Court File No. CV-24-00724514-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

A. A. and D. D.

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6

REPLY

1. The plaintiffs admit the allegations contained in paragraphs 7-8, 13, 17, 18, 20, 22, 29 (only the first sentence), 33 (only the first sentence), 36 (except that it is denied that the listed circumstances for routine strip searches are exhaustive), 37 (except it is not admitted, but expressly denied, that the routine strip searches served "to safeguard the security if the facility or safety of staff or young persons") of the Statement of Defence.

2. The plaintiffs deny the balance of the allegations contained in the Statement of Defence except as expressly stated herein.

3. The plaintiffs deny that the defendant is entitled to any immunity or defence.

Routine Strip Searches Serve No Valid Security or Safety Purpose

4. Contrary to the defendant's allegations in paragraph 24 and elsewhere in the Statement of Defence, routine strip searches do not fulfil a true security or safety purpose, and their routine application is unreasonable, arbitrary, and disproportionate to any safety utility they could have, which is denied.

5. Throughout the class period, far less damaging and intrusive, effective search methods have been available to the defendant.

6. The fact that the defendant pleads that some youth custody facilities have chosen not to routinely strip search youth (paragraph 34 of the Statement of Defence), which is denied, confirms that routinely strip searching children and youth is not required for safety.

Routine Strip Searches are Unlawful and Unconstitutional

7. Contrary to the defendant's allegations in paragraph 26 of the Statement of Defence, neither section 155 of the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 ("***CYFSA***") nor any other statutory provision in Ontario during the class period has permitted the impugned routine, suspicionless strip searches of youth in custody.

8. The governing legislation has instead always held the interests of the child to be the paramount consideration. Routinely strip searching class members is the opposite of the best interests of the affected minors.

9. Until 2018, the Crown's unlawful operation under the governing legislation required strip searches, which is unlawful and unconstitutional as particularized in the statement of claim.

10. In 2018, the Crown introduced Ontario Re gulation 43/25, which contemplated routine strip searches, and was interpreted by youth custody facilities as requiring same, similar to their operation between 2003 and 2018, which always included routine strip searches.

11. As of April 24, 2025, the Minister and/or other servants of the Crown introduced amendments to O. Reg. 155/18 regulations under the *CYFSA* through Ontario Regulation 43/25. These amendments add s. 68.3 that expressly requires the routine, suspicionless strip searches of youth in custody, contrary to the statutory provisions, context, and purpose of the *CYFSA*.

12. Paragraph 4 of section 68 (O. Reg. 43/25, s. 2 (2)) and section 68.3 (O. Reg. 43/25, s. 3) of O. Reg. 155/18 and any other regulatory provision under the *CYFSA* that is interpreted to allow or require routine strip searches of class members are unlawful and unconstitutional for the reasons particularized in the statement of claim. These sections should be struck down or read down pursuant to section 52 of the *Constitution Act, 1982* to prohibit routine strip searches of youth.

Privacy

13. Contrary to paragraphs 53, 50-60 of the Statement of Defence, the plaintiffs and other class members had a reasonable expectation of privacy with respect to their naked bodies in the face of routine, suspicionless strip searches.

14. The routine and automatic nature of the impugned strip searches negates any semblance of reasonableness as alleged by the Crown.

15. Further, the routine and automatic nature of the impugned strip searches has systemically breached the heightened requirements of privacy and procedural protections owed to minors in

custody. Throughout the class period, section 3(1)(b)(iii) of the *Youth Criminal Justice Act* has remained unchanged and has required all justice system participants to deliver enhanced procedural protections to young persons facing criminal proceedings, including their right to privacy.

16. The routine, suspicionless strip searches of class members during the class period has systemically fallen short of the required enhanced procedural protections to young persons facing criminal proceedings. These searches have constituted breaches of section 8 of the *Charter* and intrusion upon seclusion of class members. The same material facts particularized in the statement of claim support both causes of action.

Vicarious Liability

17. Contrary to the defendant's untenable arguments in paragraph 45, all Crown action other than passing legislation is effected through Crown servants. The same is the case here. Further, Ministers are Crown servants for whom the Crown may be held vicariously liable. Therefore, all of the defendant's impugned conduct herein is vicarious. There is no requirement at law to name each individual Crown servant involved in the impugned conduct in a systemic wrongdoing claim such as this action. Additionally, the Crown does not enjoy blanket immunity from liability.

18. Further, the plaintiffs plead that Ontario, as it extensively concedes in its Statement of Defence, is in full control of the conduct of its transfer payment recipients insofar as the impugned strip searches are concerned through Ontario's instructions, policies, oversight, and control effected through Crown servants.

19. Contrary to Ontario's assertion at paragraph 45 of its Statement of Defence that "the plaintiffs exclude from their claim any claim against the defendant in vicarious liability for the fault or negligence of any other person, or for which the defendant could claim contribution or indemnity", the exclusion contained in paragraph 139 of the Amended Statement of Claim is tightly circumscribed. The plaintiffs do not seek damages "attributable to the fault or negligence of a third party". Crown agents are not third parties, and their acts are attributable to Ontario.

20. The exclusion at paragraph 139 of the Amended Statement of Claim further specifies that "[f]or greater certainty" the class does not seek damages "for which Ontario is vicariously liable **as a result of harms perpetrated** on the class members **in the facilities operated by third parties and their agents and employees**… for which Ontario could claim contribution or indemnity." This has no bearing on claims against Ontario relating to the conduct of Crown agents, whether in relation to facilities operated by Ontario or transfer payment recipients.

21. Therefore, Ontario is vicariously liable for the routine strip searches of all class members conducted at its behest and direction, whether at directly operated facilities or at the transfer payment facilities.

No Limitations Defence or Laches

22. Contrary to the defendant's arguments in paragraphs 71-74 of the Statement of Defence, no limitations defence or laches is available to the Crown for the reasons particularized in the statement of claim.

23. Further and with respect to section 16(1)(h.1) and (h.2) of the *Limitations Act*, not only does the sexual nature of the misconduct alleged and the pleaded torts of battery and assault render

the limitation period inapplicable, but also the plaintiffs' *Charter* claims particularized in the statement of claim are of the nature of assault and battery, and indeed reliant on the same material facts. Therefore, regardless of the actual torts of assault and battery, s. 16(1) of the *Limitation Act* applies to the class's *Charter* claims. No limitations period applies to the class members' claims.

24. In the alternative, the questions of discoverability and age of majority would be issues that need to be determined individually and cannot be determined on a class-wide basis. Pursuant to ss. 6 and 7 of the *Limitations Act*, even if any limitation period were applicable (which is denied for the reasons set out above and particularized in the statement of claim), such limitation period would not run while any given class member was a minor or was incapable.

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