

2707/14

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE



BETWEEN:

SHELAH BROOK

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY THE
MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES (THE
OFFICE OF THE CHIEF CORONER FOR ONTARIO and THE ONTARIO FORENSIC
PATHOLOGY SERVICE)

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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.

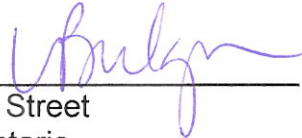
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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.

Date: **FEB 12 2014**

Issued by: 
80 Dundas Street
London, Ontario
N6A 6A3

TO: Her Majesty The Queen in Right of Ontario, represented by
Ministry of the Attorney General
Crown Law Office (Civil Law)
8 – 720 Bay Street
Toronto, ON M5G 2K1

CLAIM**1. THE PLAINTIFF CLAIMS** on behalf of herself and the Class:

- (a) An Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, C. 6 certifying this action as a class proceeding and appointing the Plaintiff as representative Plaintiff on behalf of the Class;
- (b) General damages calculated on an aggregate basis or otherwise in an amount sufficient to compensate the Plaintiff and the Class Members for the harm resulting from of the Defendants' negligence and breach of its duty and/or duties of care;
- (c) General damages calculated on an aggregate basis or otherwise in an amount sufficient to compensate the Plaintiff and the Class Members for the harm resulting from the Defendants' misfeasance in public office;
- (d) Special damages calculated on an aggregate basis or otherwise in an amount sufficient to compensate the Plaintiff and the Class Members for all costs incurred by the Plaintiff and the Class members with regard to the investigation, return, disposal, and/or burial of body parts unlawfully retained and/or destroyed by the Defendants or at the Defendants' instruction;
- (e) Nominal damages calculated on an aggregate basis or otherwise in an amount sufficient to recognize and reflect the impropriety of the Defendants' unlawful conduct;

- (f) Punitive damages and exemplary damages in an amount to be determined at trial;
- (g) An equitable rate of interest on all sums found due and owing to the Plaintiff and the Class Members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
- (h) An Order compelling the creation of a litigation trust to hold and distribute the monetary relief awarded pursuant to a plan of administration and distribution under sections 25 and 26 of the *Class Proceedings Act*;
- (i) An Order compelling the creation of a conspicuous notice program to class members pursuant to section 19 of the *Class Proceedings Act* in order to facilitate the plan of distribution claimed herein;
- (j) Costs of this action on a substantial indemnity basis including the costs associated with notice to class members and the plan of administration and distribution of relief, plus applicable taxes; and
- (k) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

Plaintiff

2. The Plaintiff, Shelah Brook, is an individual residing in London, Ontario. The Plaintiff is the personal representative of her deceased mother, whose body was the subject of a Coroner's Investigation on August 3, 1992 in Ottawa, Ontario.

3. Following her own investigation into this matter, the Plaintiff was advised by the Ministry of Community Safety and Correctional Services that her mother's brain was retained in storage for an unknown period of time, without notice, and before ultimately being cremated, also without notice to the Plaintiff. Further, the Plaintiff's mother's body was returned to her and to her family for final funerary arrangements on August 6, 1992 without disclosure that the body was incomplete.

Defendants

4. The Defendant, Her Majesty The Queen In Right Of Ontario, represented by the Ministry of Community Safety And Correctional Services (The Office of the Chief Coroner for Ontario) (the "MCSCS"), is an Ontario Government Ministry that, *inter alia*, is responsible for law enforcement and death investigation services in the Province of Ontario.
5. The MCSCS is the successor ministry to the Ministry of Public Safety and Security which, in 2002, became the successor ministry to the Ministry of the Solicitor General of Ontario.
6. The Defendant, The Office of the Chief Coroner for Ontario, is an Ontario Government Office created by virtue of the *Coroner's Act*, R.S.O. 1990, c. C.37, as amended, that, *inter alia*, is responsible for carrying out the directions of the Chief Coroner of Ontario by supervising, administering, and directing coroners in the Province of Ontario.

7. The Defendant, The Ontario Forensic Pathology Service, is an Ontario Government Office created pursuant to amendments in 2009 to the *Coroner's Act*, R.S.O. 1990, c. C.37, as amended, that, *inter alia*, is responsible for carrying out the directions of the Chief Forensic Pathologist of Ontario by supervising, administering, and directing forensic pathologists in the Province of Ontario in performing autopsies ordered by coroners.

THE CLASS

8. The Plaintiff seeks to represent a class consisting of all persons in Canada who are the immediate family members and/or personal representatives of deceased persons whose body parts were retained and/or destroyed by the Chief Coroner for Ontario, or its delegates or agents, after the conclusion of an investigation into the cause of death between the years 1974 and 2010 without notice (the "Class Members").

THE NATURE OF THE ACTION

9. This action concerns the undisclosed and unlawful long-term retention and subsequent disposal of human body parts by, or under the guidance and supervision of, the Defendants and their respective delegates, agents, and persons under their supervision and control between the years 1974 – 2010.
10. Between 1974 and 2010, it has been a common, persistent, and undisclosed practice for coroners and forensic pathologists in Ontario to retain parts of the bodies of deceased individuals for extended periods of time in storage at

hospitals or forensic pathology units throughout Ontario, without notice to the immediate family members or personal representatives of the deceased.

11. The Chief Coroner for Ontario has recently advised that many of these retained organs were subsequently destroyed, without notice to the immediate family members or personal representatives of the deceased.

12. The bodies of the deceased were returned to immediate family members and personal representatives for the purposes of final funerary arrangements without disclosure of the fact that certain parts were missing from the bodies, and instead had been retained and/or destroyed.

13. Between 1974 and June 14, 2010, the applicable statutes and regulations mandating the practice of coroners and forensic pathologists in Ontario with regard to death investigations and inquests did not include any provision or authority for the long-term retention of body parts.

14. Similarly, the applicable statutes and regulations did not include any provision for the destruction of retained body parts.

15. As a result of the conduct of the Defendants, the Plaintiff and the Class Members have suffered damages.

BACKGROUND

16. Since 1972, coroners in Ontario, under the direction of the Chief Coroner for Ontario, have been responsible for investigating deaths under certain

circumstances. These circumstances include: violence, misadventure, negligence, misconduct, and malpractice, as well as sudden and unexpected death.

17. In the course of a death investigation, the Chief Coroner for Ontario and its delegates, agents, and persons under its supervision and control may utilize the help and services of the Chief Forensic Pathologist and its delegates, agents, and persons under its supervision and control to perform autopsies and other medical procedures to determine the cause of death and resolve any other questions relating to the death of a person in Ontario.

18. Between 1974 and June 14, 2010, the applicable statutes and regulations governing the practices of coroners and forensic pathologists in Ontario authorized coroners and forensic pathologists to seize possession of a human body for the purpose of death investigation and inquest.

19. The applicable statutes and regulations between 1974 and June 14, 2010 governing the practices of coroners and forensic pathologists did not include provisions authorizing the long-term retention or disposal of human body parts after the coroner's or forensic pathologist's investigations had concluded.

20. Between 1974 and June 14, 2010, the family members and personal representatives of deceased persons were not notified when coroners or forensic pathologists in Ontario seized possession of the body parts of deceased persons for investigatory purposes and were not notified that such body parts were

retained in storage for an extended period of time following the conclusion of a death investigation or inquest, nor were they notified when many of those body parts were subsequently disposed of.

21. The systemic failure to notify family members persisted despite the fact that the Office of the Chief Coroner published an internal memorandum in November of 2004 at the latest, which emphasized the requirement to notify family members of organ retention, and outlined all necessary steps to be taken in that process.

22. The bodies of deceased persons were returned to immediate family members and personal representatives following death investigations or inquests with body parts missing. The personal representatives and immediate family members of deceased persons were not notified that the body returned to them was incomplete and that parts had been retained in storage, and in many cases, destroyed.

23. On or about June 14, 2012, the MCSCS circulated a public notice (the "Notice") in several Ontario newspapers indicating that prior to June 14, 2010, the body parts or organs of deceased persons may have been retained, and may continue to be retained, after an autopsy was conducted to determine the deceased persons' cause of death.

24. The Notice invites immediate family members and personal representatives of deceased persons who suspect that body parts may have been retained

following a death investigation and autopsy to contact the Ontario Forensic Pathology Service to inquire about the status of the body part(s).

25. The Notice states that affected family members and personal representatives, upon learning that a body part or organ of a deceased person has been retained, may request that the organ or body part be sent to a funeral home for cremation or burial and that expenses of which will be covered by the Ontario Forensic Pathology Service and the Office of the Chief Coroner.

26. The Notice further states that any unclaimed organs or body parts that were retained prior to June 14, 2010 will be unilaterally disposed of without further notice beginning on June 14, 2013.

27. Since June 14, 2010, the *Coroner's Act*, R.S.O. 1990, c. C.37 and its General Regulation, R.R.O. 1990, Regulation 180, have been amended to provide for a comprehensive legislative scheme authorizing and providing guidance for the retention of human body parts and organs by the Chief Coroner for Ontario and its delegates and agents and the Chief Forensic Pathologist for Ontario and its delegates and agents. Moreover, the new legislative scheme now mandates that the Coroner shall make reasonable efforts to notify the personal representatives of a deceased person when an organ from the deceased person's body has been retained.

28. The MCSCS announced on June 13, 2013 that further amendments had been made to Regulation 180 that allowed for a 5 year extension of the retention

period of the retained organs which had originally been scheduled for disposal starting June 14, 2013.

29. Though an amendment has been made to the FAQ section of the MCSCS website indicating that organs have also been disposed of, there has been no formal notice made to the public advising that many of the retained organs have been destroyed.

30. MCSCS has publicly advised that approximately 4000 organs were retained. The Plaintiff alleges that a much higher number of organs and body parts have been destroyed without consent or notice to the personal representatives or family members of the deceased, and that number has not been disclosed.

31. The Plaintiff pleads that MCSCS maintains detailed records of the names and other particulars of all of the deceased persons whose body parts were retained and/or destroyed. All of the deceased persons whose remains are at issue in this lawsuit comprise a fixed group of individuals who are known to the defendants with specificity.

MISFEASANCE IN PUBLIC OFFICE

32. The *Coroner's Act*, R.S.O. 1990, c. C.37 and its historical versions (the *Coroner's Act*, R.S.O. 1980 c. 93, and the *Coroner's Act 1972*, S.O. 1972, c. 98) provide legislative authority permitting the Lieutenant Governor in Council to appoint and designate one or more legally qualified medical practitioners as coroners for Ontario to hold office at their pleasure.

33. The *Coroner's Act* and its historical versions authorize the Lieutenant Governor in Council to appoint a coroner to hold the position of Chief Coroner for Ontario, whose duties include administering the *Coroner's Act* and regulations, creating programs for the instruction of coroners in Ontario, and supervising, directing, and controlling all coroners in Ontario in the performance of their duties.
34. The *Coroner's Act* and its historical versions further authorize the Lieutenant Governor in Council to appoint a forensic pathologist to hold the position of Chief Forensic Pathologist for Ontario whose duties include the supervision and direction of pathologists in their duties under the *Coroner's Act* and to be responsible for the administration and operation of the Ontario Forensic Pathology Service.
35. Pursuant to the *Coroner's Act* and its historical versions, the MCSCS and its predecessor ministries have jurisdiction over coroners and forensic pathologists in Ontario.
36. The Plaintiff therefore states that, at all material times, the Defendants' actions in retaining, and in many cases destroying, organs and body parts of deceased persons were carried out within their capacity as public officers and in the exercise, or purported exercise, of a public function.
37. The Plaintiff states that prior to amendments to the *Coroner's Act* and its regulations which came into force on June 14, 2010, there was no express or implied legal or statutory basis for which the Defendants were authorized to

retain, or cause to be retained, or destroy, or cause to be destroyed, body parts and organs of deceased persons following the conclusion of a death investigation.

38. The Plaintiff further states that prior to June 14, 2010, there was no express or implied legal or statutory basis for which the Defendants were given discretion allowing them to retain or destroy organs and body parts of deceased persons following the conclusion of a death investigation.

39. On the contrary, previous versions of the *Coroner's Act* placed limits on the coroners and forensic pathologists conducting autopsies. The *Coroner's Act* specified not only that a coroner requires a warrant to take possession of a dead body, it also placed limits on the types of items that may be seized by the coroner, as well as the manner in which those items may be held.

40. Specifically, the coroner was authorized to seize any items that he or she had grounds to believe were material to the investigation he or she was conducting. The items that were seized were directed to be placed in the custody of a police officer for safekeeping, and were to be returned to the family members or personal representatives of the deceased as soon as practicable after the conclusion of the investigation or inquest, unless the coroner was authorized or required by law to dispose of them.

41. Furthermore, previous versions of the *Coroner's Act* provided specific instructions for the removal and delivery of pituitary glands (to the notable

exclusion of all other organs) following a *post mortem* examination under a warrant, and stated that authorization to remove the glands only applies where the coroner or person performing the post mortem examination has no reason to believe that the deceased or the deceased's family members or personal representatives had objected to the deceased body being dealt with in this manner.

42. The absence of any provision in the legislation relating to the retention of any other organ or body part coupled with the fact that pituitary glands are not authorized to simply be retained or destroyed on a *de facto* basis, dictates that there is no authority for coroners or forensic pathologists to retain or destroy other organs or body parts. The Plaintiff pleads and relies on the principle of *Inclusio Unius est Exclusio Alterius*, and pleads that the inclusion of a reference to authorization for the removal of one organ dictates that authorization for the removal of other organs is not included within the scope of legislation.

43. The Plaintiff therefore states that the Defendants knowingly and consciously disregarded the express boundaries of their enabling legislation when they chose to retain, and destroy, the body parts and organs of deceased persons following the conclusion of a death investigation.

44. In the alternative, the Plaintiff states that the Defendants were reckless or wilfully blind with regard to the scope of their powers and duties enumerated in their enabling legislation and were reckless or wilfully blind as to whether their choice to retain and destroy organs and body parts from deceased persons was in

compliance with their express or implied statutory rights, powers, duties, and functions.

45. The Plaintiff states that prior to June 14, 2010, the retention and destruction of body parts and organs by, or at the direction of, the Defendants constituted deliberate unlawful conduct that blatantly disregarded the rights, interests, values, and personal beliefs of the Plaintiff and the Class Members.

46. The Plaintiff pleads that the conduct of The Office of the Chief Coroner for Ontario is contrary to the Code of Ethics for Coroners, and is in conflict with the Coroners Motto: "We Speak for the Dead to Protect the Living".

47. The Plaintiff states that the Defendants' conduct has caused the Plaintiff and the Class Members to suffer foreseeable harm for which they are entitled to be compensated.

48. The Plaintiff further states that the Defendants' conduct deprived the Plaintiff and the Class members of the choice and the ability to make full and dignified funeral, burial, and/or cremation arrangements for the deceased persons from whom the Defendants retained and destroyed organs and body parts.

NEGLIGENCE

49. The Plaintiff states that the Defendants owed a duty to the Plaintiff and members of the Class to provide reasonable and adequate notice in a timely fashion that the body parts and organs of the deceased persons in which they had an interest had been retained and/or destroyed by, or at the direction of, the Defendants

pursuant to a coroner's or forensic pathologist's investigation into the cause of death.

50. The Plaintiff states that the standard of care in this regard has been well-established as an international standard of practice in transparency and direct notice to family members and personal representatives of the deceased.

51. Furthermore, the standard of care was clearly codified in the form of an internal policy at the Office of the Chief Coroner in November of 2004, at the latest, and was disseminated by way of a memorandum to all Ontario Coroners and Pathologists. The preamble of the memo specifically references that other jurisdictions around the world have formulated policies governing the practice of organ retention and notification to relatives of such retention.

52. The 2004 Memorandum further indicates that both Coroners and Pathologists have a duty to ensure communication to family members and personal representatives regarding the retention of organs or tissue specimens, and that this will be done as early as possible during a death investigation or following the autopsy, as the case may be.

53. The Plaintiff states that the Defendants breached their duty to the Plaintiff and members of the Class because they failed, omitted, or otherwise refused to provide reasonable, adequate and timely notice to the members of the Class that the body parts and organs of the deceased persons in which the members of the

Class had an interest had been retained and destroyed by, or at the direction of, the Defendants.

54. The Plaintiff states that the Defendants' Notice of June 14, 2012 was neither reasonable, adequate, nor timely, because it was posted at a minimum of two years and at a maximum of 38 years, after the date in which an organ or body part of a deceased person in which a member of the Class had an interest was retained or destroyed by or at the direction of the Defendants.

55. Furthermore, the Notice was insufficient and inaccurate given that it did not disclose that many of the retained organs had in fact been disposed of.

56. The Plaintiff states that as a result of the Defendants' breach of their duty to provide reasonable, adequate, timely and fulsome notice to the Plaintiff and members of the Class, the Plaintiff and members of the Class have suffered from foreseeable harm, the particulars of which are as follows:

- a. The Defendants created a false sense of closure for the class members with regard to the death and subsequent burial, cremation, or other funeral arrangements made for the deceased person whose body parts or organs had been retained or destroyed;
- b. Their respective religious beliefs, standards, and views were violated and offended through their inability to bury, cremate, or make funeral arrangements for a complete deceased body that did not have missing body parts or organs;

- c. They experienced frustration, uncertainty, and inconvenience in being required to revisit the deaths of their loved ones and to make unexpected decisions in respect of their remains; and
- d. They experienced sudden and serious shock upon obtaining knowledge that body parts and organs of deceased persons in which they had an interest had been kept in storage for an extended period of time.

57. The Plaintiff pleads that the Defendants had a duty to return all human remains to the personal representatives and family members of the deceased without exception, so that final funerary arrangements could be made.

58. In addition or in the alternative to the Defendants' breach of its duty to notify, the Plaintiff states that the Defendants owed a duty to the Plaintiff and Members of the Class to return the body parts and organs of the deceased persons in which the Plaintiff and Members of the Class had an interest in a reasonable and timely fashion.

59. The Plaintiff states that the Defendants breached their duty to the Plaintiff and Members of the Class because they failed, omitted, or otherwise refused to provide for the reasonable, adequate and timely return of the body parts and organs of the deceased persons in which the members of the Class had an interest, if they were able to return the body parts and organs at all.

60. The Plaintiff states that the Defendants' offer to return retained body parts and organs at the request of a deceased person's personal representative, as stated

in its Notice of June 14, 2012, is neither reasonable, adequate, nor timely because the return of the body parts and organs will occur, at a minimum two years and at a maximum 38 years, after the date in which those organs or body parts were originally retained by or at the direction of the Defendants and when funeral arrangements had already been made for the rest of the deceased person's body.

61. The Plaintiff further states that the Defendants' undisclosed disposal of body parts and organs constitutes a further infringement on the rights and obligations of the Plaintiff and Members of the Class to effect a dignified funeral for the deceased person in which they have an interest.

62. The Plaintiff pleads that the Defendants' historical course of conduct offends universal religious beliefs and all reasonable standards of behaviour and responsibility surrounding the management and care of human remains.

63. The Plaintiff states that the Defendants' breach of its duty to provide for the reasonable and timely return of the body parts and organs of the deceased persons in which the Plaintiff and Members of the Class had an interest caused foreseeable harm to the Plaintiff and Members of the Class, particulars of which are as follows:

- a. They were deprived of their right to possession of the deceased person's body and organs for the purpose of effecting a dignified funeral befitting the deceased person's station in life and/or religious beliefs and values;

- b. They were deprived of the ability to fulfill their obligations to make adequate and dignified funeral arrangements for deceased persons;
- c. Their respective religious beliefs and/or rights to dignified funerary arrangements were betrayed through the inability to bury, cremate, or make funeral arrangements for a complete deceased body that did not have missing body parts or organs;
- d. They experienced frustration, uncertainty, and inconvenience through being required to make positive efforts, at their own expense, to inquire with the Defendants as to whether organs or body parts of a deceased person in which they had an interest had been retained;
- e. They experienced frustration, distress, and inconvenience by having to make new funeral arrangements for the deceased person's organs and body parts after they had already made funeral arrangements for the incomplete body;
- f. They were forced to re-experience and revisit troubling and traumatic memories that they had previously overcome or had developed an ability to cope with; and
- g. They experienced sudden and serious shock upon obtaining the knowledge that body parts and organs of deceased persons in which they had an interest had been kept in storage for an extended period of time and/or were destroyed.

THE DEFENDANTS' CONDUCT EXCEEDS THE SCOPE OF GOVERNING LEGISLATION

64. The Plaintiffs pleads that her mother's organs, and the organs in which the other class members had an interest, were retained after the jurisdiction of the coroner was exhausted. After a death investigation was completed, no coroner had any right to retain the body parts of the deceased.

65. There was no authority for the retention of organs, and there is no authority for the persistent policy to retain organs after the exhaustion of the jurisdiction and without notice to the affected persons.

66. Furthermore, there is no authority for the destruction of organs after the retention of organs, without notice to affected persons.

THE DEFENDANTS' CONDUCT LACKS GOOD FAITH

67. The Plaintiff pleads that the Defendants' conduct in retaining and destroying organs lacks good faith for the following reasons:

- a) It was inherently and fundamentally disrespectful and undignified to the deceased, the remains of the deceased, and the families and personal representatives of the deceased;
- b) It was done without consent from or notice to the families and personal representatives of the deceased;
- c) The practice of returning of incomplete bodies without notice to families and personal representatives was deceptive; and

- d) The conduct took place over an extended period of time, where there were many opportunities to re-evaluate and correct the Defendants' disrespectful and disgraceful practices.

REMEDIES

68. As a result of the acts and omissions of the Defendants as stated above, the Plaintiff and the Class Members have sustained losses and damages for which they are entitled to compensation.

69. All amounts payable to the class on account of damages should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, or otherwise.

70. Where damages cannot be assessed in the aggregate, the Plaintiff and Members of the Class plead and rely on section 25 of the *Class Proceedings Act* and thereby refer to the Court to determine individual issues.

General Damages

71. As a result of the unlawful conduct of the Defendants in retaining, or causing to be retained, and destroying, or causing to be destroyed, organs and body parts of deceased persons without any statutory authorization to do so, the Plaintiff and the Class Members state that they are entitled to nominal damages in an amount sufficient to reflect the wrongfulness of the Defendants' conduct.

72. As a result of the Defendants' negligence and breach of their duty or duties of

care owed to the Plaintiff and Class Members, the Plaintiff and the Class Members state that they are entitled to general damages in an amount sufficient to compensate them for the harm, pain, and distress that they suffered and for the deprivation of the ability to make full and dignified funeral arrangements for the deceased persons of whom the Plaintiff and Class Members had an interest.

73. As a result of the Defendants' misfeasance in public office, the Plaintiff and Class Members state that they are entitled to general damages in an amount sufficient to compensate them for the harm, pain, and distress that they sustained and for the deprivation of the ability to make full and dignified funeral arrangements for the deceased persons of whom the Plaintiff and Class Members had an interest.

Special Damages

74. The Plaintiff and the Class Members state that they are entitled to special damages in an amount sufficient to compensate them for all costs incurred by them as a result of now being required to investigate and make provision for the return, disposal, and/or burial of the body parts and organs retained and/or destroyed by the Defendants or under the Defendants' instruction.

Punitive and Exemplary Damages

75. By virtue of the high-handed conduct of the Defendants and their disregard for the rights and interests of the Class Members, the Plaintiff requests this Court to award against the Defendants collectively or individually, punitive and exemplary damages in an amount deemed appropriate by this Court at trial.

Plan of Distribution

76. Such damages ought to be held in a litigation trust and distributed pursuant to a plan of distribution under sections 25 and 26 of the *Class Proceedings Act*.

77. Alternatively, if so elected, the unpaid remuneration and any gains made thereon should be calculated on an aggregate basis or otherwise should be held in a litigation trust and distributed pursuant to a plan of distribution under sections 25 and 26 of the *Class Proceedings Act*.

Conspicuous Notice Plan

78. The Plaintiff requests the creation of a conspicuous and comprehensive notice program affording notice to the Class Members of the retention and destruction of organs or body parts from the bodies of deceased persons of which they have an interest.

79. The Plaintiff requests the creation of the conspicuous and comprehensive notice program pursuant to Section 19 of the *Class Proceedings Act*.

STATUTES RELIED UPON

80. The Plaintiff relies upon the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the *Coroner's Act*, R.S.O. 1990, c. C.37, as amended, the *Coroner's Act*, R.S.O. 1980 c. 93, as amended, the *Coroner's Act 1972*, S.O. 1972, c. 98, as amended, their regulations R.R.O. 1990, Regulation 180, as amended, R.R.O. 1980,

Regulation 185, as amended, and O. Reg. 307/73, as amended, the *Negligence Act*, R.S.O. 1990, c. N.1, and the *Courts of Justice Act*, R.S.O. 1990, c.C.43.

PLACE OF TRIAL

81. The Plaintiff proposes that this action be tried in London, Ontario.

FEB 12 2014

HARRISON PENSA LLP
450 Talbot Street
London, ON N6A 4K3

Jonathan J. Foreman (#45087H)
Genevieve Meisenheimer (#59191U)

Tel: (519) 679-9660
Fax: (519) 667-3362

Counsel for the Plaintiff

BROOK
PLAINTIFFS

v

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO ET AL.
DEFENDANTS

SUPERIOR COURT OF JUSTICE

Commenced at LONDON

STATEMENT OF CLAIM

HARRISON PENZA LLP
Barristers and Solicitors
450 Talbot Street, P.O. Box 3237
London, Ontario N6A 4K3

Jonathan J. Foreman (LSUC #45087H)
Genevieve Meisenheimer (LSUC#59191U)
Tel: (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiff.

File #154957