

AMENDED THIS 23 SEP 16 PURSUANT TO
 MODIFIÉ CE LA RÈGLE 28.02 CONFORMÉMENT A
 THE ORDER OF L'ORDONNANCE DU
 DATED / FAIT LE 14 SEP 16
 REGISTRAR M. Sagaria
 SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

J.K.

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED REPLY

1. The plaintiff denies all of the allegations contained in the Fresh As Amended Statement of Defence.
2. The plaintiff pleads and relies on the allegations set out in his Fresh As Amended Statement of Claim.
3. The plaintiff denies that the defendant is exempt from compliance or ensuring the compliance of its employees and/or agents with s. 127 of the *Child and Family Services Act* with respect to any of the Facilities, as defined in the Fresh as Amended Statement of Claim.
4. The plaintiff denies that s. 2(2)(b) of the *Proceedings Against the Crown Act* applies to the within action.
5. The defendant assumed responsibility for the Class members in its care, all of whom are and/or were minors. It failed in its fiduciary, statutory and common law duties to all Class members. The defendant failed to respect and maintain the rights of the plaintiff and the Class under the *Canadian Charter of Rights and Freedoms*. The defendant did not properly exercise its discretion with regards to the operation and/or oversight of the Facilities during the Class period.

6. The plaintiff repeats that all Facilities are and were operated at all material times by the Crown, and/or its employees and/or agents.

7. The plaintiff denies that any fault and/or liability lies with any party other than the defendant for its systemic negligence. In any event, the plaintiff has pled only several liability for the defendant's systemic negligence. The plaintiff's claims for breaches of fiduciary duties of the defendant and for breaches of his and the Class's *Charter* rights lie only with the defendant. The plaintiff's claims and the claims of each Class member are limited to the damages that would be apportioned to the defendant in accordance with the relative degree of fault that is attributable to the defendant's negligence.

8. The plaintiff denies that damages for breaches of the *Charter* would not be just and appropriate in the circumstances. The plaintiff and the Class are entitled to damages to compensate them for their loss of dignity and suffering, to vindicate their fundamental rights and to deter systemic violations of a similar nature.

9. The plaintiff denies that good governance concerns weigh against the awarding of *Charter* damages in these circumstances. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

10. The plaintiff also denies that his claims and the claims of the Class are barred by the application of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B or any other limitations legislation. In particular, and without limitation, the plaintiffs deny that the fiduciary claims and the *Charter* claims of Class members are subject to any statutory limitation periods. Further, the plaintiffs plead that any applicable limitation periods were suspended pursuant to sections 6 and 7 of the *Limitations Act, 2002*.

September 12, 2016

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

Kirk M. Baert LSUC#: 30942Q
Tel: 416-595-2117
Fax: 416-204-2889

James Sayce LSUC#: 58730M
Tel: 416-542-6298
Fax: 416-204-2809

Sutts Strosberg LLP
600-251 Goyeau St.
Windsor, ON N9A 6V4

Jay Strosberg LSUC#:47288F
Tel: 519-561-6203
Fax: 519-561-6203

Patricia Speight LSUC#:26380C
Tel: 519.561.6213
Fax: 519.561.2475

Lawyers for the Plaintiff

TO: **Attorney General for Ontario**
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Christopher A. Wayland (LSUC No.: 42381O)
Tel: (416) 326-4177
Fax: (416) 326-4181
Email: christopher.wayland@ontario.ca

Jonathan Sydor (LSUC No.: 421831R)
Tel: (416) 326-4171
Fax: (416)326-4181
Email: jonathan.sydor@ontario.ca

Abel Fok (LSUC No.: 58573T)
Tel: (416) 314-2059
Fax: (416)326-4181
Email: abel.fok@ontario.ca

JK
Plaintiff and
HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE
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Defendant

Court File No.: CV-16-543895-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO
Proceedings under the *Class Proceedings Act*, 1992

FRESH AS AMENDED REPLY

Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Kirk Baert LSUC#: 309420
Tel: 416.595.2117/ Fax: 416.204.2889

James Sayce LSUC#: 58730M
Tel: 416.542.6298/ Fax: 416.204.2809

SUTTS, STROSBURG LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4

Jay Strosberg LSUC#: 47288F
Tel: 519.561.6285/ Fax: 519.561.6203
Patricia Speight LSUC#: 26380C
Tel: 519.561.6213/ Fax: 519.561.2475

Lawyers for the Plaintiff