

AMENDED this 25 day of  
June, 2020 Pursuant to  
Rule 3.65  
dated the 18 day of June, 2020

Form 10  
[Rule 3.25]

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



603066

**Brought under the *Class Proceedings Act***

DOCUMENT **SECOND THIRD AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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**NOTICE TO DEFENDANT(S)**

You are being sued. You are a defendant

Go to the end of this document to see what you can do and when you must do it.

**STATEMENT OF FACTS RELIED UPON:**

**THE PARTIES**

1. The Plaintiff, Ryan Reilly (~~the "Plaintiff"~~), resides in Edmonton, Alberta. He was arrested on April 4, 2017 and detained in an Edmonton Police Station for approximately 36 hours before receiving a bail hearing.

2. The Plaintiff, MS, resides in Edmonton, Alberta. He was arrested on April 6, 2017 by appointment and held for approximately 26 hours before receiving a bail hearing. MS was acquitted on all charges related to his April 6, 2017 arrest.
3. Her Majesty the Queen in Right of Alberta (the “Crown” or the “Defendant”) is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, RSA 2000, c P-25.
4. ~~3. The Defendant, through and with its employees and agents, was at all material times responsible for the criminal justice system in the Province of Alberta including the operations, management, administration, supervision and funding of bail hearings. The Crown employs and instructs Provincial.~~

#### **ACTION IS PROPOSED CLASS PROCEEDING**

4. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, SA 2003, c C-16.5 (“CPA”) on his own behalf, and on behalf of all other persons similarly situated, who were or are arrested in the Province of Alberta and denied a bail hearing within 24 hours of such an arrest, as required by Section 503(1) of the *Criminal Code of Canada* (the “Criminal Code”), from May 2, 2016 and the date of certification of this action as a class proceeding, as further particularized below.

#### **HABEAS CORPUS, BAIL HEARINGS, AND THE CRIMINAL CODE**

5. The right to *habeas corpus* is a fundamental human rights and is deeply entrenched in the written and unwritten Canadian constitution. *Habeas corpus* provides a person detained by the state with the right, without unreasonable delay, to have the validity of his or her involuntary detention justified before an impartial and independent court. This right is of ancient lineage and a cornerstone of the Canadian criminal justice system, functioning to protect individuals from abusive or unlawful detention by the state and its agents.
6. Related to the right of *habeas corpus* is the basic right of an arrested person to have the terms of any continuing detention determined by a judicial officer (a “justice”) at a hearing for judicial interim release (a “bail hearing”). A person who is arrested and accused of a crime (an

“accused”) is presumed to be innocent of any crime until proven otherwise through a proper court process. A bail hearing allows the presumptively innocent accused the opportunity quickly to regain the liberty of which he or she was deprived on such terms as are deemed appropriate and by a justice in the public interest. An accused’s right not to be unreasonably denied bail is an entrenched statutory, common law, and constitutional right.

7. Sections 9 and 10(c) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) provides that everyone in Canada, upon arrest or detention, has the right not to be arbitrarily detained or imprisoned and the right to have the validity of a detention determined by way of *habeas corpus*. In addition, under Section 11(e), an accused person has the right not to be denied reasonable bail without just cause.
8. Additionally, under Section 7 of the *Charter*, everyone in Canada has the right to his or her liberty and the right not to be deprived thereof except in accordance with principles of fundamental justice.
9. The *Criminal Code* provides the procedures to be followed by the provinces for the conduct of bail hearings which are necessary to adhere to, and provide for, the rights enshrined in the *Charter*. Section 503(1) of the *Criminal Code*, in particular, provides that an accused individual shall be taken before an available justice without unreasonable delay and, in any event, within 24 hours after arrest for the purposes of having the lawfulness of the arrest or the necessity of a detention determined by an independent and impartial justice. The upper limit of 24 hours is mandatory.
10. The *Criminal Code* is paramount Federal legislation. It, along with the Charter, requires that each province have in place a judicial system and a prosecution service capable of providing bail hearings to accused persons within 24 hours of his or her arrest.
11. With certain exceptions, there is a statutory and constitutional presumption that every accused must be released on the least onerous form of release. A peace officer can release an accused subject to a summons, an appearance notice, or a promise to appear. A peace officer can also release an accused on an undertaking or a recognizance. If an accused is not released by a peace officer by one of these means, then he or she must be taken before an available justice to have

the validity of the arrest and the potential for bail determined within 24 hours of the time of the arrest.

12. The *Criminal Code* requires that the accused shall be released without conditions by a justice presiding at a bail hearing unless a prosecutor shows cause as to why he or she should be released with conditions or further detained in custody. Where the Crown seeks to show cause, the accused is held in custody until court facilities are available to adjudicate the matter.
13. A prosecutor, as defined by the *Criminal Code*, means the Attorney General or counsel acting on behalf of the Attorney General (defined to mean a barrister or solicitor authorized to practice law in a particular province) (a “Crown prosecutor”).
14. In limited circumstances, the *Criminal Code* reverses the onus and requires accuseds to show cause as to why they should be released on bail. These include circumstances where an accused breaches a release order or commits an indictable offence while bound by a release order. Even in these cases, the *Criminal Code* still provides that the accused must be granted timely access to a bail hearing to determine the validity of a detention and to adjudicate bail issues.
15. If an accused is not otherwise released and is not brought before a justice within 24 hours, he or she will be detained in excess of what the law permits even though just cause for his or her detention is not demonstrated. The presumptively innocent accused, consequently, irreparably loses his or her liberty pending the bail hearing.
16. The consequences of such an impermissible delay are manifold. For example, the Crown’s holding a bail hearing may lead an accused to consent to unnecessary and unjustifiable release conditions simply to regain his or her liberty – conditions which may not have otherwise been imposed if a bail hearing was heard in accordance with the provisions of the *Criminal Code*.
17. While the *Criminal Code* does not allow Crown prosecutors or peace officers the unilateral discretion to delay an accused’s bail hearing, some flexibility is provided to the provinces in administering the *Criminal Code* in order reasonably to accommodate practical realities without unduly compromising the liberty of an arrested person – including, in particular:

- a. Section 515(2.2) of the *Criminal Code*, which allows an accused to appear before a justice by means of any suitable telecommunication device (which includes a telephone or a video conference) which is deemed satisfactory to the presiding justice; and
  - b. Section 516(1) of the *Criminal Code*, which allows a prosecutor or an accused to complete an application before a justice to adjourn a bail hearing for up to three clear days. A longer period than three days is not permitted, however, unless the accused provides consent.
18. Canadian courts recognize the paramount importance of personal liberty. Arguments to restrict an individual's liberty based upon a lack of resource and a lack of Crown prosecutors to conduct bail hearings are not tenable under Canadian law. Violations of the 24 hour limit to have an accused appear before an available justice breach the accused's *Charter* rights by unreasonably depriving liberty from him or her.
19. The Crown, together with every other province in Canada, is bound by the Canadian constitution (which includes the *Constitution Act, 1867* and the *Charter*). The Crown is also bound by the *Criminal Code* and, in particular, it must ensure that accuseds are brought before an available justice within 24 hours of their arrest. Failure to do so results in a breach of accuseds' *Charter* rights.

#### **THE BAIL HEARING SYSTEM IN ALBERTA PRIOR TO THE REFERENCE DECISION**

20. In Alberta, prior to October 2016, the vast majority of bail hearings were conducted by telephone or video link with a peace officer (a member of an Alberta police force or a member of the Royal Canadian Mounted Police) representing the Crown at the bail hearing. Despite the fact that Alberta peace officers were not legally trained or licensed as lawyers, the Crown nevertheless allowed peace officers to function as a "prosecutor" at bail hearings.
21. On February 3, 2017, the Chief Justice of the Alberta Court of Queen's Bench, Wittmann CJ, found that Alberta's bail hearings regime was in breach of the *Criminal Code* and invalid. Wittmann CJ granted Alberta a six-month reprieve from the consequences of a finding of

invalidity to allow an orderly transition from a regime of peace officer conducted bail hearings to prosecutor conducted bail hearings.

22. Even before Wittmann CJ's February 2017 reference decision, widespread bail hearing delays were occurring in Alberta. Between April 2016 and February 2017, hundreds to thousands of Albertans were unlawfully detained for more than 24 hours before being taken before an available justice.
23. As justices were available 24 hours per day by telephone or video conference, the delays in bail hearings were caused wholly by a failure on the part of the Crown to allocate appropriate resources to the bail hearings regime and by a lack of sufficient Crown prosecutors (or police presenters).
24. Prior to Wittmann CJ's reference decision, the Crown knew about system wide problems with the bail hearing system in Alberta, as well as the prejudice and the deleterious effects of those delays on accuseds.
25. For years, the Crown has acted with callous disregard of the constitutional right of accused persons to have their liberty respected. The Crown has neglected to take, or refused to take, meaningful remedial action to ensure that bail hearings are held within 24 hours of arrest - including by taking such reasonable steps as hiring an adequate number of Crown prosecutors.
26. The bail hearings regime in Alberta was broken both before and after Wittmann CJ's decision. As of this date, it remains broken and the liberty of thousands of Albertans is violated annually.

#### **ALBERTA'S FAILURE TO COMPLETE AN ORDERLY TRANSITION**

27. The Crown was granted a generous period of six months to bring its bail hearings regime into compliance with the *Criminal Code*. The Crown did not request an extension of during this period from a court of competent jurisdiction in Alberta to grant such a remedy. Significantly,

Wittmann CJ did not grant the Crown relief from the *Criminal Code*'s requirement to complete bail hearings within 24 hours during this six-month period.

28. Despite the requirements of the *Criminal Code*, between February 3, 2017 and August 3, 2017, the Crown was permitted to conduct bail hearings either by a Crown prosecutor or by a designated peace officer.
29. Remarkably, even though bail hearings could be conducted by either Crown prosecutors or peace officers during this period, the number of bail hearing delays in Alberta skyrocketed and thousands of accuseds were not provided with a bail hearing within the required 24 hour period – despite the fact that justices were available.
30. At some point after February 3, 2017 and before August 3, 2017, the Crown developed a new system for bail hearings in Alberta, commonly referred to as “Crown Bail” whereby Crown prosecutors took over the prosecution of bail hearings from the Crown’s police forces. The Crown Bail system was designed and is carried out without due regard to the *Charter* rights of arrested individuals, instead it focusses on the interests of Crown prosecutors. This has lead to the unlawful detention of thousands of Albertans.
31. Since August 3, 2017, thousands of Albertans continue to be denied bail hearings within the requisite 24 hour period.
32. Pursuant to the terms of Canada’s Constitution and the ~~Alberta Act~~, ~~Alberta~~ the Crown is responsible for the administration of the criminal justice system in the province, generally, ~~and~~ for the constitution, maintenance and organization of the Provincial Court – the Court where bail hearings are ordinarily conducted and for the bail process, generally. The Crown is ~~ultimately~~ responsible for failures in the administration of criminal justice in the province.
33. The Defendant, through and with its employees and agents, is responsible for the criminal justice system in the Province of Alberta including the operation, management, administration, supervision and funding of bail hearings. The Crown employs and instructs provincial Crown prosecutors.

~~THE PLAINTIFF'S~~ MR. REILLY'S EXPERIENCES WITH ALBERTA'S BAIL HEARING REGIME

34. The Plaintiffs, Ryan Reilly ~~and MS,~~ was ~~were~~ a ~~casualty~~ casualties of the systemic problems with Alberta's bail hearings regime.
35. On April 4, 2017, at approximately 11:50 am, ~~the Plaintiff~~ Mr. Reilly was arrested in Edmonton by the Edmonton Police Service ("EPS").
36. Shortly after his arrest, ~~the Plaintiff~~ Mr. Reilly learned that the EPS was in a "code red" situation. This implied that the EPS had ~~reached~~ exceeded its maximum capacity for conducting bail hearings on a timely basis. The EPS policy, in such situations, was to take all unprocessed accuseds to the EPS Downtown Division where they would be processed and held until a bail hearing could be completed.
37. Early in the afternoon on April 4, 2017, likely between 1:00 pm and 2:00 pm, ~~the Plaintiff~~ Mr. Reilly arrived at the EPS Downtown Division. He was processed and detained in a holding cell.
38. The holding cell was a small space, no more than 10 feet long by 5 feet wide. In this space there was a toilet, a sink, and a single small bench spanning the width of the cell. There was no privacy for the toilet and the use of the toilet was video monitored and recorded. There was also no bed or cot. The lights were permanently on in the cell and there was no clock. Detainees were fed once every eight hours.
39. The cell had fecal matter, blood, or other human excretions on the walls and floor.
40. The small cell generally was occupied by two detainees. One of the detainees who shared a cell with ~~the Plaintiff~~ Mr. Reilly from April 4 - 5, 2017 was agitated and appeared to be coming down off some kind of drug, putting the Plaintiff at risk of physical harm.
41. ~~The Plaintiff~~ Mr. Reilly remained in the cell for several hours until an interview was conducted of him, without a lawyer present, by police detectives. ~~The Plaintiff~~ Mr. Reilly does not know how long he waited in the cell prior to the interview as he had no method of discerning the time. Prior to the interview, ~~the Plaintiff~~ Mr. Reilly could not sleep, given the conditions in the

cell. By the time of the interview he was utterly exhausted. At the interview, he was promised that he would have a bail hearing soon.

42. Once the interview was completed, ~~the Plaintiff~~ Mr. Reilly was returned to his cell and kept in the same conditions for many more hours. While the Plaintiff was exhausted, the conditions in the cell made sleep nearly impossible. ~~The Plaintiff~~ Mr. Reilly was not offered a blanket or a pillow or any other simple comfort. He lost track of time completely and grew increasingly anxious to obtain a bail hearing and be released from his detention. As his personal possessions, including his cell phone were taken from him when he was arrested, ~~the Plaintiff~~ Mr. Reilly had nothing to occupy him in the cell except his own thoughts and his cell mates.
43. ~~The Plaintiff~~ Mr. Reilly was told that if he did not receive his bail hearing by 12:00 am on April 6, 2017, he would be forced to remain in the cell, overnight and in the same conditions, until the morning bail hearings after 8:00 am or later.
44. ~~The Plaintiff~~ Mr. Reilly finally received a bail hearing by video conference with a justice and a prosecutor sometime around 11:00 pm on April 5, 2017. By this point, ~~the Plaintiff~~ Mr. Reilly had been detained for approximately 36 hours, was utterly exhausted, and was ready to agree to almost any conditions simply to be released from detention.
45. Prior to the bail hearing, ~~the Plaintiff~~ Mr. Reilly was not offered a shower or a change of clothes and was forced to appear before the justice looking completely disheveled.
46. The justice at ~~the Plaintiff~~ Mr. Reilly's bail hearing granted ~~the Plaintiff~~ Mr. Reilly bail with limited conditions. ~~The Plaintiff~~ Mr. Reilly was not required to post any security. The bail hearing was short and was 15 minutes or less.
47. After the bail hearing, ~~the Plaintiff~~ Mr. Reilly remained at the EPS for post-hearing processing for a further length of time until sometime between 12:30 am and 1:30 am on April 6, 2017.
48. The charges against ~~the Plaintiff~~ Mr. Reilly from his April 4, 2017 arrest were ~~ultimately stayed, but the stay was overturned on appeal.~~ The Plaintiff ~~was~~ has not been convicted of an offence ~~and no prison sentence was ever imposed.~~

49. ~~The only time the Plaintiff spent in custody as a result of the April 4, 2017 arrest was the time he spent while awaiting a bail hearing. As he was not convicted.~~ Unless Mr. Reilly is convicted of an offence, his time in custody ~~did~~ will not reduce or count towards a sentence. The Plaintiff Regardless of whether the time spent in custody may count towards any possible sentence, Mr. Reilly was deprived of his liberty while presumed innocent and awaiting a bail hearing and was not compensated for this by the Crown.
50. Amongst other damages, ~~the Plaintiff~~ Mr. Reilly suffered a loss of reputation in the community as a result of his unlawful detention. He suffered palpable distress and anxiety while in custody.
51. The Crown failed to implement a rational scheme of bail hearing management, and as a result, violated ~~the~~ Mr. Reilly's right to a timely bail hearing. It continues to fail to do so.

#### **MS'S EXPERIENCES WITH ALBERTA'S BAIL HEARING REGIME**

52. MS was arrested by appointment on April 6, 2017 at approximately 2:00 pm by an officer with the EPS. Prior to his arrest, MS spoke with a detective at the EPS who requested that MS come in at 2:00 pm rather than at 12:00 pm as this was more convenient for the EPS.
53. MS arrived at EPS headquarters at approximately 1:50 pm and was quickly processed and interviewed at approximately 2:10 pm. The interview lasted for no more than 15 minutes.
54. MS was taken to a small holding cell at around 2:30 pm in the basement of the EPS headquarters. As with Mr. Reilly, MS noted what appeared to be human excretions on the floor and cell walls, particularly around the steel toilet. A small concrete bench was present at the end of the cell that was 5 feet in length, running across the back of the cell. A fluorescent light was on permanently and there was no clock.
55. The only food offered was a cold pizza sub. MS declined to eat this. A small Dixie cup was provided for water, to be drawn from the tap by the toilet surrounded by what appeared to be human excrement.
56. MS remained in this cell for more than 24 hours, without being able to sleep. He was not offered blankets or pillows. He tried, without success, to sleep underneath the concrete bench to escape the constant florescent lighting while a cellmate sat on the bench above him.

57. In cells next to MS, a number of other detained persons were making loud noise, with some screaming at the EPS police officers that they had been detained more than 24 hours and were entitled to see a judge.
58. On Friday, April 7, 2017 at around 4:00 pm, approximately 26 hours after his arrest, MS was taken from his cell to appear before a justice by a video conference. He appeared before the justice disheveled and disoriented sometime between 4:00 pm and 5:00 pm. He was not given an opportunity to correct his appearance or make himself presentable. He had not slept in more than 30 hours and had not eaten since 12:00 pm the day prior.
59. When MS appeared before the justice, the Crown prosecutor was not present. The police explained to the justice that, at the time of the hearing, the Crown prosecutor assigned to MS's file was not responding to them and could not be contacted to attend the hearing. The EPS asked the justice if MS should be returned to his cell. Finally, after several efforts, the Crown prosecutor attended MS's bail hearing by television link.
60. At the conclusion of the bail hearing, the presiding justice ordered MS released on recognizance orders and with a \$1500 no cash bail, endorsing the record at approximately 4:30 pm after a very short hearing.
61. MS was not released from EPS headquarters until approximately 6:45 pm – almost 29 hours after he was arrested by appointment.
62. On September 16, 2019, MS was acquitted by a jury on all charges related to his April 6, 2017 arrest. He is, and always was, innocent of all charges brought against him.
63. To date, MS has received no compensation from the Crown for being held for more than 24 hours without a bail hearing. The Crown did not request an adjournment of MS's bail hearing and, in any event, he would not have consented to such a request.
64. Because of MS's prolonged and unnecessary confinement, he was unable to attend at his work on April 7, 2017. In addition, it took him several days physically to recover from the more than 30 hours he went without sleep. As with Mr. Reilly, MS suffered palpable distress, anxiety, and a loss of reputation due to being detained unlawfully.

## CLASS DEFINITION

65. The Plaintiffs advances this action on ~~his~~ their own behalf and on behalf of those similarly situated. The Plaintiffs intends to certify a class consisting of:

All persons arrested in Alberta between May 2, 2016 and the date of certification who: (a) did not receive a bail hearing within 24 hours of their arrest; (b) did not consent to an adjournment of their bail hearing; (c) did not have their bail hearing adjourned by a justice within 24 hours of their arrest; (d) were not arrested or charged with an offence listed under Section 469 of the *Criminal Code*; (e) were granted bail at a bail hearing or were released without a bail hearing, but after 24 hours from the time of their arrest; ~~and~~ (f) did not receive a prison sentence or a sentence based upon time served as a result of charges stemming from their arrest; and (g) did not have their bail hearings conducted by the Public Prosecution Service of Canada or any other Federally appointed prosecutor. (The “Class” or the “Class Members”)

## CAUSES OF ACTION

### A. CHARTER AND OTHER RIGHTS VIOLATIONS

66. The Crown was required to provide a timely bail hearing to each member of the Class. A failure to do so is a breach of the Class Members’ fundamental rights, including those enshrined in Sections 7, 9, 10(c), 11(d), 11(e) and 12 of the *Charter*.

#### *Section 7*

67. The Class Members were deprived of their right to liberty and security of the person when they were detained upon arrest. A detention in such circumstances is only justified if the arrest and detention is in accordance with principles of fundamental justice.

68. A failure to provide a bail hearing in accordance with the requirements of the *Criminal Code* is a breach of the principles of fundamental justice.

*Section 9*

69. The Crown's detention of the Class Members for more than 24 hours prior to providing a bail hearing constitutes arbitrary detention.

70. Pre-trial detention while awaiting a bail hearing is both physical and psychological detention.

*Section 10(c)*

71. The Crown was required to provide the Class Members with a means to have the validity of their detention determined by way of *habeas corpus* after their arrest. The Crown's unreasonable delay in allowing the Class Members to have the validity of their detention ascertained by a court violates Section 10(c).

*Section 11(d)*

72. The Crown's failure properly to operate, manage, administer, supervise, resource, and control bail hearings resulted in the Class Members losing their liberty prior to receiving a fair and public trial.

73. By knowingly producing the conditions under which Class Members are unnecessarily remanded into custody while awaiting a bail hearing, the Crown has breached the presumption of innocence afforded to individuals charged with a criminal offence.

*Section 11(e)*

74. The Crown has not shown just cause for denying the Class Members reasonable bail within 24 hours of arrest as mandated by the *Criminal Code*.

*Section 12*

75. The Crown's systemic failure in providing the Class Members with a bail hearing within a reasonable time constitutes cruel and unusual punishment.

76. The Crown knew, or ought to know, that its mishandling of the bail hearings regime would create conditions under which Class Members would become physically and mentally

exhausted before a bail hearing being conducted and that this could cause accuseds to accept bail conditions that they would not otherwise accept and which were unduly onerous.

77. Further, delaying a bail hearing may allow Alberta's police forces to weaken accuseds for interview and information gathering purposes. Some Class Members were deprived of sleep or subjected to threats that bail hearings may be delayed until information desired by the police is obtained.

78. At a bare minimum, Section 12 of the *Charter* requires that the Crown conform to, meet, or exceed the standards for detention stipulated in the United Nations' Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules"). In particular, the Crown violated Rules 1, 4, 5, 7, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 42, 43, 68, 111, 112, 113, 114, 115, 117, 119, 120, and 122.

#### *Unjustified Violations*

79. The Crown's breaches of the Class Members' Constitutional rights are not saved by section 1 of the *Charter*. The infringements described above are neither prescribed by law nor are they demonstrably justified in a free and democratic society.

#### *Charter Remedy*

80. The Class is entitled to a monetary remedy pursuant to section 24(1) of the *Charter* for violation of their *Charter* rights in order to:

- a. compensate them for their pain and suffering;
- b. compensate them for their loss of dignity and reputation;
- c. vindicate their fundamental rights;
- d. deter systemic violations of a similar nature; and
- e. encourage the Crown to ensure that future *Charter* violations are remedied as quickly as possible.

## B. NEGLIGENCE

81. ~~66. 75.~~ — ~~The Crown owed a duty of care to the Plaintiff and to the Class Members. As arrested persons, Alberta the Crown had custody of the Plaintiff and Class Members and was required to take reasonable steps to ensure that they the Class Members were not harmed Alberta the Crown was required to take care to protect the health and well being of the Plaintiff and the Class Members and to otherwise give reasonable consideration to their the interests of the Class Members, including their Constitutional rights.~~

82. ~~67. 76.~~ — ~~The harm suffered by the Plaintiff and the Class Members was a reasonably foreseeable consequence of the Defendant Crown's acts or omissions.~~

81. The Crown is responsible for implementing policies, standards and programs appropriate for the proper administration of the bail hearing system for the province pursuant to the Act. In particular, the risk of arrestees suffering harm, including an unnecessary loss of liberty, by not having adequate availability of prosecutors to conduct bail hearings was reasonably foreseeable. This is a non-delegable duty and Alberta is ultimately responsible for the conduct of all persons involved in the bail system in the province, and liable to the class for any failures in the system resulting in Charter breaches, pursuant to subsection 92(15) of the *Constitution Act, 1867* and sections 2, 3, 3.1, 8, 21, 30, 61, and 62 of the *Police Act*, Alberta the Crown is ultimately responsible for the conduct of all persons involved in the bail system in the province, and liable to the class for any failures in the system resulting in Charter breaches.

82. ~~67. 78.~~ — ~~There was a direct and proximate relationship between each of the Plaintiff and the Class mMembers and Alberta the Crown, including:~~

- ~~a. the physical detention of Class Members;~~
- ~~b. the transportation of Class Members;~~
- ~~c. the house and confinement of Class Members before any bail hearing;~~
- ~~d. the manner of releasing Class Members immediately after a bail hearing; and~~
- ~~e. controlling all access to and communication with the Class Members.~~

82. The reasonable standard of care expected in the circumstances required the Crown to:

- a. ~~immediately take steps to determine conditions of bail or the need for a bail hearing upon the arrest and detention of Class Members;~~
- b. ~~provide the Plaintiff and Class Members with sanitary and humane conditions prior to a bail hearing;~~
- a. provide the ~~physical~~ necessary resources ~~necessary~~ to ensure that bail hearings can be dealt with quickly, and in any event, within no more than 24 hours;
- b. manage bail court volumes to avoid overcrowding of dockets or to provide sufficient resources to address high volume dockets; ~~and~~
- c. ensure that an adequate number of Crown prosecutors and justices of the peace are available to conduct bail hearings in a timely manner so that accused individuals are not held in custody for more than 24 hours; and
- d. provide effective oversight of Alberta's Crown prosecutors, police forces, and the justice system as a whole, so that in those instances where individuals are approaching being in custody for 24 hours without a bail hearing, resources can be reallocated to prevent a breach of the accuseds' Charter rights.

83. The Crown breached its duty of care by:

- a. failing to ensure that a plan was in place to have a bail hearing conducted within the required 24 hour period immediately upon a Class Member's arrest;
- b. ~~failing to seek consent from Class Members within a reasonable amount of time if it was believed that a bail hearing should be adjourned;~~
- c. ~~failing to keep detention cells used by the Class Members in clean and sanitary condition both prior to and after a bail hearing;~~
- d. ~~failing to provide Class Members with an opportunity to obtain sufficient food, water, and sleep prior to a bail hearing;~~

- b. failing to provide the physical, technological, and human resources necessary to allow the Class Members' bail hearings to be heard within 24 hours of their arrest;  
~~and~~
  - c. failing to provide an adequate number of prosecutors to allow the Class Members' bail hearings to be heard within 24 hours of their arrest;
  - d. failing to provide appropriate guidelines, directions, or system-wide coordination to enable the justice system participants, including Alberta's Crown prosecutors, the courts, and Alberta's police forces, to ensure that Class Members received bail hearings within 24 hours.
84. As a result of the Crown's breach of the duty of care owed to the Class Members, the Class Members suffered damages, as particularized below at ~~paras 78-79~~ paragraphs 92 and 93.

### C. FIDUCIARY DUTY

85. The Crown owed fiduciary duties to all Class Members, as individuals who were involuntarily placed under ~~in~~ its care and control, and who were, therefore entirely vulnerable to and at the mercy of the Crown to obtain the opportunity to seek their freedom from a Justice at a bail hearing within 24 hours of arrest ~~fiduciary duties~~. These fiduciary duties included a duty to establish and maintain a criminal justice system that ensured that the care for and protect the Class Members received a timely bail hearing ~~and to act in their best interests in the circumstances.~~
86. The Class Members were subject to the Crown's power and unilateral discretion while detained. They were in a vulnerable position.
- ~~87. 72. 84. — By virtue of the relationship between the Class Members and Alberta the Crown, being one of trust, reliance and dependency, Alberta the Crown owed fiduciary obligations to ensure that Class Members were treated respectfully, fairly and safely, and to act in the best interest of these individuals.~~
87. The Class Members had a reasonable expectation that the Crown would act in their best interest 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;
  - b. the involuntary nature of the relationship between the Class Members and the Crown;
  - c. the Crown's complete control over the Class Member's movements; and
  - d. the Crown's establishment, resourcing, management, operation, administration, supervision, and control of the bail hearing system.
88. Most importantly, the Crown was responsible under the *Constitution Act, 1867* for organizing and resourcing the bail hearing system, hiring and managing prosecutors, and designating where, when, and by what method bail hearings would occur.
89. The Class Members were entitled to rely upon, and in fact did rely upon, the Crown to fulfill its fiduciary obligations.
90. The Crown breached its fiduciary duties to the Plaintiff and the Class Members by:
- a. failing to conduct bail hearings within the required 24 hour period immediately upon a Class Member's arrest;
  - b. ~~failing to keep detention cells used by the Class Members in clean and sanitary condition both prior to and after a bail hearing;~~
  - c. ~~failing to provide Class Members with an opportunity to obtain sufficient food, water, and sleep prior to a bail hearing;~~
  - b. failing to provide the resources necessary to allow the Class Members' bail hearings to be heard within 24 hours of their arrest; and
  - c. failing to provide an adequate number of prosecutors to allow the Class Members' bail hearings to be heard within 24 hours of their arrest.

91. The Crown knew or ought to have known that as a consequence of the Crown's failure properly to operate, care for, and control the bail hearing system, the Class Members would suffer damages, as particularized below.

**DAMAGES SUFFERED BY THE CLASS**

92. As a result of the Crown's *Charter* violations, negligence, or breach of fiduciary duty, the Plaintiffs and the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- a. loss of liberty;
- b. impairment of mental and emotional health and well-being;
- c. an impaired ability to trust other persons;
- d. depression, anxiety, emotional distress and mental anguish;
- e. pain and suffering;
- f. a loss of self-esteem and feelings of humiliation and degradation;
- g. an impaired ability to deal with persons in positions of authority;
- h. a sense of isolation from their immediate family, extended family and their community;
- i. loss of income, loss of reputation, and loss of competitive advantage; and
- j. out of pocket expenses, including unnecessary legal fees.

93. At all material times, the Crown knew, or ought to have known, that ongoing delay in failing to rectify the institutional failures in its bail hearing regime would aggravate the Plaintiffs' and the Class Members' injuries and damages.

## PUNITIVE DAMAGES

94. The Crown's wrongful conduct, as particularized above, was high-handed, callous, and in blatant disregard of the Plaintiffs' and the Class Members' interests and well-being. Most significantly, through its actions towards the Plaintiffs and the Class Members, the Crown demonstrated an utter disregard for the importance of the Plaintiffs' and the Class Members' physical liberty.
95. The Crown was the chief architect of the flaws in the bail hearings regime. It knew that through its actions, or through its failure to act, the Plaintiffs' and the Class Members would suffer irreparable harm when their bail hearings were not conducted expeditiously. The Crown knew that its bail hearings regime was failing and yet it remained indifferent to the Plaintiffs' and the Class Members' rights.
96. The Crown systematically, knowingly, and unjustifiably violated the Plaintiffs' and the Class Members' fundamental rights – including rights enshrined in the *Charter*. The Crown's behaviour necessitates an award of punitive or exemplary damages for the purposes of denunciation and deterrence.

## STATUTORY AUTHORITY

97. The Plaintiff pleads and relies upon the following statutes, including any amendments or regulations thereto:
- a. The *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3;
  - b. The *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
  - c. The *Criminal Code of Canada*, RSC 1985, c C-46;
  - d. The *Proceedings Against the Crown Act*, RSA 2000, c P-25;
  - e. The *Judicature Act*, RSA 2000, c J-2; ~~and~~
  - f. The *Class Proceedings Act*, SA 2003, c C-16.5.;
  - g. The *Police Act*, RSA 2000, c P-17; and

- h. The Government Organization Act, RSA 2000, c G-10.

**REMEDY SOUGHT:**

98. The Plaintiffs' claims:

- a. an order certifying this action as a class proceeding and appointing the Plaintiffs' as Representative Plaintiffs' for the Class;
- b. a declaration that the Crown breached its fiduciary and common law duties to the Plaintiffs' and the Class through the operation, management, administration, supervision, resourcing and control of bail hearings in Alberta;
- c. a declaration that the Crown is liable to the Plaintiffs' and the Class for the damages caused by its breach of its fiduciary and common law duties to the Plaintiffs' and the Class through the operation, management, administration, supervision, resourcing and control of bail hearings in Alberta;
- d. a declaration that the Crown has violated the Plaintiffs' and the Class Members' rights under sections 7, 9, 10(c), 11(d), 11(e) and 12 of the *Charter* by delaying their access to a bail hearing within 24 hours of their arrest;
- e. a declaration that the foregoing breaches by the Crown resulted in a marked and unacceptable departure from the reasonable standards expected of the Crown;
- f. damages for negligence, breach of fiduciary and common law duties and violation of the Class Members' *Charter* rights in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate.
- g. punitive damages in the amount of \$10 million or such other sum as this Honourable Court may find appropriate;
- h. pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;

- i. costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
- j. pursuant to sections 25 and 33 of the *Class Proceedings Act*, SA 2003, c C-16.5, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- k. such further and other relief as this Honourable Court may deem just and appropriate in all the circumstances.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.