

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RICARDO NEWELL

Plaintiff

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.



IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date: February 19, 2025

Issued by W. CAIRO R

Local registrar

Address of Superior Court of Justice
court office 330 University Ave. 8th Fl.
Toronto, Ontario M5G 1E6

TO: HIS MAJESTY THE KING IN RIGHT OF ONTARIO

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CLAIM

1. The Plaintiff claims against the defendant:
 - a. An order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the class;
 - b. A declaration that the Defendant, His Majesty the King Right of Ontario ("**Ontario**"), violated the Class Members' rights set out in subsection 15(1) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") in respect of its failures set out herein relating to the operation, management, administration, application, and control of the Security Assessment for Evaluating Risk ("**SAFER**") program in its Correctional Institutions;
 - c. Damages pursuant to subsection 24(1) of the *Charter* in an amount to be determined by the Court;
 - d. A mandatory order, pursuant to section 24(1) of the *Charter*, that Ontario enact measures to remedy the SAFER program's discriminatory impact on the Class Members on a prospective basis;
 - e. An order, pursuant to section 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("**CPA**"), directing an aggregate assessment of damages;
 - f. Punitive and exemplary damages in an amount to be determined by the Court;
 - g. Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - h. Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
 - i. The costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *CPA*; and
 - j. Such further and other relief as this Honourable Court may deem just.

A. OVERVIEW

2. The SAFER program is a software tool used to assign security classifications to inmates. The program extracts information from an inmate's profile, applies an algorithm, and generates a security rating score for the inmate. This score then determines the inmate's security classification between minimum, medium, or maximum security. Ontario has introduced, and is responsible for the operation, management, and administration of, the SAFER program in an increasing number of its Correctional Institutions since October 2021.

3. Ontario's use of the SAFER program subjects Black inmates to higher security classifications and, in turn, more restrictive conditions than their non-Black counterparts. Ontario's own data on the racial identity of inmates with medium or maximum security classifications in the Correctional Institutions where the SAFER program is in use reveals a stark disparity between the rate at which Black inmates are assigned medium or maximum security classifications compared to their non-Black counterparts. This disparity has been consistent since the SAFER program was introduced, across all Correctional Institutions where it is in use.

4. The effects of higher security classifications on Black inmates are significant. Medium and maximum security classifications entail more restrictive cells and environments, with less access to movement, activities, programs, and amenities. Higher security classifications entail more serious curtailments on an inmate's liberty.

5. The disproportionately high security rating scores given to Black inmates reflect the underlying biases of the inmate profile information used by the SAFER program. Broader patterns of systemic anti-Black racism, including racial profiling in policing, mean that such profile information is not neutral. Absent measures to account for and mitigate against these patterns, the design of the SAFER program has, and will continue to, disproportionately subject Black inmates to maximum security confinement.

6. Ontario was aware that SAFER would likely have a disproportionate impact on all racialized inmates, including Black inmates. Ontario acknowledged that mitigation measures were required to curb these disproportionate effects. In response, Ontario implemented mitigation measures for Indigenous inmates. However, despite Ontario's own data clearly confirming the

disproportionate impact of the SAFER program on Black inmates, Ontario chose not to implement measures to mitigate these effects, despite doing so for Indigenous inmates.

7. Assigning higher security classifications to Black inmates at disproportionately higher rates exacerbates the historical disadvantage faced by Black Canadians and the existing overrepresentation of Black Canadians in the Canadian criminal justice system. Rather than redress the vast overrepresentation of Black Canadians at all levels of the justice system, Ontario's implementation of the SAFER program in the Correctional Institutions has instead reinforced the negative stereotypes and stigmas which undergird this pernicious form of systemic discrimination.

B. THE PLAINTIFF AND THE CLASS

8. Ricardo Newell is currently incarcerated at the Central East Correctional Centre. He identifies as a Black man.

9. In or around February 2023 until July 2023, while previously incarcerated at the Toronto East Detention Centre ("TEDC"), Mr. Newell was placed in the maximum security unit through the SAFER program.

10. Mr. Newell does not recall being informed about the differences between the maximum security unit and other security classifications, nor that he could be transferred to a lower security unit upon review of his security rating score. He recalls being placed directly in the maximum security unit, with little information about how he was classified. Mr. Newell recalls that while in the maximum security unit at TEDC, most of the other inmates in the unit were also Black.

11. Mr. Newell recalls that he was allowed limited time outside his cell while in the maximum security unit. He had limited access to exercise equipment or recreational time. Mr. Newell's mental health was negatively impacted by his time in the maximum security unit at TEDC.

12. The Plaintiff brings this action on his own behalf and on behalf of the following Class:

All Black Inmates of Correctional Institutions who have been assigned a medium or maximum security classification by application of the Security Assessment for Evaluating Risk tool, exclusive of any time for which such classification was based on a Discretionary Override.

"Correctional Institutions" are correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

"Discretionary Override" means the discretionary decision by an employee or agent of Ontario to increase or reduce an Inmate's security classification.

"Inmates" are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

C. SYSTEMIC ANTI-BLACK RACISM IN THE CANADIAN JUSTICE SYSTEM

13. Black Canadians are significantly overrepresented in the Canadian criminal justice system, including in Ontario's Correctional Institutions. In 2010, Black men were five times more likely to be incarcerated in Ontario Correctional Institutions than white men, and Black women were almost three times more likely to be incarcerated than white women. In 2010 to 2011, Black adults made up 3.9% of the population, but accounted for 17.7% of admissions to custody in the province.

14. The disproportionate incarceration of Black Canadians is one result of the systemic discrimination they face in Canadian society. Black Canadians are more likely to be subject to police scrutiny and are subjected to stricter sentences. They face further systemic barriers through the child welfare system, the education system, the housing market, and the employment experience. Factors contributing to these disadvantages stem from the historical and systemic discrimination faced by Black Canadians, including centuries of slavery, restrictive immigration policies targeting predominantly Black populations, and disparities in educational and employment opportunities.

15. Systemic anti-Black racism in the Canadian criminal justice system has been acknowledged by Canadian courts. For example, in its 1993 decision in *R v. Parks*, 15 O.R. (3d) 324, the Ontario Court of Appeal acknowledged that anti-Black racism is a "pervasive" phenomenon, involves longstanding negative stereotypes about Black people, and "our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes." In its 2021 decision in *R v. Morris*, 2021 ONCA 680, the Ontario Court of Appeal held that "courts should take judicial notice of the existence of anti-Black racism in Canada and its potential impact on individual offenders."

16. Ontario's *Anti-Racism Act, 2017*, S.O. 2017, c. 15, acknowledges that "systemic racism is a persistent reality in Ontario," including anti-Black racism, and that this can be "perpetuated by a failure to identify and monitor racial disparities and inquiries and to take remedial action."

D. THE DEFENDANT AND ITS RESPONSIBILITY FOR THE CORRECTIONAL INSTITUTIONS

17. Ontario is named in these proceedings pursuant to the provisions of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 7, and the amendments thereto. Notice has been given to the Crown pursuant to section 18 of that legislation.

18. Ontario, through and with its agents, servants and employees, was at all material times responsible for the funding, operation, management, administration, supervision and control of the Correctional Institutions. The Ministry of Correctional Services and Community Safety ("**Ministry**") is responsible for all inmates in the Correctional Institutions.

19. In accordance with the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Act**"), Ontario is responsible for:

- a. supervising the detention of the Class;
- b. providing for the custody of the Class;
- c. creating an environment in which inmates may be effectively and properly rehabilitated; and
- d. establishing, maintaining, and operating the Correctional Institutions.

20. Section 14.2 of the Act authorizes the Ministry to establish differential inmate security classifications in Correctional Institutions:

Maximum and medium security custody programs

14.2 The Minister may establish in correctional institutions:

- (a) maximum security custody programs, in which restrictions are continuously imposed on the liberty of inmates by physical barriers, close staff supervision or limited access to the community; and

(b) medium security custody programs, in which restrictions that are less stringent than in a maximum security custody program are imposed on the liberty of inmates.

21. In accordance with the *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778 (the "**Regulation**"), the superintendent of a Correctional Institution, or a designate delegated by the superintendent, is responsible for:

- a. administering the Correctional Institution in accordance with any instructions issued by the Minister;
- b. issue to the employees of the Correctional Institution such directions as may be necessary to fulfil the responsibility of a Superintendent; and
- c. ensure that inmates aware informed of their duties and privileges while in the care and custody of the superintendent.

22. The Correctional Institutions are located across Ontario. At all material times, the Correctional Institutions have been under the sole jurisdiction and control of, and have been operated by, Ontario. Ontario retains and authorizes servants, agents, representatives and employees to operate the Correctional Institutions and gives instructions to such servants, agents, representatives and employees as to the manner in which the Correctional Institutions are to function and operate, including with regards to the operation, management, administration, application, and control of the SAFER program.

E. THE SAFER PROGRAM

23. The SAFER program is an automated software tool that extracts information from an inmate's Offender Tracking Information System ("**OTIS**") profile, or other information not contained in OTIS, applies an algorithm, and generates a security rating score for the inmate. This score is then used to assign the inmate a minimum, medium, or maximum security classification.

24. The SAFER program was first introduced at the Thunder Bay Jail and Thunder Bay Correctional Centre in October 2021. As of April 2023, the SAFER program was in use in, at minimum, the following Correctional Institutions.

- a. Thunder Bay Jail

- b. Thunder Bay Correctional Centre
- c. Toronto East Detention Centre
- d. Central North Correctional Centre
- e. Kenora Jail
- f. Fort Frances Jail
- g. Vanier Centre for Women

25. As of September 2021, Ontario also planned to expand the SAFER program to the Monteith Correctional Centre, Algoma Treatment and Remand Centre, North Bay Jail, and Sudbury Jail. As of October 2024, Ontario was in the process of expanding the SAFER program to the Toronto South Detention Centre.

26. Ontario is continuing to roll out the SAFER program to further Correctional Institutions.

27. Inmates' security rating scores, which inform their SAFER-generated security classifications, are intended to be reviewed every 30 days. Although SAFER is an automated program, it includes an override function for use in special circumstances, including where:

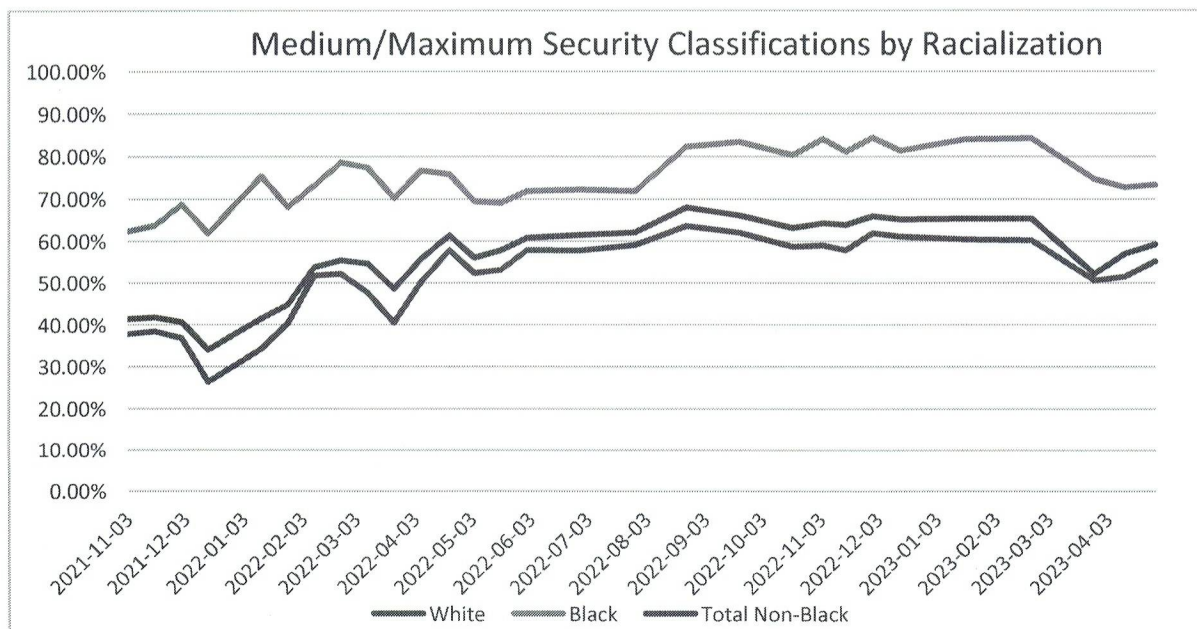
- a. the inmate is known to be lower risk than is indicated by their SAFER score;
- b. the inmate has known gang affiliation with safety concerns;
- c. the inmate has a history of victimizing other inmates;
- d. there is a current management issue, such as an inmate's non-compliance with rules and staff direction;
- e. there are unique considerations for Indigenous persons, such as where an Indigenous inmate could be accommodated in a lower-security setting with appropriate cultural supports; and
- f. other reasons, where staff must provide rationale for overriding the SAFER score.

28. Pursuant to policy, an inmate may submit an "Inmate Request Form" to request that their security classification be reconsidered by the Superintendent or a designate. However, this process lacks transparency and is procedurally unfair. Ontario has not made public the types of information which are used by the SAFER program; nor has it made public the methodology and algorithm according to which this information is used to generate security rating scores. Thus, Class Members are unable to challenge their classifications on the basis of the information and methodology on which their classifications were based.

F. DISPROPORTIONATE IMPACT ON BLACK INMATES

29. Black inmates are being assigned medium and maximum security classifications at disproportionately higher rates than white and other non-Black inmates through Ontario's use of the SAFER program. The data collected by Ontario on the number of inmates with medium or maximum security classifications in the Correctional Institutions where the SAFER program has been implemented shows a consistent statistical disparity between the rate at which Black inmates are assigned medium or maximum security classifications compared to the non-Black inmate population.

30. The chart below, based on data collected and maintained by Ontario between November 3, 2021 and April 3, 2023, illustrates the magnitude and consistency of this disparity:



31. Conditions of confinement differ significantly between the security classifications. Higher security units are more restrictive and afford inmates significantly less access and freedom than inmates in lower security classifications. These differences are summarized in the following chart:

Maximum Security	Medium Security	Minimum Security
<i>Infrastructure, Layout, Furniture</i>		
• Cells • Hard, fixed-in-place furniture • No recreation equipment in the dayroom • Less normalized furnishings (such stainless steel instead of porcelain sinks)	• Possible dormitory setting and cells • Some movable soft furnishings • May include normalized furnishings	• Dormitory setting where available • Moveable, soft furniture • Recreation equipment where available • Normalized furnishings
<i>Programming, Services, Conditions of Confinement, Movement</i>		
• Limited freedom of movement • Staff assistance required for most activities, amenities, and programs • Few programs available on unit • Institution work programs outside of living unit generally not available	• Some freedom of movement • Some activities can be done without staff involvement • Some amenities available on the unit (e.g. kettle, microwave) • Some programs and services available off unit without staff assistance • Work or education programs available with restrictions • Additional activities available and "should be substantially less restrictive than maximum security"	• Inmates have freedom of movement and can move around the unit • No staff assistance required to access recreation, yard, laundry, and kitchen supplies • Larger menu of programs and services available • "Privileged" programs available including kitchen and gardens (where available) • Greater access to recreation room and additional time out of cell

32. Through Ontario's use of the SAFER program, Black inmates' liberty is curtailed at significantly higher rates than their non-Black counterparts, by the disproportionate imposition of more restrictive conditions of confinement in medium and maximum security units. Black inmates therefore face increased physical restrictions on their liberty through their disproportionate classification in maximum security units and, in turn, disproportionately suffer the psychological impact of confinement in more restrictive conditions.

G. THE DEFENDANT'S KNOWLEDGE OF THE DISPROPORTIONATE IMPACT

33. When introducing the SAFER program in Correctional Institutions, Ontario was aware that Indigenous and racialized individuals face systemic discrimination in the criminal justice system, and that these groups are more likely to be charged, remanded, convicted, and altogether

overrepresented in Correctional Institutions. Ontario was aware that for these reasons, the SAFER program would likely contribute to the overrepresentation of Black inmates at medium and maximum security levels. Ontario also acknowledged that women do not present the same security threat as men.

34. For these reasons, Ontario implemented a two-pronged mitigation strategy to specifically address the overrepresentation of Indigenous inmates and the unique situation of women inmates.

35. First, Ontario adjusted SAFER scoring for Indigenous people and women. For male-identifying inmates, the threshold for a medium or maximum-security classification is 5 (out of 100) points higher for Indigenous inmates than it is for non-Indigenous inmates. For female-identifying inmates, the threshold for a medium-security classification is 3 (out of 100) points higher for Indigenous inmates than for non-Indigenous inmates, while the threshold for maximum-security is a further 2 points higher.

36. Second, Ontario included a specific discretionary override option for Indigenous considerations in the SAFER program, to mitigate the scores that would otherwise have been generated for Indigenous inmates.

37. According to data collected by Ontario, as a result of these mitigation measures, the rates at which Indigenous inmates are assigned medium and maximum security classifications is significantly lower than for Black inmates – despite the well-known forms of systemic discrimination to which Indigenous peoples are subjected in Canada.

38. In its January 2023 report, "An Obligation to Prevent", the Ontario Chief Coroner's Expert Panel on Deaths in Custody outlined 18 recommendations for actions to address the deaths of individuals in custody in Ontario facilities. The report acknowledged the "risks of inequities" in the applications of the SAFER program and noted that "this is an area deserving of attention and improvement."

39. Following the inquest into the May 4, 2018 death of Marco Michaud, an inmate at Ottawa-Carleton Detention Centre, the coroner's jury reviewed Ontario's policy regarding the SAFER program dated August 21, 2024, which identified considerations for Indigenous inmates but "does not currently make mention of any other racialized or equity-seeking groups even though there is

over-representation in custody of, for example, Black inmates." In a verdict explanation published on December 11, 2024, the jury recommended that "when conducting an evaluation of the SAFER tool, the Ministry shall consider updating the Assessment for Evaluating Risk policy dated August 21, 2024, to add considerations for other marginalized groups."

40. At all material times, Ontario was aware that the SAFER program would have a disproportionate impact on Black inmates and would exacerbate systemic anti-Black discrimination in the justice system. Despite this knowledge, Ontario did not adopt similar mitigation measures to address the SAFER program's tendency to assign higher security classifications to Black inmates. Ontario acknowledged the disparate impact of the SAFER program on protected groups and failed to mitigate these impacts on the Plaintiff and Class Members.

H. THE DEFENDANT'S BREACH OF THE *CHARTER*

41. Ontario's operation, management, administration, application, and control of the SAFER program in Correctional Institutions has resulted in adverse impact discrimination and systemic discrimination against the Plaintiff and Class Members on the grounds of race, in violation of their rights to equality under subsection 15(1) of the *Charter*.

42. Ontario created, planned, established, operated, financed, supervised, controlled and regulated the entire system of Correctional Institutions, including the operation, management, administration, application, and control of the SAFER program.

43. As Black inmates, the Plaintiff and Class Members were disproportionately assigned medium or maximum security classifications through the SAFER program. Ontario's own data shows a clear and consistent disparity between the rate at which Black inmates are assigned medium or medium security classifications compared to non-Black inmates. This constitutes a disproportionate impact on the Plaintiff and Class Members. This disproportionate impact constitutes a distinction based on the enumerated ground of race.

44. The maximum and medium security classifications imposed via the SAFER program constitute a burden imposed on the Plaintiff and the Class Members. The disproportionate imposition of these classifications on Black inmates reinforces, perpetuates, and exacerbates the

systemic and historical disadvantages faced by the Plaintiff and Class Members as Black Canadians. The overrepresentation of Black Canadians in Correctional Institutions is rooted in the systemic and historical disadvantages faced by Black Canadians in various facets of society.

45. The SAFER program is intended to be "neutral" in its application by analysing information without, or with little, human intervention. However, the information analysed by the SAFER program regarding Black inmates cannot generate a "neutral" result. Information extracted from a Black inmate's profile, such as interactions with law enforcement and interactions with authority during confinement, reflects disparities for Black Canadians, who are disproportionately subjected to all levels of the criminal justice system. Without measures in place to mitigate the disproportionate impact of the SAFER program on Black inmates, Ontario's use of the SAFER program perpetuates a cycle of continuing disparity for the Plaintiff and Class Members in Ontario's Correctional Institutions.

46. In any event, regardless of what information is used to generate a security rating score, Ontario is obligated not to administer the Correctional Institutions in a manner which adversely impacts Black inmates in a manner which reinforces, perpetuates, and exacerbates disadvantage. However, this is the outcome of the SAFER program.

47. The violation of the Plaintiff's and Class Member's rights to equality under subsection 15(1) of the *Charter* cannot be demonstrably justified in a free and democratic society under section 1 of the *Charter*. *Inter alia*, the infringement of the Plaintiff's and the Class Members' rights under subsection 15(1) of the *Charter* is not minimally impairing. Ontario could have reduced the discriminatory impact on Black inmates by adopting similar mitigation measures as have been adopted for Indigenous and women inmates. Ontario failed to adopt such measures.

48. Further, Ontario's failure to take steps to prevent the adverse impacts resulting from the operation of the SAFER program is contrary to the express objectives of the *Anti-Racism Act, 2017*, including the objective of "eliminating systemic racism" by identifying and monitoring racial disparities in the application of policies, practices, and procedures, and taking remedial action in response to such disparities.

I. DAMAGES SUFFERED BY THE CLASS

49. Ontario knew, or ought to have known, that the SAFER program would have a disproportionate impact on the Plaintiff and Class Members, resulting in more restrictive conditions of confinement for the Plaintiff and Class Members in Correctional Institutions. This disproportionate impact on the Plaintiff and Class Members is shown by the clear and consistent statistical disparities between the classification of Black inmates and non-Black inmates through the SAFER program.

50. Ontario knew, or ought to have known, that Black Canadians are overrepresented in the criminal justice system and that strategies would be required to mitigate the disproportionate impact of the SAFER program on Black inmates, as was recognized and implemented for Indigenous inmates. Despite this knowledge, Ontario failed to implement these mitigation measures for the Plaintiff and Class Members.

51. The systemic, adverse impacts of Ontario's use of the SAFER program have caused damages to the Plaintiff and Class Members in three respects: disproportionate reductions in liberty, injuries to dignity and self-esteem, and the perpetuation and exacerbation of historical disadvantage.

52. First, Ontario's use of the SAFER program has led to the Plaintiff and Class Members being deprived of their liberty and being subjected to more restrictive conditions of confinement than non-Black inmates. The Plaintiff and Class Members suffer increased physical restrictions on their liberty through their disproportionate classification in medium and maximum security units. They also disproportionately suffer the significant psychological impact of confinement in more restrictive conditions.

53. Second, through Ontario's use of the SAFER program, the Plaintiff and Class Members are confined in units whose populations have been structured by systemic discrimination, with more Black inmates surrounding them than non-Black inmates. For the Plaintiff and Class Members, this experience fosters the belief that highly restrictive conditions of confinement and limitations on liberty are more justified against them as Black inmates. This systemic discrimination leads to significant injury to the dignity and self-esteem of the Plaintiff and Class Members.

54. Third, disproportionate imposition of medium and maximum security classifications on Black inmates through Ontario's use of the SAFER program reinforces and exacerbates the pre-existing patterns of exclusion and negative stereotyping faced by Black Canadians. The discriminatory output of the SAFER program fosters the belief that the disparities are the result of "natural" forces, such as the belief that Black Canadians are more "dangerous" and thus deserving of harsher confinement. As Black Canadians who are subject to these negative stereotypes, the Plaintiff and the Class Members suffer from this group injury.

J. CHARTER DAMAGES

55. In the circumstances, the Plaintiff and Class Members are entitled to monetary damages from Ontario pursuant to section 24(1) of the *Charter*.

56. *Charter* damages would appropriately compensate the Plaintiff and Class Members for the harms described at paras. 49-54. Ontario's use of the SAFER program has a disproportionate impact on the Plaintiff and Class Members, as shown by the statistical disparity between the classification of Black inmates in higher security classification than non-Black inmates. As a result, the Plaintiff and Class Members have suffered, and continue to suffer, disproportionately restrictive conditions and limits on their liberty. Further, the Plaintiff and the Class Members have suffered, and continue to suffer, injuries to dignity and self-esteem as a result of being placed in maximum and medium security units whose populations are structured by the systemically discriminatory SAFER program. In addition, by their membership in a disadvantaged group, the Plaintiff and Class Members have suffered, and continue to suffer, a group injury as a result of the reinforcement of negative stereotypes and longstanding patterns of exclusion against them as Black Canadians, caused by the adverse impacts of the SAFER program.

57. *Charter* damages would also vindicate the equality rights of the Plaintiff and Class Members. The adverse impacts caused by the SAFER program will impair public confidence and diminish public faith in the efficacy of equality rights. At a time of increased public awareness of systemic anti-Black discrimination, an award of *Charter* damages will demonstrate the meaningfulness of equality rights, and the gravity of their violation.

58. *Charter* damages would deter systemic violations of a similar nature. They would incentivize Ontario to ensure that future *Charter* violations are remedied as soon as possible by identifying and monitoring racial disparities in the application of policies, practices, and procedures, and taking action in response to such disparities when identified, in a manner consistent with the *Anti-Racism Act, 2017*.

59. There are no countervailing considerations rendering damages in this case inappropriate or unjust. *Inter alia*, the design of the SAFER program is not dictated by legislation, such that Ontario could be immune from a claim for *Charter* damages.

K. PUNITIVE/EXEMPLARY DAMAGES

60. The high-handed and callous conduct of Ontario warrants condemnation. Ontario conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Plaintiff and the Class were treated in a manner that could only result in aggravated and increased mental stress and anxiety.

61. Ontario acknowledged that the SAFER program would disproportionately impact racialized inmates, including Black inmates, and acknowledged that mitigation measures were required to curb these disproportionate effects. Ontario was alerted to the need to review the SAFER policies and adopt mitigation measures to address the effects on other racialized inmates, including Black inmates. Despite this knowledge, and despite being put on notice of the need to review the SAFER program and policies, Ontario recklessly failed to adopt the same mitigation measures for the Plaintiff and Class Members.

62. In these circumstances, the Plaintiff and the Class request punitive damages to demonstrate to other government-owned institutions that such wilfully irresponsible behaviour will not be tolerated. Punitive damages will act as a deterrent to other institutions in Canada that are in positions of authority over similarly-situated populations of persons. These individuals, by virtue of their captivity and complete dependence on Ontario for their well-being, are among the most vulnerable in Canadian society. This vulnerability is exacerbated by their membership in a systemically and historically disadvantaged group in Canadian society on grounds of race.

63. The Plaintiffs plead and rely on provisions of the following statutes:

- a. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982;
 - b. *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
 - c. *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sch. 17;
 - d. *Anti-Racism Act, 2017*, S.O. 2017, c. 15;
 - e. *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22;
 - f. *General*, R.R.O. 1990, Reg. 778; and
 - g. *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
64. The Plaintiff requests that this action be tried in Toronto.

February 19, 2025

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RICARDO NEWELL
Plaintiff

- and -

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Defendant

Court File No.: *CU-25-00137-02-000*

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SUPERIOR COURT OF JUSTICE**

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STATEMENT OF CLAIM

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