

Court File No.:

3217/14

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DENNIS KARGUS, DEBORAH E. KARGUS and
AMANDA HUDDER

05/05/2014 3:40PM JUDGE #2357
Plaintiffs

- and -

ST CLN OTHER #181.00
TOTAL \$151.00
#101.00
#101.00

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, DAN SMITH, STEPHEN
JURKUS, LESLIE LONSBARY, GREGORY LANGFORD, CORRECTIONAL
OFFICER JOHN DOE #1, CORRECTIONAL OFFICER JOHN DOE #2,
CORRECTIONAL OFFICER JANE DOE #1, CORRECTIONAL OFFICER JANE DOE
#2, ANTHONY MAURICE GEORGE, BRADLEY SCOTT MIELKE, DAVID CHARLES
CAKE, INMATE JOHN DOE #3, INMATE JOHN DOE #4

Defendants

STATEMENT OF CLAIM

TO ALL DEFENDANTS:

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 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 May 2/14

Issued By: "N. Long"

Address of Court office:
80 Dundas Street,
London, Ontario
N6A 6A3

TO:

Her Majesty the Queen in Right of Ontario
Crown Law Office (Civil Law)
Ministry of the Attorney General
720 Bay St., 8th Floor
Toronto, ON M7A 2S9

Dan Smith
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Stephen Jurkus
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Leslie Lonsbary
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Gregory Langford
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Correctional Officer John Doe #1
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Correctional Officer John Doe #2
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Correctional Officer Jane Doe #1
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Correctional Officer Jane Doe #2
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Bradley Scott Mielke
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Inmate John Doe #3
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Anthony Maurice George
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

David Charles Cake
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

Inmate John Doe #4
c/o Elgin Middlesex Detention Centre
711 Exeter Rd.
London, ON N6E 1L3

CLAIM

1. The Plaintiffs claims:
 - a) Dennis Kargus:
 - i. Damages pursuant to the provisions of the Family Law Act, R.S.O. 1990, c.F.3, Section 61 in the amount of \$100,000.00;
 - b) Deborah E. Kargus:
 - i. Damages pursuant to the provisions of the Family Law Act, supra, in the amount of \$100,000.00;
 - c) Amanda Hudder:
 - i. Damages pursuant to the provisions of the Family Law Act, supra, in the amount of \$50,000.00;
 - d) Pre-judgment interest on the aforesaid sums pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.C.43 as amended;
 - e) Their costs of this action on a substantial indemnity basis;
 - f) Such further and other relief as to this Honourable Court may seem just.
2. The Plaintiff, Dennis Kargus, now 56 years of age, born March 19th, 1958, resides in the City of Sarnia, in the County of Lambton. This Plaintiff is the father of the Deceased, Adam Kargus (hereinafter referred to as "the Deceased"). This Plaintiff is, and was at all material times, employed as a Steel Fabricator Inspector.
3. The Plaintiff, Deborah E. Kargus, now 48 years of age, born October 8th, 1965, resides with her husband, the Plaintiff, Dennis Kargus, in the City of Sarnia, aforesaid. This Plaintiff is the stepmother of the Deceased and had so been since the commencement of her common-law relationship the Plaintiff, Dennis Kargus, in 1995 and then their marriage in August, 2001.
4. The Plaintiff, Amanda Hudder, now 28 years of age, born on July 10th, 1985, resides in the City of St. Thomas, in the County of Elgin. This Plaintiff is the stepsister of the Deceased.
5. The Deceased, Adam Kargus was, at the time of his death on October 31st, 2013 29 years of age, being born on the 6th day of January, 1984. His death occurred after having suffered an

agonizing and brutal beating over the course of some several hours during the evening, late night and early morning of Wednesday and Thursday, October 30th and 31st, 2013, while he was an inmate at the Elgin Middlesex Detention Centre, 711 Exeter Road, London, Ontario.

6. The Defendant, Her Majesty the Queen in Right of Ontario, is named as a Defendant in these proceedings pursuant to the provisions of the Proceedings Against The Crown Act, R.S.O. 1990, c.P.27, as amended, on behalf of the Crown, and on behalf of the Attorney General of Ontario and the Ministry of Community Safety and Correctional Services and on behalf of their agents, servants, officers, employees, those named in this proceeding and indeed all others who may have come into contact with the Deceased and were responsible for him on October 30th and 31st, 2013, the identities of whom, beyond those specifically named herein, are at this stage unknown to the Plaintiffs. This Defendant shall hereinafter be referred to as "Her Majesty".

7. The Defendant Dan Smith, resides in the City of London, County of Middlesex and was, at all material times, the Superintendent of the Elgin Middlesex Detention Centre, employed by Her Majesty and was responsible for the inmates, including the Deceased, their supervision, safety, security and wellbeing. The said Defendant, an employee of Her Majesty, and together with Her Majesty, was responsible for setting policies and procedures for the Elgin Middlesex Detention Centre, its correctional officers and other employees, effecting such policies and procedures and supervising all correctional officers and other employees of the Elgin Middlesex Detention Centre including those Defendants hereinafter referred to.

8. The Defendant, Stephen Jurkus, resides in the City of London, County of Middlesex and was, at all material times, a Supervisor/Operational Manager, duly employed at that facility by Her Majesty, and was responsible for the supervision, safety, security and wellbeing of its inmates, including the Deceased. He was also responsible for the supervision, direction and control of correctional officers, including those Defendants hereinafter referred to.

9. The Defendant, Leslie Lonsbary, resides in the City of London, County of Middlesex and was, at all material times, a Correctional Officer at the Elgin Middlesex Detention Centre duly employed at that facility by Her Majesty, and was responsible for the supervision, safety, security and wellbeing of its inmates, including the Deceased.

10. The Defendant, Gregory Langford, resides in the City of London, County of Middlesex and was, at all material times, a Correctional Officer at the Elgin Middlesex Detention Centre duly employed at that facility by Her Majesty, and was responsible for the supervision, safety, security and wellbeing of its inmates, including the Deceased.

11. The Defendants, Correctional Officers John Doe #1 and #2 and Correctional Officers Jane Doe #1 and #2 were, at all material times, Correctional Officers at the Elgin Middlesex Detention Centre duly employed at that facility by Her Majesty, and were responsible for the supervision, safety, security and wellbeing of its inmates, including the Deceased. Their identities are unknown to the Plaintiffs at this stage.

12. The Defendant, Anthony Maurice George, was, at all material times, an inmate at the Elgin Middlesex Detention Centre and was housed with, in fact in the same cell as, and was in the company of the Deceased, at all material times.

13. The Defendant, Bradley Scott Mielke, was, at all material times, an inmate at the Elgin Middlesex Detention Centre and was housed with, detained with or in the company of the Deceased at all material times.

14. The Defendant, David Charles Cake, was, at all material times, an inmate at the Elgin Middlesex Detention Centre and was housed with, detained with or in the company of the Deceased at all material times.

15. The Defendants, Inmates John Doe #3 and #4 were, at all material times, inmates at the Elgin Middlesex Detention Centre and were housed with, detained with or in the company of the Deceased at all material times. Their identities are unknown to the Plaintiffs at this stage.

16. The Plaintiffs plead and the fact is that the Defendants, all of those save and except perhaps for the Defendants, Anthony Maurice George, Bradley Scott Mielke, David Charles Cake, and Inmates John Doe #3 and #4, owed a duty of care to the Deceased, such duty including but not limited to the lawful and legitimate supervision of him and other inmates while

in custody at the Elgin Middlesex Detention Centre and the protection and preservation of the Deceased's safety, security, wellbeing and health.

17. On or about the 30th and 31st days of October, 2013, while in the custody, care and control of the Defendants, under their supervision and while in the presence of some, or all of them, at the Elgin Middlesex Detention Centre, the Deceased was savagely beaten, suffering multiple and grievous injuries, which injuries led to his death at some point during the evening, night or early morning of October 30th and/or 31st, 2013.

18. The Plaintiffs state and the fact is that the beating of the Deceased, the horrific injuries that resulted therefrom, and which led to his death were caused or contributed to by the negligence, breach of duty and/or intentional acts of the Defendants, or some of them, for whose negligence, breach of duties and actions the Defendant, Her Majesty, is responsible at law.

19. The Plaintiffs plead that the injuries and resulting death of the Deceased occurred solely or in part, as a result of the negligence and breach of duty of the Defendants, Her Majesty, Dan Smith, Stephen Jurkus, Leslie Lonsbary, Gregory Langford, Correctional Officers John Doe #1 and #2 and Correctional Officers Jane Doe #1 and #2, particulars of which are as follows:

- a) Failing to accommodate the Deceased in a reasonable, responsible or safe fashion;
- b) Failing to accommodate the Deceased apart from any persons or inmates when they knew, or ought to have known, of a potential for danger and harm, even death, to the Deceased;
- c) Failing to adequately or at all monitor the inmates, including the Deceased and including the Defendants, Anthony Maurice George, Bradley Scott Mielke and David Charles Cake and Inmates John Doe #3 and #4 while incarcerated at the Elgin Middlesex Detention Centre;
- d) Failing to adequately or at all separate the inmates such that assaultive behaviour between them could not occur, and the welfare, safety and health of the Deceased would thereby have been protected;
- e) Failing to adequately or at all be aware of the dynamics of the inmates and their behaviour, including that of the Deceased and the Defendants George, Mielke and Cake to monitor same while the inmates were incarcerated;

- f) Failing to recognize or appreciate that by placing the Deceased in a cell with the Deceased George they were putting the health, indeed the life, of the Deceased at significant risk and peril;
- g) Failing to secure or obtain a history or profile of the inmates it received into the Elgin Middlesex Detention Centre, to screen them, to measure either the propensity for, or likelihood of violence being perpetrated by an inmate;
- h) Failing to segregate inmates based on their history or propensity for violence, and in particular, to segregate the Defendants, Anthony Maurice George, Bradley Scott Mielke, David Charles Cake and Inmates John Doe #3 and #4 and keep them apart from the Deceased;
- i) Failing to provide the necessities of life to those under their charge, including the Deceased;
- j) Failing to adequately or at all recognize that the Deceased had been injured or harmed, determine the cause of injury or render to him any immediate assistance or obtain medical treatment for him;
- k) Failing to adequately or at all protect the Deceased while in custody at the Elgin Middlesex Detention Centre;
- l) Failing to be aware of, recognize or respond to the risk of harm to the Deceased from other inmates and to take steps so as to minimize or obviate that risk;
- m) Failing to check on, monitor or ensure the safety of inmates, including the Deceased, while in custody at the Elgin Middlesex Detention Centre;
- n) Failing to ensure that those charged with the responsibility for inmates, their safety, security and wellbeing, were trained, instructed or were qualified to undertake such duties;
- o) Failing to ensure that those who had any occasion, at any time, to deal with the Deceased did so with due regard and respect for him, his safety, security and wellbeing;
- p) Failing to have in place a reasonable, indeed any, policy as regarded the safety, security and wellbeing of inmates, including the Deceased, while in custody at the Elgin Middlesex Detention Centre;

- q) Failing to monitor, regulate or govern the number of inmates in custody at the Elgin Middlesex Detention Centre so as to ensure the safety of inmates, including the Deceased;
- r) Permitting the Elgin Middlesex Detention Centre to be overcrowded, thereby putting at peril, and at risk, the safety, security and wellbeing of inmates, including the Deceased;
- s) Failing to have in place a reasonable, indeed any, policy as regarded the staffing of the Elgin Middlesex Detention Centre, and particularly the ranges within which the inmates, including the Deceased, were housed and accommodated.

20. As a result of the negligence and breaches of duty of the Defendants as above noted, and their failure to exercise their duties in a reasonable, proper, prudent and responsible fashion, the Deceased, Adam Kargus, died occasioning significant damages on the part of the Plaintiffs.

21. In the alternative, the Plaintiffs plead the injuries and death of the Deceased, and the damages as suffered by the Plaintiffs, were caused by the intentional acts and assaults perpetrated by the Defendants, Anthony Maurice George, Bradley Scott Mielke, David Charles Cake and Inmates John Doe #3 and #4, one or more of them, and their vicious assaults upon the Deceased.

22. As a result of the aforesaid negligence, breaches of duty or intentional acts on the part of the Defendants, some or all of them, the Plaintiffs have suffered the death of their son and brother, Adam Kargus, and suffered serious and permanent damages as a result therefrom.

23. The Plaintiffs therefore claim damages pursuant to the provisions of the Family Law Act, supra, for funeral expenses, expenses incurred for the benefit of the Deceased, and other out of pocket expenses and special damages, particulars of which will be provided to the Defendants during the course of this lawsuit.

24. The Plaintiffs further claim pecuniary damages for the loss of financial support, or the potential loss of financial support, the Plaintiffs would have received from the Deceased had he not suffered the injuries and died at the hands of, or as a result the negligence and breach of duty and/or intentional acts of the Defendants.

25. The Plaintiffs further claim damages for the loss of guidance, care and companionship that they would have received from their son and brother, the Deceased, Adam Kargus, had his death not occurred at the hands of, or as a result of the negligence and breach of duty of the Defendants.

26. The Plaintiffs plead and rely upon the provisions of the Family Law Act, R.S.O. 1990, c.F.3, the Negligence Act, R.S.O. 1990, c.N.1, the Proceedings Against The Crown Act, R.S.O. 1990, c.P.27 and amendments thereto.

27. The Plaintiffs propose that this action be tried at London, Ontario.

Date: May 2, 2014

S. MICHAEL ROBERTSON

Lawyer

186 Albert St., Suite 105

London, ON N6A 1M1

Tel: 519-660-1147

Fax: 519-660-0840

Lawyer for the Plaintiffs

LSUC # A019287K

DENNIS KARGUS, DEBORAH E. KARGUS and
AMANDA HUDDER

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, DAN SMITH,
STEPHEN JURKUS, LESLIE LONSBARY, GREGORY LANGFORD,
CORRECTIONAL OFFICER JOHN DOE #1, CORRECTIONAL OFFICER
JOHN DOE #2, CORRECTIONAL OFFICER JANE DOE #1,
CORRECTIONAL OFFICER JANE DOE #2, ANTHONY MAURICE
GEORGE, BRADLEY SCOTT MIELKE, DAVID CHARLES CAKE,
INMATE JOHN DOE #3, INMATE JOHN DOE #4

Plaintiffs

- and - Defendants

Court File No.:

3217/14

SUPERIOR COURT OF JUSTICE
LONDON

STATEMENT OF CLAIM

Michael Robertson

S. MICHAEL ROBERTSON
Lawyer

186 Albert St., Suite 105
London, ON N6A 1M1

Tel: 519-660-1147
Fax: 519-660-0840

Lawyer for the Plaintiffs
LSUC # 19287K