

CV-16-558633-00CP

Court File No.:

**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*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date: August 15, 2016

Issued by



Local registrar

(m Brenton)

Address of court office 393 University Avenue
Toronto, ON

TO: **HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**

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CLAIM

1. The plaintiffs claim:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the class;
 - (b) a declaration that the defendant breached its fiduciary and common law duties to the plaintiffs and the class and violated the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to the funding, operation, management, administration, supervision and control of the Correctional Institutions, as defined herein;
 - (c) a declaration that the defendant is liable to the plaintiffs and the class for the damages caused by its breach of fiduciary duty, negligence, and its violation of the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to the funding, staffing, operation, management, administration, supervision and control of the Correctional Institutions, as defined herein;
 - (d) damages for negligence, breach of fiduciary duty, and violation of the class' rights and freedoms set out in sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$1 billion, or such other sum as this Honourable Court may find appropriate;
 - (e) punitive damages of \$250 million, or such other sum as this Honourable Court may find appropriate;
 - (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
 - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
 - (h) pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
 - (i) such further and other relief as to this Honourable Court may seem just and appropriate in all the circumstances.

A. OVERVIEW

2. The conditions for prisoners at Ontario's Correctional Institutions are deplorable.

3. One particularly inhumane feature of the Correctional Institutions is the chronic staffing-related lockdowns that the defendant imposes on prisoners in these institutions. These staffing-related lockdowns and the severe, continuing damage they cause to prisoners in the Correctional Institutions form the basis of this action.

4. A staffing-related "lockdown" of a Correctional Institution occurs when prisoners are locked in their cells due to shortages of prison staff. Staffing related lockdowns have become a common feature of Ontario's Correctional Institutions.

5. During lockdown, prisoners are locked in small cells for hours, days, or weeks on end. Prisoners are subject to particularly harsh conditions, including deprivation of access to fresh air, showers, medical care, phone calls and legal counsel, often for many days at a time.

6. Lockdowns cause tremendous harm to an already vulnerable group. During lockdowns, prisoners suffer from a deprivation of healthcare, privacy, dignity, security, and hygiene that violate even the basic standards applicable to prisoners in the Correctional Institutions. They violate the basic human rights of the prisoners, including their rights and freedoms under sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms*.

7. These conditions and their severe, detrimental impact on prisoners persist due to the Crown's negligence and breach of fiduciary duty in failing to appropriately staff the Correctional Institutions. The Crown has had knowledge of lockdowns and their severely detrimental effects on prisoners for many years, and it is entirely within the Crown's power and control to appropriately staff the Correctional Institutions in a manner that would eliminate lockdowns caused by staff shortages. However, despite its knowledge, the Crown has not taken any or sufficient action to ameliorate this problem, and has caused irreparable and continuing harm to the class.

B. THE PLAINTIFF AND THE CLASS

8. The plaintiff, Raymond Lapple, is a resident of Stouffville, Ontario. As described further below, he was incarcerated in Maplehurst Correctional Complex.

9. The plaintiff, Jerome Campbell, is a resident of Toronto, Ontario. As described further below, he is currently incarcerated in Toronto South Detention Centre.

10. The plaintiff, Samir Abdelgadir, is a resident of Hamilton, Ontario. As described further below, he was incarcerated in Maplehurst Correctional Complex.

11. The plaintiff, Gregory Smith, is a resident of Toronto, Ontario. As described further below, he is currently incarcerated in Toronto South Detention Centre.

12. The plaintiffs claim on behalf of themselves and on behalf of the following class:

All current and former prisoners of correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") since December 10, 2002 who are or were remanded, except the Excluded Persons; and,

All current and former prisoners of the Correctional Institutions since December 10, 2002 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 all prisoners detained by the Canadian Border Services Agency in accordance with the *Immigration and Refugee Act*, S.C. 2001, c. 27 and all prisoners of Elgin-Middlesex Detention Centre (solely with respect to their incarceration at Elgin-Middlesex Detention Centre).

C. THE DEFENDANT AND ITS RESPONSIBILITY FOR THE CORRECTIONAL INSTITUTIONS

13. The defendant, Her Majesty the Queen in right of the Province of Ontario (the "**Crown**") is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, and the amendments thereto.

14. The Correctional Institutions operate under the auspices of the Ministry of Community Safety and Correctional Services (the "**Ministry**"). The Ministry establishes, maintains, operates, and monitors the Correctional Institutions.

15. The Correctional Institutions are or were correctional institutions pursuant to the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22. In accordance with the *Ministry of Correctional Services Act*, the Crown is responsible for:

- (a) supervising the detention of the class members;
- (b) creating an environment in which prisoners may be effectively and properly rehabilitated;
- (c) providing for the custody of class members;
- (d) establishing, maintaining and operating the Correctional Institutions;
- (e) the provision of adequate medical treatment; and
- (f) the provision of adequate psychiatric treatment.

16. In accordance with *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778, the superintendent of a correctional institution is responsible for:

- (a) the management of the institution;
- (b) the care, health, safety and custody of inmates;
- (c) administering the institution; and
- (d) issuing to the employees of the institution such directions as may be necessary to fulfil the responsibilities of a superintendent.

17. The Correctional Institutions are located across Ontario. At all material times, the Crown, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of the Correctional Institutions. The Correctional Institutions are under the sole jurisdiction and control of, and were operated by, the Crown. The Crown retains and authorizes servants, agents, representatives and employees to operate the Correctional Institutions and gives instructions to such servants, agents, representatives and employees as to the manner in which the Correctional Institutions are to function and operate. The Ministry or its agents also discipline and terminate employees that staff the Correctional Institutions.

18. At all material times, it was within the control of the Ministry to appropriately staff the Correctional Institutions to eliminate lockdowns caused by staffing shortages. The Ministry has knowledge of the number of people required to staff the Correctional Institutions so as to operate without staffing-related lockdowns and it was within their control to ensure that sufficient staff was available. The Crown failed to fulfill its duties.

D. CONDITIONS AT THE CORRECTIONAL INSTITUTIONS

19. The Correctional Institutions house prisoners who are remanded, who have violated parole, and who are serving sentences of up to two years less a day.

20. Remanded prisoners are prisoners who have been charged with crimes but have not been convicted. Prisoners on remand can spend weeks, months and even years in the Correctional Institutions awaiting trials or other proceedings. Many remanded prisoners will be found not guilty of their crimes, but will still have experienced abhorrent conditions at the Correctional Institutions. All remanded prisoners are innocent until proven guilty at trial, but are nevertheless unduly punished as a result of the sub-standard conditions of confinement at the Correctional Institutions.

21. Prisoners in the Correctional Institutions are entitled to spend time outside of their cells. During this time, prisoners are entitled to visit with lawyers, obtain appropriate health care including visits with doctors, and have visits with their families. Prisoners are entitled to regular access to showers and other means to ensure personal hygiene in the Correctional Institutions. They are required to be provided access to a yard in which they may get fresh air and exercise. Prisoners are also entitled to certain programs, including spiritual or religious programming. Finally, prisoners will also have access to a television, to read newspapers or other reading material, and may make phone calls.

22. None of the above entitlements are available to prisoners during lockdown. During lockdowns, prisoners must remain locked in their cells.

23. The Correctional Institutions have policies which define and spell out the circumstances when the Correctional Institution must be locked down, including the minimum necessary staffing level.

24. Lockdowns may be caused by staff absences. Where a Correctional Institution does not have enough staff, the Correctional Institution will be locked down.

25. The vast majority of lockdowns at the Correctional Institutions are caused by staffing absences.

26. Lockdowns create egregious conditions for prisoners. During lockdowns, the impact to prisoners includes, *inter alia*:

- (a) being locked down in a cell limits prisoners from speaking or meeting with lawyers;
- (b) lawyers' visits may be cancelled thereby prejudicing prisoners' ability to have a full defence;
- (c) being locked down prevents prisoners from accessing showers and other facilities to maintain basic hygiene;
- (d) there is no or infrequent laundry service during lockdowns, and clean clothes and sheets are not available to prisoners;
- (e) family visits are cancelled or are very limited during lockdowns;
- (f) access to medication is not consistent or non-existent;
- (g) medical appointments are cancelled, and there is a higher rate of prisoners' ailments;
- (h) prisoners are required to clean their own cells, but during lockdowns there are delays in getting cleaning supplies to the prisoners and in getting laundry done, resulting in unhygienic conditions;
- (i) being locked down in a cell limits prisoners from getting in touch with family;
- (j) there is no prisoner programming running during lockdowns;
- (k) there is considerable and increased noise and banging on cell walls and other items during lockdowns, and it is difficult to sleep;

- (l) lockdowns cause violence between prisoners during the short periods between lockdowns, because prisoners forcefully vie for limited amenities such as telephones, not knowing when they will be available next;
- (m) there are an increased number of fights among prisoners as conditions worsen from lockdown;
- (n) during lockdown, there is no stimuli for prisoners, and as a result, lockdowns have a severely detrimental effect on the mental health of prisoners;
- (o) prisoners must spend extended periods of time in uncomfortably close proximity to their cell mates;
- (p) there is not enough light in prison cells;
- (q) meals are delayed during lockdowns;
- (r) prisoners' ability to maintain social and familial ties is curtailed;
- (s) there is no access to reading materials;
- (t) religious programs are denied during lockdowns; and
- (u) there is no opportunity to exercise, and prisoners cannot get any fresh air.

27. The conditions of detention during lockdowns resemble segregation or solitary confinement. In some ways they are worse. The inmate is confined with another inmate not of his or her choosing. The periods of confinement for up to 24 hours a day are entirely unpredictable to the prisoner, both as to timing and length, which adds to their suffering.

28. During lockdown, the minimum standards for prisoners' are curtailed, often for days or weeks on end. These conditions contribute to an unsafe, unhealthy and dangerous environment for prisoners and violate their basic rights and freedoms.

E. THE PLAINTIFFS' EXPERIENCES AT THE CORRECTIONAL INSTITUTIONS

29. Raymond Lapple was charged and remanded into custody at Maplehurst Correctional Complex on May 30, 2009. He was a prisoner at Maplehurst Correctional Complex ("**Maplehurst**") from that time until February 20, 2013, when he was sentenced and transferred to a federal correctional institution.

30. While incarcerated at Maplehurst, Lapple experienced egregious conditions and suffered the debilitating consequences of protracted lockdowns at this institution.

31. At Maplehurst, Lapple resided in a 6 foot by 9 foot cell double bunked with another prisoner. The cell also contained a toilet.

32. During lockdown, Lapple was required to remain in this cell for extended periods of time. Yard access was cancelled and there was no fresh air. His family visits and lawyer appointments were cancelled and there were no phone privileges. During lockdown, Lapple's personal hygiene suffered. There were no showers available during this time, and he was forced to remain in an unclean state for days.

33. Samir Abdelgadir was charged and remanded into custody at Maplehurst on June 9, 2011. He was a prisoner at Maplehurst from that time until November 3, 2015, when he was released following a determination that he was not guilty of the criminal charges against him.

34. While Abdelgadir was at Maplehurst, staffing related lockdowns were frequent and lengthy. During lockdowns, showers were not permitted and his personal hygiene suffered. In addition, his family visits and lawyer appointments were cancelled. As a result of lockdowns, Abdelgadir was prevented from engaging in customary congregational prayer on Fridays in accordance with his Muslim faith. The mental distress caused by the lockdowns contributed to many physical altercations between Abdelgadir and his cell mates.

35. As a result of the lockdowns, Abdelgadir now suffers from depression and anxiety. He takes Cipralax to help with this condition.

36. Jerome Campbell has been incarcerated in Toronto South Detention Centre since March 1, 2016, awaiting trial. He has been in lockdown approximately 75% of the time due to understaffing at the Toronto South Detention Centre. As a result of staffing-related lockdowns, Mr. Campbell's personal hygiene has suffered. For example, he was once prevented from showering for 10 straight days. Ordinarily, Mr. Campbell is only able to shower every 3 days. Mr. Campbell has had to repeatedly cancel visits with his family and lawyer and has gone weeks at a time without visiting with his 4 year old daughter. Mr. Campbell has gone weeks without going outside and his mental health has suffered significantly as a result of the constant lockdowns.

37. Gregory Smith has been incarcerated in Toronto South Detention Centre since October 1, 2015 and has been serving his sentence there since his conviction on July 25, 2016. During this time, the facility has been frequently locked down.

38. Lockdowns have had significant negative effects on Mr. Smith's health and well-being. During lockdowns, Mr. Smith cannot use the telephone to contact his daughter and parents, and lockdowns have prevented Mr. Smith from meeting in person with his lawyer and family members. Mr. Smith cannot shower during lockdowns, and he often goes days or weeks without showering in these circumstances. During lockdowns, he is not able to keep his cell clean or have his clothing laundered. Lockdowns also prevent Mr. Smith from accessing reading material, such as novels and magazines.

39. Mr. Smith is a diabetic, and lockdowns exacerbate the physical effects of his diabetes. For example, as a result of lockdowns, the pain he suffers in his feet caused by his diabetes is significantly increased. In addition, lockdowns have caused Mr. Smith's mental health to suffer, causing him anxiety and mental distress.

40. Finally, as a result of lockdowns, Mr. Smith is prevented from engaging in customary congregational prayer on Fridays in accordance with his Muslim faith.

41. For Mr. Lapple, Mr. Abdelgadir, Mr. Campbell, Mr. Smith, and the class members, the lockdowns they experienced in the Correctional Institutions were traumatic events that has had a lasting psychological impact on their lives.

F. KNOWLEDGE OF THE CROWN

42. The Crown has known about lockdowns caused by staff shortages at the Correctional Institutions and the deleterious effects of lockdowns on prisoners in the Correctional Institutions for many years. Notwithstanding this knowledge, the Crown has failed to take steps to ameliorate or correct the problem.

43. Through its operation of the Correctional Institutions and its employment of correctional officers at the Correctional Institutions, the Crown had direct knowledge of the lockdowns and their consequences on prisoners. The Crown was aware of the minimum staffing levels required to operate the prisons without staffing related lockdowns and knew that these levels were not met. The Crown was aware of repeated, chronic lockdowns and the need for additional staff and better operating systems and failed to act.

44. Lockdowns caused by staffing shortages have also repeatedly been identified and condemned in judicial decisions for many years, and at least as early as 2002. Justices of Ontario courts have repeatedly identified the unacceptable frequency of lockdowns and the abhorrent conditions thereby inflicted upon prisoners. Lockdowns have been found to be oppressive and an unacceptable form of pre-sentence punishment.

45. Similarly, the 2008 Annual Report of the Office of the Auditor General of Ontario identified staffing related lockdowns as a problem at the Correctional Institutions that result in cancellations of health and rehabilitative programs for inmates. Numerous recommendations were made to appropriately staff the Correctional Institutions which have not been complied with by the Crown.

46. Lockdowns at the Correctional Institutions caused by understaffing was also identified as a major concern in the Ontario Ombudsman's June 2013 report entitled "The Code". The Ombudsman reported that staffing related lockdowns restrict prisoners' activities, and prisoners become increasingly frustrated, agitated, and more likely to engage in violent activity.

47. However, notwithstanding its knowledge of these problems, the Crown has refused to take any action.

G. CAUSES OF ACTION

(a) Negligence

48. At all material times, the Crown owed duties to the plaintiffs and to the class members that include, but are not limited to, a non-delegable duty to protect the physical and mental health and well-being of prisoners and to maintain minimum standards at the Correctional Institutions.

49. The harm suffered by the plaintiffs and the class was a reasonably foreseeable consequence of the Crown's acts and omissions. The Crown was the guardian of all prisoners. The legislation governing the relationship between the Crown and prisoners informs the duty of care owed by the Crown to the prisoners. At all material times, the actions of the Crown had a direct impact on the class members. The Crown is responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the care and custody of prisoners. In such circumstances, the risk of harm of the nature contemplated in this action is reasonably foreseeable.

50. The *Ministry of Correctional Services Act* states that the Crown must supervise the detention of prisoners. The Crown's duties as set out in section 5 of the *Ministry of Correctional Services Act* include:

- (a) the provision of custody of persons awaiting trial or convicted of offences;
- (b) the establishment, maintenance and operation of correctional institutions; and
- (c) the provision of programs and facilities designed to assist in the rehabilitation of prisoners.

51. Similarly, in accordance with *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778, the superintendent of a correctional institution is responsible for the care, health, safety and custody of inmates.

52. The express words of the statute itself also establish a special, close, and direct relationship between the Crown and prisoners.

53. Finally, there was a direct and proximate relationship and specific interaction between each of the plaintiffs and the class members and the Crown, including but not limited to:

- (a) the daily interaction between class members and the Crown or its agents;
- (b) the close and direct supervisory relationship between the Crown and the class members;
- (c) the class' complete reliance on the Crown to satisfy their basic needs, including the necessities of life, safety and comfort; and,
- (d) the Crown's maintenance of prisoner files.

54. The plaintiffs also plead and rely on the international norms, treaties and standards which inform the Crown's standard of care, including but not limited to:

- (a) the Minimum Rules for the Treatment of Prisoners promulgated by the United Nations;
- (b) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); and
- (c) the Standard on Treatment of Prisoners in the Criminal Justice Section Standards of the American Bar Association.

55. The reasonable standard of care expected in the circumstances required the Crown:

- (a) to appropriately staff the Correctional Institutions;
- (b) to employ a sufficient number of staff to ensure that there were no lockdowns at the Correctional Institutions caused by understaffing;
- (c) to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions operated in manner such that the basic rights of prisoners were not denied;
- (d) to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions were reasonably safe for prisoners;

- (e) to follow such policies and procedures at all material times;
- (f) to ensure access to adequate and appropriate medical and health services;
- (g) to ensure access to legal representation and advice;
- (h) to ensure the ability of the class members to maintain social and familial ties;
- (i) to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (j) to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, moral, spiritual, social, health and exercise;
- (k) to ensure access to reading materials;
- (l) to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (m) to ensure access to clean clothing and bedding;
- (n) to ensure appropriate hygiene requirements, including regular access to showers;
- (o) to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (p) to respond adequately to complaints or recommendations which were made concerning lockdowns; and
- (q) to safeguard the physical and emotional needs of prisoners.

56. The Crown knew or ought to have known of its duties described herein as a result of its unique position and expertise in caring for prisoners.

57. The Crown breached the standard of care, on a class-wide systematic basis, in the following respects:

- (a) failing to have appropriate staffing levels at the Correctional Institutions;
- (b) failing to employ a sufficient number of staff to ensure that there were no lockdowns at the Correctional Institutions caused by understaffing;

- (c) failing to follow or to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions operated in manner such that the basic rights of prisoners were not denied;
- (d) failing to follow or to have in place appropriate policies and procedures to ensure that at all material times, the Correctional Institutions were reasonably safe for prisoners;
- (e) failing to ensure access to adequate and appropriate medical and health services;
- (f) failing to ensure prisoners' access to legal representation and advice;
- (g) failing to ensure the ability of the class members to maintain social and familial ties;
- (h) failing to ensure conditions of detention which ensure the maintenance of order and the safety and protection from violence;
- (i) failing to ensure access to programs, activities and services, including but not limited to educational, vocational, remedial, spiritual, social, health and exercise;
- (j) failing to ensure access to reading materials;
- (k) failing to ensure appropriate sanitary requirements, including lighting, heating, ventilation and cleanliness;
- (l) failing to ensure access to clean clothing and bedding;
- (m) failing to ensure access to appropriate hygiene requirements, including showers;
- (n) detracting from the ability of prisoners to maintain good mental and physical health;
- (o) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (p) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and
- (q) failing to safeguard the physical and emotional needs of prisoners.

58. These failures were systemic in nature and occurred across all of the Correctional Institutions.

59. The Crown's breaches caused damages to the plaintiffs and the class, as described below.

(b) Fiduciary Duty Owed by the Crown to the Class

60. The Crown owed all prisoners of the Correctional Institutions, as individuals in its sole care and control, a fiduciary duty that included a duty to care for and protect them and to act in their best interests at all material times, as particularized further below.

61. The Crown established, operated, financed, supervised and controlled the Correctional Institutions during the Class Period.

62. The prisoners' care was subject to the unilateral exercise of the Crown's power and discretion and the prisoners were in a vulnerable position.

63. By virtue of the relationship between the prisoners and the Crown, being one of trust, reliance and dependency, the Crown owed a fiduciary obligation to ensure that the prisoners were treated respectfully, fairly, and safely, to act in the best interests of those individuals, to maintain appropriate standards during their care, and to protect them from harm.

64. The prisoners had a reasonable expectation that the Crown would act in their best interests with respect to their physical and mental healthcare and wellbeing given the assumption of responsibility for the care of prisoners, by virtue of:

- (a) the unilateral assumption of responsibility for the care of the class members by the Crown;
- (b) the historic duties of the Crown to prisoners;
- (c) the involvement of the Crown in establishing the Correctional Institutions;
- (d) the dependence of the class members on the Crown;
- (e) the vulnerability of the class members as a result of their incarceration at the Correctional Institutions; and

- (f) the involuntary nature of the relationship between the class members and the Crown.

65. Given the circumstances of the relationship between the Crown and the class members, including but not limited to the statutory obligations, authority and control over the class members, the Crown undertook to act in the best interests of the class members and to act in accordance with the duty of loyalty imposed on the Crown.

66. The Crown was solely responsible for, among other things:

- (a) the implementation of the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, any other statutes relating to prisoners and all regulations promulgated under these statutes and their predecessors during the class period;
- (b) the protection of the health, safety and well-being of prisoners during the class period and the maintenance of the minimum standards set out herein;
- (c) the management, operation, administration, ownership, financing, inspection and auditing of the Correctional Institutions during the class period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Ministry, their employees, servants, officers and agents and their predecessors during the class period;
- (e) the care and supervision of, and the provision of the necessities of life to, all class members while they were incarcerated in the Provincial Institutions during the class period; and
- (f) the inspection and supervision of the Correctional Institutions and all activities that took place therein during the class period and for full record keeping with respect to the conditions at these prisons and all activities that took place therein during the class period.

67. The Class members were entitled to rely and did rely on the Crown to their detriment to fulfill their fiduciary obligations. The Crown breached its fiduciary duties to the plaintiffs and the class. The particulars of the breach include:

- (a) failing to ensure that the Correctional Institutions were properly staffed at all material times;

- (b) allowing for staffing levels to fall so low that the Correctional Institutions would be subject to lockdowns and could not operate in a reasonable manner;
- (c) failing to take a proper and good faith interest in the operation of the Correctional Institutions and supervision of the class members, despite its role in respect of the prisoners under its responsibility;
- (d) allowing for lengthy and frequent lockdowns to occur in the Correctional Institutions;
- (e) failing to ensure that the prisoners had proper access to health care, lawyers' visits, family visits, showers, fresh air and exercise, stimuli, and programming;
- (f) failure to recognize and document deterioration in the physical and mental condition of class members as a result of lockdowns and to take all reasonable steps to ensure these conditions are addressed;
- (g) putting its own interests ahead of the interests of prisoners by attempting to save money through understaffing the Correctional Institutions;
- (h) failing to provide adequate financial resources or support to properly care and provide for class members;
- (i) failing to put in place a mechanism to collect information and monitor the impact of lockdowns on class members;
- (j) failing to respond adequately, or at all, to complaints or recommendations which were made concerning lockdowns; and
- (k) failing to safeguard the physical and psychological needs of prisoners.

68. The Crown knew or ought to have known that as a consequence of its operation, care and control of the Correctional Institutions, the plaintiffs and the class members would suffer damages, as discussed below.

(c) Breaches of the *Canadian Charter of Rights and Freedoms*

69. The conditions particularized above at paragraphs 26, 57, and 67 violate basic human rights of the class members and, as such, constitute a violation of their rights and freedoms under Sections 7, 9 and 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

70. The conditions under which the prisoners are detained engage the interests of liberty and security of the person. The frequent and lengthy staffing related lockdowns which are unpredictable to prisoners and the consequences of the lockdowns identified herein cause severe detrimental mental and physical effects on inmates. The conditions at the Correctional Institutions and the conduct of the Crown violate the right of the class to life, liberty and security of the person, contrary to section 7 of the *Charter*.

71. Further, the frequent nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification. This constitutes arbitrary restraint or detention and as such constitutes a breach of section 9 of the *Charter*.

72. The frequency, duration, and severity of staffing related lockdowns and the adverse consequences of these lockdowns at the Correctional Institutions during the class period identified herein violate the rights of class members to be held in custody in a humane and safe facility. This treatment is so excessive as to outrage standards of decency and is grossly disproportionate. The frequent and lengthy staffing related lockdowns at the Correctional Institutions constitute cruel, inhumane and degrading treatment or punishment contrary to section 12 of the *Charter*.

73. The frequent and lengthy nature of the lockdowns due to staffing inadequacies is arbitrary and is imposed without institutional justification.

74. In the circumstances, the plaintiffs and the class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the class members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and
- (c) deter systemic violations of a similar nature.

75. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

H. DAMAGES SUFFERED BY THE CLASS

76. The Crown knew, or ought to have known, that as a consequence of its operation of the Correctional Institutions, that the plaintiffs and the class members would suffer significant physical and psychological damages as described below.

77. The plaintiffs and the members of the class were traumatized by their experiences arising from their incarceration at the Correctional Institutions. As a result of the negligence, breach of fiduciary duty, and breach of the *Charter* rights of the class, the plaintiffs and the class suffered and continue to suffer damages which include, but are not limited to the following:

- (a) physical and psychological harm;
- (b) exacerbation of psychological illness and the creation of new psychological illnesses;
- (c) exacerbation of physical illness and/or ailments and the creation of new physical illness and/or ailments
- (d) pain and suffering;
- (e) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (f) a requirement for medical or psychological treatment and counselling;
- (g) an impaired ability to enjoy and participate in recreational, social and employment activities; and
- (h) the loss of general enjoyment of life.

78. At all material times, the Crown has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures at the Correctional Institutions would continue to aggravate and contribute to the class members' injuries and damages.

79. As a result of the Crown's conduct, class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care.

I. PUNITIVE DAMAGES

80. The high handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the class members' interests, safety and well-being. In all the circumstances, the Crown breached, and continues to breach, its fiduciary duty, and *Charter* duties owed to the plaintiff and the class members.

81. Over a long period of time, the plaintiffs and the class members were treated in a manner that could foreseeably result in the damages suffered. The substandard conditions to which the plaintiffs and the class members were exposed to grossly violated their rights and severely altered the paths of their lives.

82. In these circumstances, punitive damages are necessary to act as a deterrent to prevent such conduct in the future.

J. VICARIOUS LIABILITY

83. The Crown is vicariously liable for the negligence and breaches of fiduciary duties perpetrated upon class members by the Crown's employees, representatives and agents.

84. Notice of this action as provided to the Crown on May 31, 2016.

85. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

86. The trial of the action should take place in the city of Toronto, in the Province of Ontario.

August 15, 2016

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Plaintiffs

and
Her Majesty the Queen in Right of the
Province of Ontario

Defendant

CV - 16-558633-001
Court File No.:

SERVICE OF A COPY
ADMITTED THIS 15th DAY OF August 2016

Crown Law Office (Civil Law)
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4:08 p.m.
Law Clerk

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

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