

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

) Thursday, THE 18th
)
) DAY OF May, 2017

JUSTICE GRACE

B E T W E E N :

TIMOTHY HAYNE

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiff, for an order that this action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, was heard this day at the court house, 80 Dundas Street, London, Ontario, N6A 6A3.

ON READING the materials filed by the parties ^{upon being advised of} and the Consent of the parties:

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

2. **THIS COURT DECLARES** that the nature of the claim asserted on behalf of the Class is for negligence and violations of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* arising from the conditions at, and the operation and



management of, the Elgin Middlesex Detention Centre (“EMDC”) during the Class Period;

3. **THIS COURT ORDERS** that the Class is defined as:

“All persons incarcerated at the Elgin Middlesex Detention Centre between August 26, 2013 and [the date of this order] including those held at the Elgin Middlesex Detention Centre pending trial or other court appearance.”;

4. **THIS COURT ORDERS** that Timothy Hayne be and is hereby appointed as the representative plaintiff in the within proceeding;

5. **THIS COURT ORDERS** that the within proceeding be and is hereby certified on the basis of the following common issues:

1. In the operation and management of the EMDC, did the Defendant owe a duty of care to the Plaintiffs?
2. If the answer to question #1 is “yes”, what is the nature of that duty of care?
3. In the operation and management of the EMDC, did the Defendant breach its duty of care owed to the Plaintiffs?
4. Did the conditions in the EMDC during the Claim Period constitute a violation of s. 7 or s. 12 of the *Charter of Rights and Freedom*?
5. By its operation and management of the EMDC, did the Defendant violate the rights of the Plaintiffs under s. 7 or s. 12 of the *Charter of Rights and Freedom*?
6. If the answer to either or both of questions #4 and #5 is “yes”, was such violation justified under s. 1 of the *Charter of Rights and Freedom*?

7. Are damages pursuant to s. 24 of the *Charter of Rights and Freedom* a just and appropriate remedy?
8. Is this an appropriate case for an award of aggregate damages pursuant to s. 24(1) of the *Class Proceedings Act*, 1992?
9. If the answer to question #8 is "yes", what is the appropriate measure of such damages?
10. Does the conduct of the Defendant merit an award of punitive damages?
11. If the answer to question #10 is "yes", what quantum should be awarded for punitive damages?;

6. **THIS COURT ORDERS** that members of the Class may opt out of the class proceeding by providing a written indication pursuant to the provisions set out in the Notice of Certification as approved by the Court;

7. **THIS COURT ORDERS** that the allocation of costs of disseminating the Notice of Certification will be determined by the Court if not agreed to by the Parties;

8. **THIS COURT ORDERS** that the Defendant shall pay to the plaintiff¹ ~~their~~ costs of this motion of \$25,000.00, inclusive of all disbursements and applicable taxes, within 30 days of the date of this Order.

J. Grace S

Justice Grace *Grace S*

ORDER ENTERED
77-72
JUN 08 2017
9306

TIMOTHY HAYNE
Plaintiff

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Defendant

Court File No. 2855-16

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**ORDER
(Certification)**

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