Court of King's Bench of Alberta

Citation: Reilly v Alberta, 2022 ABKB 612

Date: 20220926
Docket: 1801 06296
Registry: Calgary

Between:

Ryan Reilly and MS[1]

Plaintiffs

- and -

Her Majesty the Queen in the Right of the Province of Alberta[2]

Defendant

Memorandum of Decision
of the
Associate Chief Justice
J.D. Rooke

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[1] On June 25, 2020, I issued a restricted access order granting MS permission to use this pseudonym, as the proposed representative plaintiff (PRP), without prejudice to the right of the Defendant (Alberta or HMQ) to re-apply to argue that the Plaintiff MS's name should not be anonymized and to claim that same renders MS unsuitable as a representative plaintiff, a matter which I further address below.

[2] Alberta applied to the Court to amend the pleadings to add as defendants to the action, certain Alberta police forces and the Attorney General of Canada, but by my Order dated October 15, 2019, I dismissed that application under conditions not specifically germane to this Decision, while clarifying (para. 3) that the "Plaintiff's [applicable to any added representative plaintiffs, by para. 5] claim as against HMQ is limited to allegations of systemic breach by HMQ with respect to the bail system, as distinct from [individual] operational or management failures". I use the acronym "HMQ" and Alberta interchangeably, herein, although as of September 8, 2022, that is in reference to "His Majesty". In the interval, I will not change the style of cause in this Decision, having regard to the timing, but all subsequent documents (including the Order arising from this Decision) should have the style of cause changed to "His Majesty" as follows automatically by law.

I. Introduction

[1] This is the certification decision (Decision) on the class proceeding herein, under the *Class Proceedings Act*, SA 2003, c-C 16.5, as amended (the *Act)*, wherein the Third Amended Statement of Claim (TASC), filed June 25, 2020, para 4, refers to *Criminal Code,* RSC 1985 c C-46 (*Criminal Code* or *Code*), section 503, and to the proposed class definition (as elaborated in para 65), as follows:

> All persons who were arrested in Alberta between May 2, 2016 and the date of certification, who:
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> (a) did not receive a bail hearing within 24 hours of their arrest[3];
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> (b) did not consent to an adjournment of their bail hearing;
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> (c) did not have their bail hearing adjourned by a justice within 24 hours of their arrest[4];
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> (d) were not arrested or charged with an offence listed under Section 469 of the *Criminal Code*;
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> (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;
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> (f) did not receive a prison sentence or a sentence based upon time served as a result of the charges stemming from their arrest; and
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> (g) did not have their bail hearings conducted by the Public Prosecution Service of Canada [PPSC] or any other Federally appointed prosecutor (the "Class" or the "Class Members").

[2] On February 3, 2017 (TASC, para 21), in ***Hearing Office Bail Hearings (Re)***, 2017 ABQB 74 (*Bail Hearings Reference*) the then Chief Justice of this Court confirmed that Alberta's bail hearing regime was contrary to the *Code* and without legislative authority, with a six-month reprieve (to August 8, 2017) from the consequences of invalidity to allow an orderly transition from a regime of peace officer-conducted bail hearings to prosecutor-conducted bail hearings (subsequently called "Crown Bail").

[3] At some point after February 3, 2017 and before August 3, 2017 (TASC, para 30), Alberta 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. It is this Crown Bail system that is the focus of these proceedings – TR12 – 3/23-39.

[4] April 4, 2017 was the date that the TASC (paras 1 and 35) states the Plaintiff, Ryan Reilly, was arrested. The circumstances from his time of arrest to the conclusion of the case are

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[3] The Plaintiffs refer to this as "overholding of accused persons in excess of 24 hours before being brought before a justice for a first appearance at a bail hearing" (TR 11 -3/37-40), which I will usually refer to herein as "overholding in excess of 24 hours" or merely the verb "overholding", or the noun "overholds".

[4] This is in reference to *Code* s. 516 which allows for the Crown to apply for an adjournment, which I understand in most cases the Crown typically did not do, such that it formed a basis for the systemic breaches – see discussion by Plaintiffs' Counsel at TR1121/36-22/7.

summarized in the TASC (paras 36-48), including that he was not granted a bail hearing for approximately 36 hours and that in the end result, was not convicted of an offence.

[5] April 6, 2017 was the date that the TASC (paras 2 and 52) states the Plaintiff, MS (the Proposed Representative Plaintiff, or PRP) was arrested. The circumstances from his time of arrest to the conclusion of the case are summarized in the TASC (paras 52-62), including that he was not granted a bail hearing for approximately 26 hours and that, in the end result was acquitted on the charge(s) originally facing him.

A. Causes of Action

[6] At paras 66-80, the TASC alleges and describes causes of action for breaches of ss. 7, 9, 10(c)[5], 11(d), 11(e) and 12 of the *Canadian Charter of Rights & Freedoms*, being Part I of the *Constitution Act*, 1982 c.11 RSC 1985 (*Charter*). At paras 81-84 it pleads a cause of action in negligence.[6]

B. Damages

[7] The Plaintiffs claim (TASC paras 92-96 and 98(f)-(g)) damages and punitive damages of $100 million each, and (TASC paras 87 (h) – (j)) interest, costs on an indemnity basis, and costs of notice and administering the plan of distribution.

C. Amended Statement of Defence

[8] While detailed, in essence Alberta's Amended Statement of Defence (ASD), filed December 21, 2018, is a general denial of all allegations, while describing the bail hearing process in Alberta.

D. Reply to Notice to Admit

[9] In its Reply (filed May 4, 2021) to the Plaintiffs' Notice to Admit (filed May 3, 2021), Alberta admits, *inter alia* (para 20) that "since August 3, 2017, thousands of Albertans have not received bail hearings within the timelines set out in s. 503 of the *Criminal Code*".

E. Amended Notice of Application (Certification)

[10] The Amended Notice of Application (Certification) (Amended Application for Certification, or AAC), filed February 19, 2021, sought, *inter alia*, that:

a. MS be appointed the Representative Plaintiff (the Proposed Representative Plaintiff or PRP) – (see also TR11 -7/8-10 to the same effect);

b. The class definition be restated, with an amended start date of October 25, 2016[7], being the date admitted by Alberta in para 4 of the Reply to Notice to Admit, that Alberta

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5 Later abandoned.

6 While the (TASC paras 75-91) claimed a breach of fiduciary duty, that was abandoned, as noted in para 19 of the Plaintiffs Brief (PB). The Plaintiffs' claim (TR11 – 32/21-27) that all the elements of the cause of action of systemic negligence have been pleaded.

7 This is the date that Alberta indicates that the transition to Crown Bail started (TR12 – 2/12-15 & 4/31-2), although phased in/staggered implementation over time, and June 21, 2017 when the "process was complete"– it being apparent from the proceedings (see TR12 – 3/2-38) that the class period does not start before the first date, because the action is focused on the Crown Bail system, although it may extend beyond June 21, 2017 – leading to the possibility of sub-classes depending on the police agency in question (TR12 – 6/23-39). The Plaintiffs concede that there may need to be a change in the start and/or end dates for the class period after further evidence is received from Alberta by the date of certification, or discovered in the common issues trial, but say (TR12 – 54/11-33) that it

commenced a pilot project to have Crown Prosecutors replace police officers as the presenters for "the State bail hearings", in response to the report commissioned by Alberta and authored by Nancy Irving entitled "*Alberta Bail Review: Endorsing a Call for Change*"; and

c. The common issues (Schedule "A" to the AAC) be certified, which, as amended or subject of some further review, are listed (and any changes explained) below.

II. Arguments of the Parties

[11] As I move into the arguments of the parties, I make two observations. First, much of the Plaintiffs' arguments (and almost all of the first 11 paras, and many paras that follow from the Plaintiffs' Brief (PB)) go to the true, but basic, platitudes of legal principles (sometimes admitted by Alberta) applicable to the substantive issues in the litigation – e.g. the presumption of innocence until proven guilty; pre-trial release at the earliest opportunity and in the least onerous manner; detention is the exception not the rule; constitutional responsibility between the Federal and Provincial governments, etc. – none of which I need address when considering the appropriate procedure to hear that substance. I will not address those principles herein.

[12] Second, for the reasons set out at para 11 of ***Robinson v. HMQ***, 2022 ABQB 497, referencing ***Engen v. Hyundai Auto Canada Corp***, 2021 ABQB 740, at para 8 (a principle purported to be followed by both the Plaintiffs (TR11 – 3/31-35) and Alberta (see AB para 140), although I observe that is not always the case), I will only address the class proceeding procedural principles that are at issue in the litigation before me.

A. Plaintiffs' Written and Oral Arguments

[13] The Plaintiffs claim systemic breach (*inter alia*, PB, para 3-5: TR11 – 6/13 – 7/7) of the *Charter* in the Province's Crown Bail system. They state that in "***R. v. Reilly*** (cites follow), Alberta has admitted to every level of Court that sections 7, 9 and 11(e) of the *Charter* were breached...", referencing the criminal proceedings relating to Mr. Reilly that ultimately led to this class proceeding: 2018 ABPC 85, at para 3; 2019 ABCA 212, at paras 2, 15-18, 22, 47-9, and 51-2; and 2020 SCC 27, thus representing some basis in fact for the *Charter* and negligence claims, including remedies "considered by the Court of Appeal" (PB, para 6)[8].

[14] The Plaintiffs also describe the "Transition to 'Crown Bail'" commencing in October 2016 (PB, para 38 *et seq*).

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is necessary for class members to know if they are eligible or not. Alberta notes (TR11 – 50/26-51/40 *et seq*) that there is already an admission by the Plaintiffs that the end date should be June 2020. As I am granting certification, I agree to the proposal to fix the dates in the Certification Order, because on reconsideration (see TR11-11/25-12/23), if firm notice is required before the common issues trial determines liability, the class period must he determined before the Certification Order is finalized, even though subject to possible amendment at trial. I direct this to be resolved in case management by that date.

[8] To elaborate, the Plaintiffs make a lot of references to the ***R v. Reilly*** decisions (including PRB paras 10-16) as relevant to establishing their substantive claims, but what they are actually doing, relevant to certification, is only creating "some basis in fact", which I accept on the low test that sets – further references should be left to the common issues trial, and I will largely do so, without further reference herein. It is also to be noted that Mr. Reilly would not be a member of the class because he received a constitutional remedy in his criminal proceedings – a stay of his case: TR11 – 14/37-15/22; 17/18-22; and 19/32-20/6.

[15] The Plaintiffs set out their experiences at paras 76-95 of the PB, and in anticipation of an argument that damages found might be individually assessed, state, pointing to Court of Appeal comments on assessment of damages (PB, para 78-9):

> While damages for individual experiences will necessarily have to be assessed individually, there is a degree of uniformity of injury suffered by every class member inherent from the loss of their liberty ... and some evidence that a portion of the class damages can be assessed in the aggregate.

Counsel elaborated to the same effect in the discussion at TR12 – 59/26-60/34 – see also TR12 – 48/19-34. Counsel for Alberta seemed to agree (TR12 -61/12-62/13) where there is a complete assessment of liability, which would be for the common issues trial justice to determine.

B. Alberta's Written and Oral Arguments

[16] Alberta's written Brief (AB) was filed March 18, 2021. Alberta first argues certain preliminary matters. While conceding (AB paras 2-3, 13 and elsewhere) that there are "a residual number of persons who are not brought before a Justice within 24 hours of their arrest" under the *Code*'s s. 503, Alberta argues that this action proceeds notwithstanding the cause of the delays and notwithstanding that who or what caused the delays are unknown. That has already been dealt with by the Court's Order of October 15, 2019, dismissing an application to add other defendants, and directing the Plaintiffs not seek redress against law enforcement agencies, such that this action is and remains only against Alberta. The Plaintiffs stated it this way in oral argument (TR11 – 4/15-22): "the nature of the *Charter* breach and the negligence claims are being asserted only to the conduct of the Crown or in so far as the police[9] are involved, it is under the jurisdiction of the Ministry of Justice with respect to the administration of justice and they are indivisible in that context". I responded (TR 11 – 4/33-4): "I either grand certification against the Ministry or I deny it and I don't grant anything against the police, because it's not being sought". I agree with this submission by the Plaintiffs (specifically PRB, paras 8-9), and I reject the continuing argument by Alberta thereafter about missing parties, in face of my October 15, 2019 ruling.

[17] Similarly, Alberta argues (AB para 10) that the fact of delay beyond 24 hours after arrest (what Alberta calls the "effect") does not address the cause of the delay. However, it is the fact of the delay – the "effect" – that is the complaint in this action, with further resulting consequences – deprivation of liberty and the like. Thus, I find that this action is not about the cause of delay (except on a systemic basis, which I will momentarily address, but about the fact of delay. Indeed, I addressed this with Counsel for Alberta at TR11-55/38-56/22 & 59/41-60/11 & 63/27-38 & 66/5-14; and TR12 – 34/29-39 and 36/5-26. Having said that, if liability is found, the damages may have to be determined on, at least in part, an individual basis. This is something the common issues justice will be required to determine. See also the discussion by Alberta Counsel at TR12 – 36/41-37/19, regarding ***Rumley v British Columbia***, 2001 SCC 69, a case certified on negligence, caused by systemic – well beyond individual – abuse – which has some analogy to this case. ***Rumley*** is an example of a circumstance where there cannot

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[9] On a separate issue, the Plaintiffs asserted in oral argument (TR11 - 26/10-27/8) that Alberta Justice was "directing the police agencies with respect to the bail process" – therefore, arguing, in effect, that it was the system run by Alberta Justice that they argue was breached, not through the role of others.

effectively be individual cases, but the abuse – in this case, delay – is so manifest that a broad procedural remedy must be found.

[18] The other prime preliminary argument made by Alberta is about the nature of the requirement of systemic delay before Alberta can be found liable[10], as addressed in the Court's Order of October 15, 2019, in the following words: "The ... clam as against HMQ is limited to allegations of systemic breach with respect to the bail system, as distinct from operational or management failures". At AB para 4, Alberta argues the delay may be due to the "arresting law enforcement agency ... not [having] done what is necessary to allow a hearing to take place." The Plaintiffs argue (as Alberta notes in AB paras 8 and 13) that this amounts to a breakdown in the bail system that Alberta, which has the overall responsibility for administering the bail system in the Province, has a duty to make certain doesn't happen. Alberta seems to acknowledge as much (AB para 38 and the first sentence of para 47). It will be for the common issues justice to determine if the failures to meet s. 503 are systemic failures on the part of Alberta, as opposed to operational or management failures. It is thus the common issues justice who will be required, as Alberta argues at AB para 21, to "guard against an impermissible dressing up of the operational or management failures as a 'systemic' issue".

[19] Alberta argued that the Minister of Justice has no authority to micromanage the police, whose obligation is to get an accused a bail hearing under s. 503 within 24 hours. The ability of the Minister under the *Police Act* was also the subject of much discussion, including alleged misconduct of police in Lethbridge and the intervention of the Minister, which caused the Court to pose (somewhat inarticulately) the following thoughts (TR12 – 43/39 - 44/6):

> The point is that the Minister has power of supervision over the police forces ... so if there's a problem at the police force that they're not doing things, the Minister can interject. Clearly, whether the Minister has the right in the context of an ... 'overarching' system of bail across the Province to interject, not on a case-by-case basis, but on a systemic basis [is the question][11]. And so, I think that's the point that the Minister has quite a bit of authority to get in there and systemically, at least, tell the police what they need to do in this context.

What follows (TR12 – 44/19 et seq) is a discussion about the comparison to the power of the Ministry in the context of abuse of administrative segregation in Ontario (Francis v. Ontario, 2020 ONSC 1644 (Francis ONSC) and Francis v. Ontario, 2021 ONCA 197 (Francis CA)) and my recent decision in Alberta in Robinson – where, unsurprisingly, the parties take different points of view.

[20] Alberta also argued (AB paras 23-8) that its admission that "There is a systemic problem with Alberta' bail system" in the context of Mr. Reilly's application for a stay of the criminal prosecution against him due to a breach of *Code* s. 503, is not transferable to an admission of liability in this class proceeding.

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[10] The Plaintiffs argue (TR12 -55/12-20) that proof of systemic delay is not for certification but for the merits to be considered after certification before the common issues justice – and all that is required leading to certification is "some basis in fact", which they say they have established – and ultimately herein, I agree.

[11] I touch on this again at TR12 – 56/16-21.

[21] Furthermore, Alberta rejected (AB para 29) the Plaintiffs' claims that the Alberta Court of Appeal gave any binding ruling on breach of s. 503 as entitling damages for breach of the Charter.

[22] Much of the AB (paras 37-126) was dedicated to the description of the bail system in Alberta (under the heading of "Relevant Facts", and several sub-headings). While useful as background and understanding the system, and thus likely relevant for the common issues justice, it does little, if anything, to assist in determining certification.

C. Issues Argued

[23] Rather than further describe the issues argued by each party, I will consider them together by issue.

[24] Alberta argues in the AB and in oral argument and with great emphasis that this action should not be certified because substantially the same claim was not certified in Ontario: ***Cirillo v Ontario***, 2019 ONSC 3066 (***Cirillo ONSC***), subsequently upheld after the hearing herein: 2021 ONCA 353 (***Cirillo ONCA***), (see AB paras 131-9).[12] In ***Cirillo*** the same causes of action as at Bar – negligence and *Charter* breach – were rejected. However, in ***Cirillo***, it was the certification specifically of claims involving "operational, management, administration, supervision, resourcing and/or control" by Ontario in the bail process that was denied (AB para 131), whereas at Bar those elements have been specifically excluded and only systemic breaches are alleged. The Plaintiffs address this at, *inter alia* TR11 – 33/13-18 & 33-34/23, and TR12 51/3-36. They argue that in ***Cirillo***:

> ... what the plaintiffs in that case were pleading were policy issues and policy questions are not judiciable. ... they were not talking about how bail operates. They were engaged in a full scale attack on the criminal justice system in Ontario.... We've been focussing on the constitutional imperative[13] that's placed on the Government of Alberta to get accused persons in front of a justice within 24 hours, and that overarching responsibility lies with the Crown. Justice Morgan doesn't deal with that in his analysis of the issue of resourcing.

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[12] Leave denied to the SCC on February 17, 2022 (No. 39811), as Counsel for Alberta advised by letter on March 3, 2022, after the hearing.
Also since the hearing, on June 25, 2021, Alberta provided copies of the cases of ***Nasogaluak v. Attorney General of Canada***, 2021 FC 656, and ***Bigeagle v. Canada***, 2021 FC 504, both decided by McVeigh, J. While Alberta offered to provide additional submissions, I did not take them up on the offer, as they did not highlight any portions or advise of the significance of these cases, and the Plaintiffs did not respond. I choose not to try to make the arguments for either party or to find the needle(s) in the haystack of the 123 pages of decisions, and thus leave these cases to the common issues justice insofar as they are relevant to the next stage, except to note, in summary, that ***Nasogaluak*** at *inter alia* paras 35-42, followed ***Francis CA*** in certifying systemic negligence based on operational decisions leading to a duty of care on a common – beyond an individual – basis, except possibly damages, as I have herein. In ***Bigeagle***, certification was denied – see ***Nasogaluak*** at paras 55-57 – where *inter alia* a fiduciary relationship was not properly pled. Breach of a fiduciary duty was not originally pled in the case at Bar, but was subsequently abandoned (see Footnote 6 (*supra*)). Neither decision is binding on this Court.

[13] The Plaintiffs later (TR12 53/6-54/9) contrast that legislated obligation as being different than the denial of certification in the case of ***Rogers v. Faught***, 159 OAC 79, relied upon by Alberta where there is not affirmative duty.

The Plaintiffs further explain their view of how the issue of resourcing arises in this case, relying on ***Just***[14]. In essence, having made the decision to administer a bail system – in the case at Bar, Crown Bail – the government has a duty to do allocate the resources necessary to do so properly, non-negligently, and in accordance with the *Charter*. This is the issue the Plaintiffs say that "Justice Morgan does not touch on... in his analysis at all, and that is why ***Cirillo*** is wrong".

[25] Without finding that ***Cirillo*** was wrong, it is to be remembered that these policy issues are not just broad considerations (like those described at AB paras 159-60), but arise in the context of a public duty that is specifically mandated by statute (s. 503 of the *Code*), owed by what is alleged by the Plaintiffs to be agents of and indivisible from Alberta. While a breach of statute does not automatically give rise to a civil action (AB para 168-9), whether a breach of statute or public duty constitutes a private law duty sufficient for a systemic negligence claim in this class action (see AB paras 165-6) is ultimately for the common issues trial justice to determine. ***Cirillo*** was focused on a different aspect of the issue (ie., the broad allocation of resources "generally" "devoted to the criminal justice system")[15], rather than those specifically required to be allocated to this statutory provision, and is thus distinguishable. As to the issues of whether the Plaintiffs can establish liability against Alberta on such issues as proximity (AB paras 156 & 161-7), I also leave that substantive matter to the common issues trial justice to determine. At this stage, I find that there is not a credible basis to conclude that the claims of the Plaintiffs are "bound to fail".

1. Causes of Action

[26] To be certified under s. 5(1) of the *Act*, the pleadings must disclose a cause of action. The Plaintiffs plead *Charter* breaches and systemic negligence. Alberta admits (AS para 13) that breach of *Code* s. 503 "can rise to the level of a breach of Charter right", but further argues (TR12 – 23/38-24/26 & 25/21-27) that s. 503 of the *Code* does not impose an absolute strict liability duty, although it may inform the analysis or standard applicable to another claim, referencing ***R v Saskatchewan Wheat Pool*** [1983] 1 SCR 205.

[27] Alberta also concedes (AB paras 141 & 203) that the Plaintiffs have "met the low bar of disclosing a cause of action relating to sections 7, 9, 11(d), 11(e) and 12 of the *Charter*", but rejects the claim under s. 10(c) (*inter alia*, AB paras 204-5), the latter of which the Plaintiffs concede, so the remaining causes of action for alleged *Charter* breach remain for certification.

[28] As to negligence, Alberta argues (*inter alia*, AB paras 152 & 154) that those claims are bound to fail (PRB paras 26-7, as summarized in AB para 200) because they seek "to challenge core policy decisions, including funding decisions, made in Alberta ... [that] are non-judiciable and do not establish a duty of care". Alberta further argues that there is no necessary proximity between Alberta and the Class; no statutory duty of care (para 201); and that the claim is a "legally untenable position that Alberta is ultimately responsible for ... the bail system....". However, as seen ***Nelson v Marchi***, 2021 SCC 41 – a decision issued after the hearing in the case at Bar – it is for Alberta to prove, on a full record, after certification, that it has "met its burden that [the Plaintiffs seek] to challenge a core policy decision immune from [systemic] negligence liability" (at para 86, referencing ***Just***).

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14 ***Just v. British Columbia***, [1989] 2 S.C.R. 1228.

15 See reference to this at AB para 155. The same general considerations relating to underfunding are similarly raised as to ***Phaneuf v Ontario***, 2010 ONCA 901, addressed at AB para 157.

[29] The Plaintiffs note Alberta's reliance on ***Cirillo*** at the certification level (***Cirillo SC***), affirmed in the result in the Court of Appeal (***Cirillo CA***). They assert, however (PRB paras 27-35) that, in addition to not being binding on this Court, ***Cirillo*** merely "stands for no more than the proposition that an overly-broad and improperly asserted claim in negligence which focuses on policy decisions of the Crown is untenable". Moreover, the Plaintiffs assert that the certification finding in ***Cirillo SC*** "focuses on the Crown in its capacity as government, wielding its executive authority to determine the allocation and the adequacy of resources devoted to the criminal justice system" (at para 20). In ***Cirillo SC***, Morgan J. concluded (at para 27) that this would "start to resemble the task of a public enquiry". The Plaintiffs argue (PRB para 28) that, contrary to Alberta's position, the claim in ***Cirillo*** "is not at all 'eerily similar' to the allegations of the Plaintiffs" here, which relate to "systemic negligence in the Crown bail system", including failure to properly staff the Crown Bail prosecutors office and provide effective oversight of the system. In this regard the Plaintiffs refer to passages of the *Bail Hearings Reference* before the former Chief Justice of this Court, including system failures of the type recognized in ***Just***, on which basis, in oral argument, the Plaintiffs assert (TR11 – 20/15-29) that "the bail system has to be resourced to meet the statutory and policy objective" – thus making resourcing a "part of the negligence claim". The Plaintiffs noted too Alberta's reliance on ***Phaneuf***, but argued that there was no finding there of breach of the *Code*, and, in the case at Bar, underfunding is pleaded as (PRB para 35):

> [A] factual component of Alberta's overall operational failure in not rendering its bail system functional. In other words, the claim in *Phaneuf* was "I am suing because I believe the government should have spent more money on this system", whereas the claim herein is "I am suing because the government did not operate the system properly, including not spending enough money for it to comply with the Charter and the Criminal Code, as Alberta must do".

[30] The Plaintiffs also rely (paras 36-9) on ***Francis CA***, in the context of administrative segregation, which I dealt with in ***Robinson***, which the Plaintiffs argue has "direct parallels", adding that the "*Police Act* makes it the Crown's responsibility to ensure that the police cog[16] in the bail machinery is functioning properly. The proximity and foreseeability are plainly evident in the Plaintiffs' claim as pleaded"[17]. Counsel for the Plaintiffs pointed out, in oral argument (TR12 – 56/30-57/18), the Ministerial oversight of the police and "ultimate responsibility" for the administration of justice, as set out in sections 2 and 3 of the *Police Act* – in particular s. 2(2): "Notwithstanding anything in this Act, all police services and police officers shall act under the ... Minister of Justice... in respect of matters concerning the administration of justice". The Plaintiffs contend that the nature of Alberta's oversight responsibility in this regard is different from its role in the investigation of crimes and the day-to-day operations of the police, for which the police are responsible, as seen in the cases of ***R v Shirose,*** [1999] 1 S.C.R. 565 and my decision in ***R v Szcerba***, 2002 ABQB 660, relied upon by the Alberta (AB paras 175-81). I do not find at this certification stage (see AB para 167), that claims made in respect of such statutory duties as under the *Police Act* and other Provincial legislation are "doomed to fail". Rather, it will be for the common issues trial justice to determine if they succeed or fail.

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16 See reference to this in TR11 – 21/22-32.

17 The Plaintiffs reference ***Francis CA*** in relation to these issues – TR11 – 33/6-11.

[31] The Plaintiffs support this result by asserting (PRB para 40, relying on ***Johnson v Ontario***, 2016 ONSC 5314 at para 35) that where it is not "plain and obvious that the Plaintiffs' claim in systemic negligence cannot possibly succeed... the claim ought to be allowed to proceed to be tested on its merits" before the common issues justice. I agree.

[32] In the result, I find that the issue of a cause of action for systemic negligence should be considered, along with *Charter* breaches alleged, on a full evidential and argued record[18], before the common issues justice.

[33] As to Alberta's reliance on the statutory immunity under s. 3(d) of the *Proceedings Against the Crown Act*, S.A. 2000, c. P-25, to challenge the cause of action of systemic negligence (PRB, para 41), I agree with the Plaintiffs that "[t]here is no authority to suggest that the operation of he Crown Bail system constitutes a law enforcement activity that dooms this claim to failure."

[34] As I have also tried to make clear, I too agree with the Plaintiffs (PRB paras 42-4) that, at the certification stage at least, causation is not a basis upon which to determine whether a cause of action against Alberta for systemic negligence is doomed to fail. Rather, where the Plaintiffs have pleaded some basis in fact for the claim, it is the failure of Alberta to meet the mandatory provisions of s. 503 of the *Code* that is actionable, regardless of the cause, or who is responsible for it in a given case.

2. Class of Two or More

[35] The named Plaintiffs constitute 2 persons, which is the minimum required. The Plaintiffs advise that there are many more potential plaintiffs; indeed, the Plaintiffs point to data (TR11 – 31/31-36) from Alberta that "there [are] almost 17,000 people from March of 2018 to June of 2020 [who] were subject to overholds, approximately 12 percent of arrestees". This is effectively admitted by Alberta's AB paras 3 and 142 (with the exception/caveat referenced below regarding argument by Alberta to the effect that "the class can only include persons who have had their criminal charges fully dealt with (including appeals) by the certification date" (AB para 144). The Plaintiffs argue that Alberta's caveat in this regard is not necessary, relying on the class definition (TR11 40/6-17), a position with which I agree.

3. Common Issues

[36] The argument over the proposed common issues took up a substantial portion of the Briefs (especially Alberta's) and oral arguments of the parties.

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[18] I focus on the reference to the evidentiary record here and use the occasion to note that there was much evidence before the Court in this certification application, which the Plaintiffs use as some basis in fact for the claimed *Charter* and negligence breaches. However, certification is **not** about the substantive merits, so beyond the Plaintiffs establishing some basis in fact for the allegation, which, I find, they do, I leave the details to the common issues trial justice, and thus will not elaborate further on it here.

a. The Plaintiffs' Submissions

[37] The Plaintiffs[19] took a very broad approach and argued (PRB para 45) that the "Plaintiffs have adduced some basis in fact to support the common issues ... arising from the causes of action for breach" of the *Charter* and systemic negligence. They elaborated orally (TR11 43/17-22) that "if you accept the Plaintiffs' argument that the causes of action are not challenges to policy decisions taken by [Alberta], but instead relate to operational negligence as well as the *Charter* breaches, then all of these ... proposed common issues ... are certifiable".

[38] The Plaintiffs also argue (PRB paras 45-49), based on ***R v Jordan***, 2016 SCC 27, that, when a time limit is legally imposed by a statute or when the common law provides a deadline (presumably statutory, as here, or judicially imposed, as in ***Jordan***) and the time limit is missed in the criminal trial process, "the presumption is that a *Charter* breach occurred. The onus then shifts to the Crown to justify the breach....". The Plaintiffs expanded on this in oral argument, arguing that "close" doesn't cut it when time limits are mandatory: TR11 – 18/34-19/20. Moreover, they argue that the "Crown" (whether police or prosecutors) is indivisible, and the question as to which was the cause of the delay is irrelevant to certification. Reference is also made by the Plaintiffs (PRB paras 56-7 and TR11 – 46/9-28) to ***Athey v Leonati***, [1996] 3 SCR 458, and ***Clements v Clements***, 2012 SCC 32 for the proposition that all that is necessary is to show a cause that materially contributed to, not was the only cause for, the risk of injury, and to my similar analysis in ***Windsor v C.P.***, 2006 ABQB 348 at para 106, upheld at 2007 ABCA 294. Additionally, and finally, all such causes of delay in the 24 hour requirement, the Plaintiffs argue (PRB paras 51-3, relying on: ***Francis CA***, at paras 106-7; ***Rumley***; and ***Cloud v Canada*** (2004), O.R. (3d) 402 (C.A.)) are, absent evidence by Alberta to the contrary, common issues for which the "merits of these legal arguments will be determined at a common issues trial, on a full evidentiary record".

b. Alberta's Submissions

[39] Alberta, however, took a very detailed approach, which I will analyze generically here and then individually in the next section.

[40] Alberta argued (AB paras 211-214 & 217, and exhaustively directly or indirectly elsewhere) that the issues were not common, but "collapse under the weight of individuality"[20]. I reject this argument, as I have found that the only allegation in this case, at the highest level, is that the Crown Bail system systematically and negligently failed to bring all the applicable class members before a hearing officer within 24 hours.

[41] Alberta also argued (AB para 283-91 and admittedly "repeatedly stated throughout" its brief) that "not all necessary parties are named in this action". However, the Court had already determined on October 15, 2019 that no other parties would be added and thus other persons who might have had some responsibility for the delay were excluded. Moreover, the class definition eliminates all other causes. The Plaintiffs will succeed or fail only as against Alberta.

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[19] They assert that they are not relying on individual negligence, but say that what they mean "are the operational decisions and directions by Alberta with respect to the Crown bail system": TR11 – 44/37-45/21.

[20] The Plaintiffs address this in a number of places in their written briefs and oral arguments – one of them with which I agree, is TR11 – 36/33-39

c. Common Issues Individually Analyzed

[42] I will approach arguments as to individual proposed common issues by reference to their proposed number[21].

i) Duty of Care

CI#1

[43] With respect to CI#1 individually – A long argument (AB paras 218-232) is advanced by Alberta, including, in summary, *inter alia* (that which I have not otherwise dealt with herein) AB, para 219: There is no basis in fact that a single aspect of the bail process caused delays, where there were many cases with no undue delays.

[44] The Court's Response[22]: with respect to cases in which there were no undue delays, the wording of the CI#1 issue expressly makes it clear that it only references those cases where delays are beyond 24 hours. With respect to the question of whether any single aspect of the bail process caused the delay in particular cases, I reiterate that the case at Bar is framed as a claim for systemic negligence in the management of the Crown Bail program overall.

[45] At AB para 220 – Alberta argues that the Plaintiffs' claims are narrowed to systemic issues and exclude individual operational or management issues. The Court's Response: while individual operational or management issues are excluded, CI#1 quite clearly relates only to issues that provide some basis in fact for collective/systemic negligence.

[46] AB paras 221-9 continues to argue that "each and every other bail system participant... may cause or materially contribute to delays" but none are under the control or supervision of Alberta, and therefore each case of delay must be examined individually. The Court's Response: to repeat, those participants and their particular roles, if any, in delays beyond the 24 hours are clearly excluded as a result of my October 15, 2019 Order, with only systemic considerations, for which Alberta is responsible being at issue. Thus, individual analysis is not necessary, although some examples of individual cases (contrary to or in addition to what is argued in AB, paras 224-6) may provide some evidence at the common issues trial of systemic issues. Moreover, some of the matters listed in AB paras 222-9[23] may have a systemic component in a broader context than resulting in individual cases – e.g., resources and infrastructure questions such as some aspects of what is described in AB paras 222(b), (e), (g), (h) and (i) and 223 (a), and(b).

[47] CI#1 reads: Did Alberta's operation, management, administration, supervision, resourcing and or control of the judicial interim release process (bail) in Alberta cause or

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21 In this section I shall use the simple form of CI#1, etc.

22 To be clear, the Court's response to these CI individual arguments by Alberta has not been aided by the Plaintiffs failure to assist the Court by addressing them individually.

23 I will leave all considerations of Professor Luther's opinion (AB. Paras 230-2) out of this analysis, because it may have some procedural/admissibility weaknesses – although, to the extent that it is not inadmissible, it too may provide some basis in fact for systemic negligence. To the extent admissible and relevant, the common issues justice can examine and weight Professor Luther's opinions in light of this debate.

materially contribute to systemic delays[24] in bail hearings routinely taking place more than 24 hours after the Class Members' arrest?[25]

[48] Alberta's position (AB, paras 211-3, relying on ***Spring v Goodyear Canada Inc.***, 2020 ABQB 253 at para 135, ***Pasian v Academic Clinician's Management Services***, 2013 ONSC 7787 also at para 135, and ***Williams v Mutual Life Assurance Company*** (2000), 51 OR (3d) 54 (Ont SCJ) at para 39, is that the Plaintiffs must demonstrate that there is some basis in fact that the proposed common issues exist, and that the common issue can be answered across the entire class, noting that a common issue cannot be dependent on findings of fact which have to be made with respect to each individual class member. I will briefly examine those arguments, almost completely absent any Plaintiffs' response on individual common issues (as I interpret it, only the broad statements in the PRB, paras 42-4, as it relates to the allegations of systemic negligence). I will address *Charter* issues below.

[49] Alberta argues (AB paras 214-7) that proposed CI#1 to 7 must fail because, first, they relate to the Plaintiffs' negligence claim, which Alberta says is bound to fail. I reject this argument, because I am not satisfied that cause of action framed as it is on a systemic basis, is bound to fail. Secondly, they argue (see also AB para 314) that these issues are "phrased at the highest level of abstraction", "in an attempt to establish commonality", but "collapse under the weight of individuality". I find that the answer to this submission is substantive and not procedural, and as such, it is the work for the common issues justice, based on a full record, should pass the relatively low bar preliminary test at the certification level, pending evidence at a common issues trial.

CI#3

[50] AB para 233 says, in effect, that CI#3 is no different in substance than CI#1. The Court's Response: CI#1 breaks down any systemic negligence alleged breaches into particular potential causes, and CI#3 seems to focus on the result of the findings in CI#1. In that context they may be separate. I believe that this should be reconsidered and thus I direct Counsel to work together and re-write CI#1 and CI#3 to combine them or, at least, to have materially different sub-parts to them (e.g., "a" and "b").

CI#4

[51] AB paras 238-40 says that CI#4 is a legal question and that even an affirmative answer would not be determinative as it leaves out "other bail system stakeholders", for which, at AB para 170 *et seq*, Alberta argues it is not responsible[26]. The Court's Response: As to the extent of

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[24] AB para 218 would add the word "**resulting**" after "delays".

[25] On its face, CI #1would appear to have been contrary to para 3 of my Order of October 15, 2019 (*supra*)? However, it should be interpreted in the context rendered – that is only to systemic negligence or *Charter* breaches causing delays, not individual breaches.

[26] Alberta devotes AB paras 170 – 198 to "other stakeholders". While I have addressed some of these arguments elsewhere in this Decision, it would not, having regard to my conclusions on same, justify further detailed discussion, other than to note the following:

- The independence of police agencies as to criminal investigations and enforcement (AB para 175 in ***Shirose***, para 182 in ***Edmonton Police Service v. Alberta (Information and Privacy Commissioner)***, 220 ABQB 10, and para 185 in ***Heslop v. Alberta***, 2006 ABQB 203), whether to hold an accused in custody for a bail hearing or release an accused (AB para 176), individual acts of negligence (AB para 174), etc., is clearly accepted to be independent of government responsibility, but where there is a broad statutory duty that has systemic (not individual) considerations, such as s. 503, that may will be a different issue

Alberta's responsibility, that is a matter of substance, not a threshold procedural issue for certification, so I leave that to the common issues trial justice, on a full record. That said, at least two further points arise. First, no authority has been provided by Alberta that a relevant legal question cannot be a common issue, and basic logic would seem to argue to the contrary. Second, the fact that the Plaintiffs want to focus on only one of the "bail system stakeholders" (it is actually more than that – Alberta, indivisible with both police and prosecutors), doesn't make it an inappropriate common issue. It just means that the Plaintiffs have not chosen to raise common issues with other "bail system stakeholders". In the result, I do not find these arguments valid.

CI#5 & #7

[52] AB para 234 takes issue with the statement in CI#5 & #7 that Alberta is "holding an accused" whereas Alberta asserts that until the police bring an accused before the Court for a bail hearing, it is the police who are "holding" an accused. The Court's Response: This is a "nuanced issue" in that the each of these CIs refers directly or indirectly to Alberta or its "agents". There is a specific common issue - CI#4 - which asks for a determination as to whether police or prosecutors are Alberta's agents, so CI#5 & #7 may be considered in that context, or in a more general meaning of "agency". I believe that this issue could be addressed with better wording, as Counsel may discuss after this Decision, with the assistance to the Case Management Justice if appropriate, but I will otherwise leave them as they are at this time.

CI#6 & #7

[53] AB para 236 argues that, as framed, these CIs require "a reasonable assessment of each class member's individual circumstances" and are not common; similarly, AB para 237, in relation to CI#7 claims that as it relates to each case, there is a requirement of "a determination of what was the cause of why (*sic*) class members' hearings were delayed". The Court's Response: Without intending to interfere with or limit the common issues justice's findings, and for reasons relating to my discussions in this Decision on individual considerations, I do not agree with Alberta's submissions in this regard. As the frame of reference is systemic issues, individual considerations are not relevant at this stage – although, to the extent that the common issues justice determines liability in favour of the Plaintiffs, some individual assessment of damages *may* be subsequently required and such questions *may* need to be answered at that time, as prescribed by the common issues trial justice.

CI#8 & #9

[54] AB para 241 argues that these questions are phrased "in the most abstract manner possible in an attempt to show commonality". The Court's Response: This is a repeated, but unclear, allegation. Nevertheless, the Court is open to Counsel agreeing on less "abstract" wording, but absent agreement, I will allow these CIs to forward for consideration by the common issues justice, as currently drafted.

- Justices of the Peace, in their adjudicative role (AB paras 186-194), are clearly not part of government responsibility and Alberta is disingenuous in AB para 189 to claim that the Plaintiffs "attempt to impose a duty on Alberta to manage and supervise the Justices of the Peace" – Alberta has a duty to provide an adequate supply of hearing judicial officers, but not to manage or supervise them.
- The government does not have responsibility for the actions of defence and duty counsel (AB paras 195-8).

CI#8 & #9

[55] AB paras 242-54 argue, relying on ***Cirillo***, that any such breaches of rights must be assessed on an individual basis for each alleged *Charter* breach, and relying on ***Thorburn v British Columbia (Public Safety and Solicitor General)***, 2013 BCCA 480 at para 39, that there is a reasonableness requirement. The Court's Response: For reasons articulated at other places in this Decision, I reject this argument as the claim is limited to broad systemic issues, not individual issues at this stage, although, as noted above in relation to CI#6 & #7, they *may* become relevant at a later individual damages assessment stage of the proceedings before the common issues justice. I have addressed ***Cirillo*** above and will not further plow that ground in this context. As to any requirement of a reasonableness consideration for any Charter breaches, per ***Thorburn***, this again raises the alleged need for individual consideration, which I have rejected in this systemic case. On the other issues as to reasonableness raised in ***Thorburn***, I will leave that for determination on a full record before the common issues justice - noting that Alberta (AB paras 251-2, referencing ***Good***) acknowledges that certification can follow on *Charter* cases where there is a "common thread affecting all class members".

ii) *Charter* Breaches

[56] Alberta raises other issues regarding the proposed *Charter* CIs in AB paras 254-269. Without going through all of them individually, they raise matters that:

a) have been abandoned (ie. s.10(c) of the *Charter*);

b) I have already rejected in this case – ie., I have determined that this is a systemic, not individual, liability claim and thus have found no need for individual determinations before certification or afterwards, before any assessment of damages, if liability is found by the common issues justice;

c) are inapplicable in the context of bail or add nothing of substance to the debate – e.g., as to the substantive presumption of innocence, discussed at AB paras 262-4, the Supreme Court has made it clear that presumption has no direct relationship to bail, and the substantive right to "reasonable" bail, most often has no relationship to the statutory time mandate;

d) state the obvious – e.g., AB para 264, that the delay must be systematically attributed to Alberta;

e) or are best determined by the common issues justice – e.g., AB paras 257 & 266-9, whether bail hearings conducted after the statutory mandate of 24 hours; or

f) may constitute arbitrary detention or cruel and unusual treatment (in a systemic context), until conducted.

[57] To argue that damages are subsidiary to a finding of liability and cannot support certification and must be individually assessed if liability is found – AB paras 270-1 - are trite truisms, the latter in the absence of aggregate damages.

d. Results: Individual Common Issues

[58] In the result of these arguments and my findings, I accept as valid common issue CI#1 as quoted above and those common issues that follow, as set out below, with my directions in italics. That being said, the Court has no issue with Counsel agreeing to alternative wording to

that suggested herein, after specific approval when the Certification Order is perfected before execution by the Court.

[59] The remaining common issues, with my directions in italics, are as follows:

CI#2: If the answer to question #1 is yes, how?

CI#3: [*Court's Response: Directed to be reconsidered by Counsel and potentially re-written with CI#1.*] Did the systemic delays in the judicial interim release process cause or materially contribute to the failure of the Class Members to be brought before a justice for a bail hearing within 24 hours of arrest?

CI#4: Are the municipal police services in Alberta and Crown prosecutors, agents of the Crown, for the purposes of s. 5(1) of the *Proceedings Against the Crown Act*, S.A. 2000, c. P-25, in respect of the operation, management, administration, supervision, resourcing, and/or control of the bail hearing regime in Alberta?

CI#5: [*Court's Response: Counsel are directed to re-consider wording.*] By holding the Class Members for more than 24 hours after arrest without a bail hearing, when a justice was otherwise available, did Alberta, or any of its agents, contravene s. 503(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (*Criminal Code* or *Code*)?

CI#6: Did Alberta owe a duty of care to the Class to provide them with a bail hearing without reasonable delay, and in any event, after no longer than 24 hours from arrest, if a justice was available, or as soon as possible thereafter?

CI#7: If the answer to question #6 is yes, did Alberta, or any of its agents, breach this duty of care by holding the Class Members for more than 24 hours after arrest without a bail hearing?

CI#8: [*Charter s. 10(c) is struck for the reasons set out above.*] Did Alberta or any of its agents, through the operation, management, administration, supervision, resourcing, and/or control of the bail hearing regime in Alberta, infringe upon the Class Members' rights under ss. 7, 9, 11(d), 11(e) or 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*")[27]? If so, how?

CI#9: If the answer to question #8 is yes, were any or all of the infringements demonstrably justified in a free and democratic society in accordance with s. 1 of the *Charter*?

CI#10: If the answer to question #8 is yes and the answer to question #9 is no, is the class entitled to claim damages under s. 24(1) of the *Charter*?

CI#11: If the answer to questions #7 and #10 are yes, can the Court make an aggregate assessment of damages?

CI#12: If Alberta committed a breach of any of its legal obligations to the Class, does the Crown's conduct justify an award of punitive damages?

CI#13: If the answer to question #12 is yes, in what amount?

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[27] The Plaintiffs originally sought certification for breach of s. 10(c) of the *Charter* but withdrew that claim at para 5 of the PRB – see TR11 – 32/9-13.

4. Preferable Procedure

[60] Alberta argues (AB paras 6, 8, 13 and 273-82) that a class proceeding is not preferable because it would require a "determination as to the cause and responsibility for those delays, which can only occur after a lengthy and detailed review of what happened in each case", and "individual issues of class members would dominate and overwhelm ... the action, ... [because] ... it requires an examination of the individual circumstances of each individual's bail hearing" (AB para 276). Once again, I find that the limit of the potential liability against Alberta, by the Court's Order of October 15, 2019, to systemic causes of delay is, in the case at Bar, the answer to what is a commonly repeated defence objection of individualism in all class proceedings, an argument now taken up by Alberta in this case. On the contrary, for reasons articulated herein, I conclude and find that this case meets the preferable procedure requirement of s. 5(2) of the *Act*.

5. Identifiable Class and Suitable Representative Plaintiff

[61] Alberta concedes this at AB para 142, with a "few caveats". As noted in AB para 142, the Amended Notice of Application excludes bail hearings conducted by federal prosecutors, whereas the Plaintiffs' submissions include these. The Court's Response: That issue is readily resolved, because it is the Amended Notice of Application that binds (and it excludes Federal prosecutions), not the submissions of Alberta.

[62] Under the class definition in the TASC, AB argues (AB para 144) that, additionally, class members can only be those who had not received a prison sentence, or a sentence based on time served, as determined up to the appeal level, prior to the certification date. The Court's Response: The answer to this is addressed in the PRB at para 7, which I accept: It will be sufficient if a class member meets the definition if they have been sentenced at trial by the end of the opt-out period. If the parties feel further clarification is required, they can provide wording in the Certification Order.

[63] Alberta asserts (AB paras 145-6), relying upon the decision of a former member of this Court, in ***T.L. v Alberta (Director of Child Welfare)***, 2006 ABQB 104 at para 34, that the PRP, MS, must be prepared to disclose his name to be the RP. The Court's Response: Although s. 20(6)(a) (and s. 5(1)(e)) of the *Act* does not say that anonymization of the name is prohibited, even the discretionary, not mandatory wording of s.20(6)(a) (by the qualification wording of the Court "otherwise ordering"), I find not to be determinative. A name could still be a pseudonym, as the Plaintiffs noted at paras 23-5 of the PRB. The ***T.L.*** case did, however, proceed with an anonymized representative plaintiff (as explained by Counsel for the Plaintiffs, in 2009 ABQB 96 at para 26, when the notice was approved - see TR12 – 52/29-37). Further, while there does appear to be some logic to those reasons, there are other considerations (e.g., including alleged victims of the original substantive offence being identified) that may apply. Moreover, as the Plaintiffs argue (PRB para 21), s. 20(6) of the *Act* contains a discretionary requirement for name and address, but furthermore, through the October 15, 2019 Order, the Court specifically ordered "otherwise" in the language of s. 20(6). Finally, on this point, as ***T.L.*** is not binding on me, I will leave any remaining issues in this regard for such further consideration that may be given by the common issues justice to determine on more specific current evidence and argument.

[64] The only complaint by Alberta as to the litigation plan (paras 147 & 292) is that "it does not provide for how the Court would determine what caused a person's bail hearing to be delayed". The Court's Response: I reject this complaint because I have found that, in that the

action is only for systemic, not individual, causes of delay, it is the fact of delay beyond 24 hours, not the individual causes or who caused the delay that is relevant to certification.

[65] The claim of Alberta that some members of the class (see PRB paras 58-60) "would prefer to have 'control' over their own proceedings" through individual claims is completely without evidentiary support or merit.

III. Conclusion

[66] In conclusion, I certify this action as a class proceeding with the definition of the class and other terms as sought the Plaintiffs, with the following exceptions and explanations mentioned above, which, in summary, include the following:

- The dates of the start and termination of the class period may be adjusted before, and contained within, the Certification Order by agreement of Counsel approved, on ruled on, by the Case Management Justice;
- some of the common issues approved in principle may have their wording modified by the agreement of Counsel before the Certification Order;
- MS is appointed Representative Plaintiff, notwithstanding the use of a Court approved pseudonym.

Heard on the 12th day of May, 2021.
Dated at the City of Calgary, Alberta this 26th day of September, 2022.

J.D. Rooke
A.C.J.C.Q.B.A.

Appearances:

M.L. Waddell & O. Phillips
for the Plaintiffs

L. Brasil, G.A Meikle, QC & J. Dube
for the Defendant