COURT FILE NO:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LAWRENCE DAVID

Plaintiff

- and -

GOWLING WLG, GOWLING WLG (CANADA) LLP,
RODRIGO ESCAYOLA A.K.A. RODRIGUE ESCAYOLA,
MARK LEDWELL, GUY RÉGIMBALD, P.A. NEENA GUPTA,
GRAEME IAN FRANCIS MACPHERSON, DAVID ERIC PLOTKIN,
ROSA LUPO, JACYNTHE RAINVILLE, AND WAYNE B. WARREN

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and $500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

November 26, 2019 Issued by .....
Local registrar

Superior Court of Justice
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Ottawa, ON K2P 2K1

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CLAIM

1. The Plaintiff claims, on his own behalf, and on behalf of the proposed class:

a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the Plaintiff as the representative of the Class;

b) an order quashing the bill of legal fees issued to the Plaintiff under the authority of the *Solicitors' Act* on June 19, 2019, and seeking payment of fees whose amounts are unreasonable, excessive, arbitrary, and do not otherwise represent the nature, scope, quality, or persons involved in the legal services rendered;

c) an order quashing all bills of legal fees issued by Gowling WLG (Canada) LLP under the authority of the *Solicitors Act* to class members between July 12, 2017 and July 12, 2019, in respect of legal services marketed on the gowlingwlg.com international corporate website;

d) an order declaring that Gowling lawyers illegally exercised the discretion conferred in section 34 of the Solicitors Act in issuing the solicitor's charging order dated June 19, 2019;

e) an order for restitution to the Plaintiff in the amount of $1525.50;

f) an order for restitution to each class member in the amount paid to Gowling WLG (Canada) LLP in respect of each bill of fees sent under the authority of the *Solicitors Act*:

e.1) as "principals" of Gowling WLG (Canada) LLP; or
e.2) as persons charged with legal fees other than as principals

by Gowling WLG (Canada) LLP through their partners, lawyers, contractors, agents, including, but not limited to Rodrigo Escayola, a.k.a. Rodrigue Escayola, David Plotkin, Graeme Ian Francis Macpherson, Neena Gupta, Dan Palayew, Guy Régimbald, Mark Ledwell, Wayne B. Warren, Rosa Lupo, and Jacynthe Rainville.

g) Pecuniary damages in favour of the Plaintiff in the amount of $250,000;

h) non-pecuniary damages in favour of the Plaintiff in the amount of $1,250,000;

i) damages in favour of the class in the amount of $200,000,000;

j) punitive damages in favour of the Plaintiff in the amount of $500,000;

k) punitive damages in favour of the class in the amount of $150,000,000;

l) an order directing a reference or giving such directions as may be necessary to determine issues not determined at the trial of common issues;

m) pre and post-judgment interest pursuant to the *Courts of Justice Act,* R.S.O., 1990 c. C-43; and

n) special costs to the Plaintiff on a full indemnity basis; and

o) any other order this Honourable Court deems fair and reasonable in the circumstances.

2. For greater certainty, the putative class consists of persons, natural or corporate, who:

(i) paid legal fees charged to them as principals; or

(ii) paid legal fees foisted upon them without notice as persons chargeable other than as principals;

by Gowling lawyers and staff including but not limited to those named above.

3. Gowling's systemic organizational disregard for sound principles preventing the risk of overbilling were recently discussed by the Superior Court of Justice in *McIntyre v. Gowling Lafleur Henderson*, 2017 ONSC 1733.[1] In turn, overbilling for legal services contributes to the serious crisis in access to civil justice in Canada. By artificially inflating the price of legal services, Gowling imposes arbitrary and prohibitive barriers to seeking justice.

4. This class action proceeding sends a clear message: the era of predatory overbilling in the Canadian legal services industry is officially over. Access to justice deserves nothing less.

THE PARTIES

The Plaintiff

5. The proposed Representative Plaintiff, Mr. Lawrence David, is a lawyer, scholar, public servant, law professor, and author of several expert publications on the Supreme Court of Canada. The Plaintiff holds a Master of Laws degree from Harvard Law School, a B.C.L./LL.B joint

[1] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

degree in Civil Law and Common Law from McGill University's Faculty of Law, and a B.A. with Great Distinction in Political Science from Concordia University. He will soon be pursuing doctoral studies in law at one of the world's pre-eminent institutions of higher learning.

6. The Plaintiff is a first-generation Canadian. The Plaintiff is the first member of his immediate family to attend university. He is also the first in his family to attend law school. He is a first generation lawyer. The Plaintiff was raised in poverty in a single-parent household in one of Canada's most multicultural neighbourhoods. The Plaintiff suffers from documented health conditions. Outside of work, he sees friends and family, or stays at home with his puppy, Parker.

7. The Plaintiff teaches law to 70 first-year law students. He considers it a great privilege and believes he has found his true calling in life. The Plaintiff is particularly inspired by Indigenous law students and is devoted to helping law students achieve their dreams. He is himself the product of great mentorship. The Plaintiff is also dedicated to public service, having served in all three branches of federal government. This includes clerking at the Supreme Court of Canada, and serving as Policy Advisor at the Privy Council Office's Democratic Reform Secretariat, where he advised the Prime Minister and the Minister of Democratic Institutions.

8. After completing a Master of Laws degree at Harvard in 2017-2018, the Plaintiff returned to Justice Canada to serve as Legal Counsel. He is intent on serving his country even if it means sacrificing the pursuit of wealth. The Plaintiff's most significant contributions in this capacity have been authoring the legal submissions in three appeals awaiting adjudication before the Federal Court of Appeal (A-142-19, A-143-19 and A-159-19). One appeal involves reinstating the decision of the Commissioner of Lobbying finding that His Excellency the Aga Khan did not violate the *Lobbyists' Act* or *Lobbyists' Code*. A stay pending appeal remains in force.

9. The Plaintiff does not have a criminal record. He holds Top Secret government clearance, and has never been disciplined by the Law Society of Ontario. He is grateful for life's blessings.

The Defendants

10. Gowling WLG (Canada) LLP ("Gowling") is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Gowling is the independent and autonomous arm providing legal services in Canada.

11. Gowling has a documented disregard for internal control mechanisms preventing the risk of reckless or intentionally predatory overbilling in the rendering of legal services and issuance of invoices. The Superior Court of Justice discusses this issue in, *inter alia*, *McIntyre v. Gowling Lafleur Henderson*, 2017 ONSC 1733.

12. Gowling has also been or is currently involved in litigation in several Canadian provinces involving claims of predatory practices, including but not limited to, aggressive overbilling, documented privacy breaches, defamation of clients and adverse parties, and other forms of abuse.[2] Some of its lawyers, such as Kristine Robidoux, have previously been formally suspended by provincial law societies, and later resigned from Gowling. Ms. Robidoux has since returned to Gowling.[3] Further, Gowling counsel Megan McMahon and Taryn Burnett formally admitted to the Law Society of Alberta that they illegally breached the privacy of a plaintiff patient in defending a medical malpractice action.[4]

13. Rodrigo Escayola a.k.a. Rodrigue Escayola is Partner at Gowling. He maintains an active condo practice in Ottawa and in Toronto, ON. Mr. Escayola runs a blog entitled "Condo Advisor". On this blog, hosted on Gowling WLG's corporate website, Mr. Escayola describes himself as Ottawa's "Condo Lawyer", based on his extensive experience advising both condominium directors, and owners of condominium units. Mr. Escayola is, moreover, director in his own residential condominium corporation and co-founder of the "Condo Directors Group, an organization that provides a forum for condo directors..."[5]

14. Graeme Ian Francis Macpherson is a first-year associate at Gowling. He is a June 2018 call to the Law Society of Ontario. On June 19, 2019, the date on which the Plaintiff received the first bill of legal fees from Gowling, his professional webpage on Gowling WLG's website did

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[2] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

[3] See Jennifer Brown, "Robidoux resigns from Gowlings", *Canadian Lawyer*, May 27, 2014, online: https://www.canadianlawyermag.com/news/general/robidoux-resigns-from-gowlings/27261

[4] "Evidence: Privacy lawyer Taryn Burnett unlawfully obtained Plaintiff's credit report", February 11, 2017, online: http://gowlingsabuse.blogspot.com/2017/02/evidence-privacy-lawyer-taryn-burnett.html

[5] Corporate webpage for Rodrigo Escayola aka Rodrigue Escayola, online: https://gowlingwlg.com/en/people/rodrigue-escayola/

not list a single area of expertise, any practice distinctions, professional accolades, or examples of previous cases worked on, whether as part of the Condominium Practice Group at Gowling, or otherwise. The same is true today. Despite this lack of experience, Mr. Macpherson is listed as one of the regular contributors on Gowling WLG's Condo Advisor blog. Any writings published by Mr. Macpherson on the Condo Advisor blog, like the bill of legal fees and letter sent to the Plaintiff in the case at bar, are presumably, or ought to be, closely scrutinized by Mr. Escayola.

15. David Plotkin is a recent addition to Gowling Ottawa's Condominium Practice Group. He attended law school and took many classes with the representative Plaintiff at McGill University's Faculty of Law. Throughout this time, and likely due to their age difference, Mr. Plotkin often expressed his admiration of the Plaintiff. He appears on the Condo Advisor blog. Rosa Lupo is a Partner in the Condo Practice Group at Gowling's Ottawa office. Neena Gupta is a Partner in the Condo Practice Group at Gowling's Toronto office. Both Ms. Lupo and Ms. Gupta are listed alongisde Mssrs. Escayola, Macpherson and Plotkin, on the Condo Advisor Blog.

16. Wayne B. Warren is the Managing Partner at Gowling's Ottawa office. Mark Ledwell is the Managing Partner at Gowling's Toronto office. Guy Régimbald is a Partner at Gowling's Ottawa office, and a national practice group leader. Jacynthe Rainville is a legal assistant with the Condominium Practice Group at Gowling's Ottawa office. Ms. Rainville is also personal assistant and file- and timekeeper for Rodrigo Escayola.

17. Gowling WLG is the Defendant's global institutional umbrella. Gowling WLG hosts, markets, and advertises the Condo Advisor blog and the Condominium Practice Group's services on the firm's international corporate website, lends its goodwill and reputation to the services offered, and derives significant financial benefits from its alliance with the Condo Group. These financial benefits include the proceeds of the predatory, intentional, and egregious inflation of bills for legal fees. With the benefits of association and profit must inevitably come the corresponding burdens of shared liability over predatory practices that increase the bottom line.

The Defendant's Client: OCSC 931

18. Gowling's client in the events surrounding this case is Ottawa-Carleton Standard Condominium Corporation 931 ("Corporation"). ***The Corporation is not a party to the present proceedings, which are concerned solely with Gowling WLG (Canada) LLP's predatory legal***

practices. Nevertheless, the following provides this honourable court with the essential contextual information crucial to facilitate the proceedings' truth-seeking function.

19. The Corporation is a "condominium authority" under the *Condominium Act*. The Corporation executes its powers, duties, and functions through directors, officers, agents, and contractors. These include contractors working at the concierge desk of 300 Lisgar, Ottawa, ON, K2P 0E2. Concierge staff notably supervise the common elements of the condominium corporation. Concierge staff also help operate the for-profit Soho Met Residence Hotel operated onsite, booking rooms over the phone or internet, and helping guests check in and check out. The Hotel's website bills it as "The Capital's Most Exquisite Extended Stay Residence Hotel".[6]

20. Whether through its directors, officers, agents, or contractors, or through anyone else that controls entry and exit to 300 Lisgar under its authority, the Corporation is subject to and responsible for discharging the duties of care lying upon it under, *inter alia*, the *Occupiers' Liability Act*, the *Condominium Act*, the *Ontario Human Rights Code*, the *Personal Information Protection and Electronic Documents Act*, the *Consumer Protection Act*, at common law, equity, and under the *Criminal Code*, among others. The Corporation has repeatedly denied this.

21. The precise nature of the legal relationship between Soho Met Residence Hotels and the Corporation is not known to the Plaintiff. It is, not, however, determinative of the issue of Gowling WLG's deceptive billing practices. The Superior Court of Justice addressed Gowling's practices in, *inter alia*, *McIntyre v. Gowling Lafleur Henderson*, 2017 ONSC 1733.[7]

FACTS

22. The facts underlying this matter arise out of a private dispute occurring between the Plaintiff and a member of the concierge staff employed by Gowling's client corporation At the time, Mr. David was a resident at 300 Lisgar and occupier of condominium unit 1102.

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[6] See http://www.sohohotel.ca/residences/ottawa-lisgar, accessed November 24, 2019 at 4:43 PM.

[7] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

23. The facts and context of the private dispute - which did not involve any members of Gowling WLG (Canada) LLP - are irrelevant to the determination of the issues raised in the case at bar, whether in the Plaintiff's personal claim or in respect of the proposed class proceeding. It is not, therefore, necessary to be exhaustive, or overly descriptive. Only those facts directly involving the conduct of Gowling lawyers and staff need be thoroughly canvassed. The Plaintiff is mindful of the principles of proportionality and judicial economy.

24. On June 1, 2019, the Plaintiff moved into Unit 1102 at 300 Lisgar Street. Unit 1102 is owned by Mr. Alex Rodriguez. The Plaintiff rented the Unit from Mr. Rodriguez pursuant to the *Residential Tenancies Act*. As such, Mr. Rodriguez was the "landlord" and the Plaintiff the "tenant". Under the *Condominium Act*, Mr. Rodriguez was and is the "owner" of the unit, and the Plaintiff was its lawful "occupier", enjoying most property rights short of actual ownership.[8]

25. Almost from the day he began his occupation and possession of the unit, the Plaintiff became the victim of a wilful, malicious, deliberate, intentional and sustained campaign of psychological harassment by an individual employed by the Corporation. This individual, who was either an agent or contractor, worked and continues to work as part of the concierge staff, operating both the Soho Lisgar Hotel. The Corporation's legal duties under the *Occupiers Liability Act*, *Condominium Act*, the *Ontario Human Rights Code*, apply with full vigour.

26. Among other things, Mr. David was repeatedly insulted and harassed in respect of his weight and physical appearance, the fact that he was merely renting and not an owner, as to his outfits, choice of food, and solitary lifestyle. The plaintiff was also showered, on a daily basis, with expletives typically used by mean-spirited persons toward individuals who may suffer from a psychological disability. The Plaintiff does not deny having returned his fair share of expletives, in addition to reminding the harassing party of the Corporation's various legal duties. To no avail.

27. The Corporation's apparent response came in the form of a letter from Mr. Escayola, accompanied by a solicitor's bill of costs. The bill was first communicated to the Plaintiff's work e-mail, without his consent, on June 19, 2019. The email was sent by Ms. Rainville, Mr. Escayola's legal assistant at Gowling's Ottawa office. Copied to the e-mail was Mr. Macpherson. A physical letter was also mailed to the Plaintiff's residential mailbox at 300 Lisgar on June 20, 2019. The Plaintiff first became apprised of the physical letter, on or about June 20, 2019, as the

[8] Note: The Plaintiff no longer resides at 1102 - 300 Lisgar Street, Ottawa, ON, K2P 0E2.

seasonal nature of his job did not require him to log into his work-email at that time. Despite being identical to that contained in the email of June 19, 2019, the letter made no mention of Mr. Macpherson or of Ms. Rainville. It is not possible to "CC" someone to a physical letter placed in a mailbox. Like the digital version of the letter, however, the physical version of the letter was signed using the electronic signature of Mr. Escayola. This means that Mr. Escayola did not physically sign either the digital or printed letter with his own hand.

28. Despite the letter being silent on this point, Mr. Escayola appears to have charged the legal fees to the Plaintiff as a person other than a principal under the authority of the *Solicitors Act.* Mr. Escayola appears to have used the discretion conferred under section 34(1), in addition to his client's statutory and corporate powers under the *Condominium Act*, the corporate Declaration, and relevant by-laws. The Plaintiff does not deny the legal validity of these sources *per se*.

29. For the present proceedings, which relate strictly to the conduct of Gowling lawyers and staff, the relevant parts of the letter read as follows:

> …the Corporation has incurred legal fees for the drafting of this letter. In application of the Declaration, such fees and costs are to be borne by you, the owner of the unit, and are to be collected in the same manner as common expenses. The cost of our review of this matter and drafting this letter is $1525.50 (inclusive of HST)." (emphasis added)

30. The letter and bill of legal fees continues:

> **Please forward to the property manager the total amount of $1,525.50 by certified cheque or bank draft payable to OCSCC 931 by July 12, 2019**. This payment constitutes an additional contribution towards the common expenses and will be recoverable as such should the payment not be received in time.
>
> [...]
>
> *Please be advised that any additional exchanges between us to obtain compliance will result in further legal fees being claimed against the Unit*. (emphasis in original)

31. The letter and bill of legal fees contains an additional legal threat. Referring to the numerous arbitrary demands made in the letter electronically signed by Mr. Escayola on behalf of his client as "conditions to [the Plaintiff's] continued tenancy of the condominium," Mr. Escayola threatened that any breach would occasion immediate legal proceedings in the Superior Court of Justice. These proceedings would be brought pursuant to sections 107 and 134 of the *Condominium Act*. The letter further stated Gowling would,"**if required, [seek] an order**

evicting [the Plaintiff] from the property." (emphasis in original). Referring to such proceedings, the letter further states:

> Be advised that should such court proceedings be required, the Corporation will seek as against both [the Plaintiff] and the owner of the unit its costs for doing so. In our experience, such costs will exceed $25,000. (emphasis added)

32. Between June 20 and July 12, 2019, the Plaintiff made numerous requests to Mssrs. Escayola and Macpherson for a more particularized breakdown itemizing the contributions, work done, and time billed in the "review" and "drafting" of the June 19 letter by Gowling, acting through Mssrs. Escayola and Macpherson, and Ms. Rainville. Mr. Escayola refused every invitation. Mr. Macpherson and Ms. Rainville, both acting at Mr. Escayola's direction, never responded to any of the Plaintiff's reasonable, good faith inquiries. Mr. Escayola continued to dismiss the Plaintiff's concerns even after being reminded that the latter is also being a practising member in good standing of the Law Society of Ontario subject to, *inter alia*, the *Rules of Professional Conduct*, the *Law Society Act*, and all relevant rules, by-laws, and regulations.

33. There is more: on July 11, 2019, even when pressed to seek independent legal advice for themselves and for their clients before accepting payment in the amount requested in the bill of fees, Mr. Escayola refused to take the Plaintiff seriously. Mr. Escayola instead dismissed the Plaintiff's communications in general, and legal concerns, specifically, as "abusive."

34. On July 12, 2019 the Plaintiff personally delivered payment directly in the hands of Mssrs. Escayola and Macpherson at Gowling WLG (Canada) LLP's Ottawa offices at Suite 2600, 160 Elgin Street. The Plaintiff advised them that the payment was accompanied by a "payment under protest" letter. This would serve as evidence that the payment was made strictly to avoid injury, under protest, in circumstances of practical compulsion, and under no misapprehension as to the illegality and predatory nature of Gowling's conduct.

35. The letter, which will indeed be produced at trial, disclaims any responsibility or acknowledgment of the veracity or accuracy of any of the character assassinations, blatant mistruths, malicious and defamatory statements contained in the June 19 letter and bill of legal fees. Four (4) physical copies of the "payment under protest" letter were remitted to Mssrs. Escayola and Macpherson.

36. Before departing Gowling WLG (Canada) LLP's Ottawa offices, the Plaintiff verbally reminded Mssrs. Escayola and Macpherson that Gowling was "not above the law", and that legal action could be taken at anytime. Mr. Escayola's response: "*Fill your boots, buddy*!" The Plaintiff reminded Mr. Escayola that he was an officer of the Court and that this was no laughing matter. The Plaintiff is not, in any event, Mr. Escayola's "buddy", having never previously met or interacted with him or Mr. Macpherson in any circumstance.

37. As discussed in the following Parts, Mr. Escayola combined an unreasonable exercise of the statutory discretion conferred under the *Solicitors Act* with his client's malicious, punitive, and deliberately harmful exercise of the discretion to charge legal fees to Mr. Rodriguez's contributions to the common elements of Unit 1102 pursuant to the *Condominium Act*, Declaration and by-laws. Of course, Mr. Escayola and his client knew full well that, despite addressing the letter to Mr. Rodriguez, the Plaintff would ultimately be made to pay the claimed fees. This is indeed precisely why Mr. Escayola instructed Ms. Rainville to send a digital copy of the letter to Mr. David's work e-mail without prior consent, and a physical copy to his then-residential mailbox at 300 Lisgar.

ISSUES

38. Two main issues arise:

1. Is Gowling WLG (Canada) LLP guilty of the tort of conversion?; and
2. Should this proceeding be certified as a class proceeding?

39. The Plaintiff respectfully submits that the answer to each of these questions is: "Yes".

LEGAL ANALYSIS

ISSUE # 1: GOWLING WLG (CANADA) LLP IS GUILTY OF CONVERSION

Summary of Legal Position

40. Gowling WLG (Canada) LLP, acting through its partners, lawyers, and contractors, Rodrigo Escayola, Graeme Macpherson, and Jacynthe Rainville are guilty of the tort of conversion in respect of the solicitor's charging order dated 19 June, 2019.

41. Fueled by their client's powers under the *Condominium Act*, the condo Declaration, and bylaws -and palpable animus for the Plaintiff - Gowling abused the discretion conferred to

solicitors to make a person or property chargeable other than as principal under section 34(1) of the *Solicitors Act*. Gowling lawyers and assistants did this by misrepresenting the nature, scope, quality, time spent, and persons involved in the legal services in respect of which fees were charged. The true value of said services is less than 1/7th ($200.00) of the block amount charged by Gowling lawyers ($1525.50). The proposed representative Plaintiff seeks restitution.

I - The Tort of Conversion

42. As recently restated by the Supreme Court of Canada, a successful claim in conversion at common law involves proof of a (1) wrongful (2) interference (3) with the goods, property or money of another.[9] An interference involves the taking, using, or depletion of goods, property, or money without the owner's consent.[10] The interference is wrongful where it is unlawful, either at common law or under applicable legislation.[11] The nature of the property or money at issue, or their amount, does not alter liability for conversion. A cheque or bill of exchange suffices.[12]

43. Conversion is a strict liability tort. It is "irrelevant" if the defendant shows that the plaintiff is guilty of contributory negligence.[13] The ordinary remedy for a successful claim in conversion is restitution on the basis of payments received without lawful authority. This is the relief sought by the Plaintiff for himself, and on behalf of the putative class members.

A. Gowling 'Interfered' with the Plaintiff's Money

44. Gowling lawyers or employees Rodrigo Escayola, Graeme Ian Francis Macpherson, and Jacynthe Rainville "interfered" with the Plaintiff's money, namely: "a bank draft" in the amount of $1,525.50. Mr. Escayola, Gowling Ottawa's leading condominium lawyer, combined his client's authority to charge a condominium unit for fees under the *Condominium Act*, with the discretion to issue a solicitor's charging order under section 34(1) of the *Solicitors Act*. As the Plaintiff was contractually bound with his landlord to assume certain obligations arising during the tenancy, Gowlings was aware that the Plaintiff would pick up the tab.

45. The interference with the Plaintiff's money was crystallized on July 12, 2019. On this day, the Plaintiff personally remitted the bank draft to Mssrs. Escayola and Macpherson, in the exact

[9] See e.g., *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51, at para. 3.
[10] See e.g., *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727, at para. 31
[11] See e.g., *Pioneer Corp. v. Godfrey*, 2019 SCC 42 at para. 83.
[12] *373409 Alberta Ltd. (Receiver of) v. Bank of Montreal*, 2002 SCC 81, at paras. 12-16.
[13] *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51, at para. 3.

amount listed in the charging order. Included with the bank draft was a letter indicating in no uncertain terms that the payment was made under duress, in circumstances of practical compulsion, and strictly to avoid injury. The 'interference' requirement is made out on its face.

B. The Interference Was 'Wrongful'

46. Gowling's 'interference' with the Plaintiff's money was 'wrongful'. At common law, 'wrongful' is synonymous with 'unlawful' or 'illegal'. Unlawfulness or illegality may, in turn, arise from the conduct constituting the breach of a statute or any of the various duties, obligations, standards or requirements applicable to the situation at common law and equity.[14]

47. In the case at bar, the *Rules of Professional Conduct*, the *Solicitors Act*, the *Law Society Act* and by-laws all contain an express or implied obligation on licensed lawyers to only charge their clients fees that are "reasonable and fair". Nothing in the *Condominium Act*, the *Courts of Justice Act*, or the *Law Society Act*, by-laws, or in the *Rules* removes this obligation where a person other than the client is made chargeable within the meaning of s. 34(1) of the *Solicitors Act*. This includes, most importantly, refraining from using the ability to charge a property for fees where a court order has not been issued, and where the client's discretionary authority to seek fees is irreparably tainted by personal animus for the chargeable party. This obligation takes special significance where the person made chargeable is another counsel: the duty to charge fair and reasonable fees becomes superadded to those governing relations between counsel.

48. Gowling's defence will, of course, be that the exercise of its discretion was authorized by the *Solicitors Act* and the mechanism for charging property under the *Condominium Act*. The most elementary principle of any legally-conferred discretion is that the existence of authority does not necessarily always guarantee the legality of its exercise. This case is a clear example. Gowling lawyers and assistants abused their discretion by misrepresenting the nature, scope, quality, time spent, and persons involved in the legal services in respect of which fees were charged. The true value of said services is less than 1/7th of the amount charged. Here is why:

49. The bill of fees was first communicated to the Plaintiff's work e-mail, without his consent, on June 19, 2019. The email was sent by Ms. Rainville, Mr. Escayola's personal legal assistant. Copied to this e-mail was Mr. Macpherson. A physical letter was also mailed to the Plaintiff's

[14] *Pioneer Corp. v. Godfrey*, 2019 SCC 42; *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, at para. 64

residential mailbox at 300 Lisgar on June 20, 2019. The Plaintiff, however, first became apprised of the physical letter, on or about June 20, 2019, as the seasonal nature of his job did not require him to log into his work-email at that time.

50. The letter was signed "Rod Escayola", using the latter's electronic signature. There was no mention of either Mr. Macpherson or Ms. Rainville in the letter. By contrast, Ms. Rainville's e-mail attaching the letter invited Mr. David to "respond directly" to Mssrs. Macpherson and Escayola in respect of its contents. This was despite a threat in the June 19 letter that "any additional exchanges between use to obtain compliance w[ould] result in further legal fees being claimed against the Unit." The Plaintiff's suspicions were instantly aroused.

51. Further, the letter - issued on Gowlings WLG letterhead - states that the total amount of $1525.50 in legal fees is "inclusive of HST". There is no mention of a court order having been obtained or of whether an insurance claim was filed by the client. The letter also states that the amount represents "[t]he cost of our review of this matter and drafting this letter" It is unclear whether the "our" refers to Mssrs. Macpherson and Escayola and Ms. Rainville alone, to either Mr. Escayola or Mr. Macpherson alone with Ms. Rainville, or to any of them with the clients.

52. One thing is clear, however: Mr. Escayola, who bills himself as Ottawa's top Condo Lawyer, did not sign the letter. Mr. Escayola, rather, required the assistance of at least one lawyer and one legal assistant to deal with a routine condominium dispute raising issues identical to those he had previously litigated on behalf of both condominium corporations and unit owners and occupiers under sections 117 and 134 of the *Condominium Act*. For this purpose, Mr. Escayola instructed Graeme Ian Francis Macpherson, a first-year associate with no experience in contentious private condominium disputes, to assemble a letter riddled with embarrassing legal errors. Mr. Macpherson was expressly instructed by Mr. Escayola to use templates and language found in analogous files he had previously attended to. Ms. Rainville handled formatting.

53. One prominent example is *Carleton Condominium Corporation No. 22 v. MacQuarrie*, 2015 ONSC 7719. There, Mr. Escayola represented a unit owner against whom a compliance and enforcement order was brought by the condominium authority under sections 134 and 117 of the *Condominium Act*. The case links section 117 of the *Condominium Act* to the concept of workplace harassment and to an employer's duties to ensure occupational health and safety under relevant provincial legislation.

54. Another file of Mr. Escayola's involving sections 117 and 134 that he instructed Mr. Macpherson to use for relevant language and legal sources is *Carleton Condominium Corporation No. 282 v. Yahoo! Inc.*, 2017 ONSC 4385. There, Mr. Escayola represented a condominium authority who successfully obtained a Mareva injunction against Yahoo on the basis of surreptitious emails sent to condo owners by an unknown source. Mr. Escayola's successful argument was that the condominium authority's duties under section 117 authorized it to apply for a compliance order under section 134 of the *Condominium Act*. This is the same statutory mechanism used as against the Plaintiff. Mr. Escayola has written blogs on these cases.

55. The legal validity of the conclusions in cases like *MacQuarrie* and *Yahoo!* is not contested. Rather, Mr. Escayola appears to have confused the Plaintiff for Mr. MacQuarrie, and employed tactics used against the latter and in favour of his client in *Yahoo!* in violation of the *Solicitors Act*. The Plaintiff's psychological and financial integrity were directly negatively impacted.

56. To be clear: the Plaintiff contends that Mr. Macpherson is responsible for the letter's general preparation. He is not, however, its sole author. The first two pages consist of the Gowlings WLG logo and address, the subject-matter of the letter, and a series of double-spaced bulletpoints in Times New Roman size 12 font reproducing statements the Plaintiff purportedly made to the Corporation's employee. This is made by clear to the Plaintiff through the letter's inclusion of statements he admits making, alongside several demonstrable falsehoods, defamatory attacks, character assassinations and other misstatements made with actual malice. Mr. Macpherson - and whoever wrote the letter - either copy and pasted the declarant's mischaracterizations in the letter, or composed the letter with the declarant before them dictating a series of injurious assertions. The Plaintiff contends that the former scenario occurred.

57. The letter also cites or rewords several passages from frequently-cited authorities issued by the Superior Court pursuant to s. 134 of the *Condominium Act.* This includes *York Condominium Corp. No. 163 v. Robinson,* 2017 ONSC 2419. Locating these cases on CanLII's annotated *Condominium Act*, and copy and pasting the relevant contents into a letter is a matter of minutes, not hours. The calculus does not change merely because the solicitor is a first-year associate with no previous experience in condominium law. Mr. Macpherson was, after all, hired after articling with Gowling, presumably after having convinced partners as to his research and writing abilities.

58. Doubtless it is that first year associates with no experience or expertise should be brought into matters by senior Partners as a learning experience and to develop some semblance of professional practice. However, training associates is not a legitimate nor lawful excuse for the senior partner charging his rates for work actually performed by the first-year associate and a legal assistant. This is a paradigmatic example of predatory practices of many "big law" partners.

59. Indeed, predatory billing practices such as padding, overinflating, and exaggerating billable hours are regarded as both generating additional revenue for the firm and increasing the profile and authority of individual partners. Juniors also do this to become partners quickly.[15] It is, moreover, trite law, that predatory billing practices including charging senior partner rates for junior work are, where intercepted by judges or assessors, grounds for a significant if not total reduction of the inaccurately-represented amounts. Overstaffing files and duplication of effort do not escape the law's careful and just scrutiny.[16]

60. One can only imagine how many times Gowling lawyers have wielded such stratagems upon unsuspecting individuals who are not legally trained and not able to instantly identify the numerous legal problems inherent in this approach to dispute resolution. This is true for both current and former Gowling clients and adverse parties Gowling lawyers would have made chargeable for overinflated fees, knowing full well those parties would never contest or find out that the legal fees were not, in fact, representative of the legal services rendered. Fortunately, in this case, and to Gowling's direct knowledge, the Plaintiff is legally trained and has a fair understanding of the law of civil procedure in Canada. The Plaintiff also seeks certification.

61. The letter containing the bill of legal fees dated June 11, 2019, also contained a threat the following threatening language:

> **<u>If these conditions to your tenant's continued occupancy of the condominium are violated even once, the Corporation will not hesitate to immediately apply to the Superior Court of Justice to have an order restraining him from</u>**

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[15] See, among many other examples, Alice Woolley, "Time For Change: Unethical Hourly Billing In The Canadian Legal Profession And What Should Be Done About It" (2004) 83 Canadian Bar Review 860; Chicago Business, "Big Law partner accused of overbilling", January 27, 2019, online: https://www.chicagobusiness.com/law/big-law-partner-accused-overbillin; The Boston Globe, "Investigation alleges misconduct by Thornton Law Firm, recommends severe sanctions", June 28, 2018 at E4; Above The Law, "MoFo Faces Overbilling Lawsuit Alleging 'A Billing Feeding Frenzy', February 15, 2019, online: https://abovethelaw.com/2019/02/mofo-faces-overbilling-lawsuit-alleging-a-billing-feeding-frenzy/; Forbes Magazine, "'Grazing,' Photocopying And Other Tricks Inflate Legal Bills", May 11, 2011, online: https://www.forbes.com/sites/danielfisher/2011/05/11/grazing-photocopying-and-other-tricks-inflate-legal-bills/

[16] See, among many others: *Strata Plan VR808 v. Thaxter*, [2002] BCJ No 1129; *Gardiner v. Field, Turner*, [1999] OJ No 3790; *Cassels Brock & Blackwell v. Berger*, *David v. Wakim*, [1992] OJ No. 2110; *Osler Hoskin & Harcourt v. Watson*, [1993] OJ No. 462; *McMillan Binch v. 1009768 Ontario Ltd.*, [1995] OJ No. 4868.

> **<u>any such behaviour and, if required, an order evicting him from the property</u>. <u>This will be your tenant's one and only warning.</u>**
>
> Be advised that should such court proceedings be required, the Corporation will seek as against both your tenant and the owner of the unit its costs for doing so. In our experience, such costs will exceed $25,000. (*emphasis in original*)

62. The above passages are clearly boilerplate language lifted from previous files in Mr. Escayola's catalogue. They were copied and pasted in this letter to the Plaintiff without modification. There are, moreover, several additional legal problems with these passages:

> *Neither Gowling nor its client Corporation have actual authority to dictate terms of tenancy agreement entered into pursuant to the *Residential Tenancies Act*. The Plaintiff was bound to comply with the RTA, the Condominium Act, the by-laws and Declaration;
>
> *Gowling misrepresented the law governing the ability of a condominium corporation to seek a court order evicting an occupier from the unit they have lawfully rented pursuant to the *Residential Tenancies Act*. The power claimed by Gowling is not currently legally effective; it is found in section 135 et seq of the *Condominium Act*; those provisions are not yet in force, and await an order from the Lieutenant Governor-in-Council of Ontario;
>
> *Gowling misrepresented the actual cost amounts courts order in proceedings pursuant to section 134 of the *Condominium Act*. The amount of "$25,000.00", as threatened in the letter electronically-signed by Mr. Escayola, has specifically been declared abusive, unreasonable and excessive by the Superior Court of Justice. One such case is *MacQuarrie*, where Mr. Escayola represented a defendant against whom such proceedings were brought. Mr. Escayola successfully obtained a reduction of the costs claimed against his client. Yet, in this matter, the mirror opposite situation, Mr. Escayola allowed a first-year associate with no experience under his supervision to grossly mischaracterize the costs of enforcement proceedings. This is a further indicator of bad faith and disregard for the administration of justice.
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> *Finally, the Court of Appeal for Ontario affirmed in *Temedio v. Niagara North Condominium* No 6, 2019 ONCA 762, that costs in proceedings under section 134 should generally be moderate in nature. The reason: condo disputes brought for compliance are typically very straightforward and do not require any particular expertise. Perhaps this is why Mr. Escayola assigned Mr. Macpherson and Ms. Rainville to do most of the work on the file. The Court in *Temedio* further advised that prudence and alternatives to proceedings are recommended where the defendant may suffer from a disability. Equal prudence should apply in respect of tenants who rent units from condo unit owners and who do not have full vested property rights and privileges. Note that the trial judgment in *Temedio v. Niagara North Condominium Corporation No. 6*, 2018 ONSC 7214 was released before Gowling's letter dated June 19. Mr. Escayola, the top condo lawyer in Ottawa knew or ought to have known better. This encapsulates professional negligence.

63. In addition, or to reiterate the above, the 'wrongfulness' of the interference arises from:

*Gowling Partner's Rodrigo Escayola's unreasonable, unfair, arbitrary, excessive, disproportionate, malicious, and intentionally punitive exercise of the discretion to issue a solicitor's charging order under section 34(1) of the *Solicitors Act*, the *Law Society Act* and by-laws, and the *Rules of Professional Conduct*;

*Gowling Partner's Rodrigo Escayola counselling his client to exercise their discretion under the relevant provisions of the *Condominium Act*, condominium Declaration, and by-laws, in an unreasonable, unfair, arbitrary, excessive, disproportionate, malicious, and intentionally punitive exercise of the discretion to charge the legal fees occasioned by the Corporation to Unit 1102 and therefore making the Plaintiff chargeable other than as principal;

*Gowling lawyers and assistant's clear misrepresentation of the nature, scope, quality, time spent, persons involved, complexity of the file, and actual extent of legal services performed by Gowling lawyers, assistants, and other staff in respect of "File no. 0345245" (see solicitor's charging order dated 19 June 2019);

*Gowling Partner Rodrigo Escayola issuing a solicitor's charging order pursuant to s. 34(1) of the *Solicitors Act* and enforcing it by charging it to Unit 1102 in order to make the Plaintiff chargeable other than as principal. This is despite s. 34(1) conditioning the issuance of charging order on the authorization of the Superior Court of Justice;

*Gowling Partner Rodrigo Escayola issuing a solicitor's charging order in respect of fees that ss. 99 *et seq.* of the *Condominium Act* expressly provide are covered by the insurance the Corporation is legally required to maintain by law. Owners - and therefore occupiers, contribute to the insurance premiums payable and are entitled to its coverage where applicable. If Gowling's defamatory account of events is believed, the insurance policy is triggered, and the Plaintiff was required to pay a solicitor's charging order charged to his rental unit for fees that the client may in any event recoup in whole or in part from its insurer;

*Gowling's possible violation of, *inter alia*, section 36 of the *Competition Act*;

*Gowling lawyers and assistants likely being guilty of the tort of unlawful means conspiracy;

*Gowling's possible violation of ss. 380, and 381 of the *Criminal Code* ("fraud") and ("using mails to defraud");

*Gowling's possible violation of s. 346 of the *Criminal Code* ("extortion");

*Gowling's possible violation of s. 341 of the *Criminal Code* ("fraudulent concealment");

*Gowling's possible violation of s. 362 of the *Criminal Code* ("false pretence or false statement");

*Gowling's possible violation of s. 366, 368, 368.1. 372(1) ("forgery"), ("forgery instruments"), ("false information") and ("use or possession of forged document");

*Gowling's possible violation of ss. 322, 330 and 328 of the *Criminal Code* ("theft") and ("theft by person required to account");

*Gowling's possible violation of s. 332 and 336 of the *Criminal Code* ("misappropriation of money held under direction") and ("criminal breach of trust");

*Gowling's possible violation of s. 354 and 358 of the *Criminal Code* ("possession of property obtained by crime");

*Gowling's possible violation of s. 363 and 375 of the *Criminal Code* ("obtaining execution of valuable security by fraud") and ("obtaining anything by instrument based on forged document");

*Gowling Partner Rodrigo Escayola using, on his client's behalf, a solicitor's charging order for costs as an instrument to induce the breach of the Plaintiff's tenancy agreement, duly entered into pursuant to the *Residential Tenancies Act*, and clothed in its legal protections;

*Gowling lawyers being guilty of the tort of unlawful interference with contractual relations;

*Gowling lawyers and assistants being guilty of the tort of intentional infliction of emotional distress; and, including, but not limited to,

*The inability of Gowling lawyers and assistants to deny their knowledge, intention, planning, deliberateness, malice, wilful blindness or recklessness in proceeding in dealing with the Plaintiff in the above manner. Ample documentary evidence records Gowling's flagrant violations.

C. Gowling Cannot Rely on the Due Diligence Defence

64. Gowling cannot rely on the defence of due diligence. It cannot, therefore, escape liability. Gowling's conduct was wilful, intentional, planned, deliberate, malicious, reckless, or otherwise so egregiously blind as to amount to professional negligence. Nor can Gowling rely on any contributory negligence that may be alleged against the Plaintiff, who fully denies any such thing.

II - Restitution

65. The Plaintiff is entitled to restitution. Gowling's was unjustly enriched. Causes of action in tort and restitution are "not mutually exclusive… [and] may be pursued concurrently."[17] A claim for restitution is asserted in the form of unjust enrichment. In this case, all three elements are met:

1. Gowling WLG (Canada) LLP became enriched when it accepted payment of the total amount stated in the solicitor's charging order it issued on 19 June 2019;
2. the plaintiff was, as a result, deprived of that same amount; and
3. there is "an absence of juristic reason" for Gowling's enrichment at the plaintiff's expense in the amount stated in the order.[18]

70. The analysis for the third requirement, the "absence of jurisdiction" is the same as that found under the rubric entitled 'The Interference Was Wrongful' (paras. 45 et seq., above).

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[17] See e.g., *Pro-Sys Consultants Ltd. V. Microsoft Corporation*, 2013 SCC 57 at para. 93.
[18] *Garland v. Consumers' Gas Co.*, 2004 SCC 25, at para. 30

71. Considering Gowling's wilful and deliberate misrepresentation of the nature, quality, scope, and persons actually involved in the legal services for which fees were charged to the Plaintiff, the latter estimates that the true value of the legal services rendered is instead $500. However, because those legal services were purchased in respect of matters captured under the insurance policy the condominium authority is required to maintain under the *Condominium Act*, the costs were unnecessarily incurred. As result, the Plaintiff is entitled to restitution in full

ISSUE # 2 - CERTIFICATION AS CLASS PROCEEDING

Issue # 2: The Claim Should Be Certified as a Class Proceeding

66. The Plaintiff's claim should be certified as a class proceeding. In Ontario, a class action may proceed only after the court certifies that the proposed class and representative Plaintiff meet the requirements set out in s. 5(1) of the *Class Proceedings Act*. This is the case here:

> (1) the pleadings disclose a cause of action;
>
> (2) there is an identifiable class of two or more persons that would be represented by the class representative;
>
> (3) the claims or defences of the class members raise common issues;
>
> (4) a class proceeding would be the preferable procedure for the resolution of common issues; and
>
> (5) the class representative would fairly represent the interests of the class, has advanced a workable method of advancing the proceeding and notifying class members, and does not have, on the common issues for the class, an interest in conflict with other class members.[19]

67. First, the pleadings disclose not one, but several, viable causes of action. The primary cause of action relates to the tort of conversion and the representative Plaintiff's prayer for restitutionary relief. Other causes of action are founded in statute, subordinate legislation, and at common law and equity. Pleadings in motions for the certification of class proceedings are subject to the same threshold as motions in ordinary proceedings. The question is whether, if taken to be true, the pleadings to disclose a reasonable cause of action. This does not require the Plaintiff to show they will likely be successful. An arguable case suffices. This requirement is met by the Plaintiff's principal arguments on the tort of conversion and restitutionary relief.

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[19] *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at paras. 33, 37.

68. The case at bar, and the parallel claims it raises, are unquestionably arguable. If the Plaintiff's pleadings are taken as true on their face, it is not possible to state that the claims are doomed to fail. If the Plaintiff is correct as to Gowling lawyers having illegally abused their discretion in billing predatory legal fees to him as a person chargeable other than as principal, several violations of the law will have been made out. Canadian law does not, to be sure, recognize a tort of statutory breach.[20] Here, however, the Plaintiff suffered economic and psychological injury by being made to pay unreasonably inflated amounts listed in the letter received by him on June 19, 2019. This is the same for all other members of the putative class. Thus, if the pleadings are taken as true, each class member suffered an injury.

69. Second, there is an identifiable class of two or more persons that would be represented by the class representative:

> Current or former clients of Gowling who paid overinflated legal fees without assessment between June 23, 2016 and July 22, 2019; and
>
> All persons other than the Plaintiff who were also made chargeable for predatorily-inflated legal fees other than as principals pursuant to the *Solicitors' Act* between June 22, 2016 and July 22, 2019, and paid the fee without assessment. This sub-group includes, but is not limited to persons who were made chargeable other than as principals by way of a solicitor's charging order, or other analogous instrument, issued *without* court order.

70. Third, the claims or defences of the class members raise common issues. All putative class members received a letter, email, or other communication from Gowling instructing them to pay a specific amount identified as the fees associated with particular legal services rendered. All putative class members were, therefore, similarly exposed to the very present risk of being made to pay aggressively-overinflated legal fees that do not represent the nature, quality, time commitment, or persons identified in providing said the legal services involved. This is true to the extent that none of the class members personally had access to any timekeeping and other measures required or recommended for reducing the risk of predatory and anti-competitive practices such as overbilling for legal services. This risk is particularly acute in light of Gowling having been found by the Superior Court of Justice, within the limitations periods, to have engaged in overbilling as a result of insufficient mechanisms for eliminating the risk of abuse.[21]

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[20] *Her Majesty In Right of Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205.

[21] *McIntyre v. Gowling Lafleur Henderson*, 2017 ONSC 1733. See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling*

71. The commonality present here is not defeated by the fact that the class includes both current and former clients of Gowling and persons who were previously chargeable other than as principals in respect of legal fees incurred by Gowling's clients. As stated, even if different heads of action or arguments may be made by class members, all of them suffered the common harm of being made to pay aggressively overinflated legal fees in violation of the *Solicitors Act*, the *Rules of Professional Conduct*, the by-laws, and other relevant and applicable sources of law.

72. Fourth, a class proceeding would be the preferable procedure for the resolution of common issues. One reason is that the resolution of those common issues would conclusively determine the claim in all of the class members' favour. Another is that the harms complained of, and the practices and conduct from which they stem, are systemic and engrained in Gowling's institutional *modus operandi*.

73. A class proceeding is the vehicle most consistent with the principle of proportionality for addressing Gowling's predatory and anti-competitive practice of overbilling for legal fees. Gowling's lawyers continuously abuse their monopolistic status to the detriment of self-represented persons. The firm has previously admitted to professional misconduct in cases are recent as 2019.[22] Gowling has faced or is currently involved in litigation brought by individual Plaintiffs in several provinces (ON, AB, QC, BC) in respect of the national firm's predatory practices. These cases are not limited to overbilling.[23]

74. Patterns of institutional and individual behaviour include, for example, stonewalling the Plaintiff and others requesting for particulars in respect of legal fees that are clearly inflated or otherwise not representing of the nature, quality, scope, and persons involved in providing the legal services and products for which legal fees are being claimed. Gowling employs these predatory and anti-competitive practices in order to overbill clients as well as persons other than principals who are made chargeable for solicitor fees under the *Solicitors Act*. Gowling does this by way of letters demanding payment and threatening legal action with exaggerated costs.

Lafleur Henderson LLP v. Springer, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

[22] *Ozerdinc Family Trust v. Gowlings*, 2019 ONSC 5484 at para. 3.

[23] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP listed at footnote 10.

75. Gowling's predatory and anti-competitive billing practices contribute to the serious crisis in access to civil justice in Canada. By artificially inflating the price of legal services, Gowling WLG imposes arbitrary and prohibitive barriers to seeking justice. This dissuades impecunious parties from contesting fees when they cannot afford the cost of an Assessment under the *Solicitors Act*. Contesting legal fees becomes unattractive where the time and expense required to do so exceed the unreasonable amounts charged. These impacts are particularly significant for persons who cannot afford counsel for the Assessment, or who suffer from a psychological impairment. The costs are both financial and physiological. The rule of law also suffers.[24]

76. Gowling has a documented disregard for internal control mechanisms preventing the risk of overbilling in the rendering of legal services and issuance of invoices. The Superior Court addressed this issue in, *inter alia*, *McIntyre v. Gowling Lafleur Henderson*, 2017 ONSC 1733.[25] Gowling's inadequate internal controls, negligent supervision, and consequent overbilling affect *both* principals chargeable for solicitors' fees *and* persons other than principals made chargeable by way of charging orders, whether under the *Condominium Act*, or otherwise.

77. First, unwitting principals unaware of Gowling's billing practices often will not contest their legal fees if the desired outcome was obtained or if they otherwise do not find the amount objectionable. That does not, however, mean that rigorous billing practices were followed. Nor does it guarantee that the amounts paid by principals were in fact accurate and faithful in representing the nature, scope, quality, extent, and persons involved in dispensing the legal services in question. The end cannot justify the means.

78. These concerns are even more pressing where a solicitor makes a person other than their principal chargeable for legal fees by way of a demand letter insisting on immediate payment for legal services rendered. Authority for making a person or property chargeable other than as the principal flows from the *Solicitors Act*. The *existence* of legal authority does not, however,

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[24] *Hryniak v. Mauldin*, 2014 SCC X at para. 33.

[25] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

guarantee the *validity* of its exercise in individual cases. There is, as Justice Rand put it in *Roncarelli v. Duplessis*, [1959] S.C.R. 121, a perspective within which statutory discretion is meant to operate. Chief among them being them are the badges of reasonableness and fairness. These principles are not confined to state decision-makers, but rather inhere in the very exercise of statutory discretion, regardless of the status of the actor to whom power was delegated.

79. These principles constrain the exercise of discretion, in addition to any other legal requirements that may apply by virtue of the authorized decision-maker's standing or profession. As concerns the *Solicitors Act*, the discretion conferred to solicitors must, inescapably, also be exercised consistently with the *Law Society Act*, the *Rules of Professional Conduct*, relevant by-laws, the *Canadian Charter of Rights and Freedoms*, provincial human rights codes, and every other legal rule applicable in a given situation. Solicitors must never forget that they are *both* forceful partisan advocates for their client's clause *and* officers of justice whose special role as stewards of the justice system imposes a measures of independence and impartiality. This special role further requires advocates to resist the temptation of converting their clients' personal animus for the adverse party into an opportunity to unleash predatory practices that pervert the search for truth and contribute to the crisis in the Canadian civil justice system.

80. In condominium and other contentious matters, the authorities respectively conferred to solicitors under the *Solicitors Act*, and to their client condominium corporations under the *Condominium Act* run particularly acute risks of being abused for improper purposes. This can arise where clients use their counsel to punish the opposing party by inflating legal fees and demanding payment before any proceedings have been commenced. Persons charged other than principals further face the hurdle of contesting legal fees that the principal themselves are not challenging,[26] especially if counsel support clients in advancing their desired punitive objectives.

81. The issue may also arise where counsel, such as Gowling, inflate legal fees unbeknownst to the client, represent an amount to the client as being accurate, and then proceed to issue the bill of fees to a person other than the principal pursuant to the *Solicitors Act*. There is, however, a common denominator: in both cases, counsel at Gowling are engaging in deceptive, illegal, punitive, and predatory overbilling practices that contradict the spirit and purposes of the discretion conferred by the *Solicitors Act*, and their legal, professional, and ethical duties and

[26] See e.g., *Gowling Lafleur Henderson, l.l.p. c. Corporation financière Lasalle inc.*, 2014 QCCQ 13585 at para. 34.

obligations under the *Law Society Act*, by-laws, rules, and other applicable sources of law.

82. One of these two scenarios happened to the proposed representative in the case at bar. Both are illegal. In either case, Gowling lawyers and their legal assistant exercised their discretion to charge the Plaintiff as a person other than a principal in an unreasonable, arbitrary, and excessive manner. Gowling misrepresented the scope, nature, quality and persons involved in the legal services rendered, and the actual fees incurred. It also denied this when repeatedly questioned. As evidenced by past and ongoing litigation against Gowling in various Canadian provinces, this is not the first time.[27] And it likely will not be the last. Hence this class action.

83. Gowling lawyers have, as recently as 2019, admitted to or been found guilty of professional negligence or misconduct by courts of competent jurisdiction.[28] Prestige does not, therefore, guarantee the provision of services in a legally and ethically-compliant manner. In litigation raising similar issues, Gowling lawyers have also sought to argue the defence of "absolute privilege".[29] If accepted, this would create one set of laws for Gowling lawyers, and another for all other members of Canadian society. Lawyers and law firms are, however, servant of, and subordinate to the rule of law. They are, like every other member of Canadian society, possibly liable where their conduct fails to meet the standards imposed under the law of Canada.

84. In another reported case, Gowling brought a civil claim for unpaid legal fees against a defendant who claimed not to owe Gowling any amount whatsoever. After wasting scarce judicial resources and the defendant's time and money, its lawyers never showed up to prosecute the case. The proceedings were held *ex parte*, and, in the absence of evidence, Gowling's claim was summarily dismissed with costs.[30] It is unclear whether the lawyer who filed the claim was ever disciplined by the Barreau du Québec.

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[27] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute of Pharmaceutical Technology)*, 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

[28] *Ozerdinc Family Trust v. Gowlings*, 2019 ONSC 5484 at para. 3; *Gowling WLG Canada c. Li*, 2019 QCCQ 803 at paras. 82-90.

[29] *Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 214, at para. 22.

[30] *Gowling Lafleur Henderson c. Grenier*, 2013 QCCQ 172098

85. Gowling's amenability to predatory conduct and abuse of dominating market position in the legal services industry includes assisting clients prosecute and appeal the upholding of a contempt order against a self-represented litigant all the way to the Supreme Court of Canada. In *Pintea v. Johns*, 2017 SCC 23, a unanimous decision rendered from the bench, the Court overturned the contempt order and held that Gowling and their clients failed to show that the self-represented litigant had actual knowledge of the notices in respect of which he was ultimately found in contempt. That Gowling prosecuted this appeal in the Supreme Court underscores the predatory nature of their practices, litigation strategies, and ultimate disregard for consequences on adverse parties, or on public confidence in the administration of justice.

86. Gowling WLG (Canada) LLP lawyers have, moreover, previously been ordered to respond to a self-represented person's duly filed access to information request in respect of her file. The Commissioner did not agree with Gowling that the request was frivolous as only the requester's personal information was requested: see *Gowling WLG (Canada) LLP*, OIPC File Reference 003172 (December 12, 2016). Gowling was found to have deliberately and needlessly delayed the matter.[31] A class action proceeding therefore helps restore the disequilibrium continuously abused by Gowling lawyers in dealing with parties adverse to their own clients. It will also assist current and former clients who were unwittingly duped into paying aggressively overinflated bills of legal fees, or were otherwise subject to predatory practices by one of Canada's largest commercial purveyor of legal services. A class proceeding, therefore, provides a considerable measure of access to justice.

87. It is true that both clients and persons charged with legal fees other than as principals under the *Solicitors Act* may refer their legal bills for assessment. This recourse is not, however, readily available for class member. The class proceeding proposed by the representative Plaintiff instantly presents itself as the preferable procedural vehicle for justice to be pursued.

88. For one, clients to whom a bill of legal fees has been delivered may only seek an order for assessment on requisition "within a month from its delivery". This right is extinguished for class members, especially "[w]here the retainer of the solicitor is not disputed…" Parties charged for legal fees other than as principals also face an additional hurdle where the solicitor's principal has not contested the amount so charged.

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[31] *Gowling WLG (Canada) LLP*, OIPC File Reference 003172 (December 12, 2016)

89. It is, moreover, hard to imagine a situation where the client would in fact agree with a party adverse in interest that their own lawyer overbilled them in the course of an otherwise valid retainer. As this claim demonstrates, such arguments require convincing or otherwise showing without the client's participation that they were in fact overcharged without noticing. Not only do such arguments exceed the scope of an assessment under the *Solicitors Act*, they also involve a degree of legal sophistication that assessment officers might not necessarily possess. For these reasons, a vague reference in section 3 to "special circumstances" for when eligible parties may seek an assessment after presumptive time delays cannot substitute for the significant procedural and substantive advantages to be derived from certifying this claim as a class proceeding.

90. There is more: A class proceeding typically ensures the presence of both parties. By contrast, as concerns references for assessments, the *Solicitors Act* expressly states that the solicitor whose very bill of fees is at issue can "refuse[] or neglect[] to attend the assessment" even upon "having due notice…" The bill of legal fees will simply be assessed in their absence. But this can seem quite unsatisfactory for a putative class member who discovers that their suspicions as to Gowling inflating their bill of legal fees were well-founded. The assessment officer can only modify the legal bill; they do not have the jurisdiction to competently address the various tortious, statutory, common law, and equitable legal wrongs that a discovery of predatory overbilling can trigger

91. Further, the assessment procedure involves the assessment of a bill of legal fees by "a local registrar of the Superior Court of Justice." Neither the local registrar nor the assessment officer to whom a matter is referred to for assessement is necessarily legally-trained, and is not, in any case, a member of the judiciary. The jurisdiction of assessment officers is, in any event, narrow.

92. In addition, nothing in the *Solicitors Act*, the *Courts of Justice Act*, or any other valid and applicable legislation conditions the bringing of parallel actions for actionable harms under the law of Canada and Ontario on first obtaining an Assessment under section X of the former. Nor does the failure to seek an Assessment bar the bringing of proceedings by a person other than a principal who is made chargeable for legal fees. The Superior Court of Justice addressed these issues in, *inter alia*, *Gowling Lafleur Henderson v. Springer*, 2013 ONSC 923.[32]

[32] See also, relatedly, past and ongoing litigation against Gowling WLG (Canada) LLP in **Ontario** (*Ozerdinc Family Trust v. Gowling WLG (Canada) LLP*, 2019 ONSC 5484; *Gowling Lafleur Henderson LLP v. Transpharm Canada Inc. (Toronto Institute*

93. Class proceedings are however, preferable, to both the Assessment procedure, and to individual actions in respect of legal fees tainted by predatory overbilling. The reason for this is simple: Only class actions can achieve the behaviour modification outcomes that are central to institutional reform and change away from illegal-yet-systemic organizational practices.

94. Fifth, the class representative would fairly represent the interests of the class. Importantly, the Plaintiff is legally-trained. Guided by experienced class action counsel, the proposed Plaintiff is well-suited to navigate the complexities of the legal system in general, in addition to those raised in this proceeding, specifically. The proposed representative Plaintiff would be fully able to advance a workable method of prosecuting the proceeding. This would be ensured by adopting an approach anchored in proportionality, candour to court, and the cardinal objective of promoting access to justice for putative class members.

95. Further, as soon as the proceeding is certified as a class action, the first step to be undertaken by the Plaintiff in the discovery process will be to identify the specific number of putative class members affected within the limitations periods. This would ensure that any concerns of remoteness, proximity, and indeterminacy are addressed at the outset, using Gowling's own corporate legal timekeeping, legal accounting and analogous documents to achieve optimal quantification of putative class members.

96. The proposed representative Plaintiff "does not have…an interest in conflict with other class members… on the common issues for the class…" The only possibly remote adversity of interest arises from some of the class members being current or former clients of Gowling's. This adversity does not, however, give rise to a conflict of interest. All class members allege identical harms that was caused by illegal predatory billing practices engaged in by Gowling. All class members further seek the identical remedy of restitution, in addition to punitive damages for the scandalous and reprehensible conduct engaged in by Gowling.

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of Pharmaceutical Technology), 2014 ONSC 5643 *Gowling Lafleur Henderson LLP v. Springer*, 2013 ONSC 923; *Gowling Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686); **Alberta** (*Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667; *Pintea v. Johns*, 2017 SCC 23; *Carbone v. McMahon and Gowlings Lafleur Henderson LLP*, 2015 ABCA 263; *Carbone v. Whidden and Gowlings Lafleur Henderson LLP*, 2013 ABQB 434); **Québec** (*Gowling WLG Canada c. Li*, 2019 QCCQ 803, leave to appeal dismissed in *Gowling WLG (Canada) s.e.n.c.r.l. c. Li*, 2019 QCCA 954; *Gowling Lafleur Henderson, s.e.n.c.r.l. c. 2945-8775 Québec inc.*, 2015 QCCQ 2899; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Lixo Investments Ltd.*, 2014 QCCS 4893; *Gowling Lafleur Henderson s.e.n.c.r.l. c. Grenier*, 2013 QCCQ 17209); **British Columbia** (*Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147). This enumeration is not exhaustive.

97. It is, in addition, possible that Gowling's current or former clients who qualify as class members will be able to assert claims additional to, and different from, those advanced by the representative Plaintiff. Such claims may involve claims of breach of fiduciary duty, professional negligence, and other grounds of action restricted to, and arising from, the solicitor-client relationship. None of those grounds of action are raised by the representative Plaintiff in this Statement of Claim.

98. Nor would the assertion of any of these grounds in parallel or other proceedings place the representative Plaintiff in a conflict of interest with any of the class members. The representative Plaintiff has, moreover, at the time of these submissions, never met any of the members comprising the putative class. In any event, this is not a condition precedent to the certification of a class action in Ontario under section 5(1) of the *Class Proceedings Act*.

99. Finally, and for the reasons set out above, certification would undeniably and overwhelmingly fulfill all three goals sought to be advanced by class proceedings in general, namely: judicial economy, behaviour modification, and most importantly, access to justice.[33]

CONCLUSION

100. To conclude, it should be noted that Gowling could have addressed this matter - and the others raised in this class action - without engaging in deceptive, predatory, and illegal practices including but not limited to aggressive overbilling. The law cannot stand idle to such wanton, reckless and outrageous conduct by members of the very profession charged with upholding the rule of law. To do so is to make a mockery of public confidence in the administration of justice.

101. Gowling can, moreover, address this matter without defaming the Plaintiff or counseling its clients to do so as part of its litigation strategy. This concern arises on the basis of former Gowling Partner Kristine Robidoux having been suspended from the practice of law and forced to resign from Gowling in May 2014 following admissions that she wilfully breached client confidentiality by providing information to a well-known political journalist and television announcer.[34] Ms. Robidoux was also sued for defamation by her client Arthur Kent.[35]

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[33] *Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158, at para. 27

[34] See Jennifer Brown, "Robidoux resigns from Gowlings", *Canadian Lawyer*, May 27, 2014, online: https://www.canadianlawyermag.com/news/general/robidoux-resigns-from-gowlings/27261

102. Interestingly, Ms. Robidoux has since re-joined Gowling. Gowling never apologized for her behaviour, portraying it as an isolated incident.[36] It is unclear what, if any measures Gowling put in place to prevent further privacy breaches, and other predatory conduct in the practice of law. Katherine Robidoux has since been involved in litigation alleging professional negligence.[37] This another argument in favour of class proceedings as ideal for behaviour modification purposes.

103. Another case is that of Gowling lawyers Meghan McMahon and Taryn Burnett, who were found to have breached the privacy of a party *adverse in interest* in a medical malpractice matter.[38] In short, there is precedent for Gowling lawyers using their privileged position to harm parties where expedient. The concerns are even more acute where, as here, Gowling has made veiled threats of making deliberately false assertions part of the public record.

104. A Statement of Defence is not an invitation to pervert the course of justice by including character assassinations, false and prejudicial statements made with actual malice, or other forms of propensity reasoning that nothing to advance the search for truth.[39] The same goes for demonstrable false extrajudicial utterances. The search for truth in the proposed class action proceedings concerns a single thing: Gowling's deceptive, intentional or reckless, predatory practices of overbilling both clients and persons charged as principals under the authority of the *Solicitors Act*, and analogous legislation.

105. Gowling and their client Corporation have already repeatedly been advised that any disclosure of their client's defamatory account of facts, attacks on my character and reputation, and other malicious attempts at resisting this lawsuit will be met by immediate legal action. The letter is confidential. None of the allegations it contains have been proven in a court of law. None of those allegations are determinative of the harms alleged in this action or relevant to the remedy to be ordered by the court if the proceeding is successful on the merits.

106. Predatory overbilling is predatory overbilling, and predatory overbilling is illegal. This is so even if one has little regard or respect for the person ultimately made to pick up the tab.

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[35] *Ibid.* See also, most recently, *Kent v. Martin*, 2018 ABCA 202.
[36] *Ibid.*
[37] *Bechir v. Gowling Lafleur Henderson LLP*, 2017 ABQB 667. and especially at paras. 63-72.
[38] "Evidence: Privacy lawyer Taryn Burnett unlawfully obtained Plaintiff's credit report", February 11, 2017, online: http://gowlingsabuse.blogspot.com/2017/02/evidence-privacy-lawyer-taryn-burnett.html
[39] *Groia v. Law Society of Upper Canada*, 2018 SCC 27 at para. 67.

Concluding otherwise is antithetical to the rule of law. It is, rather, a recipe for vigilante justice couched in legal niceties under the guise of a generally unfettered discretion exercised by Gowling through its partners, agents, and contractors.

107. Access to justice in Canada cannot continue to tolerate the scourge of behemoth law firms exaggerating the prices of legal services and abusing their longstanding domination of the market for such services. This class proceeding sends a clear message: the era of predatory practices in the Canadian legal services industry is officially over. Access to justice deserves nothing less.

LEGAL AUTHORITIES

108. The Plaintiff relies on, *inter alia*, the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; the *Condominium Act, 1998*, S.O. 1998, c. 19; the *Solicitors Act*, R.S.O. 1990, c. S. 15; the *Law Society Act*, R.S.O. 1990, c. L. 8 and bylaws; the *Rules of Professional Conduct*; the *Competition Act*, R.S.C., 1985, c. C-34; and the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

ORDERS SOUGHT

109. Please see relief enumerated at paras. 1-2 of the present Statement of Claim.

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