Strip Searches are Never Charter Compliant

52. Warrantless searches are presumably unreasonable and subject to strict *Charter* scrutiny. Because of their incredibly invasive and harmful nature, strip searches are subject to a heightened standard when they involve vulnerable individuals, such as young persons under the Youth Justice System.

53. Strip searches have typically occurred in the following settings: (a) incident to arrest; (b) in a custodial setting where specific circumstances require an isolated strip search; (c) in a

custodial setting where inmates are subjected to routine, suspicionless strip searches. This claim focuses on the latter, *i.e*. routine, suspicionless strip searches of the plaintiff and class members in Ontario youth detention and custody.

54. Regardless of setting, any strip search must comply with the *Charter* and other legal and equitable obligations of the crown to the individual being subjected to the strip search.

55. A *Charter* compliant custodial strip search must be based on reasonable and probable grounds that a strip search is necessary to ensure the safety of others in the custodial setting. Where an individual has previously been subject to searches that would detect contraband, like the use of metal detecting devices or pat downs, there will not be reasonable and probable grounds that a strip search is necessary. Nor will there be reasonable and probable grounds that a strip search is necessary when an individual has been searched and had no opportunity to come into contact with contraband such as when they remain under supervision.

56. The impugned routine, suspicionless strip searches by Ontario against young persons in its custody systemically breached the class members' *Charter* protections and caused them harm.

Limited Search Powers Under the *CYFSA* and its Regulations

57. Neither the *CYFSA* nor the regulations promulgated thereunder (nor the *CYFSA*'s predecessor, *Child and Family Services Act*, R.S.O. 1990, c. C.11, and its regulations) permit strip searches.

58. The *Child and Family Services Act* was silent on searches. The *CYFSA* provided as of 2018 a limited power to search young persons detained in youth secure custody facilities. The

CYFSA and its regulations impose stringent requirements on searches of young persons, including a general principle that the least intrusive form of search should be employed.

59. There is no provision in the *CYFSA* permitting strip searches of any kind, let alone routine strip searches. Routine strip searches are fundamentally incompatible with Ontario's child-centric obligations under the *CYFSA* and the Convention.

60. The source of authority for the limited searches of young persons in secure custody facilities is provided by s. 155(1) of the *CYFSA* provides that:

> **Permissible searches**
>
> **155** (1) The person in charge of a place of open custody, of secure custody or of temporary detention may authorize a search, to be carried out in accordance with the regulations, of the following:
>
> 1. The place of open custody, of secure custody or of temporary detention.
> 2. The person of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
> 3. The property of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
> 4. Any vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention.

61. The regulations promulgated under the *CYFSA* do not permit strip searches. The regulations promulgated under the *CYFSA* must be compatible with Ontario's obligations under the Convention – otherwise they would contravene their enacting legislation. The regulations strictly constrain the situations in which any search is permissible and must be interpreted in a manner consistent with the Convention.

62. Section 68 of O. Reg 155/18, *General Matters Under the Authority of the Lieutenant Governor in Council* ("*Search Regulations*"), requires searches to respect the dignity of the person being searched, avoid undue embarrassment or humiliation, and to take into consideration the cultural, religious and spiritual beliefs of the person being searched:

> **Rules respecting searches**
>
> **68.** A search authorized by a person in charge of a place of open custody, of secure custody or of temporary detention shall be carried out in accordance with the following rules:
>
> 1. In no circumstance shall a search involve a body cavity search.
>
> 2. All searches shall be conducted in a manner that,
>
> i. respects the dignity of the person being searched and does not subject the person to undue embarrassment or humiliation,
>
> ii. considers the cultural, religious and spiritual beliefs of the person being searched,

63. Section 69 of the *Search Regulations* sets out procedures that must be followed when searches are conducted. It specifies that "the least intrusive search should be conducted whenever possible." It also requires that written policies must set out when different kinds of searches are permissible, what should occur when a young person refuses a search, and how to respond "where there is a reasonable cause to believe a young person is concealing an item in a body cavity":

> **Procedures re searches**
>
> **69.** (1) A person in charge of a place of open custody, of secure custody or of temporary detention shall develop and maintain written procedures with respect to searches of the person of a young person or the property of a young person, which shall include the following:
>
> 1. A description of the different types of searches that may be conducted and the circumstances when those different types of searches may be

conducted, based on the principle that the least intrusive search should be conducted whenever possible.

2. Procedures to be followed when a young person refuses a search, resists a search or fails to co-operate with a search.

3. Procedures to be followed in circumstances where there is a reasonable cause to believe that a young person is concealing an item in a body cavity that may affect the health of the young person or pose a threat to the safety of young persons, staff members or any other person in the place, or to the security of the place.

64. Section 70 of the *Search Regulations* also requires detailed, written documentation relating to searches:

Records

70. A person in charge of a place of open custody, of secure custody or of temporary detention shall maintain a written record of every search and the record shall include the following information:

1. If the search was of a person or of a person's property, the name of the person who was searched or who is identified as the owner of the property that was searched.

…

3. If a person was given the opportunity under paragraph 3 of section 68 to express their views as to how a search was to be conducted, a description of the views they expressed and what, if anything, was done in response to those views.

…

5. The reason for the search.

6. If a young person refuses a search, resists a search or fails to co-operate with a search, the action taken as result of the refusal, resistance or failure to co-operate.

7. If there is reasonable cause to believe that a young person is concealing an item in a body cavity, the basis for that belief and the action taken as a result of that belief.

8. A description of any property seized, discarded, broken or misplaced during the search.

9. Any action taken as a result of the search.

Routine Strip Searches at Ontario Secure Youth Custody Facilities

65. Children as young as 12 have been routinely strip searched at Ontario secure youth custody facilities during the class period. This occurs in both facilities operated directly by Ontario and delegated secure youth custody facilities.

66. Ontario determines where a given young person is sent to be detained while awaiting bail or trial or to serve their sentence.

67. Young persons transferred to secure youth detention and custody facilities are routinely strip searched upon admission to and departure from these facilities without any consideration of whether there are reasonable and probable grounds suggesting that such a search is necessary. If there was ever any such consideration, these searches would not occur as there are never such grounds upon transfer to a facility as young persons are searched by police officers or other law enforcement agents before being transferred to a secure youth custody facility.

68. When young persons are compelled by law to attend court, they are subjected to routine strip searches upon their return from court.

69. These searches also routinely occur following visits with family members within youth custody facilities, attendance at Court for hearings, and attendances at healthcare facilities for necessary medical and other procedures.

70. Youth detained at secure custody facilities are faced with the unacceptable choice of having to decide between being subjected to strip searches or forgoing visits with family, friends, or even seeking healthcare. These searches serve no or miniscule security purpose and contravene Ontario's statutory, constitutional, and international law obligations. These searches are tortious and violate the *Charter* and common law rights of all young persons transferred to Ontario secure youth custody facilities.

71. Further, readily available alternative searches, like pat downs, body scanners and metal detectors, can ensure that young persons do not have dangerous contraband on their person before entering a secure youth custody facility. Most, if not all, secure youth custody facilities are equipped with metal detectors, including wand metal detectors and fully body metal detectors, that are less intrusive means of search that are sufficient to ensure the safety of others in secure youth custody facilities.

72. Further, Ontario has been using full-body X-ray security screening systems in Ontario's adult correctional facilities for a number of years. These X-ray security screening systems enabled staff to see the inside of the inmates' bodies, far beyond what is searchable and discoverable with a dehumanizing strip search. Despite the availability of such technologies during the class period, Ontario has persisted in inflicting harm on the class members through unnecessary strip searches.

73. If a young person has the courage to refuse to be strip searched, they systemically face punishment by solitary confinement under the guise of safety.

Ontario Knew of the Harms of Strip Searches and the Systemic Use of Routine Strip Searches

74. Ontario is aware, and has been throughout the class Period, of the widespread use of routine strip searches in secure youth custody facilities. Throughout the class Period, Ontario has also been aware of the devastating effects of these strip searches on the class members. Ontario has received multiple complaints through both formal and informal channels before and during the class Period about the use of routine strip searches. These complaints span multiple decades. Ontario knew of, or was wilfully blind to, the problem of routine strip searches in these facilities and failed to act to prevent this harmful practice causing significant harm to the class.

75. Multiple public inquests have made recommendations about the use of strip searches in Ontario youth custody facilities. Following the 2004 death by suicide of David Meffe, a 16-year-old detained at the Toronto Youth Assessment Centre, an inquest jury issued recommendations about the problematic manner in which Ontario youth custody facilities used strip searches on children.

76. In May 2008, 17-year-old Gleb Alfyorova died by suicide at the Syl Apps Youth Centre while awaiting a psychiatric evaluation. One of the inquest findings was that Gleb had been strip-searched before his death and the jury recommendations again pointed to the problematic use of strip searches in Ontario youth custody facilities.

77. A March 2010 report prepared by the Office of the Provincial Advocate for Children and Youth for Ontario ("**Provincial Advocate for Children**") regarding the Roy McMurtry Youth Centre similarly identified issues with the use of strip searches in Ontario youth custody facilities. The Provincial Advocate for Children is an independent office of the Legislature established under the *Provincial Advocate for Children and Youth Act, 2007*. In its March 2010

report, the Provincial Advocate for Children noted that there were complaints related to the "excessive number of searches that regularly take place", and complaints that groups of youth are locked in their rooms while each youth was individually strip searched.

78. The Provincial Advocate for Children noted continued issues with strip searches at the Roy McMurtry Youth Centre in an August 2013 follow up report. Specifically, the report noted that searches were conducted "frequently" and included four types: "strip search, frisk search, body cavity search and routine search of living units, places, vehicles, etc." The report observed that 39% of detained youth raised concerns about searches, "particularly strip searches".

79. The use of body cavity searches is explicitly prohibited by section 68 of the *Search Regulations*: "A search authorized by a person in charge of a place of open custody, of secure custody or of temporary detention shall be carried out in accordance with the following rules: 1. In no circumstance shall a search involve a body cavity search."

80. A March 2019 report by the Office of the Independent Police Review Director ("**OIPRD**") noted that strip searches are "inherently humiliating and degrading… regardless of the manner in which they are carried out" and that "even a strip search carried out in a reasonable manner can be humiliating, degrading, demeaning, upsetting and devastating."

81. The Ontario Human Rights Commission ("**OHRC**") made a submission to Ontario on October 31, 2022, describing the harms that routine strip searches cause adults in the correctional setting. Due to these harms, particularly as they affect marginalized individuals, the OHRC recommended that all routine strip searches in Ontario correctional facilities be eliminated. The OHRC further recommended that strip searches in correctional facilities ought to be limited to

situations where Ontario can demonstrate reasonable and probable grounds of harmful contraband and that searches that are conducted be subject to a detailed framework with significant documentation requirements and independent oversight.

82. The Ontario Ombudsman has reported on multiple complaints about the use of routine strip searches at Ontario secure youth custody facilities. In the period 2022-2033 alone, the Ombudsman received 9 complaints about routine strip searches. The Ombudsman's office informed the Ministry of this in a March 2024 submission. Following an inquiry made by the Ombudsman, the Ministry issued a memorandum on or around November 29, 2023 to all directly operated secure youth custody facilities about this inappropriate practice, without actually requiring an approach compliant with Ontario's statutory and *Charter* obligations.

Ontario's Responsibility for Non-Directly Administered Secure Youth Custody Facilities

83. Ontario's obligations under the Convention, as incorporated into the *CYFSA*, extend to the non-directly administered secure youth custody facilities. Those facilities are also subject to the *CYFSA* and the licencing scheme administered by the Ministry. The licencing scheme must be implemented in a manner that is consistent with Ontario's obligations under the *CYFSA* and the Convention. The Ministry is granted broad inspection powers in order to ensure compliance with the *Charter*, *CYFSA*, and the Convention.

84. In all circumstances, such non-directly administered secure youth custody facilities are acting as agents of the Crown and are bound by the same legal and constitutional obligations with respect to the class. Ontario is liable for their conduct as much as Ontario is liable for its conduct within the facilities it directly operates.

The Licencing Scheme Under the CYFSA

85. All children's residences, and therefore all secure youth custody facilities, must be licensed by the Ministry. Licenced facilities are subject to periodic renewal. Non-directly administered secure youth custody facilities must be licensed to operate as a 'Children's Residences' under Part IX of the *CYFSA* to avoid contravening s. 244 of the *CYFSA* which provides that "No person shall do any of the following except under the authority of a licence: 1. Operate a children's residence." The *CYFSA* creates a strict licensure regime that is contained primarily within O. Reg. 156/18, *General Matters Under the Authority of the Minister* ("*Licensing Regulation*").

86. Applications for a licence are submitted to and evaluated by Directors. Directors may refuse to issue a licence, or renew a licence, if the law is not being complied with at a particular facility. Directors may also issue licences with conditions imposed upon them.

87. Secure youth custody facilities are required to operate in accordance with requirements imposed by Ontario through the Youth Justice Services Manual. Such licensees are also required to comply with directives issued by the Minister. The Minister may appoint inspectors to ensure licensees are complying with the *CYFSA*.

88. The Minister may, through the Director, suspend the licence if in the Director's opinion the licensee is operating the secure custody facility in a manner that results in an immediate threat to the health, safety or welfare of the children at the facility.

89. The Director can also revoke or refuse to renew licenses under Part IX of the *CYFSA*. The Director may do so, for example, if in their opinion the licensee or an employee of a licensee

has contravened the *CYFSA* or regulations promulgated thereunder, any other law including the *Charter*, or a condition of the licence. They may also do so if the manner in which the facility is being operated is carried on in a manner that is prejudicial to the children's health, safety or welfare.

90. Ontario purports to require services to be provided through the delivery of evidence-based rehabilitative programs based on the principles of community safety, accountability, and reduction of recidivism. These services are purportedly delivered in a manner that provides opportunities for supportive relations to develop between young persons and staff.

91. All directors, supervisors, and inspectors appointed by the Minister under the CYFSA are agents of Ontario. The staff at all directly administered secure youth custody facilities are agents of Ontario. Ontario is responsible in law for the acts and omissions of its agents.

Ontario's Inspection Powers Into Non-Directly Administered Secure Youth Custody Facilities and Compliance with the Charter, CYFSA, and Convention

92. Ontario has broad powers of inspection to ensure compliance with the *Charter*, *CYFSA*, and the Convention.

93. Section 273 of the *CYFSA* allows for the appointment of inspectors. Directors, as appointed under the *CYFSA* are also inspectors. Section 274 of the *CYFSA* confirms that an "inspector shall conduct inspections for the purpose of determining compliance" the *CYFSA* and its regulations.

94. Routine strip searches are illegal and present an immediate threat to the health, safety, and welfare of children. Faced with such conduct, Ontario is empowered to prevent it through the licencing scheme under the *CYFSA*. In the event inspectors find non-compliance with the

law, they are empowered to impose conditions on licensees (s. 255), refuse to issue a licence (s. 261), revoke an existing licence (s. 262), refuse to renew an existing licence (s. 262), or they can suspend a licence if a secure youth custody is being operated in a manner that presents an immediate threat to the health, safety, or welfare of children. Despite this and Ontario's knowledge of the use of routine strip searches at secure youth custody facilities, Ontario has failed to act to prevent this harmful conduct in facilities operated by Ontario and its licencees.

CAUSES OF ACTION

Breach of Fiduciary Duty

95. Ontario owes the class members fiduciary duties in providing them with care, custody, and rehabilitative services.

96. Ontario stands in a *per se* fiduciary relationship with the class members, all of whom are or were young persons under the *YCJA* and children in care under the *CYFSA*. This relationship is akin to the guardian-ward relationship.

97. In the alternative, Ontario owes the class members *ad hoc* fiduciary duties. Ontario undertook a fiduciary duty to ensure that the plaintiff and class members received appropriate care under the supervision of qualified staff and were not exposed to unreasonable risks of harm or routine suspicionless strip searches. Ontario expressly undertook to act in the best interests of the class by the *CYFSA* .

98. The preamble to the *CYFSA* and the confirmation that its "paramount purpose" is "to promote the best interests, protection and well-being of children" amounts to an undertaking sufficient to impose an *ad hoc* fiduciary duty. Operating the licencing and inspection scheme under the *CYFSA* to permit third parties to operate secure youth custody facilities also amounts to an equitable undertaking to ensure that the class members receive care and custody in compliance with the Convention. In adopting the Convention, Ontario undertook to ensure that all the class members received appropriate care and custody, regardless of whether detained in a directly operated or non-directly operated facility.

99. Ontario controlled the class members, all of whom relied upon Ontario for their safety and treatment. Ontario had an obligation to provide the class members with appropriate care and custody.

100. Ontario has broad discretion over the class members in how it administers the youth custody system in Ontario. The class members are a defined class of individuals; those placed in secure youth custody in Ontario. The class members are vulnerable to Ontario's exercise of discretion with respect to their fundamental legal and practical interests, including their bodily and psychological integrity.

101. Ontario systemically breached its fiduciary duties to the class by subjecting them to routine strip searches that served no safety purpose, despite reasonable alternatives being available. Ontario knew, or ought to have known, that youth detention facilities were conducting routine strip searches and took no action to stop them. This conduct was degrading, humiliating, and psychologically harmful. It exposed the class members to an unreasonable risk of harm, including potentially irreversible psychological injury, breaching Ontario's fiduciary duties.

Negligence

102. Ontario was negligent in conducting routine strip searches in the secure youth custody facilities it operated. Ontario was also negligent in licencing and re-licencing non-directly operated secure youth custody facilities that used routine strip searches.

103. It is well established that Ontario owes a duty of care to the individuals in its criminal justice custody. Ontario owed a duty of care to the class, *i.e.* children in its custody, and did not meet the standard of care in the operation of a secure youth custody facility and did not meet the standard of care in overseeing the licencing system for the non-directly operated secure youth custody facilities.

104. The relationship between the operator of a children's residence and a child in the operator's care is a recognized category of relationship giving rise to a duty of care. Ontario owed a duty of care to individuals admitted to facilities under its management and control.

105. Ontario's breaches of the standard of care have caused each of the class members significant psychological and other harm.

106. As particularized herein, Ontario was systemically negligent in subjecting children as young as 12 to routine strip searches.

107. In the alternative, the relationship between Ontario and the class members was analogous to other categories of relationship giving rise to duties of care recognized by Canadian courts such as the duties owed by other kinds of residential facilities where individuals are involuntarily detained, such as jails, prisons, and involuntary units of psychiatric hospitals.

108. Ontario was in a relationship of proximity with the class members, was responsible for their care, custody, and rehabilitation during their admission to the secure youth custody facilities. Ontario had complete control over the day-to-day lives of the class members. The class members, vulnerable children deprived of their liberty, were dependent upon, and relied on, Ontario for all aspects of their care, custody, and rehabilitation.

109. The relationship between Ontario and the class members at the non-directly operated secure youth custody facilities is a relationship of proximity. The legislative scheme created by the *CYFSA*, *YCJA*, and the regulations promulgated thereunder impose a private law duty of care on Ontario with respect to the operation of the youth justice system. It was reasonably foreseeable to Ontario that if it failed to meet the standard of care in implementing this system, in a matter consistent with its obligations under the Convention, significant harm would occur to the class. There are no residual policy considerations militating against the imposition of such a duty.

110. Ontario has systemically breached its duties of care to the class. It has systemically implemented the use of routine strip searches at the directly operated secure youth custody facilities. It has systemically licenced and re-licenced the non-directly operated secure youth custody facilities who in turn engage in the same harmful conduct as Ontario's directly operated facilities.

111. These systemic breaches have caused the plaintiff and the class members significant psychological and other harm.

Breaches of *Charter Rights*

112. The use of routine strip searches at secure youth custody facilities breaches the class members' *Charter* rights. Specifically, their ss. 7, 8, 9, and 12 *Charter* rights. There is no justification for these breaches of *Charter* rights under s. 1.

Breach of Section 7 Rights

113. Ontario's conduct breaches the class members' s. 7 rights under the *Charter* to not be deprived of their liberty and security of the person other than in accordance with the principles of fundamental justice.

114. The strip searches amount to a serious deprivation of liberty – the class members were told these searches were mandatory and that they had to submit to them as detailed above. The strip searches also engaged the right to security of the person and violated the class members' physical and psychological integrity.

115. The strip searches were not authorized by law and were not in accordance with the principles of fundamental justice.

116. In the alternative, if the strip searches were authorized by law, the deprivation of the class members' liberty and security of the person was not in accordance with the principles of fundamental justice. The impugned searches were arbitrary and had no connection with the legislative purpose of the *CYFSA*, *YCJA*, or any regulations promulgated thereunder. The circumstances in which the searches were conducted were such that the class members could not access contraband and the searches would not detect any contraband as a result. The strip searches serve no security, safety, or other pressing objective. The impugned searches are not in

the best interests of the children subject to them and therefore operate against, rather than in furtherance, of the legislative objectives of the *CYFSA*. The searches also prevent the rehabilitation of young persons and operate against the objectives of the *YCJA*.

117. Any authorization to search that permits routine strip searches is overbroad and grossly disproportionate. There are no benefits to routine strip searches. Even if there were, they would be far outweighed by the significant harm these searches cause the class members and the availability of reasonable, less intrusive alternatives.

118. Any authorization for such searches includes criteria that are too vague and insufficiently specific to permit such searches.

119. The use of routine strip searches is procedurally unfair. They permit the class members, all of them children at the mercy of adult prison guards, no opportunity to challenge the searches and there are no requirements to put mechanisms in place to monitor the use of such searches.

Breach of Section 8 Right to be Secure Against Unreasonable Search

120. Ontario's conduct breaches the class members' s. 8 rights under the *Charter* to be secure against unreasonable searches.

121. The class members have a reasonable expectation of privacy over their own bodies. A person's naked body is one of their most intimate things and every member of society expects that it is private and will not be interfered with against their will – particularly in the case of children.

122. The impugned strip searches were unlawful as they were not authorized by law as described above. The rule of law, and ensuring proper lawful authority for strip searches, is particularly important in a custodial setting where children are detained. Children are an inherently vulnerable group, particularly when deprived of their liberty by the state.

123. Alternatively, if the *CYFSA*, *YCJA*, regulations promulgated thereunder, or any other source of law authorizes routine strip searches in secure youth custody facilities, the law authorizing such searches is not reasonable and breaches the class members' *Charter* s. 8 rights. These searches are not necessary for safety, security, or otherwise and even if they provided any benefit, they would be significantly outweighed by the severe harms suffered by the class members. Less intrusive means of search would provide the same benefit while respecting the class members' constitutional protections.

Breach of Section 9 Right Not to be Arbitrarily Detained

124. Ontario's conduct breaches the class members' rights to be free from arbitrary detention under s. 9 of the *Charter* by restricting their liberty arbitrarily while subjecting them to routine strip searches.

125. Ontario's misconduct exceeds the legitimate interests of the state and is an unjustified intrusion upon the physical and mental liberty of the class members. There is no adequate justification for this.

Breach of Section 12 Rights Against Cruel and Unusual Treatment or Punishment

126. Ontario's conduct breaches the class members' s. 12 rights under the *Charter* to not be subjected to any cruel and unusual treatment or punishment.

127. As particularized herein, the use of routine strip searches amounts to cruel and unusual punishment or treatment. Strip searches are inherently degrading and demeaning which amounts to "cruel" treatment or punishment.

No justification for This Conduct under Section 1 of the Charter

128. There is no legal authorization for the breaches of the class members' *Charter* rights. There can be no justification saving such infringements under s. 1 of the *Charter*.

129. The impugned searches are in fact also contrary to the purposes of the *CYFSA* and the *YCJA*. These pieces of legislation are meant to advance the interests of children, not to permit conduct that harms them. The paramount purpose of the *CYFSA* is "is to promote the best interests, protection and well-being of children". Strip searches run contrary to each aspect of that purpose. Similarly, the *YCJA* has the objective of promoting rehabilitation and reintegration of young persons who commit offences. It requires enhanced procedural protections for young persons and to ensure they are treated fairly.

130. Children who have been subjected to routine strip searches are more likely to re-offend. These searches, and the emotional harm they cause, interfere with their rehabilitation. This results in an increased likelihood of crime by the class members', contrary to the public interest.

131. The *CYFSA* and *YCJA* are also meant to safeguard the dignity of the class members. Routine strip searches are contrary to this objective. Staff required to administer such searches often find them objectionable, and their use contributes to a hostile environment within secure youth custody facilities.

Intentional Torts

Intrusion Upon Seclusion

132. The impugned strip searches were invasions of the plaintiff's, and the class members', privacy.

133. As particularized herein, the invasions of the class members' most intimate private affairs, their very own naked bodies, were of the severest kind, took place in humiliating conditions, and were without any lawful excuse or justification.

134. Ontario's agents intentionally and recklessly invaded the plaintiff's, and the class members', privacy. Each and every strip search is intentional and routine; suspicionless strip searches are, at a minimum, reckless.

135. Strip searches are inherently degrading, humiliating, and anxiety provoking. They are among the most severe exercises of state power and a reasonable person would regard the invasion of privacy inherent in the impugned searches as highly offensive, distressing, and humiliating.

Assault

136. Each routine strip search created in the plaintiff and every other affected young person in the class the apprehension of imminent and offensive conduct; for there are few more dehumanizing and offensive courses of conduct that a young person in state custody can experience than being treated like cattle, standing undressed under the eyes of adult guards and following their degrading commands.

137. Further, the impugned strip searches carry with them the threat of non-trivial, offensive physical contact with the class members' bodies if they do not comply with the impugned strip searches. Each of these threats was made directly and intentionally by staff at secure youth custody facilities, who are agents of Ontario.

Battery

138. Certain of the class members were subjected to cavity searches. Each cavity search involved unwanted touching amounting to a battery.

139. There was no lawful justification for any such cavity searches. The *Search Regulations* explicitly provide that no cavity searches are to be performed on children detained in Ontario secure youth custody facilities.

140. There was no consent for any such search, nor would any consent be possible in circumstances as it would be vitiated by the coercive circumstances in which it was sought and the minor age and helplessness of the class members.

Intentional Infliction of Emotional Distress

141. The use of routine strip searches is a tortious intentional infliction of emotional distress. The use of searches on children as young as 12 is outrageous and flagrant. The use of such searches was designed to inflict, or reckless as to inflicting, humiliation, degradation, and anxiety.

142. Ontario knew, or ought to have known, that children deprived of their liberty would experience heightened distress and anxiety as a result of being subjected to such searches. Nevertheless, Ontario continued to subject the class members to such searches.

Vicarious Liability

143. Ontario is both directly liable for its breaches of common law, equitable, and *Charter* rights and vicariously liable for the torts of its agents. Ontario's agents include employees at directly administered secure youth custody facilities such as security staff, social workers, program directors, administrators, and all other staff.

144. There is a sufficiently close relationship between Ontario and its servants, officers, employees, and agents that it would be fair and just to hold Ontario vicariously liable for their tortious conduct. The wrongs pleaded herein were perpetrated in the course of their employment with the secure youth custody facilities.

145. Ontario's agents also include directors, inspectors, and other individuals designated under the *CYFSA* to operate the licencing scheme for secure youth custody facilities. There is a sufficiently close relationship between Ontario and these servants, officers, employees, and agents that it would be fair and just to hold Ontario vicariously liable for their tortious conduct. The wrongs pleaded herein were perpetrated in the course of their employment in overseeing the licencing of residential facilities under the *CYFSA*.

Harm and Damages

146. The class members suffered damages due to Ontario's negligence, breach of fiduciary duty, breaches of *Charter* rights, and intentional torts.

Base Level of Harm

147. Strip searches are harmful. They are inherently degrading, demeaning, humiliating, stressful, and provoke serious, prolonged anxiety and upset above the ordinary annoyances, anxieties, and fears that come with living civil society. Every one of the class members was harmed by being subjected to at least one routine strip search (and at times more than one each day in custody).

148. The harms of strip and cavity searches are well known, and have been throughout the class period. For instance, a report by the John Howard Society titled *Unequal Justice: Experiences and outcomes of young people in Ontario's youth bail system*, that was available to Ontario, details some of these harms:

> The arrest and period of incarceration while the young person waits for a bail hearing can be distressing. Stakeholders acknowledged the traumatizing effect of the arrest itself and the experience of jail, including things such as strip searches and cavity searches.
>
> Young people involved in the research indicated that experiences of incarceration caused and exacerbated mental health issues and deeply affected their well-being. Youth reported struggling with PTSD while in detention and sleeping with their eyes open. Others reported losing their appetites and sleeping for hours on end, no longer feeling like themselves. Young people divulged being traumatized by strip searches and interactions with officers that inflamed histories of trauma and abuse. These experiences were shared by youth that were formally detained pre-trial and those incarcerated while they waited for a decision on their bail. Frequent adjournments and multiple appearances at court result in more frequent experiences of strip searches and handcuffs.

149. Ontario knew, or ought to have known, that by its operation, oversight care, and control (or lack thereof) in breach of its duties the class members would suffer immediate and long-term

physical, emotional, psychological, and mental injuries. The class members are entitled to common law damages and equitable compensation as well as *Charter* damages.

General Damages and Equitable Compensation

150. The class members, at the time of Ontario's wrongs vulnerable youths, were traumatized by their subjection to repeated, routine strip searches and cavity searches. Because of Ontario's breaches of duties and Ontario's violation of the class members common law and *Charter* rights, the class members have suffered compensable harms that include:

(a) anxiety;

(b) psychological distress;

(c) emotional harm;

(d) impaired mental development;

(e) impaired ability to participate in normal family activities and relationships;

(f) alienation from family members, friends, and community ties;

(g) depression;

(h) mental anguish;

(i) pain and suffering;

(j) a loss of self esteem and feelings of humiliation and degradation;

(k) an impaired ability to obtain employment causing either lost or reduced income and ongoing loss of income;

(l) an impaired ability to tolerate and interact with persons in positions of authority;

(m) an impaired ability to trust others and sustain relationships;

(n) an impaired ability to enjoy and participate in recreational, social, and employment activities; and

(o) loss of general enjoyment of life.

151. The class members claim general and aggravated damages, as well as equitable compensation for these harms that arise from Ontario's violation of their common law and equitable rights.

152. The plaintiff and the class are entitled to equitable compensation for Ontario's breach of its equitable obligations to the class, such as the breach of its fiduciary duties particularized herein.

Charter Damages

153. Ontario's breaches of the class members' *Charter* rights require an award of damages to compensate the class members for loss and suffering, vindicate their rights, and deter future breaches of such rights by Ontario. These rights are not trivial, they relate to the most intimate and integral aspects of the class members' being and their ability to participate in civil society.

154. There are no good governance considerations or any other basis upon which *Charter* damages should not be awarded.

155. Further, Ontario has had knowledge of the harm caused to the class by routine strip searches for decades. Ontario's systemic conduct, as particularized herein, manifests a course of clearly unconstitutional conduct in bad faith and an abuse of power.

Special Damages and Costs of Future Care

156. Strip searches are always degrading. They are also traumatizing and invasive. As a result of being subjected to strip searches, the class members require, and will continue to require, counselling, rehabilitation, and other forms of care. The class members who have already sought such care resulting from Ontario's wrongs claim special damages for these expenses and all class members claim future costs of care.

Punitive Damages

157. Ontario's conduct was oppressive, high-handed, callous, and demonstrates a reckless disregard for the health, wellbeing, equitable and common law rights, and *Charter* rights of the class members.

158. This conduct was a marked departure from ordinary standards of decent behaviour. Ontario facilitated routine strip searches of children as young as 12 in directly operated facilities and re-licenced non-directly operated facilities that engaged in this practice, despite its obligations under the *Charter*, the *CYFSA*, *YCJA*, and the Convention. Ontario knowingly and recklessly exposed vulnerable children detained away from their families to degrading, humiliating, and harmful strip searches. The class members seek punitive damages.

The *Limitations Act, 2002*, Fraudulent Concealment, and Discoverability

159. There are no limitations periods applicable to the class member's claims.

160. Section 16(1)(h.2) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, provides that there are no limitation periods applicable to the class members' claims as they arise from one or more assaults that occurred while they were minors and the class members were financially, emotionally, physically or otherwise dependent on Ontario.

161. Section 16(1.1) confirms that this provision applies regardless of the expiry of any previously applicable limitation period and s. 16(1.3) confirms that the application of this provision is not limited in any way with respect to the causes of action alleged including negligence, breach of fiduciary duty, any other duty, or for vicarious liability.

162. In the alternative, the class members plead and rely upon s. 6 of the *Limitations Act*, as they were all minors.

163. In the alternative, the class members plead and rely upon the doctrines of discoverability and fraudulent concealment.

164. Neither A.A. nor the class members who were involuntarily detained at institutions operated by, or overseen by, Ontario, were advised of the unnecessary nature of the impugned searches. They were led to believe that it was a normal part of life in a custodial setting and necessary for safety, security, and other purposes.

165. The class members, all vulnerable youth detained in secure youth custody facilities, did not understand that the impugned searches violated their common law, equitable, and

constitutional rights. Nor did they understand that the conduct of Ontario gave rise to legal claims.

166. A.A. and the class members plead and rely upon s. 15(4) of the *Limitations Act*. The class members were minors at the time their causes of action arose and Ontario wilfully concealed from the class the wrongful nature of the impugned searches.

Legislation Relied Upon

167. The plaintiff pleads and relies upon:

(a) *Canadian Charter of Rights and Freedoms*;

(b) *Corrections and Conditional Release Act*, S.C. 1992, c. 20

(c) *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1;

(d) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

(e) *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(f) *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17;

(g) *Family Law Act*, R.S.O. 1990, c. F.3;

(h) *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B;

(i) *Negligence Act*, R.S.O. 1990, c. N.1;

(j) *Trustee Act*, R.S.O., c. T.23; and

(k) *Youth Criminal Justice Act*, S.C. 2002, c. 1.

Place of Trial

168. The plaintiff asks that the trial of this action take place at Toronto, Ontario.

DATE: July 25, 2024

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A.A. v. His Majesty the King in right of Ontario

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *class Proceedings Act, 1992*

STATEMENT OF CLAIM

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