

Court File No. CV-10-41191

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**DAVID MCKILLOP BY HIS LITIGATION GUARDIAN CHRISTINE VICTORIA  
GRACE CLARKE**

Plaintiff

- and -

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

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT

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

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

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date September 24, 2010

Issued by

  
Local registrar

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

TO: **HER MAJESTY THE QUEEN IN RIGHT  
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### CLAIM

1. The plaintiff, on behalf of the Class as described herein, claims:
  - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class and any appropriate sub class thereof;
  - (b) a declaration that the defendant breached its fiduciary, statutory and common law duties to the plaintiff and the Class through the establishment, funding, operation, management, administration, supervision and control of the Rideau Regional Centre (“Rideau”);
  - (c) a declaration that the defendant was negligent in the establishment, funding, operation, management, supervision and/or control of Rideau;
  - (d) a declaration that the defendant is liable to the plaintiff and the Class for the damages caused by its breach of fiduciary, statutory and common law duties and for their negligence in relation to the establishment, funding, operation, management, administration, supervision and control of Rideau;
  - (e) damages for negligence and breach of fiduciary duty, in the amount of \$1 billion, or such other sum as this Honourable Court may find appropriate;
  - (f) punitive damages in the amount of \$1 billion, or such other sum as this Honourable Court may find appropriate;
  - (g) an order appointing Christine Victoria Grace Clarke as litigation guardian of the proposed representative plaintiff,
  - (h) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
  - (i) costs of the action on a substantial indemnity basis;
  - (j) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
  - (k) such further and other relief as to this Honourable Court may seem just and appropriate in all the circumstances.

**A. THE PARTIES**

2. The plaintiff, David McKillop, is an individual residing in the Town of Gananoque, in the Province of Ontario. David was born on November 27, 1950. He was admitted to Rideau in 1955, at the age of 5 years old. David continued to reside at Rideau, as a ward of the institution, full-time, from 1955 through to 1972.

3. David's litigation guardian, Christine Victoria Grace Clarke ("Vici"), is an individual residing in the City of Kingston, in the Province of Ontario. Vici has known David and been his friend for over 9 years. Vici's brother, Robert Clarke, also attended Rideau. Vici has worked alongside individuals with disabilities for over 30 years.

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

5. The Crown, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of Rideau as a residential facility for the care and control of mentally challenged and mentally disabled individuals and other persons in need of psychiatric care. Rideau was a Schedule 1 facility pursuant to the *Developmental Services Act*, R.S.O. 1990, c. D. 11.

6. Rideau is located in Smith Falls, Ontario. The Crown retained and authorized servants, agents, representatives and employees to operate Rideau and gave instructions to such servants, agents, representatives and employees as to the manner in which the facility was to function and operate.

7. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons who resided at Rideau.

8. The proposed members of the Class are:
  - (a) all persons who resided at Rideau between 1951 and 2009 (the "Resident Class"); and
  - (b) all parents, spouses, children and siblings of Resident Class members (the "Family Class").

## **B. HISTORY OF THE RIDEAU REGIONAL CENTRE**

9. Rideau was operated from 1951 to March 31, 2009. Over that time period, it housed over 2,600 individuals then labelled “mentally retarded”, severely developmentally challenged and delayed. The Resident Class, as people with disabilities, are a particularly vulnerable and powerless population within society.

10. Individuals were either placed in Rideau by family members or their principal caregivers who voluntarily placed them to receive medical or personal care or by becoming wards of the Crown, having been legally remanded into the care of the Crown as wards of the state. Individuals were placed in Rideau as a result of their perceived mental and other disabilities.

11. Rideau was intended to provide a residential program for nursing care, activity, and educational programs and adult training to individuals of all ages labelled mildly, moderately, severely and profoundly disabled.

12. Rideau was originally founded in 1951 as the Ontario Hospital School, Smith Falls. The centre was renamed the Rideau Regional Hospital School in 1967 and the Rideau Regional Centre in 1974. Rideau’s educational programs were operated under the direction of the Provincial Department of Health until 1972 when the Department became the Provincial Ministry of Health. Over time, Rideau’s catchment admission area covered the regions of Nipissing, Sudbury, Algoma, Cochrane, Timiskaming, Manitoulin, Haliburton, Peterborough, Northumberland, Hastings, Lennox and Addington, Renfrew, Frontenac, Lanark, Leeds, Grenville, Dundas, Stormont, Glengarry, Russell, Cavelton, Victoria, Durham, and Prince Edward.

13. Shortages of staff and funding, coupled with an expanding operation, led to a rapid growth in the institution's population which added to the overcrowding of Rideau. Rideau quickly became a large, overcrowded, isolated and undermaintained institution. By 1975, Rideau's resident population was 2,650.

14. Rideau continued to operate under the auspices of the Ministry of Health until 1974 when the institution was transferred to the Ministry of Community and Social Services. In 1974, the *Development Services Act*, 1974, S.C. 1974, c. 2, was enacted, which gave the Ministry of Community and Social Services legislative responsibility for all government and board-operated institutions for people with developmental disabilities. The average stay of a resident in Rideau was 39 years and 60% of the residents resided at Rideau for over 35 years. Rideau was closed on March 31, 2009.

15. Every aspect of Rideau residents' lives was dictated and controlled by the Crown. Individuals at Rideau had virtually no control over any aspect of their lives. The opportunities to make choices or provide any input into their daily lives were extremely limited if not non-existent. Rideau had a prison-like environment. The vulnerability of these individuals as a result of their placement in the institution was further compounded by virtue of their being disabled.

16. In 1971, the Walter B. Williston report, sponsored by the Ministry of Health, entitled "Present Arrangements of the Care and Supervision of Mentally Retarded Persons in Ontario" (the "Williston Report") was released to the then Minister of Health. The Williston Report was a scathing indictment of large institutions for the mentally handicapped in Ontario. The Williston Report include investigations of two former residents of Rideau, one of which allegedly committed suicide.

17. Williston's findings regarding the operation of a number of similar hospital schools, including Rideau, included, but were not limited to:

- (a) shortages of staff and money;
- (b) seriously overcrowded, isolated and undermaintained;

- (c) overcrowding was most apparent in wards where profoundly and severely disabled adults were left rocking or aimlessly walking;
- (d) residents were required to perform a number of routine tasks necessary for the operation of the institution, including cooking, laundry, farming among others;
- (e) deficient staff to patient ratios, at one point approaching thirty-percent (25%) deficiencies below minimum industry or regulatory standards of the day; **and**
- (f) residents were paid nothing, or minimally unrealistic and unfair wages, for their work and labour at Rideau.

18. On a more general level with respect to the three (3) large institutions in Ontario housing individuals labelled mentally disabled, including Rideau, the Williston Report concluded that:

- (a) in many cases, residents used lavatories without doors;
- (b) the remote location caused a dearth of highly trained individuals prepared to relocate, causing a constant and insufficient number of physicians, psychiatrists, psychologists, nurses and social workers to staff Rideau;
- (c) these institutions forced mentally disabled residents to function far below developmental possibilities;
- (d) the Ontario Hospital School system was divorced from mainstream health, education and social/family services and could not therefore adequately establish and administer services which are responsive to community need; and
- (e) a "century of failure and inhumanity in the large multi-purpose residential hospitals for the retarded should, in itself, be enough to warn of the inherent weakness in the system and inspire us to look for a better solution".

19. At the time the Williston Report was authored, the daily average resident population of Rideau was 2,070 and the number of staff dealing directly with the residents was 782.

20. In 1973, a second government-sponsored report prepared by Robert Welch, Provincial Secretary for Social Development, entitled "Community Living for the Mentally Retarded in Ontario" (the "Welch Report"), was released. The Welch Report focussed on the needs of mentally disabled persons in Ontario at large, not just on Rideau residents, warning that such persons require *additional special* treatment. The Welch Report determined that, not only did mentally disabled individuals in Ontario not receive the level of appropriate care required, but that since the 1960's, there had been little overall improvement in the actual pattern of care received by the mentally disabled in Ontario.

21. Notwithstanding receiving recommendations to identify, halt, report and eliminate abuse and to provide an appropriate level of care to Rideau residents, over a period of some years, no adequate internal safeguards were put into place to prevent or report abuse of Rideau residents and no adequate steps were taken to improve the quality of care or living at Rideau. In the alternative, even if the Crown adopted some of the recommendations, those measures were inadequate and failed to meet the standard of care which was applicable in the circumstances.

22. Most notably, the Crown did not act to prevent or report the known abuse which was occurring and being perpetrated upon Rideau residents. As the Crown knew that the residents of Rideau were not always in a position to complain, report or be listened to, it would have been reasonable for the Crown to establish appropriate institutional means of quality assurance to ensure individuals resided in an inherently safe environment.

### **C. THE PLAINTIFF'S EXPERIENCES AT RIDEAU**

23. During the time when the various public recommendations and reports were published regarding the treatment of Rideau residents and the very operation of the institution, referred to above, the plaintiff was placed into Rideau as a full-time resident when he was a minor child.

24. David was admitted to Rideau in 1955. At the time of his admittance he was then described as "sick physically and mentally", "delayed mental development" and "autistic".



25. Living at Rideau was extremely difficult for David. He lived in a large dorm with many other children. He had no personal belongings and there was no sense of privacy. He was provided with shoes that did not fit him. Dorm rooms were locked day and night, providing a prison-like atmosphere. The washrooms at the dorm had no doors and the children were made to shower together. David had no control over his life at Rideau. David had no opportunity to make choices or provide any input into his daily life at Rideau.

26. While at Rideau, David was physically and mentally abused by staff members and other residents. David was punished by Staff, sometimes for no reason at all, by being required to:

- (a) clean floors with a toothbrush;
- (b) clean toilets with a toothbrush;
- (c) wear embarrassing nightgowns all day;
- (d) kneel against a wall with his fingers and arms extended for 1-2 hours at a time;  
and
- (e) kneel and hold a pail of water in each hand for extended periods of time,  
among other punishments.

27. During his residence at Rideau, David was violently kicked in the groin by a staff member. David is married, but, as result of being so violently kicked, he is unable to have children.

28. David repeatedly witnessed other children residing at Rideau being similarly physically punished for no reason and experienced staff members instructing minor residents to physically abuse one another at the staff's direction. Rideau had an air of violence and punishment which created significant fear among the residents and caused significant mental trauma.

29. David received virtually no education at all while at Rideau. Each year the residents would learn the same things. Only after leaving Rideau and attending school, did David learn to read and write.

30. While at Rideau David worked washing dishes, washing floors and helping the ward staff to take care of other residents, including little children. He was not paid for his work.

31. David was only bathed twice a week at the time of Rideau's choosing.

32. David was discharged from Rideau in 1972.

#### **D. KNOWLEDGE OF THE CROWN**

33. The Crown failed to reasonably consider or act upon the knowledge or recommendations it had been provided with by its own commissioned reports, residents, family members of residents, and its own professional staff. Further, in addition to failing to provide proper resident care, in all respects, the Crown was also aware of the abuse occurring at Rideau yet failed to take any reasonable action to prevent it from continuing or occurring.

34. The funding provided by the Crown was inadequate to meet the costs of operating and maintaining Rideau and in particular, to meet the needs of the individuals who resided there. As a result, the care provided to the resident class members and the conditions at the facility were poor, the staff hired were unskilled or unsuitable for dealing with mentally challenged persons and the conditions at the facility were not suitable or appropriate for anyone, let alone for a residential facility for people with mental disabilities.

35. The members of the Resident Class are all of the past residents of Rideau.

#### **E. MISTREATMENT OF RESIDENTS**

36. The persons who were admitted into Rideau were typically as early as at the age of five (5) years old. In many cases, they were forced to reside at Rideau by representatives of the Crown.

37. In addition to the incidents of abuse and negligent management or operation of Rideau described *supra*, other examples of improper conduct on behalf of the Crown include, but are not limited to, the following:

- (a) residents were left to aimlessly walk or crawl around Rideau at times, often without any clothing;
- (b) residents were often not bathed or cleaned;
- (c) there was intermittent or inadequate or no attempt to supervise or program residents' activities;
- (d) residents were required to perform a number of routine tasks necessary for the operation of the institution, including cooking, laundry, farming, gardening, hair cutting, cleaning toilets, helping other residents to eat their meals, feeding other residents, among other tasks;
- (e) admissions procedures contained no opportunity for pre-admission visits and communications between residents and family members were made difficult if not impossible;
- (f) serious shortage of professional staff, falling far behind, sometimes in the nature of 25%, appropriate industry and professional standards or ratios, in David's ward there were fifty (50) residents and only three (3) to four (4) staff, one (1) staff at night and less on weekends;
- (g) total lack of personal attention or privacy given the institutional structure, facilities and overcrowding;
- (h) wards and rooms were unnecessarily locked, creating a prison-like environment;
- (i) lavatory stalls lacked doors;

- (j) for their physical labour in and around the institution, residents were either paid nothing at all or were paid minimal and completely unrealistic wages in the range of 3 cents per hour; and
- (k) some residents were involuntarily sterilized.

#### **F. DUTIES OWED BY THE CROWN TO THE CLASS**

38. In breach of its duty of care and fiduciary obligations, the Crown operated or caused to be operated a residential facility whose residents, including the plaintiff and proposed members of the Class, were systemically subject to abuse, mistreatment, neglect and poor living conditions, amongst other things, caused or permitted by the Crown.

39. As a result of its sole jurisdiction over the operation of Rideau, at all material times, the Crown owed duties to the plaintiff and to members of the proposed Class which include, but are not limited to:

- (a) adequately, properly and effectively supervising the Rideau environment and the conduct of its employees to ensure the residents would not suffer harm;
- (b) ensuring that physical, emotional and sexual abuse would not occur;
- (c) protecting Rideau residents from any person or thing which would endanger or be injurious to the health and well-being of any resident;
- (d) using reasonable care to ensure the safety, well-being and protection of Rideau residents;
- (e) providing a safe environment and in particular, one free from physical sexual and/or psychological assault or harm;
- (f) setting or implementing standards of conduct for its employees and Rideau residents to ensure that no employee or resident would endanger the health or well-being of any resident or person;

- (g) providing residents a program and system through which abuse would be recognized and/or reported;
- (h) educating residents and employees in the use of a system through which abuse would be recognized and reported;
- (i) pursuing and investigating complaints of physical, sexual or psychological abuse with due diligence;
- (j) taking any and all reasonable steps to prevent and end physical, sexual or psychological abuse upon learning of a complaint;
- (k) taking any and all reasonable steps to ensure that individuals coming into direct contact with a Rideau resident were not in danger of abuse from other residents or employees;
- (l) reporting conduct which is allegedly contrary to the *Criminal Code of Canada* to the appropriate law enforcement agency upon learning the particulars of such a complaint; and
- (m) providing proper and reasonable treatment for residents upon learning that a resident was abused.

**G. FIDUCIARY DUTY OWED BY THE CROWN**

40. Furthermore, the Crown owed residents of Rideau, as individuals in its sole care and control, a fiduciary duty which included a duty to care for and protect the residents and act in their best interests at all material times.

41. The Crown had a fiduciary relationship with the residents of Rideau. The Crown created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated Rideau during the Class Period.

42. All individuals who resided at Rideau did so as wards of the Crown and were persons to whom the Crown owed the highest non-delegable, fiduciary, moral, statutory and common law duties, which included, but was not limited to, the duty to ensure that reasonable care was taken of the residents of Rideau, the duty to protect residents while at Rideau, the duty to protect the resident Class from intentional torts perpetrated on them while at Rideau, liability if these non-delegable and fiduciary duties were performed negligently or tortiously and the special responsibility to ensure the safety of the resident Class while at Rideau.

43. Amongst other things, the Crown was solely responsible:

- (a) for the administration of the Ministry of Health, the Ministry of Community and Social Services and the *Development Services Act*, R.S.O. 1990, c. D. 11, as amended, and its predecessor statutes as well as any other statutes relating to disabled persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
- (b) for the promotion of the health, safety and well being of Class Members during the Class Period;
- (c) for the management, operation and administration of the Ministry of Health and Ministry of Community and Social Services and their predecessor Ministries and Departments during the Class Period;
- (d) for decisions, procedures, regulations promulgated, operations and actions taken by the Ministry of Health and Ministry of Community and Social Services, their employees, servants, officers and agents and their predecessors during the Class Period;
- (e) for the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of Rideau during the Class Period;
- (f) for the care and supervision of all members of the resident Class while they resided at Rideau during the Class Period and for the supply of all the

necessities of life to resident Class Members, *in loco parentis*, during the Class Period;

- (g) for inspection and supervision of Rideau and all activities that took place therein during the Class Period and for full and frank reporting to the Family Class Members with respect to conditions at Rideau and all activities that took place therein during the Class Period; and
- (h) for communication with and reporting to the Family Class with respect to the activities and experiences of Class Members while residing at Rideau during the Class Period.

44. The Crown also owed the residents' legal guardians a fiduciary duty which included a duty to care for and protect Rideau's residents, a duty to act in the residents' best interests and a duty to fully inform the legal guardians of any and all factors which could endanger the residents' safety or well-being.

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

46. The Crown also owed contractual obligations to the residents' legal guardians which included, but were not limited to, acting in the residents' best interests at all material times and to inform the residents' guardians of any and all factors which might affect or threaten the residents' safety or well-being.

47. At all material times, the Resident Class members who resided at Rideau were entirely and exclusively within the power and control of the Crown and were subject to the unilateral exercise of the Crown's power or discretion. By virtue of the relationship between the mentally challenged residents and the Crown, being one of trust, reliance and dependence, by the residents, the Crown owed a fiduciary obligation to ensure that the residents of the facility were treated respectfully, fairly, safely and in all ways consistent with the obligations of a party standing *in loco parentis* to an individual under his or her care or control.

48. At all material times, the Crown owed a fiduciary duty to the residents at Rideau to act in the best interests of those individuals and to protect them from any abuse, including but not limited to, mental, emotional, physical, sexual or otherwise.

49. The individuals who resided at Rideau were entitled to rely and did rely upon the Crown to their detriment to fulfill their fiduciary obligations, the particulars of which include, but are not limited to:

- (a) the Crown failed to report injuries sustained by residents of Rideau;
- (b) the Crown failed to provide adequate medical care for residents;
- (c) the Crown forced residents to work on the premises without proper, adequate or appropriate compensation to those residents for their labour, and without ensuring a safe working environment;
- (d) the Crown failed to report allegations of sexual abuse and, moreover, often punished those residents who came forward with such claims;
- (e) the Crown failed to properly screen applicants for positions which they were hired for at Rideau;
- (f) the Crown hired caregivers and others to work at Rideau who were not qualified to reach or to meet the needs of the individuals under their care and supervision;
- (g) the Crown failed to properly supervise the administration and activities of Rideau;
- (h) the Crown failed to provide adequate financial resources or support to properly maintain the Rideau facilities or to care and provide for its residents;
- (i) the Crown failed to respond adequately, or at all, to complaints or recommendations which were made concerning Rideau, both with respect to its condition and the treatment of residents;



- (j) the Crown created, permitted and fostered an atmosphere of fear and intimidation;
- (k) the Crown failed to safeguard the physical and emotional needs of the Resident Class;
- (l) the Crown permitted unhealthy and inappropriate punishments to be perpetrated against the Resident Class; and
- (m) the Crown permitted an atmosphere that threatened the Resident Class with severe physical punishments, including violence.

50. The residents of Rideau, their legal guardians and family members, had a reasonable expectation that the Crown would act in their best interests with respect to their care and the existence and operation of Rideau by virtue of the following:

- (a) the historic duties of the Crown to individuals deemed mentally incompetent or developmentally challenged;
- (b) the unilateral assumption of responsibility for the care of the class members and similarly situated persons by the Crown;
- (c) the involvement of the Crown in the initial establishment of Rideau;
- (d) the long standing dependence of Rideau residents on the Crown;
- (e) the nature and severity of the mental and physical disabilities experienced by Rideau residents;
- (f) the vulnerability of Rideau residents as a result of their range of disabilities; and
- (g) the involuntary nature of the relationship between Rideau residents and the Crown.

51. The Crown knew, or ought to have known, that as a consequence of its operation, care and control of Rideau, that residents of Rideau would suffer both immediate and long-term mental, emotional, psychological and physical harm.

#### **H. DAMAGES SUFFERED BY THE CLASS**

52. The Crown knew, or ought to have known, that as a consequence of its negligent operation of Rideau and mistreatment of the Resident Class, that those individuals would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and the community at large.

53. Members of the Resident Class were physically, mentally, emotionally and spiritually traumatized by their experiences arising from their residence at Rideau. As a result of the negligence and breach of fiduciary duty of the Crown and its failure to provide proper and adequate care or supervision, the Resident Class members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical, sexual and psychological abuse;
- (b) exacerbation of mental disability and deprivation of healing opportunities;
- (c) impairment of mental and emotional health and well-being;
- (d) an impaired ability to trust other persons;
- (e) a further impaired ability to participate in normal family affairs and relationships;
- (f) alienation from family members;
- (g) depression, anxiety, emotional distress and mental anguish;
- (h) pain and suffering;
- (i) a loss of self-esteem and feelings of humiliation and degradation;
- (j) the fact that the Rideau structure and environment was itself further disabling to these individuals, physically, emotionally and psychologically by limiting their skills and developing a learned helplessness
- (k) a lack of and inability to gain educational and employment skills;

- (l) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (m) an impaired ability to deal with persons in positions of authority;
- (n) an impaired ability to trust other individuals or to sustain relationships;
- (o) a sense of isolation and separateness from their community;
- (p) a requirement for medical or psychological treatment and counselling;
- (q) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (r) loss of friendship and companionship;
- (s) loss of community, social connections and the ability to develop them;
- (t) loss of opportunity to realize and exercise their citizenship rights;
- (u) sexual disorientation; and
- (v) the loss of general enjoyment of life.

54. At all material times, the Crown has known, or ought to have known, particularly since 1970, and continue to know, that ongoing delay in failing to rectify the institutional failures would continue to aggravate and contribute to the Resident Class members' injuries and damages.

55. As a result of the injuries referred to *supra*, the Resident Class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. The plaintiff and other Resident Class members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of the Crown's conduct for which they claim complete indemnity, compensation and payment from the Crown for such services. In some cases the damage can only be minimized and cannot be fixed. The Resident Class members' isolation and missed opportunity for developing and building connections continues to add to their vulnerability.

56. Members of the Family Class have suffered, and continue to suffer, loss of care, guidance and companionship which arises directly, or indirectly, from the physical, mental and emotional trauma sustained directly, or indirectly, by the Resident Class who resided at

Rideau. The harm suffered by the Family Class was reasonably foreseeable and was caused by the conduct of the Crown and its agents for whom they are in law responsible.

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

### **I. PUNITIVE DAMAGES**

58. The high-handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the class members' interests, safety and well-being. In all the circumstances, the Crown breached, and continues to breach, its fiduciary duty and duty of good faith owed to former Rideau residents.

59. Over a long period of time, the plaintiff and the Resident Class members were treated in a manner that could only result in aggravated and increased mental stress and anxiety for vulnerable persons already suffering from some degree of mental disability. The anxiety, depression and sub-standard conditions to which the plaintiff and Resident Class members were exposed to has grossly violated their rights and severely altered the paths of their lives.

60. In these circumstances, the plaintiff and the Class Members request punitive damages to demonstrate to other institutions that such wilfully irresponsible and tortious behaviour will not be tolerated and will act as a deterrent to other institutions in Canada who are in the position of acting as care-givers to likewise vulnerable populations of individuals with disabilities. These individuals, by virtue of both disability and of social and institutional structures, are among the most vulnerable in Canadian Society.

61. Notice of this action was provided to Her Majesty, the Crown, on July 9, 2010.

62. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

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

September 24, 2010

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**DAVID MCKILLOP BY HIS  
LITIGATION GUARDIAN CHRISTINE  
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Plaintiff

and  
**HER MAJESTY THE QUEEN IN  
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Defendant

Court File No:

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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