

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Court File No.:

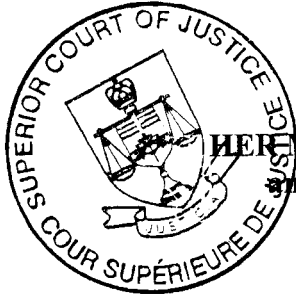
Cv-16-558376 oacp

BETWEEN:

GODDAY DADZIE and AL ZEEKEHMENS

Plaintiffs

- and -



**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and THE ATTORNEY GENERAL OF CANADA**

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE

TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$100 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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

Date: August 11, 2016

Issued by


Local registrar

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CLAIM

1. The Plaintiffs claim:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative Plaintiffs;
- (b) a declaration that Her Majesty the Queen in Right of the Province of Ontario breached its fiduciary duty to the Plaintiffs and the Class through the funding, operation, management, administration, supervision and control of the Provincial Institutions (defined below);
- (c) a declaration that Her Majesty the Queen in Right of the Province of Ontario is liable to the Plaintiffs and the Class for the damages caused by its breach of its common law duty in relation to the funding, operation, management, administration, supervision and control of the Provincial Institutions;
- (d) a declaration that the Attorney General of Canada breached its fiduciary duty to the Plaintiffs and the Class by detaining Class members in the Provincial Institutions;
- (e) a declaration that the Defendant the Attorney General of Canada is liable to the Plaintiffs and the Class for the damages caused by breaches of its common law duty in relation to the detention of Class members;
- (f) a declaration that Her Majesty the Queen in Right of the Province of Ontario has violated the Plaintiffs' and Class members' rights under sections 7, 9, 11(e) and 12 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**");
- (g) a declaration that the practices and failures of Her Majesty the Queen in Right of the Province of Ontario in the care and custody of the Plaintiffs and Class members constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the Charter;

- (h) immediate access to reasonable bail or such other remedy as the Court may consider just and appropriate pursuant to section 24 of the Charter;
- (i) damages against Her Majesty the Queen in Right of the Province of Ontario or such other remedy as the Court may consider just and appropriate pursuant to section 24 of the Charter;
- (j) damages against the Defendants for negligence and breach of fiduciary duty in the amount of \$500 million, or such other sum as this Honourable Court may find appropriate;
- (k) punitive damages in the amount of \$100 million;
- (l) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (m) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;
- (n) 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 (the "CPA"); and,
- (o) such further and other relief as this Honourable Court may deem just.

2. Under the watch of the Canada Border Services Agency ("CBSA"), innocent migrants are regularly subjected to lengthy periods of incarceration under abhorrent conditions of confinement in Ontario's provincially-run correctional institutions. This practice constitutes cruel, degrading and inhuman punishment.

3. Rather than fulfilling its own mandate to detain immigrants in reasonable and humane conditions, the CBSA transfers immigrant detainees to provincial correctional institutions that are wholly inadequate for their intended use. The CBSA has knowledge of the poor conditions, including chronic lockdowns, at these institutions. However, the CBSA continues to rely on indefinite incarceration in the Provincial Institutions as a

population management tool and turns a blind eye to the ongoing human rights violations that are taking place.

4. Both Ontario and Canada's policies and practices fall well below applicable standards and constitute gross and ongoing human rights violations.

5. The *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (the "**IRP Act**") specifically states that it is to be applied in a way that adheres to international human rights laws. The Defendants' policies and practices are in breach of this statutory mandate and their duty to confine immigrant detainees in reasonable and humane conditions.

THE PARTIES

6. The Plaintiff Godday Dadzie is an Ivory Coast national. His parents died when he was an infant and he was homeless for most of his teenage years. He arrived in Canada without identification as a stowaway on a commercial vessel in June 2003 when he was 19. He has been imprisoned at the Central East Correctional Centre in Lindsay Ontario ("**CECC**") since February 7, 2014 after being detained by CBSA officers. The CECC is a provincial correctional institution. He has not been charged with a crime, nor has he ever been convicted of a criminal offence. He is 32 years old.

7. The Plaintiff Al Zeekhehms is a Liberian national. He arrived in Canada in 2003 when he was 24 years old. He has been imprisoned in the following Provincial Institutions since March, 2013: Don Jail, Toronto East Detention Centre, Toronto West Detention Centre, South West Detention Centre, CECC and Maplehurst Correctional Complex ("**Maplehurst**"). Mr. Zeekhehms is currently detained at Maplehurst.

8. The Ivory Coast refuses to recognize Mr. Dadzie as a citizen and will not issue a travel document to the CBSA to deport him. Liberia refuses to recognize Mr. Zeekhehms as a citizen and will not issue a travel document to the CBSA to deport him. Both men are effectively caught in a stateless limbo.

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

10. Ontario, through and with its agents, servants and employees, was at all material times responsible for the funding, operation, management, administration, supervision and control of the provincial correctional institutions, as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M ("**Provincial Institutions**"). The Ministry of Correctional Services and Community Safety ("**Ministry**") is responsible for all immigrant detainees while they are incarcerated in the Provincial Institutions.

11. The Defendant Canada, through and with its agents, servants and employees, was at all material times responsible for the detention of immigrant detainees. The CBSA is the Federal agency responsible for the detention and well-being of immigrant detainees while they are being detained pursuant to the IRP Act. The CBSA was created by Order in Council on December 12, 2003 and was formally established when the *Canada Border Services Agency Act* S.C. 2005 c. 38 received Royal Assent on December 3, 2005. The CBSA is administered under the authority of the Federal Ministry of Public Safety and Emergency Preparedness.

12. The Plaintiff brings this action pursuant to the CPA on his own behalf and on behalf of all other persons who were detained by the CBSA under Division 6 of the IRP Act and were imprisoned in a Provincial Institution between December 12, 2003 and the present day (the "**Class**").

MISTREATMENT OF IMMIGRANT DETAINEES

13. When immigrants and refugees arrive in Canada, the CBSA is entitled to detain them for numerous reasons including lack of documentation, or pending refugee applications ("**Immigrant Detainees**").

14. In Ontario, the CBSA will initially detain such migrants for a period of time in CBSA-operated holding facilities. At its sole discretion, the CBSA may transfer immigrant detainees to Ontario's Provincial Institutions. Such transfers and the

subsequent incarceration of Immigrant Detainees in Provincial Institutions take place pursuant to provincial-federal agreements.

15. However, once transferred, Immigrant Detainees will spend months, and in many cases, years, confined in Provincial Institutions, subject to the same conditions as criminals serving sentences or remand prisoners awaiting trial. Immigrant Detainees are mixed with the population of the Provincial Institutions and are treated in the same sub-standard manner as convicted criminals.

16. All Immigrant Detainees are subjected to abhorrent conditions of confinement at the Provincial Institutions. Such conditions are the result of understaffing and overcrowding at the Provincial Institutions, which lead to frequent and extended periods of lockdown.

17. At all material times, Ontario, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of the Provincial Institutions. The Ministry's duty to do so is codified by statute and attendant regulations.

18. The Ministry establishes, maintains, operates, and monitors the Provincial Institutions.

19. The Provincial Institutions are located across Ontario. They are under the sole jurisdiction and control of, and were operated by, Ontario. Ontario retains and authorizes servants, agents, representatives and employees to operate the Provincial Institutions and gives instructions to such servants, agents, representatives and employees as to the manner in which the Provincial Institutions are to function and operate. The Ministry or its agents also discipline and terminate employees that staff the Provincial Institutions.

20. At all material times, it was within the control of the Ministry to appropriately staff the Provincial Institutions to eliminate lockdowns caused by staffing shortages. The Ministry has knowledge of how many people are required to staff the Provincial Institutions to operate without staffing-related lockdowns and it was within its control to ensure that sufficient staff was available. At all material times, Ontario was able to

ensure that the Provincial Institutions were appropriately staffed to prevent staffing-related lockdowns.

21. The Ministry or its agents draft, approve, and promulgate policies and procedures concerning the operation and management of the Provincial Institutions. At all material times, the Ministry holds sole power, control and responsibility for the care of the prisoners in the Provincial Institutions and ensuring that such institutions are appropriately staffed.

22. The Provincial Institutions are correctional institutions pursuant to the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 ("**MOC Act**"). In accordance with the MOC Act, Ontario is responsible for:

- (a) supervising the detention of the Class members;
- (b) providing safe and humane conditions of confinement;
- (c) providing for the custody of Class members;
- (d) establishing, maintaining and operating the Provincial Institutions;
- (e) providing adequate medical treatment; and,
- (f) providing adequate psychiatric treatment.

23. In accordance with the MOC Act, the superintendent of a Provincial Institution is responsible for:

- (a) the management of the institution;
- (b) the care, health, safety and custody of prisoners;
- (c) administering the Provincial Institution; and
- (d) issuing to the employees of the institution such directions as may be necessary to fulfil the responsibilities of a superintendent.

LOCKDOWNS AT THE PROVINCIAL INSTITUTIONS

24. The Provincial Institutions house many thousands of prisoners who are remanded, who have violated parole, and who are serving sentences of up to two years less a day. Immigrant Detainees are mingled with this population.

25. Immigrant Detainees often spend years in Provincial Institutions awaiting release or deportation. Many are detained indefinitely, meaning that they are completely unaware of when they will be released, if at all.

26. Prisoners in the Provincial Institutions, including Immigrant Detainees, are entitled to spend time outside of their cells. During this time, they may have access to televisions, newspapers or reading material, and may make phone calls. They are entitled to access an open air yard in which they may exercise. Prisoners are also entitled to a variety of programs, and are entitled to access spiritual or religious worship. Prisoners are entitled to visit with lawyers and other professionals, and prisoners are entitled to visits with members of the public. Prisoners are entitled to daily showers and other means of maintaining personal hygiene.

27. When a Provincial Institution is "on lockdown", prisoners are confined to their cells until the lockdown is lifted. Lockdowns can last hours, days or even weeks.

28. Lockdowns are most often caused by staff absences. When a Provincial Institution does not have enough available staff, it is locked down. The vast majority of lockdowns at the Provincial Institutions are caused by staffing absences.

29. Lockdowns create tremendously poor conditions for prisoners. Lockdowns are unpredictable. Class members do not know when lockdowns will occur, or for how long they will last, creating significant disruption to their lives.

30. During lockdowns, the lives of the Immigrant Detainees change dramatically:

- (a) public visits are cancelled or are very limited during lockdowns;

- (b) Immigrant Detainees clean their own cells, and are given supplies to do so, but during lockdowns there are delays in getting supplies to the prisoners and in getting laundry done;
- (c) being locked down in a cell limits Immigrant Detainees from getting in touch with family or lawyers;
- (d) being locked down prevents Immigrant Detainees from accessing showers and other facilities to maintain basic hygiene;
- (e) there is no or infrequent laundry service during lockdowns, and clean clothes and sheets are not available to Immigrant Detainees;
- (f) there is no programming during lockdowns;
- (g) there is considerable noise and banging on cell walls and other items during lockdowns, and it is difficult to sleep;
- (h) lockdowns are the cause of prisoners fighting amongst themselves. When they are let out during short periods between lockdowns, prisoners fight over showers and phones, as they do not know when their access will be interrupted once more;
- (i) there are an increased number of fights among prisoners as conditions worsen from lockdowns;
- (j) application of medication is not consistent or cannot be accessed;
- (k) medical appointments are cancelled, and there is a higher rate of prisoners' ailments;
- (l) during lockdown, there is no stimuli for Immigrant Detainees, and as a result, lockdowns have a severely detrimental effect on their mental health;
- (m) Immigrant Detainees must spend extended periods of time in uncomfortably close proximity to their cell mates;
- (n) meals are delayed;
- (o) Immigrant Detainees' ability to maintain social and familial ties is curtailed;
- (p) there is no access to reading materials;
- (q) religious programs are denied during lockdowns; and,
- (r) there is no opportunity to exercise, and prisoners cannot get any fresh air.

31. The conditions of detention during lockdowns are very similar to segregation or solitary confinement and in many ways, they are worse. The Immigrant Detainee is confined with another prisoner not of his choosing. Lockdowns are arbitrary – Immigrant Detainees do not know when the lockdown will be lifted and once it is lifted, they do not know how long it will be until they are locked down again.

32. During lockdown, Immigrant Detainees' already limited freedoms are further curtailed, often for days or weeks on end. These conditions contribute to an unsafe, unhealthy and dangerous environment for Class members and violate their basic rights and freedoms.

THE PLAINTIFFS' EXPERIENCES AT THE PROVINCIAL INSTITUTIONS

33. Mr. Dadzie has been at the CECC since early 2014.

34. Mr. Dadzie has provided the CBSA with his background information, his bio-data and his fingerprints. He has attempted to verify his identity with the Ivory Coast Embassy. He has consented to having his photo published in the media. However, the CBSA has repeatedly accused Mr. Dadzie of misleading them with respect to his identity and country of origin.

35. Mr. Dadzie has never been deemed to be a threat to public safety nor has he been deemed to be a danger to the public.

36. Mr. Dadzie has been imprisoned for over two and a half years mainly because the CBSA does not believe that he is from the Ivory Coast.

37. He is regularly held in his cell on lockdown for days at a time. During these periods, he is not able to shower or leave his cell. He is fed through an opening in his cell door. He will often go weeks without being let outside into the yard. He is housed with criminal remand detainees and he often shares a cell with dangerous prisoners. Mr. Dadzie has been physically assaulted by other prisoners at the CECC.

38. The conditions of confinement caused by the continuous lockdowns at the CECC are traumatic events that have caused Mr. Dadzie significant stress and anxiety and have had lasting psychological impacts on his life.

39. Mr. Zeekehmens is from Liberia. He has been living in Canada since 1993. He is married to a Canadian woman with whom he has five children, all born in Canada.

40. Since his arrival in Canada, Mr. Zeekehmens has practiced as a civil engineer, after studying engineering at the University of Toronto.

41. Mr. Zeekehmens has been transferred between various Provincial Institutions since his detention in March 2013, including Maplehurst, where he is now incarcerated.

42. The CBSA is of the opinion that Mr. Zeekehmens is from Ghana because Liberia will not issue him a travel document. For this reason, he has been imprisoned for the past 3.5 years.

43. Mr. Zeekehmens has suffered frequent and lengthy lockdowns at all of the Provincial Institutions where he has been detained. He has regularly gone up to five days without showering. He is often forced to spend weeks without speaking to his family and/or counsel. He is often refused access to worship at the Provincial Institutions' chapels. He has been locked in his cell with dangerous criminals and was once stabbed by his cellmate in the middle of the night. He will normally go weeks without going outside or getting any exercise.

44. Mr. Zeekehmens's mental condition is deteriorating as a result of his incarceration and the frequent lockdowns taking place at the Provincial Institutions. He suffers from anxiety disorders and his experiences have had a lasting and pronounced emotional and physical impact on his life.

45. Neither Mr. Zeekehmens nor Mr. Dadzie has a timeline for their release from custody. Their detention is indefinite.

KNOWLEDGE OF THE DEFENDANTS

46. The Defendants have known about lockdowns caused by staff shortages at the Provincial Institutions and the negative effects of lockdowns on prisoners in the Provincial Institutions for many years. Notwithstanding this knowledge, Canada continues to imprison Immigrant Detainees in Provincial Institutions and Ontario has taken no steps to correct the problem.

47. Lockdowns caused by staffing shortages have repeatedly been identified and condemned in judicial decisions. Justices of Ontario courts have repeatedly identified the unacceptable nature and frequency of lockdowns and the abhorrent conditions thereby inflicted upon prisoners. Lockdowns have been judicially found to be oppressive and an improper form of punishment.

48. The 2008 Annual Report of the Office of the Auditor General of Ontario identified staffing-related lockdowns as a problem at the Provincial Institutions that result in cancellations of health and rehabilitative programs for inmates. Numerous recommendations were made to appropriately staff the Provincial Institutions which have not been complied with.

49. Lockdowns at the Provincial Institutions caused by understaffing were also identified as a major concern in the Ontario Ombudsman's June 2013 report entitled "The Code". The Ombudsman reported that staffing-related lockdowns restrict prisoners' activities, and prisoners become increasingly frustrated, agitated, and more likely to engage in violent activity.

50. In 2014, the United Nations' High Commissioner for Human Rights openly criticized Canada calling for an end to overly lengthy and arbitrary immigrant detention practices in this country, calling them 'the norm, rather than the policy of last resort'.

51. Notwithstanding their knowledge of these problems and their failures, the Defendants have refused to take any action and continue, to the present day, to detain Class members in these conditions.

H. CAUSES OF ACTION

(a) Negligence

52. At all material times, the Defendants owed duties to the Plaintiffs and to the Class members which include, but are not limited to, a duty to protect the health and well-being of Immigrant Detainees. This duty includes a duty to give proper consideration to, and to take reasonable care of, Immigrant Detainees.

53. The harm suffered by the Immigrant Detainees was a reasonably foreseeable consequence of the Defendants' acts and omissions. The legislation governing the relationship between the Defendants and Immigrant Detainees grounds the duty of care owed by them to the Immigrant Detainees. At all material times, the actions of the Defendants had a direct impact on the Class members. The Defendants are responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the care and custody of Immigrant Detainees. In such circumstances, the risk of harm of the nature contemplated in this action is reasonably foreseeable.

54. The MOC Act states that Ontario must supervise the detention of prisoners. The Crown's duties as set out in section 5 of the MOC Act include:

- (a) the establishment, maintenance and operation of correctional institutions; and,
- (b) the provision of programs and facilities designed to assist in the rehabilitation of prisoners.

55. The IRP Act explicitly states in sections 3(3)(c) and 3(3)(f) that it is to be applied in a manner that complies with international human rights instruments to which Canada is a signatory and in a manner that is consistent with the Charter.

56. The express words of the statutes also establish a special, close, and direct relationship between the Defendants and Immigrant Detainees.

57. There was a direct and proximate relationship and specific interaction between each of the Class members and the Defendants, including but not limited to:

- (a) the detention of Class members by the CBSA;
- (b) the CBSA's transfer of Class members to the Provincial Institutions;
- (c) the daily interaction between Class members at the Provincial Institutions and Ontario or its agents;
- (d) the close and direct supervisory relationship between Ontario and the Class members; and,
- (e) the Class's complete reliance on Ontario to satisfy their basic needs, including the necessities of life, safety and comfort.

58. The reasonable standard of care expected in the circumstances required Canada:

- (a) to detain prisoners in facilities that are fit for their intended purpose;
- (b) to have in place appropriate policies and procedures to ensure that at all material times the Provincial Institutions operated in a manner such that the basic rights of prisoners were not denied;
- (c) to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions were reasonably safe for Immigrant Detainees;
- (d) to inquire, inspect or audit the Provincial Institutions on a regular basis to ensure that the basic needs of Immigrant Detainees were being met;
- (e) to remove Immigrant Detainees from Provincial Institutions when it learned of the sub-standard living conditions therein;
- (f) to follow such policies and procedures at all material times; and,
- (g) to put in place a mechanism to collect information and monitor the impact of lockdowns on Class members.

59. The reasonable standard of care expected in the circumstances required Ontario to:

- (a) to appropriately staff the Provincial Institutions;

- (b) to employ a sufficient number of employees to ensure that there were no lockdowns at the Provincial Institutions caused by understaffing;
- (c) to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions operated in manner such that the basic rights of Immigrant Detainees were not denied;
- (d) to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions were reasonably safe for Immigrant Detainees;
- (e) to follow such policies and procedures at all material times;
- (f) to ensure access to adequate and appropriate medical and health services;
- (g) to ensure regular access to legal representation and advice;
- (h) to ensure the ability of the Class members to maintain social and familial ties;
- (i) to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (j) to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, moral, spiritual, social, health and exercise;
- (k) to ensure access to reading materials;
- (l) to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (m) to ensure access to clean clothing and bedding; and,
- (n) to ensure access to appropriate hygiene requirements, including showers;

60. The Defendants knew or ought to have known of their duties described herein as a result of their unique position and expertise in caring for Immigrant Detainees.

61. Ontario breached the standard of care, on a Class-wide systematic basis, in the following respects:

- (a) failing to have appropriate staffing levels at the Provincial Institutions;

- (b) failing to employ a sufficient number of employees to ensure that there were no lockdowns at the Provincial Institutions caused by understaffing;
- (c) failing to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions operated in manner such that the basic rights of Immigrant Detainees were not denied;
- (d) failing to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions were reasonably safe for Immigrant Detainees;
- (e) failing to follow such policies and procedures at all material times;
- (f) failing to ensure access to adequate and appropriate medical and health services;
- (g) failing to allow Immigrant Detainees regular access to legal representation and advice;
- (h) failing to ensure the ability of the Class members to maintain social and familial ties;
- (i) failing to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (j) failing to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, moral, spiritual, social, health and exercise programs, activities and services;
- (k) failing to ensure access to reading materials;
- (l) failing to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (m) failing to ensure access to clean clothing and bedding;
- (n) failing to ensure appropriate hygiene requirements, including showers;
- (o) detracting from the ability of Immigrant Detainees to maintain good mental and physical health because of the increased tension and frustration among them caused by the close conditions of confinement;
- (p) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on Class members;
- (q) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and,
- (r) failing to safeguard the physical and emotional needs of Immigrant Detainees.

62. Canada breached the standard of care, on a Class-wide systematic basis, in the following respects:

- (a) transferring Immigrant Detainees to inadequately-staffed facilities which Canada knew were not fit for their intended use;
- (b) failing to have in place appropriate policies and procedures to ensure that at all material times the Provincial Institutions operated in a manner such that the basic rights of prisoners were not denied;
- (c) failing to inquire, inspect or audit the Provincial Institutions on a regular basis to ensure that the basic needs of Immigrant Detainees were being met;
- (d) failing to remove Immigrant Detainees from Provincial Institutions when it learned of the sub-standard living conditions therein;
- (e) failing to have in place appropriate policies and procedures to ensure that at all material times, the Provincial Institutions were reasonably safe for Immigrant Detainees;
- (f) failing to follow such policies and procedures at all material times; and,
- (g) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on Class members.

63. The Defendants' breaches caused damages to the Class, as described below.

(b) Fiduciary Duty Owed by the Defendants to the Class

64. The Defendants owed all Immigrant Detainees, as individuals in their care and control, fiduciary duties that included a duty to care for and protect them and to act in their best interests at all material times, as particularized further below.

65. The Immigrant Detainees' care was subject to the sole and unilateral exercise of Canada's power and discretion upon their detention by CBSA. The Immigrant Detainees' care was then subject to Ontario's power and unilateral discretion upon their transfer to

the Provincial Institutions. At all material times, the Immigrant Detainees were in a vulnerable position.

66. By virtue of the relationship between the prisoners and both Canada and Ontario, being one of trust, reliance and dependency, Canada and Ontario owed fiduciary obligations to ensure that the prisoners were treated respectfully, fairly, and safely, to act in the best interests of those individuals, to maintain appropriate standards during their imprisonment, and to protect them from harm.

67. The Immigrant Detainees had a reasonable expectation that the Defendants would act in their best interests with respect to their physical and mental healthcare and wellbeing given the assumption of responsibility for the care of prisoners by virtue of:

- (a) the detention of Immigrant Detainees by CBSA;
- (b) the transfer of Immigrant Detainees to Provincial Institutions by the CBSA;
- (c) Ontario's establishment, funding, operation, management, administration, supervision and control of the Correctional Institutions;
- (d) the dependence of Class members on the Defendants;
- (e) vulnerability of the Class members as a result of their incarceration in the Provincial Institutions; and,
- (f) the involuntary nature of the relationship between the Class members and the Defendants.

68. Given the circumstances of the relationship between the Defendants and the Class members, including but not limited to the statutory obligations, authority and responsibilities of the Defendants, the Defendants undertook to act in the best interests of class members and to act in accordance with the duty of loyalty imposed on them

69. The Defendants were responsible for, among other things:

- (a) in the case of Canada:

- (i) the administration of the CBSA, the IRP Act and any other statutes relating to Immigrant Detainees and the regulations promulgated under these statutes and their predecessors during the class period;
 - (ii) decisions, procedures, regulations promulgated, operations and actions taken by the CBSA, their employees, servants, officers and agents and their predecessors during the class period;
 - (iii) ensuring that the health, safety and well-being of Immigrant Detainees was adequately cared for in the Provincial Institutions;
 - (iv) transferring Immigrant Detainees to facilities that are fit, safe and in which the Class members would be safe from harm; and,
 - (v) the regular inspection and supervision of the Provincial Institutions and all activities that took place therein during the class period.
- (b) in the case of Ontario:
- (i) the administration of the Ministry, the MOC Act any other statutes relating to prisoners and all regulations promulgated under these statutes and their predecessors during the class period;
 - (ii) the protection of the health, safety and well-being of Immigrant Detainees during the class period;
 - (iii) the management, operation and administration of the Provincial Institutions during the class period;
 - (iv) for decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, their employees, servants, officers and agents and their predecessors during the class period;
 - (v) the care and supervision of, and the provision of the necessities of life to, all Class members while they were incarcerated in the Provincial Institutions during the class period; and,

- (vi) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, and supervision of the Provincial Institutions and all activities that took place therein during the class period and for full record keeping with respect to the conditions at these Provincial Institutions and all activities that took place therein during the class period.

70. The Class members were entitled to rely and did rely on the Defendants to their detriment to fulfill their fiduciary obligations. The Defendants breached their fiduciary duties to the Plaintiffs and the Class. The particulars of Canada's breaches include:

- (a) entering into contracts with Ontario for the detention of Immigrant Detainees, knowing that the Provincial Institutions were not fit for this purpose;
- (b) putting its own interests ahead of the interests of Immigrant Detainees by attempting to save money by delegating their detention to Ontario;
- (c) failing to ensure that Immigrant Detainees were being confined in reasonable conditions in the Provincial Institutions by inspecting or making adequate inquiries of Ontario;
- (d) failing to monitor Class members and/or to recognize the ill-effects of frequent lockdowns on them;
- (e) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (f) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and,
- (g) failing to safeguard the physical and emotional needs of Immigrant Detainees.

71. The particulars of Ontario's breaches include:

- (a) failing to ensure that the Provincial Institutions were properly staffed at all material times;
- (b) allowing for staffing levels to fall so low that the Provincial Institutions could not operate in a reasonable manner;
- (c) failing to take a proper and good faith interest in the operation of the Provincial Institutions and supervision of the Class members, despite its role in respect of the prisoners under its responsibility;

- (d) allowing for lengthy and frequent staffing-related lockdowns to occur in the Provincial Institutions;
- (e) failure to recognize deterioration in the physical and mental condition of class members and to take steps to reverse this;
- (f) putting its own interests ahead of the interests of prisoners by attempting to save money through understaffing the Provincial Institutions;
- (g) failing to provide adequate financial resources or support to properly care and provide for class members;
- (h) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (i) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and
- (j) failing to safeguard the physical and emotional needs of Immigrant Detainees.

72. The Defendants knew or ought to have known that as a consequence of Ontario's operation, care and control of the Provincial Institutions, and Canada's policies and practices with respect to transferring the class members to the Provincial Institutions, the Class members would suffer damages, as discussed below.

(c) Breaches of the Charter

73. The conditions particularized above violate the basic human rights of the Class members and, as such, constitute a violation of their rights and freedoms under Sections 7, 9, 11(e) and 12 of the Charter.

74. The conditions under which the Immigrant Detainees are detained engage the interests of liberty and security of the person. The frequent, random and unpredictable staffing-related lockdowns and the consequences of the lockdowns identified herein cause severe detrimental mental and physical effects on Immigrant Detainees. The conditions at the Provincial Institutions and the conduct of Ontario violate the right of the class to life, liberty and security of the person, contrary to section 7 of the Charter.

75. Further, the frequent, random and unpredictable nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification. This

constitutes arbitrary restraint or detention and as such constitutes a breach of section 9 of the Charter.

76. The amount, duration, unpredictability and severity of staffing-related lockdowns and the adverse consequences of these lockdowns at the Provincial Institutions during the class period identified herein violate the rights of class members to be held in custody in a humane and safe facility. This treatment is so excessive as to outrage standards of decency and is grossly disproportionate. The frequent, random and unplanned lockdowns at the Provincial Institutions constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the Charter.

77. The frequent, random and unplanned nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification. Lockdowns are not justified by legitimate safety or security reasons.

78. The treatment of the class members, in its totality, was so excessive as to outrage standards of decency. It was disproportionate and it was degrading.

79. The right to reasonable bail is a principle of fundamental justice. The Class members have the right not to be denied reasonable bail without just cause under sections 7 and 11(e) of the Charter. The indefinite detention of the Class members with no access to reasonable bail constitutes a breach of section 7 and 11(e) of the Charter. The detention of Class members and the application of the IRS Act by Canada is criminal in nature. In the alternative, if the nature of the detention of Class members and the application of the IRS Act to Class members by Canada is not criminal in nature, it attracts a true penal consequence, the imprisonment of Immigrant Detainees in the Provincial Institutions.

80. In the circumstances, the class is entitled to monetary damages from Ontario pursuant to section 24(1) of the Charter for violation of the class members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights;

- (c) deter systemic violations of a similar nature; and,
- (d) incentivize the Defendants to ensure that future *Charter* violations are remedied as soon as possible.

81. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

82. The Class is entitled to immediately access their right to reasonable bail under section 24(1) of the Charter.

DAMAGES SUFFERED BY THE CLASS

83. The Defendants knew, or ought to have known, that as a consequence of placing Class members in the Provincial Institutions, and in operating the Provincial Institutions in a sub-standard manner, that the Class members would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and the community at large.

84. Members of the Class were physically, mentally, emotionally and spiritually traumatized by their experiences arising from their detention at the Provincial Institutions. As a result of the Defendants' negligence and breach of fiduciary duty, as well as Ontario's breaches of the Charter rights of the Class, Immigrant Detainees suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical and psychological abuse;
- (b) exacerbation of existing mental disability and deprivation of healing opportunities;
- (c) the infliction of new mental illness;
- (d) impairment of mental and emotional health and well-being;
- (e) an impaired ability to trust other persons;
- (f) a further impaired ability to participate in normal family affairs and relationships;
- (g) alienation from family members;

- (h) depression, anxiety, emotional distress and mental anguish;
- (i) pain and suffering;
- (j) a loss of self-esteem and feelings of humiliation and degradation;
- (k) an impaired ability to deal with persons in positions of authority;
- (l) an impaired ability to trust other individuals or to sustain relationships;
- (m) a sense of isolation and separateness from their community;
- (n) a requirement for medical or psychological treatment and counselling;
and,
- (o) the loss of general enjoyment of life.

85. At all material times, the Defendants knew, ought to have known, and continue to know, that ongoing delay in failing to rectify the institutional failures at the Provincial Institutions would continue to aggravate and contribute to the Class members' injuries and damages.

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

J. PUNITIVE DAMAGES

87. The high-handed and callous conduct of the Defendants warrants the condemnation of this Honourable Court. The Defendants conducted their affairs with wanton and callous disregard for the Class members' interests, safety and well-being. In all the circumstances, the Defendants breached, and continues to breach, their fiduciary duties, duties of good faith, and Charter duties owed to the Plaintiffs and all Class members.

88. Over a long period of time, the Plaintiffs and the Class members were treated in a manner that could only result in aggravated and increased mental stress and anxiety. The

substandard conditions to which the Plaintiffs and the Class members were exposed has grossly violated their rights and severely altered the paths of their lives.

89. In these circumstances, the Plaintiffs and the Class request punitive damages to demonstrate to other government-owned institutions that such wilfully irresponsible and tortious behaviour will not be tolerated and will act as a deterrent to other institutions in Canada that are in the position of acting as care-givers to similarly situated populations of persons. These individuals, by virtue of their captivity and complete dependence on the Defendants for their well-being, are among the most vulnerable in Canadian society.

90. Notice of this action was provided to Ontario on June 2, 2016 pursuant to the requirements of the *Proceedings Against the Crown Act*, R.S.O. 1990 c. P. 27.

91. This action is commenced pursuant to the CPA.

92. The trial of the action should take place in the city of Toronto, in the Province of Ontario.

August 11, 2016

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ATTORNEY GENERAL OF CANADA
Defendants

Court File No.:

CV-16-558376
OCCP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding under the *Class Proceedings Act*,
1992

STATEMENT OF CLAIM

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