

AMENDED THIS Sept 28, 2017 PURSUANT TO
MODIFIÉ CE _____ CONFORMÉMENT À _____

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF _____
L'ORDONNANCE DU _____

Court File No. CV-17-578059-00CP

DATED / FAIT LE _____

ONTARIO

.....
REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

SUPERIOR COURT OF JUSTICE

BETWEEN:

Meiissa Ramganesh

ROBIN CIRILLO

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED 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.

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 " June 29, 2017 " Issued by " G. FINDLAY "
Local Registrar

Address of Superior Court of Justice
court office: 393 University Avenue, 10th Floor
Toronto ON
M5G 1E6

TO: **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**
Crown Law Office – Civil Law
720 Bay Street
8th Floor
Toronto, ON M5G 2K1
Tel: 416-325-8535
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CLAIM

1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative Plaintiff;
- (b) a declaration that Her Majesty the Queen in Right of the Province of Ontario breached its fiduciary duty to the Plaintiff and the Class through the operation, management, administration, supervision, funding and control of bail hearings in Ontario resulting in detention of the Plaintiff and members of the Class (as defined below) for a period of more than 24 hours prior to any ~~meaningful~~ bail hearing being available as described below;
- (c) a declaration that Her Majesty the Queen in Right of the Province of Ontario breached its fiduciary duty to the Plaintiff and the Class by regularly and systemically extracting excessive and punitive bail conditions from the Plaintiff and members of the Class by means of the combined effect of the systemic delays of bail hearings in Ontario and the Crown's power to seek remand for three clear days under s. 516 of the *Criminal Code*;
- (d) a declaration that Her Majesty the Queen in Right of the Province of Ontario is liable to the Plaintiff and the Class for the damages caused by its breach of its common law duty in relation to the operation, management, administration, supervision, funding and control of bail hearings in Ontario, as well as legal costs thrown away as a result of foreseeable and avoidable adjournments;
- (e) 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(d), 11(e) and 12 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**");
- (f) 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 Plaintiff and Class

members constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the Charter;

- (g) immediate access to ~~meaningful~~ bail hearings within 24 hours or such other remedy as the Court may consider just and appropriate pursuant to section 24(1) of the Charter;
- (h) a declaration that the foregoing breaches by Her Majesty the Queen in Right of the Province of Ontario resulted in a marked and unacceptable departure from the reasonable standards expected of the Crown and the prosecution such that orders for damages pursuant to section 24(1) of the Charter and criminal proceeding costs is appropriate, in the amount of \$100 million or such other sum as this Honourable Court may find appropriate;
- (i) damages against Her Majesty the Queen in Right of the Province of Ontario for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (j) punitive damages in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (k) prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (l) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
- (m) 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,
- (n) such further and other relief as this Honourable Court may deem just.

2. The right to reasonable bail is a statutory, common law and constitutional right. The right not to be denied reasonable bail without just cause is an essential element of an enlightened justice system. The *Criminal Code* requires a province to have in place a judicial system and prosecution service capable of providing meaningful bail hearings within 24 hours.

2.3. The population of accused persons held in remand has steadily increased over the class period and increased the demands on the bail system. Ontario has for many years been aware that neither its judicial system nor its prosecution service are organized or resourced in a manner that would permit it to honour its constitutional and statutory obligation to the Class. As a result, presumptively innocent people have been held in custody awaiting an opportunity to have their cases considered in a meaningful way by a properly constituted court and addressed by a properly briefed and resourced Crown attorney. Class members have served longer in custody than they should have, they have been coerced to agree to overly restrictive bail terms to secure their release and they have thrown money away on lawyers attending for hearings that don't take place because there is no court ready to deal with their case.

THE PARTIES

3.4. The Plaintiff, Robin Cirillo, resides in Etobicoke, Ontario. The Plaintiff was detained on May 28, 2016 and was not provided access to a meaningful bail hearing within 24 hours.

4.5. The Defendant, Her Majesty the Queen in right 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.

5.6. Ontario, through and with its agents, servants and employees, was at all material times responsible for the operation, management, administration, supervision, funding and control of the of bail hearings in Ontario ("**Bail Hearings**").

~~6-7.~~ The Plaintiff brings this action pursuant to the CPA on her own behalf and on behalf of all other persons who were arrested and detained for a period of more than 24 hours prior to any meaningful Bail Hearing being available as a result of:

- (a) the matter not being reached;
- (b) transportation, or lack thereof, from detention to the bail hearing;
- (c) interpretative services not present at the bail hearing;
- (d) the accused not having the opportunity to speak with counsel prior to arriving at the bail hearing; or
- (e) the Crown not being willing to proceed with a hearing.

for the time period of January 1, 2000 to the present, but excluding individuals charged with an offence mentioned in s.469 of the *Criminal Code* (the "Class").

THE BAIL HEARINGS SYSTEM

~~7-8.~~ Access to bail, (called "judicial interim release" in the *Criminal Code*, but here simply referred to using the more common term "bail") is a mandatory component of a fair justice system. If the state fails to provide the resources needed for a timely and proper adjudication of cases in which the Crown opposes release, it will frustrate this important right. Where bail is denied or delayed because the Bail Hearing System cannot provide a court for the timely adjudication of the Bail Hearing, then the presumptively innocent arrestee suffers real prejudice.

~~8-9.~~ Under the *Criminal Code* an arrestee must be taken before a justice within 24 hours of being arrested (s.503). With certain exceptions, there is a statutory and constitutional presumption that every arrestee shall at that time be released on the least onerous form of release available (an undertaking without conditions) (s.515(1)). If the Crown wishes to seek the accused's detention, or to have the court impose a more onerous release, it is obliged to

demonstrate cause for the same in a hearing before a justice (s.515(2)). Where the Crown seeks to do so the arrestee is held in custody until court facilities are available to adjudicate the dispute.

~~9.10.~~ Even in cases where an arrestee has a statutory onus to justify his or her release, they must have timely access to a court constituted to hear the case and determine the terms of their release.

~~10.11.~~ If a Bail Hearing is not held, the arrestee will be detained in custody for one or more days even though 'just cause' for his or her detention has not been shown through no fault of their own. The arrestee will incur wasted legal costs and may end up consenting to unnecessary and unjustifiable restrictions on his or her liberty (in the form of bail conditions) in order to secure his or her release.

~~11.12.~~ Ontario is responsible for constitution of the Courts generally, and for the constitution, maintenance and organization of the Provincial Court – the Court where Bail Hearings take place (*Constitution Act, 1867,*). Under the *Ministry of the Attorney General Act, RSO 1990 c.M.17*, the Attorney General is required to superintend all matters connected with the administration of justice in the province. The Attorney General is also to superintend all matters connected with judicial offices. The Attorney General is responsible for the vast majority of criminal prosecutions and the Crown Attorneys and assistant Crown Attorneys of the Province are the agents of the Attorney General when discharging their duties under the *Criminal Code*, including Bail Hearings and managing court lists.

~~12.13.~~ The Ontario Court of Justice has existed during the Class Period as a court created by the Province under the *Courts of Justice Act*. Under the *Courts of Justice Act* The Lieutenant Governor in Council may, on the recommendation of the Attorney General, appoint such provincial judges as are considered necessary (*Courts of Justice Act, s.42*). The number of provincial judges appointed is within the discretion of the Defendant.

~~13.14.~~ Justices of the Peace, as part of the Ontario Court of Justice, conduct the bulk of Bail Hearings in Ontario. The Lieutenant Governor in Council may, on the recommendation of the

Attorney General, appoint full-time justices of the peace. (*Justice of the Peace Act*, RSO 1990, c.J.4, s.2). The number of justices of the peace appointed is within the discretion of the Defendant.

THE BREAKDOWN OF THE BAIL HEARING SYSTEM

~~14.15.~~ For many years Ontario has mismanaged and starved the bail system of resources. It has done so notwithstanding repeated reports that have identified the lack of capacity in the bail system to deal with the volume of work that needs to be done in order to discharge the duties of the Province and respect the rights of the Class.

~~15.16.~~ Ontario has failed to address mismanagement of the Bail Hearing System and failed to create a rational scheme of bail court management in violation of the Class members' right to a timely hearing.

~~16.17.~~ Ontario has failed to respond to repeated recommendations for reform to address structural delays in the Bail Hearing System. There is simply no excuse for the court system not to be ready to properly process Class members in a manner that ensures that their fundamental rights are respected. All that is required is a reasonable amount of attention and planning, along with adequate resourcing.

~~17.18.~~ Ontario has failed to provide adequate resources to enable the Bail Hearing System to operate in a manner in accordance with the Class members' right to a timely Bail Hearing. To the extent that the problem arose due to a lack of resources, that fact cannot be relied upon as a reason not to respect constitutional rights. If a decision is made to apply resources to the "front end" of the criminal justice process, which involves the investigation of crimes and the arrest of suspected individuals, they must equally be applied to the Bail Hearing System, otherwise the system will not function properly.

~~18.19.~~ At all material times, it was within the control of Ontario to appropriately manage and otherwise resource the Bail Hearing System to minimize any delay caused by volume, staffing and other funding-related shortages. The Ministry has knowledge of how many people are

required to staff the Bail Hearing System so it operates without illegal delay and it was within Ontario's control to ensure that sufficient staff and resources were available. At all material times, Ontario was able to ensure that the Bail Hearing System was appropriately staffed to prevent staffing-related delays and resource-related delays.

~~19-20.~~The Ministry or its agents draft, approve, and promulgate policies and procedures concerning the operation and management of the Bail Hearing System. At all material times, the Ministry holds sole power, control and responsibility for the timeliness of bail hearings.

THE PLAINTIFFS' EXPERIENCES IN THE BAIL HEARINGS SYSTEM

~~20-21.~~On May 28, 2017, at approximately 11:00 pm, Ms. Cirillo was arrested in Etobicoke and taken to 22 division of the Toronto Police Service, located at 3699 Bloor St. W., Toronto. Ms. Cirillo was placed into a holding cell for the night.

~~21-22.~~On the morning of May 29, 2017, Ms. Cirillo was scheduled to be taken to the Ontario Court of Justice, located at College Park, 444 Yonge Street, Toronto ("College Park"). Ms. Cirillo was supposed to be at College Park at 10:00 am to attend her Bail Hearing in a timely manner. Like all accused persons, Ms. Cirillo was entirely dependent upon the Defendant to transport her to a Provincial Court to attend a Bail Hearing. The van to transport Ms. Cirillo, along with other accused persons, was approximately 2 hours late. Ms. Cirillo, along with the other accused persons she was with, did not arrive to College Park until approximately 12:30 pm.

~~22-23.~~Ms. Cirillo's sister travelled to the College Park Court to be available as a surety. Ms. Cirillo was not able to speak with counsel prior to arriving at court. Ms. Cirillo has no prior criminal record and she was to be released on consent. By 5:30 pm on May 29, Ms. Cirillo had not been given the opportunity for a Bail Hearing. As a result, Ms. Cirillo was kept in custody and transported to the Vanier Centre for Women, a provincial correctional facility located in Milton, Ontario ("Vanier").

~~23-24.~~ Ms. Cirillo was stripped searched upon arriving at Vanier and spent the night sleeping on a holding cell floor. On the morning of May 30, Ms. Cirillo was transported from Vanier back

again to College Park and was given a Bail Hearing at approximately 11:30 am. Ms. Cirillo was granted bail on consent and released. Ms. Cirillo spent a total of approximately 36 hours in custody, two nights in jail and cumulatively traveled over 130 km before she was given access to a ~~meaningful~~ Bail Hearing on a consent release. The charges against Ms. Cirillo were eventually withdrawn.

HARM TO CLASS MEMBERS

~~24.25.~~ The Class is harmed by the defendant's failure to provide ~~meaningful~~ Bail Hearings within 24 hours.

(a) Detention

~~25.26.~~ The Class is composed of accused persons who are presumed innocent. The failure to provide a ~~meaningful~~ Bail Hearing within 24 hours results in unreasonable and unjustifiable detention. In all circumstances, this deprives individuals of free movement, socialization, privacy and causes pain and suffering to the Class members.

(b) Terms

~~26.27.~~ When the Class members are denied timely access to a ~~meaningful~~ Bail Hearing, Class members accept more onerous release conditions in order to secure bail, further hindering their free movement, socialization, privacy and causing pain and suffering.

(c) Counsel fees wasted

~~27.28.~~ Delays in providing ~~meaningful~~ Bail Hearings results in multiple attendances of accused persons and their counsel, incurring unnecessary legal fees and expenses borne by the Class members.

(d) Pragmatic pleas

~~28.29.~~ When the Class members are denied timely access to a ~~meaningful~~ Bail Hearing, Class members make pragmatic pleas they otherwise would not make, in order to secure a timely

release. Such pleas are to the benefit of the Defendant and to the detriment of the Class members.

KNOWLEDGE OF THE DEFENDANT

~~29-30.~~ Ontario has known about delays caused by the mismanagement of the Bail Hearings System for many years and the negative effects of consequent delays on prisoners. Ontario has promulgated policies and directives to Crown Attorneys and assistant Crown Attorneys which have had the effect of knowingly increasing the number of persons held in remand. Notwithstanding this knowledge, Ontario has taken no steps to correct the problem.

~~30-31.~~ Bail Hearing delays have repeatedly been identified and condemned in multiple independent reviews.

~~31-32.~~ As early as 1999, the Ontario Ministry of the Attorney General in its annual review of the criminal justice system recognized the growing problem of bail delays. The annual report pointed to overcrowded dockets and recommended adding more Crown counsel and duty counsel.

~~32-33.~~ In 2014, the Canadian Civil Liberties Association released a report entitled Set up to Fail: Bail and the Revolving Door of Pre-trial Detention (the "CCLA Report"). The CCLA Report noted that there are "continued systemic violation of constitutional rights in Ontario bail courts." The CCLA report identifies several operational failures in the bail system, including:

- (a) lack of interpreters;
- (b) requirement for travel to Bail Hearing locations;
- (c) inability of defence counsel to speak with the accused prior to arrival at the court;
- (d) overcrowded dockets and courtrooms;
- (e) cost for sureties to travel and the overreliance on sureties; and

- (f) The need for in-court examinations of sureties.

~~33-34.~~ In the 2014 Premier's Letter of Mandate to the Attorney General, the Ministry was directed as such: "Your ministry's specific priorities include...Developing a comprehensive strategy to address systemic challenges related to bail, sureties, remand and delay."

~~34-35.~~ The Ministry of the Attorney General in 2013 released a report entitled *Bail Experts Table Recommendations: Justice on Target* (the "*Justice on Target Report*"). The *Justice on Target Report* identified several operational failures within the Bail Hearing System leading to delays, including:

- (a) delayed transportation, both between custody and courthouses and within the courthouses themselves;
- (b) lack of interpreters and lack of knowledge that an interpreter will be needed in a particular case;
- (c) inability of counsel to communicate with clients prior to appearance;
- (d) delays in the start of bail court and unnecessary adjournments when Crown briefs do not arrive with sufficient time for participants to review;
- (e) unnecessary adjournments; and
- (f) failure to identify the need of sureties prior to first appearance.

~~35-36.~~ In 2015, a further report on bail entitled "*Broken Bail in Canada: How We Might Go About Fixing It*", was submitted to the federal Minister of Justice (the "*Broken Bail Report*"). The *Broken Bail Report* identified that the population held on remand has been growing steadily and delays in bail being granted has increased.

~~36-37.~~ The consistent rise in remand rates in Ontario and the corresponding need to address delays has been well documented. The 2015/2016 adult correctional statistics released in the Juristat report on March 1, 2017 identified that the percentage of adults in custody who are

being held on remand in Ontario was 67%, relative to the national average of 60%, up from 35% in 2005/2006.

~~37~~38. Notwithstanding its knowledge of these problems and failures, unnecessary delays in Bail Hearings continue to the detriment of the Class. The Defendant has refused to take any meaningful remedial action.

CAUSES OF ACTION

(a) Negligence

~~38~~39. At all material times, the Defendant owed duties to the Plaintiff and to the Class members which include, but are not limited to, a duty to protect the health and well-being of the Class members. This duty includes a duty to give proper consideration to, and to take reasonable care of, the Class members.

~~39~~40. The harm suffered by the Class was a reasonably foreseeable consequence of the Defendants' acts and omissions. The legislation governing the relationship between the Defendants and the Class grounds the duty of care owed by them to the Class. At all material times, the actions of the Defendant had a direct impact on the Class members. The Defendant is responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the proper administration of the Bail Hearings System. In such circumstances, the risk of harm of the nature contemplated in this action is reasonably foreseeable.

~~40~~41. The express words of the statutes also establish a special, close, and direct relationship between the Defendant and the Class. The Defendant is responsible for the general well-being and care of Class members whom are detained (s. 5, *Ministry of Correctional Services Act*).

~~41~~42. There was a direct and proximate relationship and specific interaction between each of the Class members and the Defendant, including but not limited to:

- (a) the physical detention of Class members;
- (b) the transportation of Class members;

- (c) the housing and confinement of Class members immediately preceding any Bail Hearing; and
- (d) controlling all access to and communication with the Class members.

42-43. The reasonable standard of care expected in the circumstances required Ontario to:

- (a) manage bail court volumes to avoid known overcrowding of dockets or provide sufficient resources to address high volume dockets;
- (b) provide timely transportation from detention to Bail Hearings;
- (c) in lieu of timely transportation, establish Bail Hearings proximate to the location of Class members' arrest and detention;
- (d) pre-arrange necessary interpretation services for Class members; and
- (e) provide Class members with contact to counsel prior to arrival at a Bail Hearing.

43-44. The Defendant knew or ought to have known of its duties described herein as a result of their unique position and expertise in caring for the Class members.

44-45. Ontario breached the standard of care, on a Class-wide systematic basis, in the following respects:

- (a) constituting and resourcing bail hearings in a manner which guarantees the volume of bail hearings cannot be heard in a timely manner;
- (b) requiring Class members to be transported to Bail Hearings, but failing to provide adequate transportation;
- (c) failing to provide adequate interpretation services;
- (d) over relying on sureties and requiring attendance of sureties; and
- (e) failing to provide counsel access to Class members prior to their arrival for a Bail Hearing.

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

~~45-46.~~ The Defendant owed all Class members, 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.

~~46-47.~~ The Class member's care was subject to Ontario's power and unilateral discretion. At all material times, the Class members were in a vulnerable position.

~~47-48.~~ By virtue of the relationship between the Class members and Ontario, being one of trust, reliance and dependency, Ontario owed fiduciary obligations to ensure that the Class members were treated respectfully, fairly, and safely, and to act in the best interests of those individuals.

~~48-49.~~ The Class members had a reasonable expectation that the Defendant would act in their best interests with respect to their timely access to a Bail Hearing by virtue of:

- (a) the vulnerability of the Class members as a result of their incarceration by Ontario;
- (b) the involuntary nature of the relationship between the Class members and the Defendants;
- (c) the Defendant's complete control over the Class member's movements and transportation to a Bail Hearing; and
- (d) Ontario's establishment, funding, operation, management, administration, supervision and control of the Bail Hearings Systems.

~~49-50.~~ Given the circumstances of the relationship between the Defendant and the Class members, including but not limited to the statutory obligations, authority and responsibilities of the Defendant, the Defendant undertook to act in the best interests of Class members and to act in accordance with the duty of loyalty imposed on them.

~~50.~~51. Ontario was responsible for, among other things:

- (a) organizing and resourcing the Bail Hearing System;
- ~~(a)~~(b) managing Crown Attorneys and assistant Crown Attorneys;
- ~~(b)~~(c) designating where and when Bail Hearings may occur;
- ~~(c)~~(d) managing transportation services;
- ~~(d)~~(e) managing interpretation services; and
- ~~(e)~~(f) controlling all access to and communication with the Class members prior to a Bail Hearing.

~~51.~~52. The Class members were entitled to rely and did rely on the Defendant to their detriment to fulfill its fiduciary obligations. The Defendant breached its fiduciary duties to the Plaintiff and the Class. The particulars of Ontario's breaches include:

- (a) constituting and resourcing Bail Hearings in a manner which guarantees the volume of Bail Hearings cannot be heard in a timely manner;
- (b) requiring Class members to be transported to Bail Hearing courts, but failing to provide adequate transportation;
- (c) not constituting bail courts proximate to Class members' location of arrest and detention;
- (d) failing to provide adequate interpretation services; and
- (e) restricting counsel access to Class members prior to their arrival for a Bail Hearing.

~~52.~~53. Ontario knew or ought to have known that as a consequence of Ontario's operation, care and control of the Bail Hearings System, the Class members would suffer damages, as discussed below.

(c) Breaches of the Charter

53-54. 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(d), 11(e) and 12 of the Charter.

Section 7

55. The conditions under which the Class members are detained deprives them of their right to liberty and security of the person.

56. Ontario's breach of section 7 of the Charter is not in accordance with the principles of fundamental justice as a result of it being arbitrary, overbroad and/or having consequences that are grossly disproportionate.

Section 9

57. Ontario's detention of the Class for more than 24 hours prior to providing a bail hearing constitutes arbitrary detention and/or imprisonment.

58. Pre-trial detention while awaiting a bail hearing amounts to both physical and psychological detention. Pre-trial detention not in compliance with the strictures of the Criminal Code is unlawful and therefore arbitrary for the purpose of section 9.

Section 11

59. As a result of Ontario's operation, management, administration, supervision and control of bail hearings, class members have been treated as if they were guilty of a criminal offence prior to receiving a fair and public hearing by an independent and impartial tribunal.

60. By knowingly producing the conditions under which class members are unnecessarily remanded into custody while awaiting a bail hearing, Ontario has breached the presumption of innocence afforded to anyone charged with a criminal offence.

61. Ontario has not shown just cause for denying the Class reasonable bail within 24 hours of arrest.

Section 12

62. Ontario's systemic failure in providing the Class bail within a reasonable time constitutes cruel and unusual treatment or punishment.

63. Ontario has knowingly created the conditions under which class members spent unnecessary time in custody while awaiting bail hearings, even for minor offences which could never result in a detention order. This approach is grossly disproportionate to the bail conditions that would be appropriate in the circumstances.

64. For most charges, Ontario could release class members unconditionally from the police station with a promise to appear for a bail hearing, once scheduled.

65. The punishment or treatment visited upon class members forced to wait unnecessarily for their bail hearings is so excessive as to outrage standards of decency.

54-66. Ontario's above breaches are not saved by section 1 of the Charter, which only applies to limitation on Charter rights that are "prescribed by law." In the alternative, the infringements described above are not demonstrably justified in a free and democratic society.

55-67. 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.

~~56-68.~~ There are no countervailing considerations rendering damages in this case inappropriate or unjust.

~~57-69.~~ The Class is entitled to immediately access their right to reasonable bail under section 24(1) of the Charter.

DAMAGES SUFFERED BY THE CLASS

~~58-70.~~ Ontario knew, or ought to have known that, as a consequence of acquiescing in the breakdown of the Bail Hearings System the Class members would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with the community at large. While it may not be possible to lay responsibility for the violation of constitutional rights at the feet of any particular prosecutor, that does not preclude a costs award to sanction the failure of the Crown to take any steps to avoid the entirely predictable violation of the statutory, common law and *Charter* rights of the Plaintiff and Class members that occurred in this case.

~~59-71.~~ As a result of Ontario's negligence and breach of fiduciary duty, as well as Ontario's breaches of the Charter rights of the Class, Detainees suffered and continue to suffer damages which include, but are not limited to the following:

- (a) impairment of mental and emotional health and well-being;
- (b) an impaired ability to trust other persons;
- (c) depression, anxiety, emotional distress and mental anguish;
- (d) pain and suffering;
- (e) a loss of self-esteem and feelings of humiliation and degradation;
- (f) an impaired ability to deal with persons in positions of authority;

- (g) a sense of isolation and separateness from their community; and,
- (h) the loss of general enjoyment of life.

~~60.72.~~ At all material times, Ontario knew, ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures in the Bail Hearings System would continue to aggravate and contribute to the Class members' injuries and damages.

PUNITIVE DAMAGES

~~61.73.~~ The high-handed and callous conduct of the Defendant warrants the condemnation of this Honourable Court. The Defendant conducted its affairs with wanton and callous disregard for the Class members' interests, safety and well-being. In all the circumstances, the Defendant breached, and continues to breach, its fiduciary duties, duties of good faith, and Charter duties owed to the Plaintiff and all Class members.

~~62.74.~~ 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. The unjustified delays and resulting protracted incarceration to which the Plaintiff and the Class members were exposed has grossly violated their rights.

~~63.75.~~ In these circumstances, the Plaintiff and the Class request punitive damages to demonstrate to other governments and their agencies 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 administering Bail Hearings Systems. These individuals, by virtue of their captivity and complete dependence on the Defendant for their well-being, are among the most vulnerable in Canadian society.

~~64.76.~~ Notice of this action was provided to Ontario on March 17, 2017 pursuant to the requirements of the *Proceedings Against the Crown Act*, R.S.O. 1990 c. P. 27.

~~65.77.~~ This action is commenced pursuant to the CPA.

~~66.78.~~ The trial of the action should take place in the city of Toronto, in the Province of Ontario.

June 29, 2017

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Lawyers for the Plaintiff,
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ROBIN CIRILLO
Plaintiff

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Defendant

Court File No. CV-17-578059-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

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