

AMENDED THIS Aug 29/01 PURSUANT TO
MODIFIÉ LE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ()

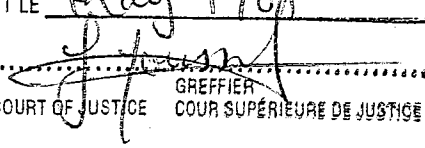
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THE ORDER OF Mr. Justice Cumming
L'ORDONNANCE DU

DATED / FAIT LE May 1/01

Court File No. 00-CV-199551CP

REGISTRAR
SUPERIOR COURT OF JUSTICE



GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

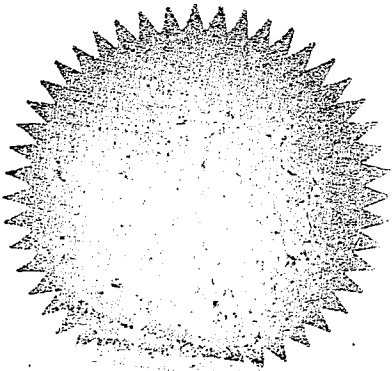
DANNY A. JOANISSE and
VANCE HAMILTON EGGLESTONE

Plaintiffs

-and-

ELLIOTT THOMPSON BARKER and GARY J. MAIER and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants



Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, **WITHIN 20 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 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.

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 WILL 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 PLAINTIFFS CLAIM, and \$500.00 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 \$100.00 for costs and have the costs assessed by the court.

Date of Issue: October 25/00 Issued by: *[Signature]*
Local Registrar

Address of court office:
Court House
393 University Avenue,
10th Floor
Toronto, Ontario
M5G 1E6

TO: Elliott Thompson Barker
356 First Street
P.O. Box 700, Stn. Main
Midland, Ontario
L4R 4P4

AND TO: Her Majesty the Queen in Right of Ontario
c/o Ministry of the Attorney General
8th Floor
720 Bay Street
Toronto, Ontario
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AND TO: GARY MAIER
5566 S. WOODLAND DRIVE
WAUNAKEE, WI
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CLAIM

1. The Plaintiffs claim:
 - (a) a declaration that the basic human and civil rights of Egglestone, Joanisse and the Class have been breached by the Defendants;
 - (b) general damages on behalf of the class in the amount of \$100,000,000.00;
 - (c) aggravated, punitive and exemplary damages in the amount of \$50,000,000.00;
 - (d) pre-judgment and post-judgment interest in accordance with the provisions of the Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended;
 - (e) costs of this action on a solicitor client basis; and
 - (f) such further and other relief as this Honorable Court may deem just.

The Parties

2. The Plaintiff, Danny A. Joanisse ("Joanisse") resides at the Penetanguishene Mental Health Centre, Oak Ridge, in the Town of Penetanguishene, Ontario pursuant to a disposition order.
3. The Plaintiff, Vance H. Egglestone ("Egglestone") resides at the Penetanguishene Mental Health Centre, Oak Ridge, in the Town of Penetanguishene, Ontario pursuant to a disposition order.
4. The Defendant, Elliott Thompson Barker ("Barker") is a psychiatrist licensed to practice in the Province of Ontario. Since 1965 Barker was employed as a psychiatrist in the Mental Health Centre at Penetanguishene ("Penetanguishene"). Barker now resides in North Bay, Ontario.
5. The Defendant, Gary J. Maier. ("Maier") is a psychiatrist who practiced in the Province of Ontario. Since 1972, Maier was employed as a psychiatrist with the Mental Health Centre at Penetanguishene. He currently practices psychiatry in the State of Wisconsin, in The United States of America.

The Class

6. The Plaintiffs bring this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 on behalf of the following class, ("the Class"):

- (a) All individuals who were incarcerated at Penetanguishene between 1968 and 1979 and who participated in the Motivation, Attitude, Participation Program ("M.A.P.");
- (b) All individuals who were incarcerated at Penetanguishene between 1968 and 1979 and who participated in the Total Encounter Capsule Program (the "Capsule");
- (c) All individuals who were incarcerated at Penetanguishene between 1965 and 1979 and who participated in Defence Disruptive Therapy ("D.D.T."); and

Joanisse's Experience

7. Joanisse was born May 28, 1956.

8. The day before his 15th birthday, on May 27, 1971 Joanisse was admitted to Penetanguishene under a Form 1 (M.H.A. 1967) as an involuntary patient from St. John's School, Uxbridge. This was the first of five such involuntary admissions to Penetanguishene for Joanisse.

9. From a young age prior to attending Penetanguishene, Joanisse was the victim of ongoing sexual abuse.

10. The various reasons for Joanisse's six admissions to Penetanguishene ranged from his simply "having a psychiatric condition" to his being found not guilty by reason of insanity on charges of attempt murder.

11. Joanisse was detained at Penetanguishene during the following periods:

May 27, 1971 to March 1, 1972;

March 26, 1972 to January 30, 1979:

May 9, 1979 to December 3, 1980:

April 9, 1981 to January 28, 1982:

September 6, 1983 to March 6, 1997:

June 16, 1999

12. During Joanisse's periods of detention, he was subjected to a variety of human experimentation without any scientific justification and torture which constituted an abuse of his human rights and dignity while only exacerbating his psychiatric conditions. Details concerning these allegations will follow.

Egglestone's Experience

13. Egglestone was born February 19, 1956.

14. In August of 1975, Egglestone was charged with rape.

15. Egglestone was jailed in Toronto, Ontario and in September of 1975 was sent to the *Clarke Institute of Psychiatry* for a 30 day assessment; thereafter he was returned to the Toronto jail.

16. Further psychiatric tests were performed in November and December 1975 while Egglestone was at the Toronto jail. In January 1976, Dr. J. Cooper, a psychiatrist, concluded that Egglestone was unable to appreciate the nature and quality of his acts or able to realize these acts were wrong.

17. Egglestone was tried in the Provincial Court, Toronto on the charge of rape and on January 16, 1976 Egglestone was found not guilty by reasons of insanity.

18. Egglestone was remanded to custody at the pleasure of the Lieutenant

19. Egglestone was discharged from Penetanguishene February 23, 1979 to St. Thomas Psychiatric Hospital and returned January 21, 1981.
20. During his periods of incarceration, Egglestone advanced inmate rights. The G-ward encounter therapy unit evolved to become known as the G-ward Social Therapy Unit (the "STU") in keeping with Barker's and Maier's philosophy of the insane criminal as therapist.
21. In October of 1986, Egglestone was charged with aggravated sexual assault, forcible confinement and choking while released into the community on a conditional warrant.
22. Egglestone was jailed in Toronto, Ontario and in June and December 1987 was sent to the Kingston Psychiatric Hospital for sixty day assessments, thereafter he was returned to jail.
23. Egglestone, during his second assessment at the Kingston Psychiatric Hospital, escaped custody in the month of December 1987. He was charged with escape custody in February 1988. He pleaded guilty and received three months in jail.
24. Egglestone, as a result of being charged October 1986, was tried in the Provincial Court (Criminal Division), Toronto on a lesser charge of sexual assault on September 12, 1988, to which he pleaded guilty. He was sentenced to 6 months in jail and 3 years probation.
25. Egglestone, following the completion of his sentence, was remanded to custody at the pleasure of the Lieutenant Governor and was delivered to the Brockville Psychiatric Hospital April 7, 1989.
26. He was further discharged July 25, 1984 and was again returned to Penetanguishene August 10, 1995.

Penetanguishene, Barker and Maier

27. The Oak Ridge Hospital, Penetanguishene, opened in 1933 was at the time of Egglestone's admission the only mental health facility providing a maximum security environment for individuals found not guilty by reasons of insanity on Warrants of the Lieutenant Governor. Inmates were sent on Warrants of Remand from the courts, the penitentiaries, reformatories and other facilities.
28. Barker began employment as a psychiatrist at Penetanguishene in 1965.
29. Barker began to write on the topic of human experimentation with mind-altering drugs as far back as the 1960's including: *The Insane Criminal as Therapist* (1968), *Buber Behind Bars* (1968), *Defence Disruptive Therapy* (1969), *The Total Encounter Capsule* (1977), *LSD in a Coercive Milieu Therapy Program* (1977).
30. The Plaintiffs state that the experiments conducted by Barker and Maier on class members were not based on credible proven scientific research, but rather, were the invention of inexperienced psychiatrists who conducted their research within an institution of the Crown.
31. Barker believed, for the insane criminal, the alternative to successful treatment was lengthy incarceration. Predicated on this, Barker developed intensive therapy programs with the objective of major reconstruction of the patients' personality. Many of Barker's theories were developed and published by Barker and a psychiatric inmate by the name of M.H. Mason.
32. Barker and Maier's human experimentation employed techniques such as solitary confinement, sensory deprivation, humiliation, force, restraints (cuffs), the use of hallucinogens and delirium-producing drugs and other forms of physical and mental abuse, under the guise of Barker and Maier's "science". Barker and Maier experimented with these techniques on hundreds of young men as human guinea pigs all of whom were under the direct or indirect control of Barker or Maier who were, at all times, agents of the Crown.

33. The experiments conducted by Barker and Maier involved various mind-altering protocols conducted over a period of years beginning in the mid-1960's and were continued to be carried out until approximately 1979 with Maier's involvement commencing in 1972.

34. Barker resigned as Director of the STU in 1972 and would remain in the wings throughout the decade. Maier became acting Director of the STU in July, 1972 under Barker's authority since Maier was still a 4th year resident and had not yet completed his qualification as a psychiatrist.

35. Maier in 1973 received two hundred--100-microgram vials of LSD from the Canadian Government.

36. Maier described Barker's attitude towards these men as "nearly all the patients in this program are throw-away people. They are tattered. One of the things that we have got to do, is, if we can't melt it down, to blow it up."

37. Maier in 1976, half way through an LSD program with class members, due to pressure from Oakridge attendants, took a one year leave of absence returning in the fall of 1977.

38. In 1978, due to rising pressure from Oakridge attendants that Maier was organizing many DDT programs, placing those individuals at risk without proper support of attendants and Maier's own psychiatric instability which included allegations of assault and smoking of illicit drugs, the attendants, under union direction, locked up Egglestone, Joannis and all class members then present in their cells for three days.

39. Maier was viewed as a maverick psychiatrist within Oakridge and a trouble maker by government officials. Maier was eventually removed from Oakridge in 1978.

40. Barker took over from Maier in 1978 and stayed there until 1979.

41. The protocols employed by Barker and Maier mirrored in all respects the "MKULTRA" brain-washing experimentation developed by the CIA under the direction of Allen Dulles to better equip American prisoners of war to withstand brain-washing by their communist captors.

42. Barker and Maier's experimentation was also consistent with that conducted by Dr. Ewen Cameron of Montreal. It was also similar to the mind-altering LSD experimentation conducted under the supervision of the Canadian Minister of Justice and the Penitentiaries Services, with funding provided in part by the Canadian Department of Defence.

43. Barker and Maier's human experimentation was divided into three main categories. Egglestone and Joannis, together with hundreds of fellow inmates, were forced to participate in these discrete mind control/mind altering experiments which invariably incorporated abuse coupled with psychological and physical torture. The programs were as follows:

- (a) Motivation, Attitude, Participation Program ("M.A.P.");
- (b) The Total Encounter Capsule Program (the "Capsule")
- (c) Defence Disruptive Therapy ("D.D.T.")

Below is a summary of the three "programs" developed by the Crown through its various agents at Penetanguishene including Barker and later Maier.

Motivation, Attitude, Participation Program

44. Prior to being placed in the M.A.P. program, all participants were placed in solitary confinement for a period of time.

45. The M.A.P. program involved rotating groups of between four to eight men who were forced to sit on a bare Terrazo floor for approximately eight hours daily without being permitted more than two moves per group. Standing was not permitted and failure to comply with the *non-movement* orders and other directives within the M.A.P. program

resulted in the individual being verbally confronted, heavily sedated with Nozinan or Largactil, put in restraints or placed in solitary confinement.

46. The M.A.P. program was run by other psychiatric patients titled M.A.P. teachers. In 1978 monitoring cameras were installed in the M.A.P. room.

47. As with the other programs reviewed below, the M.A.P. program constituted a form of human torture and abuse for which there was no legitimate scientific nor medical basis.

48. Egglestone and Joannis, like other protesters of the abusive nature of the program, were punished through the use of tranquilizers, double restraints, verbal abuse and placed in solidarity confinement for numerous days at a time. Other class members were subjected to the same form of punishment in the event that they protested the abuses.

49. As a result of the abuse suffered through participation in the M.A.P. program, Egglestone and Joannis suffered from anxiety, depression, confusion, disorientation, and a negatively altered personality. Far from being a form of rehabilitation, the M.A.P. program worsened Egglestone's and Joannis's psychiatric condition.

50. Egglestone was placed in the M.A.P. program on the following dates:

May 18, 1976 to June 26, 1976;

January 19, 1978 to February 24, 1978;

May 15, 1978 to June 5, 1978.

51. Joannis was placed in the M.A.P. program on the following dates:

September 1, 1972 to September 28, 1972;

April 18, 1975 to April 21, 1975;

May 26, 1977 to July 4, 1977;

December 30, 1977 to February 20, 1978;

January 16, 1978 to February 20, 1978;

March 22, 1978 to April 18, 1978;

June 22, 1978 to June 30, 1978

Capsule Program

52. The "Capsule" program first became operational in August of 1968. Patients commonly referred to it as the "box".
53. The capsule is a small windowless room with dimensions approximately 8' x 10'. Here, four or more men would be stripped naked and placed in the Capsule for periods of up to two weeks.
54. Through the use of four straws inserted through holes in the Capsule liquid food dispensers containing beverages were the only source of food given to the men in the Capsule.
55. Beds were not provided and the men in the Capsule slept on a small rug over a foam mat on the floor. Washroom facilities consisted of an open toilet and a wash basin. No towels were provided.
56. Serious confrontation was commonplace in the Capsule. Arguments frequently revolved around the issue of having a "clean" place to rest one's head at night.
57. The Capsule was continuously lit such that day from night was indistinguishable and disorientation resulted.
58. The Capsule patients were under observation by other psychiatric patients either through a one way mirror in the ceiling and/or through closed circuit videotaping through recessed cameras in the walls and ceiling.
59. During detention in the capsule, the men were given various drugs including Dexamyl, Tofranil and LSD and other hallucinogens, none of which served any therapeutic

purposes and were recommended by other patients consistent with Barker's theory of the "insane criminal as therapist".

60. Egglestone and Joanisse were in the Capsule on the following occasions. Egglestone from November 15, 1976 to November 29, 1976; June 17, 1977 to June 28, 1977. Joanisse was in the capsule on two different occasions for a total of seven days in October 1971.

Defence Disruptive Therapy

61. The Defence Disruptive Therapy ("DDT") program was another experimental program developed by Barker in the mid-1960's.

62. Described by Barker as "demystifying drugs" such as Scopolamine, Methedrine, LSD-25, Dextro-Amphetamine/Impramine, Dexamyl-Tofranil Sodium Amytal, Methedrine, Imprimine and Dexedrine were recommended by fellow psychiatric patients to Barker and Maier and or other agents who then prescribed to other patients in DDT program.

63. The use of LSD-25 began in February 1967. The usual dosage administered to the patients was 500mcmg., injected intramuscularly. LSD-25 was also used in combination with Methedrine.

64. Dexamyl was also used in the form of Dextramphetamine Sulfate in combination with Tofranil. Alcohol was also used and in combination with Ritalin.

65. By late 1967, the risks of homicide and suicide became very real as a result of such experimentation.

66. Egglestone and Joanisse were involved in such experimentation.

Consent

67. Consent to participate in the programs was, in the majority of cases, never solicited. In the cases where consent was sought, such consent was of no legal effect since it

68. Egglestone and Joannis were coerced to take the mind-altering drugs and to participate in the "programs" referenced above, in the name of therapy.

69. Egglestone and Joannis state that while incarcerated in this maximum security psychiatric facility, they, nor any other patients, were in a position to refuse to participate in the experimentation imposed by Barker and Maier and/or other agents. This was particularly true given the atmosphere of coercion and duress inherent in being confined to the institution in what was called "coercive milieu therapy". In this prison environment, any participation by Egglestone and Joannis and other class members in the experimentation was not on the basis of freely given consent.

70. Egglestone and Joannis further state that at no time prior to or during Barker's and Maier's mind-altering experimentation were Egglestone or Joannis advised of the risks inherent in participating in such experimentation and of the fact that there was no scientifically proven value to these experiments.

Fiduciary Issues

71. The Crown, through its agents at Penetanguishene, including Barker and Maier, owed a fiduciary duty to Egglestone, Joannis and the class members and stood in a position of fiduciary to Egglestone, Joannis and other class members. The fiduciary relationship was based on the patient-physician relationship of trust. This fiduciary relationship was further enhanced due to the vulnerable nature of the psychiatric patients and owing to the maximum security environment which made it impossible for the patients to obtain treatment elsewhere.

72. Egglestone and Joannis state that the Crown is, in law, responsible for the actions of its agents at Penetanguishene, including Barker and Maier, and is specifically responsible for breaches of their fiduciary obligations to Egglestone and Joannis and other class members, in that the Crown, through its agents at Penetanguishene, including Barker and Maier:

- (a) conducted unethical human experimentation on Egglestone and Joannis and other class members within the confines of a maximum security facility;

- (b) subjected Egglestone and Joannise and other class members to all manner of mind-altering experimentation, inhumane treatment and psychological and physical abuse and torture including the development and implementation of the M.A.P., Capsule and the DDT experiments;
- (c) treated Egglestone and Joannise and other class members with force and humiliation;
- (d) conscripted Egglestone and Joannise and other class members for enrollment in the "programs" without requiring patients' *bona fide* consent. Alternatively, where consent was obtained, such consent was obtained under coercive circumstances and was of no value;
- (e) released Egglestone and Joannise and other class members from Penetanguishene knowing that they had become drug addicts, or alternatively maintain their drug addictions as a result of participating in the purported "programs", yet failed to provide Egglestone and Joannise, or other class members, with any addiction counseling or other forms of appropriate rehabilitation.
- (f) released Egglestone and Joannise and other class members from Penetanguishene knowing that the so called treatment programs imposed upon Egglestone and Joannise and the other class members were ineffective and that Egglestone and Joannise and the other class members had not been provided with appropriate forms of rehabilitation.

Damages

73. As a result of the Defendants' breach of fiduciary obligations, Egglestone and Joannise experienced a personality change, which severely exacerbated their original diagnosis.

74. As a result of the experimental treatment and breach of fiduciary obligation of Barker and Maier and other agents of the Crown, Egglestone and Joannise and other class members became general and violent recidivists as a result of the experimental treatment administered to them by Barker and Maier and other agents of the Crown during their stay at Penetanguishene.

75. The inhumane treatment of these young men was considered justified in order to "advance" Barker's and Maier's experimentation.

76. Egglestone and Joannise state that as a result of the breach of fiduciary obligation by Barker and Maier and other agents of the Crown, Egglestone and Joannise suffered from a near total loss of employment for the past 21 years.

77. Egglestone and Joannise further claim a loss of income, loss of competitive advantage in the workplace, future loss of income and a resultant diminution of earning capacity caused by the breach of fiduciary obligation of the Defendants.

78. Egglestone and Joannise further claim, as a result of the breach of fiduciary obligations on behalf of Barker and Maier, other agents, and the Crown, a loss of enjoyment of life and the inability of being afforded the chance of becoming a productive member of society.

Breaches of Common Law and International Norms

79. The treatment of Egglestone, Joannise and the class members by the Defendants constitutes discrimination against persons with disabilities, contrary to accepted common law principles and international law norms.

80. Furthermore, the actions of the Crown, through its agents at Penetanguishene, including Barker and Maier, constituted torture and cruel, inhumane or degrading treatment or punishment in violation of the common law and international law.

81. The prohibition against torture is a *jus cogens* norm at international law and thus has direct effect in Ontario by way of the common law. Moreover, common law norms that reflect *jus cogens* international law must be treated as having a higher normative force

Negligence

82. The Crown owed a duty to Egglestone, Joanisse and class members to review and supervise the work of Barker and/or other agents and to determine on an ongoing basis whether such experimentation was scientifically justified.

83. The Crown failed in its duty to provide meaningful supervision of Barker or Maier or their research. Barker and Maier, and/or other agents, of the Crown carried out experiments on Egglestone and Joanisse and other class members for years, without the Crown questioning the value of their work or its impact on the class members.

84. As a result of the Crown's negligent supervision of Barker and Maier and/or other agents, Egglestone and Joanisse and the class members suffered damages as described within the claim.

Assault

85. Human experimentation without informed consent is an assault on the person. The research conducted by Barker or other agents constitutes an assault on the rights of Egglestone and Joanisse and class members for which the Defendants are responsible, and as a result of which Egglestone and Joanisse and other class members have suffered damages.

Punitive, Aggravated and Exemplary Damages

86. Punitive, aggravated and exemplary damages are sought against the Crown and Barker, Maier and/or other agents as a result of the flagrant breaches of their fiduciary obligations to Egglestone and Joanisse and other class members during their detention at Penetanguishene.

87. The Defendants' breach of fiduciary duty to Egglestone and Joanisse and other class members includes a wanton, reckless and outrageous disregard for the health and

well-being of Egglestone and Joannis and class members. By reason of the Defendants' high-handed, reprehensible conduct, Egglestone and Joannis and the class members are entitled to an award of aggravated, punitive and exemplary damages.

88. Punitive damages are also claimed against the Defendants for creating, supporting and operating the "demystifying drugs" DDT program and other mind-altering experimentation at Penetanguishene on vulnerable victims with the diagnosis of personality disorder. The individuals used for Barker's and Maier's purposes were no more than human guinea pigs. Such high-handed behavior warrants an award in punitive, aggravated or exemplary damages.

89. Punitive, aggravated and exemplary damages are also sought for the collusion of Barker and Maier and/or other agents and the Crown in performing the same manner of mind-altering experimentation as those conducted in the United States, including those doctors who conducted the MKULTRA experiments upon direction from the CIA.

90. Egglestone and Joannis state that at no time in Canadian history should they have been subjected to such unethical experimentation, abuse and mind-altering protocols.

91. The Plaintiffs plead and rely on the following:

- (a) *Crown Liability Act*, R.S.C., 1985, mc. C18, as amended;
- (b) *The Nuremberg Code*;
- (c) *The Universal Declaration of Human Rights*, G.A.res. 217A (III), December 10, 1948, U.N. Doc. A/810, at 71 (1948);
- (d) *International Covenant on Civil Political Rights* (1976), 999 UNTS 171; [1976] CTS 47; and
- (e) *Convention against Torture and Other Cruel, Inhuman or Punishment*, Dec. 10, 1984, G.A. res. 39/46, UN GAOR, 39th Sess., Supp. No. 51, art 1.

The Plaintiffs propose that the trial of this action take place in the City of Toronto, in the Province of Ontario.

Date Issued: _____

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IOANISSE and EGGLESTONE

v.

BARKER et al

Court File No.: 00-CV-199551CP

ONTARIO
SUPERIOR COURT OF
JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

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