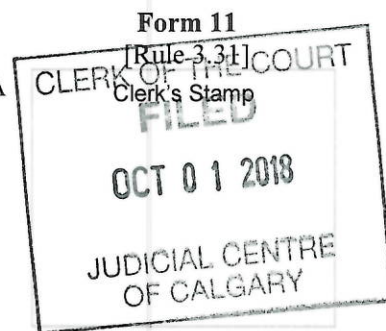


COURT FILE NUMBER 1801 06296
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF RYAN REILLY
DEFENDANT HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ALBERTA



DOCUMENT **STATEMENT OF DEFENCE**

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Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. Except as otherwise indicated herein, the Defendant Her Majesty the Queen in Right of Alberta (HMQ) denies each and every allegation contained in the amended statement of claim, including that the plaintiff or any proposed class members is entitled to the relief sought at paragraph 87, or that the criteria for certification of this action as a class proceeding pursuant to s. 5 of the *Class Proceedings Act*, SA 2002, Chapter C-16.5 (the "CPA") can be met.
2. HMQ denies that it is responsible for the operation, management, administration, supervision, control, and funding of bail hearings, as alleged or at all. There are a number of parties involved in the conduct of bail hearings and in the process leading from detention to same, including a number of different law enforcement agencies in more than 100 locations across Alberta, defence counsel or duty counsel, and the presiding judge or justice. HMQ is not responsible in law for the actions of any of those parties.
3. Furthermore, HMQ has no involvement in the conduct of bail hearings or the process leading from detention to same in respect of persons who are accused of crimes within federal jurisdiction. In those instances, the bail process is within the control of federal prosecutors for whom HMQ is not responsible in law.
4. HMQ admits that the Minister of Justice and Solicitor General, through its agents and servants, is responsible for the consideration of applications for bail after receiving same from law enforcement

agencies and for the appointment of Crown prosecutors to attend bail hearings. Policy decisions concerning the resourcing, maintenance, and organization of institutions through which the Minister carries out these responsibilities are neither justiciable nor actionable. HMQ pleads and relies on the provisions of Schedule 9 of the *Government Organization Act*, RSA 2000, c. G-10.

Any matters that defeat the claim of the plaintiff:

• **The Bail Reference and Alberta's Compliance**

5. On February 3, 2017, the (then) Chief Justice of the Alberta Court of Queen's Bench, Wittman C.J. issued reasons for judgment in a reference as to whether peace officers could function as prosecutors at bail hearings. Wittman C.J. concluded that bail hearings should be conducted by Crown prosecutors, and that this practice should be implemented by August 8, 2017.
6. There is no question that the directions of Wittman C.J. were implemented throughout the Province of Alberta in advance of the August 8, 2017 deadline. As of August 8, 2017, peace officers were not conducting bail hearings in Alberta.

• **The Limited Involvement of HMQ in the Bail Process**

7. Law enforcement agencies are the first point of contact between a person who is detained and the legal system. There are a number of different law enforcement agencies in more than 100 locations in the Province of Alberta, all of which are separate legal entities from HMQ, and operate independently from HMQ. HMQ bears no responsibility for the actions of any of these law enforcement agencies.
8. Each law enforcement agency has available to it a lockup in which accused persons are housed until they are released or sent to a correctional institution to await the processing or resolution of their criminal charges. The condition of and the operation of lockups including the availability of food, water, blankets, pillows or showers or any other amenities is the responsibility of the corresponding law enforcement agency. HMQ pleads and relies on section 53 of the *Police Act*, RSA 2000, c. P-17.
9. The law enforcement agencies are responsible for processing arrested accused persons including housing such accused persons until such time as they are released on bail or, if not released on bail, until they are transferred to a provincial correctional institution. This includes responsibility for the appearance of those persons at their respective bail hearings.
10. The provincial Crown's involvement in the bail process is limited and begins only *after* a bail package is delivered to the Crown Bail Office. HMQ has no control whatsoever over what occurs in the period between detention of an accused and delivery of his or her bail package to the Crown.

11. Unless and until a law enforcement agency submits an electronic bail package to the Crown Bail Office, HMQ has no knowledge of or involvement in the detention of an accused person.
12. HMQ has no control over when a law enforcement agency submits a bail package in respect of an accused person, and in particular, as to whether that occurs within or after 24 hours following the accused person's detention.
13. Once a law enforcement agency submits a bail package to the Crown Bail Office, the application is reviewed by triage legal assistants for compliance with certain prescribed requirements. If the bail application does not meet those requirements it is sent back to the delivering law enforcement agency for correction and resubmission.
14. HMQ has no control over how long it takes for a law enforcement agency to correct and re-submit a bail package.
15. Once a complete bail package is submitted to the Crown Bail Office, the application is reviewed and the accused person is brought before a Justice of the Peace (JP) in a timely way.
16. After the Crown reviews the file, the file is uploaded to a secure electronic Hearing List.
17. The Hearing List acts as a virtual docket and tracks the files as they flow through the Crown bail process.
18. The Hearing List also serves as a tool to manage workload as files can be reassigned to other "courtrooms" based on the capacity of Crown prosecutors and JPs.
19. Law enforcement agencies have access to the Hearing List to see where an accused is listed in the queue and when a hearing can be expected. A JP conducting bail hearings can refer to the Hearing List to see when matters are ready for hearing and what is in the queue. Once the Crown and duty counsel, if applicable, indicate that the matter is ready for hearing, the JP retains ultimate control over the Hearing List, regardless of how the matters are prioritized on the Hearing List.
20. Crown prosecutors conduct bail hearings before a JP in hearing offices in each of Edmonton and Calgary through videoconferencing technology creating a virtual courtroom. Where law enforcement can link in through video, a three-way bail hearing can take place with the accused also appearing on video. Edmonton and Calgary Police Services are currently the only two law enforcement agencies that can accommodate video bail hearings. Where law enforcement cannot link in by video, tele-bail is used. This allows JPs and Crown prosecutors located in either Edmonton or Calgary to virtually conduct bail hearings with an accused located anywhere in the province.
21. Although law enforcement agencies submit bail packages to the Crown Bail Office for persons accused of crimes within federal jurisdiction, the Crown Bail Office's only role in these matters is

to create the entry on the Hearing List and forward the package on to Public Prosecution Service of Canada (PPSC). HMQ is not involved in the bail hearing or the process to have the matter heard.

22. There are many reasons outside the control of HMQ why an accused person may not appear before a justice within 24 hours of their arrest, including but not limited to:
- a. The law enforcement agency did not submit an electronic bail package in a timely way;
 - b. The law enforcement agency did not submit a proper electronic bail package and it had to be sent back for correction and resubmission and the resubmission was not made in a timely way;
 - c. Defence counsel or duty counsel were not available to participate in a bail hearing in a timely way;
 - d. In the case of young offenders, the parents of the accused youth were not available to participate in a bail hearing in a timely way;
 - e. Justices of the Peace were unavailable because they were dealing with matters which they considered in their judicial discretion to be of higher priority than bail hearings; or
 - f. The accused person is charged with an offence which is being prosecuted by the PPSC.
23. JPs are appointed by the Lieutenant Governor in Council and are independent judicial officers for whom HMQ does not have legal responsibility. HMQ pleads and relies on the *Justice of the Peace Act*, RSA 2000, c. J-4.

• **Unique and Individual Circumstances of the Individual Detentions**

24. HMQ has no knowledge of the unique circumstances of the plaintiff's detention, or the detention of any proposed class member, before their respective bail hearings. In particular, but without limiting the generality of the foregoing, HMQ has no knowledge of or control in relation to the following:
- a. The condition of detention cells, and whether such condition "made sleep nearly impossible";
 - b. Whether the plaintiff and other proposed class members were offered a blanket or a pillow "or any other simple comfort";
 - c. The availability of food, water and an opportunity to sleep prior to a bail hearing;
 - d. Whether the plaintiff and other proposed class members were offered a shower or a change of clothes prior to their bail hearings; and
 - e. The physical appearance of the plaintiff and other proposed class members.

- **HMQ is Not Liable**

25. 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.
26. 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, and any assessment of such breach must be carried out on a case-by-case basis.

- **No Charter Breaches**

27. In respect of the allegations set out at paragraphs 51-65 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 Alberta.
28. 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 involved unique and individual circumstances and were not systemic.

- **No Negligence**

29. In respect of the allegations at paragraphs 66-72 of the Amended Statement of Claim, HMQ denies that it owed duties of care to the plaintiff or the proposed class members as alleged or at all.
30. To the extent that HMQ owed duties of care, 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, and involved unique and individual circumstances.

- **No Fiduciary Duty owed to Plaintiff or Class Members**

31. In respect of the allegations at paragraphs 73-80 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. HMQ denies that the class members, as defined, were in the care of HMQ, and puts the plaintiff to strict proof thereof.
32. To the extent that HMQ owed any fiduciary duties, which is denied, HMQ denies that it breached any such duties as alleged in 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, and involved unique and individual circumstances.
33. HMQ has breached no common law, fiduciary, or statutory duty in the resourcing, funding, management, operation or supervision of bail hearings in Alberta. HMQ has breached no common law, fiduciary, or statutory duty in the conduct of bail hearings in Alberta.

- **Bars**

34. 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 Against the Crown Act*, RSA 2000, c. P-25.

- **A Class Proceeding is not Appropriate**

35. The test for certifying a proceeding as a class action is not met in this case. The Plaintiff is unable to satisfy the criteria for certification in s. 5 of the *CPA*.

- **No Damages**

36. HMQ denies that the plaintiff or any proposed class members have suffered the damages alleged in the Amended Statement of Claim, or any damages at all. In the alternative, if the plaintiff or 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.
37. If the plaintiff or 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 plaintiff and any other potential class members have failed to mitigate same.

38. 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 and just case for the awarding of monetary damages pursuant to s 24(1) of the *Charter*. Further, and in any event, many members of the proposed class may have already sought and received a meaningful remedy for the alleged delays in the context of their respective criminal proceedings. For example, the plaintiff sought redress for the alleged delays in his hearing in the context of the underlying criminal proceedings against him and was successful in that a Provincial Court Judge provided a meaningful remedy for the alleged delay of his bail hearing by ordering a stay of the charges against him pursuant to s. 24(1) of the *Charter*.
39. In any event, the issue of what damages, if any, were suffered by class members requires proof by individual class members and consideration of unique and individual factors. An aggregate assessment of damages would not be in conformity with the requirements of ss. 30-34 of the *Class Proceedings Act*, SA 2003, c. 16.5 and is not appropriate.
40. HMQ denies that anything in its conduct warrants the awarding of punitive or aggravated damages.
41. Along with the other statutes referred to, HMQ pleads and relies on the *Criminal Code*, and the *Charter*.

Remedy sought:

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