

JUSTICE GUSTEIN

NOVEMBER 27, 2017

Court File No.: CV-16-558633-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**



BETWEEN:

RAYMOND LAPPLE, JEROME CAMPBELL, SAMIR ABDELGADIR, and GREGORY SMITH

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for certification, brought by the Plaintiffs was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion records of the Plaintiffs and of the Defendant,

AND ON BEING ADVISED that the parties consent to this Order,

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as

All current and former inmates of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**"), between May 30, 2009 and November 27, 2017 who are or were remanded, except the Excluded Persons;

All current and former inmates of the Correctional Institutions between May 30, 2009 and November 27, 2017 who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and,

"**Excluded Persons**" are:

- (1) all inmates detained only in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; and,
- (2) all inmates of Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre (solely with respect to their incarceration at those Correctional Institutions).

3. **THIS COURT ORDERS AND DECLARES** that the only causes of action asserted against the defendant are systemic negligence and breaches of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") resulting from staffing-related lockdowns.

4. **THIS COURT ORDERS AND DECLARES** that the common issues be and are hereby certified as:

- (a) By its operation and management of the Correctional Institutions (excluding Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre), did the Defendant owe a duty of care to the Plaintiffs?
- (b) If the answer to (a) is yes, what is the nature of that duty of care?
- (c) By its use of staffing-related lockdowns in the Correctional Institutions (excluding

Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre), did the Defendant breach its duty of care owed to the Plaintiffs?

(d) Is there a methodology for determining whether the frequency and duration and impact of lockdowns meets the threshold for a violation of the right not to be subject to cruel and unusual treatment or punishment as set out in section 12 of the *Charter*?

(e) If the answer to question (d) is "yes", what is that methodology?

(f) Can the methodology in question (e) be applied to some or all of the class members at a common issues trial, or otherwise in accordance with section 25 of the *Class Proceedings Act, 1992*?

(g) If the answer to question (f) is "yes", which members of the class, if any, have been subject to a deprivation of their rights under section 12 of the *Charter*?

(h) Is there a methodology to determine whether staffing-related lockdowns amount to a violation of the right not to be deprived of life, liberty or security of the person in a manner that is contrary to the principles of fundamental justice as set out in section 7 of the *Charter*?

(i) If the answer to question (h) is "yes", what is that methodology?

(j) Can the methodology in question (i) be applied to some or all of the class members at a common issues trial, or otherwise in accordance with section 25 of the *Class Proceedings Act, 1992*?

- (k) If the answer to question (j) is "yes", which members of the class, if any, have been subject to a deprivation of their rights under section 7 of the *Charter*?
- (l) Is there a minimum period of incarceration required to establish a violation of section 7 or section 12 of the *Charter* due to staffing-related lockdowns?
- (m) If the answer to question (l) is "yes", what is that minimum period of incarceration?
- (n) If there are any violations of the *Charter* as set out in questions (g) or (k), are such violations saved by section 1 of the *Charter*?
- (o) If the answer to question (n) is "no", are damages an appropriate and just remedy under section 24(1) of the *Charter*?
- (p) Is this an appropriate case for an award of aggregate damages pursuant to section 24(1) of the *Class Proceedings Act, 1992*?
- (q) If the answer to question (p) is "yes", what is the appropriate quantum of such damages?
- (r) Does the conduct of the Defendant merit an award of punitive damages?
- (s) If the answer to question (r) is "yes", what quantum should be awarded for punitive damages?
- (t) What limitation period or limitation periods apply to the causes of action advanced in this case?

(u) What circumstances are relevant to the determination of when the limitation period or limitation periods referred to in question (t) begin to run?

5. **THIS COURT ORDERS AND DECLARES** that Raymond Lapple, Jerome Campbell, and Samir Abdelgadir are hereby appointed as the Representative Plaintiffs for the Class.

6. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP and McKenzie Lake LLP are hereby appointed as class counsel ("**Class Counsel**").

7. **THIS COURT ORDERS** that class members shall be notified that this proceeding has been certified as a class proceeding as follows:

(a) by the Administrator placing, within thirty (30) days of the date of this Order, the Publication Notice found in **Schedule "A"** in the *Toronto Star*, *Windsor Star*, *Hamilton Spectator*, *Ottawa Citizen*, *Kingston Whig-Standard* and the *Chronicle Journal* in ¼ of a page size in the weekend edition of each newspaper;

(b) by the Administrator distributing the Publication Notice to all Ontario offices of the Elizabeth Fry Society, the John Howard Society, the Criminal Lawyers' Association, Canadian Defence Lawyers, Canadian Counsel of Criminal Defence Lawyers, Aboriginal Legal Services, and by posting the Publication Notice on the Criminal Lawyers' Association listserv;

(c) by the Defendant posting the Publication Notice in a conspicuous place within each Correctional Institution in common areas, making it possible for Class Members to see it;

(d) by posting the Publication Notice and Long Form Notice set out in **Schedule “A”**, and the French language translations of these documents which are to be agreed upon by the parties, on Class Counsel’s and the Administrator’s website;

(e) by the Administrator forwarding the Publication Notice and Long Form Notice to any Class Member who requests it;

(f) by the Administrator establishing a toll-free support line within Ontario, to provide assistance to class members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class members;

(g) by the Defendant providing copies of the Publication Notice and Long Form Notice to all probation and parole officers within Ontario, and making best efforts to have all probation and parole officers within Ontario distribute the Publication Notice and Long Form Notice to each parolee/former inmate assigned to them; and

h) by the Defendant directing that the Publication Notice be posted in all probation and parole offices throughout Ontario.

8. **THIS COURT ORDERS** that the Plaintiffs shall pay half and the Defendant shall pay half of the expense of the notice in paragraph 7(a) through 7(h) and the Administrator’s responsibilities herein, subject to review and readjustment by agreement or order at the termination of this proceeding.

9. **THIS COURT ORDERS** that Crawford Class Action Services (the “**Administrator**”) be and is hereby appointed as the Administrator. The Administrator shall receive opt out forms from the class.

10. **THIS COURT ORDERS** that the Administrator shall preserve all opt out forms it receives until permitted to dispose of such information by further order of this Court or by written direction jointly signed by Class Counsel and the Defendants.

11. **THIS COURT ORDERS** that a class member may opt out of the class proceeding by delivering a signed opt-out coupon, a copy of which is attached as **Schedule "B"**, or some other legible signed request to opt out, by the date that is 90 days after notice is published (the "**Opt Out Deadline**"), sent to the Administrator, at the following address:

CRAWFORD & COMPANY
3-505, 133 Weber St. North
Waterloo, Ontario N2J 3G9

12. **THIS COURT ORDERS** that if a Class Member has delivered an opt-out coupon to the Administrator, they may withdraw their opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that they wish to withdraw their opt-out.

13. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.

14. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

15. **THIS COURT ORDERS** that no other proceeding may be commenced in Ontario in respect of the subject matter of this action without leave of this court.

16. **THIS COURT ORDERS** that each party shall bear its own costs of the within motion for certification of this proceeding.

17. **THIS COURT ORDERS** that the title of proceedings is amended as follows:

RAYMOND LAPPLE, JEROME CAMPBELL, and SAMIR ABDELGADIR,
Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO
Defendant

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 27 2017

PER / PAR:



JUSTICE GLUSTEIN

SCHEDULE "A"

PUBLICATION NOTICE

Were You Incarcerated in a Provincial Jail or Prison Between May 30, 2009 and [insert certification date]?

A lawsuit may affect you. Please read this carefully.

The Ontario Superior Court of Justice decided that a class action on behalf of people who were prisoners in Provincial jails from May 30, 2009 to [insert certification date] (with some exclusions) (the "Class") can proceed. You have a choice of whether or not to stay in the Class.

To stay in the Class, you do not have to do anything. If money or benefits are obtained, you will be notified about how to make a claim. You will be legally bound by all orders and judgments, and you will not be able to sue Ontario about the legal claims in this case.

If you want to remove yourself from the class action, you must submit an opt out form. Opt out forms are available here: [website]. If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP and McKenzie Lake LLP ("Class Counsel") to represent the Class. You don't have to pay Class Counsel to participate. If they get money or benefits for the Class, they may ask for lawyers' fees and costs which would be deducted from any money obtained or to be paid separately by Ontario.

For more information about your rights, go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].

LONG FORM NOTICE

**Were You Incarcerated in a Provincial Jail
Between May 30, 2009 and [insert certification
date]?**

If YES, A Class Action May Affect Your Rights.

A Court authorized this notice. You are not being sued.

- You could be affected by a class action involving Provincial Jails.
- A Court has approved a lawsuit as a class action for current and former prisoners of Provincial jails and prisons. **If you know a current or former prisoner who cannot read this notice please share this information with them.**
- The Court has not decided whether Ontario did anything wrong, and there still has to be a court case about whether Ontario did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you make that choice.

<p>DO NOTHING</p>	<p>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Ontario on your own about the same legal claims in this lawsuit.</p>
<p>REMOVE YOURSELF (OPT OUT)</p>	<p>Get out of this lawsuit and get no benefits from it. Keep rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue Ontario on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

- Lawyers must prove the claims against Ontario at a trial or a settlement must be agreed. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **[90 days from publication date of notice]**

BASIC INFORMATION.....Page 1

1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

YOUR RIGHTS AND OPTIONS.....Page 3

7. What happens if I do nothing?
8. What if I don't want to be in the Class?

THE LAWYERS REPRESENTING YOU.....Page 4

9. Do I have a lawyer in the case?
10. How will the lawyers be paid?

A TRIAL.....Page 4

11. How and when will the Court decide who is right?
12. Will I get money after the trial?

GETTING MORE INFORMATIONPage 5

13. How do I get more information?

BASIC INFORMATION

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against Ontario on your behalf are correct. This notice explains all of these things.

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *Lapple v. Ontario* Court File No. CV-16-558633-00CP. The person who sued is called the Plaintiff. Ontario is the Defendant.

The lawsuit says that Ontario improperly subjected prisoners to chronic lockdowns for staffing-related reasons. The lawsuit says that such lockdowns constitute systemic negligence and breach prisoners' rights under the *Canadian Charter of Rights and Freedoms*. Ontario denies these claims. The Court has not decided whether the Plaintiff or Ontario is right. The lawyers for the Plaintiff will have to prove their claims in Court.

If you are having a difficult time dealing with these issues you can call [number] (TTY: [number]) for assistance.

In a class action people called the “Representative Plaintiffs” (in this case, Raymond Lapple, Jerome Campbell, and Samir Abdelgadir) sued on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

[REDACTED]

The Class includes:

All current and former inmates of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**"), between May 30, 2009 and [insert certification date] who are or were remanded, except the Excluded Persons;

All current and former inmates of the Correctional Institutions between May 30, 2009 and [insert certification date] who are or were serving a sentence at a Correctional Institution or who have violated parole and are or were imprisoned at a Correctional Institution as a result, except the Excluded Persons; and,

"Excluded Persons" are:

- (3) all inmates detained only in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; and,
- (4) all inmates of Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre (solely with respect to their incarceration at those Correctional Institutions).

[REDACTED]


The Plaintiffs are asking for money or other benefits for the Class. They are also asking for lawyers' fees and costs, plus interest.

[REDACTED]


No money or benefits are available now because the Court has not yet decided whether Ontario did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for your share.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by **[90 days from notice publication date]**



If you do nothing you will automatically remain in the lawsuit. You will be bound by all Court orders, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.



If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders and you keep your right to sue Ontario as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *Lapple v Ontario*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. You must mail your Removal Request postmarked by **[90 days from notice publication date]** to: [address], or by email at: [email].

Call **[number]** (TTY: **[number]**) if you have any questions about how to get out of the Class.

THE LAWYERS REPRESENTING YOU

[REDACTED]

Yes. The Court has appointed Koskie Minsky LLP from Toronto and McKenzie Lake LLP from London to represent you and other Class Members as “Class Counsel.” You will not be personally charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

[REDACTED]

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL


[REDACTED]

If the lawsuit is not dismissed or settled, the Plaintiffs will have to prove their claims at a trial that will take place in Toronto. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or Ontario is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

[REDACTED]

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, [website], as it becomes available.

GETTING MORE INFORMATION



You can get more information at [website], by calling toll free at **[number]** (TTY: **[number]**), or writing to: [address], or by email at: [email].

SCHEDULE "B"
OPT OUT FORM

To: ●
c/o Crawford Class Action Services
3-505, 133 Weber Street North
Waterloo, Ontario
N2J 3G9
Email: [EMAIL]@crawco.ca

This is **NOT** a claim form. Completing this OPT OUT COUPON will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

Court File No.: CV-16-558633-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RAYMOND LAPPLE, JEROME CAMPBELL and SAMIR ABDELGADIR

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or it will be legally barred. I understand that I must mail this opt-out form before _____ or else it will not be valid.

I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Date _____

Name of Class Member: _____

Signature of Witness

Signature of Class Member Opting Out or
Guardian of Property (if applicable)

Telephone: _____

Name of Witness:

Name of Guardian of Property (if applicable):

Telephone: _____

LAPPLE ET AL.
Plaintiffs and

HMQ
Defendant

Court File No.: CV-15-532262500-CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

**ORDER
(CERTIFICATION)**

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Kirk M. Baert LSUC #: 309420
Tel: 416-595-2117/Fax: 416-204-2889
Jonathan Ptak LSUC#: 45773F
Tel: 416-595-2149/Fax: 416-595-2149
James Sayce LSUC #: 58730M
416-542-6298/Fax: 416-204-2809
Garth Myers LSUC #: 62307G
Tel: 416-594-4390/Fax: 416-594-4391

Lawyers for the Plaintiffs