CITATION: *Toronto District School Board v Meta Platforms Inc.*,2025 ONSC 1499
COURT FILE NO.: CV-24-00717353-0000
DATE: 03-07-2025

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TORONTO DISTRICT SCHOOL BOARD

Plaintiff/Responding Party

- and –

META PLATFORMS INC., META PAYMENTS INC., META TECHNOLOGIES LLC., INSTAGRAM INC., INSTAGRAM LLC., FACEBOOK HOLDINGS LLC., FACEBOOK OPERATIONS LLC., FACEBOOK CANADA LTD., SICULUS INC., SNAP INC., BYTEDANCE LTD., BYTEDANCE INC., TIKTOK LTD., TIKTOK INC., TIKTOK LLC., AND TIKTOK TECHNOLOGY CANADA INC.

Defendants/Moving Parties

Duncan Embury, Greg Neinstein, Michael Wolkowicz, Sonia Nijjar, and Natalie Gilliard for the Plaintiff

Michael A. Feder, K.C., *Gillian P. Kerr, Connor Bildfell, Gregory Ringkamp,* and *Morgan Watkins*, for the Defendants Meta Platforms Inc., Meta Payments Inc., Meta Technologies LLC., Instagram Inc., Instagram LLC., Facebook Holdings LLC., Facebook Operations LLC., and Facebook Canada Ltd. and Siculus Inc.

Linda Plumpton, Grant Worden, Sarah Whitmore, and *Leora Chapman*, for the Defendant, Snap Inc.

Peter Pliszka, Antonio Di Domenico, and *Zohaib Maladwala* for the Defendants, ByteDance Ltd., ByteDance Inc., TikTok Ltd., Tiktok Inc., TikTok LLC., and TikTok Technology Canada Inc.

HEARD: February 26 and 27, 2025

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REASONS FOR DECISION

Leiper, J.:

A. Introduction

[1] On March 27, 2024, the Plaintiff, Toronto District School Board (the "Board"), issued a statement of claim in negligence and in public nuisance seeking damages from the Defendant social media companies: Meta Platforms Inc., Meta Payments Inc., Meta Technologies LLC, Instagram Inc., Instagram LLC, Facebook Holdings LLC, Facebook Operations LLC, Facebook Canada Ltd., Siculus Inc, Snap Inc., Bytedance Ltd., Bytedance Inc., Tiktok Ltd., Tiktok Inc., Tiktok LLC., and Tiktok Technology Canada Inc. (the "Corporations").

[2] The causes of action allege that the Corporations interfered with the Board's mandate to promote student achievement and well-being by causing harm to students. The Board claimed that it suffered economic damages while responding to the harm caused to the students.

[3] Pursuant to rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the Corporations brought a motion to strike out the Board's claim on the basis that it is plain and obvious that the Board's action cannot succeed.

[4] I dismiss the motion to strike the Board's claim. These are my reasons for that decision.

B. Background

[5] The Board's allegations are contained in the Statement of Claim, which I have attached as Appendix A. As I discuss below, the focus on a motion to strike is whether there is a reasonable cause of action, assuming that all the material allegations in the Statement of Claim are true.

[6] The Board's claim alleges that to increase revenue, the Corporations designed their social media products to be addictive to children. The Corporations were aware that excessive use by students causes physical, emotional, and educational harm to them. The Board also pleads that its students have been harmed by cyberbullying, which in turn, caused harm to the Board, which is charged with educating and protecting students from harm.

[7] The Board has a mandate to deliver public education and promote student well-being under the *Education Act*.[1] It is required to keep students safe from harm. It limits public access to its schools to protect students from sexual predators. The Board must provide a safe, positive, and inclusive learning environment. It educates students on mental health and on the risks associated with drug and alcohol use: *Education Act*, ss. 29.6, 169; Statement of Claim, at para. 29.

[8] The Board alleges that the Corporations, which are multinational tech conglomerates, have created and profited from sophisticated digital platforms to entice school-age students into unhealthy dependence on social media apps such as Snapchat, TikTok, Instagram, and Facebook.

[1] R.S.O. 1990, c. E.2.

The Board alleges at para. 128 of its Statement of Claim that these products are like:

> any addictive substance, [and] students are at special risk of developing compulsive use and/or addiction. The harmful effects of that compulsive use and/or addiction are the same as any other substance, including experiencing withdrawal type symptoms without use.

[9] The Board's Statement of Claim, at paras. 122-123, describes how these products take advantage of the known developmental stages of children and youth, alleging that:

> School-age children and adolescents are especially vulnerable to developing harmful behaviours because their pre-frontal cortex is not fully developed. Students are prone to engage in reward seeking behaviour, tend to engage in upward social comparison, and engage in riskier behaviour than adults. Their developing brain is unable to defend against the barrage of novel, and dopamine inducing stimuli being constantly pushed on the Defendants' products.
>
> When the release of dopamine in young brains is manipulated by the Defendants' products, it interferes with the brain's development and can have long-term impact on an individual's memory, affective processing, reasoning, planning, attention, inhibitory control, and risk-reward calibration. The normal neurodevelopment of students is interrupted, and they can develop maladaptive tendencies. In some circumstances this harm may be irreparable. The Board pleads that children spend 195 days a year in school, for six to eight hours a day during the week. Data from 2021 shows that 91 percent of Ontario students in grades 7-12 are daily users of social media, with 31 percent of those students using social media for five hours or more a day in 2021. This data does not include other screen time such as gaming or watching television programming.

[10] The Board states that the pervasive use of the Defendants' social media products has created a mental health crisis among students. Students suffer from increased levels of anxiety, depression, social media addiction, body dysmorphia, anorexia, self-harm, suicidal ideation, low self-esteem, and suicide. Between 2013 and 2021, the number of Ontario students who have self-reported that they have unmet mental health needs increased from 27.9 percent to 42.4 percent.

[11] The Board pleads that design features on the apps "push" inappropriate content to students and that although the Corporations could protect students from predators and sexualized content, such as pictures of adult genitalia, the Corporations have failed to prevent their apps from being used for child sexual abuse. Social media use thus places students at higher risk of sexual harassment, sexual exploitation. and sexual assault by on-line predators.

[12] In its pleading, the Board states that school communities must address an increase in "critical incidents" tied to social media, including gun violence and suicide. The Board has added school advisors to its staffing complement to address the more severe and violent incidents linked to social media use. The Board's claim describes in detail how social media magnifies disputes and how geolocation functions can escalate conflicts.

[13] In its pleading, the Board alleges that the anonymity of the users of social media products

increases cruel behaviour and bullying. The Board pleads that 30 percent of Ontario students reported being cyberbullied during the 2020-2021 school year over social media. Consequently, the Board is compelled to investigate cyberbullying. It pleads that its ability to do this is complicated by anonymous usernames and apps which permit content to appear and then disappear.

[14] The Board pleads that over and above the exposure to aggression, violence, and cyberbullying, student overuse of social media interferes with learning, affects sleep, and reduces students' ability to focus. The Board pleads that this consequence is a design feature of the Corporation's social media apps. The Board alleges that the Corporations profit from making their product addictive. The Board pleads that students are a key consumer demographic, and the students have been targeted by the Corporations. The claim describes in detail how the Corporations have designed their products to manipulate the brain circuitry, or synapses of students, creating "compulsive, problematic, addictive and unsafe use" of their products.

[15] The Board has identified examples of the direct damages it –i.e., not the students – suffered due to the Corporations' conduct and the impact of the Corporation's social media products on the students who are under the care and supervision of the Board. Further, the Board described the damages it suffered in the statement of claim as follows:

(i) costs to address the altered student population including barriers to focused learning and dysregulated student behaviour;

(ii) costs to educate about the dangers of social media use, digital literacy, and staff training; costs related to health care including additional mental health and wellbeing services, counselling, and resources; additional hires to respond to social media related harms including the student mental health crisis;

(iii) additional technology, IT, and cybersecurity costs;

(iv) loss of personnel hours of TDSB staff who had to direct time and activity towards discipline, education, and mitigating child safety risks caused by the endemic use of social media products;

(v) increased caring and safe schools costs and increased need for vigilance, as a result of the sexual harassment, and sexual exploitation of the student population;

(vi) costs associated with discipline and suspensions related to incidents of social media misuse in schools or that impact on school climate, including personnel hours;

(vii) monitoring bathrooms and facilities for property damage in response to viral challenges; and

(viii) such other damages that will be advised of prior to the trial of this action

C. The Legal Framework on a Motion to Strike: Rule 21.01(1)(b)

[16] Provided that it is used cautiously, rule 21.01(b) of the *Rules of Civil Procedure* is a "valuable" tool for weeding out unmeritorious claims.[2] This provision reads:

> 21.01(1) A party may move before a judge,
>
> [...]
>
> (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly.

[17] The caselaw stipulates that if it is "plain and obvious" that a pleading discloses no reasonable cause of action, then the claim may be struck.[3] The power to strike out a claim that has no reasonable prospect of succeeding can ensure effective, efficient, and fair litigation. This power must be used with care because the law is constantly developing. Courts must take a generous approach and err on the side of permitting arguable claims to proceed to trial.[4]

[18] The facts pleaded in the statement of claim are used to measure the prospect of success of the claim at trial. The material facts are taken to all be true – whether there is evidence or not to support those claims is not relevant on a motion to strike. Thus, a detailed review of the material facts pleaded is vital to the task of evaluating a motion to strike a claim.[5]

[19] The fact that a claim is a novel one does not necessarily mean that it does, or does not, have merit. As discussed below, where the plaintiff has pleaded a novel duty of care in support of a negligence claim, the court applies the *Anns/Cooper-Hobart* test to the facts as pleaded to determine whether it is plain and obvious that no such duty of care can be recognized.[6]

D. Position of the Moving Parties

[20] The Corporations submit that it is plain and obvious that the Board's negligence claim raises no reasonable cause of action. They argue that the alleged duty of care cannot: (a) demonstrate proximity; (b) demonstrate foreseeability; nor (c) overcome the policy reasons against finding a duty of care between social media companies and school boards.

[21] The Corporations also submit that the Board's claim raises no reasonable cause of action in public nuisance because: (a) the Board does not have standing in public nuisance; (b), this cause of action does not apply to interference with public education because public education is not a legally viable right; and (c) the Board seeks to unreasonably expand how the tort of public nuisance is applied.

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[2] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 20.
[3] *Imperial Tobacco,* at para. 17.
[4] *Imperial Tobacco,* at paras. 19-21.
[5] *Imperial Tobacco,* at paras. 22-23.
[6] *Haskett v. Equifax Canada Inc.*, 2003 CanLII 32896, 63 O.R. (3d) 577 (C.A.), at paras. 20-24; *Anger v. Berkshire Investment Group Inc.* 2001 CanLII 24141, 141 O.A.C. 301 (Ont. C.A.)., at para. 8.

E. The Legal Framework in Negligence

[22] The tort of negligence has four elements: (a) a duty of care owed by the defendant to the plaintiff; (b) a breach of the standard of care by the defendant; (c) damage suffered by the plaintiff; and (d) the damage being caused, in fact and in law, by the defendant's breach. [7]

[23] At the pleadings stage of an action, a viable negligence claim requires: (a) a recognized relationship that involves a duty of care; (b), an analogous relationship, or (c) material facts pleaded that meet the test of establishing that there may be a novel duty of care according to the test in *Cooper v. Hobart*.[8]

[24] A novel duty of care must meet proximity and foreseeability requirements and must not be excluded by residual policy considerations.[9]

[25] In this case, the Board acknowledges that this action seeks to create a novel duty of care that would allow the Board to seek a remedy for its pleaded economic losses linked to actions of the Corporations.

[26] I discuss each of the three requirements below – proximity, foreseeability, and residual policy concerns. To begin, I consider the context in which these factors emerge and the availability of a cause of action for pure economic loss to a plaintiff, like the Board in this case, that has not suffered physical or psychological injury nor property damage. Rather, the Board's claim is for relational economic loss.

[27] There must be a right or a "legally cognizable interest" that could be vindicated by finding a duty of care owed by the defendant to the plaintiff. The nature of the right, the kind of pure economic loss alleged, and the nature of the relationships will all inform the proximity analysis.[10]

[28] As a starting point then, the Board seeks a remedy for pure economic loss in circumstances that largely deal with injury caused to its students, who are not joined as co-plaintiffs. The immediate case is not a representative action for the students. The Board claims only for its own economic losses. The Board's negligence claim for pure economic losses based on relational economic losses, is not novel *per se*. That said, the claim in the immediate case is a novel relational economic loss claim.

[29] A relational loss occurs when a tortfeasor causes personal injury or property damages to a third party with whom the plaintiff has a relationship, typically contractual, and the plaintiff suffers a pure economic loss related to the harm suffered by the third party. The general rule is that relational economic losses are <u>not</u> recoverable in an action in tort, but may be recoverable in some circumstances. The available categories of loss recognized to date are not fixed. The court may add new categories of recoverable pure economic losses when departures from the general rule are

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[7] *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504, at para. 18.
[8] 2001 SCC 79, [2001] 3 S.C.R. 537.
[9] *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, at paras. 51-53; *McDonald v. Toronto-Dominion Bank*, 2022 ONCA 788, 163 O.R. (3d) 674, at para. 32.
[10] *Maple Leaf Foods Inc.*, at paras. 18-20, 79, 86-94

justified based on the duty of care analysis and on defensible policy grounds.[11]

[30] Damages for pure economic loss arising from the tort of negligence have a lengthy history dating back to the 1964 English decision in *Hedley Byrne & Co . Ltd. v. Heller & Partners Ltd.*[12] Canadian courts began to develop the *Hedley Byrne* principles in *Rivtow Marine Ltd. v. Washington Iron Works*.[13] The Board grounds its right in a category of economic loss described as "relational economic loss." A plaintiff may seek relief for monetary losses it suffers arising from physical or psychological damage to a third party, or damage to the property of a third party.[14]

[31] Based on its own relationship and responsibilities to the students, the Board claims economic losses caused by the Corporations that are directly connected to the harms done to its students by the Corporations' addictive social media products. To succeed at trial, the Board will need to show that the Corporations owed the Board a duty of care in these circumstances.

[32] With this summary of the legal background, the first issue on the motion is whether it is plain and obvious that the Board will fail to establish sufficient legal proximity between itself and the Corporations to establish a duty of care.

F. The Proximity Analysis

1. Who is my neighbour in law?

[33] Canadian courts determine proximity in the legal sense by asking whether the parties are in such a "close and direct relationship" that it would be "just and fair having regard to that relationship to impose a duty of care in law."[15] As LaForest, J. put it in *Hercules Managements Ltd. v. Ernst & Young*, "proximity" means that the circumstances of the relationship between the plaintiff and the defendant are of such a nature that the defendant may be said to be under an obligation to be mindful of the plaintiff's legitimate interests in conducting his or her affairs: [1997] 2 S.C.R. 165, citing *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.).

[34] The proximity analysis asks the court to consider whether the parties are sufficiently close in a legal sense such that the defendant should be obliged to be mindful of the plaintiff's interests. Depending on the circumstances, the court may consider factors such as the "expectations, representations, reliance, property and other interests as between the parties."[16]

[35] The decision that created a duty of care in negligence by a manufacturer towards the

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[11] *Bow Valley Husky* at paras. 51-52; *D'Amato v. Badger*, [1996] 2 S.C.R. 1071 at paras. 14-40; *Canadian National Railway Co. v. Norsk Pacific Steamships Co.* [1992] 1 S.C.R. 1021.

[12] [1964] A.C. 465 (H.L.).

[13] 1973 CanLII 6 (SCC), [1974] S.C.R. 1189.

[14] *Norsk*; *Winnipeg Condominium Corporation No. 36 v. Bird Construction Co.*, 1995 CanLII 146 (SCC), [1995] 1 SCR 85; *Bow Valley Husky*, at para. 50; *Sauer v Canada (Attorney General)*, 2007 ONCA 454, 225 O.A.C. 143; *Maple Leaf Foods Inc.*, at paras. 21-23.

[15] *McDonald v. Toronto-Dominion Bank*, at para. 34; *Cooper*, at paras. 32, 34.

[16] *Cooper*, at paras. 30, 34-35; *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19, [2018] 1 S.C.R. 587, at para. 23.

consumer is *Donoghue v. Stevenson*.[17] In that case, Lord Atkin discussed the question of proximity, at pp. 580-581:

> Who then in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

[36] Proximity does not necessarily mean physical proximity, although one could imagine that in many circumstances legal proximity could be derived from physical or locational proximity. Legal proximity, however, looks at whether the person whose careless actions affected another person ought to have thought about how their actions would directly affect the other person.[18]

2. The Proximity Analysis in this Case

[37] The Corporations submit that the Board fails to establish legal proximity in this case, and thus it cannot be found to owe the Board a duty of care. The Board has not pleaded any relationship between the Corporations and the Board. While the Corporations may have a relationship with the students who have accounts to use the social media platforms, the Board has no relationship at all with the Corporations. The Corporations submit that the Board is attempting to align itself with the students who may be affected by social media to create an argument of proximity. The Corporations characterize the Board's position as "bootstrapping" its claim onto the suffering of students.

[38] The Corporations argue that it is plain and obvious that no relationship of proximity could be found at trial assuming the facts in the Statement of Claim are true. They point to the Board's complaint in the Statement of Claim that it is unable to get the Corporations' attention in removing harmful content and submit this is evidence that the Corporations had no proximate relationship with the Board. Therefore, while the students may have been the "neighbour" of the Corporations, the Board is not. The students may suffer, but the Board does not. Essentially, the Corporations imply that their relationships with student users have nothing to do with the Board.

[39] I disagree. Assuming the material allegations in the Statement of Claim are true, the Board asserts that the Corporations put themselves into a relationship with the Board by targeting students at school during school hours. The Board alleges that the Corporations used psychologically manipulative and highly effective marketing techniques that harmed the students at school and their ability to receive an education. The Board also alleges that the Corporations use geo-location, sophisticated knowledge of adolescent neuroscience and data analytics to entice school age users, a desirable demographic, to use their apps. The Corporations are in business to sell their products and earn revenue. The Board's interest is education and student well-being. Assuming the pleadings are true, these interests are placed in direct conflict. The Board has pleaded that the Corporations have prioritized profit over student health, with an adverse and costly impact on the Board's responsibilities to safeguard the students who are in their charge.

[40] The Board has pleaded, logically that the Corporations have impeded its ability to carry

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[17] 1932 CanLII 536, [1932] A.C. 562 (H.L.).

[18] *Donoghue*.

out its significant role in the lives of its students and to deliver public education, while safeguarding the health and safety of the students. Thus, it is not "plain and obvious" that the Corporations will be found to have no proximity to the Board for the purposes of a duty of care analysis. This is because, as pleaded, the Corporations have inserted themselves into the relationship between the Board and its students, and into the lives of students while at school. While the entry may be through cyberspace and students' digital devices instead of the front doors of the school, this novel factual context does not mean that proximity in law is defeated. Rather, it means that proximity may be established.

[41] The Board has pleaded that the Corporations contemplated and knew about the adverse and costly impact to the Board when it marketed its products to the students. The Board pleads that the Corporations decided to target students at schools and during school hours. The pleading supports finding as a material fact that the Board could reasonably establish that the harm suffered by both the students and the Board was within the contemplation of the Defendants. It is not plain and obvious that the Board cannot demonstrate at trial that the Corporations ought to have considered the impact on the Board arising from these products directly competing for the attention, energy, and the mental focus of students within their learning environment.

[42] The Corporations' position that they do not have to think about the Board because they deal directly with the students is not responsive to the issue. This may be true as a contractual fact, but as demonstrated all the way back to *Donoghue v. Stephenson,* negligence law does not depend upon a contractual or direct relationship. It is arguable that the Corporations had a foreseeable duty of care toward the Board. This manifested through the relationship between the Board and its students, which is a relevant factor in assessing claims for relational economic relief. I cite the following two cases to illustrate why the Board-student relationship is relevant to the analysis of the proximity between the Board and the Corporations.

[43] In *Winnipeg Condominium Corporation No. 36 v. Bird Construction Co.*,[19] the Supreme Court considered the tort liability of a construction company responsible for a building with substantial and dangerous defects to the exterior cladding, which had begun to fall off. The risk of physical harm was not only to the plaintiff condominium corporation, which had the problem of repairing the deteriorating building, but also to those who might be nearby - such as condominium residents and passersby who were exposed to risk from falling debris.

[44] In considering proximity and foreseeability, La Forest, J. wrote, at para. 36 for the unanimous Court:

> In my view, the reasonable likelihood that a defect in a building will cause injury to its inhabitants is also sufficient to ground a contractor's duty in tort to subsequent purchasers of the building for the cost of repairing the defect if that defect is discovered prior to any injury and if it poses a real and substantial danger to the inhabitants of the building. In coming to this conclusion, I adopt the reasoning of Laskin J. in *Rivtow,* which I find highly persuasive. If a contractor can be held liable in tort where he or she constructs a building negligently and, as a result of that negligence, the building causes damage to persons or property, it follows that

[19] 1995 CanLII 146 (SCC), [1995] 1 SCR 85.

> the contractor should also be held liable in cases where the dangerous defect is discovered and the owner of the building wishes to mitigate the danger by fixing the defect and putting the building back into a non-dangerous state. In both cases, the duty in tort serves to protect the bodily integrity and property interests of the inhabitants of the building. See *Dutton*, *supra*, at p. 396, *per* Lord Denning M.R.

[45] The Supreme Court found that the building owner was in legal proximity to the negligent builder, even though the shoddy workmanship posed physical risks to the residents of the building.

[46] The claim in the case at bar describes physical and psychological harm to the students who are under the care and guidance of the Board. The Board-student relationship informs the proximity analysis here, just as the owner-inhabitant relationship did in *Winnipeg Condominium Corporation No. 36 v. Bird.*

[47] In *Canadian National Railway Co. v. Norsk Pacific Steamship Co.*,[20] the defendants carelessly allowed their barge being towed behind a tugboat in heavy fog to collide with a railway bridge owned by the federal government. Bridge users like the plaintiff Canadian National Railway Co. ("CNR") were forced to re-route rail traffic and this led to costly delays for the users of the bridge. These users had no contractual or direct relationship with the defendant barge company that had damaged the federal government's bridge. A majority of the Supreme Court dismissed the barge company's appeal and found a duty of care between the railway company/bridge user and the defendant barge company. Justice McLachlin, as she then was, for three members of the court, considered the fact that the plaintiff's operations were so closely allied with the bridge owner, that it was like a joint venturer with the bridge owner. Thus, CNR's discrete consequential economic losses from the negligent act of the defendant were linked to the losses of the owner of the bridge.[21]

[48] In concurring reasons, Stevenson, J. rejected the arguments concerning the risk of indeterminate liability, in terms that echo Lord Atkins' description of proximity in *Donoghue v. Stevenson*. Stevenson J. said that proximity is established "when the defendant actually knows or ought to know of a specific individual or individuals, as opposed to a general or unascertained class of the public, who is or are likely to suffer a foreseeable kind of loss as a result of negligence by that defendant."[22]

[49] In *CNR v. Norsk*, the barge owner knew or ought to have known it would affect bridge users by negligently damaging the bridge. Similarly, in *Winnipeg Condominium Corporation No. 36* v. *Bird*, the condominium builder knew or ought to know that an unsafe building would affect the residents of the building. In *Donoghue v. Stevenson,* the bottler of ginger beer knew or ought to have known that a tainted drink will affect the person who consumes it. And here, the Board submits that a social media company whose negligent conduct harms students while at school, knows or ought to know that the persons responsible for student care and well being are also harmed.

[50] The Corporations seek to rely on cases in which there was no factual relationship between

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[20] 1992 CanLII 105, [1992] 1 S.C.R. 1021.

[21] *Norsk*, at p. 1184.

[22] *Norsk*, at p. 1182.

the plaintiff and defendant. They assert that without a relationship, there can be no finding of proximity. For example, the Corporations rely on the 2010 decision of the Court of Appeal for Ontario in *Cavanaugh v. Grenville Christian College*.[23] In this case, two ordained Anglican priests served as headmasters at the defendant boarding school where students were physically and psychologically harmed. The respondent Anglican Diocese was not involved in the operations of the College, the lives of the students, nor did it have any supervisory role over the staff at the school. The pleadings alleged only an undefined "affiliation" with the school. The plaintiffs did not plead that the Diocese had knowledge, control, or involvement in the harm to the students. Here, in contrast, the Board pleads the opposite: the Corporations are the direct source of detailed harm to students – and to the Board itself.

[51] The Corporations rely on *Kaissieh v. Done*[24] but the case is of no assistance to them. In this case, acquaintances persuaded the plaintiff to provide his identification documents to facilitate a "straw buyer" scheme to purchase a luxury vehicle to be resold overseas. The plaintiff claimed that he suffered from the use of his identity to carry out the scheme. The plaintiffs named the vehicle manufacturer as a defendant, but did not plead any connection between the wrongful acts of the dealer or the other individual who persuaded the plaintiff to provide his identification documents. As in the *Cavanaugh* decision, the court found there were no facts pleaded that connected the manufacturer to the scheme, the false representations, or to the plaintiff. These are not analogous circumstances to those pleaded in the case at bar.

[52] The Corporations rely on *Dafesh v. Amormino*,[25] which, once again, does not assist them. In this case, the plaintiffs were employees of a car dealership which was investigated for criminal activity. As a result of the investigation, the dealership was closed and the plaintiffs lost their jobs. The employees sued the police and others for economic loss after the dealership failed, connecting a negligent investigation to their economic loss arising from the dealership closing. In finding insufficient proximity, the motion judge concluded that although the employees suffered indirect economic and reputational harms, nevertheless, in the absence of a duty of care relationship with the police who investigated their employer, they had no claim for their pure economic losses. In contrast, the Board pleads direct economic harm by the targeted acts of the Corporations towards its students and as discussed above, there is a basis for finding a proximate relationship between the Corporations and the Board.

[53] Finally, the Corporations rely on *Paxton v. Ramji*.[26] This is an unhelpful authority for the defendant Corporations. In this case, the court considered whether a duty of care existed between a doctor and an unborn child. The doctor had prescribed a teratogenic drug to his patient who accidentally became pregnant due to a failure of her partner's vasectomy procedure. They chose to have the child, who suffered from birth defects connected to the drug. The Court of Appeal found strong policy reasons not to impose such a duty, given the conflict that it creates for doctors who would be forced to choose between treating the well-being of their female patients and the well-being of an unborn child. This case is far removed from the facts or circumstances in the case at bar and does not assist with the proximity analysis.

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[23] 2013 ONCA 139, 360 D.L.R. (4th) 670 .
[24] 2022 ONSC 425.
[25] 2017 ONSC 1748.
[26] 2008 ONCA 697, 92 O.R. (3d) 401.

[54] The decisions the Corporations rely upon rise and fall on their particular facts and pleadings, and are not analogous to the relationships, conduct, or harm pleaded in this case.

[55] The Corporations submit that intentional targeting of students is irrelevant to proximity because negligence is not an intentional tort. This submission misses the point. The Board does not plead that the Corporations intentionally harmed it, rather, the Corporations negligently harmed the Board by intentionally targeting students as consumers of social media products during school hours and in ways that affected students in their studies.

[56] Finally, while the Corporations may not have wished to interact with the Board, this does not mean that they did not have a legal obligation to listen to the Board. Just as the manufacturers of pharmaceuticals and medical devices have a responsibility to monitor adverse side effects, it is not plain and obvious that the Corporations can adopt a position of blind indifference to the entreaties of the Board. Assuming the material facts are true, the Board pleads that it frequently and directly contacted the Corporations to report student safety issues or cyber-bullying, or to request the removal of sexually exploitative content involving their students. The Board pleads that the Corporations were either nonresponsive or delayed taking any steps requested. As a result, the Board pleads it has suffered direct harm, including, "reputational harm, increased administrator, educator, and IT resource burden, and damage to the school climate."

[57] In *Price v. Smith & Wesson*,[27] Justice Perell considered a proposed class action for negligent design against a gun manufacturer after a tragic shooting occurred in Toronto, in which two children were killed and others were injured by the senseless, random, gun violence. The plaintiff alleged that the manufacturer did not utilize "authorized user" or "smart gun" technology to prevent the stolen handgun from being discharged by the thief of the weapon. The Defendant argued it owed no duty of care to a non-user of the weapon who had been harmed by an unauthorized user of the weapon.

[58] Perell, J. disagreed, finding that a duty of care is owed not only to an end-user, but "expands beyond the purchasers of the product to include the perspective of others who will come within the product's proximity." In *Price*, at para. 101, Perell J. wrote:

> The duty of care in design associated with goods (dangerous or nondangerous) is not confined to the closest degrees of proximity of the purchaser or the consumer. Others may come within the ambits of foreseeability and proximity, in which it might be fair to make the manufacturer of the product liable for misadventures with its product.

[59] Although *Price v. Smith & Wesson* is not a pure economic loss case, nor is it an example of a relational economic loss case, it demonstrates that a manufacturer's liability is not necessarily limited to the purchasers or the end-users of its product. In the immediate case, the fact that the Board is not the end-user of the Corporations' products does not preclude it being owed a duty by the Corporations. It does not preclude the possibility that the Corporations may be liable for misadventures with their products that cause economic harm to the Board. As *Price* and the other cases discussed above demonstrate, the scope of proximity needed to find a duty of care does not

[27] *Price v. Smith & Wesson Corp.*, 2021 ONSC 1114, 154 O.R. (3d) 675.

require a direct relationship between the plaintiff and the defendant.

[60] Proximity will often focus on roles. In *Hill v. Hamilton-Wentworth Regional Police Services Board,*[28] the Supreme Court considered whether there was sufficient proximity between an investigating police officer and a suspect to establish a *prima facie* duty of care. This case is an example of this point about proximity: individuals may have foreseeable duties of care to one another because of their roles and responsibilities. As Chief Justice McLachlin put it in *Hill*, at para. 29:

> [Proximity] is not concerned with how intimate the plaintiff and defendant were or with their physical proximity, so much as with whether the *actions* of the alleged wrongdoer have a close or direct effect on the victim, such that the wrongdoer ought to have had the victim in mind as a person potentially harmed.

[61] Likewise, in two cases involving interconnected markets, plaintiffs with no physical connection to the defendants successfully established a duty of care owed to them because plaintiffs and defendants were part of an integrated marketplace economy. In the case of *Sauer v. Canada (Attorney General)*,[29] it was the beef market. In *Darmar Farms Inc. v. Syngenta Canada Inc. et al.*,[30] it was the corn market. In both cases, the plaintiff established that they fell within a range of individuals who would be affected by the acts of the defendants. The case at bar involves the information economy. It is not plain and obvious that the Corporations' social media products would not affect the Board and its mandate to provide information to students and protect them from harm.

[62] Taking the pleadings as true at this stage, they assert that the Board is responsible for the security and safety of its students. It owes duties to its students and stands in *loco parentis* to them when students are in the Board's care. The *raison d'être* of the Board is providing education. Commercial concepts such as joint ventures, or contracts do not apply. The relationship between the Board and the students is closer than that of mutually beneficial commercial counterparties, in fact and in law. The Board has a fiduciary relationship to its students in carrying out its mandate of public education, which carries a profound public benefit.

[63] The value of public education has been recognized in *R. v. Jones,*[31] citing the U.S. Supreme Court in *Brown v. Board of Education of Topeka,*[32] to the effect that education is "perhaps the most important function of state and local governments." Through education, children learn good citizenship, cultural values, normal adjustment to their environment and are prepared for future success in their lives.[33] The majority of the Supreme Court of Canada in *Jones* confirmed in their reasons that "no proof is required to show the importance of education in our society or its significance to government. The legitimate, indeed compelling, interest of the state in the

[28] 2007 SCC 41 (CanLII), [2007] 3 S.C.R. 129.
[29] 2007 ONCA 454, 225 O.A.C. 143.
[30] 2019 ONCA 789, 148 O.R. (3d) 115.
[31] 1986 CanLII 32, [1986] 2 S.C.R. 284, at para. 29.
[32] 347 U.S. 483 (1954) at p. 493
[33] *Brown v. Board of Education,* at p. 493.

education of the young is known and understood by all informed citizens."[34]

[64] In terms of legal proximity, I find that the Board has a reasonable claim to a duty of care from social media companies that targets school-aged children, including students during school hours and in doing so, carelessly damages their attention-span, psychological safety, and well-being. The Board is responsible for the learning environment and it has been damaged by the harm caused to the learners that compose the environment. I appreciate that the Corporations will deny the material allegations in the Statement of Claim, but that is a matter for another day.

[65] The Corporations have not persuaded me that the Board's arguments about the necessary proximity to support a duty of care are certain to fail. It will be open to the Board to argue that the Corporations created a relationship of proximity to the Board arising from the Corporations' targeted engagement with students via their social media products.

3. Foreseeability

[66] I turn now to the Corporations' arguments about foreseeability. While proximity focuses on who could reasonably be affected by one's conduct, foreseeability asks whether the harm caused is an objectively foreseeable consequence of the conduct.[35]

[67] As Karakatsanis J. put it in *Rankin's Garage & Sales*, "[w]hen determining whether reasonable foreseeability is established, the proper question to ask is whether the plaintiff has 'offer[ed] facts to persuade the court that the risk of the type of damage that occurred was reasonably foreseeable to the class of plaintiff that was damaged.'"[36]

[68] The Board's pleadings, if true, assert an intentional interference with student attention, without regard to the harm inflicted on students arising from that interference. The Board has pleaded that the Defendants knew about the adverse impact of their designs on young children, the consequences of that impact (for example, reduced attention and withdrawal-like symptoms), and the subsequent adverse effect on education and schools.

[69] I agree with the Board that if the facts pleaded are proven, it is not plain and obvious that the Board will be unable to establish objective foreseeability of the harm the Corporation's products caused to the Boards efforts of providing education and keeping students safe. The Board's allegations of its attempts to have the Corporations remove harmful content must be taken at face value at this stage. If established, this would support a finding that the Corporations had subjective knowledge of the impact on schools and boards.

[70] Moreover, all that is required is objective knowledge: that is, "whether someone in the defendant's position ought reasonably to have foreseen harm rather than whether the specific defendant did."[37] It is not plain and obvious that the Board's pleaded material facts cannot establish foreseeability of harm in the immediate case.

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[34] *Jones,* at para. 30.
[35] *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 54.
[36] *Rankin,* at para. 24, quoting A. M. Linden and B. Feldthusen, *Canadian Tort Law,* 10th ed. (2015), at p. 322.
[37] *Rankin,* at para. 53.

[71] On the Board's theory of the case, the significant educational disruption and losses incurred by the Board were objectively foreseeable because they were willfully occasioned by the Defendants. Applying that conduct to the nature of teaching and the responsibility of the Board, considering the stages of brain development and student susceptibility to the digital enticements described in the claim, I find that the Board may reasonably be able to establish objective foreseeability of the harms in issue by the Corporations' products.

4. Analysis of the Residual Policy Factors

[72] The Corporations submit that there are overriding policy concerns which will negate any finding of a duty of care based on proximity and foreseeability. They rely on the following residual policy factors as negating a duty of care in the immediate case: (a) the concern for indeterminate liability; (b) policy concerns associated with Canada's trade agreement with the United States and Mexico (CUSMA); and (c) the scrutiny of the board's funding decisions.

(a) ***Indeterminate Liability***

[73] It is common for defendants to raise the spectre of indeterminate liability in cases involving novel duties of care.[38] Here, the Corporations submit that the Supreme Court has recognized "indeterminate liability" as "the most serious problem" confronting duties that involve relational economic loss. This policy concern was a serious problem in a case like *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*[39] on the specific facts and duties pleaded in that case. In that case, the scope of the "duty to warn" sought to be imposed on the owners of a drilling rig that had to be shut down would have meant that a "host of other persons" could lose money if the rig was shut down. With the benefit of a full trial record, the Supreme Court identified a "ripple effect" of indeterminate liability that negated a duty of care. In my view, there is no obvious ripple effect presented by this claim. Further, the framework for considering issues of indeterminate liability has evolved since *Bow Valley*.

[74] Although concerns about unlimited or "indeterminate" liability may be considered at a motion to strike within the policy analysis, there are caveats to the application of policy considerations as a basis for striking a claim. For example, *Anger v. Berkshire* was a case involving a motion to strike. The plaintiffs brought claims against salespeople, directors, officers, and compliance officers of Berkshire. The members of the sales force had persuaded the plaintiffs to make improvident investments in limited partnerships. However, in claiming liability on the part of the directors, officers, and compliance officers, the plaintiffs were making a novel claim in tort for pure economic loss. Some of the defendants successfully moved to strike the claim against them on the basis that they had no direct contact with the plaintiffs and owed them no duty of care. The Court of Appeal allowed the appeal, noting that "to attempt to apply policy considerations in a vacuum, and without the benefit of a record would be contrary to the principles upon which our case law has long been understood to develop": *Anger*, at para. 15.

[75] More recently, in *Deloitte & Touche v. Livent Inc*,[40] the Supreme Court of Canada

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[38] See e.g. *Hercules Managements Ltd*, at para. 31; *Norsk*, at p. 1050; *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, [2017] 2 S.C.R. 855, at para. 42.

[39] 1997 CanLII 307 (SCC), [1997] 3 S.C.R. 1210, at para. 62.

[40] *Livent*, at para. 45

commented about indeterminate liability:

> We would add one final point. Indeterminate liability is a residual policy consideration, nothing more. The presence of indeterminacy need not be dispositive of liability in all cases. To approach the analysis otherwise would transform indeterminate liability from a policy consideration into a policy veto. While indeterminacy may militate against liability, other policy considerations — such as the immense profit margins that "high risk" actors often benefit from, or the extent to which "high risk" actors voluntarily assume the risk of indeterminate liability — may ultimately justify maintaining that liability, despite its indeterminacy.

In other words, indeterminacy as a defence or rebuttal to an allegation of a duty of care is not necessarily the final word, particularly on a motion to strike a claim. A judge at this stage of an action should take care not to use this policy consideration as a "policy veto."

[76] Further, and in any event, indeterminate liability is not the same as significant liability.[41] The Corporations conflate these concepts. The Corporations submit that the scope of liability will be impossible to ascertain if they are found to owe a duty of care to the Board. This could mean that school boards could sue "anyone" capable of affecting student behaviour at school, including parents, friends, siblings, religious leaders, doctors, authors, film producers and "distributors of virtually any product that students may use or consume." Theoretically, maybe. Practically, however, this list of examples is answered by the commentary found in the analysis of Brown J. in *Saadati v. Moorehead*:[42]

> [A]s I have explained is the case with unmeritorious or trivial claims for negligently caused mental injury, robust application of the elements of the cause of action of negligence should also be sufficient to address concerns for indeterminate liability.

In other words, insofar as indeterminate liability is concerned, it is better analyzed as a factor in the duty of care analysis about whether there is a proximate relationship between the parties. As explained above, it is not plain and obvious that there is not a duty of care relationship. Moreover, it is somewhat fanciful to suggest the immediate case sets a precedent for a duty of care for all of the potential claimants enumerated above. The only issue at this stage of the litigation, is whether the Board has a reasonable claim for the pure economic loss associated with protecting students from the products that students were sold and used. It does not mean the Board will prevail at trial.

[77] Moreover, significant liability, such as that faced by defendants who face allegations of widespread harm, does not equate to indeterminate liability, which is but one of several possible policy consideration at the third stage of the test for a novel duty of care." The Corporations chose a market model which focuses on enticing children and youth in large numbers.

[78] Further, the unique relationship between the Board and its students underlies the Board's claim and the proximity analysis. Thus, this case does not necessarily expose the Corporations to claims from the enumerated other possible claimants. The universe of school boards affected by the Corporations' choices of marketing their students is a finite quantity and knowable in advance.

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[41] *Livent*, at para. 43.

[42] 2017 SCC 28, [2017] 1 S.C.R. 543, at para. 34

The Corporations chose to "enter" the schools and to attract students during school hours.

[79] The unique context, and finite numbers of affected school boards persuade me that indeterminate liability is not a dispositive policy factor meaning that that the duty of care proposed by the Board will necessarily fail at trial on that basis.

(b) ***Article 19.17.2 of Canada's Treaty Obligations under CUSMA***

[80] The Corporations submit that the aspect of the claim that involves students putting themselves at risk by copying "viral challenges" circulated on social media would contravene Canada's obligations under the *Canada-United States-Mexico Agreement*, (CUSMA) – Article 19.17.2.

[81] Article 19.17.2 provides that Canada may not "adopt or maintain measures that treat interactive computer service providers as information content providers in determining liability for harms related to information made available by the service, unless the service provider created or developed it".

[82] There is one Canadian decision to date on the impact of Article 19.17.2. In *Giustra v. Twitter, Inc.*,[43] the plaintiff sought to sue Twitter in defamation for a series of tweets which "vilified the Plaintiff for political purposes in relation to the 2016 United States election…[as] part of an orchestrated campaign to discredit the Plaintiff in part because of his charitable and philanthropic work in support of the Clinton Foundation."

[83] On appeal, the issues concerned whether British Columbia had jurisdiction over the subject matter, and whether B.C. was a *forum non conviens,* under the statutory framework in British Columbia's *Court Jurisdiction and Proceedings Transfer Act* ("*CJPTA*").[44] The British Columbia Court of Appeal was alive to the fact that if the claim was brought in California, it would be subject to summary dismissal under s. 230 of the *Communications Decency Act,* 47 U.S.C. which saves harmless internet providers for defamatory posts if the content is authored by third parties.

[84] Although as read, Article 19.17.2 of CUSMA does not precisely extend the protections in s. 230 of the *Communications Act* to Canada, the British Columbia court recognized in the context of defamatory tweets emanating from Twitter users that Article 19.17.2 of CUSMA:[45]

> […] emphasizes the commercial aspect of the immunity granted to Twitter by section 230. While arguments concerning the effect of Article 19.17 may well be relevant to Twitter's defence in the event Mr. Giustra's action proceeds in British Columbia … the article does not alter the very simple fact that there is no bar in British Columbia to Mr. Giustra's case being determined on its merits, whereas in California, the courts are precluded from considering the case at all. While it could be commenced there, it would be subject to immediate summary dismissal.

[85] In the context of the immediate case, the precedent from *Giustra v. Twitter* reveals at most,

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[43] 2021 BCCA 466, at para. 136.
[44] *Giustra,* at paras. 4-5.
[45] *Giustra,* at para. 136.

a triable issue as to the aspects of the claim that rely on damage incentivized by the conduct of third party content providers. However, this does not mean that the Corporations can avoid liability, particularly if the evidence shows, as pleaded, that disturbing and harmful content has been systematically "pushed" into the feeds of students by the design of their algorithms. In other words, although the content of the Corporation's social media is relevant to the case at bar, it is the design features of the Corporations' apps, and their addictive and adverse impacts on students and the Board, that is at the heart of the case.

[86] Such was the situation in the American case of *Anderson v. TikTok*,[46] in which a 10-year-old student tragically died from asphyxiation after responding to a "blackout challenge" which was sent to her "For You Page" on TikTok. The United States Court of Appeals decided that there could be liability despite the provisions found in s. 230 of the American *Communications Decency Act.* In concurring reasons, at p. 186, Circuit Judge Matey explained the factual background, characterizing TikTok Inc's position to be one that would interpret s. 230 of the *Communications Decency Act* to "permit casual indifference to the death of a ten-year-old girl.[47] Matey J. noted that TikTok's customized algorithm placed the videos on N.'s page after it determined that the "Blackout Challenge was tailored" and "likely to be of interest to N, the ten-year old student":

> No one claims the videos N. viewed were created by TikTok; all agree they were produced and posted by other TikTok subscribers. But by the time N. viewed these videos, TikTok knew that: (1) "the deadly Blackout Challenge was spreading through its app," (2)"its algorithm was specifically feeding the Blackout Challenge to children," and (3) several children had died while attempting the Blackout Challenge after viewing videos of the Challenge on their For you Pages...Yet, TikTok "took no and/or completely inadequate action to extinguish and prevent the spread of the Blackout Challenge from being shown to children on their [For you Pages.]

[87] Similar tensions arise from the pleadings in the case at bar. Many of the allegations are aimed at the actions of the Corporations and their role in pushing dangerous and harmful content into the "feeds" and timelines of students who sign up for these platforms. Moreover, there are the adverse addictive effects of the apps that are discrete from the content pushed by the Corporations. These are trial issues which do not justify striking the claim at this stage.

(c) ***Scrutiny of Board Funding Decisions***

[88] Like all school boards in Ontario, the provincial government funds the Board. The Corporations submit that given that the alleged economic costs expended by the Board to deal with the effects of the social media apps were discretionary, fixing damages for anticipated additional costs of mitigating social media use will amount to a public budget policy exercise by the courts and thus should be avoided.

[89] I disagree. Public and private actors may claim for anticipated losses in tort based on past harms. This will be a function of expert evidence in damages, an exercise which courts undertake

[46] (2024) 116 Federal Reporter, 4th Series, United States Court of Appeals, Third Circuit, August 27, 2024.
[47] *Anderson*, at p. 185.

routinely, and will only arise if liability is established.

[90] Relying on the logic underpinning *The King v. Canadian Pacific Ry. Co.*,[48] the Corporations also submit that no damages can be payable for increased costs of staffing a government funded entity such as the Board. In that case, the Crown could not recover the costs related to legislated disability payments made to a railway gateman who was severely injured. The injury arose after an accident caused by the negligence of the defendant railway company. *The King v. CPR* decision, since followed in several contexts, found that in an action "*per quod servitium amisit*"[49] the Crown cannot claim the costs of statutory payments to an injured employee caused by a third party's negligence, due to issues of remoteness and reasonable foreseeability.

[91] While I do not have to decide the point, which is a matter for trial, the comparison between the factual circumstances in *The King v. Canadian Pacific* to the Board's claim is inapposite. There is no statutory authority attached to the loss of Board staff because of the alleged tortious activity of the Corporations. The damages are not claimed relative to the compensation of existing staff who have been unavailable for service due to an injury committed against staff members. To the contrary, this claim seeks damages for costs that directly relate to the harm alleged to be caused by the Corporations and suffered by the Board itself. If there is any application for the jurisprudence as it relates to an action in *per quod servitium amisit*, that argument is available at trial. It is not plain and obvious" that it must apply to the context in this case, and thus I find that it does not justify striking the claim.

(d) ***Countervailing Policy Considerations***

[92] Although for the reasons set out above, the matter of factors negating a *prima facia* duty of care are best resolved based on a full record, I note that the Board has countervailing policy arguments to balance against the Corporation's arguments. The Board submits that given the requirement for the court to weigh all policy considerations, it is appropriate to consider those that speak in favour of finding a *prima facie* duty of care.[50] These include: (a) the importance of the interest being protected to society; (b) the reduction of the cost burden on the taxpayer for the exploitative, profit-seeking practices of the Corporations; (c) the inability of the Board to contract or insure against the risks of harm involved; and (d) the desirability of deterrence of wrongdoing aimed at children and youth.

[93] Given my findings above, I need not discuss these countervailing policy factors, which can be addressed by the trial judge.

G. The Board's Claim in Public Nuisance

1. The Legal Framework

[94] I turn now to the Corporations' argument that the Board has not demonstrated a legally viable action in public nuisance.

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[48] 1947 CanLII 34 (SCC), [1947] S.C.R. 185.

[49] Latin pleading, meaning where the services of a servant are lost.

[50] See *Livent*, at para. 45; *Winnipeg Condominium Corporation No. 36*, at para 12.

[95] Public nuisance exists to protect the "use and enjoyment of public resources and facilities".[51]

[96] A public nuisance is any activity that substantially and unreasonably interferes with the public's interest in questions of health, safety, morality, comfort, or convenience. Whether a particular activity constitutes a public nuisance is a question of fact. Courts may consider many factors, including the inconvenience caused by the activity, the difficulty involved in lessening or avoiding the risk, the utility of the activity, the time, place, and duration of the defendant's activity, the general practice of others, and the character of the neighborhood.[52]

[97] The tort of public or "common" nuisance has been described as a "catch-all of miscellaneous offences, not necessarily related to the enjoyment of land, involving some discomfort or inconvenience to the general public in the exercise of what is usually referred to as a public right."[53]

[98] Historically, only the Attorney General had standing to sue in public nuisance.[54] However, an individual plaintiff will have standing if it is granted by the Attorney General or if the individual can show that they have suffered "special damages" over and above the rest of the community.

[99] The standing prerequisite that plaintiffs other than the Attorney General must have special damages over and above those of the rest of the members of the public who enjoy the right, has led some commentators to describe public nuisance as a "particularly ineffective private law remedy".[55]

[100] The tort of public nuisance requires a legally viable right, with which the defendant has interfered.[56] The "vast majority" of public nuisance claims involve pollution of lands and water, or obstructions to roads and waterways.

[101] In *Ontario (A.G.) v. Dieleman,* an injunction was granted in a public nuisance case about prohibited picketing at abortion clinics. The case was a public nuisance claim that arose in response to the interest of the Attorney General in protecting rights of health care.

[102] The Supreme Court of Canada did not limit the scope of unreasonable activity which may attract a remedy in public nuisance was described by the Supreme Court of Canada in *B.C. v. Canadian Forest Products Ltd.*[57], including as follows:

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[51] *Dieleman,* at para. 474, citing Cassels, *Prostitution and Public Nuisance: Desperate Measures and the Limits of Civil Adjudication* (1985) 63:4 Can. B. Rev 764, at p. 784.

[52] *Kenora (City) v. Eikre Holdings Ltd.,* 2018 ONSC 7635; *Beatty v. Waterloo (Regional Municipality),* 2011 ONSC 3599; *Sunnybrae Springbrook Farms Inc. v. Trent Hills (Municipality),* 2010 ONSC 1123, aff'd 2011 ONCA 179; *Ryan v. Victoria (City),* [1999] 1 S.C.R. 201; *Tock v. St. John's (City) Metropolitan Area Board,* [1989] 2 S.C.R. 1181; *Ontario (Attorney General) v. Orange Productions Ltd.* (1971), 21 D.L.R. (3d) 257 (Ont. H.C.).

[53] Wilfred Estey, "Public Nuisance and Standing to Sue" (1972) 10:3 Osgoode Hall LJ 563, at p. 563.

[54] *George v. Nfld. and Labrador,* 2017 NLCA 24, at p. 74; *Finlay v. Canada (Minister of Finance)* 1986 CanLII 6, at paras. 18-29; *St. Lawrence Rendering Co. Ltd. v. Cornwall (City of),* 1951 CanLII 81, [1951] O.R. 669, at p. 4.

[55] *British Columbia v. Canadian Forest Products Ltd.,* 2004 SCC 38, [2004] 2 S.C.R. 74, at para. 18.

[56] *Ontario (A.G.) v. Dieleman,* 1994 CanLII 7509, 117 D.L.R. (4th) 449.

[57] *Canadian Forest Products Ltd,* at para. 66.

> Any activity which unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience.

[103] In that case, the Supreme Court of Canada recognized that while the act of the defendant in burning down a public forest also amounted to negligence, this did not prevent bringing an action in public nuisance as well.

[104] In *Valeant Canada*[58] the British Columbia Court of Appeal accepted the proposition that it is not necessary in public nuisance to show that all members of the public have had their rights interfered with, rather the interference must be sufficiently widespread or indiscriminate that it would not be reasonable to expect one person to take proceedings to stop the conduct. Nevertheless, the Court of Appeal declined to expand the tort of public nuisance to the actions of opioid producers despite the impact on public health, reasoning that where there are sufficient alternatives such as product liability claims, it is unnecessary to resort to nuisance. To permit the claim to proceed would risk allowing nuisance to "devour the entire law of tort."[59]

2. Is it "Plain and Obvious" that the Board's Action in Nuisance will Fail?

(a) *The Question of Standing based on Special Damages*

[105] The Board submits that it brings this claim in public nuisance relative to the Corporations' interference with a valuable public resource: education. By virtue of education's unique nature, the Board sustained "special damages" over and above other members of the community with an interest in effective public education for its children and youth.

[106] The substance of the Board's claim links its compensatory damages to its role as an education provider. These damages, listed earlier in this judgment are special damages. In my opinion, the Board has pleaded a sufficient basis to put in play the question of education as a valuable public resource, for the purposes of its public nuisance claim.

[107] The Board's position is arguable. I would not strike its claim on the basis that it has no standing to bring an action in public nuisance.

(b) *The Question of Education as a Legally Viable Right for the Purposes of Public Nuisance*

[108] Education is more akin to a right of health care, and both are obviously different than water rights, the right to breath clean air, or to travel unobstructed on a public highway. Like language rights, some educational rights are protected by the *Canadian Charter of Rights and Freedoms.*

[109] It is not a stretch of the legal imagination to include a child's right to a safe education as the subject matter of a public nuisance claim. A claim in public nuisance would be obvious if a student's attendance at school, for example, were interfered with or blocked by unlawful physical

[58] *Valeant Canada LP/Valeant Canada S.E.C. v. British Columbia*, 2022 BCCA 366, at para. 192, citing Lord Denning in *A.G. v. P.YA. Quarries Ltd.*, [1957] 1 All E.R. 894, at p. 908.
[59] *Valeant,* at para. 216, citing Victor E. Schwartz & Phil Goldberg, "The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort" (2006) 45 Washburn L.J. 541, at p. 556, 578-579.

obstruction. The right to be free from the obstruction or nuisance is separate from the source of the harm and illustrates the wide range of public nuisance claims. As in *Dieleman*, if the right to access health care was being physically impeded and warranted a remedy. Similarly if the right to access education is being impeded by the Corporations' social media technology, this poses a triable issue. In other words, it is not plain and obvious that the Board does not have an individual claim for public nuisance for the special damages it suffered from the Corporations' products damaging access to public education.

[110] I do not find that it is plain and obvious that public nuisance is strictly confined to the historical examples of the decided cases mentioned above, particularly where the factual matrix underlying this claim did not exist until recently. In *A.-G. Ont. v. Orange Productions Ltd.*[60] Wells C.J.H.C. quoted from Lord Justice Romer in *A.G. v. P.Y.A. Quarries Ltd.*[61] to apply notions of public nuisance to the question of whether to issue an injunction to prevent a rock festival from taking place on lands without proper facilities:

> The expression "the neighbourhood" has been regarded as sufficiently defining the area affected by a public nuisance in other cases also (see, for example, *A.-G. v. Stone* (1895), 60 J.P. 168; *A.-G. v. Cole & Son*, [1901] 1 Ch. 205; and A.-G. v. Corke, [1933] Ch. 89).
>
> I do not propose to attempt a more precise definition of a public nuisance than those which emerge from the textbooks and authorities to which I have referred. It is, however, clear, in my opinion, that any nuisance is "public" which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue.

[111] Just as Lord Atkins in *Donoghue* v. *Stephenson* considered "who is my neighbour" for the purposes of the proximity analysis, in public nuisance the issue becomes where is the neighbourhood affected by the nuisance? The court considers the "sphere of the public nuisance."

[112] The Corporations would restrict the sphere of public nuisance to tangible places: roads, waterways, medical clinics and festival grounds. The Board submits that changes in technology have created new spheres of nuisance, in this case involving its students and disproportionately or "specially" affecting the Board's mandate.

[113] The Corporations define this as an unjustified radical expansion of the law of public

[60] (1971), 21 D.L.R. (3d) 257, [1971] 3 O.R. 585 (H.C.J.), at p. 268.
[61] *P.Y.A. Quarries Ltd*, at p. 902.

nuisance – thus unreasonably allowing the tort of nuisance to "devour" the entire law of tort[62]

[114] In contrast, the Board submits that the case at bar is merely an application of old law to new facts. It represents an incremental, logical extension of the tort of public nuisance to a particular set of new facts and relationships that has emerged with advances in communications technology.

[115] I conclude that it is a triable issue. This case involves novel facts. The pleaded facts assert an important public right. Could a court conclude that public education is a right amenable to a cause of action in nuisance? It is not plain and obvious that it could not.

[116] Has the Board pleaded interference with that right? It has. The statistics, if true, and the methods and outcomes of social media on the learning environment reveal broad effects that impact not only the immediate access to the right to an education, but to the futures of many young people. It is arguable that an addictive product that interferes with the mental health and educational aspirations of students is a public nuisance that requires a remedy.

[117] I find that it is not plain and obvious that the Board's action in public nuisance will not succeed.

[118] Finally, while the Corporations also raised the issue of rule 25.11, which deals with technically improper pleadings, this point was not developed in the written argument, nor was it a part of oral submissions. Given my findings above, I do not find that the claim is "scandalous, frivolous, or vexatious, nor is it an abuse of the process of the court" pursuant to rule 25.11.

H. Conclusion

[119] The motion is dismissed. If the parties are unable to agree on costs, they may make brief written submissions, maximum 5 pages, on or before March 31, 2025.

Leiper, J.

Released: March 7, 2025

[62] A concern of the British Columbia Court of Appeal in the opioid action involved in *Valeant Canada LP/Valeant Canada S.E.C.* at paras. 216-218.

Electronically issued / Délivré par voie électronique : 27-Mar-2024
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

TORONTO DISTRICT SCHOOL BOARD

Plaintiff

-and-

META PLATFORMS INC., META PAYMENTS INC., META TECHNOLOGIES LLC., INSTAGRAM INC., INSTAGRAM LLC., FACEBOOK HOLDINGS LLC., FACEBOOK OPERATIONS LLC., FACEBOOK CANADA LTD., SICULUS INC., SNAP INC., BYTEDANCE LTD., BYTEDANCE INC., TIKTOK LTD., TIKTOK INC., TIKTOK LLC., AND TIKTOK TECHNOLOGY CANADA INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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 $5,000 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 courts.

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.

Date: March 27, 2024

Issued by____________________________

Local registrar

Address of court office:	Superior Court of Justice 330 University Ave. Toronto, Ontario M5G 1R7

TO: **META PLATFORMS INC.**
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DE, 19808
United States

AND TO: **META PAYMENTS INC.**
1201 Hays Street,
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United States

AND TO: **META TECHNOLOGIES LLC.**
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AND TO: **INSTAGRAM INC.**
Incorporated Services Ltd.
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AND TO: **INSTAGRAM LLC.**
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AND TO: **FACEBOOK HOLDINGS LLC.**
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AND TO: **SNAP INC.**
Corporation Services Company
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AND TO: **BYTEDANCE LTD.**
Vistra (Cayman) Limited
P.O. Box 31119 Grand Pavilion,
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Cayman Islands

AND TO: **BYTEDANCE INC.**
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AND TO: **TIKTOK LTD.**
Vistra (Cayman) Limited
P.O. Box 31119 Grand Pavilion,
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Cayman Islands

AND TO: **TIKTOK LLC.**
Corporation Services Company
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Wilmington, New Castle County
DE, 19808
United States

AND TO: **TIKTOK INC.**
Corporation Services Company
251 Little Falls Drive
Wilmington, New Castle County
DE, 19808
United States

AND TO: **TIKTOK TECHNOLOGY CANADA INC.**
240 Richmond St W
Suite 5-101
Toronto, ON
M5V 1V6
Canada

CLAIM

1. The Plaintiff, Toronto District School Board ("TDSB") claims:

   a) General and special damages in the amount of $750,000,000;
   b) Aggravated damages in the amount of $100,000,000;
   c) Punitive and exemplary damages in the amount of $750,000,000;
   d) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
   e) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
   f) The costs of this action, together with all applicable taxes; and
   g) Such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. The *Education Act* R.S.O. 1990, c. E.2 ("the *Act*") provides the legal and regulatory framework for the education system in Ontario. In accordance with the *Act,* a strong public education system is the foundation for a prosperous, caring, and civil society.

3. The *Act* grants authority to district school boards ("boards") to operate their constituent schools for educational purposes, and to carry out their statutory responsibilities to promote the education and well-being of the student population within their constituent jurisdiction.

4. A school is a body of pupils that is organized as a unit for educational purposes, under the jurisdiction of the appropriate board. A board is the statutory representative of its student population and is a corporation that has all the powers that are conferred or imposed on it under the *Act*.

5. TDSB (or "the Board") is the largest public school board in Canada, with jurisdiction over almost 600 schools and approximately 238,000 students in Toronto, Ontario.

6. In accordance with the *Act*, TDSB provides students the opportunity to realize their potential and to develop into highly skilled, knowledgeable, caring individuals who contribute to their society.

7. TDSB claims the Defendants have negligently interfered with TDSB's statutory mandate to promote student achievement and well-being and to carry out its statutory obligations on behalf of its student population.

8. Specifically, the Defendants employ exploitative business practices and have negligently designed unsafe and/or addictive products that the Defendants market and promote to students, including TDSB students.

9. The widespread and compulsive use of the Defendants' products has consequences beyond harms to the individual users. It has fundamentally changed the learning and teaching environment at TDSB schools, and affected the student population, administrators, educators, staff, and other members of the TDSB community.

10. The Defendants have knowingly and/or negligently disrupted and fundamentally changed the school, learning, and teaching climate by creating and sustaining prolific and/or compulsive use of their products by students. As a direct result of this conduct, TDSB has suffered, and continues to suffer, substantial damages. These damages include, but are not limited to, a significant diversion and drain on TDSB's resources and personnel that is caused by the conduct of the Defendants.

11. The Defendants knew, or ought to have known, that their conduct is having a serious impact on schools and would cause widespread disruption to the education system, including to TDSB.

12. The Defendants have targeted TDSB's schools and the student population to increase overall product usage and engagement. As part of their business practices, the Defendants analyze and strategize based on the market penetration of their products at the school-level.

13. The Defendants chose to maximize profits at the expense of student well-being and without due regard to the foreseeable harm and damage caused to TDSB.

14. The Defendants knew, or ought to have known, that their negligent conduct seriously and negatively impacts the student population by causing maladaptive brain development, compulsive use, disrupted sleep patterns, behavioural dysregulation, learning and attention impairment, and other serious issues that impact the school, learning, and teaching climate.

15. The Defendants knew, or ought to have known, of internal and external research, data, and reports about the unreasonably high frequency of negative experiences occurring on their products, as well as the risks of harm to student users. The Defendants have failed to respond responsibly to this information and failed to make their social media products reasonably safe for students. Instead, the Defendants have continued to deny that their products are harmful and dangerous. The Defendants have engaged in a long-standing pattern of obfuscating the truth, mischaracterizing the scientific and technical literature, and minimizing the seriousness of the harms occurring on, and resulting from, the use of their social media products.

16. The Defendants knew, or ought to have known, of the various safety risks associated with their negligent conduct, including creating a forum for cyberbullying and harassment.

17. The Defendants knew, or ought to have known that the design of their products facilitates connections between vulnerable students and sex predators leading to an increased risk of child sex abuse, child sex trafficking, and the proliferation of Child Sex Abuse Materials (CSAM) on their social media products, among other serious issues that impact school climate. As a direct result of the Defendants' failures to design a safe product, TDSB expends and diverts significant financial and administrative resources to protect students from social media harms and risks.

18. The student population of TDSB and its schools were the direct target of the Defendants' wrongful and tortious conduct. The harm to students' attention, emotional and social well-being, and to their ability to learn and the corresponding impact of these harms on TDSB was foreseeable and proximate.

19. While deliberately seeking to attract students to their platforms, the Defendants knew that school boards, including TDSB, would be forced to address, through financial and human resources, the devastating impact that compulsive social media use has on the student population and on their mental health.

20. Schools have been uniquely harmed by the Defendants. The TDSB has a unique responsibility to operate its public schools and has suffered damage different in kind and in quality from that suffered by the public in common.

21. The social media related harms caused by the Defendants require a response that far exceeds TDSB's available resources.

22. TDSB seeks compensation and remediation costs to address the harms directly flowing from the conduct of the Defendants, which include but are not limited to:

a) Increased educator time and resources spent addressing and/or managing social media use, including issues caused by compulsive social media use;

b) Increased educator and administrator time and resources to promote students' learning, as a result of students' focus and attentional issues;

c) Increased costs to address the need for special or alternative education services to respond to attention deficits;

d) Increased costs to address the need for digital literacy and/or online safety programming, and other costs related to increased vigilance and harm prevention;

e) Increased costs to address the need for additional mental health supports;

f) Increased disciplinary services and administrator time to address increased behavioural aggression and incidents;

g) Increased costs and need for additional personnel including clinicians, and caring and safe schools staff, the diversion of staff resources, and costs for third parties, such as educational speakers, to address social media harms;

h) Increased need for information technology ("IT") professionals, IT infrastructure and cyber security;

i) Increased resources to investigate and respond to threats made against schools, staff, and students through social media products;

j) Increased resources to prevent, investigate, and deal with the consequences of cyberbullying caused by, and occurring over, social media products;

k) Property damage and vandalism in response to viral social media challenges purposely and/or knowingly promoted by the Defendants;

l) Increased resources to respond to the Defendants' products increasing students' risks of experiencing sexual harassment, sexual abuse, CSAM, and similar serious harms.

23. TDSB brings this action in negligence including general negligence, defective product design (design negligence), negligence in manufacturing/manufacturing an inherently dangerous product, and negligent failure to warn.

24. TDSB brings this action in public nuisance to protect the public interest in a strong public education system. The tortious conduct of the Defendants constitutes an unreasonable interference with an important public right to education.

25. The harm to TDSB and to the education system as a result of the Defendants' reprehensible conduct is extensive and warrants an award of aggravated damages.

26. The Defendants have acted in a high-handed, reckless, malicious, and reprehensible manner without due regard for the well-being of the student population and the education system, warranting an award of punitive and exemplary damages.

PARTIES

A. The Plaintiff

27. TDSB is a corporation that is conferred authority pursuant to the *Education Act*. TDSB's powers, duties, and obligations are set out in the *Act*, related *Regulations,* and the *Policy and Program Memoranda* issued by the Ministry of Education.

28. TDSB is one of 72 district school boards in Ontario who receive a majority of education funding from the provincial government. TDSB is responsible for making local decisions in using its finite resources.

29. TDSB's statutory mandate extends beyond providing an academic education. Pursuant to sections 29.6 and 169 of the *Act*, TDSB is required to educate its students on mental health, promote student well-being, and educate students on the risks associated with drug and alcohol use. TDSB is to provide a safe, positive and inclusive learning environment. TDSB is statutorily authorized to limit the public's access to its schools to keep students safe from harm, and in particular to protect students from sex predators.

30. TDSB brings this action to hold the Defendants' accountable for the harm they have caused to TDSB including its student population, schools, educators, administrators, and staff, and for interfering with its statutory duties.

B. The Defendants

The "Meta" Defendants and Products: Instagram & Facebook

31. The Defendant, Meta Platforms Inc. ("Meta Platforms"), is a multinational technology conglomerate or "parent company" operating and controlling approximately 94 subsidiaries, as of the time of filing.

32. Meta Platforms oversees, develops, directs, designs, markets, operates, and maintains its social media products and technological products. Material to this claim is Meta Platforms' "family" of social media products, such as Facebook (including Facebook Messenger, Messenger Kids, and Facebook Marketplace), Threads, and Instagram.

33. Meta Platforms includes, but is not limited to, the following named subsidiary Defendants: Meta Payments Inc.; Meta Technologies LLC.; Instagram Inc.; Instagram LLC.; Facebook Holdings LLC.; Facebook Operations LLC.; Facebook Canada Ltd.; and Siculus Inc. (collectively "Meta").

34. The Plaintiff has made every effort to identify the specific arms of Meta Platforms responsible for certain business decisions, as applicable, throughout this claim. However, due to the opaque nature of its business organization, the purpose of many of its subsidiaries is known only to the Defendant.

35. Meta Platforms' principal place of business is in Menlo Park, California.

36. Meta Platforms acquired the social media company Instagram (launched in 2010) on April 9, 2012 for approximately 19 billion USD.

37. Meta Platforms had its initial public offering on May 8, 2012, and is a publicly traded company on the Nasdaq under the ticker "META." Meta Platforms' revenue is almost exclusively generated from harvesting user data to sell lucrative ad space on its various social media products. Its market capitalization is approximately 1 trillion USD, as of January 2024.

38. In October 2021, Facebook Inc. filed an amended and restated certificate of incorporation in Delaware and rebranded itself as "Meta Platforms Inc."

39. Meta Platforms wholly owns Defendant Meta Payments Inc. ("Meta Payments"). Meta Payments is incorporated in the State of Florida. Its principal place of business is in Menlo Park, California. Meta Payments processes payments made through Meta's various social media platforms.

40. The Defendant, Meta Technologies LLC. ("Meta Technologies"), is a Delaware limited liability company and an agent of Meta Platforms. Meta Technologies shares its principal place of business in Menlo Park, California, with Meta Platforms. Previously known as Facebook Technologies LLC., Meta Technologies is responsible for developing Meta's virtual reality line of products and technologies.

41. The Defendant, Instagram Inc., is a wholly owned subsidiary of Meta Platforms. It is incorporated in Delaware with its principal place of business in Menlo Park, California.

42. The Defendant, Instagram Inc., in turn, owns and controls the Defendant, Instagram LLC. (together "Instagram"), also incorporated under the laws of Delaware with its principal place of business in Menlo Park, California.

43. The Defendant, Facebook Holdings LLC., is a wholly owned subsidiary of Meta Platforms. It was incorporated in Delaware on March 11, 2020, and is primarily a holding company for entities involved in Meta Platforms' international business operations. Its principal place of business is in Menlo Park, California.

44. The Defendant, Facebook Operations LLC., is a wholly owned subsidiary of Meta Platforms. It was incorporated in Delaware on January 8, 2012. Its principal place of business is in Menlo Park, California.

45. The Defendant, Facebook Canada Ltd., is a wholly owned subsidiary of Meta Platforms and was incorporated on October 21, 2008 in accordance with the *Canada Business Corporations Act* (RSC , 1985, c. C-44). Its principal place of business is in Toronto, Ontario, Canada.

46. The Defendant, Siculus Inc., is a wholly owned subsidiary of Meta Platforms. It was incorporated in Delaware on October 19, 2011. Siculus constructs data

facilities and other projects for Meta Platforms. Its principal place of business is in Menlo Park, California.

47. At all times material to this Claim, acting alone or in concert with its subsidiaries, Meta has advertised, marketed, offered, and distributed its social media products to consumers throughout Ontario, Canada.

The Snap Inc. Defendant and Product: Snapchat

48. The Defendant, Snap Inc. ("Snap"), oversees, develops, directs, designs, markets, operates, and maintains its social media product, Snapchat.

49. Snap was incorporated in Delaware on May 24, 2012 under the name Snapchat Inc.

50. Snap's principal place of business is in Santa Monica, California.

51. Snap previously conducted business under the name Snapchat Inc. It filed an amended and restated certificate of incorporation in Delaware in September 2016 and rebranded itself as "Snap Inc."

52. Snap had its initial public offering on March 2, 2017, and is a publicly traded company on the NYSE under the ticker "SNAP." Snap's revenue is almost exclusively generated from harvesting user data to sell lucrative ad space on Snapchat. Its market capitalization is approximately 26.6 billion USD, as of January 2024.

53. At all times material to this Claim, Snap has advertised, marketed, offered, and distributed Snapchat to consumers throughout Ontario, Canada.

The ByteDance Ltd. Defendants and Product: TikTok

54. The Defendant, ByteDance Ltd. ("ByteDance"), is a multinational technology conglomerate and parent company, operating and controlling multiple subsidiaries, as of the time of filing.

55. ByteDance oversees, develops, directs, designs, markets, operates, and maintains its social media product, TikTok.

56. ByteDance includes but is not limited to, the following named subsidiary Defendants, ByteDance Inc., TikTok Ltd., TikTok Inc., TikTok LLC., and TikTok Technology Canada Ltd. (collectively, "TikTok").

57. The Plaintiff has made every effort to identify the specific arms of ByteDance responsible for certain business decisions, as applicable, throughout this claim. However, due to the opaque nature of its business organization, the purpose of many of its subsidiaries is known only to the Defendant.

58. ByteDance was incorporated in the Caymen Islands with its principal place of business in Beijing, China.

59. The Defendant, ByteDance Inc., is a Delaware corporation with its principal place of business in Delaware.

60. The Defendant, TikTok Ltd., is a wholly owned subsidiary of ByteDance. It was incorporated in the Caymen Islands with its principal place of business in the Caymen Islands.

61. The Defendant, TikTok LLC., is a wholly owned subsidiary of ByteDance. It was incorporated in Delaware, with its principal place of business in Delaware.

62. The Defendant, TikTok Inc., is a wholly owned subsidiary of ByteDance. It was incorporated in California on April 30, 2015, with its principal place of business in Culver City, California.

63. The Defendant, TikTok Technology Canada Ltd., is a wholly owned subsidiary of ByteDance.

64. ByteDance is a privately owned corporation and its valuation is estimated at approximately 268 billion USD.

65. At all times material to this Claim, acting alone or in concert with its subsidiaries, ByteDance has advertised, marketed, offered, and distributed TikTok to consumers throughout Ontario, Canada.

JURISDICTION

66. The acts of negligence as disclosed in this action, and other tortious conduct of the Defendants, were committed in Ontario, Canada.

67. The Ontario Superior Court of Justice has general and specific jurisdiction over this Claim. There is a real and substantial connection between the actions of the Defendants and the damage to TDSB.

68. The Defendants have directly and continuously conducted their business affairs in Ontario, Canada. The Defendants have advertised, marketed, offered, and distributed their social media products to consumers in Ontario, Canada.

69. Further, the Defendants have fixed offices / residences in Toronto, Ontario. As such, they have a long-standing active presence in Ontario.

70. The Defendants have committed multiple torts against the Plaintiff, an Ontario corporate entity, affecting its student population, its schools, and its staff. The damage caused to TDSB is a direct result of the Defendants' business activities in the Province of Ontario. Accordingly, it is in the interests of justice for this Honourable Court to exercise jurisdiction over this litigation.

71. The Province of Ontario is the most convenient forum for the trial of this action in that the damages were suffered in the Province of Ontario, and the community in which the Plaintiff operates has a vested interest in hearing these issues of public importance in its own jurisdiction.

FACTS

A. Overview of material facts

72. The Defendants' profits are tied to maximizing youth engagement on their social media products. The Defendants collect youth user data to sell targeted ad space to increase advertising revenue.

73. The Defendants knowingly and/or negligently engineered products and design features to manipulate brain neurochemistry and to induce excessive and/or compulsive and/or addictive and/or problematic use amongst students.

74. The Defendants analyze the penetration of their products at the school-level and contemplate and/or develop strategies to target schools and the student population.

75. The Defendants knowingly promote their products to student-age children, including during school hours, without due regard for the disruptive effects on the student population and the education system.

76. The Defendants' algorithms intentionally amplify and push harmful content to maximize engagement with the social media products, often referred to as negative content bias, and/or preference amplification.

77. The Defendants knowingly profited from the proliferation of CSAM on their social media products, facilitated child sexual abuse, child sexual harassment, "sextortion," child sex trafficking and encouraged the connection of adults to children and youth, and vice versa.

78. The Defendants' representations about the safety, and the design of their social media products, both express and implied, have been false and misleading. The Defendants failed to disclose material information about the harmful effects of their products.

79. TDSB is now left grappling with the consequences of the Defendants' misconduct, such that the Defendants' misconduct has directly caused substantial harm to TDSB.

B. The Products

The Meta Products

80. The Meta Products include Instagram and Facebook (including Facebook Messenger, Messenger Kids, and Facebook Marketplace).

81. In brief, the Instagram interface includes Stories, Reels, an Explore Page, and a home screen or user "Feed."

82. "Reels," are auto-playing short videos that are recommended and curated to users by Instagram's algorithm. "Stories" are time limited user posts, usually pictures or videos.

83. The posts in the feed include those from accounts that the user has chosen to follow and "suggested posts," which consists of posts from accounts the user has not chosen to follow, as well as advertisements.

84. The "Explore" page is content that Instagram has decided the viewer would like to consume and/or engage with.

85. Users can make multiple accounts, known as Single User Multiple Accounts (SUMAs) or FINSTAs (short for Fake Instagram), generally viewed by youth as a more "candid" Instagram or a means of circumventing parental control. Instagram accounts can be completely anonymous, and identities are not generally verified.

86. There is no age verification process to access Instagram without a user account. To sign up for an account, a user must merely input a date of birth alleging that they are 13 years or older. No other protocol or barrier is in place to prevent users under 13 years old from accessing the product.

87. In 2018, Instagram shifted away from organizing a user's feed chronologically, and instead opted to organize a user's feed by a measure it calls, "Meaningful Social Interactions" (MSI). MSI causes youth users to see less content from users they follow and more content Meta believes the youth user will "engage with." Often this content is celebrity or "influencer" content highlighting unrealistic lifestyles and/or body image. This shift to MSI was in direct response to lagging user numbers, including slowing rates of Daily Active Users (DAUs) and Monthly Active Users (MAUs).

88. Instagram also offers the ability to have an account verified, a social signifier, denoted by a blue checkmark.

89. Meta intentionally designed its MSI-focused algorithms to collect and analyze several kinds of student data, including but not limited to, a user's profile, content the user reports, content the user posts, content viewed, content engaged with, navigation paths, watch time, hover time (the amount of time a user viewed a piece of content), whether a user mutes or unmutes a video, and whether a user makes a video full screen, among other data.

90. Facebook is a social media product that has the highest global market penetration of any social media product. It has approximately 3.049 billion MAUs, and approximately 2.09 billion DAUs. It has gone through many design updates and alterations since its initial form in 2004. In September 2006, Facebook became available to all internet users. To register as a user an email account is required, and the person must self-declare that they are 13 years or older.

91. The Facebook product is interactive and includes various tools such as News Feed (a newsfeed of stories and posts published on the product, some of which are posted by connections, and others that are suggested by Meta), People You May Know Suggested for You, Groups You Should Join, and Discover (recommendations by Meta).

92. Facebook users who meet certain criteria are eligible to participate in "Facebook Stars," a program whereby the user receives "Stars" or "Gifts" that other users purchase directly from Meta and can be exchanged for money. In order to qualify for this program, a user must have 500 followers for at least 30 days and allege to be at least 18 years old.

93. Meta Platforms is growth oriented, frequently acquiring new companies, and is constantly seeking to expand its user base, as well as retool its products to promote user engagement with its apps.

94. Targeting student users and their schools is a part of Meta's marketing and growth strategy.

The SnapChat Product

95. The Defendant Snap's flagship product is Snapchat, which includes its five core tabs, as evolved over time - a camera tab, an ephemeral visual and text messaging conversation tab (2012), a proprietary "Snapmap" (2017), a Stories tab (2013) and a Spotlight feature (2020).

96. Snap has evolved by adding various tools such as Video-Sharing (2012), Geo-Filters (2014), beautification and other Filters, also called Lenses (2014), Discover (2015), Memories (2016), and virtual avatars called "Bitmojis" (2016). Snapchat has always leveraged time limited or ephemeral content to create pressure for users to frequently engage with the products. The pictures or videos self destruct and there is a second-to-second count down shown on the screen, before the content disappears. Snap is known for providing a venue for sharing explicit content, colloquially known as "sexts."

97. Snap uses end to end encryption on its product.

98. Snap "gamifies" its product to encourage compulsive use with Snapchat Streaks (launched in 2016 and requiring daily use to maintain), various "Trophies / Charms" (such as for sending a snap in the middle of the night) and other "rewards"

based features, such as a socially comparative "Snapscore" that is based on the total number of snaps sent and received, and is viewable to other users.

99. Snapmap allows users to locate each other via location, and there is a "heatmap" of recent snaps posted to a communal and public "Our Story" tab. The "Our Story" feature shares videos and pictures related around place, time, or event to users who are not otherwise connected.

100. Snapchat employs a variety of algorithms, which collect data about a user and then make recommendations to the user, based on that collected data.

101. Snapchat's "Quick Add," "Discover," and "Spotlight" features all employ manipulative algorithms to keep users interacting with the product.

102. The Quick Add feature uses an algorithm to suggest new friends to a Snapchat user. Snap also utilizes geo-local information to suggest users to each other based on proximity.

103. The Discover feature curates content for the user based on extracted data, collected from the user's history of activity within the product.

104. The Spotlight feature, which is also based on an algorithm, presents an endless stream of the most entertaining snaps.

105. Snap also develops, operates, and maintains another product, a virtual or alternative reality eye glass called "Spectacles" with the ability to interact with its flagship Snapchat product.

The TikTok Product

106. The Defendant TikTok's product is a social media product consisting of different options, and tools, primarily designed to share and consume short form audio-visual videos. The main feature of TikTok is a "For You Page" (FYP) an infinite stream of continuous content dictated by the Defendants' machine learning algorithms, termed its "Recommendation Engine."

107. TikTok limits the length of videos that can be created over TikTok or uploaded to TikTok - a deliberate design choice to keep the consumer's attention. TikTok has experimented with its maximum video length and assessed the impact of this factor

on user engagement. TikTok videos frequently range from a few seconds to a few minutes long, and are usually no more than three minutes long.

108. TikTok offers a variety of effects, sounds, editing options, such as interactive "duets" with other users, stitches, slowing down or speeding up videos, or options to engage with "trending" content including certain music or skits.

109. The TikTok product creates and maintains a user's "flow-state," a hyper-focused, near hypnotic state, where bodily movements are reflexive and the user is totally immersed in smoothly rotating through the product. Users are sucked into the product, without any conscious awareness of the amount of time passing. The Defendant utilizes several features such as full screen videos, video autoplay, and seamless content with no breaks or barriers to induce this state.

110. TikTok zealously guards the specifics of its Recommendation Engine algorithms. A key factor in what content gets promoted is how long a user lingers over a certain video, and whether they rewatch it. An estimated 90-95 percent of the content viewed on TikTok comes from its algorithms (as opposed to selection), the highest amongst the Defendants' products. TikTok shows users what it thinks the user wants to see, overriding a user's preference to decide what content to consume.

111. The TikTok app can be downloaded and all content can be accessed without signing up for an account. Even without a user account, the Defendant collects a "guest" user's data and the algorithms recommend personalized content to the user. The only limitation is that a guest user cannot create content or engage interactively (for example like content or comment on content).

112. TikTok also offers the option to have an account "verified." TikTok offers "Promote," an advertising tool that boosts content by pushing it to users as an ad. Promote lets the "content creator" track the number of video views, video shares, likes, comments, and how many individuals clicked through the TikTok profile to a third-party website. It also tracks the demographic information of the viewer, such as age and gender.

113. The product has tools for users to create or share Artificial Intelligence (AI) generated content such as images, video, audio that may be highly realistic or created in a particular artistic style (e.g. painting, cartoons, and anime).

114. TikTok pays certain content creators out of a "creator fund" based on a TikTok formula considering factors such as the number of views, the authenticity of those

views, and the level of engagement with the content. Content creators can also receive "tips" directly from users over TikTok via Stripe, TikTok's payment provider.

115. Creators can also earn virtual diamonds, a rewards-based program based on the "quality" and "popularity" of the content, as decided by TikTok. There is also an option for "LIVE Gifting" when content creators "go live" on the app. Users purchase virtual TikTok coins. The coins can then be exchanged for virtual gifts and given to a creator who can, in turn, redeem the gift for virtual diamonds, and then money. Coins can be purchased during a live session.

C. Features common to Defendants' social media products

116. The social media products have been designed, maintained, and updated by data scientists, systems design engineers, user experience ("UX") researchers, and others to appeal directly to the student population. Every detail, including but not limited to, the colour of product icons, the placement of buttons within the interface, and the timing of notifications, has been carefully crafted to maximize the intensity, frequency, and length of user sessions.

117. The Defendants' products all utilize algorithms, machine learning, and AI to execute various tasks. In simple terms, an algorithm refers to a defined sequence of steps, taken to solve a problem or obtain a certain result. Within social media products this often means code that is written to assess certain data inputs, and then an application of rules to that data to generate outputs or carry out commands. "Machine learning" refers to algorithms that execute tasks under various levels of human oversight and may be largely autonomous - this is a form of AI.

118. The Defendants' products include many common features:

a. they are embedded into the interface of a cell phone or other electronic device in the form of an application ("app");

b. they provide users with an unlimited stream of content to consume;

c. users are able to "sign up" with an email account;

d. they have interactive features that allow users to engage with the content of classmates, friends, family, celebrities, businesses, and/or strangers;

e. they use "notifications" such as eye-catching banners, haptics, vibrations or sounds to create user engagement and re-engagement with the products throughout the day;

f. users have the option to share content in an ephemeral format, either in real time, or in a time restricted manner (ranging from mere seconds to 24 hours depending on the app). The design intent of this feature is to promote reengagement by creating a sense of urgency to view content before it expires;

g. they contain a feature to message another user, or groups of users, directly, in either a disappearing or lingering format;

h. the interface of the products operates through machine – human interactions, swiping left or right, double tapping, dictation (speaking), and reflexive infinite scrolling. The products are so sensitive to the most minute expression of the human user, such that a lingering gaze on a screen is logged as integral data by the products, and the app calibrates the experience of the user, in response;

i. they all utilize some form of engagement based ranking system to promote content that they predict will increase a user's engagement and interaction with the products. This tends to be content that will provoke an emotional reaction from the user, regardless of whether it's a negative or positive reaction;

j. users are often fed content that becomes more extreme with more use of the products to promote user re-engagement and to prevent boredom;

k. they use geo-local tagging allowing a user to share where exactly they are in the world, including the specific address or location; and

l. they push suggested content, suggested ads, and engage in paid partnerships with various individuals, "influencers," and/or businesses to curate content.

D. The Defendants' products were deliberately designed to manipulate the developing brain of students to promote excessive, compulsive, and unsafe use of their products

119. The Defendants' social media products are designed to manipulate users' neural networks, specifically the dopaminergic reward and motivational pathways in the brain, which are implicated in compulsive use, addiction, impulse regulation, goal setting, attention, risk assessment, impulsivity, pleasure, and other critical functions.

120. The Defendants exploit the fact that children, youth, and young adults ("students") have a developing pre-frontal cortex. This region of the brain is central to planning and executive decision-making, including the evaluation of future consequences and the weighing of risk and reward. It also helps to inhibit impulsive actions and to regulate the emotional responses to social rewards.

121. Dopamine release and circuitry is critical to motivation, completing "hard" tasks, and is a key factor in reinforcing behaviour, leading to habit formation.

122. School-age children and adolescents are especially vulnerable to developing harmful behaviours because their pre-frontal cortex is not fully developed. Students are prone to engage in reward seeking behaviour, tend to engage in upward social comparison, and engage in riskier behaviour than adults. Their developing brain is unable to defend against the barrage of novel, and dopamine inducing stimuli being constantly pushed on the Defendants' products.

123. When the release of dopamine in young brains is manipulated by the Defendants' products, it interferes with the brain's development and can have long-term impact on an individual's memory, affective processing, reasoning, planning, attention, inhibitory control, and risk-reward calibration. The normal neurodevelopment of students is interrupted, and they can develop maladaptive tendencies. In some circumstances this harm may be irreparable.

124. Through understanding and leveraging the human need for connection, and in particular the youth tendency for upward social comparison, the Defendants have made it extremely difficult for students to disengage with the products.

125. In particular, the Defendants have exploited the vulnerability in human psychology by creating a social-validation feedback loop.

126. The Defendants' products deploy dopamine hits, such as likes, or push an engaging video at opportune times, such as right before a user is likely to lose interest and log off. This "Intermittent Variable Reward" (IVR) scheduling prolongs the use of social media products. IVR is a well-known psychological tactic that spaces out dopamine triggering stimuli (such as a perceived reward) with a variable time gap, and in turn causes craving and anticipation. The Defendants' products exploit the fact that dopamine is released in anticipation of a rewarding event. This anticipation creates tension within the user, and frequent reengagement with the social media apps to seek reward.

127. Further, dopamine circuitry is manipulated in response to both pleasurable, novel, and adverse stimuli. The Defendants knew, or ought to have known, that students are prone to engaging with extreme content or content that provokes a reaction – even if it is a negative reaction, such as sadness or anger.

128. Like with any addictive substance, students are at special risk of developing compulsive use and/or addiction. The harmful effects of that compulsive use and/or addiction are the same as any other substance, including experiencing withdrawal type symptoms without use.

129. Meta knew, or ought to have known, that its users experience what it internally calls "problematic use," defined as lacking control over one's social media use, and using social media despite experiencing material harm, such as health issues or interference with schoolwork and homework.

130. Meta knew, or ought to have known, that many of its child and youth users have an addict's narrative around their use of Meta's products. Students are unhappy with the time they spend on the products but find it difficult to stop due to their under-developed brains. As students have a harder time with impulse control and regulating dopamine, they tend to keep scrolling.

131. Further, Meta studied the developing brain in designing its products. Meta knew, or ought to have known, that students' brains are still developing and are particularly vulnerable to stimulus, novelty, and reward.

132. TikTok also leveraged human biology and psychology to induce excessive use of its products. A key metric of its success is not just user growth but user retention, and time spent on the app, per session. TikTok's growth strategy contemplates pulling in and retaining new users by discovering what rewards they are seeking, and encouraging them to associate using TikTok with habitual cues such as

boredom, bedtime, or similar. TikTok knows its product and algorithms cause real harm.

133. Snap also capitalized on these inherent vulnerabilities in students, by creating SnapStreak, making Snapscore viewable to other Snap users, and giving students "rewards" in the form of trophies and other tools to promote excessive use.

134. Snap also capitalized on children's impulsivity and limited cognitive development by alleging that its content disappears, even though there are numerous workarounds, such as screen grabbing the content, or taking a photo of it with another device. Snap's promise of no consequence disappearing content is a deception and misrepresentation.

135. Social media products also impact attention, which is regulated by a number of mechanisms in the brain. In particular, compulsive social media use negatively impacts students' executive functioning and increases impulsivity.

136. Further, students are engaging in task switching, such as checking their social media or phone, far more frequently than past generations. Studies show that the average youth can only focus for about six minutes on a task before seeking diversion on an electronic device or the Defendants' products. This frequent task switching negatively impacts students' ability to learn and is evident in the challenges the Plaintiff is facing to educate students.

137. The Defendants capitalized on their knowledge that the developing child brain is particularly vulnerable and prone to manipulation by their social media products. By manipulating the neural circuitry of the various dopaminergic pathways, the Defendants create compulsive, problematic, addictive, and unsafe use.

138. The conduct of the Defendants in facilitating and promoting compulsive use amongst students has caused direct harm to school climate, and to TDSB and its student population, as enumerated below.

E. The Defendants' algorithms intentionally amplify and push harmful content to student users to maximize engagement with the products, often referred to as negative content bias and/or preference amplification

139. The Defendants purposefully designed their products to be addictive and to deliver harmful content to students. Harmful content includes, but is not limited to, content related to self-harm, suicidal ideation, drugs, alcohol, eating disorders, hate speech, and sex (particularly that encourages non-consensual sexual activity).

140. The Defendants' social media products rely on sophisticated, subsurface algorithms to generate recommended content, designed to maximize user engagement, and provoke user reaction. The algorithms deliberately and/or recklessly push negative and extreme content, resulting in cycles of "amplification" with increasingly extreme and/or harmful content being promoted.

141. Meta knew, or ought to have known, that its algorithms push harmful content ("a negative content bias") and often leads to preference amplification (sometimes called going down "rabbit holes"). Indeed, it runs its own experiments, called "proactive incident responses" to see what, and how fast, certain harmful content will be pushed to users.

142. Further, Meta knew, or ought to have known, that its algorithms boost suicide and self-injury (SSI) content.

143. TikTok's algorithms are designed to begin working the minute a user opens the app. A second of viewing or hesitation indicates interest; a swipe suggests a desire for something else.

144. The TikTok algorithms also amplify harmful content, including SSI content.

145. Further, TikTok also pushes so called "corpse bride" diet content (content glorifying being so thin that bones are protruding). TikTok is a gateway to developing disordered eating, and anorexia, which is pervasive on the product.

146. TikTok users often participate in trending challenges, connecting them to other participants and viewers, to gain exposure and go viral. Numerous students have injured themselves, injured others, or destroyed property participating in viral TikTok challenges. Examples include the "devious licks" challenge, filming oneself trashing a school bathroom or stealing items from schools, or a "blackout" challenge, filming oneself choking or holding their breath until they pass out.

147. Snap also utilizes algorithms to push inappropriate and harmful content to youth users, including its Quick Add, Spotlight, and Our Story features.

148. The Defendants knew, or ought to have known, that their algorithmic product features are unsafe for students.

149. The main goal of the Defendants' "attention economy" is to push so called viral content, regardless of whether it is making students sick and compromising the education of the student population.

150. The conduct of the Defendants in exploiting the negativity bias amongst vulnerable students has caused direct harm to school climate, and to TDSB and its student population, as enumerated below.

F. The Defendants' core business is promoting engagement on social media products to sell targeted ad space: Ontario students a targeted demographic

151. The "Internet of Things" has ushered in new technological products at a rapid pace. Legal remedies and regulatory legislation lag behind technological developments. Within this gap, the Defendants' social media products have proliferated and exploded. The Defendants have achieved remarkable levels of market penetration within TDSB schools. A large proportion of the student population is engaging with social media products for several hours per day.

152. The student population is a key target demographic for each of the Defendants, who know that students are typically engaged in school or school-based activities for a majority of the day.

153. The conduct of the Defendants in targeting schools and promoting excessive student engagement with its products has caused direct harm to school climate, and to TDSB and its student population, as enumerated below.

Meta targets schools and Ontario students to generate profit

154. Meta Platforms' revenue is derived almost exclusively from collecting user data and selling ad space on its social media products, including ad space targeted towards students. Meta Platforms' revenue over the past five years has continued to rise: approximately $134 billion in 2023; $116.609 billion in 2022; $117.92 billion in 2021; $85.965 billion in 2020 and $70.7 billion in 2019.

155. Meta leverages the fact that children are legally required to attend schools, and therefore congregate there in mass numbers, to collect demographic data or analytics around schools.

156. Meta recognized a decrease in its high school users and strategized to remediate that by targeting schools directly. Meta uses geo-local targeting to try to pull high school students on its app during school hours.

157. Meta has explicitly devoted strategy and marketing budgets towards targeting students and their schools.

158. Meta views students as commodities to be won at all costs. Meta's exploitative business strategies includes methods of pulling students onto their products during the school day, and incentivizing excessive use amongst students.

159. Meta is aware that its monthly active user engagement is highly dependent on maximizing penetration within schools and building a prolific presence within schools. Meta categorizes schools based on the level of market penetration.

160. Additionally, Meta did not historically distinguish between content that is suitable for the average social, emotional, and cognitive development of older versus younger users.

161. The advertising targeted towards students includes suggestions about abuse of prescription drugs, anorexia, romantic relationships, and other problematic tropes for such an audience.

162. The TDSB student population is among those targeted by Meta's harmful suggested content and harmful ads without seeking out this content, which causes a direct impact on the school, learning, and teaching climate at TDSB, and its student population.

163. Meta collects data for selling and assessing the efficacy of targeted ads including detailed demographics, such as information about youth based in a specific location, however, that data is solely within the purview of the Defendant. The Plaintiff alleges that given its significant market penetration within Ontario, and within the youth demographic, that Ontario students and TDSB students are a target market of Meta.

Snap targets schools and Ontario students

164. Snaps' revenue is almost exclusively generated from third parties advertising on its Snapchat product. Advertising revenue accounted for approximately 99 percent of total revenue in the fiscal years, 2022, 2021, and 2020. Snap's approximate total revenue was $4.5 billion in 2023; $4.6 billion in 2022; $4.1 billion in 2021; $2.5 billion in 2020; and $1.7 billion in 2019.

165. Snap's large market capitalization and valuation is dictated by the perceived value of its younger, active user base. This includes the value of their data, and time, as well as Snap's perceived growth opportunities.

166. The Snap product, Snapchat, has been marketed to youths since its inception. Its features were designed to be sleek and to confound an older audience, and instead appeal to a younger, digitally native audience. Snap knows its appeal amongst school-age children, which is a significant factor in its business decisions.

167. A public statement from Snap's CEO as far back as May 2012 on Snap's website confirms that the Defendant contemplated students using the app, during the school day - "we were thrilled to hear that most of them [early users] were high school students who were using Snapchat as a new way to pass notes in class - behind-the-back photos of educators and funny faces were sent back and forth throughout the day."

168. Snap highlights its connection to schools when communicating with advertisers, promoting "Back to School on Snapchat" and "Snap to School" rhetoric on its product.

169. Snap has about 406 million DAUs, as of 2023. Snap collects users' location, real time activity, and historical activity to allow advertisers to target specific ads across the entire product to specific users. According to Snap's publicly available Securities Exchange Commission (SEC) 2023 annual report, Snap's primary commodity is trading in its users' attention - "[w]e compete to attract and retain our users' attention, both in terms of reach and engagement." Students and young adults are its primary user base and target market.

170. It is easy for new users to join Snap and there is a low barrier to entry. Resultingly, Snap has acknowledged that its demographic data, including age, can be incomplete or inaccurate.

171. The TDSB student population is among those targeted by Snap's practices, which causes a direct impact on school, learning, and teaching climate at TDSB.

172. Snap collects data for selling and assessing the efficacy of targeted ads including detailed demographics, such as information about youth based in a specific location, however, that data is solely within the purview of the Defendant. The Plaintiff alleges that given its significant market penetration within Ontario, and within the youth demographic, that Ontario students and TDSB students are a target market of Snap.

TikTok targets schools and Ontario students

173. TikTok generates revenue from "ads" which are promoted video content, whether "creator content" or an actual product.

174. TikTok has the highest user engagement of any of the Defendants' social media products. The majority of TikTok users are children, youth, or young adults. TikTok expressly does not want old content creators on its product including those with "too many wrinkles" or "abnormal body shape."

175. TikTok is a privately owned company, and therefore not subject to the same disclosure obligations as the Defendants Meta and Snap. As such, much of its demographic and financial information is solely within the purview of the Defendants.

176. TikTok's exploitative business practices target students and schools causing a direct harmful impact on TDSB's school, learning, and teaching climate.

177. TDSB alleges that TikTok collects data for selling and assessing the efficacy of targeted ads including demographics, such as information about youth based in a specific location, however, that data is solely within the purview of the Defendant. The Plaintiff alleges that given TikTok's significant market penetration within Ontario, and within the student demographic, that Ontario students and TDSB students are a target market of TikTok.

G. The Defendants' products facilitate and cause the sexual exploitation and abuse of the student population

178. The Defendants have created an economy based on the sexual exploitation, sexual abuse, and sexual harassment of students. The Defendants' social media products

host sexually suggestive content of students, illegal CSAM material, and facilitate the Commercial Sexual Exploitation of Children (CSEC). CSAM refers to imagery or videos showing a child engaged in an explicit sexual activity or that is graphic and primarily sexual in nature. Contrary to the Defendants' public representations, their products contain account after account of CSEC / CSAM material, often with large followings, "menus" and options to buy additional similar content.

179. The design of the social media products endanger students by encouraging connections with predatory individuals that increase the risk of sexual harassment, sextortion, and similar harms. Sextortion is a term that captures many scenarios where an individual is threatened with the release of explicit content if the individual does not meet certain demands.

180. Sexual crimes against Canadian children, including the Plaintiff's students is rising at an alarming rate. Reported incidents of sexual interference are up 18 per cent in 2022. Similarly, possessing and accessing CSAM increased by 21 per cent in 2022 compared to the previous year.

181. TDSB's clinicians, child social workers, psychologists, educators, and administrators are in a state of constant vigilance to mitigate these risks, as they are concerned about students' unsafe social media use. TDSB staff respond to signs of social media risks and harm, such as students being subject to predatory behaviour over the products, or meeting unknown individuals from social media off school premises.

182. TDSB designs policies and provides educational materials to prohibit and discourage students from sharing explicit images over the Defendants' social media products. TDSB expends considerable resources to counter the insidious and harmful effects that use of the Defendants' products is causing within its schools.

183. Students' pervasive use of social media products is challenging to supervise, and students' use outside of school hours often impacts school climate. Students' pervasive use of social media products is contributing to an increasingly dangerous, harmful, and disengaged environment for learning.

184. TDSB expends considerable resources to promote student safety outside of school hours and off school premises, because of social media harms. The need for additional resources to address issues that start off school premises, but then permeate the school climate, is a significant aspect of this claim.

185. The Defendants' products allow CSEC, CSAM, and similar high engagement content to be monetized. TikTok and Meta also allow users to pay each other directly for this content over the products, or to pay using the products' virtual currencies that are exchangeable for dollars. Snap functioned similarly until its Snapcash tool was disabled in 2018. Snap provides financial compensation to content creators and/or for high engagement sexually suggestive content.

186. TDSB is expending unanticipated levels of time and fiscal resources to investigate, interrupt, remediate, and provide services to children who have been exposed to various forms of sexual exploitation, sexual abuse, and sexual harassment facilitated by, occurring over, or caused by, the design of the Defendants' social media products. These forms of harm are occurring at high volumes, collectively, amongst the student population.

187. On January 31, 2024, the CEOs of Snap, Meta, and TikTok were compelled to provide sworn testimony to a US Senate Hearing Committee on child safety issues, including the sheer volume of child sexual abuse and exploitation facilitated by the products. The Defendants were questioned about their historical and ongoing failure to mitigate this problem.

188. The Defendants' public representations that their AI content filters proactively, accurately, and sufficiently remove this harmful content was and is false. The Defendants regularly fail to fulfill their legal obligations to report CSAM on their social media products.

189. Meta's content screening AI tools sometimes identified material as CSAM, and generated a warning to users seeking to access this material stating that it is likely CSAM. However, this warning contained a bypass option to allow users to access this content anyways.

190. Specifically, Meta has:

   a. proactively served and directed children to a stream of egregious, sexually explicit images through recommended users and posts – even where the child has expressed no interest in this content;

   b. enabled adults to find, message, and groom minors, soliciting them to sell pictures or participate in child sex abuse (so called "pornographic") videos;

   c. fostered unmoderated user groups devoted to and/or facilitating CSEC;

d. allowed users to search for, like, share, and sell a large volume of CSAM;

e. failed to respond when this content was flagged as breaching Meta's code of conduct;

f. failed to detect a fictitious account created by investigators posing as a mother offering her fictitious 13-year-old daughter for trafficking; and

g. solicited the daughter, who had alleged to be 18 years old but had posted content of her school and her interests, consistent with a 13 year old, to create a professional page and sell advertising on the product due to the high volume of engagement with her overtly underage profile, predominately by adult men.

191. The scope of the problem is immense. As of June 2020, it was estimated that 500,000 underage Instagram accounts receive what is termed inappropriate interactions with children or "IIC" on a daily basis. Meta has not prioritized child safety although it knew, or ought to have known, of the severity of the problem.

192. This is also a pervasive problem on TikTok. The TikTok algorithms push extreme content and regularly recommend inappropriate adult 18+ content, and content related to non-consensual sex to students and users registered as being under 18 years old. TDSB has incurred unanticipated expenses and diverted significant resources to counter this type of harmful ideology that students are learning over social media.

193. Snap has long been on notice that its product is the tool of choice for sex predators and that it facilitates sextortion, in large part due to its anonymity, end to end encryption, disappearing content, and a secure for "My Eyes Only" folder. Snap also recommends students to adults and vice versa via its "Quick Add" mechanism.

194. Snap altered its Quick Add algorithm in 2022, such that it recommends adult users to students aged 13 – 17 and vice versa when they have a "number" of connections in common. Snap has refused to disclose the number of "friends" in common needed to suggest the connection between adults and youth. Snap refuses to conduct age or identity verification.

195. The Defendants fail to consistently or reliably action requests to remove and take down content of students that is sexually suggestive and/or explicit. The harm to the student population and to school climate is immense.

H. TDSB is now left grappling with the consequences of the Defendants' misconduct, such that the Defendants' misconduct has directly caused substantial harm to TDSB

196. School boards, including TDSB, have been, and continue to be, uniquely harmed by the Defendants' conduct. Students' compulsive, problematic use of social media products results in significant disruption to schools' operations and public educational missions, greatly frustrating TDSB's ability to achieve their mandate of educating students in a safe and healthy environment, and forces TDSB to expend or divert significant resources in response.

197. Children spend about 195 days a year, and spend about six to eight hours a day, in school.

198. The Defendants have achieved remarkable levels of market penetration within TDSB schools. Recent data from 2021 confirms that approximately 91 percent of Ontario students, grades 7 – 12, use social media daily. A staggering 31 percent of these students use social media for five hours or more a day (increasing from 20.5 percent in 2019). About 14 percent of these students use social media for seven hours or more daily (increasing from 6.6 percent in 2019). This does not include any other form of recreational screen time such as playing video games or watching tv.

199. Approximately 83 percent of Ontario students have three or more hours of recreational screen time, (unrelated to work or school), on a daily basis. This is a significant jump from 64 percent in 2017.

200. Further, a majority of secondary school students (52 percent) spend five hours or more in their free time on their electronic devices. One in five students report they neglect homework to spend recreational time on their electronic devices and one in four students report that they lose sleep because of device use at night.

201. Pursuant to the *Act*, TDSB is obligated to provide a safe, inclusive, and positive school climate. Students with exceptionalities, and students from disadvantaged backgrounds are disproportionately vulnerable to being harmed over social media, or as a result of social media use. TDSB expends considerable resources to promote student achievement and well-being, and to remove systemic barriers to learning. The Defendants' misconduct undermines TDSB's actions to promote equity in education.

202. TDSB is also a primary provider of mental health supports, and resources for many students, as students' mental health impacts their ability to learn. The Defendants' misconduct has compelled TDSB to divert resources, and time, and to incur unanticipated expenses to mitigate social media caused harms.

Endemic social media use is causing an unprecedented youth mental health crisis

203. Endemic social media use is causing an unprecedented youth mental health crisis within the Plaintiff's schools, and amongst its student population. Students' social media use is causing significantly increased rates of anxiety, depression, social media addiction, body dysmorphia, anorexia, low self-esteem, disordered eating, suicidal ideation, pervasive loneliness, self-harm, and suicide. Increased use of the Defendants' products, per session, and over time, exponentially increases the risk of experiencing such adverse effects.

204. Addictive and compulsive use of the Defendants' products can entail a variety of behavioural problems such as, loss of control over use, extended use, cravings to use, and using the products despite significant harm to the user's physical and mental health.

205. Students using social media for three hours or more per day are at increased risk of experiencing depression and anxiety. Limiting students' social media use to ten minutes per day or less is known to rapidly reduce loneliness and depression in a matter of weeks.

206. The design of the products causes and contributes to the student mental health epidemic by deliberately pushing harmful content that causes body dysmorphia, anorexia, low self-esteem, disordered eating, and negative comparison, such as influencer content. These trends are particularly notable for teenage female students and can result in serious physical health complications, such as gastrointestinal issues, hair loss, nutritional deficiencies, and time off school.

207. Teen students' displeasure with their appearance and body image can be predicted based on the frequency of their social media use, and worsens with behaviour such as posting selfies over the social media products and frequent use of beautification filters. It is estimated that the majority of females under age 13 have used a beautification filter, and more than half of teenage females use the Defendants' filter technology daily, without which they do not feel they look good enough to post to social media. Students expend disproportionate amounts of time projecting and monitoring their social media image, leading to increased anxiety.

208. Excessive social media use is known to interfere with students' sleep, increasing their risk of experiencing poor health outcomes, major depression (by a factor of three), and is a predicator of future suicidal behaviour. Students are chronically tired. There has been a spike in student absenteeism because of health and mental health concerns related to social media use.

209. The Defendants' products frequently expose students to self harm and suicidal ideation content, and communities that encourage this behaviour. Frequent social media use increases the risk of suicidal behaviour and/or suicidal ideation in students.

210. The deliberate and negligent design of the products cause serious mental harms and those harms have proliferated across the Ontario student population. The results are drastic. During the 2020 – 2021 school year:

    i. 26 percent of Ontario students report feeling as though they are in serious psychological distress;

    ii. 30 percent of Ontario students feel they have low status at schools;

    iii. 20 percent of Ontario students report poor or fair health;

    iv. 38 percent of Ontario students report poor or fair mental health;

    v. over half (51 percent) of Ontario students are not getting adequate sleep, less than 8 or more hours of sleep a night;

    vi. almost half (46 percent) of Ontario students are constantly worried about their weight;

    vii. about one in five Ontario students report feeling consistently lonely;

    viii. about one in five Ontario students report self-harming; and

    ix. about one in five Ontario students have seriously contemplated suicide.

Expending and diverting significant time and resources to address youth mental health crisis, and social media addiction and/or compulsive use

211. Students' social media use is causing a student mental health crisis, for example, increased rates of anxiety, depression, social media addiction, body dysmorphia, anorexia, low self-esteem, disordered eating, suicidal ideation, self-harm, and suicide.

212. The number of Ontario students self-reporting an unmet need for mental health services, and counselling, up from 27.9 percent in 2013, to 42.4 percent in 2021.

213. About one in six (17.8 percent) Ontario secondary school students report symptoms that may suggest a moderate-to serious problem with technology use. About 4.7 percent of those students report symptoms that may suggest a serious problem with technology use. The most prevalent form of problematic technology use that is experienced "quite often" or "very often" is staying on electronic devices longer than intended (41.3 percent).

214. About ten percent of Ontario students report feelings of pervasive nervousness when not using their electronic devices, and that this discomfort is relieved by "use."

215. The COVID-19 pandemic pushed students online. The Defendants' conduct during those years further entrenched students in harmful social media use. The Defendants' revenues all increased over the pandemic years.

216. The role of guidance counsellors has shifted from aiding with long term career goals, and educating students about college or university options, to disproportionately responding to students in crisis. TDSB clinicians are helping students connect with the Centre for Addiction and Mental Health (CAMH) and other partner agencies – some explicitly for social media overuse.

217. Further, many critical incidents occurring in the TDSB community have a social media element. These catastrophic incidents can be very serious, including gun violence or suicide. Whenever such a tragedy occurs, TDSB deploys additional supports such as grief counseling. TDSB has also incurred additional expenses to investigate the causes of such serious incidents, to try to prevent such harms from occurring again. Social media is consistently implicated as a causal factor.

218. TDSB received emergency funding during the COVID-19 pandemic. TDSB added back $10.4 million of these funds, in part, to manage and respond to social media related harms including:

   i. 16.0 social workers
   ii. 15.0 child and youth counsellors
   iii. 40.0 school-based safety monitors
   iv. 20.0 elementary vice principals
   v. 8.0 secondary vice principal

Expending and diverting significant time and resources to address youth barriers to focused learning, because of compulsive social media use

219. The prolific and/or compulsive use of the Defendants' products is a significant distraction to focused learning and a disruption to the overall learning ecosystem. Educators expend increased time and effort responding to issues related to compulsive social media use including behavioural dysregulation, increased acts of aggression, and increased friction in the teacher-student relationship caused by attempts to manage or restrict use. This results in decreased instructional time.

220. The Defendants also disrupt the education, and social / emotional development of pre-teen students, as the social media products tacitly encourage underage users (i.e. users under age 13) to sign up.

221. As previously stated, compulsive and/or inappropriate social media use is causing and contributing to a student population that is struggling to focus, is dysregulated, and is prone to seeking distraction. These behavioural changes are caused and contributed by the Defendants' negligence and exploitative business practices.

222. This behaviour is reinforced during leisure time, and during time that should be allotted to homework or proper sleep.

223. TDSB is expending resources to address the behavioural changes amongst the student population caused and exacerbated by the conduct of the Defendants.

224. Chronic and problematic social media use is altering and impacting students' ability to engage in sustained focus. Depending on the age and maturity of students, schools may be responsible for administering prescription medication and for the related costs.

225. The Plaintiff has been compelled to "compete" with the Defendants' products for the students' attention and time, as students' have become habituated to immediate gratification.

226. The ubiquitous use of social media products by students is a barrier to the deep learning required to develop competency in literacy, numeracy, and other core educational objectives.

227. Misinformation / disinformation, extreme political views, and harmful ideologies (discriminatory, racist, homophobic, and similar) proliferate over the Defendants'

products, and are pushed at an exponentially greater rate than accurate information or moderate views. Students are increasingly unable to distinguish fact and propaganda and are increasingly lacking the criticality to vet the misinformation they encounter on social media. Resultingly, educators are expending disproportionate amounts of time and resources to help students learn the necessary skills to learn (i.e. critical thought), counter misinformation (that often directly contradicts the curriculum) and prevent students from adopting the harmful, prejudicial, or discriminatory ideologies that they are constantly exposed to on social media.

Expending and diverting significant time and resources to address youth anti-social behaviour, rise in cyberbullying, and rise in serious violent incidents related to social media

228. The Defendants' products facilitate and promote cyberbullying, harassment, hate speech, misinformation / disinformation, and other harms. Endemic social media use is accelerating and escalating harmful incidents in schools, such as physical violence and conflicts.

229. Under the *Education Act*, TDSB is obligated to investigate, and respond to serious violent incidents that will impact school climate. TDSB is also obligated to promote a caring and safe school climate. The number of violent incidents impacting TDSB is increasing. For the 2022-2023 school year, the Board reported the highest number of violent incidents since this type of data was systematically collected in 2000. There has been an increase in spending related to caring and safe schools that will be maintained for the 2023-2024 school year. Disciplinary measures are particularly time, labour, and resource intensive.

230. The spike in the severity and frequency of antisocial behaviour including incidents such as, assault with weapons, physical conflicts, sexual assault and similar harms frequently have a social media element. Social media is facilitating these harms in key ways:

    a) social media has the ability to magnify disputes before they can get de-escalated or resolved, especially if students feel their social media image, self-identity, or self-esteem is being threatened;

    b) an incident shared over the Defendants' products rapidly escalates due to the virality of the design, for example 100 people can be involved on either "side" in a matter of minutes;

c) geolocation sharing over the Defendants' products also serves to escalate conflicts;

d) when an incident does occur it is often filmed and put on social media for views, likes and comments, thereby re-victimizing the victim;

e) there have been incidents of "fight clubs" and similar content posted on social media to generate views, as students seek to have their "viral" moment; and

f) the products facilitate impulsive and risky behaviour by youth through their technological design choices and the negative impact on children's developing brain and self-regulation.

231. Due to increase in the severity and frequency of violent / serious incidents, TDSB has added ten caring and safe school advisors to its staff and implemented additional school safety monitors in junior high schools.

232. Problematic social media use is encouraging more negative peer to peer interactions. The perceived anonymity of social media emboldens students to be cruel. There has been a decrease in positive, in person, peer to peer interactions.

233. TDSB expends resources to prevent, monitor, and respond to cyberbullying and harassment – cyberbullying is a defined term in the *Education Act* that contemplates it occurring over social media. Cyberbullying is a pervasive problem and almost 30 percent of Ontario students report being cyberbullied during the 2020 – 2021 year, frequently over social media. Problematic and/or compulsive social media use compounds cyberbullying.

234. Prolific social media use amongst students has largely eroded the distinction between acts committed during school hours and on school grounds and acts committed during students' recreational time. Students bring their disputes outside school into school via social media, a modern day trojan horse.

235. TDSB is expending significant and additional resources to conduct rigorous investigations in response to cyberbullying, threats and harassment of students over social media. TDSB's obligation to investigate is complicated by the anonymous usernames, and ephemeral disappearing content replete on the Defendants' social media products. It is significantly more time intensive for educators, administrators,

and safe school staff to detangle who is committing what harmful behaviours when they are relying on fragments of screen shots, and trying to untangle webs of anonymous usernames.

236. Without limiting the generality of the foregoing, the Defendants' conduct causes student safety concerns and negatively impacts students' social and emotional development resulting in an unanticipated and additional strain on the Plaintiff's fiscal and administrative resources.

Expending and diverting significant time and resources to developing policies, programs and educational materials to raise awareness about social media harms, and risks of social media use for students, parents, guardians, staff, and community stakeholders

237. TDSB faces considerable demand for resources to educate students about social media harms and safety risks associated with social media use including educating about caring and safe online behaviours, internet safety, and the acceptable use of technology. TDSB expends and diverts resources to hire external speakers to educate on these topics. TDSB also organizes, hosts, and provides presentations for parents, guardians, community stakeholders, students, and staff to learn about these topics. TDSB curates and provides access to helpful resources on its website.

238. Significant resources at all levels of school administration are required to respond to the harms caused by the prolific and/or compulsive social media use amongst TDSB's student population. This additional resource burden would not exist without the negligent conduct of the Defendants.

Expending and diverting significant time and resources to investigate and remediate the sexual abuse, sexual harassment, and sexual exploitation of students facilitated by and occurring over social media products

239. TDSB has expended significant and unexpected levels of time and resources to address the endemic and commonplace sharing of sexually explicit images of students over the Defendants' products including by children under the age of 13.

240. TDSB prohibits and instructs students not to share explicit images of themselves or of other students. However, students are impulsive, vulnerable to peer pressure, and driven by their emotions, facts exploited by the Defendants' designs of the products. The Defendants' products habituate children to being objectified, and reward students who post or share explicit content with likes, comments, attention, engagement, virtual currencies and/or money.

241. Students use the Defendants' disappearing technology to send explicit photos and videos, unaware that it can be screenshot or overridden by other means. Further, students film each other in places where there is a reasonable expectation of privacy, such as a bathroom. This type of content is then shared publicly, or in group chats over the Defendants' social media products, well beyond the intended recipient, if there was one.

242. Every time this type of incident occurs it has a profound impact on TDSB, its student population and school climate. TDSB responds using a comprehensive multi-department approach to investigate, educate, prevent, and remediate each incident, and address the harms, to the extent possible. Children's Aid Services and/or the police are alerted, as required, which then involves liaising and coordinating parallel investigations.

243. Many students desire careers as content creators or influencers, and share their image publicly over the Defendants' products. Students feel pressure to respond to or engage with unknown users on the social media products. The Plaintiff's students frequently experience sexual harassment, and unwanted sexual advances over social media products. Risks may range from Direct Messages "DMs" and "dates" with older men to sexual assault. Students are at risk of being sexually exploited and/or sex trafficked over the Defendants' social media products.

244. TDSB provides education to its student population, parents, guardians, and caregivers about the risks of child sex trafficking and that this exploitation often begins over social media. These serious issues of student safety and well-being divert TDSB from its core mission of educating, as it is impossible for students to learn when in crisis, no matter how engaging the teacher or curriculum.

Expending and diverting significant time and resources to address staff mental well-being in response to social media harms

245. TDSB expends considerable resources to respond to staff being harmed over social media products including, but not limited to, staff who are subject to harassment, defamation or have their personal details or image shared on the Defendants' products, without their consent.

246. Responding to such concerns is an unanticipated time and fiscal resource burden that is compounded by the Defendants' failure to cooperate with TDSB, when such matters arise. TDSB, including its communications and other departments request

that the Defendants' remove the offensive material. Frequently, the Defendants fail to respond or respond and state that the content does not violate their terms of use and conditions.

247. The harmful effects of the Defendants' products impact staff in a variety of ways, including staff encountering difficulties associated with educating a dysregulated and unfocused student population, or staff who have uncovered or had to respond to child sex abuse being facilitated on the Defendants' products. This can result in unanticipated leaves of absences, or human resource matters that impact TDSB.

248. TDSB provides support services to promote staff well-being and the demand for such services is rising. In 2022 – 2023, TDSB received about 23,000 requests for professional support referrals from staff.

Expending and diverting significant time and resources to respond to spikes in vandalism, increased property damage, and risky behaviour caused by viral social media challenges

249. Students are exposed to, and often execute, viral challenges over the social media products that endanger themselves, others, or cause property damage to TDSB. These so-called challenges are particularly rampant on the Defendant TikTok's product.

250. Students may engage in harmful behaviour in the hopes of having a viral moment on social media and misbehave in a manner that impacts the learning environment. Students may slap the teacher's butt or trash the school bathroom and then post this misconduct to social media. Students may engage in reckless behaviour for views, likes, and comments, such as scaling school buildings.

251. TDSB is dealing with a marked and unanticipated spike in this type of student misconduct fueled by social media.

252. TikTok's algorithm functions to boost such content, and the Defendant often fails to shut down or suppress harmful viral challenges targeted to children and youth, in a timely manner resulting in foreseeable damage to the Plaintiff's property.

253. The Plaintiff expends significant time and resources to respond to property damage caused by viral challenges. TDSB also marshals and deploys resources and education materials to prevent and mitigate harms resulting from these challenges. Staff mobilize to alert parents, guardians, and other staff members about the

challenge and otherwise create an environment that is on "high alert" – this diverts the Plaintiff from its core mandate of educating young minds.

Expending and diverting significant time and resources to information technology (IT), cyber security, and communication matters related to social media

254. The Plaintiff develops and provides multiple educational materials and programs around responsible digital citizenship.

255. TDSB's IT department, along with its Communications department, educators, principals, lawyers and other professionals frequently contact the Defendants to request certain offensive, violent, harmful, hateful, explicit, and/or exploitative content be removed.

256. Frequently, TDSB does not receive a response to these requests, often requiring follow up and escalation. If the content is particularly harmful and/or hateful, TDSB has paid a third-party service provider to compel the Defendants to remove the content or has retained the services of an external legal counsel. This material may include content outside of school hours, or off school property that negatively impacts the learning environment at TDSB schools.

257. TDSB also requires significant IT investment to regulate, manage, and secure its networks from the deleterious impact of prolific and/or compulsive social media use amongst its student population.

LIABILITY

A. Negligence

Duty of care

258. TDSB is a corporation made up of its constituent schools and student population (or body). The body of students and schools for whom TDSB is statutorily responsible were the direct target of the Defendants' wrongful and tortious efforts, and the harm to their attention, emotional well-being, and ability to learn and its corresponding impact on education was both foreseeable and proximate.

259. The Defendants targeted students and their schools as a key consumer group.

260. The Defendants owe a duty of care to TDSB. The relationship between the Defendants and TDSB is sufficiently proximate, and the harm was reasonably foreseeable.

261. While deliberately seeking to attract students to their platform, including specifically targeting school-time, the Defendants knew that School Boards would be forced to address, through financial and human resources, the devastating impact that compulsive social media use has on the student population and their mental health.

262. The Defendants were aware of the risk that their products would addict or cause compulsive use in school-aged children; they were seeking that result. The Defendants contemplated that the student population would access their products, including on their electronic devices during the school day. The economic costs and severe disruption to the learning process that has harmed TDSB were foreseeable to all the Defendants, as the costs were a natural and probable consequence of massive numbers of students becoming addicted to social media products and suffering mental health issues that the products foreseeably caused.

263. At all material times, the Defendants knew, or in the exercise of reasonable care, should have known that excessive and/or compulsive use by students of their products would result in the disruption and adverse impact on schools.

264. The Defendants manufactured the forum and circumstances to cause harm to the Plaintiff, the student population, and the education system including foreseeable harm to staff, students, and substantial diversion of Plaintiff time and resources. The Defendants' lack of safeguards, proactive mechanisms to protect users, and creation of risky situations, is a misfeasance lending itself to finding a duty of care.

265. The public has an interest in the well-being of students. According to the *Education Act*, boards play a role in "maintaining confidence in the province's publicly funded education systems." The Defendants are interfering with, and negatively impacting, this societal good.

266. The Plaintiff is forced to use its public funding to attempt to mitigate the ongoing damage caused by the Defendants' wrongful conduct.

267. The Defendants' conduct interferes with the Plaintiff's efforts to fulfill its statutory duties as codified in the *Act*.

268. At all material times, the Defendants owed a duty to the Plaintiff and its student population, to exercise reasonable care in the creation, production, maintenance, distribution, management, marketing, promotion, and delivery of Defendants' social media products. The Defendants owed the Plaintiff a duty to take all reasonable steps necessary to design, research, market, advertise, promote, operate, and distribute their products in a way that is not unreasonably dangerous to student users, including TDSB's student population.

269. This duty included a duty to provide accurate, true, and correct information about the harms, risks and adverse effects associated with using the Defendants' products. This duty also included a duty to provide accurate, clear, and complete warnings specific to the harms, risks and adverse effects associated with using the Defendants' products, including but not limited to, the following: students' risk of extended use; exposure to danger; and exposure to harmful algorithm driven content recommendations.

270. The Defendants manufactured dangerous and addictive products that they marketed to students as safe. The interface of their products is designed to appeal to student users, and promote excessive engagement, regardless of the impact on students' well-being.

271. The Defendants' business strategies and marketing campaigns center on obtaining more younger, daily, active users. The Defendants portrayed their products as safe for students. The Defendants used young and famous people that would appeal to youth in their marketing campaigns and content creator partnerships.

272. TDSB has suffered proximate and foreseeable harms as a direct result of the Defendants' breaches of their respective duties of care and their wrongful and tortious conduct, including but not limited to:

   a. Expending time and resources to address an unfocused student population with maladaptive brain development, poor sleep, and behavioural dysregulation;

   b. Expending time and resources to address a student population afflicted with compulsive use;

c. Disrupted school and learning climate;

d. Increased educator and administrator resource and time burden;

e. Increased vigilance and resources with respect to the safety and protection of students, including child exploitation and sextortion;

f. Increased cyberbullying and increased resources required to prevent and respond to this harm;

g. Increased student absenteeism;

h. Staff encountering or responding to social media caused harm;

i. Property damage and vandalism;

j. Demand for digital literacy, online safety, and similar curriculum/educational materials to address social media harms;

k. Increased resources to address attentional and focus deficits caused by social media defects;

l. Increased demand for clinicians, mental health and well being staff, guidance counsellors, and other resources and personnel;

m. Increased demand for TDSB electronic devices for educational purposes, cyber security and IT professionals, IT infrastructure, and other technology to respond to social media harms in schools;

n. Increased supports for anorexia, self-esteem, depression, and anxiety disorders;

o. Reduced privacy and increased voyeurism;

p. Rise in serious violent incidents requiring investigation, discipline, and remediation efforts and resource burden;

q. Rise in investigations and safe schools spending to respond to threats made to school, students, and staff including bomb, shooting, and death threats;

r. Friction in the student-teacher relationship requiring intervention and supports;

s. Reduced academic compliance, including neglect of homework; and

t. Other harms as particularized in this claim and as will be revealed in advance of trial.

General Negligence

273. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference.

274. The harms and losses suffered by TDSB were caused and/or contributed to by the joint and/or several negligence of the Defendants, the particulars of which include, but are not limited to, the following:

a) failure to exercise reasonable care in the creation, production, maintenance, distribution, management, marketing, promotion, and delivery of their products to student users including exposing these users to danger, harmful content, an addictive product, and the serious risk of excessive / compulsive use;

b) failure to complete adequate pre and post market testing, as well as alpha and beta testing on the safety of the products and other associated risks;

c) failure to disclose or promptly act on the data, reports, and studies that were commissioned finding negative effects on youth safety, health, and excessive use;

d) failure to disclose or warn users that the algorithms and AI functions of the products promote excessive and unsafe use to maximize engagement;

e) failure to disclose or warn of the negative mental, emotional, and health consequences associated with product use;

f) failure to provide adequate warnings about the real and serious safety risks of using the products;

g) failure to monitor the safety of their products and/or take appropriate corrective action to adequately inform the Plaintiff and its student population of such safety risks;

h) designing and publishing safety metrics in a manner that was deliberately misleading in order to obscure and conceal the extent of harm that was actually occurring on the products, with full awareness that this data was irreconcilable with internal unpublished data showing substantial harm and risk to users;

i) failure to employ adequate safeguards in the creation, maintenance, and operation of their products including effective age restrictions for students under age 13, and to prevent excessive / harmful use;

j) failure to provide results or material facts underlying internal and/or solicited research showing that their products are harmful for children;

k) designing a defective and dangerous product including various defective features both built in and hidden, such as endless content, deploying Intermittent Variable Rewards (IVR), distracting notifications, ephemeral content that encourages CSAM, geolocation, gamification to encourage compulsive use, negative content bias, harmful filters, seamless autoplay promoting flow state and passive content consumption, barriers to deletion, connection of child and adult users, inadequate age verification for under 13's; and

l) committing other failures, acts, and omissions set forth herein including but not limited to those particularized at paragraph 282.

275. Compulsive and/or harmful social media use has caused increased rates of anxiety, depression, body dysmorphia, anorexia, low self-esteem, suicidal ideation, self-harm, suicide, and social media addiction. The Plaintiff has been forced by the Defendants' misconduct to provide mental health services to attempt to address these harms.

276. Compulsive and/or harmful social media use has caused physical health problems by encouraging excessive screen time, sedentary behaviour, and disrupting sleep. This is resulting in barriers to learning and is a strain on the Plaintiff's resources.

277. Compulsive and/or harmful social media use has caused changes in students' ability to engage in sustained focus, an increase in ADHD and / or ADHD like symptoms, an increase in distractions during instructional time, and other barriers to focused learning.

278. The Defendants' negligence and tortious misconduct is systemic in nature.

279. As a direct result of the Defendants' misconduct, the Plaintiff has incurred significant damages and additional costs in the discharge of its core mandate to educate, protect, socialize, and teach responsibility to its young student population, as well as execute its statutory duties to staff.

B. Defective product design

280. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference.

281. The social media products are referred to by the Defendants throughout their marketing materials and financial disclosures as products. The Defendants' products are subject to products liability law.

282. The Defendants' products were negligently and defectively designed including but not limited to the following design defects or features:

a) endless and infinite content;

b) lack of effective parental controls;

c) lack of mandatory screen time limitations;

d) lack of identity verification;

e) anonymous accounts encouraged and allowed;

f) inadequate age verification – no barriers to creating an account under age 13 except to misstate date of birth;

g) inadequate age verification – barriers to reporting users under age 13;

h) inadequate parental control – parents/guardians are not authorized to delete a child's account, ages 13-18 years old (Instagram);

i) inadequate content control – user accounts are not necessary to download the application and view recommended content (TikTok);

j) user accounts not necessary to view public content via browser (Instagram);

k) hidden intermittent variable reward structure and other psychological tactics to promote compulsive / harmful use;

l) constant notifications – especially during sleeping hours and school hours;

m) ephemeral content that encourages FOMO ("fear of missing out") to promote reengagement;

n) ephemeral content that encourages student users to send explicit images / videos to each other, which can then be captured in a permanent format;

o) ephemeral content that encourages and facilitates CSAM;

p) disappearing messaging options that allow for "sextortion;"

q) My Eyes Only feature (Snap);

r) rampant disinformation and misinformation amplified by algorithms;

s) geolocation tagging options that create privacy and safety concerns;

t) deliberate gamification, rewards, and product interface to appeal to students;

u) creating a streak feature (Snap) that rewards compulsive use;

v) algorithmic prioritization of harmful content (sexual, violent, SSI, disordered eating);

w) feed organized by Meaningful Social Interactions (MSI) even though this often results in negative upward social comparison for students;

x) beautification filters that encourage body dysmorphia;

y) beautification filters that for many years could be used without any transparency that a filter was being used, leading to unrealistic beauty expectations, especially for teenage girls;

z) seamless content promoting flow state and passive consumption;

aa) video and content autoplay promoting compulsive use;

bb) limit on video length content to promote flow state and excessive engagement;

cc) barriers to deletion - it is confusing for users to navigate the multistep deletion process;

dd) barriers to deletion – once a user has deleted their account they must wait a certain time period before the Defendants action this request and if the user re-opens the app within this time period, the deletion request is cancelled;

ee) barriers to deletion – the Defendants' fail to action reports about users under age 13 on the products;

ff) private chat and group chat options;

gg) connection of child and adult users;

hh) encouraging and failing to limit secondary accounts;

ii) lack of effective reporting mechanisms for youth;

jj) failure to collect and report accurate safety statistics;

kk) failure to adequately test products for safe user experience;

ll) failure to ensure children are not targeted with adult content and adult content ads;

mm) students are able to make public accounts and share content with the public; and

nn) intentionally addictive product design.

283. There are reasonable alternative designs. The Defendants can carry any costs associated with making their products safer for students. Further, they ought to bear any loss of income caused by designing and marketing a less addictive product, with a higher minimum user age limit, stronger parental controls, and stricter harmful content filters for students. The costs of such a design does not outweigh the substantial risks associated with the historical and current product design.

C. Negligence in manufacturing / manufacturing an inherently dangerous product; the Defendants' products are dangerous per se

284. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference.

285. There is no right to manufacture an inherently dangerous product. No amount or degree of specificity of warning will exonerate the Defendants from liability for manufacturing a product that promotes addiction and/or compulsive use in students, facilitates connection between students and sex predators, and creates an inherently dangerous situation.

286. The Defendants' products connect adult predators to students, and push sexualized content to students. There were reasonable alternate ways to manufacture the products to make them safer for student use. The Defendants chose not to implement reasonable and effective safeguards.

287. In particular, Meta's algorithms promote CSEC and CSAM to its users, including teenagers and children under the age of 13. If a user searches for a banned term such as "child pornography" the algorithm often recommends alternative terms that predators use to circumvent Meta's blocked terms, such as "cheese pizza," with its similar initials to child pornography, a gateway to illicit material on the product.

288. Meta fails to adequately monitor for these alternative terms. Meta does not flag as suspicious interactions between students and unconnected adults that begin on one product such as Instagram but then move to Meta's WhatsApp, a problematic and well known grooming technique.

289. After years of pressure from child rights activists, Meta has rolled out a bare bones "Protections From Suspicious Adults" tool that despite being only deployed for

problematic accounts fails to automatically ban, report, or disable the account. Further, Meta fails to notify predators who initiate inappropriate contact with students, or make inappropriate comments to students, that their conduct violates community standards.

290. Meta knew about the huge volume of inappropriate content being shared between adults and students; a 2021 presentation estimated that 100,000 children per day received online sexual harassment, such as pictures of adult genitalia.

291. The Defendants all have the ability to prevent adults from direct messaging children, or to deploy content filters that automatically screen and remove this harmful content.

292. The Defendants rely on automated detection of CSAM or other violative or illicit content, which is inadequate both because it only identifies exact matches of images that have been previously flagged in a database and because it becomes increasingly ineffective over time, as new content is generated.

293. When the Plaintiff, including its student population or concerned parents and guardians, report CSAM and similar content, there is often inconsistent response, no response, a delayed response, or a response that the material does not violate Meta's Community Standards.

294. The Defendants profit off this exploitative content and resulting increase in user engagement, while the Plaintiff expends considerable resources to investigate and mitigate these serious safety risks.

295. It is only through investigative reports, now publicly available, that the above features are known about Meta. Discovery around Snap and TikTok's algorithms, and how they promote, and foster connections to facilitate CSAM and child sexual abuse will reveal additional details about the inherent danger of the Defendants products.

296. Further, as alleged above, the Defendants' products are associated with the inherent risks of addictive and/or compulsive use.

D. Negligent failure to warn

297. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference. The Plaintiff alleges negligent failure to warn in both products liability and in general negligence.

298. The Defendants have benefited from a shroud of secrecy surrounding their operations and products. The Defendants had knowledge that there was danger and risk inherent to the ordinary use of their products.

299. The Defendants had internal reports about the risk of compulsive use and the common negative effects youth experience from accessing their products. The Defendants' failed to voluntarily provide internal reports, data, or information about the risks and harms associated with use of their products.

300. A duty to warn corrects the inherent knowledge imbalance between the Defendants and the Plaintiff including student consumers. Warnings allow consumers to make informed choices about whether they are willing to assume the risk, associated with the use of the product.

301. Warnings serve an important policy function of encouraging manufacturers to be forthright about the risks associated with their products, rather than to downplay those risks.

302. The Defendants failed to warn TDSB and its student population of the risk of compulsive use or addiction.

303. The Defendants failed to properly monitor the safety of their products and/or take appropriate corrective action to adequately inform the Plaintiff and its student population of such safety risks.

304. The Defendants' obligation to warn is continuous and ongoing. Given the serious harms occurring on the products at very high rates, there ought to be a full indication of each of the specific dangers arising from the use of the social media products.

305. As such, the Defendants withheld material information about the risks and adverse effects of their products, failed to exercise reasonable care, and caused substantial harm to the education system.

E. Public Nuisance

306. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference.

A public right to education and unreasonable interference with that right

307. TDSB and its student population have a right to be free from conduct that endangers health and safety. TDSB's student population has a protected right to education. The tortious conduct of the Defendants has unreasonably interfered with these rights.

308. In December 1991, Canada ratified the *UN Convention on the Rights of the Child (1989), Treaty no. 27531*, including every child's right to an education. For the children within TDSB's jurisdiction, the Board is instrumental in realizing that right.

309. The Defendants knowingly and persistently interfered with TDSB and its student population's right to an education that is not disrupted by the Defendants' addictive products. The Defendants have engaged in conduct and omissions which unreasonably interfere with the public health and safety of the Plaintiff's school communities and student population by designing, developing, promoting, and maintaining their products with features and algorithms described above that are specifically addictive, harmful, and appeal to students who are particularly unable to appreciate the risks posed by those products. School climate has been negatively altered by the Defendants' misconduct.

310. The Defendants' conduct has substantially and unreasonably interfered with the right to a public education in a safe and healthy environment, as it relates to the good and safe working order of the Plaintiff's property, including but not limited to its school buildings. TDSB has the property rights of an occupier in respect to its school sites. The Defendants' conduct adversely impacts TDSB's use and enjoyment of its property.

311. TDSB must mobilize a multi-department response each time a viral social media challenge sweeps across the schools. TDSB is forced into an environment of high alert and dedicates significant resources to mitigating these harms.

312. The Defendants have engaged in conduct that substantially and unreasonably interferes with the health and safety of the TDSB student population and with the

function and operations of TDSB schools, and which harms the health, safety, and welfare of the TDSB community.

313. The harm to TDSB is a matter of substantial public interest and legitimate concern to affected individuals, communities, and stakeholders.

314. The Defendants have created a situation in which TDSB is forced to divert financial and human resources to deal with the impact of social media use on the educational environment, interfering with its primary mission. The Defendants' massive disruption to the educational process and to the statutory duties of TDSB is, itself, a public nuisance.

315. The Defendants knew, or ought to have known, that the deliberate design of addictive and defective social media products would interfere with students' access to an education, negatively impact the learning environment, and create a public nuisance within the education system.

316. The Plaintiff pleads and relies upon:

a. *Negligence Act*, R.S.O. 1990, c. N.1;
b. *Education Act*, R.S.O. 1990, c. E.2 and *Regulations* issued pursuant to the *Education Act;*
c. *Human Rights Code*, R.S.O. 1990, c. H.19;
d. *UN Convention on the Rights of the Child* (1989),Treaty no. 27531, ratified by Canada on 13 December 1991;
e. *Child, Youth and Family Services Act* 2017, S.O. 2017, c. 14, Sched. 1;
f. *Trespass to Property Act*, R.S.O. 1990, c. T.21

DAMAGES

A. Compensatory Damages

317. The TDSB seeks compensatory damages for the significant time, money, and other resources that it has to dedicate to managing the social media epidemic in its schools. Damages, include but are not limited to,:

i. costs to address the altered student population including barriers to focused learning and dysregulated student behaviour;

ii. costs to educate about the dangers of social media use, digital literacy, and staff training;

iii. costs related to health care including additional mental health and well being services, counselling, and resources;

iv. additional hires to respond to social media related harms including the student mental health crisis;

v. additional technology, IT, and cybersecurity costs;

vi. loss of personnel hours of TDSB staff who had to direct time and activity towards discipline, education, and mitigating child safety risks caused by the endemic use of social media products;

vii. increased caring and safe schools costs and increased need for vigilance, as a result of the sexual harassment, and sexual exploitation of the student population;

viii. costs associated with discipline and suspensions related to incidents of social media misuse in schools or that impact on school climate, including personnel hours;

ix. monitoring bathrooms and facilities for property damage in response to viral challenges; and

x. such other damages that will be advised of prior to the trial of this action.

318. TDSB seeks forward looking remediation costs to expand the resources and supports directed to addressing the serious harms caused by compulsive, excessive and dangerous social media use.

B. Aggravated Damages

319. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference. The Defendants have acted in bad faith.

320. The misconduct of the social media Defendants as particularized in this Claim is outrageous, and reprehensible. Their conduct has caused widespread damage to TDSB and its student population including degradation of the learning environment, reputational harm, mental distress, and a negatively altered school climate. The harm to TDSB and to the education system is extensive, pervasive, and intangible. This harm warrants an award of aggravated damages.

C. Punitive and Exemplary Damages

321. The Plaintiff repeats and relies upon the foregoing paragraphs, and incorporates them herein by reference. The Defendants' misconduct was premeditated, deliberate, deceptive, and has been ongoing for years.

322. The Defendants knew that their conduct was causing significant harm and disrupting the learning ecosystem. The Defendants were, and continue to be, in the best position to address the problem. They have failed to do so.

323. The Defendants have acted in a high handed, reckless, malicious, and highly reprehensible manner with reckless disregard for their duty to consider the social, emotional, and physical well-being of their student users that departs to a marked degree from ordinary standards of decent behaviour. An award of punitive and exemplary damages is required to achieve the objectives of retribution, deterrence, and denunciation.

324. The Defendants have refused to take accountability for their exploitative products and exploitative business decisions. The Defendants have relied on their intellectual property and advanced technology to obscure how exploitatively the social media products are designed. Much of what is known about the products is the result of concerned whistleblowers, leaked documents, and sworn testimony from senior technology executives before US Senate Hearing Committees in 2021, 2023, and 2024.

325. In sworn testimony before a US Senate Committee in October 2021 executives from TikTok, Snap, and Meta were asked whether they had conducted research on their products' harmful effects on children. Each company responded that they had and were conducting such research. The representative from Snap even alleged that its internal data showed overwhelming feelings of happiness among its users. The Defendants then stated they would make this internal research available and provide the technical details about their algorithms to external, independent researchers outside of the companies.

326. The Defendants have failed to follow through on these promises.

327. The Defendants have internal research on the harmful effect of their products on children and have not made it public or available.

328. Independent third parties have yet to get access to the Defendants' algorithms, which the Plaintiff alleges were deliberately designed in a manner to be both harmful, and to misstate the actual rates of harm occurring over the products. The Defendants remain shielded by black box algorithms.

329. The Plaintiff alleges that the Defendants pay mere lip service to the concept of an effective and functioning parental control feature. Rather, these alleged tools were designed with full awareness that most parents and guardians are not as digitally native as their children, the tools are difficult to locate, and hard to operate. In fact, the Defendants deliberately sought to design a low friction product, with no stop gaps, in order to prey on students' impulsivity and lack of control.

330. The Plaintiff alleges that the Defendants knew their products to be addictive and made the deliberate decision to promote engagement at all costs.

331. The Plaintiff alleges that the Defendants knew that students cannot control their social media use and self-identify as addicted to social media.

332. The Defendants have failed to design effective content filters and effective tools. It would be relatively easy, for example, to build a button or feature allowing students to express that they feel unsafe or have seen content or ads that makes them uncomfortable, yet the Defendants have failed to do so. The Defendants deliberately, recklessly, and/or negligently designed the content filters in their social media products in a porous and ineffective manner.

333. The Defendants have made false and public representations about the rates of cyberbullying, sexual harassment, hate speech, and other serious harms occurring on their products. The real statistics related to harm and risk are profoundly more concerning than the Defendants represented.

334. Meta publishes this inaccurate data in quarterly reports, called Community Standard Enforcement Reports ("CSE Reports"), available on Meta's Transparency Center. These CSE Reports purport to highlight the safety of Meta's products by focusing on a metric it designed, called Prevalence that grossly underrepresents the harm occurring over the product.

335. Meta separately and contemporaneously compiled extensive user survey data from a Bad Experiences & Encounters Framework ("BEEF") survey and a Tracking Reach of Integrity Problems Survey (TRIPS).

336. The disparity between Meta's BEEF and TRIPS survey data versus its CSE Reports is stark and irreconcilable. Meta's third quarter 2021 CSE Report stated that less than 0.05 percent of views were of content that violated Instagram's standards against suicide and self injury. Therefore, Meta publicly reported less than five views of suicide and self-injury content for every 10,000 views of content. However, Meta's contemporaneous internal BEEF survey data showed that during 2021, 6.7 percent of all surveyed Instagram users had seen self-harm content within the last seven days, and for youth aged 13-15 that number jumped to 16.9 percent.

337. The BEEF survey results revealed similar discrepancies on other safety metrics, pertaining to youth users. For example in 2021:

    i. 21.8 percent of 13–15-year-olds said they were the target of bullying in the past seven days;

    ii. 39.4 percent of 13–15-year-old children said they had experienced negative comparison, in the past seven days; and

    iii. 13 percent of Instagram users aged 13-15 self-reported having received unwanted sexual advances over the product within the previous seven days.

338. In October 2021 a Meta whistleblower overseeing the BEEF program informed the company about the scope of the problem, including that the current published safety metrics and reporting mechanisms were grossly inaccurate.

339. The Defendants allege they have effective reporting mechanisms for students to flag offending content. The Plaintiff alleges the Defendants frequently fail to respond to the Plaintiff and its student population's requests to view less harmful content, and/or to remove harmful content.

340. The Defendants allege that the minimum age limit to use their products is 13 years old and that this is reasonably enforced. The Plaintiff alleges the Defendants deliberately target the tween or pre-teen market, and are aware that under 13's are on their products in large numbers.

341. The Defendants allege that the products are reasonably safe for students. The Plaintiff alleges the products are dangerous per se.

342. Snap's geo-local technology, lack of identity and age verification, anonymity, encryption, and quick add feature connects students to bad actors. Snap is the subject of litigation in the US in a number of cases related to connecting youths to drug dealers resulting in the fatal consumption of fentanyl laced drugs, and its reckless design of a speed filter that resulted in numerous student fatalities.

343. The Defendants have repeatedly, and consistently refused to engage in a transparent exchange of information with concerned stakeholders, activist groups, consumers, legislators, and the public.

344. The Plaintiff alleges that similar to the public health crisis caused by cigarette companies, the Defendants are seeking to shift blame and shirk responsibility through a concerted effort to withhold and distort the facts. The Defendants have committed a mass deception on the public that disproportionately impacts the Plaintiff and its student population.

345. The Plaintiff alleges the Defendants exert significant control over various think tanks, researchers, and lobbyists in order to distort and hide the truth about the harms and risks associated with product use. Whistleblowers, including a former research director at Harvard specializing in misinformation on social media, have alleged the Defendants seek to influence research on their products. The Defendants engaged in a deliberate, and careful strategy to mislead.

346. The Defendants' omissions, the extent of which are still being discovered, are material.

347. The Defendants made representations with the intention that the Plaintiff, its student population, consumers, and the general public would act on them in determining that social media products were safe for users aged 13 – 18. TDSB relied on the Defendants statements, express and implied, including critical omissions, such as the failure to disclose the products' addictive potential and safety risks, especially for children and youth.

348. Issues arising from endemic social media use are now entrenched, as students are unable to disengage from the products and are suffering from social and emotional harm, dysregulation, systemic and disproportionately high mental health issues, and other maladaptive alterations to their developing brains. The harm to the education system, and the Plaintiff is severe.

349. The Defendants have acted in a reckless, highhanded, contemptuous manner. An award of punitive damages is required to punish the Defendants and denounce such conduct. The Defendants are unlikely to make the necessary changes to their products without an award of damages large enough to garner the attention of their senior executives and large awards function to deter such misconduct in the future.

SERVICE OUTSIDE OF ONTARIO

350. This Statement of Claim may be served outside Ontario without an order pursuant to the *Rules of Civil Procedure* because the claims are:

(a) in respect of torts committed in Ontario (Rule 17.02(g)); and/or
(b) brought against a person carrying on business in Ontario (Rule 17.02(p)).

DATE: March 27, 2024

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TORONTO DISTRICT SCHOOL BOARD
Plaintiff

v.

META INC et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED IN TORONTO

STATEMENT OF CLAIM

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DATE: 03-07-2025

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

***TORONTO DISTRICT SCHOOL BOARD**

Plaintiff/Responding Party

- and –

META PLATFORMS INC., META PAYMENTS INC., META TECHNOLOGIES LLC., INSTAGRAM INC., INSTAGRAM LLC., FACEBOOK HOLDINGS LLC., FACEBOOK OPERATIONS LLC., FACEBOOK CANADA LTD., SICULUS INC., SNAP INC., BYTEDANCE LTD., BYTEDANCE INC., TIKTOK LTD., TIKTOK INC., TIKTOK LLC., AND TIKTOK TECHNOLOGY CANADA INC.

Defendants/Moving Parties

REASONS FOR DECISION

Released: 7 March 2025