

CV-11-420734

Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

BETWEEN :

**ROBERT SEED**

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 February 22, 2011

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

## CLAIM

1. The plaintiff claims:
  - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class (as defined below);
  - (b) a declaration that the defendant breached its fiduciary duties to the plaintiff and the Class through the establishment, funding, operation, management, administration, supervision and control of the W. Ross MacDonald School for the Blind and its predecessors (“Ross MacDonald”);
  - (c) a declaration that the defendant is liable to the plaintiff and the Class for the damages caused by its breach of its common law duties in relation to the establishment, funding, operation, management, administration, supervision and control of Ross MacDonald;
  - (d) damages for negligence and breach of fiduciary duty, in the amount of \$200 million, or such other sum as this Honourable Court may find appropriate;
  - (e) punitive damages in the amount of \$25 million;
  - (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the plaintiff;
  - (h) the costs of notice and of administering the plan of distribution of the recovery in this application, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
  - (i) such further and other relief as this Honourable Court may deem just.

### A. OVERVIEW

2. Ross MacDonald was at all material times a provincially-operated elementary and secondary school for children with visual disabilities. The vast majority of students lived in

residence and had minimal contact with their families during the school year. These children were under the Crown's exclusive control and care.

3. Throughout its long period of operation, those caring for the students at Ross MacDonald have often approached them with contempt, prejudice, indifference and abuse. Students have suffered physical and mental abuse at the hands of teachers, residence counsellors, other students and employees of the institution.

4. Every aspect of students' lives was dictated, controlled and provided for by the Crown. Students at Ross MacDonald had no control over any aspect of their lives. The students lived by the bell and the whistle: they woke them in the morning, they lined them up for meals and they sent them to bed. The students were children at the mercy of the adults that cared for them and were particularly vulnerable as a result of their disabilities.

## **B. THE PARTIES**

5. The plaintiff Robert Seed ("Seed") is a former student of Ross MacDonald. He attended the school and lived in residence from 1954 to 1965. At the time, the school was called the Ontario School for the Blind and the residence counsellors were called house mothers and fathers. Seed resides in Thunder Bay, Ontario.

6. 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.

7. The Crown, through and with its agents, servants and employees, was at all material times responsible for the operation, funding and supervision of Ross MacDonald as a school for primary and secondary students who are visually impaired, blind and deaf-blind. Students came from throughout Ontario and other provinces to attend Ross MacDonald. The vast majority of students lived in residence during their studies. Ross MacDonald is a provincial school and operates under section 13 of the *Education Act*, R.S.O. 1990, c. E.2. It is under the authority of the Provincial Schools Branch within the Learning and Curriculum Division of the Ministry of Education.

8. Ross MacDonald opened in 1872 as the Ontario Institution for the Education of the Blind. It was under the control of the Department of the Provincial Secretary until 1904, after which it was under the jurisdiction of the Department of Education (later the Ministry of Education). It was later renamed the Ontario School for the Blind and renamed again in 1974 as the W. Ross Macdonald School.

9. The school and residence are located in Brantford, Ontario and are under the sole jurisdiction and control of, and are operated by, the Crown. The Crown retains and authorizes servants, agents, representatives and employees to operate Ross MacDonald and gives instructions to such servants, agents, representatives and employees as to the manner in which the school and residence are to function and operate.

10. The staff members responsible for caring for the students while they are in residence were called “house mothers” or “house fathers” for many years. At some point in the 1960s or 1970s, the school stopped using these terms and adopted the title of residence counsellor.

11. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons who have attended or resided at Ross MacDonald from 1945 to the present day (the “Class” or “Class Members”).

### **C. MISTREATMENT OF STUDENTS AND CONDITIONS AT THE SCHOOL**

12. Throughout the class period, the residence counsellors, teachers and administrators at Ross MacDonald treated the students with contempt, prejudice and indifference. They engaged in abusive conduct, often taking advantage of the visual disabilities of students.

#### **Students Suffered Capricious, Violent and Humiliating Punishment**

13. The residence counsellors and teachers often inflicted capricious, violent and humiliating punishments on students.

14. Students were frequently punished for minor or innocuous matters such as being homesick, wetting the bed, throwing up, having trouble reading or using too much toilet paper.

15. The teachers and residence counsellors used physical violence as a means of discipline. This would include beating, shoving students, throwing books and other school equipment at students during classes, making students drink from urinals, slapping students with the bare hand or with classroom objects such as books and grabbing students by the hair. Students caught speaking at night, even as young as six (6) years old, endured a counsellor jumping on their backs and beating them. Students were force-fed at mealtimes, were forced to eat their own vomit as punishment for throwing up and in some cases had their mouths literally washed out with soap.

16. Students also suffered humiliation and bullying at the hands of their caregivers. The teachers and residence counsellors would take advantage of the students' disabilities. For instance, punishment included leaving a student alone in the dormitory hallway at night, even though he or she was visually impaired and would be disoriented. In another example, a teacher during class spun a blind student around several times and then left him to find his seat. Staff would also take advantage of disabilities by sneaking up on students during their private conversations.

### **Mealtimes and the Military Atmosphere**

17. Mealtimes were horrible experiences for many students. Students were force-fed if they did not eat their meals. The residence counsellors would push a fork of food into a student's mouth, sometimes to the point of the student vomiting. Students had to learn to close their teeth to avoid this experience.

18. Ross MacDonald had a military atmosphere. Everything was regimented with bells, whistles and lining up. There were no choices about where to sleep or sit at meals. Students were expected to know the rules and were punished for breaking minor rules. Punishment was arbitrary.

19. Ross MacDonald did little or nothing to prepare visually impaired students for life and the attitudes of seeing people. There was a 'conveyor-belt' mentality where the objective was to get the students in and out of the school. There was a lack of concern for students.

20. Students were isolated from the community and family and became dependent on the staff and environment at Ross MacDonald. They were not prepared for the broader community. Staff did not foster their identities as independent individuals. Underestimation of the students' potential was pervasive and reinforced.

#### **Staff Were Unqualified and Failed to Supervise Students**

21. The residence counsellors, traditionally (and sadly) called "house mothers" and "house fathers", were ill-educated, unqualified and poorly paid. There was always an expectation that residence counsellors would act in a parental capacity for students, which included assisting with homework. However, the pervasive lack of qualifications amongst the residence counsellors prevented them from fulfilling this role.

22. Staff were hired without reference checks (or even criminal reference checks), despite the fact that they were hired to work with children. There was also uncertainty amongst staff as to what their role, duties and reporting requirements were. There was no orientation for new staff and insufficient training in dealing with children or students with disabilities. Supervision of staff was irregular and unfocused. There was also inappropriate relationships between staff and students.

23. There was a failure to properly supervise students, which created an environment where assault amongst students was widespread. There were instances of sexual assault by male students against other male students that was known to staff. The residence counsellors failed to intervene or address the situation even though there were complaints. There was also violence amongst students. The staff would shrug it off or say that it was "deserved". Employees ignored these behaviours, conducts and complaints. The residence counsellors took a hands-off approach. They saw their role as limited to ensuring students did not get hurt or break rules. Students raised themselves, as the school lacked any sort of parental figures.

#### **D. THE PLAINTIFF'S EXPERIENCES AT W. ROSS MACDONALD SCHOOL**

24. Seed, just like almost all students, lived in residence while attending Ross MacDonald. He entered at Ross MacDonald when he was seven (7) years old in 1954 and left in 1965. Seed suffered abuse as a student and resident of Ross MacDonald.

25. For instance, Mr. Halliwell was a house father while Seed was in residence. He would invite students into his room for “religious classes”. Seed was invited to Halliwell’s room for tea on one occasion. Halliwell attempted to get Seed on his bed and made sexual advances towards him. Seed was able to fend off these advances and left.

26. Seed also suffered at the hands of George Barney, a teacher. Barney would punch students, slap them on their bare stomach or throw books and other items at students in class. On one occasion, Barney threw a brailler<sup>1</sup> at a student. He was also verbally abusive, telling students they were “losers” or “would not get very far in life”. The other teachers and administration were aware of Barney’s conduct, but did not take action to minimize or eliminate it.

27. Seed spoke to the Ministry of Education about abuse at Ross MacDonald. The Ministry admitted there were cases of alleged abuse, but advised him that too many years had passed for the Ministry to take any action.

#### **E. KNOWLEDGE OF THE CROWN AND ITS HANDS-OFF APPROACH**

28. The Crown knew or ought to have known of the conditions at Ross MacDonald, including the pervasive use of arbitrary, violent and humiliating punishments.

29. In 1950, the Royal Commission on Education in Ontario visited Ross MacDonald and presented a report setting out findings and recommendations. The report at page 385 described the substandard and unsafe conditions of the school:

... frankly, we were appalled by the conditions under which the staff and students work. The school buildings, with the exception of the residences, are inadequate, antiquated, dilapidated, dismal, poorly lighted, and constitute a fire hazard of first magnitude. ... Such deficiency in school plan, particularly where blind children are in attendance, is inexcusable. ...

30. Despite the report’s findings, conditions at the Ross MacDonald continued to be well below appropriate standards.

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<sup>1</sup> A brailler or braille typewriter is a piece of equipment that visually-impaired persons use to assist in writing in braille. It weighs approximately 20 to 25 pounds.



31. In May 1991, the Ministry of Education received complaints of sexual abuse of students at two of the provincial schools. This led the Ministry of Education to undertake a review of the provincial schools. The Ministry produced a report titled "Report of the Review of Student Care at the Provincial Schools for the Deaf and Blind and Demonstration Schools" dated December 1991 (the "1991 Report").

32. The 1991 Report described conditions at the provincial schools including the lack of supervision and ill-qualification of staff. It noted the focus was on the needs of the schools as opposed to those of the children: "the primary determinants when major decisions are being made are often the use and appearance of the buildings, administrative, financial implications, conflict avoidance and tradition." The report concluded that human resource management was weak, safeguards were not in place to protect children's rights and interests, there were safety issues and the buildings were unsuitable for children. It found that "the conditions in the school which mitigate against the well-being of children, are significant."

33. In particular, the 1991 Report found:

- (a) students were vulnerable as they were living in residence and because of their disabilities;
- (b) they were isolated from the community and family and became dependent on the staff and environment at Ross MacDonald;
- (c) underestimation of the students' potential was pervasive and reinforced;
- (d) there was minimal participation by the Crown's Human Resources Branch in managing human resources which led to a failure to implement appropriate practices and policies;
- (e) staff were hired without reference checks or criminal record checks;
- (f) there was no orientation for staff, nor training in dealing with students with disabilities;
- (g) there was an environment of hostility amongst staff as residential staff were seen as inferior to education staff and junior teachers were treated as inferior to senior teachers;
- (h) staff were unfamiliar with students' rights and in particular the rights to have "respectful and consistent interaction with staff, freedom from harsh and degrading communication, and freedom from corporal punishment.";
- (i) discipline was applied inconsistently and was perceived as punitive and excessive;

- (j) the Ministry of Education lacked any residential standards for the schools;
- (k) the child abuse reporting policies were inadequate and staff were not trained in child abuse reporting. Staff were merely required to report abuse to their superiors and did not require reporting to the Children's Aid Society, contrary to the *Child and Family Services Act*;
- (l) supervision in the residences was inadequate, particularly at night which led to incidents of sexual involvement between students, inappropriate touching and complaints of sexual assault;
- (m) students were able to leave the residences without signing-out and security guards did not know who entered or left the buildings;
- (n) night-time staff coverage was unsatisfactory and represented a risk to residents, sometimes only one (1) staff member monitoring in excess of thirty (30) children;
- (o) residential staff needed training as counsellors and in communication skills;
- (p) "urgent attention" was required for training of residential staff as they lacked training in First Aid, safe holding techniques, child abuse reporting and coping with aggressive behaviour;
- (q) training was required in relation to appropriate relationships between staff and students as there was dating between staff and older students;
- (r) buildings were "institutional, old, oppressive and in need of major renovation or replacement" making the residences unsuitable for children, especially young children, and making it impossible to create a homelike environment; and
- (s) students did not have sufficient privacy or psychological security. Bathrooms were industrial and/or institutional and some did not have doors on the bathroom stalls and most students did not have private space in the bedroom areas.

## **F. THE CROWN'S FIDUCIARY DUTIES**

34. All individuals who attended or resided at Ross MacDonald were under the authority and care of the Crown, with the Crown as their guardian, and were persons to whom the Crown owed fiduciary duties. These duties included, but were not limited to, the duty to ensure the safety and reasonable care of students, the duty to protect students while at Ross MacDonald and the duty to protect the Class from intentional torts perpetrated on them while at Ross MacDonald.

35. Ross MacDonald students had a reasonable expectation that the Crown would act in their best interests with respect to their care and in the operation of Ross MacDonald by virtue of the following:

- (a) the involvement of the Crown in the establishment of Ross MacDonald;
- (b) the long standing dependence of Ross MacDonald students on the Crown;
- (c) the fact that the students were minor children, all of whom suffered from a disability to varying extents;
- (d) the fact that the Ross MacDonald environment was itself further disabling to these individuals, physically, emotionally and psychologically; and
- (e) the vulnerability of Ross MacDonald students as a result of their disabilities.

36. At all material times, the students who attended and resided at Ross MacDonald 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 disabled children and the Crown, being one of trust, reliance and dependence by the students, the Crown owed a fiduciary duty to ensure students 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.

37. In particular, as a result of its sole jurisdiction over the operation of Ross MacDonald, the Crown owed fiduciary duties to the Class Members which include, but are not limited to,

- (a) properly, effectively and in good faith supervising the Ross MacDonald environment and the conduct of its employees to ensure students would not suffer harm;
- (b) ensuring that physical, emotional and sexual abuse would not occur;
- (c) protecting students from any person or thing which would endanger or be injurious to their health and well-being;
- (d) placing the interests of students ahead of the Crown, its agents, employees and other persons under the Crown supervision;

- (e) using reasonable care to ensure the safety, well-being and protection of students;
- (f) providing a safe environment and in particular, one free from physical, sexual and psychological assault or harm;
- (g) setting or implementing standards of conduct for its employees and Ross MacDonald students to ensure that no employee or student would endanger the health or well-being of any student or person;
- (h) pursuing and investigating complaints of physical, sexual or psychological abuse in good faith;
- (i) taking any and all reasonable steps to prevent and end physical, sexual or psychological abuse upon learning of a complaint;
- (j) reporting conduct which is allegedly contrary to the *Criminal Code* of Canada to the appropriate law enforcement agency and the Children's Aid Society upon learning the particulars of such a complaint; and
- (k) providing proper and reasonable treatment for students upon learning of abuse.

**G. THE CROWN BREACHED ITS FIDUCIARY DUTIES TO THE CLASS**

38. The Crown breached its fiduciary duties. The Crown operated or caused to be operated a school and residential facility whose students, including the plaintiff and Class Members, were systemically subject to abuse, mistreatment and poor living conditions, amongst other things, caused or permitted by the Crown. The Crown knew of, or was wilfully blind to, the conditions at Ross MacDonald, including the pervasive use of arbitrary, violent and humiliating punishments and the wholly inadequate supervision of students.

39. The students who attended or resided at Ross MacDonald were entitled to rely and did rely upon the Crown, to their detriment, to fulfill their fiduciary obligations. The particulars of the Crown's breach of its fiduciary obligations include, but are not limited to:

- (a) failing to take a proper and good faith interest in the operation and supervision at Ross MacDonald, despite its quasi-parental, or in *loco parentis*, role in respect of the students under its responsibility;
- (b) failing to investigate injuries sustained by students;
- (c) failing to provide adequate medical care for students;
- (d) failing to report allegations of physical, emotional or sexual abuse, including the failure to report such conduct in accordance with the *Child and Family Services Act*;
- (e) failing to properly screen applicants for staff positions at Ross MacDonald, which included failing to conduct criminal background checks or reference checks;
- (f) hiring caregivers and others to work at Ross MacDonald who were not qualified to meet the needs of the individuals under their care and supervision;
- (g) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of students;
- (h) failing to properly supervise the Ross MacDonald environment, including its administration and activities;
- (i) failing to provide adequate financial resources or support to properly care and provide for Ross MacDonald students;
- (j) failing to respond adequately, or at all, to complaints or recommendations which were made concerning Ross MacDonald, both with respect to its condition and the treatment of students, including complaints of physical, emotional and sexual abuse;
- (k) creating, permitting and fostering an atmosphere of fear and intimidation among the disabled children at Ross MacDonald;
- (l) failing to safeguard the physical and emotional needs of the Class;
- (m) permitting unhealthy and inappropriate punishments to be perpetrated against the Class; and

- (n) permitting an atmosphere that threatened the Class with physical punishments, including violence.

40. As a result of these breaches, the Class Members suffered damages as set out in paragraphs 48 and 49 below.

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

41. The Crown created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated Ross MacDonald during the class period.

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

- (a) the management, operation and administration of the Ministry of Education and its predecessor ministries and departments during the class period;
- (b) the administration of the Ministry of Education and the *Education Act*, R.S.O. 1990, c. E.2., and its predecessor statutes as well as any other statutes relating to education and disabled persons and all regulations promulgated under these statutes and their predecessors during the class period;
- (c) the promotion of the health, safety and well-being of Class Members during the class period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry of Education, its employees, servants, officers and agents and its predecessors during the class period;
- (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of Ross MacDonald during the class period;
- (f) the care and supervision of all members of the Class while they attended or resided at Ross MacDonald during the class period and for the supply of all the necessities of life to Class Members, *in loco parentis*, during the class period; and

- (g) inspection and supervision of Ross MacDonald and all activities that took place therein during the class period.

43. The Crown owed common law duties to the Class Members which include, but are not limited to,

- (a) properly and effectively supervising the Ross MacDonald environment and the conduct of its employees to ensure students would not suffer harm;
- (b) using reasonable care to ensure the safety, well-being and protection of students;
- (c) setting or implementing standards of conduct for its employees and Ross MacDonald students to ensure that no employee or student would endanger the health or well-being of any student or person;
- (d) providing students a program and system through which abuse would be recognized and reported;
- (e) educating students and employees in the use of a system through which abuse would be recognized and reported;
- (f) pursuing and investigating complaints of physical, sexual or psychological abuse with due diligence;
- (g) taking any and all reasonable steps to prevent and end physical, sexual or psychological abuse upon learning of a complaint; and
- (h) providing proper and reasonable treatment for students upon learning of abuse.

#### **I. THE CROWN'S NEGLIGENCE**

44. The Crown acted negligently and in breach of its duty of care to Class Members in its establishment, operation, regulation, financing, supervision and control of Ross MacDonald.

45. The Crown breached its common law duties to the class through its negligent failure to properly supervise the operations and staff of Ross MacDonald. In particular, without limitation, the Crown acted negligently by:

- (a) failing to investigate or report injuries sustained by students;
- (b) failing to provide adequate medical care for students;
- (c) failing to properly screen applicants for staff positions at Ross MacDonald, which included failing to conduct criminal background checks or reference checks;
- (d) hiring caregivers and others to work at Ross MacDonald who were not qualified to meet the needs of the individuals under their care and supervision;
- (e) failing to set or implement standards of conduct for its employees and Ross MacDonald students with respect to the safety, health or well-being of students;
- (f) failing to implement adequate policies for recognizing and reporting potential abuse of or harm to students;
- (g) failing to educate students and employees in the use of a system through which abuse would be recognized and reported;
- (h) failing to properly supervise the Ross MacDonald environment, including its administration and activities;
- (i) failing to adequately, properly and effectively supervise the conduct of its employees, representatives and agents;
- (j) failing to provide adequate financial resources or support to properly care and provide for Ross MacDonald students;
- (k) failing to respond adequately, or at all, to complaints or recommendations which were made concerning Ross MacDonald, both with respect to its condition and the treatment of students, including complaints of physical, emotional and sexual abuse;
- (l) permitting unhealthy and inappropriate punishments to be perpetrated against the Class; and
- (m) permitting an atmosphere that threatened the Class with physical punishments, including violence.



46. The Class Members suffered damages as a result of the Crown's negligence, the particulars of which are set out in paragraphs 48 and 49 below.

**J. DAMAGES SUFFERED BY THE CLASS**

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

48. Members of the Class were traumatized by their experiences arising from their attendance and residence at Ross MacDonald. As a result of the Crown's breach of its fiduciary obligations and its negligence, including its failure to provide proper and adequate care or supervision, the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) emotional, physical and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) an impaired ability to trust other persons;
- (d) a further impaired ability to participate in normal family affairs and relationships;
- (e) alienation from family members;
- (f) depression, anxiety, emotional distress and mental anguish;
- (g) pain and suffering;
- (h) a loss of self-esteem and feelings of humiliation and degradation;
- (i) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (j) an impaired ability to deal with persons in positions of authority;
- (k) an impaired ability to trust other individuals or to sustain relationships;
- (l) a sense of isolation and separateness from their community;

- (m) a requirement for medical or psychological treatment and counselling;
- (n) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (o) loss of friendship and companionship;
- (p) sexual disorientation; and
- (q) the loss of general enjoyment of life.

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

50. The plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that students 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 Ross MacDonald was in breach of all educational and parental standards and in breach of the duties it owed to the Class Members.

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

## **K. PUNITIVE DAMAGES**

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

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

54. In these circumstances, the plaintiff and the Class Members request aggravated and punitive damages to demonstrate to other educational institutions that such wilfully irresponsible and tortious behaviour will not be tolerated and will act as a deterrence to other institutions in Canada that are in the position of acting as caregivers to likewise vulnerable young children with disabilities.

55. Notice of this action was provided to Her Majesty, the Queen in Right of Ontario, on November 26, 2010.

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

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

February 22, 2011

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

**Kirk M. Baert** LSUC#: 309420  
Tel: 416-595-2117  
Fax: 416-204-2889

**Celeste Poltak** LSUC#: 46207A  
Tel: 416-595-2701

**Jonathan Bida** LSUC#: 54211D  
Tel: 416-595-2072

Solicitors for the plaintiff

**ROBERT SEED**

- and -

Plaintiff

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

Defendant

Court File No:

*CV-11-420734*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

**KOSKIE MINSKY LLP**

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

**Kirk M. Baert** LSUC#: 309420

Tel: 416-595-2117

Fax: 416-204-2889

**Celeste Poltak** LSUC#: 46207A

Tel: 416-595-2701

**Jonathan Bida** LSUC#: 54211D

Tel: 416-595-2072

Solicitors for the plaintiff