

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

MONDAY, THE 20TH

)

JUSTICE PERELL

)

DAY OF APRIL, 2020

)

BETWEEN:

CONREY FRANCIS

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*



JUDGMENT

THIS MOTION, made by the Plaintiff, for summary judgment was heard on January 20-24, 2020, at the Superior Court of Justice, 180 Queen St. W, Toronto, Ontario, in the presence of counsel for all parties, with judgment having been reserved to this day;

ON READING the motion records, transcript briefs, facta, authorities, undertaking briefs and additional materials of the parties, and on hearing the submissions of the lawyers for the parties;

1. **THIS COURT ORDERS AND ADJUDGES** that the Plaintiff's motion for summary judgment is granted.

2. **THIS COURT ORDERS AND ADJUDGES** that this judgment inures to the benefit of the "**Class**", which is composed of "**Class Members**", and which is defined as follows:

All current and former inmates, who were alive as of April 20, 2015:

I. Inmates with a Serious Mental Illness

(a) who were subjected to Administrative Segregation for any length of time at one of the Correctional Institutions between January 1, 2009 and September 18, 2018; and,

(b) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders ("DSM"): Schizophrenia (all sub-types), Delusional disorder, Schizophreniform disorder, Schizoaffective disorder, Brief psychotic disorder, Substance-induced psychotic disorder (excluding intoxications and withdrawal), Psychotic disorder not otherwise specified, Major depressive disorders, Bipolar disorder I, Bipolar disorder II, Neurocognitive disorders and/or Delirium, Dementia and Amnesic and Other Cognitive Disorders, Post-Traumatic Stress Disorder; Obsessive Compulsive Disorder; or Borderline Personality Disorder; and who suffered from their disorder, in a manner described in **Appendix "A"**, and,

(c) who reported such diagnosis and suffering to the Defendant's agents before or during their Administrative Segregation (the "SMI Inmates");

or,

II. Inmates in Prolonged Administrative Segregation

who were subjected to Administrative Segregation for 15 or more consecutive days ("Prolonged Administrative Segregation") at one of the Correctional Institutions between January 1, 2009 and September 18, 2018 (the "Prolonged Inmates");

whereas

"Correctional Institutions" are correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, excluding the St. Lawrence Valley Correctional and Treatment Centre,

"Inmates" are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22,

“Administrative Segregation” refers to segregation as outlined in section 34 of Regulation 778, R.R.O. 1990 under *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, and

Appendix "A" states as follows:

Significant impairment in judgment (including all of the following: the inability to make decisions, confusion, and disorientation);
Significant impairment in thinking (including both paranoia and delusions that make the offender a danger to self or others);
Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders or staff);
Significant impairment in communications that interferes with ability to effectively interact with other offenders or staff; hallucinations; delusions; or severe obsessional rituals that interferes with ability to effectively interact with other offenders or staff;
Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; or
Chronic and severe self-injury.

3. **THIS COURT ORDERS AND ADJUDGES** that the certified common issues are answered as follows:

(a) By the operation and management of the Correctional Institutions from April 20, 2015 to September 18, 2018, did the Defendant owe a duty of care to the Class Members?

Yes.

(b) If the answer to (a) is yes, what is the nature of that duty of care?

Ontario owed a duty of care not to operate a system of administration segregation that caused harm to the inmates.

(c) By the use of Administrative Segregation and/or Prolonged Administrative Segregation at the Correctional Institutions from April 20, 2015 to September 18, 2018, did the Defendant breach a duty of care owed to some or all of the Class Members?

Yes.

(d) Did the use of Administrative Segregation deprive the SMI Inmates of security of the person under s. 7 of the Charter?

Yes.

(e) Did the use of Prolonged Administrative Segregation deprive the Prolonged Inmates of security of the person under s. 7 of the Charter?

Yes.

(f) If the answer to (d) or (e) is "yes", does the deprivation fail to accord with the principles of fundamental justice for some or all of the Class Members?

Yes.

(g) If the answer to either question in (f) is "yes", does the deprivation fail to accord with the principles of fundamental justice where the Class Members were placed in Administrative Segregation or Prolonged Administrative Segregation and the reason indicated for such placement was: (i) at their own request; (ii) for their own protection, including protection for medical reasons; (iii) to protect the security of the institution or safety of others, including protection for medical reasons; (iv) for alleged misconduct of a serious nature; or (v) for any other reason?

Yes.

(h) Does the deprivation of liberty under s. 7 of the Charter fail to accord with the principles of fundamental justice for some or all of the Class Members?

Yes

(i) If the answer to (h) is "yes", does the deprivation fail to accord with the principles of fundamental justice where the Class Members were placed in Administrative Segregation or Prolonged Administrative Segregation and the reason indicated for such placement was: (i) at their own request; (ii) for their own protection, including protection for medical reasons; (iii) to protect the security of the institution or safety of others, including protection for medical reasons; (iv) for alleged misconduct of a serious nature; or (v) for any other reason?

Yes.

(j) Did the use of Prolonged Administrative Segregation constitute cruel and unusual treatment or punishment under s. 12 of the Charter for the Prolonged Inmates where the Prolonged Inmates were placed in Administrative Segregation and the reason indicated for such placement was: (i) at their own request; (ii) for their own protection, including protection for medical reasons; (iii) to protect the security of the institution or safety of others, including protection for medical reasons; (iv) for alleged misconduct of a serious nature; or (v) for any other reason?

Yes.

(k) Did the use of Administrative Segregation constitute cruel and unusual treatment or punishment under s. 12 of the Charter for the SMI Inmates where the SMI Inmates were placed in Administrative Segregation and the reason indicated for such placement was: (i) at their own request; (ii) for their own protection, including protection for medical reasons; (iii) to protect the security of the institution or safety of others, including protection for medical reasons; (iv) for alleged misconduct of a serious nature; or (v) for any other reason?

Yes.

(l) If the answer to questions (g), (i), (j) or (k) is "yes", were such violation(s) justified under section 1 of the Charter?

No.

(m) If the answer to question (l) is "no", are damages pursuant to section 24(1) of the Charter an appropriate remedy?

Yes.

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

Yes.

(o) If the answer to (n) is "yes", what is the appropriate quantum of such damages?

\$30.0 million, without prejudice to Class Members' claims for further damages at the individual issues stage ("**Aggregate Damages**")

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

Not on a collective basis, without prejudice to Class Members' claims for punitive damages at the individual issues stage.

(q) If the answer to (p) is "yes", what quantum should be awarded for punitive damages?

It is unnecessary to decide this issue.

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

Subject to rebutting the presumption that their individual claims for damages are statute-barred, the claims of Class Members imprisoned in administrative segregation before April 20, 2015 are statute-barred.

(s) What circumstances are relevant to determining when the limitation period or limitation periods referred to in question (r) begin to run?

It is unnecessary to decide this issue.

4. **THIS COURT ORDERS AND ADJUDGES** that the procedure for the determination of individual issues trials pursuant to s. 25 of the *Class Proceedings Act, 1992*, and the procedure to rebut the presumptive limitation period shall be decided on a further motion before this Court.

5. **THIS COURT ORDERS AND ADJUDGES** that Aggregate Damages, less court-approved counsel fees and expenses, shall be distributed to the Class Members pursuant to a distribution protocol that will be established by further order of the Court.

6. **THIS COURT ORDERS AND ADJUDGES** that the Aggregate Damages may represent only a part of the Defendant's liability to Class Members, and it is made without prejudice to individual Class Members' right to seek additional damages at individual issues trials, but Class Members must credit the amount of their participation in the Aggregate Award against any subsequent award of damages.

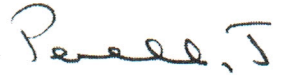
7. **THIS COURT ORDERS AND ADJUDGES** that notice pursuant to s. 18 of the *Class Proceedings Act, 1992*, shall be given to the Class in a manner to be decided on a further motion before this Court.

8. **THIS COURT ORDERS AND ADJUDGES** that the legal fees and disbursements payable to Class Counsel shall be determined on a further motion before this Court.

9. **THIS COURT ORDERS AND ADJUDGES** that the amounts owing to the Law Foundation of Ontario under the *Law Society Act* shall be determined on a further motion before this Court, on notice to the Law Foundation of Ontario.

10. **THIS COURT ORDERS AND ADJUDGES** that the costs and disbursements of this motion and the action shall be determined through a further order of the Court.

[1] **THIS JUDGMENT BEARS INTEREST** at the rate of 3% per cent per year on the amount of the Aggregate Award, commencing on April 20, 2020.



Perell, J.

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PER / PAR: 

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

JUDGMENT

KOSKIE MINSKY LLP

900-20 Queen St W
Toronto ON M5H 3R3

Kirk M. Baert LS#: 309420

Tel: (416) 595-2092
Fax: (416) 204 2889

James Sayce LS#: 58730M

Tel: (416) 542-6298
Fax: (416) 204-2809

Charles Hatt LS#: 644181

Tel: 416-595-2124
Fax: 416-977-3316

Lawyers for the Plaintiff