TO: **TORONTO POLICE SERVICES BOARD**
40 College Street
Toronto, Ontario
M5G 2J3

AND TO: **THE OFFICE OF THE TORONTO CHIEF OF POLICE**
40 College Street
Toronto, Ontario
M5G 2J3

CLAIM

1. The Plaintiff, Ayaan Farah, on behalf of the Class described herein, claim:

(a) an order certifying this action as a Class Proceeding pursuant to *Class Proceedings Act*, 1992, S.O. 1992, c. 6, and appointing the Plaintiff as the representative plaintiff for the Class, as defined below;

(b) a declaration that Toronto Police Services Board (the "**Toronto Police Board**") and William Blair, Mark Saunders, James Ramer and Myron Demkiw, in their capacity as Toronto Chiefs of Police as appointed by the Toronto Police Board (collectively the "**Toronto Chiefs of Police**"), violated the rights of the Plaintiff and the Class under sections 8, 7, 9, and 15 of the *Charter of Rights and Freedoms* (the "***Charter***"), and further, that none of these breaches are saved by section 1 of the *Charter;*

(c) an interim or interlocutory injunction, or a supervisory order under the *Charter*, requiring the Defendants to immediately:

(i) end the practice of police officers of the Toronto Police Service ("**officers of the Toronto Police Service**" or the "**Defendants' officers**") stopping individuals, without any reasonable suspicion of individuals' involvement in criminal activity, requesting individuals provide personal and/or identifying information, and collecting and storing this personal and/or identifying information in the Toronto Police Service's databases ("**Carding**");

(ii) end the practice of sharing any information collected from Carding with any third-party law enforcement agency;

(iii) expunge all previously recorded data collected through the practice of Carding; and

(iv) publish a public statement, apology and acknowledgement to the victims of Carding.

(d) a permanent injunction, or a supervisory order under the *Charter*, requiring the Defendants to immediately take the measures set out in paragraph 1(c), above, and:

(i) amend, retract, restate or clarify any of the Defendants' policies, practices, standards or guidelines that enable or acquiesce to the practise of Carding;

(ii) develop a policy compliance evaluation framework for the Defendants' elimination of Carding, with the result of any assessment being published annually for public circulation;

(iii) develop or adapt training resources for employees, members and officers of the Toronto Police Service to underscore the fact that Carding is unlawful and impermissible; and

(iv) implement all the recommendations of the Honourable Chief Justice Michael Tulloch's "Report of Independent Street Checks Review" (the "**Tulloch Report**").

(e) an order pursuant to section 24(1) of the *Charter* condemning the Defendants to pay damages to Class members in the amount of $150,000,000, or such sum as the Court deems appropriate, for the breaches of the Class members' *Charter* rights;

(f) an order that the Defendants were negligent and/or intruded upon the seclusion of the Class members, and caused damages in the amount of $50,000,000;

(g) an order condemning the Defendants to pay punitive damages in the amount of $50,000,000, or such other sum as the Court deems appropriate;

(h) prejudgment and post judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(i) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff, together with all applicable taxes;

(j) costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and

(k) such further and other relief as this Honourable Court deems just.

A. OVERVIEW

2. In Canada, people enjoy fundamental rights to move freely about their communities without the fear of arbitrary and discriminatory seizure of their personal information by police officers. Many people in Canada take these rights for granted, but the Plaintiff and Class members do not. The Plaintiff and Class members are Black, First Nations, Inuit and Métis persons whom the Toronto Police Service robbed of these rights through the discriminatory practice of Carding. In the guise of upholding law and order, the Toronto Police Service arbitrarily detained the Plaintiff and Class members, seized their personal information, and retained that information for indefinite use by law enforcement. Carding has caused widespread harm, including damage to the Plaintiff's and Class members' mental and physical integrity, their privacy, and their livelihoods.

3. Carding has made Class members fearful to walk down the street, made them feel like criminals because of their racial or ethnic identity, and made them feel like second-class citizens, denied the right to live their lives without arbitrary police interference. Carding is not acceptable, it has never been acceptable, and it must stop. This action seeks to compel an end to Carding and to compensate Class members.

4. The Defendants are legally responsible for the serial misconduct of the Toronto Police Service. The Defendants have implemented various operational policies, inclusive of forms, rules, standards and training

that have encouraged or condoned Carding by the Toronto Police Service. The Defendants' operational policies result in serious and ongoing breaches of the Plaintiff's and Class members' privacy. Moreover, the Defendants knew or should have known that the implementation of their operational policies resulted in the discriminatory and disproportionate targeting of Black, First Nations, Inuit and Métis individuals.

5. Carding is an abuse of the Defendants' statutory and common law powers. While the police have a statutory and common law duty to investigate crime, they are not empowered to undertake any and all action in the exercise of that duty. The Supreme Court of Canada has been unequivocal that the police do not enjoy a general power to detain or to seize whenever that detention or seizure will assist a police office in the execution of their duty. Moreover, there is no place for the police to apply systemic racial stereotyping and prejudice when making investigative decisions. What the Defendants did to the Plaintiff and Class members was unlawful.

6. The Plaintiff and Class members have been profoundly affected by the practice of Carding. Officers of the Toronto Police Service misused their authority to coerce the Plaintiff and Class members to produce personal information. The Defendants knew or were willfully blind to the fact that this widespread practice did, and continues to, target Class members on the basis of racial or ethnic identity, and they failed to take reasonable measures to stop the abuse. Carding infringed the Plaintiff's and Class members' right to:

(a) be secure against unreasonable search and seizure, inclusive of their right to a reasonable expectation of privacy, in contravention of s. 8 of the *Charter*;

(b) be treated equally before and under the law, in contravention of section 15(1) of the *Charter*;

(c) not be arbitrarily deprived of liberty and the security of the person, in contravention of section 7 of the *Charter*; and

(d) be free from arbitrary detention, in contravention of section 9 of the *Charter*.

7. None of the breaches can be justified under section 1 of the *Charter*. These breaches are inconsistent with a free and democratic society, and they do not constitute a reasonable limit on the Plaintiff's or Class members' rights.

8. The Defendants and the Defendants' officers owed a duty of care to the Plaintiff and Class members. The Defendants and the Defendants' officers breached the standard of care through the repeated and systematic implementation of Carding policies. These breaches caused the damages enumerated below.

9. The Defendants and the Defendants' officers further intruded upon the seclusion of the Class members. The Defendants intentionally implemented a program of Carding. In implementing this policy the Defendants' officers acted n a manner that was arbitrary and unlawful, breaching the *Charter*, the *Police Services Act*, R.S.O. 1990, c. P.15 (the "***Police Services Act***"), and the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 (the "***Human Rights Code***"). A reasonable person would regard the Defendants' arbitrary and discriminatory seizure and retention of the Class members' data as highly offensive, and likely to cause distress, humiliation or anguish.

10. During the Class Period:

(a) the Plaintiff and all Class members suffered damages during, and after, being subjected to the degrading practice of Carding;

(b) the Plaintiff and all Class members suffered damages due to being discriminatorily targeted by law enforcement on the basis of their race, and/or national or ethnic origin, and/or colour;

(c) the Plaintiff and all Class members suffered damage due to the unlawful seizure and retention of their personal information, and the subsequent use or sharing of that information with third parties;

(d) the Plaintiff and some Class members suffered additional harmful effects due to loss of employment or the inability to obtain employment; and

(e) some Class members suffered additional harmful effects due to contact with the criminal justice system that only arose as a result of the Defendants' unlawful use of Carding.

11. For a considerable period of time, the Defendants have habitually violated the Class members' fundamental rights. The Defendants have continued this practice despite significant public opprobrium concerning Carding, including concerns repeatedly expressed by members of the Black and Indigenous communities; decades of academic research highlighting the deleterious effects of the practice; and multiple public reports and investigations that have overwhelmingly found the practice to be ineffective and discriminatory.

12. Accordingly, in addition to enjoining the Defendants to take the necessary steps to cease this practice, as described in paragraphs 1(c) and 1(d), this Honourable Court should reprimand the Defendants for their stubborn persistence. In these circumstances, it is appropriate to award damages to the Class under section 24(1) of the *Charter* and at common law, and to award punitive damages to condemn the Defendants' high-handed conduct.

B. THE PARTIES

a. The Plaintiff

Ayaan Farah

13. Ms. Farah is a 38 year-old Somali-Canadian and a member of the Black community. Ms. Farah has no criminal convictions, and she has never been the subject of any criminal investigation by officers of the Toronto Police Service, or any other law enforcement organization.

14. From or about July 10, 2006, Ms. Farah was employed at Toronto's Lester B. Pearson International Airport as a Customer Service Agent for US Airways. In her role, she was required to hold security clearance and a Restricted Area Identity Card ("**RAIC**"), as issued by Transport Canada.

15. In or about 2011, Ms. Farah was sitting in public. She was detained by officers of the Toronto Police Service, who requested her name, as well as her personal information and home address. Ms. Farah felt compelled to comply with the officers' demands and she truthfully provided the information they asked for.

16. At this time, police officers recorded Ms. Farah's personal identifying information. However, the police officers gave no contemporaneous indication that they were collecting information to further a criminal investigation.

17. At or subsequent to this time, the Toronto Police Service entered Ms. Farah's personal information into one or more databases controlled by the Defendants.

18. Ms. Farah felt targeted, distressed and embarrassed to have her personal information demanded from her. This is particularly because the experience was clearly random and arbitrary – the police identified no reason for her detention and the collection of her information. This left her feeling distrustful of the Toronto Police Service, and unsafe in public.

19. In or around June 2012, Ms. Farah's employer required her to renew her security clearance and seek an additional RAIC. In January 2013, Ms. Farah received a full security clearance and was issued a new RAIC.

20. In or around January 2014, Transport Canada received a Law Enforcement Records Check ("**LERC**") report from the Royal Canadian Mounted Police (the "**RCMP**"). The LERC indicated, among other things, that when Ms. Farah was stopped by officers of the Toronto Police Service in 2011, she had been observed with a member of the Somali-Canadian community ("**Subject "A"**"), who the records of the Defendants purported to be a member of a "street gang". Subject "A" was not identified.

21. On or about February 3, 2014, Transport Canada wrote Ms. Farah a letter advising of concerns that arose as a result of the LERC and noted, among other things, that these concerns arose due to the Defendants' collection of her personal information in 2011. The letter noted that during the Defendants' collection of her information in 2011 she had been "observed by police on one (1) occasion with Subject "A", who admitted at the time being a very close associate of yours." The current status of your association is unknown". The letter invited Ms. Farah to make comments in reply.

22. On or about February 12, 2014, Ms. Farah contacted Transport Canada, and noted that she was "confused as to what the letter was about" and that she had "no relations or associations to anyone who is involved in criminal activity and the incident in 2011 may be a case of mistaken identity" and that she did not know anyone who would meet the description of Subject "A".

23. On or about April 10, 2014, Transport Canada made email inquiries of the RCMP regarding, among other things, the statement "that Subject "A" admitted in 2011, of being very closely associated to the applicant". Transport Canada requested "any further information related to the method by which this information was received by the Police".

24. On or about June 11, 2014, Transport Canada received a response from the RCMP with respect to, among other things, Subject "A". The RCMP's report clarified that the basis of Ms. Farah's purported associations with Subject "A" was that "Police had direct interaction with the Applicant and subject "A" at which time both were together".

25. On or about June 13, 2014, Transport Canada sent Ms. Farah a letter containing the above details, and indicating that they had not been provided with names or details of the third-parties or sources because of privacy legislation. Ms. Farah was asked to submit any other relevant information or documentation within twenty days of receipt of the letter. She was also provided with the name and telephone number of a contact person at Transport Canada should she wish to discuss the matter.

26. On or about July 3, 2014, Ms. Farah personally emailed Transport Canada with additional written representations. With regard to the allegations concerning the police and Subject "A" she said:

> Toronto Police is falsely accusing me of having ties to gangsters. I am a law-abiding citizen with no criminal convictions.
>
> The alleged association I have to this individual is also unknown to me. For one, I have no recollection of this occurrence or even for that matter, as the individual is also unnamed in the report, I do not know who this individual happens to be. Furthermore, I have no idea to what is meant by "direct interaction".
>
> The fact remains, the events transpired over 2 years ago without any laws being broken or without charges being laid…

27. On or about September 16, 2014, Ms. Farah's security clearance was considered by the Transportation Security Clearance Advisory Body (the "**Advisory Body**"). The Advisory Body recommended that Ms. Farah's security clearance be cancelled, due to the incident of her personal information being collected in 2011, noting that her clearance should be cancelled:

> …based on the police report detailing the applicant's close association to an individual who is known by police to be a long-standing member of the "Dixon Crew" [Subject "A"] and who has a lengthy criminal record, as well as her association to two (2) individuals with criminal records.

28. On or about November 18, 2014, the Advisory Board recommendations were forwarded to the Director General, Aviation Security.

29. On or about November 21, 2014, Ms. Farah's security clearance was revoked. The Director General noted in the Record of Discussion:

> I find it unlikely that an individual would have no recollection of a direct interaction with police and, due to her very close association with Subject A, I believe the applicant either knew or was willfully blind to Subject A's activities.
>
> and
>
> Furthermore, the written explanation provided by the applicant and her counsel did not provide sufficient information to dispel my concerns.

30. On or about November 25, 2014, Ms. Farah was informed that the Minister of Transport had cancelled her clearance based on a review of her file. The letter noted that Ms. Farah had the right to seek the review of the decision in Court within 30 days.

31. On or about December 4, 2014, Ms. Farah's employer suspended her without pay or benefits because her RAIC was cancelled.

32. At the time, Ms. Farah's employer was undergoing a restructuring, and her employer hired internally for promotions, progression, and raises. Due to her suspension, Ms. Farah was not eligible to apply for any of these roles and/or benefits.

33. On or about December 18, 2014, Ms. Farah sought a review of Transport Canada's decision to revoke her security clearance.

34. On or about August 15, 2016, the Federal Court held that the cancellation of Ms. Farah's security clearance, leading to the revocation of her RAIC, was both procedurally unfair and substantively unreasonable, and set the decision aside.[1]

35. Following the decision of the Federal Court, Ms. Farah was reinstated in her previous position.

36. The Court did not decide whether Ms. Farah's *Charter* rights had been breached by the Defendants' practice of Carding. Nor did Ms. Farah seek damages for the Defendants' breach of her *Charter* rights, including the impacts on her psychological integrity, or damages she incurred for being suspended from work without pay or benefits, and the damage to her career progression, between December 4, 2014 and until after the Federal Court's decision in August of 2016.

37. The arbitrary detention by the Defendants' officers, the receipt of Transport Canada's letter, the ensuing commentary from officers of the Toronto Police Service, and Ms. Farah's eventual suspension and dismissal from her employment left Ms. Farah feeling despondent, causing her serious state-imposed psychological stress.

38. The officers of the Toronto Police Service's allegations of her association with an unspecified member of the Somali community caused Ms. Farah to retreat from social interactions. She was wary of leaving her home, afraid to meet or engage with other members of her community, and fearful of going out in public.

39. Prior to the events described above, Ms. Farah had been a social and outgoing person. Following her realization that she had been Carded, she developed depression, paranoia and hyper-vigilance when in public.

[1] *Ayaan Mohammed Farah v. Attorney General of Canada*, 2016 FC 935.

40. Prior to the events described above, Ms. Farah had played an active role volunteering at local community centres and food banks. Following her realization that she had been Carded, Ms. Farah stopped participating in her local community.

41. Prior to the events described above, Ms. Farah had felt safe in her community. Following her realization that she had been Carded, Ms. Farah felt unsafe in public, and worried about her personal safety when officers of the Toronto Police Service passed her in public.

42. Ms. Farah's experience was distressing, and it caused her to lose confidence in her safety in Canada. Ultimately, she emigrated to the United States of America, to, among other things, avoid further contact with officers of the Toronto Police Service.

b. The Defendants

The Toronto Police Board

43. The Defendant, the Toronto Police Board is the civilian police board that governs and sets policies for the Toronto Police Service pursuant to the *Police Services Act*.

44. Pursuant to subsection 31(1) of the *Police Services Act*, the Toronto Police Board is responsible for the provision of adequate and effective police services in Toronto, which includes, among other things, responsibilities over the:

(a) appointment of members of the Toronto Police Service, inclusive of employees of the Toronto Police Service, and persons appointed as police officers of the Toronto Police Service;

(b) recruitment and appointment of the Toronto Chiefs of Police and any deputy of the Toronto Chiefs of Police;

(c) general determination, after consultation with the Toronto Chiefs of Police, of objectives and priorities with respect to police services in the municipality;

(d) establishment of policies for effective management of the Toronto Police Service; and

(e) establishment of policies respecting the disclosure by Toronto Chiefs of Police of personal information about individuals.

45. Pursuant to subsection 41(2) of the *Police Services Act*, the Toronto Chiefs of Police must report to the Toronto Police Board and obey its lawful orders and directions.

The Toronto Chiefs of Police

46. The Defendants, the Toronto Chiefs of Police, are appointed by the Defendant, the Toronto Police Board.

47. Pursuant to subsection 41(1) of the *Police Services Act*, the Toronto Chiefs of Police's duties included or include:

(a) administering the Toronto Police Service and overseeing the operations in accordance with the objectives, priorities and policies established by the Toronto Police Board;

(b) ensuring that members of the police force carry out their duties in accordance with the *Police Services Act* in and in a manner that reflects the need of the community; and

(c) ensuring that Toronto Police Service provide community-oriented polices services.

48. The Toronto Chiefs of Police were or are responsible for the development and issuance of day-to-day and operational policies for the Toronto Police Service.

49. Since December 2011, the role of Toronto Chief of Police has been held by:

(a) William Blair ("**Bill Blair**"), from in or around 2005 until 2015;

(b) Mark Saunders, from in or around 2015 until 2020;

(c) James Ramer, from in or around 2020 until 2022; and

(d) Myron Demkiw, from in or around 2022 and ongoing.

The Defendants, jointly

50. The Defendants, by virtue of section 1 of the *Police Services Act*, are required to provide policing services to the public in accordance with guiding principles, including:

(a) the importance of safeguarding the fundamental rights guaranteed by the *Charter* and the *Human Rights Code*;

(b) the need for co-operating between the providers of police services and the communities they serve;

(c) the need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society; and

(d) the need to ensure that police forces are representative of the communities they serve.

51. Section 1 of the *Human Rights Code*, requires the Defendants to provide policing services without discrimination *inter alia*, on the basis of race, ancestry, place of origin, colour, ethnic origin, or citizenship.

52. Pursuant to subsection 45(1) of the *Police Services Act*, all officers of the Toronto Police Service must take the oath that:

> I solemnly swear (affirm) that I will be loyal to Canada, and that I will uphold the Constitution of Canada and that I will, to the best of my ability, discharge my duties as a member of the Toronto Police Services Board faithfully, impartially and according to the *Police Services Act*, any other Act, and any regulation, rule or by-law.

53. The Defendants, by virtue of subsection 29(2), 50(1) of the *Police Services Act*, and at common law, may be found jointly liable in respect of torts and/or violations of the *Charter* committed by officers of the Toronto Police Service.

54. If the Toronto Police Board is prepared to accept liability for the actions of the Toronto Chiefs of Police, the Plaintiff will seek leave under section 29 of the *Class Proceedings Act, 1992,* S.O. 1992, c. 6, to discontinue the within action against the Toronto Chiefs of Police on a without costs basis.

c. The Class Members

55. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992,* S.O. 1992, c. 6, on their own behalf and on behalf of all other Class members.

56. The members of the proposed '**Class**' are:

(a) All Black, First Nations, Inuit and Métis persons, who:

(i) were stopped by officers of the Toronto Police Service who did not have a reasonable suspicion of their involvement in criminal, activity. For example, if the officer of the Toronto Police Service recorded the reason for the stop as a "general investigation", or other similar or equivalent terms;

(ii) were subject to the collection and recording of personal information, for example, on a "208 Card", in a "Field Information Report", in "Community Safety Notes", in the records of a police officer, or in some similar form;

(iii) whose personal information the Defendants or the Defendants' officers entered in a database, including the Criminal Information Processing System, Versadex, or any similar database accessed by the Toronto Police Service (together, the "**Defendants' databases**");

(iv) whose personal information was retained in one of the Defendants' databases after December 5, 2011;

Where:

(i) "**Black persons**" are individuals who identify as Black, including but not limited to, Black, African-Canadian, Caribbean-Canadian and mixed-raced individuals; and

(ii) "**First Nations, Inuit or Métis persons**" are individuals who identify as First Nations, Inuit or a Métis persons.

C. HISTORY OF THE DEFENDANTS' USE OF CARDING

a. The history of Carding for First Nations, Inuit, Métis and Black communities

57. First Nation, Inuit, Métis and Black individuals and communities have a long history of baseless and indiscriminate identity checks, coupled with arbitrary detention by law enforcement officers.

58. In or around 1885, the Canadian Department of Indian Affairs instituted the Off-Reserve Pass System. The Pass system allowed for the incarceration or forced return to a reserve of any First Nation, Inuit or Métis individual who was found to be travelling without state issued documentation and permission. The practice lasted for 60 years, and is a stain on Canada's relationship with First Nations, Inuit and Métis communities.

59. The experience of random and indiscriminate requesting of personal identifying information was also a core component of the experience of enslaved Black persons in North America. Slave owners would issue passes to allow slaves to leave Slave owners' property for a limited time, and only to go to a specific place. Slaves were required to present their passes to authorities to justify their movements.

60. This is important historical context, as the Defendants' practice of Carding exacerbates and perpetuates these historical inequalities.

b. The emergence of Street Checks in Canadian policing

61. The practice of police officers requesting and retaining personal information from members of the public ("**Street Checks**"), developed more broadly in Canada following World War I. At this time, the Royal North-West Mounted Police (the "**RNWMP**"), began recruiting agents to track and collect information concerning "subversive" individuals.

62. In or around the 1920's, Street Checks expanded after the RNWMP and the Dominion Police combined to form the RCMP. During the inter-war period, agents of the RCMP were tasked with tracking the personal information of labour organizers.

63. This practice continued into World War II, where the RCMP collected information on individuals with pro-Nazi sentiments.

c. The introduction of Street Checks into municipal policing in Toronto

64. Street Checks were introduced into municipal policing in Toronto, in or around 1957. The practice was not specifically regulated by any Ontario statute or regulation until 2016.

65. In or around 1957, the Metropolitan Toronto Police Force (a predecessor to the Toronto Police Service), institutionalized the practice of Street Checks for their police officers. The practice started as a means for police officers to seek information regarding specific persons of interest in detectives' ongoing investigations. At the time, officers recorded information about members of the public on "Suspect Cards", also known as "R41 Cards", which were then sent to detectives for further investigations.

66. Over time, police officers were given more discretion to investigate members of the public, allowing the practice to gradually expand. For example:

(a) in or around the 1970's, the then Chief of Police introduced a new procedure for Street Checks, called a "Form 172". The "Form 172" gave individual officers greater discretion to investigate individuals on the "street" and to request the provision of information if the individual being investigated was "known to the police";

(b) in or around 1991, the then Chief of Police introduced a new procedure for Street Checks, called a "Form 208". The Form standardized the data that an officer should collect during a Street Check. The Form directed officers to record information concerning the place and location of the contact with a police officer as well as the nature and circumstance of the investigation. The Form also collected personal information, including the individual's name, date of birth, age, sex, birth place, colour, appearance, height, whether the individual was identified using an ID, and the personal contact information of the individual; and

(c) in or around 1998, the then Chief of Police amended the Toronto Police Services' policies, so that officers were no longer limited to filling Suspect Cards relating to "all persons investigated"; but were instead given the discretion to complete cards when the police officer determined they were "investigating a person and the circumstances are appropriate".

67. Over time, the expansion of police officers' discretionary powers to perform Street Checks, devolved into the practice of Carding. Increasingly, officers of the Toronto Police Service utilized random stops to require members of the public to provide information, without the officer in question having any reasonable suspicion of criminal activity.

d. The Defendants expand Carding throughout municipal policing in Toronto

68. In or around 2006, the devolution of the practice of Street Checks into Carding was accelerated by the Defendants' creation of the Toronto Anti-Violence Intervention Strategy (the "**TAVIS policy**"), which,

among other things, created a specialized division of the Toronto Police Service ("**TAVIS officers**"), specifically mandated to police neighbourhoods that the Defendants identified as high-risk and high-crime.

69. Under the TAVIS policy, any interaction between a TAVIS officers and a member of the public constituted a "valid" reason for the completion of a "208 Card". The TAVIS policy resulted in an increase in the number and frequency of stops of the members of the public. TAVIS officers disproportionately focused their stops on Black, First Nations, Inuit and Métis individuals. For the most part, the members of the public stopped by TAVIS officers were not acting suspiciously, nor were they suspected of having committed any crime.

70. In or around 2008, the Toronto Police Service introduced new equipment, which allowed police officers to input their data collection directly into a computer database. At this time, the electronic equivalent of 208 Cards became known as Field Information Reports. By directly inputting Field Information Reports into the Defendants' databases, officers of the Toronto Police Service could quickly enter personal information from Street Checks or Carding into their permanent records.

71. The Defendants and the Toronto Police Service retained and continue to retain the Class members' personal information.

e. Communities raise the alarm concerning Carding

72. From 2005 onwards, the Toronto Police Service's practice of Carding accelerated, continuing the disproportionate seizure of personal information from Black, First Nations, Inuit and Métis peoples.

73. From the outset of the development of Carding, individuals, community representatives and civil society organizations, alerted the Defendants of the disproportionate, discriminatory and deleterious effects of Carding on Black, First Nations, Inuit and Métis individuals and communities. It was particularly noted that the harmful effects of Carding on people with mental health illnesses could and can be especially devastating.

74. From 2011-2013, the Toronto Star published a series of investigative journalist reports on the practice of Carding in Toronto. Among other things, the Toronto Star was able to access and analyze some of the data within the Defendants' databases. The Toronto Star's analysis demonstrated the significant disproportionate use of Carding by the Defendants and the Defendants' officers on Back, First Nations, Inuit and Métis individuals.

f. The Defendants decides to continue the practice of Carding

75. In or about 2012, in response to continuing and significant public opprobrium over the practice of carding, the then Toronto Chief of Police, Bill Blair, directed the Chief's Internal Organizational Review to examine the use of Field Information Reports. This review formed the foundation of the Police and Community Engagement Review (the "**PACER**").

76. During the PACER, the Chief of Police received submissions from community groups, leaders of the Black, First Nations, Inuit and Métis communities, impacted individuals, and subject matter experts. These submissions repeatedly emphasized the discriminatory and ineffective nature of Carding.

77. Concurrently, in or about 2012, in response to continuing significant public opprobrium over the practice of Carding, the Toronto Police Board established the Street Check Sub-Committee to research and develop new policies concerning Carding (the "**Subcommittee**").

78. During the Subcommittee's review, it received submissions from community groups, leaders of the Black, First Nations, Inuit and Métis communities, impacted individuals, and subject matter experts. These submissions repeatedly emphasized that Carding was both discriminatory and ineffective.

79. On or around November 2013, Phase II of the PACER was published (the "**PACER II**"). The PACER II concluded that the continued use of Field Information Reports was important for public safety, and made suggestions for changes in the implementation of Street Checks. Notably, the conclusions of the PACER II did not admit any institutional or systematized discrimination caused by the polices of the

Defendants, and found that the perception of bias by the public was an accidental offshoot of an administrative program and certain "bad apple" officers:

> There are communities in Toronto who believe they have experienced biased-based policing during their interactions with police. This is especially prominent in the Black community, and particularly among Black youth, based upon some of their community engagement experiences. An unintended consequence of a performance management system that focused on quantitative measurements rather than qualitative value, potentially contributed to the community's experience. Furthermore, it is important to recognize the community's concerns may also be the result of the unintentional application of an Officer's personal biases. Decisions based on the intentional application of bias or racism have never been, and will never be, tolerated by the Service.

80. On or around November 18, 2013, in response to the PACER II, the Ontario Human Rights Commission ("**OHRC**") noted, "significant human rights concerns about racial profiling and its impact on racialized and Aboriginal Peoples. In particular, we raised concerns about the current practice of carding..." The OHRC particularly noted that the amendments to the practice of Street Checks proposed in the PACER II, institutionalized Carding by allowing officers of the Toronto Police Service to stop a member of the public who drew "the attention of police". The OHRC noted that this was "no different than stopping someone for the purpose "general investigation"".

81. On or around November 18, 2013, the Subcommittee reported to the Toronto Police Board. The Subcommittee did not recommend the end of Carding, and instead made recommendations to create policies to manage the further collection of data.

g. The Truth and Reconciliation Commission releases its Calls to Action

82. In or around June 2015, the Truth and Reconciliation Commission of Canada released its Calls to Action. The Calls to Action were issued to address the legacy of residential schools and to advance the process of Canadian reconciliation. Among other things, the Calls to Action addressed the discriminatory impact of the Canadian criminal justice system on First Nations, Inuit and Métis individuals including:

(a) Calls to Action 30 – which identified the need to eliminate "the overrepresentation of Aboriginal people in custody over the next decade"; and

(b) Call to Action 38 – which identified the need to eliminate "the overrepresentation of Aboriginal youth in custody over the next decade".

h. The United Nations critiques Canada for Carding

83. In or about October 2016, the United Nations' Working Group of Experts on People of African Descent released a statement following a fact-finding mission visiting Toronto, Ottawa, Halifax and Montreal.

84. The UN Expert Panel noted that it was "deeply concerned" by "the systemic anti-Black racism that continues to have a negative impact on the human rights situation of African Canadians", noting "clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement", and further noted the "arbitrary use of 'carding' or street checks disproportionately affects people of African descent".

i. The Defendants update its policies on Street Checks

85. In or around 2015, the Toronto Police Service updated its policies on Street Checks, including renaming "Field Information Reports" as "Community Engagements". While the method for documenting personal information collected from Carding changed, the new policy continued to allow the Defendants' officers to detain members of the public without a reasonable suspicion of criminal activity, and require them to provide personal information to an officer, including their address, contact information, ethnicity and/or race.

86. The Defendants retained and continue to retain the Class members' personal information.

j. Ontario introduces O. Reg. 58/16 to regulate the practice of Street Checks and Carding

87. In or around 2016, Ontario responded to the controversy surrounding carding by enacting the *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*, O. Reg. 58/16 ("**O. Reg. 58/16**"), under the *Police Services Act* to formally regulate Street Checks.

88. O. Reg. 58/16 was intended to provide police services in Ontario with rules for police-public interactions. It also required police officers to fulfill several duties before attempting to collect information from the public, including informing a detained individual of their right to walk away, and explaining the reason for the stop.

89. O. Reg. 58/16 contains broad and significant exclusions, for example, in circumstances "where police are investigating a specific offence".

90. In or around January 2017, Ontario ended the TAVIS policy and the specialized units of TAVIS officers were disbanded.

k. Justice Tulloch and the OHRC critique the Defendants' and officers of the Defendants' Carding practices

91. On or about May 18, 2017, the Executive Council of Ontario issued Order in Counsel 1058/2017 appointing the Chief Justice Michael Tulloch, then a justice of the Court of Appeal for Ontario, as an Independent Reviewer of O. Reg. 58/16, and requiring Chief Justice Tulloch to review the regulation in accordance with the Terms of Reference issued by the Minister of Community Safety and Correctional Services.

92. On or about May 19, 2017, the Minister of Community Safety and Correctional Services issued Terms of Reference to Chief Justice Tulloch, directing His Honour, *inter alia* to:

(a) review the content and implementation of O. Reg. 58/16;

(b) consult with relevant stakeholders on issues pertaining to this review; and

(c) produce interim and final reports.

93. On or about April 2017, the OHRC released its report "Under Suspicion – Research and Consultation Report on Racial Profiling in Ontario" (the "**Racial Profiling Report**").

94. The Racial Profiling Report compiled leading research and the experiences of Ontarians. The Racial Profiling Report noted that during its research and consultations the OHRC:

> …received hundreds of responses about racial profiling by police, from all regions of the province. In addition, the HRTO applications we analyzed alleged racial profiling by police most often (41%). The extensive nature of the reports is consistent with the notion that racial profiling in policing is a widespread concern across Ontario.

95. The Racial Profiling Report went on to note:

> A growing body of Canadian survey research and data collected on police traffic stops and street checks support that African Canadian and Indigenous people, and in some cities, Middle Eastern people, are disproportionately likely to be stopped and/or searched by the police than White people and people from other racialized groups. Arrest and charge data collected by the Toronto Police Service (TPS) and analyzed by the *Toronto Star* also shows that Black people may be treated more harshly than White people upon arrest.

96. The Racial Profiling Report further noted that racial profiling:

> …can have profound personal impacts. Racial profiling has a harmful effect on dignity. Victims may also lose their sense of being safe and secure, their liberty, their connection with their families and communities, and in the most tragic cases, their lives. Racial profiling also has harmful impacts on the social fabric of society.

97. Of particular note, 25.9% of all the Black respondents and 24% of the Indigenous respondents consulted for the Racial Profiling Report noted experiences of Street Checks and/or Carding.

98. On or about May 1, 2018, the OHRC provided recommendations concerning O. Reg. 58/16. The OHRC's recommendations particularly noted that the new regulation was too narrow:

> The exclusion of interactions where police are investigating a specific offence (which can be interpreted very broadly) and traffic stops threatens to render its mandate meaningless. There cannot be accountability for racial profiling in police interactions if, as appears to be the case in some police forces, only a small handful of interactions are being captured under the Regulation.

99. Furthermore, the OHRC noted that O. Reg. 58/16 would enable the Defendants and officers of the Defendants to continue Carding as:

> …the circumstances in which police are permitted to approach individuals in a non-arrest scenario and to collect identifying information should be further narrowed. The current Regulation permits the continued use of police tactics that have a disproportionate impact on Black, Indigenous and other racialized communities.

100. The OHRC's recommendations were endorsed by a wide-range of community and advocacy groups including, the Ontario Federation of Indigenous Friendship Centres, the Association of Black Law Enforcers, Aboriginal Legal Services of Toronto, the Black Action Defense Committee, Legal Aid Ontario and the Human Rights Legal Support Centre.

101. On or about December 11, 2018, Chief Justice Tulloch issued the Tulloch Report. Among other things, the Tulloch Report concluded that:

(a) in many police services, the number of street checks conducted became a measure of officer performance. As a result, police officers were incentivized to engage in arbitrary street checks as "the bar for suspicious behaviour was lowered, and then dropped entirely";

(b) street checks "evolved into a general, uncontrolled practice" with "significant levels of disproportionate application to marginalized, racialized and Indigenous people" and "a focused collection of their personal information despite the fact that the majority of them had no criminal involvement";

(c) ultimately, instead of capturing people involved in criminality, "[carding] captured and recorded the identity and personal information of hundreds of thousands of individuals who did not have any criminal history"; and that

(d) "Carding is a practice that no longer has any place in modern policing".

102. Importantly, the Tulloch Report noted that researchers had found the practice of Carding ineffective as a method of crime prevention or reduction. The Tulloch Report further underlined the deleterious impacts of Carding on the rights of Black, First Nations, Inuit and Métis persons, as well as degrading effect that Carding had on the public's trust in police officers.

103. The Tulloch Report made 129 recommendations concerning: the training of police officers, the danger of performance targets, the need for the Defendants to report on their compliance with policies that eliminated Carding, amendments to O. Reg. 58/16, and the implementation of O. Reg. 58/16.

104. To date, the Defendants have implemented only some of Chief Justice Tulloch's recommendations.

l. The OHRC's Public Inquiry find significant racial disparity in the Toronto Police Services' treatment of Black Torontonians

105. In or around November 2017, the OHRC launched a public inquiry into racial profiling and racial discrimination of Black individuals by officers of the Toronto Police Service.

106. On or about December 10, 2018, the OHRC released its first interim report, "A Collective Impact" (the "**First OHRC Interim Report**").

107. Among other things, the First OHRC Interim Report found that Black Torontonians are grossly over-policed, disproportionately charged with criminal conduct, sentenced more harshly than other groups, and more prone to being the victims of violence from officers of the Toronto Police Service during their detention or arrest.

108. On or about August 2020, the OHRC released its second interim report, "A Disparate Impact" (the "**Second OHRC Interim Report**").

109. The report particularly noted that Black Torontonians are 4.8 times as likely to be charged with "obstruction of justice" charges, highly-discretionary charges that arise from interactions with officers of the Toronto Police Service. These include interactions that were commenced by officers of the Toronto Police Service engaged in Carding.

110. The final report of the OHRC's inquiry into anti-Black Racism by the Toronto Police Service is expected to be released imminently, and will address the Defendants' policies, procedures, practices, training and education that continue to impact members of Toronto's Black community.

m. Research by the Defendants and others confirms that Black, First Nations, Inuit and Métis people continue to be subject to discriminatory treatment by police

111. On or about April 1, 2020, the *Anti-Racism Data Standards for the Identification and Monitory of Systemic Racism* (the "**Data Standards**") came into force, pursuant to the *Anti-Racism Act, 2017*, S.O. 2017, c. 15. Pursuant to the Data Standards, the Defendants started collecting race-based data in a systematized manner to benchmark, analyze and recognize systemic discrimination in their policies and practices.

112. On or about June 15, 2022, the Defendants released their findings based on their first year of collecting systematized race-based data, in 2020.

113. Among other things, these data demonstrated that Black individuals in Toronto remain 2.2 times more likely to have an interaction with an officer of the Toronto Police Service, and 1.6 times more likely to have force used on them during that interaction. First Nations, Inuit and Métis people were also 1.5 times more likely to have an interaction with an officer of the Toronto Police Service.

114. On or around November 15, 2022, the Native Women's Association of Canada released its Interim Report on Gender-Based Review on the Implementation of the *United Nations Declaration on the Rights of Indigenous People's Act* (the "**NWAC Interim Report**"). Among other things, the NWAC Interim

Report confirmed that discriminatory treatment by police of Indigenous women remained pervasive throughout Canada.

n. The Defendants continue to practice Carding in a discriminatory manner

115. To date, the Defendants continue to implement a policy of Carding. The Defendants' officers continue to detain members of the public, with no reasonable suspicion of their participation in criminal activity, and actively, or constructively, require them to provide personal information. Furthermore, the Defendants' officers continue to pursue policies that result in the disproportionate use of Carding on members of Black, First Nations, Inuit and Métis communities. This behaviour has a disproportionate impact on the Class members, due to historic and contemporary inequities faced by Class members, particularly in the criminal justice system. The Defendants are aware of the Toronto Police Service's continued use of discriminatory Carding, which is the product of the Defendants' ill-conceived policies and their inappropriate supervision.

116. Further, despite the overwhelming evidence that Carding is both discriminatory and ineffective, the Defendants and the Toronto Police Service continue to retain and use personal information collected through Carding. This personal information disproportionately pertains to Black, First Nations, Inuit, and Métis peoples. Personal information that the Defendants retained from Carding is made available to law enforcement agencies across the country for a wide array of purposes, including investigations and security checks. Due to historic economic inequities and contemporary stereotypes concerning Class members, the retention and use of these data have a disproportionate impact on the social and economic lives of the Class members.

117. Moreover, researchers have consistently found that Carding is ineffective at reducing crime rates, does not assist with investigation of criminal activities, and fails to protect or serve communities. Decades of research has repeatedly confirmed that the practice is an ineffective approach to policing.

118. This research has similarly confirmed that the practice has significant deleterious effects on the health, psychological integrity and safety of targeted individuals, and a fraying effect on impacted communities.

119. This research has affirmed the severe, numerous and disproportionate impacts of Carding on Class members, including:

(a) mirroring historical practices of restricting and controlling the movement of Black, First Nations, Inuit and Métis individuals;

(b) reaffirming false stereotypes that Class members are inherently more criminogenic than other Torontonians;

(c) contributing to race-based traumatic stress, a psychological burden that has been demonstrated to increase the manifestation of chronic physical and mental illness, and significantly decrease the life expectancy of racialized Canadians, particularly Black, First Nations, Inuit and Métis individuals;

(d) increasing alienation, decreasing the sense of trust and belonging in society, and degrading social cohesion between the Class members and Canadian society,

(e) causing grave and long-term effects on youth Class members, with youth feeling singled out, fearful of police officers, and fearful in public;

(f) instilling distrust and antipathy between Class members, their communities, the criminal justice system, and government agencies in general;

(g) dissuading Class members and their communities from seeking employment within, or engaging with, the criminal justice system – including seeking employment with the

Defendants – thereby perpetuating the continued under-representation of Black, First Nations, Inuit and Métis employees throughout the justice system;

(h) dissuading Class members and their communities from seeking public office, or working with government in general – thereby perpetuating the continued under-representation of Black, First Nations, Inuit and Métis individuals throughout government; and

(i) ultimately contributing to the over surveillance and over incarceration of Class members and their communities.

o. Information collected from Carding has, and continues, to negatively impact Class members' employment

120. The Defendants' practice of Carding has, and continues to, preclude, deny or end the employment of Class members, or materially impede their advancement in the workplace.

121. Various employers require their employees or prospective employees provide a security, criminal or background check, as a condition of obtaining, maintaining or advancing in employment.

122. Employers that require security, criminal or background checks include a number of fields, including, but not limited to, employment:

(a) with vulnerable communities such as children and the elderly;

(b) with the Federal public service;

(c) as a member of the armed forces;

(d) at sensitive sites such as in airports, ports, prisons, and nuclear power stations; and

(e) working in law enforcement, including with the Defendants, particularly as a police officer.

D. THE DEFENDANTS BREACHED THE CLASS MEMBERS' RIGHTS

123. The Defendants breached Class members' rights under sections 8, 15, 7, and 9 of the *Charter*.

a. The Defendants breached Section 8 of the *Charter*

124. The Defendants' historical and contemporary implementation of Carding has, and continues to, breach Class members' right to be secure against unreasonable search and seizure. Through the repeated and wanton collection and retention of private and personal information from individuals who were not engaged in, or suspected of a crime, the Defendants and the Defendants' officers improperly invaded the Class members' privacy.

125. The act of unreasonable search and seizure is particularly pernicious in light of the long history of Black, First Nations, Inuit and Métis individuals experiencing limits on their ability to travel freely in public, and being forced to summarily provide personal information to law enforcement officers.

126. The harms of Carding are aggravated by the disproportionate rate of interactions between the Defendants' officers and Black, First Nations, Inuit and Métis individuals, and the much higher use of force by police officers during these encounters. Ultimately, the Defendants' policies and practices of arbitrarily searching, seizing and retaining personal information from Class members exposes Class members to higher risks of violence from their interactions with the police. Additionally, in light of the widespread knowledge of the increased risk of violence from police officers, arbitrary search and seizure also inflicts mental and psychological harm due to Class members' legitimate fear that police interactions may be violent, or even fatal.

127. The Defendants' policies and practices of Carding does not further a legitimate state goal; instead, Carding is directly contrary to the Defendants' guiding principles, as enumerated in section 1 of the *Police Services Act*, including the importance of safeguarding fundamental rights, cooperating with communities, and being sensitive to the pluralistic, multiracial and multicultural character of Ontario society.

128. Class members had, and have, a reasonable interest in informational privacy, particularly in not divulging their personal and private information to law enforcement, including their identity, their race or ethnicity, their movements, their associates, and their business. In the totality of the circumstances, Class members had and have a reasonable expectation to protect a biographical core of their personal information, and particularly, a reasonable expectation that they would not actively or constructively be compelled to divulge personal information.

129. The importance of the Class members' ability to protect their privacy is particularly relevant in light of the possibly far-reaching impacts of having personal information retained by the police. The retention of this information by the Defendants can preclude Class members seeking, obtaining or progressing within employment, in an array of fields. This can have further deleterious effects on Black, First Nations, Inuit and Métis persons, who already receive diminished economic opportunities relative to other Canadians.

130. The Defendants' seizure and retention of the Class members' personal information was not authorized by law. The Defendants' and officers of the Defendants' practice of seizing and retaining the Class members' personal information was beyond the Defendants' officers' powers under either the *Police Services Act*, any other applicable legislation or regulation, or at common law.

131. In the alternative, any legislation, regulation or policy that grants the Defendants' and the Toronto Police Service the ability to seize the Class members' personal information with no reasonable suspicion of criminality, inclusive of the *Police Services Act*, and O. Reg. 58/16, is unreasonable.

132. In either event, the manner in which the Defendants and the Toronto Police Service conducted Carding, and the seizure of Class members' personal information, is itself unreasonable.

b. The Defendants breached Section 15 of the *Charter*

133. The Defendants' implementation of Carding has had the impact of creating and contributing to distinctions for the Class members based on the enumerated ground of race, national or ethnic origin, and colour. The Defendants' implementation of Carding has had the impact of Class members being disproportionally subjected to surveillance, criminalization and having their privacy invaded.

134. The overrepresentation of the personal information of Black, First Nations, Inuit and Métis individuals in the Defendants' databases, relative to the general population of Toronto or Ontario, is compelling proof that the Defendants have implemented Carding in a manner that has both created and contributed to distinctions in respect of Class members based on the enumerated grounds of race, national or ethnic origin, and colour.

135. The Defendants' and the Toronto Police Service's actions imposed, and continues to impose a burden on the Class members by perpetuating historical disadvantages, particularly in the manner that Carding echoes historical practices that discriminatorily surveilled and impeded the free movement of First Nations, Inuit and Métis and Black persons.

136. With regards to First Nations, Inuit and Métis persons, the Defendants' and the Toronto Police Service's practice has further echoes of Canada's shameful history of arbitrarily detaining Indigenous youth – be it through the implementation of Residential Schools, through the removal of children from their families in the Sixties Scoop; or through the contemporary disproportionate removal of Indigenous children from their families.

137. Carding further has the effect of imposing a burden on the Class members as it reinforces prejudice and stereotypes concerning the Class members. Among other things, it affirms false concepts that the Class members and their communities are:

(a) inherently more criminogenic and require increased surveillance;

(b) more prone to violence and a greater risk to public safety, particularly young men within the Class; and

(c) cannot be trusted to occupy public space without posing a threat to the general public.

138. Carding is arbitrary, as it is an ineffective criminal justice policy that does not assist in reducing criminality, the investigation of crimes, or reduce violence within communities. The fact that these policies are ineffective was, and continues to be, repeatedly communicated directly to the Defendants, before and since 2011.

139. The Defendants' actions perpetuate, reinforce or exacerbate numerous disadvantages, including:

(a) making the Class members feel unsafe, surveilled and insecure in public space, and in their own communities;

(b) making Class members fearful to spend time in public, including ceasing remaining connected with family members and community, contributing to cultural and public interest programs and events, volunteering or other attending engagements outside the household;

(c) increasing the risk that Class members face violence from the Defendants' officers;

(d) reinforcing alienation and disconnection between Class members, their communities, their families and Toronto and Ontario more broadly;

(e) reinforcing alienation, and a sense among Class members of being targeted and unfairly singled out, particularly youth Class members;

(f) contributing or exacerbating race-based traumatic, resulting in various long term physical and psychological health impacts;

(g) dissuading Class members from using the services of the criminal justice system, for fear of being arbitrarily targeted, precluding Class members who are victims of criminality receiving justice; and

(h) contributing to the grossly disproportionate rate at which charges are laid against the Class members, resulting in increased rates of incarceration and longer sentences.

140. Carding frays the fabric of community and public life. This is particularly detrimental to the Class members in light of Canadian policies that have specifically targeted or precluded the development and maintenance of the Class members' cultural practices and eroded community life.

141. First Nations, Inuit and Métis Class members, in particular, have been the target of historical efforts to disrupt their communities and eradicate their cultural practices. This stands in direct contrast to the significant importance of community, cultural networks and communal space for many First Nations, Inuit and Métis persons.

142. Carding also restricts employment opportunities and causes Class members to self-select away from professions that require a security check, or require exposure to the Defendants and the Defendants' officers.

143. The Defendants' and the Defendants' officers discrimination against the Class members has caused the Class members to suffer the harms described below. The Defendants' mistreatment of Class members has left many of them hurt, distressed or exacerbated, or caused poverty. In so doing, the Defendant have worsened pre-existing vulnerabilities.

c. The Defendants breached Section 7 of the *Charter*

144. The Defendants also breached Class members' right to liberty and security of the person by invading Class members' privacy, restricting their movements, and causing serious psychological distress.

145. In the ordinary course – particularly in circumstances where officers of the Toronto Police Service have no reasonable grounds to suspect criminality – Class members have a right to autonomy in their inherently private choices about when they share their personal information with law enforcement. However, by Carding Class members, the Toronto Police Service compelled them to abandon their right to protect their personal information. By implementing Carding, the Defendants violated an essential aspect of Class members' right to liberty in a free and democratic society.

146. The Defendants' conduct is particularly egregious because they knowingly allowed the Toronto Police Service to deploy Carding in a discriminatory manner. With the Defendants' knowledge and direction, the Toronto Police Service targeted Class members on the basis of their race or ethnicity. To the present day, Carding restricts the ability of many Black, First Nations, Inuit and Métis people to freely move about their own communities, and to control their physical and psychological integrity.

147. Furthermore, the Defendants' practice of Carding has caused Class members serious psychological harm and mental anguish, unlawfully infringing their right to security of the person. Arbitrarily stopping Class members on the basis of race or ethnicity, and seizing and retaining their personal information caused Class members to experience high levels of fear, anxiety, and stress. Moreover, Carding, as a practice, is more than acute encounters with the Toronto Police Service. Class members live their lives with the expectation that they may, at any moment, be subjected to baseless harassment by the Toronto Police Service. The serious psychological impacts of pernicious and unwarranted police surveillance have long lasting consequences for many Class members, including depression, anxiety, and post-traumatic stress disorders, among others.

148. None of the foregoing deprivations was in accordance with the principles of fundamental justice as each was unnecessary and unrelated to the purpose of Street Checks under the relevant policies and legislation, and as such were arbitrary, overbroad and grossly disproportionate. It is further a principle of fundamental justice that personal information that is subject to a reasonable expectation of privacy cannot

be disclosed to third parties without informed consent. The Defendants' and the Toronto Police Service's sharing of the data from Carding with third-party law enforcement agencies and governmental departments therefore constitutes a further contravention of the principles of fundamental justice.

d. The Defendants breached Section 9 of the *Charter*

149. The Defendants also breached the Class members' right to be free of arbitrary detention. The Defendants' practice of Carding included the arbitrary detention of Class members to extract personal information from them.

150. The Defendants' practice of Carding required Class members to provide personal identifying information and respond to questioning that exceeded preliminary investigative questioning. Class members were psychologically or physically restrained when officers of the Toronto Police Service detained them and forced or constructively forced them to divulge personal information.

151. The policy of Carding replicates an erroneous, stereo-typical and discriminatory concept that all Black, First Nations, Inuit and Métis individuals are inherently criminogenic, a risk to the safety of the general public, and should be treated with suspicion regardless of their location, conduct or behaviour in public. This has a pronounced impact on Class members' sense of security, belonging in Toronto, and connection to community.

152. Officers of the Toronto Police Service stopped all Class members in an arbitrary fashion. Class members were all detained without reasonable grounds, as there was no reasonable basis to believe that the Class members were involved in a criminal offence, or had information to advance the investigation of a criminal offence, or that their detention was otherwise necessary.

153. As admitted in the PACER II, the Defendants' own review of Carding, the Defendants' officers used Carding as a basis to detain Class members for improper reasons, making their detentions arbitrary. As admitted in the PACER II, some of the Defendants' officers detained Class members because of their

bias towards Black, First Nations, Inuit and Métis persons. These improper motives further underscore the unlawfulness of these detentions.

e. The Defendants' breaches are not saved by Section 1 of the *Charter*

154. None of the *Charter* breaches set out above can be justified in a free and democratic society, and they cannot be saved by section 1 of the *Charter*. On the contrary, they represent a derogation from the Defendants' guiding principles, as well as a breach of the oaths taken by officers of the Toronto Police Service to provide services in accordance with the *Charter*, the *Police Services Act*, and the *Human Rights Code*.

E. THE DEFENDANTS ACTED TORTIOUSLY

a. The Defendants acted negligently in their provision of policing services to the Class members

155. The Defendants and the Defendants' officers owed a private law duty of care to the Class members when they stopped them for the purpose of Carding. The duty of care arose when officers of the Toronto Police Service assumed control of Class members, restricted their movements, compelled their speech, and seized and stored their personal information. The duty of care is codified, among other places, in the *Police Services Act*, the oath taken by officers of the Toronto Police Service, and at common law.

156. Through their systemic carelessness and willful blindness, the Defendants created, contributed to and sustained the Toronto Police Service's policy and practice of Carding. The Defendants and the Toronto Police Service departed from their statutory responsibilities and breached the standard of care of a reasonable police service and reasonable police officers by carelessly or willfully failing to implement adequate measures to ensure that officers of the Toronto Police Service complied with the *Charter* and other applicable legislation, including the *Police Services Act* and the *Human Rights Code*, and by encouraging or condoning the practice of Carding. The Defendants knew that the Toronto Police Service practiced and practices Carding, they knew that the practice was and remains unlawful, they knew that the

practice caused and continues to cause serious harm to the Class members, and they failed to take reasonable corrective measures in accordance with the standard of care and their statutory responsibilities.

157. The Defendants are directly liable for the actions of the Toronto Police Service and vicariously liable for the actions of the Defendants' officers in implementing the Toronto Police Service's policy and practice of Carding. The Defendants' systemic negligence caused the damages to the Class members set out below.

b. The Defendants intruded upon the Class members seclusion

158. Additionally, by detaining Class members, seizing their personal information, and retaining that information for their own purposes, the Defendants and the Toronto Police Service intruded upon the seclusion of Class members. Carding is a tortious invasion of privacy. The intrusion of Class members' privacy has been neither trivial nor transient. Carding compelled Class members to produce personal information, including their identity, their race or ethnicity, their movements, their associates, and their business, all of which was stored in the Defendants' databases indefinitely for use by law enforcement agencies and government departments. Ms. Farah's experience illustrates the way in which the Toronto Police Service and others assemble these data, together with information from other instances of Carding, to form a detailed and far-ranging picture of private human interactions and to surveil a population.

159. Carding is unlawful. It breaches the Class members' *Charter* rights and it is inconsistent with the *Police Services Act* and the *Human Rights Code*, among other relevant statutes. Carding is also a breach of the Defendants' duties to the public at common law.

160. Carding has caused numerous damages to Class members, including the infringement of their psychological and physical integrity; precluding or impeding them from interacting with other members of the public or occupying public space; interfering Class members' ability to retain, seek or progress in employment; and causing ongoing distress, annoyance and embarrassment for the Class members.

161. The Defendants have actively refused to acknowledge the full extent of the discriminatory nature of their conduct, or to apologize for Carding, and the Defendants have not made any substantive amends to the Class members.

162. A reasonable person would regard the Defendants' arbitrary and discriminatory seizure and retention of the Class members' personal information as highly offensive, and likely to cause distress, humiliation or anguish. The Defendants' conduct abrogates or restricts Class members' basic right to navigate public space without being harassed by the police and having their personal information extracted.

F. CLASS MEMBERS SUFFERED DAMAGES

163. As a result of Defendants' breaches of the Class members' *Charter* rights, Class members have faced and continue to face:

(a) serious psychological harm, including depression, anxiety, race-based traumatic stress, and paranoia;

(b) separation, alienation and disconnection from their communities;

(c) loss of employment, as well as loss of progression and future employment opportunities;

(d) exposure to the use of excessive force during their detention, including serious injury, sexual assault, and death; and

(e) intergenerational impacts of the stereotyping.

164. As a result of the foregoing, the Class members suffered and continue to suffer severe adverse effects, including:

(a) emotional and mental distress including, post-traumatic stress disorders, panic disorders, specific phobias, adjustment disorders, and in some cases, suicidal ideation, self harm, and serious mental illness;

(b) difficulty forming and maintaining relationships;

(c) difficulty accessing and maintaining stable employment, housing, and transportation;

(d) increased risk of poverty, homelessness, unemployment, illness, hospitalization, drug use, poor educational outcomes, being a victim of violence, involvement in the criminal justice system, and committing or attempting suicide; and

(e) loss of connection to their family, community, and cultures.

165. As a consequence, the Class members suffered injury and damages including:

(a) serious physical and psychological harm;

(b) loss of income and loss of advantage; and

(c) pain and suffering.

G. PUNITIVE, EXEMPLARY, AND AGGRAVATED DAMAGES

166. The Defendants, including their Board Members, senior officers, directors, and senior staff, had, or should have had, specific and complete knowledge of the widespread damage to the Class that resulted from the breaches set out above. Despite this knowledge, the Defendants continued, and continues, to breach their respective duties to Class members, who were profoundly vulnerable to their delicts, with devastating consequences.

167. Importantly, a significant and public rebuke is required when the officers of a police force systemically and deliberately exceed the limits on their statutory or common law powers. In appropriate

circumstances, police officers are authorized to significantly interfere with the physical and psychological integrity of members of the public. Given the scope of police officers' powers, it is imperative that they be exercised in a manner that is reasonable, proportionate and lawful. It is equally important that those charged with supervising police officers, like the Defendants, discharge their duties carefully and without wonton disregard for the harms perpetrated by the officers for whom they are responsible.

168. The Defendants were consistently warned of the deleterious and disproportionate impacts of the practice of Carding on Class members, as well as the fact that the practice is ineffective in investigating criminal offences or promoting public safety. These warnings came from community members and community leaders, academic research, expert panels and reports, and the Defendants' own investigations. Despite these warnings, the Defendants nevertheless failed to take appropriate action.

169. The high-handed conduct of Defendants warrants the condemnation of this Honourable Court. At all material times, the Defendants asserted direct or *de facto* control over Carding practices, and they conducted their affairs with wanton and callous disregard for Class members' interests, safety and wellbeing.

170. Over a lengthy period, the Defendants treated the Plaintiff and the Class members in a manner that could only result in aggravated and increased mental and physical suffering for a vulnerable population. The Defendants violations of Class members' rights have irreparably damaged their lives, and it is appropriate to order punitive, exemplary, and aggravated damages.

H. LIMITATIONS

171. The running of any applicable limitation period on the claims asserted by Class members has been suspended since December 5, 2013, in accordance with subsection 28(1) of the *Class Proceeding Act, 1992* due to the filing of a statement of claim to commence a class proceeding under the *Class Proceeding Act, 1992*, bearing court file number CV-13-494306.

172. In the alternative, the extent of Class members' claims will not be discoverable until the Defendants produce the relevant Defendants' databases, or otherwise confirm the nature, extent, and use of the personal information collected and recorded in respect of each Class member.

I. MISCELLANEOUS

173. Full particulars respecting the Defendants' breaches of their duties are within the Defendants' knowledge, control and possession.

174. This action is commenced pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

175. The Plaintiff and Class members also plead and rely upon the:

(a) *Charter of Rights and Freedoms, Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;

(b) *Police Services Act,* R.S.O. 1990, c. P.15;

(c) *Human Rights Code,* R.S.O. 1990, c. H.1;

(d) *Limitations Act, 2002,* S.O. 2002, c. 24, Sched. B

(e) *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

(f) such other legislation or regulations as may apply.

August 14, 2023

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AYAAN FARAH Plaintiff	and	TORONTO POLICE BOARD SERVICES, et al. Defendants	Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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