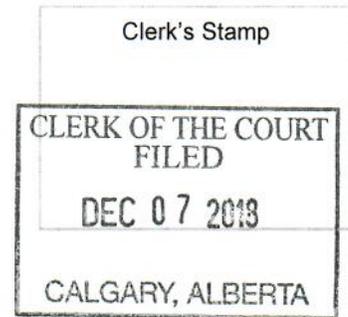


COURT FILE NUMBER 1801-06296
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) RYAN REILLY
DEFENDANT(S) HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA



Brought under the *Class Proceedings Act*

DOCUMENT **REPLY TO DEFENCE**

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This is the Reply of the Plaintiff to the Statement of Defence filed by Her Majesty the Queen in Right of the Province of Alberta on October 1, 2018.

STATEMENT OF FACTS RELIED ON:

1. The Plaintiff, unless otherwise specifically admitted herein or in the Second Amended Statement of Claim, denies each allegation contained in the Statement of Defence.

2. This Reply relies upon the terms and definitions as set out in the Second Amended Statement of Claim.

ANY MATTERS THAT DEFEAT THE CLAIM/DEFENCE OF THE DEFENDANT:

Responsibility for Administration of Justice in Alberta

3. With respect to paragraphs 2 and 7 – 22 of the Statement of Defence, the Crown has the constitutional obligation and is ultimately responsible for the administration of justice in Alberta under section 92(14) of the *Constitution Act, 1867*, 30 & 31 Vict, c 3.
4. The *Police Act*, RSA 2000, c P-17 is administered by the Minister of Justice and Solicitor General, an agent of the Crown, as defined by the *Proceedings Against the Crown Act*, RSA 2000, c P-25. Sections 2, 3, and 30 of the *Police Act* confirm the Crown controls and is responsible for all of Alberta's police forces in respect of matters concerning the administration of justice. This includes responsibility for ensuring that all police authorities in the province comply with the *Criminal Code*'s requirement that accused persons receive a bail hearing within 24 hours of arrest. Any delays caused by the police authorities are the responsibility of the Crown, since for the purpose of this process, they are one actor.
5. The Crown has ultimate control and responsibility over municipal police forces and over the Royal Canadian Mounted Police (the "RCMP") insofar as the RCMP has been contracted to act as Alberta's provincial police force. The Crown is liable for the acts of all police forces carrying out their obligations in the criminal justice system. Section 21 of the *Police Act* reiterates the Crown's control over the RCMP in its capacity as Alberta's provincial police force. Section 30 of the *Police Act* reiterates the Crown's control over municipal police forces in Alberta.
6. Articles 6.1 and 6.4 of the Provincial Police Service Agreement entered into between the RCMP, the Federal government, and the Crown, effective as of April 1, 2012 and remains in force, provides that the Crown retains control over the administration of justice and law enforcement in Alberta.

7. The Crown cannot absolve itself of responsibility for delays and *Charter* violations in the bail hearing process in Alberta by alleging that its own agents were responsible for or contributed to the delays.
8. The Crown owed the Plaintiff and the class statutory, common law, and constitutional (including *Charter*) duties to ensure that they were provided with bail hearings in a timely manner and, in any event, within 24 hours. The Crown is answerable to the Plaintiff and to the proposed Class Members for fulfilling these obligations and it cannot shirk this responsibility by pointing to the actions or inactions of its own agents.
9. The Crown's bald allegations that it has "no control" over Alberta's police forces is wrong in law. The Crown does control and has sole statutory liability for the role of Alberta's police forces in the bail process.

Responsibility for the Public Prosecution Service of Canada Hearings

10. With respect to paragraphs 3, 21 and 24(f) of the Statement of Defence, only the Crown is liable to the Plaintiff and the Class Members for any bail hearing delays at any stage following the arrest of an accused. Any failures of the police to process an accused in a timely manner is solely the responsibility of the Crown vis-a-vis the Plaintiff and the Class.
11. The Plaintiff admits that the Crown is not responsible, in law, for the actions of Federal prosecutors and is not responsible for delays in the Alberta bail hearing system caused by Federal prosecutors. This action excludes from the proposed Class any persons arrested and charged with crimes over which Federal prosecutors have jurisdiction.

Involvement of Defence Counsel

12. With respect to paragraphs 2 and 24(c) of the Statement of Defence, if an adjournment is sought by an accused personally or through her or his counsel, the Crown must nevertheless bring the

request for an adjournment to an available justice within the requisite 24 hour period or proceed with a bail hearing in accordance with section 516 of the *Criminal Code*.

13. This action is not brought on behalf of individuals who consented to an adjournment of their bail hearing under section 516 of the *Criminal Code*.

No Statutory Bar

14. With respect to paragraph 34 of the Statement of Defence, the *Proceedings Against the Crown Act*, RSA 2000, c P-25 does not provide the Crown with immunity from liability for its failure to bring accused persons before a justice within 24 hours. The Crown immunity provided at section 5(6) of the *Proceedings Against the Crown Act* only applies to adjudicative functions performed by the Crown. The Crown is not immune from a civil suit for damages for wrongful conduct in the performance of prosecutorial functions, that are distinct from judicial functions.

15. Further, section 5(6) of the *Proceedings Against the Crown Act* has no application to actions for damages under section 24(1) of the *Charter*.

Authorities

16. The Plaintiff pleads and relies upon the provisions of the following statutes and regulations, including any amendments:
- a. *Constitution Act, 1867*, 30 & 31 Vict, c 3
 - b. *Criminal Code*, RSC 1985, c C-46
 - c. *Police Act*, RSA 2000, c P-17
 - d. *Proceedings Against the Crown Act*, RSA 2000, c P-25
 - e. *Public Service Act*, RSA 2000, c P-42
 - f. *Designation and Transfer of Responsibility Regulation*, Alta Reg 80/2012

REMEDY SOUGHT

17. The Plaintiff repeats the relief sought in the Second Amended Statement of Claim.

NOTE

This reply may only make admissions or respond to matters raised for the first time in the statement of defence (Rules 3.33(2)(b) and 13)