

CITATION: Brazeau v. Attorney General (Canada), 2016 ONSC 7836
COURT FILE NO.: CV-15-532625-00CP
DATE: 20161214

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)	
)	
CHRISTOPHER BRAZEAU and DAVID KIFT)	<i>Kirk M. Baert and James Sayce for the</i>
)	Plaintiffs
Plaintiffs)	
)	
- and -)	
)	
THE ATTORNEY GENERAL OF CANADA)	<i>Paul Vickery and Greg Tzemenakis for the</i>
)	Defendant
Defendant)	
)	
)	
Proceeding under the <i>Class Proceedings Act, 1992</i>)	HEARD: December 12, 2016

PERELL, J.

REASONS FOR DECISION

[1] Pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Plaintiffs Christopher Brazeau and David Kift bring a proposed class action against The Attorney General of Canada ("Canada"). On consent, Messrs. Brazeau and Kift seek certification of their action as a class proceeding.

[2] Messrs. Brazeau and Kift were prison inmates, and their action concerns Canada's management of all federal penitentiaries under the auspices of Correctional Service Canada ("CSC"), a federal agency.

[3] Messrs. Brazeau and Kift allege breaches of sections 7, 9, and/or 12 of the *Canadian Charter of Rights and Freedoms*. The Fresh as Amended Statement of Claim alleges:

- a. That Canada operated the Federal Institutions by way of Correctional Service Canada ("CSC"). The CSC is the federal agency that operates, manages, supervises and controls the Federal Institutions;
- b. That Canada was responsible for the operation, funding and supervision of the Federal Institutions under the authority of the *Corrections and Conditional Release Act*;
- c. That Canada failed to provide Class Members with reasonable access to mental healthcare, contrary to its duties under the *Charter*;

- d. That Canada over-relies on the use of extended periods of solitary confinement in managing Class Members, contrary to its duties under the *Charter*;
- e. That CSC staff are not trained to deal with the Class Members' vulnerabilities and regularly use improper physical and forceful punishments on the Class Members, contrary to Canada's duties under the *Charter*; and
- f. That Canada knew or ought to have known of the conditions at the Federal Institutions, including the pervasive use of solitary confinement, arbitrary, violent and humiliating punishments, and the failure to adequately provide access to adequate mental healthcare.

[4] Mr. Brazeau was an inmate at the Edmonton Institution in Edmonton, Alberta, and Mr. Kift was a inmate at the Joyceville Institution in Kingston, Ontario. Both men suffer from Generalized Anxiety Disorder and Post Traumatic Stress Disorder ("PTSD"). Mr. Brazeau has also been diagnosed with Attention Deficit and Hyperactivity Disorder ("ADHD").

[5] During their incarceration, both men spent substantial amounts of time in "Administrative Segregation," or solitary confinement, as it is more commonly known. They allege that they were deprived of necessary medications for long periods of time. They allege that they suffered damages due to the systemic abuses perpetrated by Canada.

[6] Messrs. Brazeau and Kift seek to be Representative Plaintiffs for the following class:

All offenders in federal custody who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013.

Appendix "A" states: Significant impairment in judgment (including inability to make decisions; confusion; disorientation); Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; delusions that make the offender a danger to self or others); Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders, staffs or follow correctional plan); Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan; Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; Chronic and severe self-injury; or, A GAF score of 50 or less.

[7] The start date of the Class Period is predicated upon the coming into force of the applicable regime in the *Corrections and Conditional Release Act*, S.C. 1992, c. 20. There is no prescribed end date, and it remains a running Class Period until resolution. The 2013 date by which a Class Member must have been alive is necessarily predicated upon the applicable provisions in the *Trustee Act* R.S.O. 1990, c. T.23, ss. 38(1) & (3) to maintain actions for torts by executors and administrators.

[8] Messrs. Brazeau and Kift propose the following common issues be certified:

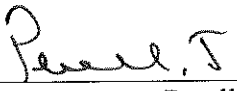
- a. By its operation and management of the Federal Institutions from November 1, 1992 to the present, did the Defendant breach the Class Members' rights under section 7 of the *Charter*?
- b. If so, were its actions saved by section 1 of the *Charter*?
- c. By its operation and management of the Federal Institutions from November 1, 1992 to the present, did the Defendant breach the Class Members' rights under section 9 of the *Charter*?
- d. If so, were its actions saved by section 1 of the *Charter*?
- e. By its operation and management of the Federal correctional facilities from November 1, 1992 to the present, did the Defendant breach the Class Members' rights under section 12 of the *Charter*?
- f. If so, were its actions saved by section 1 of the *Charter*?
- g. If the answer to any of common issues (a), (c), or (e) is "yes", and the answer to any of (b), (d) and (f) is "no", are damages available to the Class under section 24 of the *Charter*?
- h. If the answer to common issue (g) is "yes", can the Court make an aggregate assessment of the damages suffered by all Class Members as a part of the common issues trial?

[9] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court shall certify a proceeding as a class proceeding if: (1) the pleadings disclose a cause of action; (2) there is an identifiable class; (3) the claims or defences of the class members raise common issues of fact or law; (4) a class proceeding would be the preferable procedure; and (5) there is a representative plaintiff or defendant who would adequately represent the interests of the class without conflict of interest and there is a workable litigation plan.

[10] Similar *Charter* claims have been certified against government actors; see: *Good v. Toronto (Police Services Board)*, 2013 ONSC 3026, aff'd 2014 ONSC 4583 (Div. Ct.), aff'd 2016 ONCA 250, leave to appeal to S.C.C. ref'd [2016] S.C.C.A. No. 255; *Ewert v. Canada (Attorney General)*, 2016 BCSC 962; and *Johnson v. Ontario*, 2016 ONSC 5314. Similar claims involving systemic institutional abuses have been certified; see: *Cloud v. Canada (Attorney General)* (2004), 73 O.R. (3d) 401 (C.A.); *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.).

[11] In the present case, I am satisfied that all of the criteria for certification have been satisfied.

[12] Accordingly, I grant Messrs. Brazeau's and Kift's motion.



Perell, J.

Released: December 14, 2016

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