CITATION: Dadzie v. Ontario, 2025 ONSC 6342
COURT FILE NO.: (Dadzie v. Ontario) CV-16-558376-00CP
(Lapple v. Ontario) CV-16-558633-00CP
DATE: 20251117

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: GODDAY DADZIE and AL ZEEKEHMENS, Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and THE ATTORNEY GENERAL OF CANADA, Defendants

AND BETWEEN:

RAYMOND LAPPLE and JEROME CAMPBELL, Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO, Defendant

BEFORE: Glustein J.

COUNSEL: *Jonathan Ptak, Jamie Shilton, Caitlin Leach, Matthew Baer, Chelsea Smith, Paul Champ, Lydia Dobson, Scott Hutchison and Katrina Crocker*, for the plaintiffs

Alexandra Clark, Timothy Gindi, Ryan Cookson and Andrea Huckins, for the defendant His Majesty the King in Right of Ontario

Monmi Goswami, Rachel Hepburn Craig, Negar Hashemi, Sharon Stewart, Matthew Siddal and Brandon Stock, for the defendant Attorney General of Canada

HEARD: October 22, 2025

REASONS FOR DECISION

Nature of motions and overview

[1] The plaintiffs in (i) Court File No. CV-16-558376-00CP (the "*Dadzie* Action") and (ii) Court File No. CV-16-558633-00CP (the "*Lapple* Action") bring three concurrent motions before the court in each action. I summarize these motions below.

[2] The plaintiffs in each action bring a motion (the "Settlement Motions") seeking the following relief in relation to the joint settlement agreement dated August 5, 2025, reached between the parties in both actions (the "Settlement Agreement"):

(i) approval of the Settlement Agreement in each action as fair and reasonable and in the best interests of class members,

(ii) approval of Deloitte LLP as claims administrator ("Deloitte"),

(iii) approval of Crawford & Company (Canada) Inc. ("Crawford") as claims adjudicator,

(iv) approval of the form, content, and dissemination of the notices of settlement approval, and

(iv) ancillary related relief.

[3] The defendants, the Attorney General of Canada ("Canada") and His Majesty the King in Right of Ontario ("Ontario"), consent to the orders sought in the Settlement Motions. Deloitte and Crawford consent to their respective appointments.

[4] The plaintiffs in each action bring a motion (the "Fees Motions") for an order:

(i) declaring that the Class Counsel[1] fees and disbursements are fair and reasonable,

(ii) approving the payment of an honorarium of $15,000 for each of the representative plaintiffs in both actions, and

(iii) ancillary related relief.

[5] The defendants take no position on the Fees Motions.

[6] The plaintiffs in each action bring a motion (the "Disclosure Motions") for an order to authorize Class Counsel to provide a copy of its contact list for these class actions (the "Contact List") to the Ontario Public Guardian and Trustee ("PGT") pursuant to an Information-Sharing Agreement in both actions between Class Counsel and the PGT dated October 3, 2025 (the "ISA"), to enable the PGT to identify PGT clients who may be entitled to make a claim under the Settlement Agreement.

[7] The defendants take no position on the Disclosure Motions.

[8] At the hearing, I advised counsel that I would grant the relief sought with reasons to follow. I signed the orders granting the relief and now set out my reasons.

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[1] Class Counsel are Koskie Minsky LLP, McKenzie Lake Lawyers LLP, Champ & Associates and Henin Hutchison Robitaille LLP.

Facts

[9] Both Canada and Ontario make no admission of fact or of legal liability. I set out the facts below as relevant background to these motions on that basis.

[10] I first set out the facts relevant to the Settlement Motions. I then consider any additional facts relevant to the Fees Motions.[2] Finally, I consider the additional facts relevant to the Disclosure Motions.

FACTS RELEVANT TO THE SETTLEMENT MOTIONS

Background to the actions

[11] The actions relate to staffing-related lockdowns ("SRLs") at certain Ontario correctional institutions (the "Correctional Institutions") during the class period of May 30, 2009, to November 27, 2017 (the "Class Period").

[12] The plaintiffs allege that inmates and immigration detainees at the Correctional Institutions during the Class Period (the "Class Members") suffered from numerous SRLs, during which they were largely or entirely confined to their cells.

[13] While lockdowns may occur for other reasons, including to maintain the security of the correctional institution, these actions focus solely on SRLs, i.e. lockdowns due to staff shortages.

[14] SRLs may apply to entire institutions, to specific units, or may rotate amongst units. They may be anticipated or unanticipated and may vary in length, with some lasting only hours and others continuing for days.

[15] During SRLs, a Class Member may have been confined to their cell with one or more other inmates, eating their meals in the same room with a shared open toilet, with no access to the day room. Opportunities to shower are reduced, and outdoor time and other programming may be cancelled. Telephone calls with friends, family, and legal counsel may be cancelled or restricted. Visitors, many of whom travelled a significant distance to arrive at the correctional institution, are often turned away.

[16] The class in the *Lapple* Action includes inmates who were on remand, were serving a sentence, or who were imprisoned for other reasons (such as having violated parole).

[17] The class in the *Dadzie* Action consists of individuals detained in the Correctional Institutions under the *Immigration Refugee Protection Act*, S.C. 2001, c. 27 (the "*IRPA*") ("Immigration Detainees"), because they were deemed inadmissible to Canada and either a danger to the public or unlikely to appear for a hearing, or because their identity was not established.

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[2] Many of the facts related to the risks of the actions are relevant to both the Settlement and Fees Motions.

Provided that regular 30-day detention reviews are conducted, there is no cap on how long an individual can be detained under the *IRPA*.

[18] Together, the two classes comprise all those affected by SRLs at the included Correctional Institutions during the Class Period (only the Elgin-Middlesex Detention Centre, the Ontario Correctional Institute, and the St. Lawrence Valley Correctional and Treatment Centre are excluded).

History of the proceedings

[19] The *Dadzie* Action was commenced on August 11, 2016, and the *Lapple* Action on August 15, 2016. Both actions allege systemic negligence and breaches of ss. 7 and 12 of the *Canadian Charter of Rights and Freedoms*.

[20] The plaintiffs' certification motion records, totaling approximately 1,000 pages in each action, contained affidavits from 14 Class Members, including the representative plaintiffs, and two expert witnesses. Cross-examinations of the parties' affiants took place before the actions were certified as class proceedings on consent on November 27, 2017.

[21] Following certification, the parties commenced an extensive discovery process. After the defendants produced their first tranche of documents, the first attempted mediation of this matter took place in January 2019 with the assistance of the Honourable George Adams. No resolution could be reached at that time.

[22] Documentary production was then completed, followed by oral discoveries of the defendants and of each of the representative plaintiffs in both actions. The defendants produced approximately 90,000 documents.

[23] After the completion of documentary and oral discoveries and a number of post-discovery motions, including a full-day refusals motion, the parties took steps to prepare for trial, including the exchange of expert reports and the service of detailed requests to admit and responses thereto.

[24] Prior to trial, the plaintiffs served reports from six experts on the following issues: (i) the prevalence of SRLs in Canada, measures taken to avoid SRLs, and minimum standards for the operation of correctional institutions in Ontario, (ii) the use of lockdowns in correctional facilities in the United States, (iii) standards in international human rights law for the detention of migrants and refugees, (iv) harms arising from SRLs, (v) particular harms to Immigration Detainees arising from SRLs, and (vi) class size.

[25] A pre-trial conference was scheduled, and an eight-week joint trial of the two actions was set to begin on September 8, 2025.

Second mediation

[26] In the midst of trial preparations, the parties agreed to engage in a second mediation of both actions with the assistance of the Honourable Thomas Cromwell. By this stage, Class Counsel had aggressively advanced the actions towards trial, including by seeking admissions, filing expert reports, scheduling a pre-trial conference, and obtaining a timetable for steps to prepare for trial.

[27] Class Counsel had also completed thorough legal and factual research, reviewed the defendants' voluminous productions, interviewed potential fact witnesses, and drafted will-say statements in preparation for trial.

[28] Prior to the mediation scheduled for April 28 and 30, 2025, the parties exchanged lengthy mediation briefs, setting out the relevant case law and the evidentiary record.

[29] At the mediation, many offers were exchanged in continuous negotiations over two full days. Detailed expert reports on class size were relied upon by both parties in assessing and making settlement offers. With the assistance of the Honourable Thomas Cromwell, the parties reached a proposed agreement in principle, formalized in a Memorandum of Understanding.

[30] The parties then worked together—in meetings both as an entire counsel group and in smaller "task forces"—to arrive at a final settlement agreement and compensation protocol. Many drafts of the Settlement Agreement and its schedules were exchanged in the process. These efforts culminated in the execution, on August 5, 2025, of the Settlement Agreement.

[31] On August 12, 2025, this court approved the contents and manner of notice of the settlement approval hearing, and the appointment of Deloitte as the notice administrator. Notice of the settlement approval hearing was widely disseminated, including by (i) direct notice by email and mail, (ii) posting online and in Correctional Institutions, immigration holding centres, as well as probation and parole offices, (iii) digital advertising, and (iv) a press release.

[32] The deadline for Class Members to object to the settlement was October 14, 2025.

Key terms of the Settlement Agreement

[33] The settlement includes a $59 million all-inclusive fund to be paid by Ontario and Canada, subject to a confidential agreement between the defendants as to their respective contributions to the fund.

[34] Of the total $59 million fund, $57 million comprises the reversionary Primary Fund, from which Class Members will be compensated pursuant to the negotiated Compensation Protocol.

[35] The remaining $2 million constitutes the non-reversionary Exceptional Circumstances Fund ("ECF"), to be distributed pursuant to the Exceptional Circumstances Protocol ("ECP"). Unlike the Compensation Protocol, which was thoroughly negotiated between the parties, the ECP was not negotiated. Instead, distribution of the $2 million in the ECF is to be effected under the full discretion of Class Counsel. In the Settlement Agreement, Class Counsel directed that the ECF be distributed on behalf of Class Members who fell outside of presumptive limitation periods or were incarcerated at the Toronto South Detention Centre ("TSDC"), as SRLs at TDSC were allegedly underreported. The ECF was included by the defendants on a without prejudice basis for the purpose of settlement, without admission of any liability to the Class Members who would benefit under the ECP.

[36] As I discuss below, there were many Class Members whose claims fell outside the presumptive limitation periods. Further, inmates at TSDC allegedly suffered from a larger number

of unreported SRLs. These groups of Class Members are the beneficiaries of the ECF, under the ECP determined by Class Counsel.

[37] I now review the Primary Fund and the ECF.

(i) The Primary Fund governed by the Compensation Protocol

[38] Under the Compensation Protocol, Class Members are eligible for compensation of up to $68,000 if they were subjected to 16 or more SRLs,[3] as reflected in Ontario's records. These SRLs need not be consecutive or continuous, nor at the same institution.

[39] Any combination of SRLs between August 2014 and November 2017 that adds up to 16 or more will entitle Class Members to compensation. The Basic Recovery available to eligible Class Members starts at $2,000 and increases under a grid based on a Class Member's total SRLs, up to $28,000 for those that experienced 201 or more SRLs.

[40] The only information required from a Class Member for Basic Recovery is their name and birth date.[4] All other steps are conducted by the defendants and the administrator through an SRL inventory, which contains the information of every Class Member at every institution and dates of SRLs during the Class Period.[5] A Class Member receives Basic Recovery payment if they were subject to 16 or more SRLs during the Class Period.

[41] Eligible Class Members also have two options for "Enhanced Recovery".

[42] Class Members with a mental health alert recorded in their correctional file prior to the last SRL that they experienced are eligible for a "Differential Impact Award" of $3,000 to $15,000, depending on a grid based on how many SRLs they experienced. These Class Members also benefit from the easy access claims process by providing only their name and birth date. The administrator can use government records to determine if there was a mental health alert on file and the number of SRLs, and can then assess compensation for the Differential Impact Award under the grid.

[43] Alternatively, Class Members may receive a "Serious Harm Award" of either $20,000 or $40,000, if they establish that they experienced:

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[3] In this context, each full day of an SRL is counted as an "SRL", with a formula for partial days (half or ¾) if the SRL was not for a full day. If the SRL was only in a particular area of the Correctional Institution and did not affect all class members at that institution on that day, Class Members at that institution on that day are credited with a half day SRL since it is not possible to know whether any particular inmate was in a particular area of an SRL on a particular day.

[4] The Class Member would also provide an Offender Tracking Information System Number (if known to them) and payment details, but all that is required to qualify for compensation is name and birth date.

[5] Class Members incarcerated at TSDC can seek an extra amount of $1,500 or $2,500 due to alleged underreporting of SRLs at TSDC, which is addressed in the ECP, although they still only need to provide name and birth date.

(i) within 120 days of an SRL, substantial degradation in an existing Mental Disorder, development of a new Mental Disorder, or self-injurious behaviour (not including body modification or protest actions, such as hunger strikes), or, during an SRL, violence causing serious physical injuries requiring medical attention[6], or

(ii) a documented suicide attempt during or within 120 days of an SRL, or violence causing permanent impairment during an SRL.[7]

[44] Claimants are presumed to act honestly and in good faith. Proof of causation is not required.

[45] The Compensation Protocol limits compensation to:

(i) those who experienced SRLs no earlier than two years before the actions were commenced, reflecting the basic two-year limitation period in s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, and

(ii) those who demonstrate that they lacked legal capacity for a relevant period, such that the limitation period applicable to their earlier claims did not run.

(ii) The ECF governed by the ECP

[46] Class Counsel negotiated the $2 million additional ECF for which Class Counsel retained full discretion on allocation, which is to be effected through the ECP.

[47] Class Counsel determined that it would be highly unlikely that any Class Member with capacity could avoid the application of the presumptive limitation period, since:

(i) each Class Member would have known of the lockdown;

(ii) the evidence from the representative plaintiffs was that they were aware of damages they had suffered and that the lockdowns had been staffing related; and

(iii) the conditions and consequences of SRLs were repeatedly cited in sentencing decisions in which pre-trial credits were awarded.

[48] Given the above evidence, the defendants refused to provide any compensation for Class Members outside the presumptive limitation period.

[49] The ECP serves, primarily, to provide some compensation to Class Members who experienced SRLs subject to presumptive limitation periods but cannot demonstrate incapacity.

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[6] An award under this subsection is for $20,000.

[7] An award under this subsection is for $40,000.

[50] The compensation available under the ECP differs as between *Lapple* and *Dadzie* Class Members based on the plaintiffs' submissions that different limitation periods affect their claims. The defendants deny this.

[51] For the *Lapple* Class, where a two-year limitation period likely applies, the ECP provides awards of $3,300 to $8,600 to those who experienced more than 100 SRLs, with the majority of those SRLs occurring prior to August 2014.

[52] For the *Dadzie* Class, as against Canada, the plaintiffs submit that the six-year limitation period in s. 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, applies. The plaintiffs submit that the causes of action alleged against the federal Crown arose "otherwise than in a province" and concern a "federal regulatory policy regime … that applies in all provinces", and the national operations of a federal body. The plaintiffs rely on *Canada (Attorney General) v. Liang*, 2018 FCA 39, at para. 19; *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888, at para. 385, 431 C.R.R. (2d) 136, rev'd on other grounds, 2020 ONCA 184, at para. 32; *Farrell v. Attorney General of Canada*, 2023 ONSC 1474, at paras. 242-248.

[53] The defendants do not accept that the six-year limitation period applies and instead submit that a two-year limitation period should be applied.

[54] The ECF provides a discretionary fund, which Class Counsel has used to provide some compensation for presumptively statute-barred claims and to address alleged underreporting at TSDC.

[55] In recognition of the defendants' limitation period argument in the *Dadzie* Action, *Dadzie* Class Members who experienced SRLs between August 2010 and August 2014 are compensated under the ECP at 70% of the quantum that they would have received for Basic Recovery or a Differential Impact Award under the Compensation Protocol had all of their SRLs occurred after August 2014.

[56] The ECP also remedies a potential unfairness for those detained at the TSDC, where sentencing judges have repeatedly found SRLs to be underreported. Class Members who were incarcerated at TSDC for at least six months and less than one year during the presumptive limitation period will receive an additional $1,500. Class Members incarcerated at the TSDC for one year or more during the presumptive limitation period will receive an additional $2,500.[8]

[57] Awards from the ECF will be reduced *pro rata* as necessary. As with the Compensation Protocol, Class Counsel does not expect any *pro rata* reduction of ECP awards. Any residue in the ECF may, if funds permit, be distributed to Class Members credited with 100 or fewer SRLs and

[8] Consequently, the maximum recovery of a Class Member is $70,500 if that Class Member qualifies for the additional TSDC distribution under the ECP of $2,500 in addition to the maximum of $68,000 under the Compensation Protocol.

will otherwise be distributed *cy-près* to the John Howard Society of Ontario and Elizabeth Fry Societies in Ontario.

(iii) Non-monetary benefits of the settlement

[58] The Settlement Agreement includes important non-monetary measures that will benefit the Class Members and others who pass through Ontario's correctional institutions.

[59] Efforts have been made to ensure that awards under the Settlement Agreement remain meaningful after reaching Class Members. Canada confirms in the Settlement Agreement that receipt of these awards will not impact Class Members' eligibility for or benefits from Old Age Security or the Canada Pension Plan.

[60] In addition, Ontario agrees in the Settlement Agreement to send a letter, in a form agreed by the parties, to Legal Aid Ontario asking that it amend its rules such that legal aid services provided to claimants, now or in the past, are not affected by the receipt of settlement funds.

[61] Ontario also agreed under the Settlement Agreement to annually publish the total number of full-facility, full-day SRLs in Ontario correctional institutions for that year, on a facility-by-facility basis. This measure ensures that the public is aware of SRLs that occur in the years ahead and can respond by advocating for further improvements.

Other steps taken by Ontario to address SRLs since the end of the Class Period

[62] Ontario has also made improvements to address SRLs since the end of the Class Period, including:

(i) changes to Ontario's lockdown policy to improve the reporting of SRLs and reduce negative impacts of SRLs, including a requirement that correctional institutions use rotational lockdowns where possible and make best efforts to minimize the impact of unscheduled lockdowns on inmates,

(ii) the hiring of an additional 5,411 new correctional officers since March 2016, including 1,200 newly created correctional officer positions, and the temporary hiring of 14 Senior Staff Development Officers to train new correctional officers,

(iii) the adoption of a modernized approach to staffing in 2021 through the creation of the Corrections Attendance Support & Management Officer, with an increased focus on attendance management to decrease absenteeism,

(iv) the investment in 2020 of more than $500 million in correctional facilities, including improvements to infrastructure, increased staffing, and investment in new technology to assist in tracking and monitoring SRLs, and

(v) the transformation of health services in Ontario's correctional facilities through the creation, in 2023, of a new Health Services Division, and the move, in 2025, to have all health care staff report to regional Associate Directors of Clinical Services, rather than local Superintendents, to promote patient-centered care.

[63] Ontario has also terminated its agreement with Canada to house Immigration Detainees in its correctional institutions. This change came into effect on September 15, 2025. Canada is no longer holding any Immigration Detainees in provincial correctional facilities, anywhere in Canada. As a result, Immigration Detainees are no longer subject to SRLs in Ontario's correctional institutions.

Evidence as to objections

[64] With a combined class size of 11,846 members and a robust notice process for the present settlement approval motion, approximately 20 written objections were received prior to the hearing. The Notice Administrator and Class Counsel received over 2,500 statements supporting the settlement.

[65] Of those objections, some were withdrawn, and others either provided no reasons or unclear reasons for the objections. Consequently, there were only eleven substantive written objections from Class Members to be considered at the hearing. The court also heard oral submissions from any Class Member who attended at the hearing and wished to make submissions.

[66] I do not set out each objection individually. In summary, the objections addressed concerns as to (i) amounts and distribution under the Compensation Protocol, (ii) the application of limitation laws and the ECP, and (iii) Class Counsel fees and disbursements.

[67] I review these objections collectively in my analysis of settlement approval later in these reasons.

Evidence as to litigation risk related to the actions

[68] At the outset of these actions, the cases addressing administrative segregation had not been decided, so there was no certainty that either those *Charter* cases, or similar arguments under the present cases, would succeed.

[69] In the administrative segregation cases, there were applicable international standards restricting administrative segregation, which is defined as 22 hours or more a day without meaningful human contact: *Francis v. Ontario*, 2020 ONSC 1644, 456 C.R.R. (2d) 1, at paras. 61, 269, aff'd 2021 ONCA 197, 154 OR (3d) 498. No similar defined standard, domestic or international, applied to SRLs, which raised an increased risk of establishing a *Charter* breach.

[70] A significant risk arose following the decision of the Ontario Court of Appeal in *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667, 416 D.L.R. (4th) 124. The court allowed the appeal from the decision of the application judge who found a *Charter* breach arising from SRLs at Maplehurst Correctional Complex.

[71] The SRLs at Maplehurst took place during the Class Period in the present class action and at one of the Correctional Institutions subject to the present class action. Laskin J.A., speaking for the court, held that the SRLs did not breach ss. 7 or 12 of the *Charter*. The Court of Appeal reversed the application judge's finding that conditions of detention during lockdowns were "tantamount to segregation or solitary confinement." Instead, the Court of Appeal held that during lockdowns, the applicants "still received necessary medical attention, could meet with their lawyers, could on

occasion use showers and telephones, and were transported to their court appearances": at paras. 47-49 and 58.

[72] Laskin J.A. raised significant doubts about the relevance of case law addressing administrative segregation, which was relied upon heavily by the plaintiffs in the present class action. Laskin J.A. held, at para. 49:

> Moreover, it is at least fair to say that the physical and social isolation and the resulting psychological and physical effects that accompany solitary confinement are not present when an inmate shares his cell with another inmate. During a period of a lockdown, the two inmates can converse with each other, play cards or board games, even watch television through the window of the door to their cell (depending on the cell's angle).

[73] Given the decision in *Ogiamien*, there was a significant risk that a court would not apply administrative segregation case law to the present case.

[74] Further, the plaintiffs in the present class actions would be required to prepare a comprehensive evidentiary record, including expert reports to overcome the evidentiary findings made in *Ogiamien*, based on a different record.

[75] The plaintiffs faced the additional risk that a court could find that Ontario had met the standard of care given the operational challenges it faced. Ontario could have sought to rely on evidence that certain services, deemed essential by Ontario, were maintained during the SRLs.

[76] Ontario may have been successful in relying on its lockdown policies. To succeed at trial, the plaintiffs needed to demonstrate that frequent SRLs arose from the operational negligence of individual Crown agents, and not from policy decisions.

[77] Even if the plaintiffs had succeeded on liability issues, any success would have been subject to appeal.

[78] Also, important challenges would also have remained in proving damages. There was a significant risk that the trial judge would find that proof of individual harm was required to make out each *Charter* breach or instance of negligence, foreclosing aggregate damages. This could have led to adversarial individual hearings, requiring significant participation from Class Members, and limiting recovery to those who could overcome credibility issues related to mental health or criminal convictions.

<u>Evidence as to recommendations of Class Counsel</u>

[79] All Class Counsel are highly experienced and recommend approval of the Settlement Agreement as fair and reasonable and in the best interests of the Class Members.

FACTS RELEVANT TO THE FEES MOTIONS

[80] In addition to the evidence about litigation risk, mediation, and the knowledge of Class Counsel obtained throughout the litigation as the matter approached trial (all as discussed above),

the following evidence is also relevant to the Fees Motions (which also include the claim for honoraria). I address both the relevant fees/disbursements evidence and honoraria evidence below.

Evidence relevant to fees and disbursements

[81] While there are slight differences between the representative plaintiffs' retainers (given the way the actions were started), the most restrictive agreements provide that Class Counsel will be paid 30% of any recovery if the actions settled before the commencement of trial or 33.3% thereafter. The least restrictive provides for recovery of 33% at the present stage of litigation.

[82] There is no dispute that the retainer agreements comply with s. 32 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*").

[83] The representative plaintiffs agreed to the contingency fee rates in their retainer agreements, are aware of the fees Class Counsel seek, and believe those fees to be fair in the circumstances, based on Class Counsel's work, the risk Class Counsel took on in representing them, and the results achieved for the class. Each also believes that, had Class Counsel not taken on these actions, Class Members would not have been able to advance their claims individually and would not have received the compensation and benefits to which they would be entitled under the settlement.

[84] Over almost a decade, the Class Counsel firms incurred 28,972 hours on these actions, with a total value of $12,089,186.12.[9] It is estimated that a further $3,500,000 of legal fees will be incurred by Class Counsel to administer the Settlement Agreement. In total, this represents a multiplier of only 1.14.

[85] Total disbursements of $997,489.62 (inclusive of taxes) have been incurred, with the Class Proceedings Fund of the Law Foundation of Ontario having paid $890,400.63 of that amount, to be reimbursed by Class Counsel upon approval of Class Counsel's fees and disbursements.

Evidence relevant to request for honoraria

[86] Mr. Lapple's evidence is that, as a result of him filing affidavit evidence and through examinations for discovery and cross-examinations by defence counsel, his "role as a representative plaintiff has required [him] to disclose information about [his] interactions with the criminal justice system, [and] provide details about the harms [he] suffered while enduring prison conditions that [he] experienced as traumatic".

[87] Mr. Lapple adds that answering questions on cross-examination and examination for discovery "required [him] to relive traumatic events and to disclose personal and sensitive information."

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[9] This was the amount up to October 8, 2025, the date Mr. Baer swore his affidavit in support of the motion.

[88] That information included disclosure of:

(i) "my interactions with the criminal justice system, including the fact that I had been federally sentenced in respect of a criminal conviction",

(ii) "the impacts of SRLs on my personal hygiene as a result of losing access to showers and having to share a toilet with my cellmate for long periods of time",

(iii) "impacts on my family members, whose visits from Welland, Ontario to Maplehurst (located in Milton, Ontario) were cancelled due to SRLs", and

(iv) "my diagnoses with post-traumatic stress disorder and anxiety, which I believe were caused in part by the SRLs I experienced at Maplehurst".

[89] Mr. Campbell's evidence was that:

> I was required to provide sensitive personal information for the Statement of Claim, including with respect to:
>
> a. my interactions with the criminal justice system;
>
> b. the cancellation of visits with family members and loved ones due to SRLs;
>
> c. the impacts of SRLs on my personal hygiene as a result of losing access to showers; and
>
> d. the significant mental suffering I was experiencing as a result of SRLs.

[90] Mr. Campbell further commented on the difficulty answering questions on examination for discovery:

> Answering these questions was a difficult experience, as it required me to relive traumatic events. I was also questioned about things like what happens when shower access is cancelled, or when you have to share a cell toilet with one or two other cellmates for days at a time due to SRLs. Like most people, I would prefer to keep these things private, but, as representative plaintiff, I was required to answer these questions as part of the examination.

[91] Mr. Dadzie also gave evidence about his cross-examination and examinations for discovery:

> I was required to provide sensitive personal information for the Statement of Claim, including with respect to:
>
> a. my interactions with the immigration detention system;

b. my immigration proceedings, and the CBSA's attempts to remove me from Canada;

c. the physical assaults by other prisoners I experienced;

d. the impacts of SRLs on my personal hygiene as a result of losing access to showers; and

e. the stress and anxiety I was experiencing as a result of SRLs.

[92] Mr. Zeekehmens' evidence is that he was required to answer questions on cross-examination and examination for discovery related to personal matters:

> I was required to provide sensitive personal information for the Statement of Claim, including with respect to:
>
> a. my immigration proceedings, and the CBSA's attempts to remove me from Canada;
>
> b. the impacts of SRLs on my personal hygiene as a result of losing access to showers; and
>
> c. the deterioration in my mental health I was experiencing as a result of SRLs.

FACTS RELEVANT TO THE DISCLOSURE MOTIONS

[93] The PGT is the public body which acts as substitute decision-maker, trustee, and estate administrator of last resort: *Public Guardian and Trustee Act*, R.S.O. 1990, c. P.51. In legal proceedings, including in class actions, it acts as the litigation guardian of last resort: *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, r. 7.03.1(13)(ii). Presently, the PGT acts for approximately 13,000 people in this capacity ("PGT Clients").

[94] Under the Settlement Agreement, compensation is available up to $68,000[10] based on the number of SRLs a Class Member experienced. Without a litigation guardian such as the PGT, incapable Class Members will not be able to access this compensation.

[95] Due to the size and nature of the class, there are likely many incapable Class Members who are PGT Clients.

[96] The PGT often finds it challenging to identify PGT Clients who are eligible to make a claim under a class action settlement. Not all eligible incapable class members identify themselves as

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[10] Class Members whose SRLs occurred at TSDC may receive an additional $2,500 for a total of $70,500—see footnote 8 above.

such, PGT resources are limited, and the biographical information the PGT has about its clients is also often limited.

[97] Moreover, capacity can fluctuate, and some incapable individuals or their families may be in contact with Class Counsel, but not the PGT. As it currently stands, the PGT is practically unable to identify many of the people they are statutorily required to represent.

[98] A list of Class Members was not produced by the defendants in the course of this litigation. Accordingly, it is not possible to follow the same practice used in other class actions, whereby a class list was shared under an information-sharing agreement between the PGT and one of the class action parties.

[99] The Contact List includes contact information for thousands of individuals who have contacted Class Counsel regarding these class actions. Subject to court approval, Class Counsel and the PGT have agreed to disclose the Contact List so the PGT can identify which Class Members it is responsible for protecting. The agreement provides for various privacy and security protections, which are discussed in more detail below.

[100] Disclosing the Contact List requires court approval because the list consists of personal information Class Counsel collected in the course of their business and operations. The *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 ("*PIPEDA*") provides that private organizations (such as law firms) who possess individuals' personal information may not disclose that information to others without those individuals' knowledge and consent, subject to certain exceptions.

[101] The Contact List will be kept secure and confidential. Pursuant to the ISA, the PGT will store the Contact List securely, maintain it in compliance with the various privacy statutes and policies applicable to it, use it only for the purpose of fulfilling its duties as its clients' legal representative of last resort, and will destroy it, equally securely, two years after the agreement takes effect. Both parties will do the utmost to preserve the information they have and will promptly alert the other of any unauthorized use or collection.

Analysis

[102] In the Settlement Motions, the issues before the court are:

(i) approval of the Settlement Agreement as fair and reasonable and in the best interests of Class Members,

(ii) approval of Deloitte and Crawford as claims administrator and claims adjudicator, respectively, and

(iii) approval of the form, content, and dissemination of the notices of settlement approval.

[103] In the Fees Motions, the issues before the court are:

(i) whether Class Counsel fees and disbursements are fair and reasonable, and

(ii) approval of the payment of an honorarium of $15,000 for each of the four representative plaintiffs in the actions.

[104] In the Disclosure Motions, the issue is whether the court should make an order that Class Counsel may disclose the Contact List to the PGT for the purpose of enabling the PGT to identify PGT Clients who may be entitled to make a claim under the Settlement Agreement.

[105] I address each of these motions below.

ANALYSIS OF THE SETTLEMENT MOTIONS

Issue 1: Approval of the Settlement Agreement as fair and reasonable

[106] The law for settlement approval is not in dispute. I rely on my summary of the applicable principles in *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217, at para. 32.

[107] I find that the settlement is fair and reasonable and is in the best interests of the Class Members. I rely on the factors I set out below.

(i) There was significant litigation risk

[108] I have reviewed the relevant risk factors at paras. 68-78 above. On its own, the decision of the Court of Appeal in *Ogiamien* raised a significant risk that a court would have followed the approach of Laskin J.A., unless the plaintiffs in the present actions could have created a new and convincing record, with expert evidence, to establish a *Charter* breach. Further, any reliance on administrative segregation case law was put at risk by *Ogiamien*, where the court did not accept the analogy.

[109] The other litigation risks discussed above were also significant, including establishing liability for breach of standard of care, reliance on government policies rather than operational negligence, and the possibility that individual damage trials could be required.

[110] In brief, the litigation raised very high risks, and the Settlement Agreement was fair and reasonable in light of those risks.

(ii) The compensation process is easy to access for Class Members

[111] At paras. 40, 42, and 44 above, I review the straightforward and simple access to compensation for Class Members.

[112] Those who seek Basic Recovery, Differential Impact Awards, and ECF recovery only need to provide their name, date of birth, Offender Tracking Information System Number (if known to them) and payment details.

[113] For Differential Impact Awards, a mental health alert does not indicate a confirmed mental health diagnosis. Mental health alerts are recorded in an inmate's correctional file if the inmate discloses a history of mental illness, shows signs of or has disclosed thoughts about self-harm or suicide, or is demonstrating behaviour suggestive of a mental illness. The number of inmates with

mental health alerts in Ontario's custody has grown from 7% in 1998/99 to 33% in 2018/19. Class Counsel estimates that 25%-30% of Class Members had mental health alerts on their files during the presumptive limitation periods.

[114] Access to Differential Impact Awards based only on mental health alerts is a very significant benefit to the class, particularly in comparison to the administrative segregation class actions, where Class Members had to prove a diagnosis for increased compensation.

[115] Each Class Member's compensation for a Basic Recovery or Differential Impact Award is then determined based on (i) a Claimant Spreadsheet, compiled by Ontario, listing incarceration dates and locations and any mental health alerts for each Claimant, and (ii) the SRL Inventory, also compiled by Ontario, listing every recorded SRL during the Class Period, whether it was full-day or part-day, and whether it affected all or only part of an institution.

[116] Additional information is only required for those seeking a Serious Harm Award, or those seeking to rebut the presumed limitation periods due to incapacity. Claimants seeking Serious Harms Awards must provide any documents in their possession that support their claim. If there are none, their claim can still proceed based on correctional records to be produced by Ontario. All claims for Serious Harms Awards will be determined based on a paper record alone, with no oral testimony required.

[117] Even for Serious Harm Claims, claimants are presumed to act honestly and in good faith, enabling Class Members to benefit from that assumption in establishing harm.

[118] Those seeking Serious Harms Awards also benefit from presumptive causation. They need not demonstrate that the harm they suffered was caused by SRLs, only that it occurred either during (for physical violence causing serious physical injuries or permanent impairment) or within 120 days of an SRL (for substantial degradation of or development of a mental disorder, self-injurious behaviour, or a suicide attempt). This eases the process for Class Members and will reduce the costs of adjudication.

[119] The above ease of access is a significant benefit over the possibility of individual trials if aggregate damages were not awarded by the court.

[120] Given the time required to complete the trial, receive a judgment, litigate appeals, and arrive at a negotiated or court-ordered distribution or individual issues process, any non-mediated resolution would have taken many years to reach Class Members. This form of delay is particularly problematic where, as here, many Class Members are "socioeconomically disadvantaged, marginalized, and/or suffering from mental illness" and may "pass away before the final determination of their awards": *Johnson et al. v. Ontario*, 2023 ONSC 5250 ("*Johnson*"), at para. 19.

(iii) The settlement is a result of arm's length negotiations and is recommended by Class Counsel

[121] In this case, there is a very strong presumption of fairness which applies given the settlement was negotiated at arm's length and presented for court approval on the recommendation of experienced Class Counsel.

[122] Class Counsel unequivocally recommend the approval of the Settlement Agreement. In the view of Class Counsel, it is an excellent settlement given the specific risks of proving the actions at trial, the potential delay in proceeding through trial, the monetary and nonmonetary benefits the Settlement Agreement provides, and the very simple process for advancing most claims.

[123] The four Class Counsel firms are leaders in class action and civil litigation in Canada and, in the case of Henein Hutchison Robitaille LLP, also have significant expertise in criminal law.

[124] The Class Counsel firms have been appointed class counsel in numerous class actions across a range of Canadian jurisdictions, including consumer protection claims, *Charter* claims, crown liability claims, institutional abuse claims, systemic negligence claims, and employment and employee benefit claims. This includes successful administrative segregation class actions regarding Ontario and federal institutions, and the successful class actions concerning the Elgin-Middlesex Detention Centre.

[125] The representation of the class by "highly reputable counsel with expertise in class action litigation" entitles the court to assume "in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement and that class counsel is staking his or her reputation and experience on the recommendation": *Serhan v. Johnson & Johnson*, 2011 ONSC 128, 79 C.C.L.T. (3d) 272, at para. 55.

[126] This recommendation of Class Counsel is particularly important given the late-stage nature of the settlement, which was reached as the parties were preparing for trial. That recommendation is informed by Class Counsel's review of almost 90,000 documents, examination of Ontario's and Canada's representatives, and the exchange of expert reports.

[127] The second mediation took place amidst preparations for trial. Both mediations took place before leading mediators. The proposed settlement was negotiated after certification, production, discovery, and pre- and post-discovery motions. Class Counsel's positions in the mediation were informed by a trial-ready level of investigation, discovery, and review of evidence.

[128] Courts recognize that in a late-stage settlement, class counsel are "well-positioned to evaluate the risks of further litigation and conclude that settlement is in the best interests of the class": *Jost v. Canada (Attorney General)*, 2025 FC 1193, at para. 29, citing *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670, at para. 5.

[129] The settlement in this case was negotiated at arm's length by highly experienced Class Counsel who were extremely familiar with a documentary record almost as fulsome as would have been presented at trial. These factors weigh heavily in favour of settlement approval.

(iv) The terms of the Settlement Agreement are of significant benefit to the class

[130] The terms of the Settlement Agreement, and the benefits it provides to Class Members, strongly support its approval.

[131] The 16 SRLs threshold for compensation is reasonable and arguably represents the best result that the plaintiffs could have achieved at trial. For those without a mental illness, administrative segregation is only deemed to violate the *Charter* if longer than 15 consecutive

days: *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243, 144 O.R. (3d) 641, at para. 150, leave to appeal granted but appeal discontinued, [2019] S.C.C.A. No. 96. A threshold of less than 16 SRLs, which are not required to be continuous or consecutive, would have been extremely difficult to establish.

[132] The two Enhanced Recovery options for claimants (based on mental health alerts or serious harm) provide increased compensation to those most affected by SRLs.

[133] The amounts available under the Compensation Protocol (up to $68,000) compare favourably to the outcomes in other class actions involving inmates:

(i) In the federal administrative segregation class actions, class members can receive up to $50,000 without bringing a summary judgment motion, including up to $20,000 calculated based on the length of their placements in segregation, up to $10,000, in addition, if they were diagnosed with a serious mental illness, and up to $20,000, in addition, if they suffered specific harms: *Brazeau v. Canada (Attorney General)*, 2021 ONSC 4294, at para. 28.

(ii) In the Ontario administrative segregation class actions, class members can receive up to $100,000 without bringing a summary judgment motion, including (i) up to $40,000 calculated based on the length of their placements in segregation, (ii) up to $20,000, in addition, if they were diagnosed with a serious mental illness, and (iii) up to $40,000, in addition, if they suffered specific harms: *Francis v. Ontario*, 2023 ONSC 5355, Schedule "A" (Distribution and Individual Issues Protocol).

(iii) In the Elgin-Middlesex Detention Centre class action, class members can receive up to $35,000, based on the extent of the detrimental impacts that they suffer: *Johnson*, at para. 28.

[134] Based on the above, the Settlement Agreement is well within the "zone of reasonableness" for court approval.

(v) ECP extends compensation to more Class Members

[135] It was highly likely that, at trial, claims regarding SRLs that occurred prior to August 2014 would have been found to be presumptively limitations-barred. That outcome would have mirrored Perell J.'s application of presumptive statute bars in the administrative segregation class actions: *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888, 431 C.R.R. (2d) 136, at para. 381, rev'd on other grounds, 2020 ONCA 184; *Francis v. Ontario*, 2020 ONSC 1644, 456 C.R.R. (2d) 1, at para. 280.

[136] Given the evidence I review at para. 47 above, there was a high risk that presumptive limitations periods would apply. Consequently, the ECF is an important benefit to those Class Members with claims that are presumptively statute-barred.

[137] This feature of the Settlement Agreement, negotiated by Class Counsel, is a significant improvement on the claims processes in the administrative segregation class actions, where those who did not rebut the presumptive statutory bar on a summary judgment motion received no relief.

[138] Other class actions settlements, including the Elgin-Middlesex Detention Centre settlement, have limited the compensation available for, or have not compensated, presumptively statute-barred claims, notwithstanding the existence of a longer class period: see e.g., *Johnson* and the Johnson Settlement; *Walmsley v. 2016169 Ontario Inc*, 2020 ONSC 1416, at paras. 18, 22, 41(iv); *Tataskweyak Cree Nation et al. v. Canada (A.G.)*, 2021 MBQB 275, at paras. 45, 78; and *Fulawka v. Bank of Nova Scotia*, 2014 ONSC 4743, 69 C.P.C. (7th) 134, at para. 9.

[139] The application of a presumptive statutory bar in the Compensation Protocol reflects the likely outcome at trial, while ensuring that those who can demonstrate incapacity receive the full compensation to which they would otherwise be entitled.

[140] Consequently, the application of the ECP to both the *Dadzie* and *Lapple* classes provides a benefit to many class members that would likely have not been available at trial. The application of the ECP fairly distinguishes between the *Dadzie* class' alleged entitlement to a six-year limitation period and provides a reasonable threshold of SRLs (101+) so that the most seriously injured Class Members will have the opportunity to obtain some meaningful compensation rather than compensation of a nominal amount of no benefit.

(vi) Non-monetary measures bring extra benefits to both classes

[141] At paras. 59-65 above, I review the non-monetary benefits of the Settlement Agreement and the additional steps taken by Ontario to address SRLs. Those financial and transparency benefits provide important non-monetary measures that will benefit the class, and others who pass through Ontario's correctional institutions.

[142] These measures, which could not have been achieved through the courts, are a testament to the ability of settlements in class proceedings to achieve behaviour modification.

(vii) Response to objections

[143] Since notice of the settlement approval hearing was published in August 2025, over 2,500 individuals have contacted the Class Counsel firms and the administrator to express support for the settlement, or to inquire about making a claim under the Settlement Agreement.

[144] In *McLean v. Canada*, 2019 FC 1075, as part of the approval process, class members were invited to file Statements of Support and Objection Forms. Approximately 3,360 Statements of Support and 2,485 Objection Forms were received: at paras. 54-56.

[145] I apply the approach of Phelan J. in *McLean* by considering the objections as a whole to determine if they raise concerns about whether the settlement is fair and reasonable and in the best interests of class members. Phelan J. held, at paras. 68 and 125:

> Recent case law in this Court and in other superior courts (see *Manuge v R*, 2013 FC 341 at paras 5-6, 227 ACWS (3d) 637; *Hunt v Mezentco Solutions Inc*, 2017 ONSC 2140 at paras 162-163 278 ACWS (3d) 482) have emphasized that the settlement must be looked at as a whole and particularly it is not open to the Court to rewrite the substantive terms of the settlement or assess the interests of individual class members in isolation from the whole class.

…

> In a case involving so many over such a long period, over such a vast area, objection is to be expected. Settlements are not perfect; compromise is not easy. Objections may be reasonable but may be reasonably counterbalanced by other elements of the Settlement.

[146] It is important for class members to have a right to object, and the court must take those objections into account when considering whether the settlement agreement is in the best interests of the class.

[147] However, in the present case, the objections address three general categories, none of which modifies the court's assessment, based on the factors set out above, that the Settlement Agreement is fair and reasonable, when considered in the context of the entire settlement and the interest of all (as opposed to individual) Class Members.

[148] I address each of the categories of objections below.

1. Objections as to the amounts and distribution under the Compensation Protocol

[149] There were objections as to the cap on basic recovery for 200+ days, with some Class Members seeking higher compensation for SRLs above that amount.

[150] However, the use of a grid to provide easy access to recovery based on SRLs requires establishing an upper category. The upper range for Basic Recovery (201 or more SRLs) is higher than those in the Ontario and federal administrative segregation class actions, where the highest amount in the grid was for a placement of 120 days or more: *Brazeau v. Canada (Attorney General)*, 2021 ONSC 4294, at para. 28 (Individual Issues and Distribution Protocol at s. 10.4); *Francis v. Ontario*, 2023 ONSC 5355, Schedule "A" (Distribution and Individual Issues Protocol) at s. 10.15.

[151] Furthermore, based on class size estimates relied on by the parties in negotiating the settlement, less than 1.5% of class members eligible for compensation under the Settlement Agreement will have experienced more than 200 SRLs and will therefor qualify for the highest level of Basic Recovery. The categories in the Basic Recovery grid are reasonable.

[152] Certain Class Members objected to the amounts available under the Compensation Protocol. However, as I discuss at para. 133 above, those amounts compare favourably with compensation ordered by the court in the federal administrative segregation class actions, following judgment on the common issues.

[153] Another objector raised the distinction between physical and psychological harm because, while the Serious Harm Award is available for both types of harm, the Differential Impact Award is only available for those with a mental health issue. However, the ability to obtain a serious damage award provides compensation for physical harm of up to $40,000, which is well within the zone of reasonableness. The fact that an additional benefit was negotiated for those Class Members with a mental health alert does not detract from the reasonableness of the settlement for all Class Members.

2. Objections based on the application of the limitation laws and the ECP

[154] There were some objections to claims being limited to presumptive statute-barred claims (subject to the ECP). However, as I discuss at paras. 135 and 138 above, no such compensation was made available for class members in other *Charter* class actions.

[155] Further, while the availability of ECP is not an admission of liability of the defendants to the presumptively statute-barred claims, it provides an important benefit negotiated by Class Counsel on behalf of those Class Members who would otherwise not receive any compensation.

[156] Furthermore, Class Counsel amended the ECP to ensure that any residue in the ECP funds could be used to compensate additional statute-barred Class Members. As a result of those amendments, if there are funds remaining in the ECP after the initial distribution, those funds will, if practicable, be distributed to other Class Members with 100 or fewer SRLs under the SRL formula, provided the total number of SRLs without any adjustments (due to partial institution or partial-day lockdowns) is still over 100.

[157] While the concerns of statute-barred Class Members are understandable, the exclusion of these claims arises from the operation of law. Class Counsel has provided some relief to those most impacted by limitation periods. Both the exclusion of statute-barred claims under the Compensation Protocol, and the thresholds and amount of compensation in the ECP, are fair and reasonable.

3. Objection to Class Counsel fees and the honorarium

[158] An objection was raised that the 30% contingency fee should collectively include both Class Counsel fees and honoraria. I do not agree.

[159] Honoraria are distinct from Class Counsel fees. The four honoraria of $15,000 for each of the representative plaintiffs are separate requests that should not be considered as part of the fees approval.

[160] Honoraria are not part of “a payout to Counsel”, as was submitted by one objector. Honoraria are paid to representative plaintiffs on the basis of the factors set out in *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628, at paras. 107-112, and in *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 (Div. Ct.), at para. 92. Consequently, I do not accept that class counsel fees and honoraria should be combined to fall within a reasonable contingency fee sought by Class Counsel.

(viii) Conclusion

[161] For the above reasons, I find that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members.

Issue 2: Approval of Deloitte and Crawford as claims administrator and claims adjudicator, respectively

[162] The evidence establishes that both Deloitte and Crawford have significant expertise as claims administrator and claims adjudicator, respectively, and should be approved.

[163] Deloitte has already been appointed as notice administrator by my earlier order and has successfully completed all tasks associated with that role. Deloitte has significant administrative expertise in some of the largest Canadian class action settlements, including many large *Charter*-based settlements requiring a trauma-informed administrative process. I am satisfied that Deloitte can deal sensitively and competently with this class.

[164] Crawford also filed evidence for the motions setting out its considerable expertise as a claims adjudicator. That experience includes very large matters such as the Hepatitis C class actions and the Elgin-Middlesex Detention Centre settlement (which is particularly relevant to the present case). A team of health care experts will adjudicate serious harm claims and incapacity claims in a cost-effective manner with expertise in these issues.

[165] I am satisfied that Crawford has the experience and abilities to act as a competent claims adjudicator.

[166] For the above reasons, I approve the appointment of Deloitte and Crawford as claims administrator and claims adjudicator, respectively.

Issue 3: Approval of the form, content, and dissemination of the notices of settlement approval

[167] The Phase 2 notice plan is similar to the Phase 1 notice plan previously approved by the court.

[168] The notice itself is straightforward and clear. Class Members will be able to easily understand the claims process.

[169] As with the Phase 1 notice plan, distribution is extensive. In addition to toll free numbers and websites to be maintained by Class Counsel and the administrator[11], Class Counsel will send out notice directly by email to the thousands of Class Members on its Contact List.

[170] In addition, there will be an extensive advertising claim staggered over five months on digital and social media. Notices will be posted in every federal and Ontario correctional institution and immigration holding centre.

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[11] There are almost 2,000 class members already registered with Deloitte for updates on the settlement.

[171] Notices will also be sent to more than a dozen organizations with close affiliations with Class Members, such as the Elizabeth Fry Society, the John Howard Society, the Canadian Association of Refugee Lawyers, the Criminal Lawyers' Association, the Legal Aid Refugee Law Offices, and the Canadian Civil Liberties Association.

[172] For the above reasons, I approve the form, content, and dissemination of the notices of settlement approval.

ANALYSIS OF THE FEES MOTIONS

Issue 1: Approval of the fees and disbursements as fair and reasonable

[173] The law for fees approval is not in dispute. I rely on my summary of the applicable principles in *Faiz*, at para. 42.

[174] Class Counsel seeks the approval of a fee of 30% of the total settlement fund, amounting to $17,700,000, plus HST of $2,301,000 and disbursements of $997,489.62 (inclusive of taxes).

[175] I find that the fees and disbursements sought are fair and reasonable. I rely on the factors I set out below.

(i) The results achieved were excellent

[176] As I discuss at para. 133 above, a comparison of the Settlement Agreement with the results achieved in the administrative segregation cases demonstrates that Class Counsel achieved an excellent result for the class.

[177] The issues in this litigation are of great importance to Class Members, who experienced unpredictable and frequent limits on their ability to move around outside their cells, contact their lawyers and families, and maintain basic hygiene.

[178] Absent a class proceeding undertaken on a contingency-fee basis, it is unclear how any single Class Member could have successfully sought damages or created behaviour modification, particularly given that the Court of Appeal's decision in *Ogiamien* could only be overcome through a complex record including expert evidence. Without a class proceeding and counsel acting on a contingency basis, access to justice would not have been achieved.

(ii) The risks to Class Counsel were high

[179] As I review at paras. 68-78 above, the risks to Class Counsel in prosecuting this action were significant, particularly considering *Ogiamien*. A massive team effort was required by all counsel for nearly a decade to work with experts and the representative plaintiffs to prepare a record for trial which could attempt to overcome the evidence not before the court in *Ogiamien*. With hours incurred worth over $12 million as of October 8, 2025, the risks for Class Counsel were extremely high.

[180] Legal fees not only reward counsel for successful results, but "also encourage counsel to take on difficult and risky class action litigation": *Abdulrahim v. Air France*, 2011 ONSC 512, 16

C.P.C. (7th) 289, at para. 9. In the present case, Class Counsel bore the risk, from the outset, that the actions would fail and the time that Class Counsel spent on the actions would not be repaid.

[181] The court must consider the risks at the time the case was commenced as well as the additional risks that developed throughout the case: *Kaplan v. PayPal CA Limited*, 2021 ONSC 1981, at para. 88.

[182] In this case, the risk existed from the commencement of the action that no class-wide *Charter* breach or negligence would be found at a common issues trial.

[183] These actions were commenced in August 2016. Three months earlier, the application judge in *Ogiamien* held, on a *Charter* application, that *Charter* damages were owed to the two applicants, who had been subject to SRLs: *Ogiamien v. Ontario*, 2016 ONSC 3080. The results of an appeal from that decision were unknown. None of the precedential *Charter* applications and class proceedings, and subsequent appeals, related to administrative segregation had been heard or decided. No judgment in a class proceeding had imposed clear *Charter* limits on acceptable conditions of confinement for inmates.

[184] The risk associated with proving the common issues increased over the course of the actions. While *Charter* limits on administrative segregation were later recognized by appellate courts, and significant *Charter* damages were awarded in those class actions, Laskin J.A. in *Ogiamien* specifically rejected any comparison between conditions during SRLs and administrative segregation: at paras. 47-49.

[185] Furthermore, the Court of Appeal in *Ogiamien* held that the SRLs did not constitute a *Charter* breach. This rendered the successful litigation of these actions much more difficult.

[186] Regardless, Class Counsel remained committed to the prosecution of these actions. At the time of settlement, Class Counsel were prepared to bring these actions to trial only weeks later, having conducted extensive discoveries, document review, and research, and equipped with compelling evidence from six different experts on domestic and international standards, class size, and the harms caused by SRLs.

(iii) The fee is presumptively valid under the retainer agreements

[187] The contingency-fee retainer agreements between Class Counsel and the Representative Plaintiffs are the appropriate starting point in analysing Class Counsel's fee request: *Commonwealth Investors Syndicate v. Laxton*, 94 B.C.L.R. (2d) 177 (C.A.), at para. 47.

[188] For class proceedings legislation to achieve access to justice, behaviour modification, and judicial economy, there must be hard-working counsel prepared to bring class actions and litigate them well: *Ford v. F. Hoffmann-La Roche Ltd.*, 2005 CanLII 8689 (Ont. S.C.), at para. 59.

[189] Courts have accepted that "a robust contingency fee system", which rewards class counsel "for the wins and losses over many files and many years of litigation," ensures that "the class action will continue to remain viable as a meaningful vehicle for access to justice": *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537, at para. 19.

[190] While courts "have the discretion to set a fee agreement aside where it would otherwise not be fair and reasonable for the class members", "typically, contingency fee percentages ranging from 15% to 33% enjoy presumptive validity": *David v. Loblaw*, 2025 ONSC 2792, at para. 42; *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at paras. 3, 10; *Faiz*, at para. 42(i).

[191] The representative plaintiffs (i) agreed to the contingency fee rates in their retainer agreements (ii) are aware of the fees Class Counsel seeks, and (iii) believe those fees to be fair in the circumstances, based on Class Counsel's work, the risk Class Counsel took on in representing them, and the results achieved for the class. Each also believes that had Class Counsel not taken on these actions, Class Members would not have been able to advance their claims individually and never would have received the compensation and benefits to which they would be entitled under the Settlement Agreement.

(iv) A multiplier cross-check supports the reasonableness of the fees

[192] Fee multipliers act as a "cross-check" on fees for large settlements. The multiplier must not be so high "as to be unseemly so as to impact the integrity of the profession", but it "must also allow class counsel an incentive to obtain a multiple of their base fee": *David*, at para. 46.

[193] Courts have endorsed multipliers of 2 to 4, including in mega fund cases: *David*, at para. 48.

[194] Class Counsel will spend significant time after settlement approval responding to Class Member queries, assisting Class Members in preparing and submitting claims, and providing joint directions to the administrator with the defendants. Class Counsel does not seek any further compensation for these additional, and inevitable, hours to be spent administering the settlement. As a result, the multiplier, which is 1.46 if measured against the legal fees incurred as of October 8, 2025, is 1.14 if measured against total legal fees including the future time necessary for settlement administration. Both figures are below the typical range of 2 to 4.

(v) Conclusion

[195] In the face of significant risk, Class Counsel brought these actions to a successful resolution, on the eve of trial. The Settlement Agreement achieves both access to justice and behaviour modification. Consequently, the 30% fee sought by Class Counsel is fair and reasonable.

[196] I note that the disbursements sought are reasonable, given the significant expert evidence required to prepare for certification and trial.

Issue 2: Approval of the honoraria

[197] I rely on the law I set out in *Faiz*, at para. 45. I grant the honoraria as all of the representative plaintiffs provided uncontested evidence that they were required to "expose themselves to re-traumatization for the benefit of the class": *Doucet*, at para. 92.

[198] In particular, the court in *Doucet* referred, at para. 58, to administrative segregation cases (*C.S. v. Ontario*, 2021 ONSC 6851, at para. 74, and *Brazeau v. Attorney General (Canada)*, 2019 ONSC 4721, at paras. 34-35) as examples where "the representative plaintiff puts their personal

experience forward, reliving their trauma, while relieving other class members from having to do so".

[199] I rely on the evidence set out at paras. 86-92 above. I find that "each of the Representative Plaintiffs shared and were examined in relation to highly personal information and traumatic events".

[200] All of the representative plaintiffs were required to relive their traumatic experiences dealing with the immigration detention or criminal justice system, personal hygiene, and effect on family contact. Such evidence, under both *Doucet* and *Fresco*, justifies the payment of an honorarium of $15,000 to each representative plaintiff.

[201] Consequently, I grant the honorarium sought by the plaintiffs.

ANALYSIS OF THE DISCLOSURE MOTIONS

[202] The issue in these motions is whether the court should exercise its authority to order that Class Counsel, as the holders of Class Members' private information, may disclose the Contact List to the PGT.

[203] One of the exceptions to the prohibition against disclosure in s. 7 of *PIPEDA* is contained in s. 7(3)(c). This provision allows for organizations to disclose personal information without knowledge or consent where that is "required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records".

[204] Section 12 of the *CPA* allows a court, whether on its own initiative or on a party's motion, to "make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate". Where justified in accordance with the objectives of the *CPA*, s. 12 empowers the court to make orders for the disclosure of personal information, satisfying the requirements of the exception in s. 7(3)(c) of *PIPEDA*.

[205] In *Airia Brands v. Air Canada*, 2016 ONSC 1371, the court exercised its s. 12 powers to enable disclosure under s. 7(3)(c) of *PIPEDA*. In that case, the plaintiffs entered into a settlement with some of the defendant airlines but not others. The plaintiffs sought an order requiring the non-settling defendants to produce customer information, including names, contact information, and purchase amounts for intra-Canada air freight shipping services to the administrator, for "the limited purpose of providing notice and facilitating the claims administration process pursuant to the proposed distribution protocol": at para. 15. The court agreed, emphasizing "the production of this information is to fulfil the goals of a class proceeding and ensure access to justice to the class members and to ensure they benefit from the settlements": at para. 26.

[206] In *Airia*, the court order required the administrator to maintain the confidentiality of the information, forbade it from disclosing any of it "except to the specific settlement class member to whom [it] relate[d]", and required the administrator to delete the information and report that it had done so to the court once the litigation concluded: at paras. 27-28.

[207] Courts issued similar orders and provided similar rationales in *Nardi v. Sorin Group Deutschland GMBH*, 2022 ONSC 4126, and *Sheridan Chevrolet v. Denso*, 2021 ONSC 3648.

[208] In *Nardi*, the court ordered disclosure of personal information that was more sensitive than the information at issue in the present class actions. *Nardi* was a case about surgical equipment contaminated with a bacterium. Once the hospitals realized the equipment was contaminated, they mailed notices to possibly affected patients. Class counsel brought an unopposed motion seeking access to those mailing lists so that they could contact class members, alert them to the progress of the action, and gather evidence for the common issues trial. The court agreed that the hospitals should produce their mailing lists to class counsel, despite these being personal health records subject to statutory privacy protections, so that class members could benefit from the action.

[209] To balance the privacy interests reflected in *PIPEDA*, courts have often insisted on requirements that personal information be kept secure and confidential. For instance, the order in *Nardi* forbade class counsel from disclosing the mailing lists or any information in them to anyone but a court-appointed administrator, as well as from disclosing any class member's name or contact information in the court record without their consent: at para. 3.

[210] In *Sheridan Chevrolet*, the court ordered that the defendants produce customer information to an administrator—which had "signed a confidentiality agreement" and would imminently "implement security measures to safeguard this information"—for the limited purpose of providing class members with notice and access to the claims protocol: at para. 20.

[211] The Contact List in the present case will be kept secure and confidential. Pursuant to the ISA, the PGT will store the Contact List securely, maintain it in compliance with the various privacy statutes and policies applicable to it, use it only for the purpose of fulfilling its duties as its clients' legal representative of last resort, and will destroy it, equally securely, two years after the agreement takes effect. Both parties will do the utmost to preserve the information they have and will promptly alert the other of any unauthorized use or collection.

[212] For the above reasons, I grant the order sought.

Order

[213] For the above reasons, I grant the relief sought in the motions before the court.

GLUSTEIN J.

Date: 20251117

CITATION: Dadzie v. Ontario, 2025 ONSC 6342
COURT FILE NO.: (Dadzie v. Ontario) CV-16-558376-00CP
(Lapple v. Ontario) CV-16-558633-00CP
DATE: 20251117

ONTARIO

SUPERIOR COURT OF JUSTICE

GODDAY DADZIE and AL ZEEKEHMENS

Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and THE ATTOREY GENERAL OF CANADA

Defendants

AND BETWEEN:

RAYMOND LAPPLE and JEROME CAMPBELL

Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

REASONS FOR DECISION

Glustein J.

Released: November 17, 2025