

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**GLENN JOHNSON, MICHAEL SMITH and TIMOTHY HAYNE**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

- and -

Court File No. 1406/19

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**ERIC SABOURIN**

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

*Proceedings under the Class Proceedings Act, 1992*

---

**SETTLEMENT AGREEMENT**

---

**WHEREAS** the Plaintiffs brought these Actions under the *Class Proceedings Act, 1992*, alleging negligence and breaches of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* in respect of the Defendant's operation and management of the Elgin-Middlesex Detention Centre ("EMDC");

**AND WHEREAS** counsel for the Parties to this Settlement Agreement have conducted a thorough analysis of the claims, and have also taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

**AND WHEREAS** in consideration of all of the circumstances and after extensive arm's length

negotiations, both directly and with the assistance of the Mediator, the Parties to this Settlement Agreement wish to settle any and all issues amongst themselves relating to the within Actions;

**AND WHEREAS** following their negotiations with the Mediator, the Parties to this Settlement Agreement entered into a Memorandum of Understanding, dated March 31, 2022 setting out the principles upon which the Parties agreed to settle all claims in the Actions, and which principles are reflected herein;

**AND WHEREAS** after their investigation and negotiation, the Parties and their respective counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

**NOW THEREFORE** the Parties to this Settlement Agreement agree to settle the issues in dispute in these Actions relating to the operation and management of the EMDC on the following terms and conditions:

### **DEFINITIONS**

1. For the purposes of this Settlement Agreement, the following definitions apply:
  - a) "Actions" means, collectively, the Johnson/Hayne Action and the Sabourin Action;
  - b) "Administration Costs" means all costs to administer and distribute the Settlement Fund, including the costs and professional fees of the Referee and Claims Administrator and the reasonable fees of the doctors, psychologists, social workers, counsellors, and therapists as referenced in paragraph 7 below;
  - c) "Approval Hearing" means the hearing at the Court to approve the Settlement of these Actions, this Settlement Agreement, and Counsel Fees;
  - d) "Approval Order" means the order of the Court approving the Settlement and Counsel Fees;
  - e) "Approved Claims" means Claims assessed by the Referee or Claims Administrator, as the case may be, pursuant to the Compensation Plan, and, after the conclusion of all requests for reconsideration, approved by the Referee or Claims Administrator for payment from the Settlement Fund and identified in the Successful Claims Report;

- f) “Claim” means the Level 1 Claim, Level 2 Claim, or Level 3 Claim made by a Claimant by filing a Claim Form with the Claims Administrator in accordance with the procedure in this Settlement Agreement;
- g) “Claimant” means any Class Member who was incarcerated at the EMDC during the time periods set out in the Johnson/Hayne Class and/or Sabourin Class, and files a Claim Form pursuant to the terms of this Settlement Agreement;
- h) “Claims Administrator” means Epiq Class Action Services Canada Inc, or such other persons or third party claims administration company agreed to by the Parties and appointed by the Court to deliver notices in accordance with the Notice Plan and to administer the claims process in accordance with the Compensation Plan;
- i) “Claim Form” means a form for the written Claim from a Claimant choosing one of a Level 1 Claim, Level 2 Claim, or Level 3 Claim, and seeking compensation from the Settlement Fund in accordance with the Compensation Allocation System;
- j) “Class” or “Class Members” means members of the Johnson/Hayne Class and members of the Sabourin Class, including those held at the EMDC pending trial or other court appearance, and excluding any person who has validly opted out of the Johnson/Hayne Class or the Sabourin Class;
- k) “Class Counsel” means McKenzie Lake Lawyers LLP;
- l) “Compensation Plan” means the compensation and claims process plan detailing how Claims shall be delivered and evaluated and how compensation to Claimants shall be made, attached as **Schedule “A”** to this Settlement Agreement;
- m) “Counsel Fees” means the total fixed sum to be approved by the Court in an amount no greater than \$9,388,207.92, inclusive of legal fees, taxes, and disbursements

(calculated as \$8,198,850.00 (25% of the Settlement Fund), plus HST of \$1,065,850.50, plus disbursements of \$123,507.42);

- n) “Court” means the Ontario Superior Court of Justice;
- o) “Court Approval Date” means the later of:
  - i) thirty (30) days after the date on which the Court issues the Approval Order; or,
  - ii) the date of disposition of any appeals from the Approval Order (if such an appeal lies) or the expiry of any applicable appeal periods if no appeal is initiated;
- p) “CPF Levy” means the Class Proceedings Fund levy applicable to compensation payable to the Class Members pursuant to O. Reg. 771/92;
- q) “EMDC” means the Elgin-Middlesex Detention Centre;
- r) “HMQRO” means Her Majesty the Queen in right of Ontario;
- s) “Johnson/Hayne Class” means all persons incarcerated at the EMDC between January 1, 2010 and May 18, 2017, as certified pursuant to the Orders of Justice Grace, dated August 23, 2016 and May 18, 2017;
- t) “Johnson/Hayne Action” means the class proceeding in the Ontario Superior Court of Justice commenced by Glenn Johnson, Michael Smith, and Timothy Hayne against Her Majesty the Queen in right of Ontario, bearing Court File No. 2291/13 CP;
- u) “Mediator” means the Honourable Justice Thomas A Cromwell;
- v) “Notice Approval Motion” means a motion to obtain an order approving the Notice Plan and the Notice of Certification and Settlement Approval Hearing;
- w) “Notice Approval Order” means the order of the Court approving the form, content, and method of dissemination of the Notice Plan and the Notice of Certification and Settlement

Approval Hearing;

- x) “Notice of Certification and Settlement Approval Hearing” means a notice substantially in the form attached hereto as **Schedule “B”** advising Class Members (i) of a hearing in which the Court will consider whether to approve the Settlement, and of their entitlement to file objections to the Settlement, and (ii) of notice of certification of the Sabourin Class, and their entitlement to opt out of the Sabourin Action on or before the Opt-Out Deadline;
- y) “Notice of Settlement Approval” means a notice substantially in the form attached hereto as **Schedule “C”** advising Class Members that the Court has approved the Settlement and advising of the claims process;
- z) “Notice Plan” means the plan substantially in the form attached hereto as **Schedule “D”** to disseminate the Notice of Certification and Settlement Approval Hearing and Notice of Settlement Approval to the Class;
- aa) “Notice Plan Costs” means the costs of disseminating the notices in accordance with the Notice Plan;
- bb) “Objection Deadline” means the first business day that is ninety (90) days after the Notice of Certification and Settlement Approval Hearing is first delivered;
- cc) “Opt-Out Deadline” means the first business day that is ninety (90) days after the Notice of Certification and Settlement Approval Hearing is first delivered;
- dd) “Opt-Out Threshold” means a total of one hundred (100) timely and valid opt outs by potential members of the Johnson/Hayne Class and Sabourin Class combined;

- ee) “Parties” means HMQRO and the Plaintiffs in the Actions;
- ff) “Referee” means a retired judge or other senior legal practitioner, or several of them, appointed by the Court to assess Level 2 Claims and Level 3 Claims under this Settlement Agreement and Compensation Plan;
- gg) “Releasees” means HMQRO and each of its employees, servants, agents, Ministers, members of the Executive Council under the *Executive Council Act*, insurers, representatives and assigns;
- hh) “Sabourin Action” means the class proceeding in the Ontario Superior Court of Justice commenced by Eric Sabourin against HMQRO, bearing Court File No. 1406/19 CP;
- ii) “Sabourin Class” means all persons incarcerated at the EMDC between May 18, 2017 and November 10, 2021, as certified pursuant to the Order of Justice Grace, dated November 10, 2021;
- jj) “Settlement Agreement” or “Settlement” means this agreement, as executed by the Parties and/or their representatives, and the attached schedules, resolving all issues in the Actions as approved by the Court;
- kk) “Settlement Fund” means the \$32,795,400.00 that HMQRO has agreed to pay to settle the Actions, inclusive of payment of Approved Claims, CPF Levy, Administration Costs and Notice Plan Costs, interest and all applicable taxes, but exclusive of Class Counsel Fees;
- ll) “Successful Claims Report” bears the meaning ascribed to it in paragraph 26 of the Compensation Plan; and,
- mm) “Time-Barred Class Member” means a presumptive Class Member whose presumptive Claim arises from an injury, loss or damage sustained while he/she/they were incarcerated at

the EMDC on or before October 9, 2011, and whose claim is statute-barred by the *Limitations Act, 2002*, SO 2002, c 24, but does not include a Class Member who, before the Johnson/Hayne and Sabourin Actions were commenced, issued and served within his/her/their applicable limitation period a timely proceeding against HMQRO for damages arising from his/her/their incarceration at the EMDC, and who did not opt out.

### **SETTLEMENT FUND**

2. The Settlement Fund will be used to pay the Approved Claims, CPF Levy, Administration Costs and Notice Plan Costs and all applicable taxes in accordance with this Settlement Agreement in full and final Settlement of the Actions.
3. HMQRO shall pay to Class Counsel the Counsel Fees as approved by the Court within thirty (30) days of the Court Approval Date, or as otherwise directed by the Court.
4. Administration Costs, Notice Plan Costs, and fees for doctors, psychologists, social workers, counsellors, and/or therapists will be paid by HMQRO out of the Settlement Fund as the payments to the Claims Administrator and Referee come due.
5. HMQRO shall also pay:
  - a) one cheque or wire transfer to the Claims Administrator in the total amount of all Approved Claims for the payment of all Approved Claims in accordance with the Compensation Plan when calculated and determined; and,
  - b) one cheque or wire transfer for payment of the CPF Levy when calculated and determined.
6. The Claims Administrator shall ensure sufficient reserve of the Settlement Fund is maintained in order to satisfy full payment of all Notice Costs and payment of all Administration Costs, including applicable taxes thereon.

7. Where this Settlement Agreement and Compensation Plan ask a Claimant to provide supporting documentation from a doctor, psychologist, social worker, counsellor, or therapist, the Claimant may apply to the Claims Administrator to have the Claims Administrator pay any reasonable fee charged by the doctor, psychologist, social worker, counsellor, or therapist for the provision of the supporting documentation. Such fees shall not exceed \$500 total per Claimant and may be paid by the Claims Administrator out of the Administration Costs component in the Settlement Fund in the following two scenarios:
  - i) upon presentation of receipt(s) of payment issued by the doctor, psychologist, social worker, counsellor, or therapist, for payment already made by the Claimant, the fees shall be payable by the Claims Administrator directly to the Claimant; and,
  - ii) where payment has not yet been rendered by the Claimant, upon receipt by the Claims Administrator of a written confirmation from a doctor, psychologist, social worker, counsellor, or therapist indicating that a request for supporting documentation has been made, and the amount required for payment, the fees shall be paid directly by the Claims Administrator to the doctor, psychologist, social worker, counsellor, or therapist.
8. The Notice Plan will provide for the distribution of the Notice of Certification and Settlement Approval Hearing, the Notice of Settlement Approval, and Claim Form, all of which will be mutually agreed upon by the Parties and approved by the Court.
9. In the event that the Court approves the Settlement of the Actions, all costs of the Notice of Settlement Approval, the Approval Hearing and Administration Costs incurred to that date, shall be paid from the Settlement Fund.
10. The Settlement Fund shall be paid as follows:
  - a) first, to pay Administration Costs and Notice Plan Costs and applicable taxes relating to



the Settlement Fund;

- b) second, to pay the CPF Levy; and,
- c) third, the remainder of the Settlement Fund will then be used to compensate Claimants for Approved Claims in accordance with the Compensation Plan.

11. Any amounts remaining in the Settlement Fund after all of the payments in paragraph 10 above have been made will be returned to HMQRO no later than twelve (12) months after all Approved Claims have been determined under the Compensation Plan.
12. The Claims Administrator shall retain in hard copy or electronic form all Claim Forms and supporting documentation for one year after all Approved Claims have been determined under the Compensation Plan. The Claims Administrator shall thereafter destroy the documents, and shall notify HMQRO in writing that such documents have been destroyed.

## **OPT OUTS AND OBJECTIONS**

### ***Opt Outs***

13. The Parties hereto acknowledge that the Johnson/Hayne Class has already been provided with notice of certification and has been given the opportunity to opt out.
14. For clarity, the Parties further acknowledge that a person can be a member of both the Johnson/Hayne Class and the Sabourin Class, as long as the person's placement dates at the EMDC satisfy both class definitions. A person who has opted out of the Johnson/Hayne Class but not the Sabourin Class will remain a member of the Sabourin Class, and a person who opts out of the Sabourin Class but not the Johnson/Hayne Class will remain a member of the Johnson/Hayne Class.
15. At the motion in which Court approval of the Notice of Certification and Settlement Approval

Hearing is sought, the Parties agree to seek Court approval of an opt-out process for the Sabourin Class that includes the following terms:

- (a) an opt-out form from a putative member of the Sabourin Class will not be effective unless it is signed, sent by email or regular mail, addressed to the Claims Administrator, and postmarked on or before the Opt-Out Deadline;
- (b) a putative member of the Sabourin Class who has delivered an opt-out form to the Claims Administrator may withdraw his/her/their opt-out form before the Opt-Out Deadline by advising the Claims Administrator, in writing, that he/she/they wish(es) to withdraw his/her/their opt-out form; and,
- (c) the Claims Administrator shall serve on the Parties and file with the Court, within ten (10) days of the expiry of the Opt-Out Deadline, an affidavit listing all persons who have opted out of the Sabourin Class, if any.

16. The Parties acknowledge that any putative member of the Sabourin Class who does not submit a properly completed opt-out form to the Claims Administrator before the Opt-Out Deadline shall be deemed to be a Class Member, shall be bound by this Settlement Agreement, and in order to be eligible for compensation, must submit any Claims for compensation arising from his/her/their placement in the EMDC in accordance with this Settlement Agreement and the Compensation Plan.

17. The Parties acknowledge that any putative member of the Sabourin Class who submits an opt-out form on or before the Opt-Out Deadline in accordance with this Settlement: (1) is no longer a member of the Sabourin Class, and is no longer a Class Member; (2) may not receive any benefits under this Settlement or the Compensation Plan; and, (3) may bring his/her/their lawsuit against HMQRO, as the case may be, at his/her/their own expense and subject to any limitation period.

*Objections*

18. At the motion in which Court approval of the Notice of Certification and Settlement Approval Hearing is sought, the Parties agree to seek Court approval of a process for submitting objections. The Parties will seek approval of an objection process in which any Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement, including the Compensation Plan, will be required to serve on the Claims Administrator, on or before the Objection Deadline, an objection form signed by the objector and containing the following information:

- (a) the objector's full name, address, email address, and telephone number;
- (b) a statement that the objector meets the criteria for membership in the Class;
- (c) to the best of the objector's recollection, a list of the objector's placements in the EMDC, with placement dates, release dates, and unit locations;
- (d) a written statement of all factual and legal grounds for the objection accompanied by any legal support for such objection;
- (e) copies of any papers, briefs or other documents upon which the objection is based;
- (f) a statement setting out whether the objector intends to appear at the hearing to approve the Settlement Agreement; and,
- (g) a statement setting out whether the objector intends to appear at the hearing through counsel, and if so, identifying any counsel representing the objector who intends to appear at the hearing.

19. The objection process that the Parties agree to propose will provide that upon expiry of the Objection Deadline, the Claims Administrator will deliver copies of each objection to Class Counsel and counsel for HMQRO. Class Counsel shall file any objections with the Court as part

of the Settlement approval motion.

### **COMMUNICATIONS**

20. The Parties and their counsel agree that, in the event that they are commenting publicly on the Actions or this Settlement Agreement, they shall only:
- a) inform the inquirer that the Actions have been settled to the satisfaction of all Parties;
  - b) inform the inquirer that it is the view of the Parties that the Settlement of the Actions is fair, reasonable and in the best interests of the Class; and,
  - c) decline to comment in a manner that casts the conduct of either Party or its representatives, including the EMDC and its employees, in a negative light or reveals anything said during the settlement negotiations.

### **COURT APPROVAL**

21. It is understood and agreed that Court approval of the Notice of Certification and Settlement Approval Hearing, Notice of Settlement Approval, Notice Plan, and this Settlement Agreement and Compensation Plan are required.
22. As soon as practical after execution of this Settlement Agreement, the Parties shall move expeditiously to advise the Court and seek to schedule (i) the Notice Approval Motion; and, (ii) the Approval Hearing, provided that the Approval Hearing shall be heard no earlier than forty-five (45) days after the Opt-Out Deadline.
23. The Parties agree to file motion materials, as necessary, with respect to the approval motions identified in paragraph 22 above, and counsel shall act reasonably and in good faith in preparing the contents of such motion materials.
24. Class Counsel shall bring a motion for Court approval of Counsel Fees at the time of Settlement approval. HMQRO shall take no position on the quantum of Counsel Fees sought

by Class Counsel on this motion.

25. Nothing in this Settlement Agreement or the Compensation Plan attached as Schedule "A" hereto precludes the Parties from applying for an amendment to the Compensation Plan. The Parties may consent to procedural modifications to the Compensation Plan, such as extensions of time for certain steps, without requiring Court approval, as long as such changes do not substantively affect the rights and remedies provided for in the Compensation Plan.

### **RELEASES**

26. On the Court Approval Date, each Class Member, whether or not he/she/they submit(s) a Claim or otherwise receives compensation in accordance with the Compensation Plan, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising, that he/she/they may heretofore have had, may now have or may hereafter have, whether commenced or not, in connection with all claims relating to or arising out of the Actions with respect to the operation and management of the EMDC, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms hereof.
27. On the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to or arising out of the

Actions.

28. On the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting, prosecuting or continuing any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, against any person or entity that could or does result in a claim-over against the Releasees or any of them for contribution, indemnity in common law or equity, or under the provisions of the *Negligence Act* and the amendments thereto, or under any successor legislation thereto, or under the *Rules of Civil Procedure*, relating to or arising out of the Actions. It is understood and agreed that if such Class Member commences such an action or takes such proceedings, and the Releasees, or any of them, are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding that might be brought in the future by such Class Member with respect to the matters covered herein. This Settlement Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis, and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Settlement Agreement.

**NO ADMISSIONS, NO USE**

29. This Settlement Agreement, whether or not it is executed by the Parties or is terminated in

accordance with paragraphs 30 or 32 below, and any proceedings taken pursuant to this Settlement Agreement, are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or its Schedules, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the Parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any Parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement. For greater clarity, HMQRO denies the truth of the allegations in the Actions and denies any liability whatsoever.

#### **TERMINATION**

30. Unless Class Counsel and HMQRO shall agree otherwise in writing, this Settlement Agreement shall be automatically terminated and shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court declines to issue the Approval Order, or if an appeal of the Approval Order (if such an appeal lies) results in the Approval Order not becoming final.
31. For greater certainty, neither the Court's approval of Counsel Fees in an amount less than that agreed to by the Parties, nor the Court's refusal to approve Counsel Fees at all, shall constitute a refusal to issue the Approval Order, or any other basis for the termination of this Settlement Agreement.
32. HMQRO, in its sole and absolute discretion, may terminate this Settlement Agreement no later than thirty (30) days after the Opt-Out Deadline in accordance with this paragraph 32,

if the Opt-Out Threshold is exceeded, by delivering a notice of termination to Class Counsel.

33. If HMQRO does not deliver a notice of termination in accordance with paragraph 32, this Settlement Agreement shall become fully effective and irrevocable on the Court Approval Date.
34. If the Settlement Agreement is terminated automatically under paragraph 30 or by HMQRO pursuant to paragraph 32, HMQRO shall schedule a case management conference with the Court for orders:
- a) declaring the Settlement Agreement to be null and void and of no force or effect;
  - b) setting aside the Notice Approval Order on the basis of the termination of the Settlement Agreement; and,
  - c) imposing a timetable for next steps in the Actions.
35. In the event that this Settlement Agreement is automatically terminated under paragraph 30 or by HMQRO under paragraph 32:
- a) no person or Party shall be deemed to have waived any rights, claims or defences whatsoever by virtue of this Settlement Agreement;
  - b) this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith will be without prejudice to the Parties and Class Members, and will not be deemed or construed to be an admission or confession in any way by the Parties of any fact, matter or proposition of law;
  - c) with the exception of this paragraph 35 and paragraph 29, this Settlement Agreement shall have no further force and effect, shall not be binding on any person or any of the Parties, and shall not be used as evidence or otherwise in any litigation or other proceeding for any purpose;



- d) the legal position of each of the Parties shall be the same as it was immediately prior to the execution of this Settlement Agreement, and each of the Parties may exercise its legal rights to the same extent as if this Settlement Agreement had never been executed;
- e) without limiting the generality of the foregoing, the releases and claims bars in paragraphs 26-28 shall be null and void and of no force and effect whatsoever; and,
- f) notice of the termination shall be published on the websites of Class Counsel and the Claims Administrator within seventy-two (72) hours of the termination.

### **GENERAL**


- 36. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Ontario.
- 37. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.
- 38. This Settlement Agreement may be signed by the Parties in counterpart, which shall have the same effect and enforceability as a single executed document.

**IN WITNESS WHEREOF**, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of October 26, 2022.

October 31, 2022  
Date

October 27, 2022  
Date

  
McKENZIE LAKE LAWYERS LLP  
Counsel for the Plaintiffs

  
Per: Sean Kearney  
Counsel for the Defendant, HMQRO

### **Schedule “A” – Compensation Plan**

#### ***Definitions***

1. All defined terms in the Settlement Agreement are applicable to this Compensation Plan. In addition, the following definitions apply in this Schedule:
  - a) “Claim Form” means the Claim Form as described herein in which a Claimant selects a Level 1 Claim, Level 2 Claim, or Level 3 Claim, and the supporting documentation provided therewith;
  - b) “Excluded Claims” means a Claim by a person (i) who has previously and validly opted out of the Johnson/Hayne Action or the Sabourin Action in writing, (ii) who is a Time-Barred Class Member, or (iii) who has previously settled claims against HMQRO and has executed a release in favour of HMQRO in relation to matters that are the subject of the Actions;
  - c) “Class List” means lists prepared by HMQRO and updated in accordance with paragraph 14(c) below, identifying all persons incarcerated at the EMDC i) between January 1, 2010 and October 9, 2011 and ii) between October 10, 2011 and November 10, 2021;
  - d) “Compensation Allocation System” means the method of determining the compensation to be allocated to each Claimant for the harms described in his/her/their Claim Form as set out in paragraph 7 of this Compensation Plan, which compensation to be paid to Claimants is subject to paragraph 1.b) of this Compensation Plan; and,
  - e) “Inmate File” means the records from a Claimant’s placement(s) in the EMDC between October 10, 2011 and November 10, 2021 from (i) a Claimant’s institutional file, and (ii) a Claimant’s healthcare file.

### ***Inmate File Requests***

2. The Claimant's Inmate File will not be required to make a Claim. While the Claimant's Inmate File will not be required to make a Claim, it may be that a Claimant nevertheless wishes to obtain a copy of his/her/their Inmate File in order to support his/her/their Claim. Any Inmate File requests made on or after the date of the Approval Order and within three (3) months of the Court Approval Date will be considered a request under the Inmate File Request Process as defined below.
  
3. The Parties will seek to implement the following system to expedite the processing of requests and the delivery of Inmate Files during the claims period herein as follows ("Inmate File Request Process"):
  - a) The Parties will jointly seek an order of the Youth Justice Court (the Ontario Court of Justice sitting under the provisions of the *Youth Criminal Justice Act*, SC 2002, c 1) permitting production of the Inmate Files and dissemination of the Notice of Certification and Settlement Approval Hearing and Notice of Settlement Approval;
  - b) HMQRO shall be responsible for the preparation of any application record and affidavit(s) relating to seeking and obtaining the *Youth Criminal Justice Act* Order. Class Counsel will prepare the factum and make submissions with respect to same. This application will be brought on consent of the Parties;
  - c) The Parties will seek permission from the Court in the Approval Order to deliver the Inmate Files to Class Counsel and to the requesting Claimant in accordance with rule 30.1.01(3) of the *Rules of Civil Procedure* ("Inmate File Production Order");
  - d) Claimant requests for Inmate Files pursuant to this Inmate File Request Process must be made to the Claims Administrator by the Claimant or estate (if claiming on behalf of a

deceased Claimant) in writing. These requests must be made beginning on the date of the Approval Order and within three (3) months after the Court Approval Date. The Claims Administrator shall then promptly forward the request to HMQRO;

- e) If a Claimant requests an Inmate File within the timeframe set out in subparagraph (d), HMQRO will make best efforts to produce the Inmate File to Class Counsel (in electronic format) in accordance with the Inmate File Production Order and *Youth Criminal Justice Act* Order within nine (9) months after the Court Approval Date on a rolling basis as requests are received and processed. Class Counsel shall thereafter provide the Inmate File to the Claimant.
4. In disclosing any Inmate File, HMQRO may, at its discretion, redact records on one or more of the following grounds: (i) the records contain information that identifies, or may identify, the names or identities of correctional staff, police, or confidential informants; (ii) the records contain information identifying other individuals; (iii) the records contain information that may put HMQRO staff or any member of the public at risk; (iv) the records contain security information that may put the safety and security of a correctional facility at risk; and/or, (v) the records contain information that is protected by a legal privilege.
  5. A late request for an Inmate File, or a request for an Inmate File that is made outside of the Inmate File Request Process identified above, is not a basis for a request for reconsideration or appeal to the Referee, Claims Administrator, Court, or any other court or tribunal.
- Paragraphs 1-4 above are not intended to impact any individual's ability to request personal records arising from his/her/their incarceration at the EMDC pursuant to the *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched A, or the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, or any other legislation outside of these proceedings.

*Claims Process & The Compensation Allocation System*

6. Any Class Member who wishes to claim compensation under the Settlement Agreement shall deliver to or otherwise provide the Claims Administrator with a completed Claim Form and all supporting documentation no later than twelve (12) months after the Court Approval Date. If the Claims Administrator does not receive a completed Claim Form and supporting documentation from a Class Member by the deadline, then the Class Member shall not be eligible for any compensation whatsoever. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than twenty (20) business days after receipt of the Claim Form, if his/her/their Claim Form is incomplete. The Claimant shall complete the Claim Form within the later of (i) sixty days (60) days from the date that the Claims Administrator advises him/her/them that his/her/their Claim Form is incomplete; or, (ii) the deadline to submit a Claim Form and supporting documentation set out in the first sentence of this paragraph.
7. The Compensation Allocation System is as follows:
  - a) the description of Level 1 Claims, Level 2 Claims, and Level 3 Claims, and their respective potential award values, is contained in Table 1 below;
  - b) Claimants may claim only for one compensation level in their Claim Form, and may not stack Claims (e.g., receive compensation for both a Level 1 Claim at \$1,500 and a Level 3 Claim at \$35,000);
  - c) Class Members who were incarcerated at the EMDC for fewer than 24 hours are not eligible to make a Level 1 Claim; and,
  - d) Class Members who were incarcerated at the EMDC for fewer than 24 hours may make a Level 2 Claim or a Level 3 Claim, provided that they deliver the supporting evidence

set out in paragraph 8 below.

<b>Table 1</b>		
	<b>Description</b>	<b>Claim Award</b>
<b>Level 1 Claim</b>	A Level 1 Claim may be brought by a Class Member who was incarcerated at the EMDC for at least 24 hours and can establish that he/she/they suffered some detrimental impact from his/her/their incarceration at the EMDC, as evidenced by occasional short-term episodes of anxiety, depression, loss of sleep, nightmares and/or panic states.	\$1,500
<b>Level 2 Claim</b>	A Level 2 Claim may be brought by a Class Member who can establish that he/she/they suffered modest or continued detrimental impacts from his/her/their incarceration at the EMDC, as evidenced by several episodes of anxiety or depression; serious physical injury requiring medical attention; diagnosed PTSD; anxiety or depression requiring medical intervention or medication; and/or, significant resulting substance abuse.	Up to \$12,500
<b>Level 3 Claim</b>	A Level 3 Claim may be brought by a Class Member or Class Member's estate. The Class Member or his/her/their estate, as applicable, must establish that the Class Member suffered an ongoing or fatal impact from his/her/their incarceration at the EMDC, resulting in a serious dysfunction, impairment, or death, as evidenced by severe anxiety and/or depression requiring ongoing mental health treatment, including medication, or serious physical injury requiring admission to a hospital and ongoing physical therapy and rehabilitation.	Up to \$35,000

8. The supporting evidence required in respect of each compensation level is:

a) Level 1 Claim:

**Sworn statement/solemn affirmation** of the Claimant setting out, to the best of his/her/their recollection, (1) the nature of the incident(s) alleged to have been experienced by the Claimant while incarcerated at the EMDC, including details

regarding the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident; and, (2) the nature and extent of the harm(s) caused to the Claimant by the incident(s);

b) Level 2 Claim:

**Commissioned Affidavit** of the Claimant setting out, to the best of his/her/their recollection, (1) the nature of the incident(s) alleged to have been experienced by the Claimant while incarcerated at the EMDC, including details regarding the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident(s); and, (2) the nature and extent of the harm(s) caused to the Claimant by the incident(s);

c) Level 3 Claim

**Commissioned Affidavit** of the Claimant setting out, to the best of his/her/their recollection, (1) the nature of the incident(s) alleged to have been experienced by the Claimant while incarcerated at the EMDC, along with all details relating to the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident(s); and, (2) the nature and extent of the harm(s) caused to the Claimant by the incident(s);

d) Supporting Documentation:

Where possible, additional supporting documentation for Level 2 and Level 3 Claims should be provided from a doctor, psychologist, social worker, counsellor, or therapist setting out the professional's knowledge of (1) the incident(s) alleged by the Claimant; and, (2) the nature of the harm caused to the Claimant by the incident(s).

9. The Claim Form requires the Claimant to provide identifying information and to specify the level of harm for which he/she/they is/are claiming. The supporting evidence required in respect of each compensation level is set out in paragraph 8 of this Compensation Plan. The Claim Form will provide instructions regarding what supporting evidence is required in respect of each compensation level. The Claim Form will instruct Claimants to attach the supporting evidence to the Claim Form. If a Claimant submitting a Level 2 Claim or a Level 3 Claim does not provide the supporting documentation identified in paragraph 8(d) above, the Claimant shall explain on the Claim Form why it was not possible to provide supporting

documentation. The Claim Form shall expressly state that failure to provide supporting documentation for a Level 2 Claim or Level 3 Claim may impact the quantum of an award.

10. The Claim Form shall include a direction by which a Claimant who is incarcerated may authorize and direct payment of any compensation awarded under this Settlement Agreement to (i) a person designated by the incarcerated Claimant; or, (ii) a bank account designated by the incarcerated Claimant.
11. The Claim Form shall include i) a check box to be completed by the Claimant in which he/she/they shall indicate whether he/she/they have commenced an individual proceeding against HMQRO in respect of harms sustained while incarcerated at the EMDC between January 1, 2010 and May 18, 2017, or between May 18, 2017 and November 10, 2021, and ii) a signed certification by the Claimant on substantially the terms below:

By submitting a Claim in this Settlement, I hereby acknowledge that:

- a) I am a member of the Johnson/Haynes Class or the Sabourin Class, or both Classes;
- b) I am bound by and subject to the terms of the Settlement Agreement and order of the Court approving the Settlement Agreement, including the releases set forth therein; and,
- c) if I have issued and served on Ontario my own individual lawsuit, proceeding, action, or application against Ontario in respect of damages, loss or harm I sustained while incarcerated at the EMDC during either a) the Johnson/Haynes Class period of January 1, 2010 to May 18, 2017, or b) the Sabourin Class period of May 18, 2017 to November 10, 2021 ("Individual Claim"), and did not opt out of the Class covering the time period of my Individual Claim, my Individual Claim may be dismissed with prejudice and



without costs as provided in the Settlement.

12. A Claimant shall submit one Claim Form that comprises all of the Claims that he/she/they may have arising from his/her/their incarceration at the EMDC. If more than one Claim Form is submitted, the Claims Administrator will treat them as one Claim Form, but for clarity, a Claimant will not be eligible to receive compensation for more than one level of harm in the Compensation Allocation System.
13. If a Claim is being submitted on behalf of a Claimant by his/her/their estate or another person designated to act on behalf of the Claimant, the person completing the Claim shall explain on the Claim Form why he/she/they has/have the authority to act on the Claimant's behalf, and shall attach a copy of any Certificate of Appointment of Estate Trustee, Power of Attorney or other document establishing that authority.
14. The Class List will be provided to the Claims Administrator by HMQRO on or before the Court Approval Date. Within thirty (30) business days of receipt of a Claim Form, the Claims Administrator shall review the Claim Form and the attached supporting documents and verify that the Claimant is eligible to claim for compensation as follows:
  - a) for an individual claiming as a Class Member, the Claims Administrator shall be satisfied that (i) the individual is a Class Member by virtue of being listed in the Class List, (ii) the individual is not a Time-Barred Class Member, (iii) the individual did not opt out of the Actions; (iv) the Claim is not an Excluded Claim; and, (v) the harm is alleged to have occurred at the EMDC and to a person incarcerated at the EMDC during the time period between a) October 10, 2011 and November 10, 2021, or b) between January 1, 2010 and October 9, 2011 where that individual has issued and served within his/her/their applicable limitation period a timely proceeding against HMQRO for damages arising from his/her/their incarceration at the EMDC;

- b) for an individual making a Claim on behalf of a Class Member or a Class Member's estate, the Claims Administrator shall be satisfied that (i) the individual has legal authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs; (ii) the person or estate on whose behalf the Claim is submitted is a Class Member by virtue of being listed in the Class List, (iii) the person or estate on whose behalf the Claim is submitted is not a Time-Barred Class Member; (iv) no valid opt out was submitted for that person or estate; (iv) the Claim is not an Excluded Claim; and, (v) the harm is alleged to have occurred at the EMDC and to a person incarcerated at the EMDC during the time period a) between October 10, 2011 and November 10, 2021, or b) between January 1, 2010 and October 9, 2011 where that individual has issued and served within his/her/their applicable limitation period a timely proceeding against HMQRO for damages arising from his/her/their incarceration at the EMDC;
- c) if a Claim Form is submitted by or on behalf of an individual who is not on the Class List, the Claims Administrator shall deliver the Claim Form to HMQRO, and HMQRO shall review the Claim Form and determine whether the individual was inadvertently excluded from the Class List;
  - i. if HMQRO determines the individual is a Class Member and should be included on the Class List, HMQRO shall advise the Claims Administrator and update the Class List to include the Claimant;
  - ii. if the individual is not a Class Member, HMQRO shall notify the Claims Administrator and Class Counsel, and the individual shall not be added to the Class List;
- d) if a determination is made by the Claims Administrator that an individual who has submitted a Claim Form is not eligible for compensation for the reasons set out in

paragraph (a) or (b) above, the Claims Administrator shall send out a notice, with a copy of the notice and Claim Form to HMQRO and Class Counsel, advising the individual who submitted the Claim Form of this determination, within ten (10) business days of the Claim Administrator's determination of ineligibility.

15. Within five (5) business days of the Claims Administrator's verification that the Claimant is eligible to claim for compensation in accordance with paragraph 14 above, the Claims Administrator shall forward a copy of the Claim Form and supporting documentation to HMQRO.
16. HMQRO may submit to the Claims Administrator, without written argument, any documentation from the Claimant's Inmate File that HMQRO determines, in its sole discretion, is relevant to the determination of the Claim. If HMQRO chooses to produce responding documentation from the Claimant's Inmate File in response to a Claim, the following provisions apply:
  - a) HMQRO must also provide to Class Counsel (i) a copy of the responding documentation, and (ii) the entirety of the Claimant's Inmate File, subject to the schedule for production in subparagraphs (b) and (c) below, and the application of any redactions identified in paragraph 3(4) above;
  - b) if the records constituting the Claimant's Inmate File are stored at the EMDC, within ninety (90) days of receipt of the Claim Form and supporting documentation, HMQRO shall make best efforts to produce (i) the responding documents, and (ii) the Claimant's Inmate File;
  - c) if the records constituting the Claimant's Inmate File are stored at central storage or at another Ontario correctional institution, within 120 days of receipt of the Claim Form and supporting documentation, HMQRO shall make best efforts to produce (i) the responding documents, and (ii) the Claimant's Inmate File;

- d) Class Counsel shall have the right to submit, without written argument, any further documentation from the Claimant's Inmate File within thirty (30) days of receipt of the responding documents and Inmate File from HMQRO.
17. Where HMQRO determines that it will not submit any documentation, it will advise the Claims Administrator and the Claims Administrator will forthwith proceed with its review and consideration of the Claim.
18. The Claims Administrator shall provide all Level 2 Claims and Level 3 Claims verified under paragraph 14, together with all documentation provided in accordance with paragraph 15 above, to the Referee. The Claims Administrator, in respect of Level 1 Claims, and the Referee, in respect of Level 2 Claims and Level 3 Claims, shall review the Claim Form, any supporting documentation, and the documentation submitted by HMQRO and by Class Counsel, if any, to determine the compensation level, if any, for which a Claimant is eligible pursuant to the Compensation Allocation System.
19. The Claims Administrator, or Referee, as the case may be, shall make its determination based on the type of harm alleged and whether the related documentary requirements are met. In considering Level 2 Claims and Level 3 Claims, the Referee, in his/her/their sole discretion, may determine the quantum of the award in an amount not exceeding the maximum identified in the Compensation Allocation System for the level of Claim sought. If the Referee determines that a Level 3 Claim does not meet the threshold of a Level 3 Claim, the Referee may evaluate the Level 3 claim as if it were a Level 2 Claim. If a Claimant failed to attach the supporting documentation identified in paragraph 8(d) to his/her/their Level 2 Claim or Level 3 Claim, the Referee shall consider the explanation provided by the Claimant in the Claim Form as to why it was not possible to provide supporting documentation, and may adjust the quantum of the award in the Referee's sole discretion.

20. If a Class Member is unable to execute a Claim Form due to lack of legal capacity, a Claim Form may be executed by the Public Guardian and Trustee as authorized to act on behalf of the Class Member or by any other legally recognized guardian.
21. The claims process is intended to be expeditious, cost effective and user-friendly, and to minimize the burden on Claimants. The Claims Administrator or the Referee, as applicable, shall, in the absence of reasonable grounds to the contrary, assume the Claimants to be acting honestly and in good faith. The Claims Administrator or the Referee shall nonetheless require that each Claimant meet the documentary requirements set out in this Settlement Agreement in respect of each Claim.
22. Where a Claim Form contains minor omissions or errors, the Claims Administrator or Referee shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator or Referee.
23. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator or Referee believes that the Claim contains unintentional errors that would materially exaggerate the amount of compensation to be awarded to the Claimant, the Claims Administrator or Referee may disallow the Claim in its entirety, or, in respect of a Level 2 Claim or Level 3 Claim, make such adjustments so that an appropriate amount of compensation is awarded to the Claimant. If the Claims Administrator or Referee believes that the Claim is fraudulent or contains intentional errors that would materially exaggerate the amount of compensation to be awarded to the Claimant, the Claims Administrator or Referee shall disallow the Claim in its entirety.
24. Where the Claims Administrator or Referee disallows a Claim in its entirety under paragraph 23, the Claims Administrator or Referee shall send to the Claimant, at the Claimant's postal or email address as indicated in the Claim Form, and to Class Counsel a notice advising the Claimant of

the decision and that he/she/they may make a request for reconsideration to the Claims Administrator or Referee.

***Payments to and by the Claims Administrator***

25. As soon as possible after (i) all timely Claim Forms have been processed; (ii) the time to request a reconsideration has expired; and, (iii) all requests for reconsideration have concluded, the Claims Administrator shall review its determinations and those made by the Referee, and shall allocate amounts to successful Claimants from the Settlement Fund subject to the following limitations:
  - a) there will be no compensation for an Excluded Claim; and,
  - b) if there are not enough funds in the Settlement Fund to compensate all successful Claimants on the basis of the Compensation Allocation System, the amount of compensation for all Claimants shall be adjusted downward such that each Claimant receives the proportionate share of the Settlement Fund based on the relative values of each compensation level.
26. Upon completion of paragraph 25 above, the Claims Administrator shall prepare a "Successful Claims Report" advising HMQRO and Class Counsel of the Approved Claims and the amounts to be awarded to each successful Claimant.
27. HMQRO shall make a single payment to the Claims Administrator on account of the Approved Claims within thirty (30) days of delivery of the Successful Claims Report to HMQRO, which the Claims Administrator shall use to carry out distributions to the successful Claimants identified in the Successful Claims Report. Within sixty (60) days of (i) completion of the Successful Claims Report, and (ii) receipt of this Approved Claims payment from HMQRO, the Claims Administrator shall mail the individual compensation cheques to the successful Claimants at the postal addresses indicated in the Claim Forms or as directed by an incarcerated Claimant in the Claim Form, and shall provide a copy of this mailing to Class

Counsel.

28. If, for any valid reason, a cheque is not cashed by the Claimant or as directed by an incarcerated Claimant in the Claim Form six (6) months after the date of the cheque, the Claimant shall forfeit the right to compensation and the funds shall be returned to HMQRO in accordance with paragraph 11 of the Settlement Agreement.

29. Thirty (30) days prior to the expiry of the six (6) month period described in paragraph 28 above, the Claims Administrator shall:

- a) provide Class Counsel with a list of the Claimants who have not cashed their compensation cheques;
- b) send the Claimant a further letter (copied to Class Counsel) and attempt to contact the Claimant by telephone advising him/her/them that he/she/they has/have thirty (30) days to cash the compensation cheque; and,
- c) provide an accounting to HMQRO of any interest accrued by the Claims Administrator in relation to any monies that it has held pending the clearance of expiration of all cheques and direct all interest accrued back to HMQRO.

***Reconsiderations***

30. An individual who has submitted a Claim Form under this Settlement Agreement and Compensation Plan is only entitled to notice of, and reconsideration of, (i) a decision to disallow a Claim in its entirety under paragraph 23, which shall be reconsidered by the Claims Administrator or Referee as applicable; and/or, (ii) a determination of ineligibility under paragraph 14, which shall be reconsidered by the Claims Administrator. All other determinations of the Claims Administrator and Referee are final, and there is no further appeal or review of any decision of the Claims Administrator whatsoever to the Claims

Administrator, Referee, Court, or any other court or tribunal.

31. For greater certainty, other than a decision to disallow a Claim in its entirety under paragraph 23, or a determination of ineligibility under paragraph 14, all decisions of the Claims Administrator and Referee, including those relating to *inter alia*, any claims assessment, the quantum of a Level 2 Claim or Level 3 Claim awarded under the Compensation Allocation System and Table 1 thereof, the sufficiency of a Claim, the sufficiency of the supporting documents, timelines, the late delivery of any Claim or component of a Claim or supporting documentation, any matter relating to the Inmate File Request process, or any other matter relating to the claims process are final, and the Parties expressly agree that these decisions may not be appealed to or put before the Court or any other court or tribunal for any review or a determination.
32. The request for reconsideration shall identify that a request for reconsideration is being made (i) because the Claim was disallowed in its entirety under paragraph 23, or (ii) because a determination of ineligibility was made under paragraph 14, and shall concisely state, in no more than one (1) page, the basis for the request, but shall not contain any additional evidence, documents, or materials not originally included with the Claim Form. Any request for reconsideration must be received by the Claims Administrator or Referee, as applicable, within twenty-one (21) days of the date of the notice advising of the disallowance of a Claim in its entirety or the determination that the Claim is ineligible. If no request for reconsideration is received by the Claims Administrator or Referee within this time period, the individual submitting the Claim Form shall be deemed to have accepted the determination of the Claims Administrator or Referee, and the determination shall be final and binding and not subject to further appeal or review by any court or other tribunal.
33. Where a timely request for reconsideration is filed with the Claims Administrator in



accordance with paragraph 32 above, the Claims Administrator or Referee, as the case may be, shall advise Class Counsel and HMQRO of the request and conduct a review of the request for reconsideration. The Claims Administrator or Referee must issue its decision on the reconsideration to the individual who submitted the Claim, Class Counsel and HMQRO within fourteen (14) days of receipt of the request for reconsideration.

34. Following its determination on a request for reconsideration, the Claims Administrator or Referee, as applicable, shall advise the individual submitting the Claim of its determination of the request for reconsideration. In the event the Claims Administrator or Referee reverses or modifies its initial decision, the Claims Administrator or Referee shall send a notice specifying the revision to the disallowance or decision to the postal or email address as indicated in the Claim Form (copied to Class Counsel).
35. The determination of the Claims Administrator or Referee in response to a request for reconsideration is final and binding and is not subject to further review by or appeal to any court or other tribunal.

**ELGIN-MIDDLESEX DETENTION CENTRE ("EMDC") CLASS ACTIONS: NOTICE OF CERTIFICATION, PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL HEARING**

**Please read this notice carefully – your legal rights may be affected.**

A proposed Settlement has been reached in two certified class action lawsuits against Ontario (the "Defendant"): *Johnson v Ontario* and *Sabourin v Ontario*. The lawsuits allege that the Defendant negligently operated the EMDC, causing Class Members harm and violating their rights. The Defendant denies those allegations, and the Court did not decide who was right. The parties have instead decided to settle the lawsuits.

**Who are Class Members in the Proposed Settlement?**

Johnson/Hayne Action	All persons incarcerated at the EMDC between <b>January 1, 2010 and May 18, 2017</b> , including those held pending trial or other court appearance.
Sabourin Action	All persons incarcerated at the EMDC between <b>May 18, 2017 and November 10, 2021</b> , including those held pending trial or other court appearance.

**What benefits are available to eligible Class Members under the Proposed Settlement?**

The Defendant has agreed to provide a settlement fund of **\$32,795,400.00** to pay successful Class Member claims as well as certain fees and expenses. The Defendant will also pay up to an additional \$9,388,207.92 for legal fees (\$8,198,850.00), taxes (\$1,065,850.50) and disbursements (\$123,507.42).

Depending on how long a person was incarcerated at the EMDC, and the amount and nature of harm that they suffered while incarcerated, eligible Class Members may make one of three types of claims: a Level 1 Claim (\$1,500), a Level 2 Claim (up to \$12,500), or a Level 3 Claim (up to \$35,000). Contact McKenzie Lake Lawyers LLP ("Class Counsel") or the Claims Administrator for more information about eligibility and supporting evidence for making a Claim.

**SETTLEMENT APPROVAL HEARING:** The proposed Settlement must be approved by the Court before it becomes effective. The Court will decide whether or not to approve the Settlement on ● at 10:00 am EST at the London Courthouse, 80 Dundas Street, London, ON N6A 6A3. You can register with Class Counsel to be notified if the Settlement is approved.

**YOUR LEGAL RIGHTS AND OPTIONS:**

- If the Court approves the Settlement, you can **participate** by submitting a Claim for compensation. If you wish to participate, you are not required to do anything until after the Settlement is approved.
- You can **object** to the proposed Settlement and attend the Settlement Approval Hearing to present that objection. If you wish to object, you must submit a signed and completed Objection Form to the Claims Administrator on or before [the Objection Deadline].
- If you are a Class Member who was incarcerated at the EMDC between **May 18, 2017 and November 10, 2021**, you can **exclude yourself** from the Sabourin Action (**opt out**), in which case, you will not be eligible to receive any compensation under the Settlement Agreement for harm alleged to have occurred between May 18, 2017 and November 10, 2021. If you wish to exclude yourself from the Sabourin Action and preserve your legal rights against the Defendant, you must submit a signed and completed Opt Out Form to the Claims Administrator on or before [the Opt-Out Deadline].

A copy of the Objection Form and Opt-Out Form can be obtained from the Claims Administrator's website below or by reaching out to Class Counsel at the telephone number or email address below.

**To obtain more information, visit the Claims Administrator online at ● or call ●.**

You may also contact Class Counsel at 1-844-672-5666  
or emdc@mckenzielake.com.

## **ELGIN-MIDDLESEX DETENTION CENTRE ("EMDC") CLASS ACTIONS: NOTICE OF CERTIFICATION, PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL HEARING**

*Johnson et al v Her Majesty the Queen in right of Ontario*, Court File No 2291/13 CP

*Sabourin v Her Majesty the Queen in right of Ontario*, Court File No 1406/19 CP

**Please read this Notice carefully. Your rights may be affected regardless of whether or not you act.**

### **Who is this Notice for?**

This Notice is for all persons who were incarcerated at the Elgin-Middlesex Detention Centre ("EMDC") between January 1, 2010 and November 10, 2021, including those held pending trial or other court appearance ("Class Members").

### **What is this litigation about?**

*Johnson et al v Her Majesty the Queen in right of Ontario* (the "Johnson/Hayne Action") and *Sabourin v Her Majesty the Queen in right of Ontario* (the "Sabourin Action") are certified class action lawsuits against Her Majesty the Queen in right of Ontario (the "Defendant") alleging (1) that the conditions at the EMDC are overcrowded, unsanitary, dangerous, and violent; and, (2) that in its operation and management of the EMDC, the Defendant was systemically negligent and deprived Class Members of their rights guaranteed by sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (the right to life, liberty and security of the person and the right not to be subjected to any cruel and unusual treatment or punishment).

<b>Class Action</b>	<b>Class Members</b>
Johnson/Hayne Action	All persons incarcerated at the EMDC between <b>January 1, 2010 and May 18, 2017</b> , including those held pending trial or other court appearance
Sabourin Action	All persons incarcerated at the EMDC between <b>May 18, 2017 and November 10, 2021</b> , including those held pending trial or other court appearance

Depending on when you were incarcerated at the EMDC, you may be a Class Member in both the Johnson/Hayne Action and Sabourin Action or only one of the Actions.

### **What is the purpose of this Notice?**

The purpose of this Notice is:

- (1) to advise Class Members in the Sabourin Action of the Sabourin Action's certification and their entitlement to opt out of the Sabourin Action on or before [the Opt-Out Deadline];
- (2) to inform all Class Members of a proposed Settlement in the Johnson/Hayne Action and Sabourin Action class action lawsuits against the Defendant;
- (3) to advise all Class Members of the Settlement Approval Hearing, at which the Ontario Superior Court of Justice will consider whether to approve the proposed Settlement; and,
- (4) to advise all Class Members of their entitlement to file objections to the proposed Settlement on or before [the Objection Deadline].

### **When were these actions certified?**

On November 10, 2021, on consent of the Parties, the Sabourin Action was certified as a class action by the Honourable Justice Grace of the Ontario Superior Court of Justice on behalf of all persons who were incarcerated

at the EMDC between May 18, 2017 and November 10, 2021, including those held pending trial or other court appearance.

The Johnson/Hayne Action had already been certified as a class action by the Honourable Justice Grace of the Ontario Superior Court of Justice on behalf of all persons incarcerated at the EMDC between January 1, 2010 and May 18, 2017, including those held pending trial or other court appearance. Class Members in the Johnson/Hayne Action were already provided with notice of that Action's certification, and the deadline for opting out of that action has since passed.

### **What is available under the Settlement?**

A proposed Settlement has been reached in these actions.

Under the proposed Settlement, the Defendant will pay \$32,795,400.00 to settle the actions. This amount includes payment of Approved Claims, the Class Proceedings Fund Levy, Administration Costs and Notice Plan Costs, interest and all applicable taxes.

Under the proposed Settlement, Class Members (those who were incarcerated at the EMDC between January 1, 2010 and November 10, 2021 and who are not excluded from the Class) may be eligible for compensation under **one** of the following compensation levels if they submit a valid and timely Claim:

	Description	Claim Award
<b>Level 1 Claim</b>	A Level 1 Claim may be brought by Class Members who were incarcerated at the EMDC <u>for at least 24 hours</u> and can establish that they suffered some detrimental impact from their incarceration at the EMDC, as evidenced by occasional short-term episodes of anxiety, depression, loss of sleep, nightmares and/or panic states.	\$1,500
<b>Level 2 Claim</b>	A Level 2 Claim may be brought by Class Members who can establish that they suffered modest or continued detrimental impacts from their incarceration at the EMDC, as evidenced by several episodes of anxiety or depression; serious physical injury requiring medical attention; diagnosed Post Traumatic Stress Disorder; anxiety or depression requiring medical intervention or medication; and/or significant resulting substance abuse.	Up to \$12,500
<b>Level 3 Claim</b>	A Level 3 Claim may be brought by Class Members or by their estates. The Class Member or estate must establish that they suffered an ongoing or fatal impact from their incarceration at the EMDC, resulting in a serious dysfunction, impairment, or death, as evidenced by severe anxiety and/or depression requiring ongoing mental health treatment, including medication, or serious physical injury requiring admission to a hospital and ongoing physical therapy and rehabilitation.	Up to \$35,000

**Class Members may only claim for one compensation level in their Claim Form**, and may not stack Claims (i.e. receive compensation for both a Level 1 Claim at \$1,500 and a Level 3 Claim at \$35,000).

Class Members who were incarcerated at the EMDC for fewer than 24 hours are not eligible to make a Level 1 Claim. They may make a Level 2 Claim or a Level 3 Claim, provided that they deliver the supporting evidence required.

#### **When is the Settlement Approval Hearing?**

The proposed Settlement must be approved by the Ontario Superior Court of Justice to become effective. The Settlement Approval Hearing will take place before the Ontario Superior Court of Justice on ● at 10:00 am EST at the London Courthouse, 80 Dundas Street, London, ON N6A 6A3.

The legal fees paid to the lawyers acting for the Class Members ("Class Counsel") may also be approved at the Settlement Approval Hearing, but that amount will be paid separately (in addition to the \$32,795,400.00) and will not reduce the amounts paid to successful Claimants.

If the Settlement is approved, an additional Notice will follow. Visit the settlement website at [website] for the most up to date information. You can also register with Class Counsel (McKenzie Lake Lawyers LLP) or on the settlement website at [website] to receive an email if the Settlement is approved.

#### **What are my legal rights and options?**

##### **For all Class Members (Class Members in the Johnson/Hayne Action and/or Sabourin Action):**

- You can **participate** in the Settlement, if the proposed Settlement is approved by the Court, and submit a Claim for compensation. If you wish to participate, you are not required to do anything until after the Settlement is approved.
- You can **object** to the proposed Settlement before the Court considers whether to approve it and attend the Settlement Approval Hearing to present that objection. If you wish to object to the proposed Settlement, you must submit a signed and completed Objection Form to the Claims Administrator on or before [the Objection Deadline].

**If you are a Class Member who was incarcerated at the EMDC between May 18, 2017 and November 10, 2021** (a Class Member in the Sabourin Action), you have a third option:

- You can **exclude** yourself from the Sabourin Action (opt out), in which case, you will not be eligible to receive any compensation under the Settlement Agreement for harm alleged to have occurred between May 18, 2017 and November 10, 2021. If you wish to exclude yourself from the Sabourin Action (opt out) and preserve your legal rights against the Defendant, you must submit a signed and completed Opt Out Form to the Claims Administrator on or before [the Opt Out Deadline].

Class Members in the Johnson/Hayne Action were already given the opportunity to exclude themselves from the Johnson/Hayne Action (opt out). The opt-out deadline for the Johnson/Hayne Action was June 20, 2018. Class Members are no longer able to opt out of the Johnson/Hayne Action.

Your legal rights and options—and the deadlines to exercise them—are explained in more detail in this Notice. Please read this entire Notice carefully.

#### **Why did I get this Notice?**

You are receiving this Notice because the Defendant's records indicate that you were incarcerated at the EMDC between January 1, 2010 and November 10, 2021. You may be entitled to claim certain benefits offered by the

proposed Settlement if the proposed Settlement is approved by the Court and you submit a valid and timely Claim.

You have a right to know about the proposed Settlement and your options before the Court decides whether to approve the proposed Settlement. If the Court approves the proposed Settlement, the Defendant will provide the payments agreed to in the Settlement Agreement to Class Members who submit valid and timely Claims. This Notice explains the class action lawsuits, the proposed Settlement, your legal rights, what compensation is available, who is eligible for that compensation, and how to make a Claim for that compensation. Please read this entire Notice carefully.

### **Why is there a Settlement?**

The Parties have agreed to the proposed Settlement to avoid the cost and risk of further litigation, including potential trials, and to provide Class Members with reasonable compensation in exchange for releasing the Defendant from liability. The proposed Settlement does not mean that the Defendant did anything wrong, and the Court did not decide which Party was right.

The Parties entered into a Settlement Agreement. The individuals who filed the Actions (called the "Representative Plaintiffs") and Class Counsel believe that the proposed Settlement is fair, reasonable and in the best interests of the Class.

### **How do I know if I am part of the Settlement?**

For the purposes of the proposed Settlement, all persons who were incarcerated at the EMDC between January 1, 2010 and November 10, 2021, including those held pending trial or other court appearance, are Class Members. However, not all Class Members are eligible to receive compensation. Some exceptions apply (see below).

### **Can everyone make a Claim in the Settlement?**

Only Class Members who meet certain criteria are eligible to submit Claims in the Settlement. You are excluded from making a Claim in the proposed Settlement if:

- (a) you are not a Class Member under the terms of the Settlement Agreement;
- (b) you validly opted out of the Johnson/Hayne Action and/or Sabourin Action in writing (but see \* and \*\* below);
- (c) you are a "Time-Barred Class Member" (defined below); and/or,
- (d) you previously settled claims against the Defendant and executed a release in favour of the Defendant in relation to matters that are the subject of the Actions.

\* If you were incarcerated at the EMDC both during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017) and during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021), opted out of the Johnson/Hayne Action and do not opt out of the Sabourin Action, you are only still a Class Member in the Sabourin Action. You may make a Claim for compensation under the Settlement Agreement for harm alleged to have occurred to you at the EMDC during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021).

\*\* If you were incarcerated at the EMDC both during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017) and during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021), did not opt out of the Johnson/Hayne Action and opt out of the Sabourin Action, you are only still a Class Member in the Johnson/Hayne Action. You may make a Claim for compensation under the Settlement Agreement for harm alleged to have occurred to you at the EMDC during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017).

You are a "Time-Barred Class Member" if (a) your claim arises from an injury, loss or damage sustained while you

were incarcerated at the EMDC on or before October 9, 2011 and is statute-barred by the *Limitations Act, 2002*, SO 2002, c 24; (b) you did not, before the Johnson/Hayne Action and Sabourin Action were commenced, initiate within the applicable limitation period a proceeding against the Defendant for damages arising from your incarceration at the EMDC (i.e. issue and serve a statement of claim on the Defendant); and (c) you did not validly opt out.

### **How do I make a Claim for compensation under the Settlement?**

**The claims process has not yet begun.** If the proposed Settlement is approved by the Court at the Settlement Approval Hearing to be held on ●, you may make a Claim by doing the following:

- (1) fill out the Claim Form (on paper or online);
- (2) include the supporting evidence and documentation specified on the Claim Form; and,
- (3) submit the Claim Form and supporting evidence and documentation to the Claims Administrator online, by mail (at the address listed on the Claim Form), or by email (at the email address listed on the Claim Form) on or before the deadline to submit a Claim Form (12 months after the Court Approval Date).

Please keep a copy of your completed Claim Form and all of the supporting evidence and documentation you submit for your own records.

If you fail to submit a Claim Form and supporting evidence and documentation on or before the deadline to submit a Claim Form, you will not be eligible for any compensation whatsoever (i.e., you will not get paid). Sending in a Claim Form late will be the same as doing nothing.

### **What evidence do I need to prove my Claim?**

The material you need to include with your Claim will depend on whether you are making a Level 1, Level 2, or Level 3 Claim.

The supporting evidence required in respect of each compensation level is:

**Level 1 Claim:** Sworn statement/solemn affirmation setting out, to the best of your recollection, (1) the nature of the incident(s) alleged to have been experienced by you while incarcerated at the EMDC, including details regarding the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident; and, (2) the nature and extent of the harm(s) caused to you by the incident(s).

**Level 2 Claim:** Commissioned Affidavit setting out, to the best of your recollection, (1) the nature of the incident(s) alleged to have been experienced by you while incarcerated at the EMDC, including details regarding the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident(s); and, (2) the nature and extent of the harm(s) caused to you by the incident(s).

**Level 3 Claim:** Commissioned Affidavit setting out, to the best of your recollection, (1) the nature of the incident(s) alleged to have been experienced by the Claimant while incarcerated at the EMDC, along with all details relating to the specific date of the incident(s), unit/location, individuals involved, reports made to staff, and any other pertinent information relating to the alleged incident(s); and, (2) the nature and extent of the harm(s) caused you by the incident(s).

**Supporting Documentation:** Where possible, additional supporting documentation for Level 2 and Level 3 Claims should be provided from a doctor, psychologist, social worker, counsellor, or therapist setting out the professional's knowledge of (1) the incident(s) alleged by you ; and, (2) the nature of the harm caused to you by the incident(s). If you are submitting a Level 2 Claim or a Level 3 Claim and cannot provide this supporting

documentation, you will need to explain on your Claim Form why it was not possible to provide supporting documentation. A failure to provide supporting documentation for a Level 2 Claim or Level 3 Claim may impact the quantum of your award.

**Can I submit a Claim on behalf of someone else?**

Yes, if you have legal authority to do so. If a Claim is being submitted on behalf of someone else, the person completing the Claim must explain on the Claim Form why they have the authority to act and must attach a copy of any Certificate of Appointment of Estate Trustee, Power of Attorney or other document establishing that authority.

**How do I get records from when I was incarcerated at the EMDC?**

You don't necessarily need a copy of your Inmate File (containing certain records from when you were at the EMDC) to make a Claim. However, if you nevertheless want to obtain a copy of your Inmate File in order to support your Claim, there is a process for doing so under the Settlement.

You can request a copy of your Inmate File by contacting the Claims Administrator in writing. These requests must be made within three (3) months after the order approving the Settlement becomes final.

The Defendant will make best efforts to produce a copy of the Inmate File within nine (9) months after the order approving the Settlement becomes final.

**If my Claim is successful, when will I receive my compensation?**

The Claims Administrator will mail individual compensation cheques to successful Claimants at the postal addresses indicated in the Claim Forms or as directed by an incarcerated Claimant in the Claim Form.

The Claims Administrator cannot mail the individual compensation cheques until (i) all timely Claim Forms have been processed; (ii) the time to request a reconsideration has expired; (iii) all requests for reconsideration have concluded; (iv) the Claims Administrator has reviewed its determinations and those made by the Referee, and has allocated amounts to successful Claimants; (v) the Claims Administrator has prepared a Successful Claims Report advising the Defendant and Class Counsel of the Approved Claims and the amounts to be awarded to each successful Claimant; and, (vi) the Defendant provides the Claims Administrator with the funds to carry out the distributions to the successful Claimants identified in the Successful Claims Report (the Approved Claims payment). The Claims Administrator will mail the individual compensation cheques within sixty (60) days of (i) completion of the Successful Claims Report; and, (ii) receipt of the Approved Claims payment. This process will take some time, and your patience is appreciated. When the cheques have been mailed, an announcement will be posted on the websites of Class Counsel and the Claims Administrator.

**Who will review my Claim?**

A third-party Claims Administrator agreed to by the Parties will be appointed by the Court to administer the Settlement and the claims process. The Claims Administrator will conduct an initial review of all Claims to verify that the Claimant is eligible to claim for compensation.

Once the Claims have been verified, the Claims Administrator will provide all verified Level 2 Claims and verified Level 3 Claims, together with all documentation provided, to the Referee – a retired judge or other senior legal practitioner appointed by the Court. The Claims Administrator, for Level 1 Claims, and the Referee, for Level 2 Claims and Level 3 Claims, will review the Claim Form, any supporting documentation, and documentation submitted by the Defendant and Class Counsel, if any, to determine the compensation level, if any, for which a Claimant is eligible.



In considering Level 2 Claims and Level 3 Claims, the Referee may determine the quantum of the award in an amount not exceeding the maximum identified in the table at Question 6 above.

**What if my Claim is found to be incomplete?**

The Claims Administrator will review each Claim Form for completeness. If your Claim Form is incomplete, the Claims Administrator will let you know within twenty (20) business days of receiving your Claim Form. You will then have to complete the Claim Form within the later of (i) sixty (60) days from the date that the Claims Administrator advises you that your Claim Form is incomplete; or, (ii) the deadline to submit a Claim Form and supporting documentation.

**What am I giving up to stay in the Sabourin Class?**

Unless you exclude yourself in writing (opt out) from the Sabourin Class, you will be part of the Class bound by the proposed Settlement if the proposed Settlement is approved by the Court. That means that you can't sue, continue to sue, or be part of any other lawsuit against the Defendant about the legal issues in this case related to your incarceration at the EMDC between May 18, 2017 and November 10, 2021. It also means that all of the Court's orders will apply to you and legally bind you.

**Can I exclude myself from the Settlement?**

If you do not want the compensation provided in this proposed Settlement, and you want to keep the right to sue or continue to sue the Defendant on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or opting out of the Class.

Class Members who want to participate in the proposed Settlement are automatically included in the Class and should **not** submit the Opt-Out Form discussed below.

**Only certain Class Members are eligible to opt out of the Settlement at this time.**

1. If you are a Class Member who was incarcerated at the EMDC **between January 1, 2010 and May 18, 2017**, you are a Class Member in the Johnson/Hayne Action and **you can no longer opt out of the Settlement**. Class Members in the Johnson/Hayne Action were already given the opportunity to exclude themselves from the Johnson/Hayne Action (opt out). The opt out deadline for the Johnson/Hayne Action was June 20, 2018. Class Members are no longer able to opt out of the Johnson/Hayne Action or proposed Settlement (in relation to harm alleged to have occurred between January 1, 2010 and May 18, 2017).
2. If you are a Class Member who was incarcerated at the EMDC **between May 18, 2017 and November 10, 2021**, you are a Class Member in the Sabourin Action. Class Members in the Sabourin Action can exclude themselves from the Sabourin Class and proposed Settlement in relation to harm alleged to have occurred between May 18, 2017 and November 10, 2021 (opt out).

**I am a class member in the Sabourin Action. How do I opt out or exclude myself from the Settlement?**

If you exclude yourself from the Sabourin Action (opt out), you will **not** be eligible to receive any compensation under the Settlement Agreement for harm alleged to have occurred between May 18, 2017 and November 10, 2021. You will also not be able to object to the proposed Settlement. You will not be bound by anything that happens on the Sabourin Action.

If you wish to exclude yourself from the Sabourin Action (opt out) and preserve your legal rights against the Defendant, you must submit a **signed and completed** Opt Out Form to the Claims Administrator on or before **[the Opt-Out Deadline]**. You can obtain a copy of the Opt Out Form by contacting Class Counsel, by contacting the Claims Administrator, or by downloading a copy from ●.

You cannot exclude yourself from the Sabourin Action on the phone or on any website. Instead, you must submit a signed and completed Opt Out Form to the Claims Administrator by email or regular mail. Please keep a copy of the Opt Out Form you submit for your records.

No person may opt out a minor (a person under 18 years of age) or a mentally incapable Class Member without permission of the Court and after providing notice to the Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

**If I do not exclude myself from the Sabourin Action (opt out), can I sue for the same thing later?**

If you do not exclude yourself from the Sabourin Action (opt out), you will be part of the Class bound by the proposed Settlement if the proposed Settlement is approved by the Court. That means that you can't sue, continue to sue, or be part of any other lawsuit against the Defendant about the legal issues in this case related to your incarceration at the EMDC between May 18, 2017 and November 10, 2021.

**If I exclude myself (opt out), can I get compensation under the Settlement Agreement?**

If you exclude yourself from the Sabourin Action (opt out), you will not be eligible to receive any compensation under the Settlement Agreement for harm alleged to have occurred between May 18, 2017 and November 10, 2021.

If you excluded yourself from the Johnson/Hayne Action (opted out), you will not be eligible to receive any compensation under the Settlement Agreement for harm alleged to have occurred between January 1, 2010 and May 18, 2017.

Depending on when you were incarcerated at the EMDC, you may be a Class Member in both the Johnson/Hayne Action and Sabourin Action or only one of the Actions.

If you were incarcerated at the EMDC both during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017) and during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021), opted out of the Johnson/Hayne Action and do not opt out of the Sabourin Action, you are a Class Member in the Sabourin Action only. You may make a Claim for compensation under the Settlement Agreement for harm alleged to have occurred to you at the EMDC during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021).

If you were incarcerated at the EMDC both during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017) and during the time period covered by the Sabourin Action (May 18, 2017 to November 10, 2021), did not opt out of the Johnson/Hayne Action and opt out of the Sabourin Action, you are a Class Member in the Johnson/Hayne Action only. You may make a Claim for compensation under the Settlement Agreement for harm alleged to have occurred to you at the EMDC during the time period covered by the Johnson/Hayne Action (January 1, 2010 to May 18, 2017).

**Do I have a lawyer in this case?**

Yes. The law firm representing the Class Members (Class Counsel) is listed below. You will not be charged for contacting these lawyers for more information. If you want to be represented by your own lawyer, you may hire one at your own expense.

**McKenzie Lake Lawyers LLP**  
 140 Fullarton Street, Suite 1800  
 London, ON N6A 5P2  
 Toll-Free Telephone: 1-844-672-5666  
 Email: emdc@mckenzielake.com

### **How will the lawyers representing the Class be paid?**

Class Counsel will ask the Court for approval of the payment of their fees and other expenses by the Defendant. The Defendant and Class Counsel have agreed to ask the court to approve an amount of up to \$9,388,207.92 for legal fees (\$8,198,850.00), taxes (\$1,065,850.50) and disbursements (\$123,507.42). It will be up to the Court to approve or determine the amount that the Defendant will be ordered to pay for those fees and expenses. The Court may award something less than the amount requested by Class Counsel. These amounts will not come out of the fund for payments to Class Members, or decrease their entitlements.

You may continue to check on the progress of Class Counsel's request for fees and expenses by visiting [[website](#)].

### **What if I don't agree with the Settlement?**

If you are a Class Member, you can tell the Court that you don't agree with the proposed Settlement or some part of it by filing an objection. In an objection, you can give the Court reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object, you must submit a **signed and completed** Objection Form to the Claims Administrator on or before [[the Objection Deadline](#)]. Be sure to include the following information:

- (i) your full name, address, email address, and telephone number;
- (ii) a statement that you meet the criteria for membership in the Class;
- (iii) to the best of your recollection, a list of your placements in the EMDC, with placement dates, release dates, and unit locations;
- (iv) a written statement of all factual and legal grounds for your objection accompanied by any legal support for your objection;
- (v) copies of any papers, briefs or other documents upon which your objection is based;
- (vi) a statement setting out whether you intend to appear at the Settlement Approval Hearing;
- (vii) a statement setting out whether you intend to appear at the Settlement Approval Hearing through counsel, and if so, identifying any counsel representing you who intends to appear at the Settlement Approval Hearing; and,
- (viii) your signature.

Objections must be sent by mail, courier, or email to the Claims Administrator on or before [[the Objection Deadline](#)] using the Objection Form, which can be obtained by requesting a copy from the Claims Administrator or Class Counsel or by downloading a copy at [●](#). Objections submitted after this date will not be considered.

If you want to speak at the Settlement Approval Hearing, you must indicate that you intend to do so in your Objection Form. You can hire a lawyer to appear on your behalf at your own expense or you may appear yourself. If you do not state your intention to appear in your Objection Form, or you do not submit a signed and completed Objection Form before [[the Objection Deadline](#)], you will waive all objections and can be barred from speaking at the Settlement Approval Hearing.

**What is the difference between objecting and excluding myself (opting out)?**

Objecting is simply telling the Court that you don't like something about the proposed Settlement. You can object to the proposed Settlement only if you stay in the Class. Excluding yourself (opting out) is telling the Court that you do not want to be part of the Class and the proposed Settlement. If you exclude yourself (opt out), you have no basis to object because the proposed Settlement no longer affects you.

**What is the Settlement Approval Hearing?**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, subject to the requirements above, but you do not have to attend.

**When is the Settlement Approval Hearing?**

The Settlement Approval Hearing will take place before the Ontario Superior Court of Justice on ● at 10:00 am EST at the London Courthouse, 80 Dundas Street, London, ON N6A 6A3.

At this Settlement Approval Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and in the best interests of the Class. If there are objections, the Court will consider them. The Court will listen to Class Members who have asked to speak at the Settlement Approval Hearing. The Court may also decide how much to pay Class Counsel. After the Settlement Approval Hearing, the Court will decide whether to approve the proposed Settlement. We do not know how long this decision will take.

The Settlement Approval Hearing may be rescheduled without further notice to you. It is recommended that you periodically check ● for updated information.

**Do I have to attend the Settlement Approval Hearing?**

No, you do not need to attend the Settlement Approval Hearing, but you are welcome to attend at your own expense.

If you submit an objection, you do not need to come to the Court to talk about it. As long as you have mailed your signed and completed Objection Form on time, the Court will consider it. You may also attend or pay your own lawyer to attend, but it is not necessary.

Class Members do not need to appear at the Settlement Approval Hearing or take any other action to indicate their approval of the proposed Settlement. Class Counsel will answer any questions that the Court may have.

**What happens if I do nothing at all?**

If the Court approves the proposed Settlement and you do nothing at all, you will not receive any compensation from the proposed Settlement. In order to receive compensation in the proposed Settlement, you must submit a Claim Form with the supporting evidence and documentation specified on the Claim Form. Unless you exclude yourself (opt out), you won't be able to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendant about the legal issues in the Johnson/Hayne Action and/or Sabourin Action.

However, even if you take no action, you will keep your right to sue the Defendant for any other claims not resolved by the Settlement, subject to any applicable limitation periods.

**How can I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which you can view at ● [website].

Neither the Parties nor their counsel make any representation regarding the tax effects, if any, of receiving any benefits under this proposed Settlement. Consult your tax adviser for any tax questions you may have.

The court offices will be unable to answer any questions about the matters in this Notice. If you have any questions regarding the proposed Settlement or about the class action lawsuits in general, information is available on Class Counsel's website ([www.mckenzielake.com](http://www.mckenzielake.com)) or by contacting Class Counsel directly:

**McKenzie Lake Lawyers LLP**  
 140 Fullarton Street, Suite 1800  
 London, ON N6A 5P2  
 Toll-Free Telephone: 1-844-672-5666  
 Email: [emdc@mckenzielake.com](mailto:emdc@mckenzielake.com)

You can also obtain more information by reaching out to the Claims Administrator:

<b>EMDC Class Actions Claims Administrator</b>
c/o Epiq Class Action Services Canada Inc P.O. Box 507 STN B Ottawa, ON K1P 5P6 Toll-Free Telephone: ● Email: ●

If the Court approves the proposed Settlement and the Settlement Agreement is not terminated, Notice of Settlement Approval will follow.

**This Notice was approved by order of the Ontario Superior Court of Justice. This is not a solicitation from a lawyer.**

## ELGIN-MIDDLESEX DETENTION CENTRE ("EMDC") CLASS ACTIONS: NOTICE OF SETTLEMENT APPROVAL

**Please read this Notice carefully. Your rights may be affected regardless of whether or not you act.**

### What is this Notice about?

This Notice is for all persons who were incarcerated at the EMDC between January 1, 2010 and November 10, 2021, including those held pending trial or other court appearance ("Class Members").

The Ontario Superior Court of Justice has approved a Settlement of two class actions: *Johnson et al v Ontario* (the "Johnson/Hayne Action"), and *Sabourin v Ontario* (the "Sabourin Action"). The class actions allege that Ontario's operation of the EMDC was negligent and violated Class Members' rights under the *Canadian Charter of Rights and Freedoms*. The Defendant has not been found liable for any of the claims advanced in these lawsuits. The Parties have instead decided to settle the lawsuits.

That Settlement was approved by the Court on [DATE].

### Who can claim in the Settlement?

You are eligible to submit a claim in this Settlement if you suffered harm while incarcerated at the EMDC between **October 10, 2011 and November 10, 2021**, and did not previously opt out of the class actions. You may also be able to submit a claim if you suffered harm while incarcerated at the EMDC between January 1, 2010 and October 9, 2011 if you meet certain criteria.

### What money is available under the Settlement?

Under the Settlement, the Defendant will pay **\$32,795,400.00** for eligible Class Member claims and other fees in the class action lawsuits. Class Members may be eligible for compensation under one of the following compensation levels:

	Description	Claim Award
<b>Level 1 Claim</b>	A Level 1 Claim may be brought by Class Members who were incarcerated at the EMDC <u>for at least 24 hours</u> and can establish that they suffered some detrimental impact from their incarceration at the EMDC, as evidenced by occasional short-term episodes of anxiety, depression, loss of sleep, nightmares and/or panic states.	\$1,500
<b>Level 2 Claim</b>	A Level 2 Claim may be brought by Class Members who can establish that they suffered modest or continued detrimental impacts from their incarceration at the EMDC, as evidenced by several episodes of anxiety or depression; serious physical injury requiring medical attention; diagnosed Post Traumatic Stress Disorder; anxiety or depression requiring medical intervention or medication and/or significant resulting substance abuse.	Up to \$12,500
<b>Level 3 Claim</b>	A Level 3 Claim may be brought by Class Members or the estates of Class Members. The Class Members or their estates must establish that the Class Member has suffered an ongoing or fatal impact from incarceration at the EMDC, resulting in a serious dysfunction, impairment, or death, as evidenced by severe anxiety and/or depression requiring ongoing mental health treatment, including	Up to \$35,000

	medication, or serious physical injury requiring admission to a hospital and ongoing physical therapy and rehabilitation.	
--	---	--

Class Members may only claim for one compensation level in their Claim Form (i.e. you cannot make both a Level 1 and a Level 3 claim). If you were incarcerated for fewer than 24 hours, you cannot make a Level 1 Claim, but you can make a Level 2 or Level 3 claim with the required supporting documentation.

#### **How Do I Make a Claim for Compensation?**

The period for submitting a Claim begins on [●DATE] and runs until [●DATE].

You may make a Claim by completing all of the following steps:

- (1) fill out the Claim Form (on paper or online at [●WEBSITE]);
- (2) include the supporting evidence and documentation specified on the Claim Form; and,
- (3) submit the Claim Form and supporting evidence and documentation to the Claims Administrator online, by mail (at the address listed on the Claim Form), or by email (at the email address listed on the Claim Form) on or before [●DATE].

If you fail to submit a Claim Form and supporting evidence and documentation on or before [●DATE], you will not be eligible for any compensation whatsoever (i.e. you will not get paid). Sending in a Claim Form late will be the same as doing nothing.

#### **Where can I get additional information?**

The court offices will be unable to answer any questions about the matters contained in this Notice. If you have any questions regarding the Settlement Agreement or about the class action lawsuits in general, information is available on Class Counsel's website ([www.mckenzielake.com](http://www.mckenzielake.com)) or by contacting Class Counsel directly. You can also request more information from the Settlement Administrator and Class Counsel at the addresses below:

<b>The Settlement Administrator</b>	<b>Class Counsel</b>
<b>EMDC Class Actions Claims Administrator</b> c/o Epiq Class Action Services Canada Inc P.O. Box 507 STN B Ottawa, ON K1P 5P6 Website Toll-Free Telephone: ● Email: ●	<b>McKenzie Lake Lawyers LLP</b> 140 Fullarton Street, Suite 1800 London, ON N6A 5P2 Toll-Free Telephone: 1-844-672-5666 Email: <a href="mailto:emdc@mckenzielake.com">emdc@mckenzielake.com</a>

## Schedule “D” – Notice Plan

### Notice Plan

1. Capitalized terms used in this Notice Plan have the meanings ascribed to them in the Settlement Agreement.

#### *Notice of Certification and Settlement Approval Hearing*

2. The Notice of Certification and Settlement Approval Hearing shall first be published within forty-five (45) days of the Notice Approval Order, and shall thereafter be distributed as follows:
  - a. the Claims Administrator and Class Counsel shall post the Notice of Certification and Settlement Approval Hearing (Long Form), the Notice of Certification and Settlement Approval Hearing (Short Form), the Opt-Out Form, the Objection Form, and the Settlement Agreement on their websites;
  - b. the Claims Administrator shall forward a copy of the Notice of Certification and the Settlement Approval Hearing (Long Form), the Notice of Certification and the Settlement Approval Hearing (Short Form), the Opt-Out Form, the Objection Form, and the Settlement Agreement to any Class Member who requests it;
  - c. the Claims Administrator shall establish a toll-free support line to provide assistance to Class Members, family, or other persons who make inquiries on their own behalf or on behalf of Class Members;
  - d. the Claims Administrator shall publish the Notice of Certification and Settlement Approval Hearing (Short Form) in ¼ of a page size i) in a weekend edition and ii) in a weekday edition, of the following newspapers:
    - i. *The London Free Press*; and,
    - ii. *The Londoner*;
  - e. Class Counsel shall forward a copy of the Notice of Certification and the Settlement Approval Hearing (Short Form) and the Notice of Certification and the Settlement Approval Hearing (Long Form) to all Class Members for whom Class Counsel has an email address on file;
  - f. HMQRO shall provide the Claims Administrator with a list of Class Members’ last known addresses. The Claims Administrator shall send the Notice of Certification and Settlement Approval Hearing (Short Form) by regular mail to the last known address of the Class Members provided by HMQRO;
  - g. HMQRO shall post the Notice of Certification and the Settlement Approval Hearing (Short Form) in conspicuous places within the EMDC in common areas, making it possible for Class Members to see it;
  - h. HMQRO shall provide copies of the Notice of Certification and the Settlement Hearing (Short Form) to all probation and parole officers working within 100 km of London, Ontario, and:



1. make best efforts to have probation and parole officers working within this area distribute the Notice of Certification and the Settlement Approval Hearing (Short Form) to each parolee/former inmate currently assigned to them; and,
2. make best efforts to have each probation and parole office within this area post the Notice of Certification and the Settlement Approval Hearing (Short Form).

*Notice of Settlement Approval*

3. The Notice of Settlement Approval shall first be published within forty-five (45) days of the Approval Order, and shall thereafter be distributed as follows:
  - a. the Claims Administrator and Class Counsel shall post the Notice of Settlement Approval and the Claim Form on their websites;
  - b. the Claims Administrator shall forward copies of the Notice of Settlement Approval and the Claim Form to any Class Member who requests them;
  - c. Class Members may register their email addresses on the Claims Administrator's website. Where a Class Member has provided an email address in this matter, the Claims Administrator will send copies of the Notice of Settlement Approval and Claim Form to the email address provided;
  - d. the Administrator shall publish the Notice of Settlement Approval i) in a weekend edition and ii) in a weekday edition, of the following newspapers:
    - i. *The London Free Press*; and,
    - ii. *The Londoner*;
  - e. Class Counsel shall forward copies of the Notice of Settlement Approval and the Claim Form to all Class Members for whom Class Counsel has an email address on file;
  - f. HMQRO shall post the Notice of Settlement Approval and the Claim Form in conspicuous places within the EMDC in common areas, making it possible for Class Members to see it; and,
  - g. HMQRO shall provide copies of the Notice of Settlement Approval to all probation and parole officers working within 100 km of London, Ontario, and:
    1. make best efforts to have probation and parole officers working within this area distribute the Notice of Settlement Approval to each parolee/former inmate currently assigned to them; and,
    2. make best efforts to have each probation and parole office within this area post the Notice of Settlement Approval.