

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) MONDAY, THE 12th
JUSTICE PERELL) DAY OF DECEMBER, 2016
)
)

B E T W E E N :

CHRISTOPHER BRAZEAU and DAVID KIFT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

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 record and supplementary motion records of the Plaintiffs, and on reading the motion record of the Defendant,

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 offenders in federal custody who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013.

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

(a) By its operation and management of the Federal Institutions from November 1, 1992 to the present, did the Defendant breach the Class members' rights under section 7 of the *Canadian Charter of Rights and Freedoms* ("Charter")?

(b) If so, were its actions saved by Section 1 of the Charter?

(c) By its operation and management of the Federal Institutions from November 1, 1992 to the present, did the Defendant breach the Class members' rights under section 9 of the Charter?

(d) If so, were its actions saved by Section 1 of the Charter?

(e) By its operation and management of the Federal Institutions from November 1, 1992 to the present, did the Defendant breach the Class members' rights under section 12 of the Charter?

(f) If so, were its actions saved by section 1 of the Charter?

(g) If the answer to any of common issues (a), (c), or (e) is yes, and the answer to any of (b), (d) and (f) is no, are damages available to the Class under section 24 of the Charter?

(h) If the answer to common issue (g) is "yes", can the Court make an aggregate assessment of the damages suffered by all class members as a part of the common issues trial?

4. **THIS COURT ORDERS AND DECLARES** that Christopher Brazeau and David Kift are hereby appointed as the representative Plaintiffs for the Class.

5. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP is hereby appointed as class counsel ("Class Counsel").

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

(a) by posting the Short Form Notice set out in **Schedule "A"** and Long Form Notice set out in **Schedule "B"**, 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;

(b) by the Administrator placing, within forty (40) days of the date of this Order, the Short Form Notice in the newspapers set out in **Schedule "C"** attached hereto, in $\frac{1}{4}$ of a page size in the weekend edition of each paper, if possible;

(c) by the Administrator distributing the Short Form Notice to all offices of the Elizabeth Fry Society, the John Howard Society, Aboriginal Legal Services and the West Coast Prison Justice Society Prisoners' Legal Services;

(d) by the Defendant posting the Short Form Notice in conspicuous places within each Federal Institution in common areas, making it possible for Class Members to see it;

(e) by the Administrator forwarding the Short Form 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.

7. **THIS COURT ORDERS** that the expense of the notice in paragraphs 6 and the Administrator's responsibilities herein shall be borne equally by the Plaintiffs and the Defendant, subject to review and readjustment by agreement or order at the termination of this proceeding.

8. **THIS COURT ORDERS** that Crawford Class Action Services (the "**Administrator**") be and is hereby appointed as the Administrator. The Administrator shall, *inter alia*, receive opt out forms from the class.

9. **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 "D"**, or some other legible signed request to opt out, by August 12, 2017 (the "**Opt Out Deadline**"), sent to the Administrator, at the following address:

CRAWFORD & COMPANY
3-505, 133 Weber St. North
Waterloo, Ontario N2J 3G9
Attention: Prisoner Mental Health Class Action

10. **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.

11. **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.

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



JUSTICE PERELL



Appendix A

- *Significant impairment in judgment (including inability to make decisions; confusion; disorientation);*
- *Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; 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, staff or follow correctional plan);*
- *Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Chronic and severe suicidal ideation resulting in increased risk for suicide attempts;*
- *Chronic and severe self-injury; or,*
- *A GAF score of 50 or less.*

"Schedule A"

Legal Notice

Were You Incarcerated in a Federal Institution Between November 1, 1992 and the present?

Were You Diagnosed by a Doctor With A Mental Illness Before or During your Incarceration?

A Lawsuit May Affect You. Please Read this Carefully.

What is this case about?

The lawsuit says the Government of Canada failed to care for people who suffer from mental illness within Federal Penitentiaries. The Government of Canada denies these claims. The Court has not decided whether the Class or Canada is right. The lawyers for the Class will have to prove their claims in Court.

Who is included?

All offenders in federal custody who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013 (with some exceptions). The amended claim containing the complete class definition can be found on the Koskie Minsky website.

Who represents the class?

The Ontario Superior Court of Justice has appointed Koskie Minsky LLP to represent the Class as "Class Counsel". You don't have to pay Class Counsel, or anyone else, to participate. Instead, 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 Canada. You may hire your own lawyer to

appear for you, but if you do, you may have to pay that lawyer.

What are your options?

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 ask for a share. You will be legally bound by all orders and judgments, and you will not be able to sue Canada about the legal claims in this case.

Staying in this Class will not impact the residence or supports received by class members from community based agencies which are funded by any government.

Get out of the Class: If you want to keep your rights to sue Canada individually over the claims in this case you need to remove yourself. If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded. To ask to be removed, send a letter to the address below, postmarked no later than [date], that says you want to be removed from *Brazeau v. Canada*. 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 **August 12, 2017** to: [address], or send it by email at: [email].

How can I get more information?

Go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].

ONTARIO SUPERIOR COURT OF JUSTICE

**Were You Incarcerated in a Federal Prison
Between November 1, 1992 and the present?**

**Were You Diagnosed by a Doctor With A
Mental Illness Before or During your
Incarceration?**

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 Federal Penitentiaries.
- A Court has approved a lawsuit as a class action for current and former inmates of Federal Correctional Institutions who suffer from mental illness.
If you know a former inmate who cannot read this notice please share this information with them.
- The Court has not decided whether Canada did anything wrong, and there still has to be a court case about whether 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.

"Schedule B"

ONTARIO SUPERIOR COURT OF JUSTICE

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 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 Canada on your own about the same legal claims in this lawsuit.</p>

- Lawyers must prove the claims against Canada at a trial or a settlement must be agreed. 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 **August 12, 2017**

QUESTIONS? CALL TOLL-FREE [NUMBER] (TTY: [NUMBER]) OR VISIT WWW.[WEBSITE].CA

WHAT THIS NOTICE CONTAINS

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4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

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7. What happens if I do nothing?
8. What if I don't want to be in the Class?
9. If a former resident remains in the Class will that impact their current placement?

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11. How will the lawyers be paid?

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4.. Who is a member of the Class?

The Class includes:

All offenders in federal custody who were diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, in a manner described in Appendix A, and reported such during their incarceration, where the diagnosis by a medical doctor occurred either before or during incarceration in a federal institution and the offenders were incarcerated between November 1, 1992 and the present, and were alive as of July 20, 2013.

Appendix A

- *Significant impairment in judgment (including inability to make decisions; confusion; disorientation);*
- *Significant impairment in thinking (including constant preoccupation with thoughts, paranoia; 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, staffs or follow correctional plan);*
- *Significant impairment in communications that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Significant impairment due to anxiety (panic attacks; overwhelming anxiety) that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Other symptoms: hallucinations; delusions; severe obsessional rituals that interferes with ability to effectively interact with other offenders, staff or follow correctional plan;*
- *Chronic and severe suicidal ideation resulting in increased risk for suicide attempts;*
- *Chronic and severe self-injury; or,*
- *A GAF score of 50 or less.*

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money or other benefits for the Class. They are also asking for attorneys' 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 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.

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 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 *Brazeau v. Canada* Court File No. CV-15-532262500-CP. The person who sued is called the Plaintiff. Canada is the Defendant.

2. What is this lawsuit about?

The lawsuit says that Canada failed to provide Class members with adequate medical care, improperly subjected them to solitary confinement and failed to protect people who suffer from mental illness. The lawsuit says residents of the Federal Correctional Institutions were unduly emotionally, physically, and psychologically traumatized by their experiences at the Federal Penitentiaries. Canada denies these claims. The Court has not decided whether the Plaintiff or Canada is right. The lawyers for the Plaintiff 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, Christopher Brazeau and David Kift) 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.

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 _____.

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 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 *Brazeau v. Canada*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. You must mail your Removal Request postmarked by _____ to: [address], or by email at: [email].

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

9. If a former inmate remains in the Class will this impact their current care placement?

No. Staying in this Class will not impact the current placement for any members who are still under supervised care.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent you and other Class Members as “Class Counsel.” You will not be 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.

11. 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 defendant.

A TRIAL

12. 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 Canada is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

13. 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

14. 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 C"

Publication	Circulation	Unit Type/Size
Globe & Mail	416,409	1/4 Page
National Post	181,525	1/4 Page
Vancouver Sun	163,344	1/4 Page
Toronto Star	440,442	1/4 Page
Le Journal de Montreal	243,957	1/4 Page
La Presse	340,285	1/4 Page
The Gazette (Montreal)	104,175	1/4 Page
Le Soleil	96,374	1/4 Page
Calgary Herald	110,761	1/4 Page
Winnipeg Free Press	138,888	1/4 Page
Ottawa Citizen	98,204	1/4 Page
Edmonton Journal	102,571	1/4 Page
The Leader-Post (Regina)	37,236	1/4 Page
The Windsor Star	54,767	1/4 Page
The Telegram (NL)	39,700	1/4 Page
The Chronicle Herald (Halifax)	93,178	1/4 Page
The Hamilton Spectator	116,635	1/4 Page
London Free Press	72,791	1/4 Page
Kingston Whig-Standard	18,668	1/4 Page

Press Release

North American distribution of an English and French press release via the CNW Newswire.
400 words in English and in French.

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“Schedule D”

OPT OUT COUPON

To: **Prisoner Mental Health Class Action Administrator
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-15-5332262500-CP

CHRISTOPHER BRAZEAU and DAVID KIFT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

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 the certification 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):
Telephone: _____

* Attached is a copy of the document appointing me
as Guardian of Property.

*Note: To opt out, this coupon must be properly completed and received at the above-address no later than
August 12, 2017.*

BRAZEAU ET AL.
Plaintiff and

ATTORNEY GENERAL OF
CANADA
Defendant

Court File No.: CV-15-532262500-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**ORDER
(CERTIFICATION)**

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