

CP

Court File No. 2291 / 13



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

GLENN JOHNSON and MICHAEL SMITH

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under
The Class Proceedings Act, 1992, S.O. 1992, Chapter 6

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs does not have a lawyer, serve it on the Plaintiffs, 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.

Date DEC 09 2013

Issued by 
Local Registrar

Address of court office: 80 Dundas St.
London, Ontario
N6A 6A3

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
c/o Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th floor
Toronto, Ontario
M7A 2S9

CLAIM

1. The Plaintiffs claim:
 - (a) An Order certifying this action as a Class Proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the Class and any appropriate subclass thereof;
 - (b) A Declaration that,
 - (i) The conditions at the Elgin Middlesex Detention Centre (hereafter “EMDC”) and the practises of the Defendant in the care and custody of the Plaintiff Class Members at the EMDC during the Claim Period constitute an infringement of and deprivation of the right to life, liberty and security of the person as guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*;
 - (ii) The conditions at the EMDC and the practises of the Defendant in the care and custody of the Plaintiff Class Members at the EMDC during the Claim Period constitute cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Canadian Charter of Rights and Freedoms*;
 - (iii) In the operation of the EMDC during the Claim Period, the Defendant violated the Plaintiffs’ rights under Sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*;
 - (iv) The conditions at the EMDC and the practises of the Defendant in the care and custody of the Plaintiff Class Members at the EMDC during the Claim Period violate the terms of the Court Orders by which Class Members

were remanded to EMDC; namely, to keep the prisoners safely and securely during their incarceration or period of remand;

- (c) Damages or such other remedy as the Court may consider just and appropriate pursuant to Section 24 of the *Canadian Charter of Rights and Freedoms*;
- (d) Aggregate damages for negligence, breach of fiduciary duty, assault and battery in the amount of \$300,000,000.00;
- (e) Directions pursuant to Section 26 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
- (f) Punitive, aggravated or exemplary damages in the amount of \$25,000,000.00;
- (g) In the alternative, directing that individual assessments of damages be conducted;
- (h) Pre-judgment and post-judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) Their costs of this action on a substantial indemnity basis, together with all applicable taxes; and,
- (j) Such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff, Glenn Johnson, is an individual ordinarily resident in the City of London, who was incarcerated at the EMDC from approximately May 3, 2012 to December 30, 2012 when he was transferred to another institution. The Plaintiff was also incarcerated at EMDC earlier during the Claim Period.

3. The Plaintiff, Michael Smith, is an individual who resides in the Town of Tillsonburg, who was incarcerated at the EMDC from July 9, 2012 to July 12, 2012.

4. The Plaintiffs sue on their own behalf and on behalf of the Class defined as follows:

“All persons incarcerated at the Elgin Middlesex Detention Centre between January 1, 2010 and August 25, 2013 including those held at the Elgin Middlesex Detention Centre pending trial or other court appearance.”

5. The EMDC is a correctional institution as defined by the *Ministry of Correctional Services Act*, R.S.O. 1990, Chapter M.22, as amended. The EMDC is located on Exeter Road in the City of London.

6. The Defendant, Her Majesty the Queen in Right of Ontario (hereafter “HMQO”), owns and operates the EMDC under the direction of the Ministry of Community Safety and Correctional Services.

7. The Defendant, HMQO, is named as a Defendant pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, Chapter P.27, section 9, as amended.

8. The Defendant is the employer of the staff who work at the EMDC, including superintendents, supervisory staff, guards, medical staff and other employees. The Defendant, its employees, servants and agents together were responsible for the proper care, supervision and custody of the members of the Plaintiff Class between January 1, 2010 and August 25, 2013 (herein “the Claim Period”).

9. The Plaintiffs plead and rely upon the provisions of the *Proceedings Against the Crown Act*, supra, sections 2, 3, 5 and 13, as amended.

OVERVIEW

10. This action concerns the overcrowded, unsanitary and unsafe conditions at the EMDC during the Claim Period. Those conditions result from the acts and omissions of the Defendant, its employees, servants and agents for whom the Defendant is in law responsible. The conditions particularized below violate the basic human rights of the class members and, as such, constitute a violation of their rights under Section 7 and 12 of the *Canadian Charter of Rights and Freedoms*.

11. In addition, the Defendant, its employees, servants and agents, have fostered an atmosphere of violence, brutality and intimidation by their failure to adhere to and follow policies in place for the proper management and supervision of prisoners at EMDC during the Claim Period. The Defendant's conduct and that of its employees, servants and agents for whom it is in law responsible constitute systemic negligence and/or a breach of the fiduciary duties owed by the Defendant to the members of the Plaintiff class.

12. The Defendant's mistreatment of prisoners is a violation of their basic human rights and, as such, constitutes a violation of their rights under Sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*.

OVERCROWDED CONDITIONS AT EMDC

13. The EMDC was constructed in the 1970's and was designed to hold approximately 150 inmates.

14. Although some alterations have been made to the facility since it was originally constructed, the inmate capacity was not significantly increased.

15. During the Claim Period, the number of persons in custody regularly exceeded 400.

16. The cell blocks at EMDC were designed to comprise ten cells, each to be occupied by a single inmate, with two additional rooms for recreational purposes. Cells were later modified and a concrete slab was installed in order to house two inmates per cell. During the Claim Period, the cells routinely housed more than two prisoners even though the cell was designed for one prisoner and had sleeping accommodation for only two prisoners. The ventilation and plumbing system were designed for ten prisoners in the cell block and were not up-dated or expanded to handle the overcrowding during the Claim Period.

17. In addition, the rooms that were originally intended for recreational purposes were converted to “welfare cells”. These rooms were supposed to hold two prisoners, but often held as many as five, resulting in unsafe and unsanitary conditions.

18. Throughout the Claim Period, the number of prisoners per cell routinely exceeded the capacity for the cells.

19. As a result of the overcrowding at EMDC, class members were forced to live in unhygienic and unsanitary conditions; in particular,

- (a) prisoners were required to sleep on the floor of cells immediately beside or touching upon the toilets present in the cell;

- (b) the toilets in the cells and in the washrooms were frequently left unclean and/or did not properly function thereby causing noxious smells and contaminated water to overflow;
- (c) cells were not cleaned so as to remove bacteria and prevent illness or infection;
- (d) cells and washroom areas had black mold and bed bugs were common; and,
- (e) sick prisoners were not separated and removed from the cells they shared with other prisoners.

20. The Plaintiffs state that the living conditions at EMDC during the Claim Period fell below the standard required to humanely and safely house prisoners.

21. The Defendant, its employees, servants and agents, were at all material times aware of the unhygienic and unsanitary conditions at EMDC and, despite this knowledge, took no steps to remedy the conditions.

22. The Plaintiffs state that the Defendant owed a duty to the class members to ensure that during their custody and incarceration at EMDC, the condition of the Detention Centre was such that prisoners were housed in a humane, sanitary and safe manner.

23. The Plaintiffs state that the unsanitary, unhygienic and unsafe condition of EMDC during the Claim Period is the result of the negligence of the Defendant, its employees, servants and agents; in particular,

- (a) The Defendant permitted overcrowding at the EMDC to the point where the conditions referred to above were prevalent throughout the Claim Period;

- (b) The Defendant took no steps to relieve the overcrowding or to provide further or alternative sanitary facilities for prisoners;
- (c) The Defendant failed to ensure that the toilets in the cells and washrooms were properly maintained and functioning;
- (d) The Defendant failed to ensure that the toilets in cells and washrooms were kept in a clean and hygienic state;
- (e) The Defendant failed to make timely or reasonable inspections of the cells and washrooms to ensure that the toilets were functioning and hygienic;
- (f) The Defendant failed to respond to numerous complaints made by prisoners with respect to the overcrowded conditions or the unhygienic and unsanitary state of the cells and washrooms;
- (g) The Defendant failed to separate patients who were sick and likely to be contagious from prisoners who were not then ill;
- (h) The Defendant permitted the conditions at EMDC to reach the point where the conditions were inhumane, unsanitary and unhygienic.

24. The Plaintiffs state that the negligence of the Defendant aforesaid constitutes systemic negligence that results from the Defendant's failure to follow its own policies, protocols and standards for housing prisoners, or from the failure to have in place practises, policies, protocols or standards to ensure the humane and sanitary housing of prisoners in the Defendant's care at EMDC.

25. Further, prisoners were frequently confined to their cells for long periods of time thereby exacerbating the unsanitary and unhealthy conditions within the cells. The Defendant took no steps to relieve the overcrowded conditions, nor did the Defendant take any steps to mitigate the unsanitary and unhealthy conditions within the cells, ranges and washrooms despite the obvious and apparent poor conditions in which prisoners were held.

26. The Plaintiffs state that the conditions at EMDC during the Claim Period violate the rights of class members to be held in custody in a humane, safe and sanitary facility and, as such, constitute cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Canadian Charter of Rights and Freedoms*.

27. Further, or in the alternative, the Plaintiffs state that the conditions at the EMDC and the conduct of the Defendant aforesaid, constitute an infringement of and deprivation of the right to life, liberty and security of the person as guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*.

28. The members of the Plaintiff class were in the care, custody and control of the Defendant and, as such, they were subject to the unilateral exercise of discretion or power by the Defendant, its employees, servants and agents while in EMDC.

29. The Defendant has undertaken by legislation, court order or otherwise to provide for the custody, care and supervision of class members while incarcerated at EMDC. The Plaintiffs plead and rely upon the provisions of the *Ministry of Correctional Services Act*, R.S.O. 1990, Chapter M.22 as amended and in force during the Claim Period, and in particular, sections 1, 4, 5, 6, 7, 8, 14, 20, 24, together with the Regulations thereto.

30. The Plaintiffs state that there exists between the Defendant and the members of the Plaintiff class a limited fiduciary relationship pursuant to which the Defendant owed a fiduciary obligation to the members of the Plaintiff class to,

- (a) House the members of the Plaintiff class in a humane, sanitary and safe manner;
- (b) To take reasonable steps to correct deficiencies within EMDC where such deficiencies result in inhumane, unsanitary and unsafe conditions; and,
- (c) To exercise their discretion and power for the protection of the members of the Plaintiff class provided the exercise of such discretion was consistent with their statutory and other obligations.

31. The Plaintiffs state that the Defendant breached its fiduciary obligations by virtue of the inhumane, unsafe, unsanitary and unhygienic conditions which it permitted to exist and caused to continue during the Claim Period.

32. The Plaintiffs also plead and rely upon,

- (a) The *United Nations Declaration of Human Rights*, articles 3 and 5;
- (b) The *United Nations International Covenant on Civil and Political Rights*, articles 7 and 10;
- (c) The Compendium of the UN Standards and Norms in Crime Prevention and Criminal Justice; and,
- (d) The *United Nations Standard Minimum Rules for the Treatment of Prisoners*, sections 7-10, 12, 14, 19, 20, 22-27, 35, 46, 57, 60, 63, 67, 82, 84-86 and 88.

VIOLENCE AND SAFETY

33. Despite the overcrowded conditions at EMDC during the Claim Period, the Defendant did nothing to modify or increase the supervision and care provided to prevent or minimize violence among inmates.

34. The Defendant, its employees, servants and agents regularly and routinely failed to properly supervise and oversee prisoners at EMDC in the cells, ranges, washrooms and other parts of the facility.

35. Because of the layout and design of the cell blocks, guards were often unable to see or hear what was transpiring in the cell block and routinely closed the doors to the guard stations so as not to see or hear what was happening in the cell blocks.

36. The Defendant knew or ought to have known at all material times that the overcrowding together with the unsanitary and unhygienic conditions at EMDC were likely to increase the frequency and severity of violence between inmates.

37. Rather than take steps to mitigate this risk, the Defendant, its employees, servants and agents instead encouraged and promoted violence upon and among inmates which fostered an atmosphere of brutality and intimidation; in particular,

- (a) Guards failed to supervise and oversee prisoners while in their cells or on the ranges;
- (b) Guards discouraged inmates who were physically assaulted from making any complaint;

- (c) Guards failed to follow the protocols and procedures in place for victims of assault;
- (d) Guards used excessive force for which there was no follow-up investigation by supervisory staff;
- (e) Guards inflicted excessive, inappropriate and unnecessary physical assaults on inmates;
- (f) Guards instructed or encouraged inmates to assault other inmates, particularly sex offenders;
- (g) Prisoner complaints of physical assaults or intimidation by guards or other inmates were ignored or dismissed;
- (h) Proper investigations of physical assaults were not conducted;
- (i) Victims of physical assaults were not protected against further assaults by the same or other inmates;
- (j) The guards abdicated their supervisory and protective roles to inmates in each range;
- (k) Guards advised inmates to follow the rules set by the usually larger and more violent inmates known as “servers”;
- (l) Guards permitted the “servers” to set their own rules and to enforce those rules with impunity;

- (m) Guards discouraged complaints about the conditions and practises at the EMDC and encouraged violence against those who made complaints;
- (n) Prisoners were not taken promptly for medical treatment and/or were discouraged from seeking medical treatment for injuries sustained; and,
- (o) Prisoners who suffered serious physical injuries or illness did not receive prompt or appropriate medical care and treatment.

38. The Plaintiffs state that the Defendant is a party to the assaults and batteries that took place on inmates whether perpetrated by the guards or by other inmates by virtue of the Defendant's conduct above.

39. The Defendant had policies which mandated:

- (a) The level and manner of supervision to be provided to inmates;
- (b) The steps to be taken when an inmate complained of a physical assault;
- (c) The steps to be taken when an inmate complained of an anticipated physical assault and/or threats of violence;
- (d) The steps to be taken when staff knew or ought to have known that a prisoner was at risk of physical assault or intimidation;
- (e) The steps to be taken to investigate and respond to allegations of physical assault or abuse of inmates by guards;

- (f) The steps to be taken to ensure that injured or sick inmates received prompt medical attention and, where necessary, ongoing medical treatment.

40. The Plaintiffs state that the Defendant owed a duty of care to the members of the Plaintiff class to:

- (a) Ensure the safety of prisoners in the Defendant's custody;
- (b) Take reasonable steps to prevent, discourage and investigate acts of physical violence among inmates;
- (c) Adhere to the policies referred to in the preceding paragraph;
- (d) Properly train, supervise and inspect its employees, servants and agents to ensure that they were qualified and performed their duties in an appropriate manner and, where necessary, take remedial action including disciplinary action;
- (e) Provide appropriate mechanisms for complaint by victims of violence within the EMDC, whether such violence was occasioned by another inmate or by the guards;
- (f) Report and investigate those incidents and take appropriate actions; and,
- (g) Take such measures as are necessary to protect vulnerable prisoners and those who have been the victim of violence from further intimidation and physical assaults.

41. The Plaintiffs state that the Defendant, its employees, servants and agents were systemically negligent and breached their duty of care owed to the members of the Plaintiff class; in particular:

- (a) The Defendant failed to take reasonable steps to prevent, discourage or investigate intimidation and violence to inmates;
- (b) The Defendant permitted practises which encouraged physical violence and discouraged the reporting of assaults and intimidation;
- (c) The Defendant failed to adhere to the policies in place to ensure the safety of prisoners and prevention of violence to and among prisoners;
- (d) The Defendant failed to properly or adequately supervise and investigate complaints which were made by prisoners who were the victims of intimidation and assault by other inmates or by guards;
- (e) The Defendant permitted the more violent and aggressive inmates to set the rules and impose their own discipline and punishment;
- (f) The Defendant failed to have in place policies, practises and training for its employees, servants and agents to protect prisoners from violence and intimidation;
- (g) The Defendant failed to separate or segregate vulnerable inmates, victims of assaults or intimidation and inmates who suffered from mental or physical disabilities;

- (h) The Defendant failed to separate or segregate unconvicted prisoners from convicted inmates; and
- (i) The Defendant had in place inadequate protocols and procedures or practises to respond to complaints or to monitor the risk of physical violence and intimidation within EMDC.

42. The Plaintiffs state that by its conduct and omissions, the Defendant systematically fostered a culture of violence, brutality and intimidation at EMDC such that the safety and security of class members was at constant risk during the Claim Period.

43. The Plaintiffs state that the Defendant, its employees, servants and agents callously disregarded the safety and security of members of the Plaintiff class and permitted conditions of violence, brutality and intimidation to persist at the EMDC throughout the Claim Period.

44. The Defendant allowed a culture to develop whereby the more powerful inmates controlled the cell blocks. Those inmates, known as “servers” set the rules and meted out punishment indiscriminately within the cell block. The Defendant recognized, accepted and encouraged their actions as self-appointed rulers of the cell blocks.

45. The Defendant was at all material times aware that violence occurred against prisoners by these servers within the cell blocks but did nothing to protect prisoners.

46. The Plaintiffs state that the Defendant tacitly approved of the violence and control by servers to the point where written rules and notices posted by servers within the cell block were known to the Defendant and prisoners were instructed to follow those rules or risk being beaten.

47. The Plaintiffs state that the Defendant allowed a climate of fear and intimidation to exist within the EMDC thereby putting at risk all class members to threats, violence, neglect or other abuse from other prisoners and guards.

48. The Plaintiffs state that the practises of the Defendant in the care and custody of the Plaintiff class members during the Claim Period constitutes cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Canadian Charter of Rights and Freedoms*.

49. Further, the Plaintiffs state that the practises of the Defendant in the care and custody of the Plaintiff class members at the EMDC during the Claim Period constitute an infringement of and deprivation of the right to “security of the person” as guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*.

50. The Plaintiffs state that the Court Orders by which prisoners were remanded to the EMDC during the Claim Period expressly provided that the prisoner was to be kept safe during his or her incarceration at EMDC. At no time did the Defendant advise the Courts that it was unable to comply with the Orders pursuant to which prisoners were remanded to the EMDC.

51. The Plaintiffs state the conditions at the EMDC and the practises of the Defendant above constitute a violation of the remand orders by which prisoners were incarcerated at EMDC.

52. Further, or in the alternative, the Plaintiffs state that the members of the Plaintiff class were entirely dependent and reliant upon the due exercise of power and control by the Defendant, its employees, servants and agents, in their administration of the EMDC and the enforcement of the

policies governing safe custody, protection and the prevention of violence and intimidation of prisoners.

53. The Plaintiffs state that the Defendant owed a fiduciary duty to the members of the Plaintiff class consistent with their statutory and other legal obligations to act in the best interests of the members of the Plaintiff class to discourage, prevent, investigate and act upon incidents and complaints of physical violence and intimidation to prisoners.

54. The Plaintiffs state that the Defendant breached its fiduciary obligations to the members of the Plaintiff class by virtue of its practises above which encouraged intimidation of and violence against prisoners at EMDC during the Claim Period, and the failure to take steps to prevent the occurrence or recurrence of intimidation and violence. Prisoners at the EMDC were at the mercy of the Defendant, its employees, servants and agents whose conduct encouraged and fostered an atmosphere of violence, brutality and intimidation.

MEDICAL CARE AND TREATMENT

55. There is no infirmary unit at EMDC. Ill or injured inmates were occasionally placed in segregation cells in proximity to the health centre but such cells were not dedicated for ill or injured inmates and were not monitored by EMDC health centre staff.

56. There were no medically trained personnel on duty and no access to onsite health care for prisoners between 11 p.m. and 7 a.m. during the Claim Period.

57. Further, the Plaintiffs state that throughout the Claim Period, there was no comprehensive policy or protocol for communication among medical staff as well as between medical and operational staff with regard to inmate health care needs.

58. The Plaintiffs state that the Defendant owed a duty of care to the class members to,
- (a) Provide reasonable medical care and treatment for prisoners at EMDC;
 - (b) Take reasonable steps to segregate prisoners who were contagious from the general prison population;
 - (c) Provide competent and trained medical personnel to deal with sick or injured prisoners;
 - (d) Transport prisoners to local hospitals where more serious medical attention was required and do so in a timely manner;
 - (e) Identify prisoners at risk because of their mental or physical disability or illness and ensure that their medications were not taken by other inmates; and,
 - (f) Follow policies and procedures to document injuries sustained by inmates while in EMDC.
59. The Plaintiffs state that the medical care and treatment provided by and available to class members during the Claim Period was completely inadequate; in particular,
- (a) Prisoners were discouraged from seeking medical attention for injuries or illnesses by the Defendant's employees, servants or agents;
 - (b) Prisoners were discouraged from reporting injuries sustained by assaults on prisoners by guards or other prisoners;

- (c) Prisoners did not receive medication or treatment prescribed by doctors and/or did not receive such medication or treatment in a timely and regular fashion;
- (d) Prisoners did not receive regular or appropriate follow-up for injuries suffered at EMDC;
- (e) Patient care instructions from doctors and hospitals were regularly and routinely disregarded;
- (f) Prisoners were not transferred to outside hospitals for prompt and necessary medical care and treatment;
- (g) The Defendant employed medical staff who were not trained or qualified to diagnose serious illness or injuries;
- (h) Prisoners who were placed in isolation or segregation received no medical supervision;
- (i) Prisoners who required special services or care for physical and mental illness were housed with other prisoners in the general population without regard to their special needs;
- (j) No steps were taken to ensure that medications provided to prisoners were not confiscated by other prisoners;
- (k) Special medical and dietary needs were frequently ignored or disregarded and in any event were not met; and,

- (l) The Defendant failed to have in place medical personnel to address illness or injury resulting in a lack of treatment or lack of timely treatment of illnesses and injury.

60. The Plaintiffs state that the Defendant, its employees, servants and agents, regularly and routinely failed to follow policies in place at EMDC during the Claim Period for the medical care and treatment of prisoners and the recording and reporting of injuries suffered at EMDC.

61. The Plaintiffs state that the Defendant was negligent in failing to follow the policies in place for the care, treatment, recording and reporting of illness and injury.

62. Further, or in the alternative, the Plaintiffs state that the Defendant failed to put in place appropriate policies, practises and supervision to ensure that class members received appropriate and timely medical care and treatment during the Claim Period. The Defendant's conduct above constitutes systemic negligence.

63. Further, the Plaintiffs state that the conduct of the Defendant, its employees, servants and agents aforesaid constitutes cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the *Canadian Charter of Rights and Freedoms*.

64. Further, the Plaintiffs state that the conduct of the Defendant, its employees, servants and agents constitutes an infringement of and deprivation of the right to "security of the person" as guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*.

65. Further, or in the alternative, the failure to provide an appropriate and timely medical care and treatment violated the remand orders by which prisoners were incarcerated at EMDC.

66. The Plaintiffs state that the members of the Plaintiff class depended and relied entirely upon the Defendant, its employees, servants and agents with respect to the provision of medical care and treatment while incarcerated at EMDC during the Claim Period.

67. The Plaintiffs state that there existed between the Defendant and members of the Plaintiff class a limited fiduciary duty pursuant to which the Defendant owed a fiduciary obligation to the members of the Plaintiff class to ensure that they received appropriate and timely medical care and treatment for injuries and illnesses while in the Defendant's custody and care at EMDC.

68. The Plaintiffs state that the Defendant breached its fiduciary obligations owed to the Plaintiff class by failing to provide appropriate and timely medical treatment and care to class members.

69. The Plaintiffs state that the Defendant was at all material times aware of the inadequate care and treatment by virtue of complaints made by prisoners and family members of prisoners as well as published media reports.

70. The Plaintiffs state that notwithstanding its knowledge of the inadequate and inappropriate medical care and treatment available to class members during the Claim Period, the Defendant took no steps to remedy or mitigate its negligence and/or breach of fiduciary duty.

EXPERIENCE OF REPRESENTATIVE PLAINTIFFS

Glenn Johnson

71. On August 31, 2012, the Plaintiff, Glenn Johnson, slipped and fell on a puddle of water in the cell block. He was treated at the EMDC health centre where it was determined that he had

sustained a mild concussion. The Plaintiff was transferred to a smaller cell to recover. His cellmate decided that another inmate would move into the cell and would occupy Mr. Johnson's bed, thereby relegating the Plaintiff to the floor. When Mr. Johnson protested this arrangement, he was assaulted by the cellmate which resulted in a laceration to his head and cuts and bruises to his mouth.

72. The Plaintiff's laceration should have been treated with stitches but this treatment was denied. No follow-up treatment was provided.

73. The Plaintiff, Glenn Johnson, was further assaulted on October 28, 2012. The Plaintiff was informed by other inmates that he would be the "entertainment for the night" and would be required to fight another inmate. When he refused, the Plaintiff was beaten by a group of inmates.

74. On December 30, 2012, the Plaintiff was attacked by three inmates and stabbed in the back with a pencil.

75. Throughout much of his incarceration, the Plaintiff, Mr. Johnson, was held in a cell where he was required to sleep on the floor because of overcrowding. He was also subject to repeated threats of violence from other inmates and on one occasion, had a cup of urine thrown on him. On another occasion, the Plaintiff was sexually touched by another inmate as he slept on the floor.

76. In or about November, 2012, the Plaintiff, Glenn Johnson, was threatened with violence by an inmate who threatened to rape and beat the Plaintiff's blind wife and daughter when released.

The Plaintiff's request to be moved to a different range away from the threatening inmate was denied.

77. Lockdowns occurred on a frequent basis while the Plaintiff was incarcerated at EMDC. On one such occasion, the Plaintiff was strip-searched and pepper-sprayed without appropriate reason, all of which added to his fear for his safety at the EMDC.

78. The Plaintiff, Mr. Johnson, has dietary restrictions and allergies of which the guards were fully aware. On several occasions, the Plaintiff was provided with food that he could not eat. When Mr. Johnson brought this to the attention of the guards, he was provided with juice and a fruit cup, and on some occasions was deprived of a nutritional meal for multiple days in a row.

79. The Plaintiff, Glenn Johnson, suffers from hepatitis-C and depression. He takes medications to treat these conditions. On an almost daily basis, the Plaintiff was beaten for his medications by other inmates to the knowledge of the Defendant.

80. The Plaintiff was also deprived of proper medical treatment while at EMDC. In August, 2012, the Plaintiff contracted ringworm from another inmate and was refused treatment.

81. In October, 2012, the Plaintiff developed a lump on his arm which was itchy and sore but was not provided with any antibiotics to treat this infectious condition.

82. The representative Plaintiffs state that at all material times the Defendant knew or ought to have known of the threats, violence, lack of medical attention and overcrowded conditions which these Plaintiffs and other members of the Plaintiff class endured during the Claim Period.

Michael Smith

83. The Plaintiff, Michael Smith, was an inmate at EMDC from July 9 to July 12, 2012.
84. On July 9, 2012, the Plaintiff was advised by the guard who escorted him to Range 6 that:
- (a) EMDC was a lot rougher than other jails;
 - (b) He should keep his head down to avoid being attacked;
 - (c) The inmates posted rules on the wall of the range and he should make himself aware of them; and,
 - (d) If he failed to follow those rules set by the inmates, he would get hurt.
85. During his time on the range, the Plaintiff was indeed subject to the direction and control of an inmate who set the rules and enforced those rules within the range.
86. On July 10, 2012, the Plaintiff was threatened and then assaulted by several inmates. He was dragged from the range to the washrooms where his right cheek was sliced through by a piece of plastic tray.
87. The Plaintiff was required by those who assaulted him to clean and bandage his own wound and was later taken to the medical centre for examination. At the time, the Plaintiff was suffering from a 1 inch gaping wound to his right cheek together with an abrasion to his left shoulder area.
88. The Plaintiff was subsequently escorted to a hospital where he received 13 stitches and required plastic surgery to repair the damage to his right cheek. As a result of the assault, this Plaintiff suffered permanent disfiguring facial scars as well as ongoing psychological trauma.

DAMAGES

89. The Plaintiffs state that the Defendant knew, or ought to have known, that as a consequence of their negligence, breach of fiduciary duty and violation of rights guaranteed by Sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, the class members would suffer significant physical, emotional and psychological harm.

90. Members of the Plaintiff class have been sexually, physically, mentally and emotionally traumatized by their experiences arising from their incarceration at EMDC during the Claim Period as a consequence of the conditions and conduct of the Defendant, its servants, agents and employees as described above. In general, and without restricting the generality of the foregoing, the Plaintiff class members have suffered:

- (a) Physical injuries;
- (b) Fear and intimidation;
- (c) Adverse effects on interpersonal relationships;
- (d) An impaired ability to complete or pursue education;
- (e) An impaired ability to obtain and sustain employment, resulting in lost or reduced income and ongoing loss of income;
- (f) Reduced earning capacity;
- (g) An impaired ability to deal with persons in authority;
- (h) An impaired ability to trust other people or to sustain intimate relations;

- (i) An impaired ability to express emotions in a normal and healthy manner;
- (j) Psychological disorders including depression and anxiety;
- (k) Post-traumatic stress disorder;
- (l) A need for medical and psychological treatment and counselling;
- (m) An increased need for medical and psychological treatment and counselling;
- (n) An impaired ability to enjoy and participate in recreational, social and athletic and employment activities;
- (o) Physical pain and suffering;
- (p) Loss of friendship, companionship and support of friends and community; and,
- (q) Loss of enjoyment of life.

91. The Plaintiffs state that the damages suffered by the members of the Plaintiff class were an entirely foreseeable consequence of the conduct of the Defendant aforesaid.

92. The Plaintiffs plead that the Defendant's conduct and actions in the circumstances have caused class members to develop certain psychological defence mechanisms in order to survive the conditions and abuse at EMDC. The defence mechanisms include denial, repression, dissociation and guilt.

93. Further, the Plaintiffs state that the fear and intimidation instilled in class members as a consequence of the violence and conditions prevalent at EMDC have prevented class members from coming forward or rendered them unable to pursue their claims.

94. The Defendant's conduct prevented the Plaintiffs from discovering the wrongfulness of the Defendant's actions, the nature of their injuries and/or the nexus between their injuries and the abuse.

95. Plaintiff class members have received little or no meaningful therapy regarding the abuse suffered at EMDC. They are still in the process of coming to understand and appreciate the full extent of the injuries caused to them by the abuse and the nexus between the abuse and injuries cause by the abuse. The Plaintiffs require therapy and medical attention. The Plaintiffs were incapable of commencing the proceeding before now because of their physical, mental or psychological condition.

96. Further, as a result of the conduct of the Defendant above, the Plaintiff class members have incurred out-of-pocket expenses including medical expenses, hospital accounts, x-ray accounts, physician accounts, prescription drugs, medical, transportation and rehabilitation costs, and lost income, housekeeping and other related expenses. The full particulars of these accounts will be delivered to the Defendant prior to trial.

97. The Plaintiffs propose that this action be tried in the City of London, in the Province of Ontario.

DEC 09 2011

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GLENN JOHNSON and MICHAEL SMITH -and- HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO Court File No.
Plaintiffs Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

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