

JUSTICE GUSTEIN

NOVEMBER 27, 2017
Court File No.: CV-16-55837600CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GODDAY DADZIE and AL ZEEKEHMENS

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and THE ATTORNEY GENERAL OF CANADA**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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

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

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

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

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

All persons detained under Division 6 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 at Ontario correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") between May 30, 2009 and November 27, 2017 (solely with respect to their detention under Division 6 of the *Immigration and Refugee Protection Act*), except the Excluded Persons.

"**Excluded Persons**" are all persons who were detained at the Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre (solely with respect to their detention under the *Immigration and Refugee Protection Act* at those Correctional Institutions)

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

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

(a) Was a duty of care owed to the Class Members:

(i) By the Defendant Canada in its operation, management and administration of the immigration detention scheme under the *Immigration and Refugee Protection Act* and its regulations?

(ii) By the Defendant Ontario in its operation and management of the Correctional Institutions (excluding Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre) (the "**Included Correctional Institutions**")?

(b) If the answer to (a)(i) and/or (a)(ii) is "yes", what is the nature of that duty of care?

(c) Was the duty of care breached:

(i) By the Defendant Canada in its transfer to and detention of Class Members under the *Immigration and Refugee Protection Act* and its regulations in the Included Correctional Institutions?

- (ii) By the Defendant Canada in its acquiescence in the use of staffing-related lockdowns in the detention of Class Members in the Included Correctional Institutions?
 - (iii) By the Defendant Ontario in the use of staffing-related lockdowns in the Included Correctional Institutions?
- (d) Is there a methodology for determining whether the frequency and duration and impact of lockdowns meets the threshold for a violation of the right not to be subject to cruel and unusual treatment or punishment as set out in section 12 of the *Charter*?
- (e) If the answer to question (d) is "yes", what is that methodology?
- (f) Can the methodology in question (e) be applied to some or all of the class members at a common issues trial, or otherwise in accordance with section 25 of the *Class Proceedings Act, 1992*?
- (g) If the answer to question (f) is "yes", which members of the class, if any, have been subject to a deprivation of their rights under section 12 of the *Charter*?
- (h) Is there a methodology to determine whether staffing-related lockdowns amount to a violation of the right not to be deprived of life, liberty or security of the person in a manner that is contrary to the principles of fundamental justice as set out in section 7 of the *Charter*?
- (i) If the answer to question (h) is "yes", what is that methodology?
- (j) Can the methodology in question (i) be applied to some or all of the class members at a common issues trial, or otherwise in accordance with section 25 of the *Class Proceedings Act, 1992*?
- (k) If the answer to question (j) is "yes", which members of the class, if any, have been

subject to a deprivation of their rights under section 7 of the *Charter*?

(l) Is there a minimum period of incarceration required to establish a violation of section 7 or section 12 of the *Charter* due to staffing-related lockdowns?

(m) If the answer to question (l) is "yes", what is that minimum period of incarceration?

(n) If there are any violations of the *Charter* as set out in questions (g) or (k), are such violations saved by section 1 of the *Charter*?

(o) If the answer to question (n) is "no", are damages an appropriate and just remedy under section 24(1) of the *Charter*?

(p) Is this an appropriate case for an award of aggregate damages pursuant to section 24(1) of the *Class Proceedings Act, 1992*?

(q) If the answer to question (p) is "yes", what is the appropriate quantum of such damages?

(r) Does the conduct of the Defendant merit an award of punitive damages?

(s) If the answer to question (r) is "yes", what quantum should be awarded for punitive damages?

(t) What limitation period or limitation periods apply to the causes of action advanced in this case?

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

5. **THIS COURT ORDERS AND DECLARES** that Godday Dadzie and Al Zeekehmens are hereby appointed as the Representative Plaintiffs for the Class.

6. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP and Henein Hutchison

LLP are hereby appointed as class counsel (“**Class Counsel**”).

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

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

(b) by the Administrator distributing the Publication Notice to all Ontario offices of the Elizabeth Fry Society, the John Howard Society and the Refugee Law Office of Pro Bono Law Ontario;

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

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

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

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

8. **THIS COURT ORDERS** that the Plaintiffs shall pay half and the Defendants shall pay half of the combined expense of the notice in paragraphs 7(a) through 7(f) and fees for the Administrator’s responsibilities herein, subject to review and readjustment by agreement or order at the termination of this

proceeding.

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

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

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

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

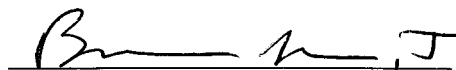
13. **THIS COURT ORDERS** that if a Class Member has delivered an opt-out coupon to the Administrator, they may withdraw their opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that they wish to withdraw their opt-out.

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

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

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

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

A handwritten signature in black ink, appearing to read "Bruce M. Glustein", written over a horizontal line.

JUSTICE GLUSTEIN

SCHEDULE "A"

PUBLICATION NOTICE

Were you detained under Division 6 of the *Immigration and Refugee Protection Act* in a Provincial Jail or Prison Between May 30, 2009 and [insert certification date]?

A lawsuit may affect you. Please read this carefully.

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

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

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

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

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

LONG FORM NOTICE

Were You Detained Under the *Immigration and Refugee Protection Act* in a Provincial Jail Between May 30, 2009 and [insert certification date]?

If YES, A Class Action May Affect Your Rights.

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

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

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

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

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

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why is there a notice?

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

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *Dadzie v. Ontario* Court File No. CV-16-55837600-00CP. The people who sued are called the Plaintiffs. Ontario and Canada are the Defendants.

2. What is this lawsuit about?

The lawsuit says that Ontario and Canada improperly subjected immigration detainees to chronic lockdowns in provincial prisons for staffing-related reasons. The lawsuit says that such lockdowns constitute systemic negligence and breach detainees' rights under the *Canadian Charter of Rights and Freedoms*. Ontario and Canada deny these claims. The Court has not decided whether the Plaintiffs or the Defendants are right. The lawyers for the Plaintiffs will have to prove their claims in Court.

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

3. Why is this a class action?

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

4. Who is a member of the Class?

The Class includes:

All persons detained under Division 6 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 at Ontario correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (the "**Correctional Institutions**") between May 30, 2009 and [insert certification date] (solely with respect to their detention under Division 6 of the *Immigration and Refugee Protection Act*), except the Excluded Persons.

"**Excluded Persons**" are all persons who were detained at the Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre (solely with respect to their detention under the *Immigration and Refugee Protection Act* at those Correctional Institutions)

5. What are the Plaintiffs asking for?

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

6. Is there any money available now?

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

YOUR RIGHTS AND OPTIONS

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

7. What happens if I do nothing at all?

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

8. What if I don't want to be in the Lawsuit?

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

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

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

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

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

10. How will the lawyers be paid?

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

A TRIAL

11. How and when will the Court decide who is right?

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

12. Will I get money after the trial?

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

GETTING MORE INFORMATION

13. How do I get more information?

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

SCHEDULE "B"

OPT OUT FORM

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

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

Court File No.: CV-16-55837600CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GODDAY DADZIE and AL ZEEKEHMENS

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and THE ATTORNEY GENERAL OF CANADA**

Defendants

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

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

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

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

Date _____

Name of Class Member: _____

Signature of Witness

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

Telephone: _____

Name of Witness:

Name of Guardian of Property (if applicable):

DADZIE ET AL.
Plaintiffs and

HMQ et al
Defendants

Court File No.: CV-16-55837600CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

ORDER

(CERTIFICATION)

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