

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**C. DAVID NAYLOR and ARNOLD ABERMAN**

Plaintiffs

- and -

**MICHELE BRILL-EDWARDS, HELEN CHAN, JOHN DICK, PETER DURIE,  
BRENDA GALLIE, MARC GIACOMELLI, MIRIAM KAUFMAN, NANCY  
OLIVIERI, PAUL RANALLI and MARGARET THOMPSON**

Defendants

**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 TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

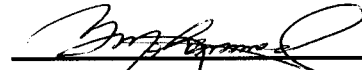
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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

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

Date July 3, 2002

Issued by

  
Local registrar

Address of court office 393 University Avenue  
Toronto, ON

- TO: Michele Brill-Edwards,  
c/o 89 Wychwood Park,  
Toronto, ON M6G 2V5
- AND TO: Helen Chan  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8
- AND TO: John Dick  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8
- AND TO: Peter Durie  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8
- AND TO: Brenda Gallie  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8
- AND TO: Marc Giacomelli  
c/o 89 Wychwood Park,  
Toronto, ON M6G 2V5
- AND TO: Miriam Kaufman  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8
- AND TO: Nancy Olivieri  
c/o Hospital for Sick Children  
555 University Avenue  
Toronto, ON M5G 1X8

AND TO: Paul Ranalli  
c/o Toronto Western Hospital  
399 Bathurst Street  
Toronto, ON M5T 2S8

AND TO: Margaret Thompson  
c/o 89 Wychwood Park,  
Toronto, ON M6G 2V5

## CLAIM

1. The plaintiffs claim against the defendants:
  - (i) general damages in the amount of \$1,000,000.00;
  - (ii) punitive, aggravated and exemplary damages in the amount of \$1,000,000.00;
  - (iii) a full and unqualified apology and retraction from each defendant of the defamatory statements republished by the defendants
  - (iv) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990. C.13, and amendments thereto;
  - (v) post-judgment interest pursuant to the *Courts of Justice Act*;
  - (vi) costs of this action on a substantial indemnity basis with all applicable taxes thereon; and,
  - (vii) such further and other relief as this Honourable Court may deem just.

## THE PARTIES:

2. The plaintiff C. David Naylor ("Naylor") is an individual residing in the City of Toronto. Naylor is currently the Dean of the Faculty of Medicine of the University of Toronto and the Vice Provost, Relations with Health Care Institutions, University of Toronto. Naylor was the Dean of the Faculty of Medicine at the time the Defamatory Article (as defined below) was published and subsequently republished by the defendants.

3. The plaintiff Arnold Aberman ("Aberman") is an individual residing in the City of Toronto. Aberman was the Dean of Medicine of the University of Toronto from December 1992 to June 1999. Aberman was the former Dean of Medicine at the time of the Defamatory Article (as defined below) was published and subsequently republished by the defendants.

4. All of the defendants, as identified below, are primary and controlling members of an unincorporated organization known as Doctors for Research Integrity (“DRI”), whose stated objective is to promote "research integrity and academic freedom".
5. The defendant Michele Brill-Edwards (“Edwards”) is an individual residing in the City of Toronto. Edwards is a paediatrician and a primary and controlling member of DRI.
6. The defendant Helen Chan (“Chan”) is an individual residing in the City of Toronto. Chan is a Senior Scientist at the Research Institute, Hospital for Sick Children and holds the title of Professor in the Department of Paediatrics at the University of Toronto. Chan is a primary and controlling member of DRI.
7. The defendant John Dick (“Dick”) is an individual residing in the City of Toronto. Dick is a Senior Scientist at the Research Institute, Hospital for Sick Children and holds the title of Professor in the Department of Medical Genetics and Microbiology at the University of Toronto. Dick is a primary and controlling member of DRI.
8. The defendant Peter Durie (“Durie”) is an individual residing in the City of Toronto. Durie is a Senior Scientist at the Research Institute, Hospital for Sick Children and holds the title of Professor in the Department of Paediatrics at the University of Toronto. Durie is a primary and controlling member of DRI.
9. The defendant Brenda Gallie (“Gallie”) is an individual residing in the City of Toronto. Gallie is a doctor at the Hospital for Sick Children and holds the title of Professor of Ophthalmology, Medical Genetics and Microbiology and Medical Biophysics at the University of Toronto. Gallie is a primary and controlling member of DRI.
10. The defendant Marc Giacomelli (“Giacomelli”) is an individual residing in the City of Toronto. Giacomelli is a primary and controlling member of DRI and its co-chair.
11. The defendant Miriam Kaufman (“Kaufman”) is an individual residing in the City of Toronto. Kaufman is a paediatrician in the Division of Adolescent Medicine at the Hospital

for Sick Children, and holds the title of Associate Professor at the University of Toronto. Kaufman is a primary and controlling member of DRI.

12. The defendant Nancy Olivieri (“Olivieri”) is an individual residing in the City of Toronto. Olivieri is a doctor at the Hospital for Sick Children and holds the title of Professor of Medicine and Paediatrics at the University of Toronto. Olivieri is a primary and controlling member of DRI.

13. The defendant Paul Ranalli (“Ranalli”) is an individual residing in the City of Toronto. Ranalli is a neurologist at the Toronto Western Hospital and holds the title of Lecturer in the Department of Medicine at the University of Toronto. Ranalli is a primary and controlling member of DRI and its co-chair.

14. The defendant Margaret Thompson (“Thompson”) is an individual residing in the City of Toronto. Thompson is a Professor Emeritus of Medical Genetics and Microbiology at the University of Toronto. Thompson is a primary and controlling member of DRI.

#### **REPUBLICATION OF LIBEL AND THE DEFAMATORY MEANING:**

15. The defendants, through their organization D.R.I., control and/or operate the web site [www.doctorsintegrity.com](http://www.doctorsintegrity.com) (the “DRI site”). At some time unknown to the plaintiffs, but prior to May 13, 2002, when it came to the attention of the plaintiffs, the defendants caused, authorized or, in the alternative, negligently failed to prevent an article authored by Arthur Schafer entitled “Selling out to big drug companies” and originally published in The Toronto Star on September 28, 2001 (the “Defamatory Article”, a copy of which is attached hereto as Schedule “A”) to be republished on the DRI site. The article was continually republished on the DRI site until on or about May 18, 2002.

16. The defendants caused, authorized or, in the alternative, negligently failed to prevent the Defamatory Article from being republished with the full knowledge that on December 21, 2001, The Toronto Star and Schafer issued and published an apology entitled “Good faith of deans not questioned” in reference to this article retracting certain allegations made in the

article, expressing the regret of The Toronto Star and Schafer for creating adverse impressions about Naylor and Aberman, and specifically apologizing to Naylor and Aberman. A copy of the apology is attached as Schedule "B" to this statement of claim.

17. The defendants had earlier endorsed and expressed the sentiments expressed in the Defamatory Article and sought to draw attention to it. Some or all of the primary and controlling members received copies on or about December 21, 2002 of an electronic notice concerning the apology published by The Toronto Star and Schafer.

18. In the alternative, the defendants who did not personally know of the apology caused the Defamatory Article to be republished when they ought to have known that on December 21, 2001, The Toronto Star and Schafer issued and published an apology entitled "Good faith of deans not questioned" in reference to this article. In all instances the defendants, as the primary and controlling members of DRI, are fully responsible for any and all items published on the DRI website.

19. The Defamatory Article maliciously republished on the DRI site was defamatory of the plaintiffs in its entirety, as well as in the following particular statements:

(i) the headline of the article itself which states:

Selling out to big drug companies

(ii) the first and second paragraphs of the article which state:

Pity the poor medical school dean. You work your fingers to the bone tickling the egos of drug company CEOs. You market the excellence of your researchers to the companies and induce them to fork over millions of dollars in research funds, sending your university to the top of the league table. And then "some damn fool of a researcher" proceeds to offend the biggest potential donor with a cacophony of whistle blowing. After all your hard work, the promised \$50 million donation vanishes.

That, in a nutshell, was the plight of the previous University of Toronto Medical School dean. Now, a new dean is earning his decanal stripes in the courtship of the pharmaceutical giants and, wouldn't you know it, another scandal hits the front pages. Lawsuits are flying. The U of T looks bad, again.

(iii) the third paragraph of the article which states:

Its that old bugbear, academic freedom. The world's pre-eminent medical journals were praised last month of their new policy, whereby researchers are required to keep personal control of their research design and data and not cede control to their drug company sponsors. But this is not likely to do much good if our leading research universities sack researchers who show too much independence.

(iv) the fourth paragraph which states:

The same faculty of medicine that wouldn't support Nancy Olivieri in her battle for academic freedom has discovered that an eminent psychiatrist it was courting, Dr. David Healy, carries an offensive odour. When Healy gave a lecture last year at the Centre for Addiction and Mental Health, affiliated with the U of T medical faculty, the reservations he expressed about the side effects of Prozac allegedly upset his academic audience. It's possible, as well, that his criticisms offended the Eli Lilly pharmaceutical company, which makes Prozac, and which just happens to be a major donor to the centre.

(v) the fifth paragraph which states:

Ultimately, Healy's concerns about the possible adverse side effects of Prozac for some patients will be resolved by careful



scientific research. But raising such critical questions should not, surely, be a hanging offence.

(vi) the sixth paragraph which states:

Sadly, the academic leader of our country's most prestigious medical faculty does not see anything worrying about the denial of an academic position to an eminent medical scholar immediately after he expressed views critical of an Eli Lilly product. His predecessor could see no issue of academic freedom in the Olivieri case and the current dean can see no issue of academic freedom in the Healy case. The Olivieri problem was merely a "scientific dispute" and the Healy job offer withdrawal is merely an issue of "lack of fit" with other staff. So no corrective action is needed.

(vii) the seventh paragraph which states:

It almost seems as if successful candidates for medical deanship at the University of Toronto have all passed the same initiation test. They have proven their suitability for the job by demonstrating that they are incapable of recognizing even the most blatant threat to academic freedom.

(viii) the ninth paragraph which states:

...Universities, hospitals and researchers enter into alliances or "partnerships" with industry, thereby creating an "academic-industrial complex". When universities embrace the sponsorship of business, business values can easily crowd out the values of scientific integrity.

(ix) the twelfth paragraph which states:

In other words, put scientists and scientific institutions in a conflict-of-interest situation where they are committed to making money as well as to the pursuit of scientific truth, and they will respond just like the rest of us.

20. The said words set out in paragraph 19 hereof are defamatory of Naylor and Aberman in their natural and ordinary meaning or, in the alternative, by way of innuendo the words meant and were understood to mean that, in their positions of Dean and former Dean, respectively, of the Faculty of Medicine at the University of Toronto, the plaintiffs:

- (i) have been, or are in the process of, preferring the interest of big drug companies over the interest of the Faculty of Medicine or the University;
- (ii) have each embarked on this course because of the prospect of, or the fact of, financial contributions from those companies to the faculty or the University;
- (iii) were unable to take appropriate and morally correct actions because of this conflict of interest and a desire not to upset the pharmaceutical companies;
- (iv) were corrupted by a desire to please the pharmaceutical companies;
- (v) were and are unsuited to be Dean of the Faculty of Medicine; and
- (vi) failed, or are failing to perform the duties of Dean adequately and honestly.

21. With regard to the Aberman, the words set out in paragraph 19 hereof are defamatory in their natural and ordinary meaning and/or by way of innuendo the words meant and were understood to mean that:

- (i) Aberman (the former Dean referred to in the Defamatory Article) spent very considerable time and effort ingratiating himself to the Chief Executive Officers of drug companies and, in particular seeking to obtain a \$50 million donation from Apotex;

- (ii) Aberman considers that all this work came to nothing because of the activities of someone he considers to be a “damn fool”, namely Dr. Nancy Olivieri;
- (iii) Aberman is incapable of recognizing even the most blatant threat to academic freedom because he has been corrupted by his allegiance to the pharmaceutical industries;
- (iv) Aberman considers Nancy Olivieri to be a “damn fool” because his judgement is clouded by a conflict of interest;
- (v) Aberman is so blinded by that conflict as to be unable to recognize an issue of academic freedom in her case;
- (vi) Aberman was unable to take appropriate and morally correct actions in this case because of his conflict of interest and his desire not to upset the pharmaceutical companies;
- (vii) Aberman was corrupted by a desire to please the pharmaceutical companies;
- (viii) because of these inabilities, Aberman was unsuited to be Dean; and
- (ix) Aberman failed to perform his duties of Dean adequately and honestly.

22. With respect to the Naylor, the words set out in paragraph 19 are defamatory in their natural and ordinary meaning and/or by way of innuendo the words meant and were understood to mean that:

- (i) Naylor (the present dean referred to in the Defamatory Article) has expended considerable time and energy seeking to curry favour with large pharmaceutical companies;
- (ii) Naylor is incapable of recognizing even the most blatant threat to academic freedom because of his allegiance to the pharmaceutical industries;

- (iii) Naylor is not a credible medical scientist because of his integrity and commitment to the scientific method have been corroded and corrupted by the values in the marketplace and more specifically by his allegiance to the pharmaceutical industry;
- (iv) Naylor has taken no corrective or other actions as regards to Dr. Healy because his judgement is clouded by a conflict of interest arising from his allegiance to pharmaceutical companies;
- (v) Naylor is so blinded by conflict of interest as to be unable to recognize the issue of academic freedom in the case of Dr. Healy;
- (vi) Naylor is corrupted by his desire to please the pharmaceutical companies;
- (vii) because of these factors, Naylor is unsuited to be Dean; and
- (viii) Naylor has not fulfilled his professional occupational duties in an honest manner because he is being corrupted by allegiance to the pharmaceutical industry.

23. Each of these defamatory statements was intended to refer and did refer to the plaintiffs, and could be and was understood to refer to the plaintiffs. Each statement was defamatory of the plaintiffs. Moreover, the subsequent publication (i.e. The Toronto Star and Schafer apology referred to in paragraphs 16) identified the plaintiffs by name.

24. All of the defendants are primary and controlling members of DRI and they all caused, authorized or, in the alternative, negligently failed to prevent the republication of the Defamatory Article. All defendants are jointly and severally liable to the plaintiffs for damages as a result of the publication of the Defamatory Article on the DRI site.

25. The defendants knew or ought to have known the plain meaning and innuendo of the words contained in the Defamatory Article were defamatory and libellous of the plaintiffs and that the words, their meaning and innuendo were untrue. The republication of the Defamatory

Article has injured the plaintiffs' reputation in the community and has resulted in the plaintiffs suffering loss of reputation and distress.

26. The defendants acted out of malice towards the plaintiffs and with the deliberate intention of discrediting their reputation and holding them up to public scandal, ridicule and contempt. The conduct of the defendants entitles the plaintiffs to aggravated, exemplary and punitive damages.

27. The fact that the Defamatory Article was published on the D.R.I. website after The Toronto Star and Schafer had published an apology and retraction and in full knowledge of such publication is evidence of malice.

28. The plaintiffs were personally injured by the republication of the Defamatory Article and by the defendants' conduct. Nonetheless, the plaintiffs intend to donate all damages recovered to a bursary fund for the benefit of medical students

29. On or about May 13, 2001, the defendants were served with notice pursuant to Section 5(1) of the *Libel and Slander Act*, R.S.O. 1990, Chap-L-12 (the "Notice").

30. On or about May 29, 2002 the defendants posted the Toronto Star and Schafer apology on the DRI site. The defendants have also posted a statement purporting to be an apology of their own on the DRI site. This purported apology fails to make explicit reference to the article republished by the defendants, was not approved by the defendants and, in any event, falls far short of actually constituting an apology. A copy of the DRI "apology" is attached as schedule "C" to this statement of claim.

31. The defendants removed the Defamatory Article on or about May 18, 2001 after the plaintiffs had served the defendants with the Notice. They have not apologized directly to the plaintiffs for or retracted their republication of the Defamatory Article and have refused to provide letters of apology to the plaintiffs. The "apology" posted by the defendants was not provided to the plaintiffs for review or approval and is unacceptable to them.

The plaintiffs propose that this action be tried at Toronto.

July 3, 2002

**Heenan Blaikie LLP**

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Toronto, Ontario M5J 2J4

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Solicitors for the Plaintiffs

## SCHEDULE "A"

**THE TORONTO STAR**

September 28, 2001

**SELLING OUT TO BIG DRUG COMPANIES**

By: Arthur Schafer

Pity the poor medical school dean. You work your fingers to the bone tickling the egos of drug company CEOs. You market the excellence of your researchers to the companies and induce them to fork over millions of dollars in research funds, sending your university to the top of the league table. And then "some damn fool of a researcher" proceeds to offend the biggest potential donor with a cacophony of whistle blowing. After all your hard work, the promised \$50 million donation vanishes.

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It's that old bugbear, academic freedom. The world's pre-eminent medical journals were praised last month for their new policy, whereby researchers are required to keep personal control of their research design and data and not cede control to their drug company sponsors. But this is not likely to do much good if our leading research universities sack researchers who show too much independence.

The same faculty of medicine that wouldn't support Nancy Olivieri in her battle for academic freedom has discovered that an eminent psychiatrist it was courting, Dr. David Healy, carries an offensive odour. When Healy gave a lecture last year at the Centre for Addiction and Mental Health, affiliated with the U of T medical faculty, the reservations he expressed about the side effects of Prozac allegedly upset his academic audience. It's possible, as well, that his criticisms offended the Eli Lilly pharmaceutical company, which makes Prozac, and which just happens to be a major donor to the centre.

Ultimately, Healy's concerns about the possible adverse side effects of Prozac for some patients will be resolved by careful scientific research. But raising such critical questions should not, surely, be a hanging offence.

Sadly, the academic leader of our country's most prestigious medical faculty does not see anything worrying about the denial of an academic position to an eminent medical scholar immediately after he expressed views critical of an Eli Lilly product. His predecessor could see no issue of academic freedom in the Olivieri case and the current dean can see no issue of academic freedom in the Healy case. The Olivieri problem was merely a "scientific dispute" and the Healy job offer withdrawal is merely an issue of "lack of fit" with other staff. So no corrective action is needed.

It almost seems as if successful candidates for medical deanship at the University of Toronto have all passed the same initiation test. They have proven their suitability for the job by demonstrating that they are incapable of recognizing even the most blatant threat to academic freedom.

The Canadian public relies heavily on our medical faculties and hospital research centres to tell us whether new drugs are safe and effective. Unfortunately, Canadian governments have been unwilling to properly fund the necessary research effort. Researchers are left scrambling to locate money for their research.

Into this vacuum has stepped an opportunistic and ever more profitable pharmaceutical industry.

September 28, 2001

Universities, hospitals and researchers enter into alliances or "partnerships" with industry, thereby creating an "academic-industrial complex". When universities embrace the sponsorship of business, business values can easily crowd out the values of scientific integrity.

Cash-starved universities and hospitals stand to make hundreds of millions of dollars from partnerships with drug companies. Raising the money to build and maintain fine facilities, to hire outstanding researchers and to fund their experiments are all commendable goals.

Unfortunately, the values of the marketplace are corroding and corrupting the foundational values of medical science. Scientists are supposed to be impartial and objective, but as the editor of Britain's premier medical journal, *The Lancet*, observes, "nine out of 10 papers" concerned with new drugs are found by independent reviewers to be "deliberately skewed in favour of the new products being studied." Evidence is accumulating that researchers who are funded by the pharmaceutical industry tend to produce industry-friendly results.

In other words, put scientists and scientific institutions in a conflict-of-interest situation where they are committed to making money as well as to the pursuit of scientific truth, and they will respond just like the rest of us. Only a few individuals and institutions will be outright corrupted, but a very large number will be subconsciously influenced or biased. Their research, on the whole, will be less reliable. Useless or even harmful new drugs will come to market because they've not been rigorously and objectively tested. Critics will be silenced, marginalized or banished. The soul of medicine will be lost.

That's a high price for the public to pay for sloughing the research bill onto the shoulders of drug companies. Public health and safety are at stake, as is public confidence in our universities and hospitals.

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*Arthur Schafer is Professor of Philosophy and Director of the Centre for Professional and Applied Ethics at the University of Manitoba.*

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## SCHEDULE "B"



December 21, 2001

A37

**- APOLOGY -**  
**Good faith of deans not questioned**

On Sept. 28th, The Star published a freelance Opinion page column by Prof. Arthur Schafer commenting on drug-company sponsorship of medical research in teaching hospitals and universities. The column also commented on the roles played in the Nancy Olivieri and David Healy cases by Dr. Arnold Aberman and Dr. David Naylor, successive deans of medicine at University of Toronto.

The column did not intend to question the honesty and good faith of Aberman and Naylor in either case. While the column did not agree with the way the Olivieri and Healy cases were handled, it did not intend to question the general commitment of either dean to the principle of academic freedom. The Star and Schafer believe that the deans sought to act in the best interest of the faculty of medicine and without influence of existing or potential drug-company sponsors. Neither Aberman nor Naylor was involved in the solicitation of the specific donation referred to in the column.

The Star and Schafer regret any contrary impressions the column may have created, and apologize to the deans.

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SCHEDULE "C"

# Doctors for Research Integrity

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[In the news](#)

[The Experts speak](#)

[Upcoming events](#)

[How to help](#)

## In The News

We are collecting media related to our cause, and have organized files into three categories:

- > [Academic media](#)
- > [University media](#)
- > [Mainstream media](#)

### THIS JUST IN:

[Nature Review - April 2002](#)

[A postmodern moral tale: the ethics of research relationships](#)

By: Margaret A. Somerville ([pdf file - 145 kb](#))

### ALSO:

[Press Release - April 22, 2002](#)

[Hate mail doctor escapes penalty for latest research misconduct](#)

We would greatly appreciate any references to media that may directly or indirectly relate to our cause.

Please email the reference to: [smuraca@idirect.com](mailto:smuraca@idirect.com)

## APOLOGY

DRI apologizes and regrets any inappropriate impressions.

This [Apology](#) should have been included in our list of articles.

<b>DECEMBER</b>
<b>19</b>
<b>2001</b>

[Click here](#)

<b>OCTOBER</b>
<b>26</b>
<b>2001</b>

[Supplement: January 30, 2002](#)

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**C. DAVID NAYLOR et al** Plaintiffs  
And  
**MICHELLE BRILL-EDWARDS et al** Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

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