

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JAMAREY CHISHOLM

Plaintiff

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF DEFENCE

1. The Defendant, His Majesty the King in right of Ontario (“Ontario”) denies each and every allegation contained in the Amended Statement of Claim (the “Claim”) except as specifically admitted hereinafter.
2. Ontario specifically denies that the Plaintiff or the proposed class members are entitled to the relief set out in paragraph 1 of the Claim.
3. Ontario specifically denies that the authorities or concessions pleaded at paragraphs 5, 57 to 59, 61–64, 73, and 86 of the Claim are binding in this proceeding.

The ICIT Deployment

4. In response to paragraphs 2 and 27 of the Claim, Ontario admits that the Institutional Crisis Intervention Team (ICIT) was deployed to Unit 8 of Maplehurst Correctional Complex (“MHCC”) on December 22 and 23, 2023 (the “ICIT Deployment”).

The Representative Plaintiff

5. Jamarey Chisholm was incarcerated at MHCC on March 30, 2021. He was transferred to the Toronto South Detention Centre on November 11, 2021 and returned to MHCC on November 16, 2021, where he remained until his release on August 15, 2024. At the time of the ICIT Deployment, he was housed in Unit 8A Cell #3.

Ontario

6. In response to paragraph 10 of the Claim, Ontario pleads that it is immune from all liability in tort except as permitted by the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17 (*CLPA*). Ontario admits that:
 - a. Ontario is subject to all the vicarious liability in tort to which it would be liable if it were a person in respect of a tort committed by an employee of Ontario, except as otherwise provided under the *CLPA* and any other Act.
 - b. Ontario pleads and relies on immunities to liability in tort applicable to employees of Ontario at common law and under any Act, including those provided for in:
 - i. the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (*MCSA*), s. 12; and

ii. the *Criminal Code*, R.S.C. 1985, c. C-46, s. 25.

- c. at all material times, employees of Ontario operated, managed, administered and supervised MHCC; and
 - d. at all material times, Ontario funded the operations of MHCC. Ontario relies on the *CLPA*, s. 11(4) in pleading that no cause of action arises against Ontario or an employee or agent of Ontario in respect of this funding.
7. In response to paragraph 11 of the Claim, Ontario admits that:
- a. MHCC is a “correctional institution” as that term is defined in the *MCSA*, s. 1; and
 - b. at all material times, employees of Ontario were responsible for supervising the detention and providing for the custody of MHCC inmates as well as maintaining and operating MHCC.
8. Ontario admits that in December 2023 and January 2024, Winston Wong was:
- a. an employee of Ontario;
 - b. the Superintendent of MHCC;
 - c. responsible for the administration and management of MHCC;
 - d. responsible for the care, health, discipline, safety and custody of inmates of MHCC, including:
 - i. supervising the recording, guarding and disposition of inmate property; and

- ii. supervising searches conducted on inmates of MHCC; and
- e. required to issue to employees of Ontario working at MHCC such directions as may be necessary to fulfil his responsibilities as Superintendent.

MHCC

- 9. In response to paragraph 7 of the Claim, Ontario admits that in December 2023:
 - a. the inmate population at MHCC included accused persons in pretrial detention and offenders serving their sentences; and
 - b. Unit 8 comprised six wings, identified as 8A through 8F.
- 10. Ontario specifically denies that 192 inmates were housed in Unit 8 of MHCC at the time of ICIT Deployment and pleads that 182 inmates were housed there at that time (the “Unit 8 Inmates”).

Governing Legislation and Ministry of the Solicitor General (“SOLGEN”) Policies

- 11. The ICIT Deployment was governed by applicable legislation, including:
 - a. the *MCSA*, as amended effective July 1, 2019; and
 - b. R.R.O. 1990, Reg. 778, *General*, as amended effective October 2, 2023.
- 12. The ICIT Deployment was governed by applicable Ministry of the Solicitor General (“SOLGEN”) policies, including:

- a. the Institutional Services Policy and Procedures Manual (ISPPM) in effect as of December 20, 2023;
- b. the MHCC Standing Orders (SOs) in effect as of December 20, 2023; and
- c. the Ontario Correctional Services Code of Conduct and Professionalism (COCAP) in effect as of December 20, 2023.

Inmate Assault on a Correctional Officer

- 13. On December 20, 2023, Richard Wuol, an inmate of MHCC Unit 8C, assaulted Correctional Officer (CO) Gregory Lecinski, by punching him in the face, causing him to fall to the ground (the “Assault”). CO Lecinski was injured in the Assault, requiring medical attention and was transported to the hospital. Inmate Wuol fractured CO Lecinski’s orbital bone and split CO Lecinski’s eyelid.
- 14. As a result of the Assault, correctional officers in Unit 8 declared a “Code Blue.” A Code Blue is an emergency code indicating officer assistance is required. The responding correctional officers secured the Unit 8 Inmates in their cells within approximately 15 minutes, following which the unit was placed on lockdown.
- 15. After the Assault, Correctional Officers escorted Inmate Wuol from Unit 8C wing to Unit 1K wing in MHCC on December 20, 2023. Ontario denies paragraphs 3 and 16 of the Claim. Inmate Wuol was transferred out of MHCC to the Toronto East Detention Center on December 21, 2023.

Lockdown

16. The daily schedule in Unit 8 of MHCC provides for periods of time throughout the day when inmates spend time outside of their cells. A lockdown involves a strict limitation on the movement of inmates, non-correctional staff, and other persons in all or part of an institution including inmates who are confined to their cells. Depending on the type of lockdown, some limitations may also apply to correctional staff. As a result of the Assault, Unit 8 was on lockdown from approximately 1540 hours (3:40 p.m.) on December 20, 2023, until approximately 1000 hours (10 a.m.) on December 24, 2023. Ontario admits that, contrary to applicable SOLGEN policy:
- a. The Superintendent or his delegate did not complete an Employee/Other Information Report as required; and
 - b. the lockdown was not recorded in the Offender Tracking Information System on the Lockdown Details screen.

ICIT Authorization

17. On December 21, 2023, Superintendent Wong authorized:
- a. the ICIT Deployment and;
 - b. a search of all wings of Unit 8 with cell extractions by ICIT, use of handheld metal detectors, and searches by designated correctional officer search teams (the “Level 4 Search”).

18. In response to paragraph 22 of the Claim, Ontario admits that a Threat Level Assessment was not completed before Superintendent Wong authorized the ICIT Deployment, contrary to applicable SOLGEN policy. A Threat Level Assessment process is designed to determine the level of risk to institutional safety and security and to make recommendations regarding the appropriate level of intervention and response. Ontario further admits that the Weapon Search Protocol Checklist, required by the ISPPM, was not completed before Superintendent Wong authorized the Level 4 Search, contrary to applicable SOLGEN policy. The purpose of the Weapon Search Protocol Checklist is to ensure that threats to institutional safety and security are responded to in a safe, responsible and effective manner.
19. Superintendent Wong did not provide a complete report of the facts of the ICIT Deployment to Tanya Frankovich, the SOLGEN Regional Director for the Toronto Region, Institutional Services, Corrections, as required by applicable SOLGEN policy.
20. Ontario denies that ICIT is akin to a SWAT team as alleged at paragraph 21 of the Claim. ICIT is composed of correctional officers with specialized training and techniques to control rebellious, non-compliant, aggressive, violent, or potentially violent inmates in a disciplined and professional manner.

ICIT Deployment to Unit 8 Wings

21. In response to paragraph 26 of the Claim, Ontario pleads that correctional officers were assigned to ICIT for the purposes of the ICIT Deployment (“ICIT Officers”) in Unit 8 Wings 8A, 8B, and 8C on December 22, 2023, and in Unit 8 Wings 8D, 8E, and 8F on December 23, 2023.

Munitions Deployed

22. Ontario admits that ICIT Officers deployed a form of munition called a Distraction Device (“DD #25”, termed “stun grenades” in the Claim) on their entry into Unit 8 Wings 8A through 8D. Ontario admits that the use of the DD #25s in the course of the ICIT Deployment to Unit 8, wings 8A, 8B, 8C, 8D, and 8F by ICIT Officers was not necessary and was excessive since the Unit 8 Inmates were secured in their cells.
23. An ICIT Officer intended to deploy a DD #25 on entry into Unit 8 Wing E but deployed an Oleoresin Capsicum (OC) flameless grenade instead, in error.
24. ICIT Officers deployed pepper ball rounds in and around specific cells.

Timing of the ICIT Deployment

25. In response to paragraph 23 of the Claim, Ontario admits that ICIT was deployed to Unit 8 two days after the Assault on CO Lecinski. Ontario further admits that, at the time of the ICIT Deployment, Unit 8 was on lockdown, and the Unit 8 Inmates were secured and under control. Accordingly, there was no immediate concern for staff safety at the time of the ICIT Deployment.

The Search of Unit 8 inmates and Unit 8 cells

26. Upon entry into each wing of the unit, ICIT Officers instructed Unit 8 Inmates to undress to their underpants and lie on their beds in the prone position. In response to paragraphs 2, 4, 8, 17, 20, 22–24, 27, 29–31, 41, 47, 48, 50, 57, 59, 66, 69, 72, 75, 81, 83–85, 87, and 91 of the Claim, Ontario denies that all Unit 8 Inmates were subjected to a “strip search”

within the meaning of that term as defined in the applicable regulation (*General*, R.R.O. 1990, Reg. 778, s. 1) in effect at the time of the ICIT Deployment and Level 4 Search. Ontario expressly denies that at any time any Unit 8 Inmates were instructed to remove their underpants.

27. Ontario admits paragraphs 29 and 30 of the Claim only to the extent that ICIT Officers applied zip ties to the hands of Unit 8 Inmates and led them out of their cells in their underpants to the staff desk area, where they were photographed by correctional officers working at MHCC in the presence of medical staff.
28. In response to paragraphs 38 and 39 of the Claim, Ontario admits that while the Unit 8 Inmates were out of their cells, correctional officers working at MHCC searched these cells. Ontario admits that contrary to applicable SOLGEN policy governing level 4 searches, these correctional officers did not utilize handheld metal detectors when searching Unit 8 on December 22 and 23, 2023.
29. During the search, correctional officers working at MHCC removed items from Unit 8 cells, placed them in bins, and rolled the bins away. In response to paragraphs 38 and 40, Ontario admits that the items removed from Unit 8 Inmates' cells included, in some cases, toilet paper.
30. From the staff desk area, the Unit 8 Inmates were led to the hallway. In the hallway, the Unit 8 Inmates were seated cross-legged, facing the wall. They remained in the hallway until the correctional officers were done searching the Unit 8 Inmates' cells.

31. In response to paragraph 32 of the Claim, Ontario admits that contrary to applicable SOLGEN policy, there were instances in the hallway where ICIT Officers pointed pepper-ball launchers at the back of some Unit 8 Inmates' heads.
32. Once the search was concluded, the Unit 8 Inmates were returned to their cells.
33. Contrary to applicable SOLGEN policy, after the ICIT Deployment, the MHCC correctional staff did not provide the Accident and Injury Report forms for some of the Unit 8 inmates to CSOI upon request.

Inmates' clothing

34. On December 22, 2023, inmates in Units 8A, 8B, and 8C were returned to their cells after approximately 1.5 hours in the hallway. Upon their return, employees of Ontario working at MHCC provided these inmates with bed sheets and blankets. Ontario admits that replacement outer clothing was not provided to inmates in those units until up to 37 hours after their outer clothing had been removed.
35. Ontario further pleads that, on December 23, 2023, inmates in Units 8D, 8E and 8F were returned to their cells after approximately 1.5 hours in the hallway. Upon their return, employees of Ontario working at MHCC provided these inmates with bed sheets and blankets. Ontario admits that replacement outer clothing was not provided to inmates until up to 19 hours after their outer clothing had been removed.
36. Ontario admits that in withholding outer clothing from Unit 8 Inmates for between 19–37 hours, employees of Ontario working at MHCC did not act in compliance with the governing legislation and SOLGEN policy.

Drop in temperature

37. In response to paragraphs 42 to 44 of the Claim, Ontario admits that between December 22 and 24, 2023, the temperature on Units 8A and B dropped from approximately 22 degrees Celsius to between approximately 19 and 21 degrees Celsius. Units 8C and D dropped from approximately 23.5 degrees Celsius to between approximately 20.5 degrees Celsius to 23 degrees Celsius. Units 8E and F dropped from between 21 and 23 degrees Celsius to between approximately 20.5 degrees Celsius to 21 degrees Celsius.
38. MHCC operational procedure governing the heating ventilation and air conditioning system on Unit 8 at the time of the ICIT Deployment provided that correctional staff in the control module in Unit 8 could turn the smoke exhaust fan on to take out any smoke, smells, or chemicals such as tear gas or pepper spray from Unit 8 and turn off the exhaust fan when tear gas, pepper spray, or smoke was completely removed from inside Unit 8.
39. The smoke exhaust fan sucks out the air from that area. This can cause the temperature to drop a small amount because the warm air is being exhausted out of the Unit.
40. OC spray was deployed on Unit 8 on December 22 and 23, 2023. As a result, the exhaust fan was turned on in accordance with applicable MHCC operational procedure.
41. Ontario specifically denies that temperatures on Unit 8 were ever extremely cold during the ICIT Deployment. Ontario further denies that correctional officers working in Unit 8 between December 22 and 23, 2023 implemented colder temperatures as part of a campaign to punish Unit 8 Inmates.

Staff Photograph

42. In response to paragraph 48 of the Claim, Ontario admits that on December 22, 2023, Superintendent Wong requested that employees of Ontario working at MHCC gather for a photograph at Unit 8. CO Robertson took this photograph with a personal device, contrary to applicable SOLGEN policy.

Policy compliance in coverage of the ICIT Deployment

43. In response to paragraphs 50–53 of the Claim, Ontario admits that employees of Ontario working at MHCC did not assign a video camera operator to capture the ICIT Deployment in its entirety, using a high-definition digital video recorder, contrary to applicable SOLGEN policy.
44. Ontario further admits that employees of Ontario working at MHCC at the time of the ICIT Deployment, contrary to applicable SOLGEN policy, did not complete some reports and prepare all required documentation in relation to the ICIT Deployment as required, including:
- a. Two correctional officers did not complete their ICIT Activation Reports independently;
 - b. Some correctional officers did not include required information in completed ICIT Activation Reports;
 - c. Some Correctional Officers did not prepare contemporaneous Occurrence Reports of the ICIT Deployment;

- d. The Local Investigative Report for the ICIT deployment was not completed within the timelines required under applicable SOLGEN policy:
- i. Part A of the Local Investigative Report was not completed within 24 hours of the ICIT Deployment, which ended on December 23, 2023. Part A of the Local Investigative Report was completed on December 25, 2023.
 - ii. Part B of the Local Investigative Report was not completed within 15 days of the ICIT Deployment. Part B of the Local Investigative Report was completed on March 18, 2024.
 - iii. The Situation, Mission, Execution, Administration and Communication (SMEAC) document was not comprehensive and not in alignment with Ministry policy. The SMEAC is a document prepared in advance of an activation and is utilized for organizing information about an ICIT activation and deployment plan. The SMEAC specifies instructions to ICIT from the crisis manager.

Destruction of Records

45. CCTV footage at MHCC was subject to a 59-day retention schedule, and other than the CCTV footage that was preserved prior to the 59 days, the retention period for the additional relevant CCTV footage had expired and the additional footage had been automatically deleted in accordance with this schedule.

Response to the ICIT Deployment

46. Ontario admits that SOLGEN senior management beyond the institutional and regional levels became aware of the details of the ICIT Deployment gradually after April 4, 2024. In June 2024, SOLGEN's Executive Director Office, Assistant Deputy Minister's Office within Institutional Services and the Deputy Solicitor General's Office for Correctional Services became aware that the Unit 8 Inmates depicted in the available CCTV footage were not wearing outer clothing for an extended period of time. On June 21, 2024, then-Deputy Solicitor General Karen Ellis ordered a Correctional Services Oversight & Investigation (CSOI) into the ICIT Deployment.
47. The CSOI released two investigative reports on October 31, 2024, and April 23, 2025. In response to paragraph 55 of the Claim, Ontario admits that the reports have not been made public.
48. Ontario has taken disciplinary measures with respect to involved employees, including for cause terminations, release without cause, and disciplinary suspensions. Superintendent Wong was terminated on January 22, 2025 and is no longer employed by Ontario in any capacity.
49. In addition, Ontario has instituted the following changes to guide future ICIT deployments:
50. An Executive Directive issued by the Assistant Deputy Minister to all regional offices and provincial correctional institutions on April 9, 2025 that, effective immediately, prior to an ICIT activation consultation with the Regional Office must occur.

51. Direction issued to Regional Offices on April 24, 2025 that notification to the SOLGEN Deputy Solicitor General's Office is required within one hour of an ICIT activation.
52. Five new Deputy Superintendent positions allocated to MHCC to strengthen oversight, enhance staff support, and improve operational consistency.
53. Staffing changes to the SOLGEN Central Regional Office (which has oversight of MHCC). These changes included identifying experienced Regional and Deputy Regional Directors to more effectively manage the institutions within the Central Region portfolio.
54. Crisis Manager training for the three MHCC Deputy Superintendents who required the training was completed on February 20, 2025.
55. A review of existing ICIT practices, including tactics and weapons used in deployments.

Negligence

56. Ontario admits that at all material times, employees of Ontario working at MHCC owed Unit 8 Inmates a duty of care.
57. Ontario denies that employees of Ontario working at MHCC breached the applicable standard of care by not providing access to medical care to Unit 8 Inmates during and after the ICIT Deployment.

Misfeasance in Public Office

58. Ontario denies that its employees are liable for the tort of misfeasance in public office.

59. Ontario specifically denies that at any time was its employees motivated by malice, bad faith, dishonesty, or improper purpose in respect of the Plaintiff or any Unit 8 Inmate or the reference of their public duties in activating and deploying ICIT and plead that in fact at all material times employees of Ontario working at MHCC acted in good faith in the performance of their duties as peace officers.

Charter of Rights and Freedoms

60. Ontario admits that the search of the Unit 8 Inmates in their underwear during the ICIT Deployment did not comply with s. 8 of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 1* (the “*Charter*”). Ontario denies any further or other breaches of s. 8 of the *Charter*.
61. Ontario denies that the ICIT Deployment breached the rights of the Unit 8 Inmates under s. 7 of the *Charter*. Ontario specifically denies that the Unit 8 Inmates, who were lawfully confined to a correctional facility, experienced any deprivations of life, liberty or security of the person as a result of the ICIT Deployment. In the alternative, the actions taken by Ontario or employees of Ontario were not arbitrary, overbroad, grossly disproportionate, or otherwise not in accordance with the principles of fundamental justice.
62. Ontario denies that the ICIT Deployment breached the rights of the Unit 8 Inmates under s. 9 of the *Charter*. Ontario specifically denies that the Unit 8 Inmates, who were lawfully confined to a correctional facility, were subjected to detention as a result of the ICIT Deployment. In the alternative, if the Unit 8 Inmates were subjected to detention as a result of the ICIT Deployment, Ontario denies that any such detention was arbitrary.

63. Ontario denies that the ICIT Deployment breached the rights of the Unit 8 Inmates under s. 12 of the *Charter*. Ontario specifically denies that the treatment of the Unit 8 Inmates during the ICIT Deployment was grossly disproportionate to what they could reasonably expect while lawfully confined in a correctional facility. Ontario further denies that the treatment of the Unit 8 Inmates during the ICIT Deployment falls within the narrow class of punishments or treatments that are intrinsically incompatible with human dignity.

Damages

64. Ontario denies that Unit 8 Inmates have suffered the damages as alleged or at all. In the alternative, if the Unit 8 Inmates suffered any loss or damages as alleged or otherwise, which is not admitted but denied, then such alleged loss or damages were not caused or materially contributed to by the acts or omissions of Ontario or an employee or employees of Ontario. Such injuries, loss or damages were caused or contributed to by previous or subsequent accidents, events, occurrences or pre-existing medical conditions, the full particulars of which are not known to Ontario.
65. If Unit 8 Inmates suffered any injuries, loss or damages as alleged, which fact is not admitted but denied:
- a. Ontario puts the Unit 8 Inmates to the strict proof thereof;
 - b. such injuries, loss or damages are excessive and too remote; and
 - c. the Unit 8 Inmates have failed to mitigate their damages.

66. Ontario denies that the actions of employees of Ontario caused damages to the Plaintiff and Unit 8 Inmates as alleged, or at all.
67. Ontario pleads that some or all Unit 8 Inmates caused or contributed to:
- a. the events giving rise to their claims against Ontario; and / or
 - b. their losses, if any.
68. Ontario pleads that a declaration is an appropriate and just remedy for any *Charter* breaches. Ontario denies that the Unit 8 Inmates are entitled to s. 24(1) *Charter* damages for any *Charter* violations. Ontario has appropriately applied employment disciplinary measures and instituted changes to guide future ICIT deployments. Ontario denies that *Charter* damages are functionally required to fulfill the objects of compensation, vindication of rights, or deterrence of future *Charter* breaches and plead that countervailing policy considerations, including any remedies received by Unit 8 Inmates in criminal or civil proceedings, render an award of damages inappropriate.
69. In any event, the issue of what damages, if any, were suffered by Unit 8 Inmates requires proof by individual Unit 8 Inmates. An aggregate assessment of damages would not conform with s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 and would not be appropriate.
70. Ontario denies that its conduct warrants an award of punitive or aggravated damages. Ontario denies that the conduct of its employees warrants an award of punitive or aggravated damages. Ontario specifically denies that it can be held vicariously liable for punitive or aggravated damages arising from the conduct of its employees.

71. Ontario pleads and relies upon the provisions of the *CLPA*, the *Negligence Act*, R.S.O. 1990, c. N.1, the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 1, the *Criminal Code*, R.S.C. 1985, c. C-46, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, all as amended, and the *MCSA* and the *General Regulation*, R.R.O. 1990, Reg. 778 thereunder in effect at the material time.
72. Ontario submits that this action should be dismissed with costs.

September 29, 2026

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JAMAREY CHISHOLM

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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