

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROBIN CIRILLO

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceedings under the *Class Proceedings Act, 1992*

STATEMENT OF DEFENCE

1. The Defendant (“HMQ”) admits the allegations contained in paragraphs 5 and 76-78 of the Amended Statement of Claim.
2. HMQ has no knowledge of the allegations contained in paragraph 4 (first sentence), 7, and 22 (except for the third sentence, which is denied) of the Amended Statement of Claim.
3. HMQ denies all of the remaining allegations in the Amended Statement of Claim, including that the plaintiff or any potential class member are entitled to the relief sought in paragraph 1 of the Amended Statement of Claim, and puts the plaintiff to the strict proof thereof.
4. In respect of the allegations set out in paragraph 6 and 20 of the Amended Statement of Claim, HMQ denies that it is responsible for the operation, management, administration, supervision, funding, and control of Bail Hearings (as that term is defined in the Amended Statement of Claim). Bail hearings are controlled by several actors within the criminal justice system, including the Crown prosecutor (for whose acts HMQ is in law responsible), the police (for whose acts, depending on, among other things, the specific police force involved, HMQ may or may not be in law responsible), the

defendant and/or defence counsel or duty counsel (for whose acts HMQ is not in law responsible), and the judge or justice (for whose acts HMQ is not in law responsible).

5. With respect to the allegations set out at paragraph 12 of the Amended Statement of Claim, HMQ is responsible for the constitution, maintenance, and organization of provincial courts, including the Ontario Court of Justice (“OCJ”). The OCJ is the Court which hears the majority of judicial interim release hearings (hereafter referred to as “bail hearings”). Policy decisions concerning the constitution, maintenance, and organization of provincial courts are neither justiciable nor actionable.

6. Pursuant to the *Ministry of the Attorney General Act*, RSO 1990 c M17 (“MAGA”), the Attorney General of Ontario (“AG”), through its agents and servants, superintends the administration of justice in the province and all matters connected with judicial offices. Policy decisions concerning the resourcing, maintenance, and organization of institutions through which the AG carries out these responsibilities, including courts and judicial offices, are neither justiciable nor actionable.

7. Pursuant to MAGA, the AG, through its agents and servants, is responsible for the conduct of most criminal prosecutions in Ontario. In criminal proceedings conducted by the AG, agents and servants of HMQ conduct bail proceedings on behalf of the Crown. The conduct of criminal prosecutions is immune from suit, subject only to certain narrow exceptions set out in MAGA, which do not apply here. Policy decisions concerning the management of Crown Attorneys and Assistant Crown Attorneys are neither justiciable nor actionable.

8. With respect to the allegations at paragraphs 13 and 14 of the Amended Statement of Claim, the Lieutenant-Governor in Council may, on the AG’s recommendation, appoint justices of the peace and OCJ judges. Decisions concerning the appointment of justices of the peace and provincial court judges fall within the Crown’s sole discretion and are neither justiciable nor actionable. Further, the assignment and scheduling of justices of the peace and provincial court judges are the exclusive responsibility of the judiciary, for which the Crown is not liable and which, in any event, are neither

justiciable nor actionable. The Crown pleads and relies on sections 36, 72 and 75 of the *Courts of Justice Act*, and section 15 of the *Justices of the Peace Act*.

9. Any person charged with an offence has the right to reasonable bail and the right not to be denied reasonable bail without just cause. However, HMQ denies that the *Criminal Code* or the constitution require that a province have in place a judicial system and prosecution service capable of determining the bail status of every person within 24 hours of arrest. The *Criminal Code* does not require that bail be determined within 24 hours.

10. In the alternative, if such a requirement exists (which is denied), HMQ denies the existence of a private law duty of care owed to the plaintiff, and to any class members, in this respect. In the further alternative, if such a private law duty of care exists (which is denied), then HMQ denies that it was breached.

11. A person arrested by a peace officer is often detained by the arresting police service, pursuant to detention provisions in the *Police Services Act*, RSO 1990 c P 15. The detained person usually remains in the custody of the police service until at least their initial appearance before a justice. In general, accused persons are transported to the court by the arresting police service. Aside from members of the Ontario Provincial Police (“OPP”), peace officers are not agents and servants of HMQ and HMQ is not in law responsible for their conduct.

12. In any circumstance where the rights of an arrested person under the constitution or the *Criminal Code* are not upheld, the arrested person may seek redress in the context of the underlying criminal proceeding. Such redress can include, *inter alia*, relief under section 24(1) of the *Charter*, prerogative relief, or costs awarded pursuant to the *Criminal Code*. Orders made in the course of bail proceedings may not be impugned in collateral proceedings.

13. HMQ denies that any of the matters set out at paragraphs 15-19 of the Amended Statement of Claim are justiciable or actionable. In particular, but without limiting the generality of the foregoing, funding and resourcing decisions with respect to provincial

courts, Crown Attorney's offices, and bail hearings are policy decisions which are neither justiciable nor actionable. In the alternative, HMQ denies that provincial courts and Crown Attorney's offices were inappropriately funded and resourced at all material times.

The Plaintiff's Arrest and Bail Hearing

14. With respect to the allegations set out at paragraphs 21-24 of the Amended Statement of Claim, the plaintiff was arrested by police officers of the Toronto Police Service at approximately 11:00 pm on May 28, 2017 in Toronto, Ontario, and charged with one count of assault with a weapon. The Toronto Police Service detained the plaintiff at the 22 Division detachment overnight following her arrest.

15. On May 29, 2017, the Toronto Police Service transported the plaintiff from the 22 Division detachment to the OCJ at College Park in Toronto. HMQ has no knowledge of the circumstances surrounding the transport of the plaintiff to the courthouse.

16. The plaintiff appeared before a Justice of the Peace of the OCJ on the afternoon of May 29, 2017. The plaintiff was represented by duty counsel. The presiding Justice of the Peace ordered the plaintiff's bail hearing adjourned to the morning of May 30, 2017 ("the Adjournment Order"), in compliance with the requirements of the *Criminal Code*.

17. At no point in the criminal proceeding did the plaintiff seek to impugn the Adjournment Order, nor did she seek any other relief in respect of the Adjournment Order. That Order therefore is final and the plaintiff's claim amounts to an impermissible collateral attack thereon and/or is an abuse of process.

18. In accordance with the Adjournment Order, the plaintiff was remanded to the Vanier Correctional Centre for Women from the evening of May 29 to the morning of May 30, 2017. With respect specifically to the allegations at paragraph 24 of the Amended Statement of Claim, HMQ denies that it breached any duties owed to the plaintiff in respect of her detention at the Vanier Centre, and puts the plaintiff to strict proof thereof.

19. On the morning of May 30, 2017, the plaintiff appeared before a Justice of the Peace, who ordered her released on bail subject to certain conditions proposed jointly by the Crown and the plaintiff, who was again represented by duty counsel.

20. On June 28, 2017, the Plaintiff entered into a peace bond, and the charges against her were withdrawn.

No Negligence, Breaches of Fiduciary Duties, or *Charter* Breaches

21. HMQ denies the allegations at paragraphs 25-29 of the Amended Statement of Claim, and puts the plaintiff to the strict proof thereof. In particular, HMQ denies that the proposed class members had a right to a bail hearing within 24 hours of their arrest or detention. HMQ pleads, and the fact is, that class members had a right to be dealt with in accordance to law within 24 hours of their arrest or detention, which is not the same thing as a right to a bail hearing.

22. In addition, the allegations contained at paragraphs 25-29 of the Amended Statement of Claim are not tenable in law. In those paragraphs, the plaintiff makes allegations about the reasonableness of bail release conditions, multiple court appearances (at each of which the accused would have been dealt with by the court), and of pleas ultimately made. Each of these allegations amounts to a collateral attack on orders of the court and is impermissible and/or an abuse of process.

23. With respect to the allegations at paragraph 30 of the Amended Statement of Claim, policy decisions, including Crown policies and directives concerning the conduct of bail hearings, are neither justiciable nor actionable. In the alternative, all relevant Crown policies and directives were lawful.

24. At paragraphs 31-37 of the Amended Statement of Claim, the plaintiff improperly pleads evidence, not material facts. This evidence is hearsay. HMQ denies that it is admissible. HMQ also denies the allegations made in these paragraphs as well as in paragraph 38 of the Amended Statement of Claim.

25. HMQ denies that it owed duties of care to the plaintiff or proposed class members, as specifically alleged at paragraphs 39 to 42 of the Amended Statement of Claim, or otherwise.

26. To the extent that HMQ owed duties of care, which is not admitted, HMQ denies that the standard of care is as set out at paragraph 43 of the Amended Statement of Claim. In the alternative, HMQ denies that it violated any duty of care owed to the plaintiff or proposed class members. At all material times, HMQ, and its agents and servants acted reasonably in the administration of the court system, and in its part of the conduct of bail hearings, having regard to all applicable constraints, including resource considerations. In the alternative, if HMQ owed and breached any such duties, which is denied, HMQ pleads that any such breach or breaches were infrequent, not systemic.

27. In respect of the allegations at paragraphs 46-53 of the Amended Statement of Claim, HMQ denies that it owed any fiduciary duties to the plaintiff or any other proposed class member with respect of the allegations in the Amended Statement of Claim, or otherwise. Ontario denies that the class members, as defined, were in the care of HMQ, and puts the plaintiff to strict proof thereof.

28. To the extent that HMQ owed any fiduciary duties, which is denied, HMQ denies that it breached any such duties as set out at paragraph 52 of the Amended Statement of Claim, or at all. In the further alternative, if HMQ breached any such duties (which is denied), HMQ pleads that any such breach or breaches were infrequent, not systemic.

29. HMQ has breached no common law, fiduciary, or statutory duty in the resourcing, funding, management, operation or supervision of bail hearings in Ontario. HMQ has breached no common law, fiduciary, or statutory duty in the conduct of bail hearings in Ontario.

30. In respect of the allegations set out at paragraphs 54-66 of the Amended Statement of Claim, HMQ denies that it or its agents or servants breached any *Charter* rights enjoyed by the plaintiff, or any other proposed class member, in the resourcing, funding, management, operation, or conduct of bail hearings in Ontario.

31. In respect of the allegations set out at paragraph 64 of the Amended Statement of Claim, a promise to appear issued under the *Criminal Code* is a form of release. There is no such thing as a promise to appear for a bail hearing, as a person released on a promise to appear does not require a bail hearing. Further and in any event, a promise to appear may only be issued by a peace officer. Ontario denies that any of its agents and servants, other than relevant OPP officers, may release detained persons unconditionally from a police station with a promise to appear.

32. In the alternative, if any actions of HMQ, or its agents and servants, amounted to a *prima facie* breach of a *Charter* right owed to any proposed class member, which is denied, those actions were reasonable and were taken after considering all relevant factors, and any *prima facie* breach was justified in a free and democratic society, pursuant to s 1 of the *Charter*. In the further alternative, if HMQ or its agents or servants unjustifiably breached the *Charter* rights of any class member, those breaches were not systemic.

33. This action is barred by reason of Crown immunity. The Crown is not liable for anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in the person or responsibilities that the person has in connection with the execution of judicial process. The Crown pleads and relies on section 5(6) of the *Proceedings of the Crown Act*.

34. This action is barred by the principle of judicial immunity. HMQ pleads and relies on s 20 of the *Justices of the Peace Act*, RSO 1990 c J4, s 82 of the *Courts of Justice Act*, RSO 1990 c C43 (“CJA”), and the common law principle of judicial immunity.

35. HMQ pleads and relies on the immunity for acts done in good faith in accordance with an order or process of a court in Ontario, as set out in s 143 of the CJA.

36. HMQ pleads that overall compliance with the applicable statutory and regulatory provisions governing bail proceedings is a complete answer and defence to the within action, requiring the dismissal of same.

37. The action is statute-barred. HMQ pleads and relies upon the provisions of *Limitations Act, 2002*, SO 2002, c 24, Sched. B.

Damages

38. HMQ denies that the plaintiffs have suffered the damages alleged at paragraphs 25-29 and 70-72 of the Amended Statement of Claim, or any damages at all. In the alternative, if any potential class members suffered any loss or damages, such loss or damages were not caused or materially contributed to by any actionable act or omission by HMQ, or for which HMQ is in law responsible.

39. If any of the potential class members suffered any loss or damages as alleged or otherwise, which is not admitted but denied, then such alleged loss or damages are excessive and too remote, and HMQ puts the plaintiffs to the strict proof thereof. Further, the plaintiffs and any other potential class members have failed to mitigate same.

40. In the event that HMQ or its agents and servants breached the *Charter* rights of the Plaintiff or any proposed class member, which is denied, this is not an appropriate case for the awarding of monetary damages pursuant to s 24(1) of the *Charter*.

41. In any event, the issue of what damages, if any, were suffered by class members requires proof by individual class members. An aggregate assessment of damages would not be in conformity with the requirements of s 24 of the *Class Proceedings Act*, SO 1992, chap 6 and is not appropriate.

42. HMQ denies that anything in its conduct warrants the awarding of punitive or aggravated damages.

43. HMQ pleads and relies on the *Proceedings Against the Crown Act*; the *Courts of Justice Act*, and regulations enacted thereunder; the *Ministry of the Attorney General Act*, the *Ministry of Correctional Services Act*; the *Justices of the Peace Act*; the *Police Services Act*, and regulations enacted thereunder; the *Criminal Code*, and the *Charter*.

44. HMQ asks that this action be dismissed, with costs.

October 31, 2017

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

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STATEMENT OF DEFENCE

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