

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RAYMOND LAPPLE, JEROME CAMPBELL, and SAMIR ABDELGADIR

Plaintiffs

– and –

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF DEFENCE

1. The Defendant, Her Majesty the Queen in right of Ontario (“Ontario”) denies each and every allegation contained in the Amended Statement of Claim (the “Claim”), except as specifically admitted hereafter.

The Representative Plaintiffs

2. The plaintiff Raymond Lapple was incarcerated at the Maplehurst Correctional Complex (“Maplehurst”) from May 31, 2009 to March 13, 2013, when he was transferred to a federal correctional institution.

3. The plaintiff Jerome Campbell was brought into custody at the Toronto South Detention Centre (“TSDC”) on February 29, 2016, and has remained in custody since that date. During his incarceration, he has been transferred between TSDC, Hamilton Wentworth Detention Centre (“HWDC”) and Central North Correctional Centre. He is currently housed at HWDC.

4. The plaintiff Samir Abdelgadir was incarcerated at HWDC on several separate occasions: from October 19, 2007 to November 15, 2007, from December 31, 2007 to January 3, 2008, from May 28, 2008 to June 10, 2008, and from November 30, 2010 to December 3, 2010. He was then incarcerated at Maplehurst from June 9, 2011 to September 3, 2013. On October 7, 2013, he returned to provincial custody at Maplehurst where he remained until September 22, 2015, when he was transferred to Niagara Detention Centre. He was released from Niagara Detention Centre on November 3, 2015. He returned again to provincial custody at HWDC on August 4, 2017 and was transferred to TSDC on August 31, 2017 where he remained until his release on October 2, 2017.

5. Ontario admits that this claim is brought by Raymond Lapple, Jerome Campbell and Samir Abdelgadir (the "Representative Plaintiffs") on behalf of:

All current and former inmates of 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 (the "Class Period") who are or were remanded, except the Excluded Persons; and,

All current and former inmates of the Correctional Institutions during the Class Period 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:

- (1) all inmates detained only in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 28; and,
- (2) all inmates of Elgin-Middlesex Detention Centre, the Ontario Correctional Institute and the St. Lawrence Valley Correctional and Treatment Centre (solely with respect to their incarceration at those Correctional Institutions) (together, the "Class Members").

6. Ontario admits that the Class Members include the Representative Plaintiffs.

The Ministry of Community Safety and Correctional Services

7. The Ministry of Community Safety and Correctional Services is responsible for establishing, maintaining and operating Correctional Institutions in Ontario pursuant to the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (“MCSA”).

8. Ontario admits that the Superintendent of a Correctional Institution is responsible for the management of the institution and for the care, health, discipline, safety and custody of the inmates under the Superintendent’s authority.

9. During the Class Period, there were 30 Correctional Institutions in operation in the Province of Ontario. Of these 30 Correctional Institutions, 22 are currently operating and 8 have closed.

Lockdowns

10. The regular daily schedule in most units of the Correctional Institutions provides for periods of time throughout the day when inmates spend time outside of their cells. A lockdown refers to a period of time when inmates who would typically have access to a day room and programing outside of their cells, are instead locked in their cells (“Lockdown”).

11. Lockdowns can occur for a number of reasons. A Lockdown may occur because a potential weapon has gone missing, and a search must be undertaken in an effort to locate the missing item. A Lockdown might occur when there is a disturbance in one area of the institution and correctional officers are redeployed to assist. A Lockdown could also be the result of a shortage of correctional staff (“Staffing Lockdown”).

12. Lockdowns, including Staffing Lockdowns, can involve a single unit of a Correctional Institution, multiple units of a Correctional Institution, or the entire Correctional Institution, depending on the nature and scope of the Lockdown.

13. The decision by a Superintendent or Designate to order a Lockdown, including a Staffing Lockdown, is made pursuant to ss. 5 and 20 of the *MCSA*, as well as s. 2 of *O. Reg 778* made under the *MCSA*, as part of the Superintendent’s responsibility for the safe management and

operation of a Correctional Institution. In addition, a Correctional Institution may use a Lockdown specifically to facilitate searches which are authorized under s. 23.1 of the *MCSA* and ss. 22-27 of *O. Reg 778*.

14. Ontario denies that Lockdowns, including Staffing Lockdowns, occurred with the frequency or duration alleged in the Claim. Ontario denies that Lockdowns, including Staffing Lockdowns, have the impact alleged in the Claim. Ontario pleads that any Lockdowns, including any Staffing Lockdowns, experienced by Class Members were justified and were imposed only where necessary to ensure the safety and security of inmates and staff.

15. Ontario denies that during Lockdowns, including Staffing Lockdowns, Class Members were deprived of basic human rights. During a Lockdown, including a Staffing Lockdown, correctional staff will attempt to maintain all critical correctional functions. These critical correctional functions include supervision of inmate accommodations and work assignments, staffing key posts within the Correctional Institutions, conducting searches, inmate counts and patrols and providing emergency response.

16. During Lockdowns, including Staffing Lockdowns, other essential programs and services are maintained including providing health care services such as medication rounds and ensuring inmates' attendance at Court. Other programs and services such as showers, clean laundry, access to the exercise yard, to cleaning supplies and to visits continue during Lockdowns whenever possible.

17. Ontario denies that conditions experienced by inmates during Lockdowns, including Staffing Lockdowns, are equivalent or similar to the conditions experienced by inmates in segregation.

18. Ontario denies that it failed to have in place or to follow appropriate policies or procedures relating to Lockdowns, including Staffing Lockdowns ("Lockdown Policies"). At all material times, the Lockdown Policies were properly implemented and enforced.

19. In the alternative, Ontario pleads:

- a) any breach of its Lockdown Policies was not systemic;
- b) any breach of its Lockdown Policies was not common to all Class Members;
- c) any breach of its Lockdown Policies did not result in a breach of Ontario's duty to the Class Members; and
- d) any breach of its Lockdown Policies did not result in a breach of the Class Members' rights under the *Charter*.

Negligence

20. Ontario denies that it owed the Class Members any duty of care in respect of the use of Lockdowns, including Staffing Lockdowns, at the Correctional Institutions.

21. If Ontario is found to owe a duty of care to the Class Members, Ontario did not breach the duty of care. At all times, the employees, agents and servants of the Crown met the applicable standard of care and acted in a reasonable and prudent manner and in good faith.

22. In the further alternative, if Ontario breached any duty of care owing to the Class Members (which is denied), Ontario pleads that any such breach was infrequent, specific to the individual class member, and not systemic.

23. Ontario pleads that some or all Class Members negligently caused or contributed to the conditions which form the basis of their claims as against Ontario.

No Breaches of the *Canadian Charter of Rights and Freedoms*

24. Ontario denies that any rights of the Class Members under the *Canadian Charter of Rights and Freedoms* ("*Charter*") have been breached and puts the Plaintiffs to the strict proof thereof. Ontario pleads that its policies complied with the *Charter*.

25. Ontario denies that there was a substantial change in the conditions of the Class Members' detention or a deprivation of their residual liberty interests during Lockdowns. The Class Members' residual liberty interests under section 7 of the *Charter* are therefore not engaged.

26. Ontario also denies any infringement or deprivation of the Class Members' right to life or security of the person. In the alternative, and in any event, any deprivation has been in accordance with the principles of fundamental justice.

27. Ontario further denies that the Class Members have been subject to any cruel or unusual punishment or treatment in violation of section 12 of the *Charter*. Ontario therefore denies that any act or omission on the part of its employees violated any of the Class Members' rights under the *Charter*.

28. Ontario pleads, in the alternative, that if any act or omission on the part of any of Ontario's employees infringed any of the Class Members' rights under the *Charter*, any such infringement was justified under s. 1 of the *Charter*.

29. Ontario pleads, in the further alternative, that if any act or omission on the part of any of Ontario's employees infringed any of the Class Members' rights under the *Charter* and was not justified, any such infringement is not systemic or common to the Class Members.

30. In the further alternative, Ontario pleads that if any act or omission on the part of any of Ontario's employees infringed any of the Class Members' rights under the *Charter* and was not justified, damages are not an appropriate remedy for any such infringement. *Charter* damages are not a just and appropriate remedy in this case. Ontario acted at all times reasonably, in good faith, and with appropriate regard for the Class Members' *Charter* rights; moreover, countervailing policy considerations render an award of damages inappropriate.

Crown Immunity

31. Ontario pleads that it is immune from liability, save and except to the extent that Crown immunity has been expressly lifted by statute. Ontario claims Crown immunity in respect of all allegations of systemic negligence and direct liability for negligence.

32. Ontario pleads and relies upon s. 5(2) of the *Proceedings Against the Crown Act* R.S.O. 1990, c P.27 ("*PACA*").

33. Ontario pleads that, if any employee of Ontario breached any duty of care owed to Class Members, which is denied, any such breach or breaches were specific to the individual Class Member in question, and not systemic. In any event, the Representative Plaintiffs have not alleged any specific breach by a specific employee.

Core Policy Decisions Are Not Justiciable

34. No cause of action exists for policy or planning functions of Ontario. These matters are non-justiciable.

35. Ontario pleads that all of the allegations of negligence in the Claim involve policy and planning decisions for which Ontario is not liable at law.

International Standards

36. The Representative Plaintiffs plead and rely on various provisions of the Minimum Rules for the Treatment of Prisoners promulgated by the United Nations; the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); and the Standard on Treatment of Prisoners in the Criminal Justice Section Standards of the American Bar Association (together, the “International Standards”).

37. Ontario pleads that a breach of the International Standards does not give rise to a cause of action in Canadian law, nor does it constitute a breach of the *Charter*.

38. Ontario denies that it breached the International Standards during the Class Period or at all. Ontario specifically denies it owed any legal duties to the Class Members pursuant to the International Standards. In the alternative, should Ontario be found to have owed such duties to the Class Members, which is not admitted but specifically denied, then Ontario did not breach such duties.

Damages

39. Ontario denies that the Class Members have suffered the damages alleged or any damages at all. In the alternative, if the Class Members suffered any loss or damages, such loss or damages were not caused or materially contributed to by any actionable act or omission by Ontario, or for which Ontario is responsible in law.

40. Ontario pleads further that if any Class Member sustained any injuries, loss or damages as a result of a Lockdown, including a Staffing Lockdown, during the Class Period, which fact is not admitted but denied, such injuries, loss or damages were caused or contributed to by the negligence or intentional acts of that same Class Member.

41. If the Class Members suffered any loss or damages as alleged or otherwise, which is not admitted but denied, then such alleged loss or damages are excessive and too remote and Ontario puts the Class Members to the strict proof thereof. Further, the Class Members have failed to mitigate their damages.

42. Ontario pleads that if any Class Member sustained injuries, loss or damages as a result of a Lockdown, including a Staffing Lockdown, during the Class Period, which is not admitted but denied, such injuries, loss or damages were caused or contributed to by previous or subsequent accidents, events, occurrences or pre-existing medical conditions, the full particulars of which are not known to Ontario.

43. In any event, the issue of what damages, if any, were suffered by class members requires proof by individual Class Members. An aggregate assessment of damages would not be in conformity with s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 and would not be appropriate.

44. Ontario denies that its conduct warrants an award of punitive or aggravated damages.

Limitations

45. Ontario pleads and relies on the *Limitations Act, 2002*, S.O. 2002, c 24, Schedule B. Ontario specifically pleads that:

- (a) any Class Member's claims which arose prior to May 31, 2014 ("Barred Claims") are statute-barred; and
- (b) the Class Members ought reasonably to have discovered the material facts upon which the Barred Claims are based before May 31, 2016, which is when the Plaintiffs first provided notice pursuant to section 7(1) of *PACA* of their class action claim against Ontario.

46. Ontario pleads and relies upon the provisions of *PACA*, the *Negligence Act*, R.S.O. 1990, c. N.1, the *MCSA* and the *General Regulations*, R.R.O. 1990, Reg. 778 thereunder, the *Charter* and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, all as amended.

47. The Defendant submits that this action should be dismissed with costs.

DATE: May 31, 2018

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PROCEEDING COMMENCED AT
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STATEMENT OF DEFENCE

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