

Court of Appeal File No.:  
Court File No.: 16-543895-00CP

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**J.K.**

Plaintiff  
(Respondent)

- and -

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

Defendant  
(Appellant)

- and -

**BANYAN COMMUNITY SERVICES INC., CRAIGWOOD YOUTH SERVICES, PWI-DI-GOO-ZING-NE-YAA-ZHING ADVISORY SERVICES, CAS OF NIPISSING AND PARRY SOUND, WILLIAM W. CREIGHTON YOUTH SERVICES, RAY OF HOPE INC., NORTHERN YOUTH SERVICES INC., YOUTH SERVICES BUREAU OF OTTAWA, ANAGO (NON) RESIDENTIAL RESOURCES INC., , KENNEDY HOUSE YOUTH SERVICE INC., NORTH EASTERN ONTARIO FAMILY AND CHILDREN'S SERVICES / SERVICES A LA FAMILLE ET A L'ENFANCE DU NORD-EST DE L'ONTARIO, ST. LAWRENCE YOUTH ASSOCIATION, KINARK CHILD AND FAMILY SRVC CORP. (MARKHAM), CASATTA LTD., YORK DETENTION CENTRE LTD.**

Third Parties  
(Respondents)

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF APPEAL**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** ("the Crown"), appeals to the Ontario Court of Appeal from the Order of The Honourable Mr. Justice Perell striking the Crown's Third Party Claim without leave to amend, dated December 22, 2016, made at Toronto, Ontario (the "Order").

**THE APPELLANT ASKS** that the Order be set aside and that judgment be issued:

1. reinstating the Crown's Third Party Claim;
2. granting the Crown its costs of this appeal and of the motion below; and
3. granting such further and other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS OF THE APPEAL** are that in making the Order, the Honourable Motions Judge erred:

1. in characterizing the Plaintiff's claims in a manner fundamentally inconsistent with the Plaintiff's pleadings and with his Response to the Third Parties' Demand for Particulars;
2. in applying *Taylor v Canada (Health Canada)*, 2009 ONCA 4876 ("*Taylor*"), to the present case, which is fundamentally factually distinguishable and which includes allegations of vicarious liability;
3. in failing to apply *Anderson v Canada (Attorney General)*, 2013 NLTD 154, a decision which addresses vicarious liability in a class proceedings context;
4. in misapprehending the nature of the Plaintiff's claim in vicarious liability in respect of acts or omissions committed by the independent corporations that are under contract with the Crown to operate youth justice facilities ("the Third Parties") and the significance of that claim to the validity of the Third Party Claim;
5. in failing to appreciate that the Third Parties' obligations to indemnify the Crown also arise independently as a result of the indemnity provisions contained in their service contracts with the Crown and therefore in failing to consider and rule upon the validity of

the claim based on those indemnity provisions;

6. in finding that it was plain and obvious that the Crown's Third Party Claim had no reasonable cause of action and striking the Third Party Claim without leave to amend;  
and
7. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The Order striking out the Third Party Claim is final in nature.
2. An appeal of a final order of a judge of the Superior Court of Justice lies to the Ontario Court of Appeal pursuant to subsection 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c. C-43.

**The Appellant requests that this appeal be heard in TORONTO.**

**Dated:** January 17, 2017

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Inc., Northern Youth Services Inc., Youth  
Services Bureau of Ottawa, Anago (Non)  
Residential Resources Inc., Kennedy  
House Youth Services Inc., North Eastern  
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Self-Represented Third Party, Casatta Ltd.

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

Defendant

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- and -

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J.K.

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Third Parties  
(Respondents)

**APPELLANT'S CERTIFICATE**

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. All evidence before the court on the motion to strike the Third Party Claim, returnable December 13, 2016.

**Dated:** January 17, 2017

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Residential Resources Inc., Kennedy  
House Youth Services Inc., North Eastern  
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York Detention Centre.

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