

Amended this 27th day of October 2021 as  
per rule 26.02 (a)

Court File No.: 2702/14

**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)

Defendant

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

**AMENDED 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: February 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~~ M7A 2S9

**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 (the "Class Proceedings Act") 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 Defendant's' 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 Defendant's' 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~~ funeral arrangements of body parts unlawfully retained ~~and/or destroyed~~ by the Defendants or at the Defendant's' instruction;
  - (e) ~~Nominal~~ Moral and or aggravated damages calculated on an aggregate basis or otherwise in an amount sufficient to recognize and reflect the impropriety of the Defendant's' 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, payable by the Defendant;
- (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, in the summer of 2012, 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 to the Plaintiff, and ~~before~~ was 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 Chief Coroner for Ontario and their Deputies are appointed by the Lieutenant Governor in Council and are responsible for administering the *Coroner's Act*.
8. ~~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.
9. The Chief Forensic Pathologist for Ontario and their Deputies are appointed by the Lieutenant Governor in Council and are responsible for administering the Ontario Forensic Pathology Service in accordance with the *Coroner's Act*.
10. The Defendant is liable for the negligent acts or omissions of its designates including coroners and pathologists, and for any misfeasance in public office committed by them.

## **THE CLASS**

11. 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~~

All Canadians who are the immediate family members (being the spouse, common law partner, children, parents, grandparents, grandchildren, and siblings) and/or the executor or administrator of the estate of deceased persons whose organs or tissue were retained and/or destroyed by the Chief Coroner for Ontario, its delegates or agents, and not returned to the next of kin, following a coroner's investigation into the deceased person's cause of death from 1974 until June 14, 2010, (the "Class Members").

## THE NATURE OF THE ACTION

12. 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~~ its respective delegates, agents, and persons under their supervision and control between the years 1974 – 2010.
13. Between 1974 and 2010, it ~~has been~~ was a common, persistent, and undisclosed practice for coroners and forensic pathologists in Ontario to retain parts of the bodies of deceased individuals, including major organs such as brains and hearts, for extended periods of time, for purposes unrelated to the coronial investigation. The body parts were kept in storage at hospitals or forensic pathology units throughout Ontario, without notice to, or the consent of the immediate family members or personal representatives of the deceased.
14. In or about June, 2012, ~~the~~ Chief Coroner for Ontario ~~has recently~~ advised that body parts for as many as 4000 individuals remained in storage, and that many

of these other retained organs ~~were subsequently~~ had been destroyed, without notice to the immediate family members or personal representatives of the deceased.

15. Following the completion of the autopsy, 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.
16. 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. The body parts were retained by the Defendant without colour of right.
17. Similarly, the applicable statutes and regulations did not include any provision for the destruction of retained body parts. The body parts were destroyed by the Defendant without colour of right, and without due regard to the religious, cultural, spiritual or other sensibilities of the deceased's next of kin or personal representatives regarding the funerary arrangements for the deceased.
18. As a result of the conduct of the Defendants, the Plaintiff and the Class Members have suffered damages.

## BACKGROUND

19. 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.
20. 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.
21. 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 only for the purpose of death investigation and inquest. Other than the possessory rights established by statute, the State has no right or entitlement to possess human remains, which right vests solely in the deceased's next of kin or personal representative.
22. 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.

23. 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.
24. The systemic failure to notify family members or personal representatives 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.
25. 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.
26. 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.

27. 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).
28. 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.
29. 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.
30. The Notice was inadequate to provide reasonable notice to the Class and it did not come to the attention of many Class Members.
31. 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.

32. 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.
33. 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.
34. 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.
35. 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**

36. 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 of the Crown.
37. 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.
38. 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.
39. 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.
40. The Plaintiff therefore states that, at all material times, the ~~Defendants'~~ actions of coroners and pathologists in Ontario 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, for which the Defendant is liable in law.

41. 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 authorizing coroners or pathologists ~~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. Accordingly, by retaining or destroying these body parts, the coroners or pathologists acted outside the scope of their statutory power, and in a manner which they knew or ought to have known would cause harm to the Plaintiff and the Class.
42. 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. Accordingly, by retaining or destroying these body parts, the coroners or pathologists acted outside the scope of their statutory power, and in a manner which they knew or ought to have known would cause harm to the Plaintiff and the Class.
43. 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.

44. 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.
45. 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.
46. 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.

47. The Plaintiff therefore states that the Defendants knowingly and consciously disregarded the express boundaries of their enabling legislation when ~~they~~ coroners or pathologists chose to retain, and destroy, the body parts and organs of deceased persons following the conclusion of a death investigation.
48. In the alternative, the Plaintiff states that the Defendant was ~~s-were~~ reckless or wilfully blind with regard to the scope of their powers and duties enumerated in their enabling legislation and wasere 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.
49. The Plaintiff states that prior to June 14, 2010, the retention and destruction of body parts and organs by, or at the direction of, coroners or pathologists the ~~Defendants~~ constituted deliberate unlawful conduct that blatantly disregarded the rights, interests, values, and personal beliefs of the Plaintiff and the Class Members, causing injury to the Plaintiff and the Class.
50. 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".

51. The Plaintiff states that the Defendant's' conduct has caused the Plaintiff and the Class Members to suffer foreseeable harm for which they are entitled to be compensated.
52. The Plaintiff further states that the Defendant's' 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. As a result, the Plaintiff and the Class have been injured.

### **CONVERSION**

53. Between 1974 and June 14, 2010, the Defendant, including all coroners and pathologists acting under its authority, had no property or possessory rights in body parts and organs removed during the course of a death investigation once the death investigation was concluded.
54. Between 1974 and June 14, 2010, upon conclusion of a death investigation, the Plaintiff and Class Members had possessory and property rights in the whole of the deceased person's body, including those body parts and organs removed during the course of the death investigation.
55. In retaining and/or destroying body parts and organs following the conclusion of death investigations, all coroners and pathologists acting under the Defendant's authority wrongfully interfered with, and acted inconsistently with the Plaintiff's and Class Members' property rights in those body parts and organs. The

Defendant is liable to the Plaintiff and the Class for the wrongful conversion of the deceased persons' body parts.

## **NEGLIGENCE**

56. By taking possession of the bodies of deceased persons to conduct forensic autopsies, the Defendant was in a direct proximate relationship with the Plaintiff and the Class, giving rise to a duty of care.
57. The Plaintiff states that the Defendants owed a duty to the Plaintiff and members of the Class to return the deceased's body to the Plaintiff and the Class intact, failing which it owed a duty 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 for further investigation. ~~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.~~
58. The Defendant had no right to destroy deceased's body parts without notice to, and the consent of the Plaintiff and the Class.
59. 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.
60. 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.

61. 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.
62. The Plaintiff states that the Defendants breached its ~~their~~ duty to the Plaintiff and members of the Class because it ~~they~~ failed to return the bodies intact; it failed ~~or~~, 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 it destroyed body parts without notice or consent. ~~by, or at the direction of, the Defendants.~~
63. The Plaintiff states that the Defendant's' 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 the Plaintiff or a member of the Class had an interest was retained or destroyed by or at the direction of the Defendants acting through its appointed coroners or pathologists.

64. 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.
65. The Plaintiff states that as a result of the Defendant's' breach of its their duties as set out herein ~~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 of a degree sufficient to warrant compensation. Injuries suffered by the Class include, but are not limited to, the particulars of which are as follows:
- a. The Defendants created a false sense of closure for the Plaintiff and eClass mMembers 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 of the Plaintiff and the Class 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 prolonged mental torment, distress, depression 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, as well as serious and prolonged mental trauma, 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.
66. 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.
67. In addition or in the alternative to the Defendant's' breach of its duty to notify, the Plaintiff states that the Defendant's' owed a duty to the Plaintiff and Mmembers of the Class to return the body parts and organs of the deceased persons in which the Plaintiff and Mmembers of the Class had an interest in a reasonable and timely fashion.
68. The Plaintiff states that the Defendants breached their its duty to the Plaintiff and Mmembers of the Class because they it 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 it was ~~they were~~ able to return the body parts and organs at all.
69. The Plaintiff states that the Defendant's' 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 occurred ~~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 Defendant's' and when funeral arrangements had already been made for the rest of the deceased person's body, resulting in the Plaintiff and the Class having to incur additional expenses and loss of income for the final funerary arrangements for the wrongfully retained body parts.

70. The Plaintiff further states that the Defendant's' 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, and has caused the Plaintiff and the Class to suffer foreseeable serious and prolonged mental injuries that rise above the ordinary annoyances, anxieties and fears that come with living in civil society.
71. The Plaintiff pleads that the Defendant's' historical course of conduct offends universal religious beliefs, cultural norms and sensibilities, and falls below all reasonable standards of behaviour and responsibility surrounding the management and care of human remains and warrants an award of moral damages, aggravated damages, as well as exemplary or punitive damages.
72. The Plaintiff states that the Defendant's' 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 of a degree sufficient

to warrant compensation. Injuries suffered by the Class include, but are not limited to, 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 prolonged mental injuries that rise above the ordinary annoyances, anxieties and fears that come with living in civil society, including depression, frustration, and mental distress, and as well as the inconvenience, expense and trauma of ~~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, causing prolonged depression and anxiety, among other mental injuries; and
- g. They experienced sudden and serious shock, as well as serious and prolonged mental trauma, 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**

- 73. 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 or pathologist was exhausted. After a death investigation was completed, no coroner or pathologist had any right to retain the body parts of the deceased. Intentionally retaining the body parts and organs after the coroners and pathologists had no statutory right to do so was conduct exceeding the statutory rights and authority of the coroners and pathologists.
- 74. There was no authority for the retention of organs, and there ~~is~~was no authority for the Defendant's persistent policy to retain organs after the exhaustion of the limited jurisdiction to possess the remains of a deceased person, and without notice to the affected ~~persons-~~ family members and personal representatives.

75. Furthermore, there is no authority for the destruction of organs after the retention of organs, without notice to affected ~~persons~~, family members and personal representatives.
76. The Defendant, and its designates the coroners and pathologists, all knew or ought reasonably to have known that they had no jurisdiction to retain organs and body parts, and that returning the deceaseds' bodies to the Plaintiff and the Class without all the organs and body parts intact, would cause injury to the Plaintiff and the Class.

#### **THE DEFENDANT'S CONDUCT LACKS GOOD FAITH**

77. The Plaintiff pleads that the Defendant's<sup>2</sup> 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 Defendant's' disrespectful and disgraceful practices.

## REMEDIES

78. 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.
79. 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.
80. 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

81. 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 moral damages in an amount sufficient to reflect the wrongfulness of the Defendant's' conduct.
82. As a result of the Defendant's' negligence and breach of ~~their~~ its duty or duties of care owed to the Plaintiff and Class Members, the Plaintiff ~~and the Class~~

~~Members states that they she and the Class~~ 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.

83. As a result of the Defendant's' 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**

84. 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 Defendant's' instruction.

### **Punitive and Exemplary Damages**

85. By virtue of the high-handed conduct of the Defendants and ~~its 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 against the Defendant in an amount deemed appropriate by this Court at trial.

### **Plan of Distribution**

86. 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*.
87. 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**

88. 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 and an order that the Defendant shall pay the whole of the costs in respect thereto.
89. The Plaintiff requests the creation of the conspicuous and comprehensive notice program pursuant to Section 19 of the *Class Proceedings Act*, and an order that the Defendant shall pay the whole of the costs in respect thereto.

### **STATUTES RELIED UPON**

90. 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**

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

February 12, 2014

**FOREMAN & COMPANY**  
**PROFESSIONAL CORPORATION**  
4 Covent Market Place  
London, ON N6A 1E2

**Jonathan Foreman (LSO# 45087H)**  
**Jean-Marc Metrailler (LSO# 69848F)**

Tel: 519.914.1175  
Email: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)  
[jmetrailler@foremancompany.com](mailto:jmetrailler@foremancompany.com)

**WADDELL PHILLIPS**  
**PROFESSIONAL CORPORATION**  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5

**Margaret L. Waddell (LSO# 29860U)**  
**Tina Q. Yang (LSO# 60010N)**

Tel: 647.261.4486  
Email: [marg@waddellphillips.ca](mailto:marg@waddellphillips.ca)  
[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)

Lawyers for the Plaintiff

**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

SHELAH BROOK  
Plaintiffs

v

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.  
Defendants

Court File No.: 2707/14

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**AMENDED STATEMENT OF CLAIM**

**FOREMAN & COMPANY**  
**PROFESSIONAL CORPORATION**

4 Covent Market Place  
London, ON N6A 1E2

**Jonathan Foreman (LSO# 45087H)**

**Jean-Marc Metrailler (LSO# 69848F)**

Tel: 519.914.1175

Email: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)

[jmetrailler@foremancompany.com](mailto:jmetrailler@foremancompany.com)

**WADDELL PHILLIPS**  
**PROFESSIONAL CORPORATION**

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Tel: 647.261.4486

Email: [marg@waddellphillips.ca](mailto:marg@waddellphillips.ca)

[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)

Lawyers for the Plaintiff

**HARRISON PENSE 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**