

File No. CI 18-01-16608

21-01-31242

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

VIRGIL CHARLES GAMBLIN and HAWA YUSUF, as Litigation Guardian of
A.M.,

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA ,

Defendant.

ORDER

MERCHANT LAW GROUP
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THE QUEEN'S BENCH

Winnipeg Centre

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Wednesday, THE 4th

MDM. JUSTICE SHAWN D. GREENBERG

May
DAY OF AUGUST, 2022

(Court Seal)

BETWEEN:

VIRGIL CHARLES GAMBLIN and HAWA YUSSUF as Litigation Guardian of A.M. Plaintiffs

- and -

THE GOVERNMENT OF MANITOBA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C.130

ORDER

THIS MOTION, made by the Plaintiffs for approval of notice of certification, was heard on April 29, 2022;

ON READING the motion record of the Plaintiffs, and on hearing the submissions of the lawyer(s) for the Plaintiffs and the Defendant;

AND UPON BEING ADVISED of the parties' consent to this Order;

1. THIS COURT ORDERS that Epiq Global (the "Administrator") is hereby appointed as the Administrator.

2. **THIS COURT ORDERS** that Class Members shall be notified that this proceeding has been certified as a class proceeding as follows:

(a) by the Administrator placing, within thirty (30) days of the date of this Order, Internet banner and other advertisements targeting the general population of Manitoba and substantially containing the information contained in the Short-Form Notice, which will be provided to the Administrator by the parties substantially in the form set out in **Schedule “A”**, as well a French language version which is to be agreed upon by the parties;

(b) by the Administrator distributing the Short-Form Notice to all Manitoba offices of the Elizabeth Fry Society, the John Howard Society, the Public Guardian and Trustee of Manitoba, the University of Manitoba Community Law Centre; the Métis Justice Institute, Aboriginal Legal Services (Toronto), and the Manitoba Association of Friendship Centres;

(c) by the Defendant posting the Short-Form Notice in a conspicuous place within each Provincial Custodial Facility in common areas, making it possible for Class Members to see it;

(d) by the Administrator establishing a website and toll-free support line within Manitoba, to provide assistance to Class Members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class Members;

(e) by Class Counsel and the Administrator posting the Short-Form Notice and Long Form Notice, which will be provided to the Administrator by the parties substantially in the form set out in **Schedule “B”**, and the French language translations of these documents which are to be agreed upon by the parties, on Class Counsel’s and the Administrator’s respective

websites;

(f) by the Administrator forwarding the Short-Form Notice and Long Form Notice to any Class Member who requests it;

(g) by the Defendant providing copies of the Short-Form Notice and Long Form Notice to all probation officers within Manitoba, and making best efforts to have all probation officers within Manitoba distribute the Publication Notice and Long Form Notice to each former inmate assigned to them; and,

(h) by the Defendant directing that the Short-Form Notice be posted in all probation offices throughout Manitoba.

3. **THIS COURT ORDERS** that the Plaintiffs shall pay half and the Defendant shall pay half of the expense of the notice program described in paragraphs 2(a), (b), (d), (e), and (f) and the opt-out program described in paragraphs 4-9, up to a maximum payment by the Defendant of \$25,000. The Plaintiffs shall pay any remaining portion of the expenses. The expenses include the Administrator's responsibilities herein, subject to review and readjustment by agreement or order at the termination of this proceeding.
4. **THIS COURT ORDERS** that the Administrator shall receive opt-out forms from the Class Members.
5. **THIS COURT ORDERS** that the Administrator shall preserve all opt-out forms it receives until permitted to dispose of such information by further order of this Court or by written direction jointly signed by Class Counsel and the Defendant.

6. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering a signed opt-out form, a copy of which is attached as **Schedule "C"**, or some other legible signed request to opt out, within 90 days after the notices described in paragraph 2(e) are published (the "**Opt Out Deadline**"), sent to the Administrator, at the following address:

Manitoba Solitary Confinement Class Action
c/o Epiq Class Action Services Canada Inc.
PO Box 507 Stn B
Ottawa, ON
K1P 5P6

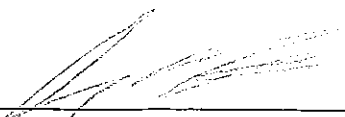
7. **THIS COURT ORDERS** that if a Class Member has delivered an opt-out form to the Administrator, they may withdraw their opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that they wish to withdraw their opt-out.
8. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.
9. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

(Date) *September 6, 2022.*

B. GREENBERG

Greenberg J.

Date: Aug 17 / 2027

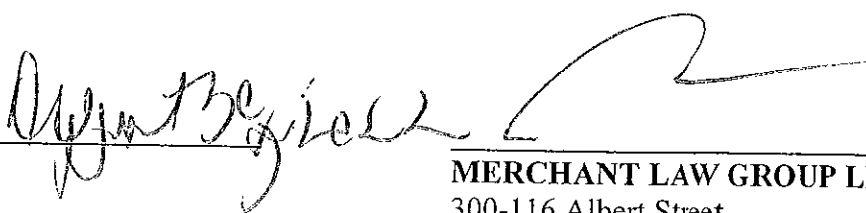


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Date: August 15, 2027



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**Lawyers for the Defendant The Government of
Manitoba**

SCHEDULE "A"

SHORT-FORM NOTICE

Were You Incarcerated in a Provincial Adult or Youth Jail between September 12, 2006 and [insert certification date]?

A class action lawsuit may affect you. Please read this carefully.

The Manitoba Court of Queen's Bench has decided that a class action on behalf of people who were inmates in adult and youth provincial jails in Manitoba and who:

- Were placed in segregation for prolonged periods of time (15 or more consecutive days) between September 12, 2012 and [DATE];
- Were placed in segregation for any length of time as youth between September 12, 2006 and [DATE]; or
- Were placed in segregation for any length of time and who were diagnosed with a Serious Mental Illness (with some exclusions) between September 12, 2012 and [DATE].

You have a choice of whether or not to stay in the Class.

To stay in the Class, you do not have to do anything. If money or benefits are obtained in the class action, you will be notified about how to make a claim. You will be legally bound by all orders and judgments, and you will not be able to sue Manitoba about the legal claims in this case.

If you want to remove yourself from the class action, you must submit an opt out form by [insert opt out deadline]. Opt out forms are available here: [website]. If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP ("Class Counsel") to represent the Class. You don't have to pay Class Counsel to participate. If they get money or benefits for the Class, they may ask for lawyers' fees and costs which would be deducted from any money obtained or to be paid separately by Manitoba.

For more information about your rights, go to [website], call toll-free [number] (TTY: [number]) or write to [address], or by email at: [email].

SCHEDULE "B"

Were You Incarcerated in a Provincial Adult or Youth Jail in Manitoba between September 12, 2006 and [insert certification date]?

If YES, a Class Action May Affect Your Rights.

A Court authorized this notice. You are not being sued.

You could be affected by a class action involving solitary confinement in Manitoba.

A Court has certified a class action for current and former inmates of provincial jails in Manitoba who:

- Were placed in segregation for prolonged periods of time (15 or more consecutive days) between September 12, 2012 and [DATE];
- Were placed in segregation for any length of time as youth between September 12, 2006 and [DATE]; or
- Were placed in segregation for any length of time and who were diagnosed with a Serious Mental Illness (with some exclusions) between September 12, 2012 and [DATE].

If you know a current or former inmate who cannot read this notice please share this information with them.

The Court has not decided whether Manitoba did anything wrong. There still has to be a court case about whether Manitoba did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is for helping you make that choice.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

<p>Do NOTHING</p>	<p>Stay in this class action and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement in the class action. But, you give up any rights to sue Manitoba on your own about the same legal claims in this lawsuit.</p>
<p>REMOVE YOURSELF (OPT OUT)</p>	<p>Get out of this class action and get no benefits from it. Keep your individual rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded in the class action, you won't share in those. But, you keep any rights to sue Manitoba on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **[90 days from publication date of notice]**

WHAT THIS NOTICE CONTAINS

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- 2. What is this lawsuit about?
- 3. Why is this a class action?
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BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a class action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included in the class, you may have legal rights and options before the Court decides whether the claims being made against Ontario on your behalf are correct. This notice explains all of these things.

A judge of the Manitoba Court of Queen's Bench is currently overseeing this case. The case is known as *Gamblin et al. v. The Government of Manitoba*, Court File No. CI-18-01-16608. The people who sued are called the Plaintiffs. The Government of Manitoba is the Defendant.

2. What is this lawsuit about?

The lawsuit says that Manitoba improperly used segregation in provincial adult and youth jails. The lawsuit says that Manitoba's use of segregation constitutes systemic negligence, breaches inmates' rights under the *Canadian Charter of Rights and Freedoms*, and breaches the fiduciary duty owed by Manitoba to inmates.

Manitoba denies these claims. The Court has not decided whether the Plaintiffs or Manitoba is right. The lawyers for the Plaintiffs will have to prove their claims in Court.

If you are having a difficult time dealing with these issues you can call [number] (TTY: [number]) for assistance.

3. Why is this a class action?

In a class action, a person or people called the “Representative Plaintiff(s)” sue on behalf of other people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class action (opt out).

4. Who is a member of the Class?

The Class includes:

Inmates with a Serious Mental Illness

All current and former inmates, who were alive as of September 12, 2016, who were subjected to Disciplinary Segregation or Preventive Segregation for any length of time at one of the Provincial Custodial Facilities between September 12, 2012 and the date this action is certified as a class proceeding; who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders:

- Schizophrenia (all sub-types),
- Delusional disorder,
- Schizophreniform disorder,
- Schizoaffective disorder,
- Brief psychotic disorder,
- Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- Psychotic disorder not otherwise specified,
- Major depressive disorders,
- Bipolar disorder I,
- Bipolar disorder II,
- Neurocognitive disorders and/or Delirium, Dementia and Amnesic and Other Cognitive Disorders,
- Post-Traumatic Stress Disorder;
- Obsessive Compulsive Disorder; or
- Borderline Personality Disorder;

and who suffered from their disorder, in a manner described in Appendix "A", and who reported such diagnosis and suffering to the Government of Manitoba and/or its agents before or during their segregation.

Youth Inmates

All current and former inmates, who were alive as of September 12, 2016, who, while under the age of 18, were subjected to Preventive Segregation at one of the Provincial Custodial Facilities for any

length of time between September 12, 2006 and the date this action is certified as a class proceeding.

Inmates in Prolonged Solitary Confinement

All current and former inmates, who were alive as of September 12, 2016, who were subjected to Solitary Confinement at one of the Provincial Custodial Facilities for 15 or more days between September 12, 2012 and the date this action is certified as a class proceeding.

Appendix "A"

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

Please note: the glossary of the relevant DSM is to be used to interpret the foregoing terms where appropriate.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money or other benefits for the Class. They are also asking for lawyers' fees and costs, plus interest.

6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Manitoba did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for your share.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether remove yourself (opt out). You have to decide this by **[90 days from notice publication date]**

7. What happens if I do nothing at all?

If you do nothing you will automatically remain in the class action. You will be bound by all Court orders, good or bad. If any benefits are awarded, you may need to submit a claim or take other action to receive any benefits.

8. What if I don't want to be in the Lawsuit?

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders and you keep your right to sue Manitoba as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *Gamblin et al. v. The Government of Manitoba*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. You must mail your Removal Request postmarked by **[90 days from notice publication date]** to: [address], or by email at: [email].

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

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP to represent you and other Class Members as "Class Counsel." You will not be personally charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid?

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to also approve their request to be paid, and will only approve fees that are fair, reasonable, and in the best interests of the Class. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

11. How and when will the Court decide who is right?

If the lawsuit is not dismissed or settled, the Plaintiffs will have to prove their claims at a trial. During the trial, a judge will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or Manitoba is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, [website], as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at [website], by calling toll free at [number] (TTY: [number]), or writing to: [address], or by email at: [email]

SCHEDULE "C"

OPT OUT FORM

To: **Manitoba Segregation Class Action Administrator**
[address]
Email: X

This is **NOT** a claim form. Completing this OPT OUT FORM will exclude you from receiving any compensation arising out of any settlement or claim for damages in the class action named below:

Manitoba Segregation Class Action

Gamblin et al v. Manitoba, QB File No. CI18-01-16608

Placements in Segregation in Provincial Jails between:

September 12, 2012 and X (Placements as an Adult)

September 12, 2006 and X (Placements as a Youth)

My name is: _____ Address: _____

Tel.: _____

Dates in Segregation (if known) _____ Email: _____

<input type="checkbox"/>	<p>I was placed in segregation in a provincial jail in Manitoba as an adult between September 12, 2012 and X</p> <p>and/or</p> <p>I was placed in segregation in a provincial jail in Manitoba as a youth between September 12, 2006 and X</p>
<input type="checkbox"/>	<p>I want to REMOVE myself from the class action</p> <p>I understand that any individual claim I may have must be commenced within a specified limitation period or it will be legally barred. I understand that I must mail or email this opt-out form by X, 2022 or else it will not be valid.</p> <p>I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.</p> <p>I understand that by opting out, I take full responsibility for the resumption of the running of the limitation period and for taking all necessary legal steps to protect any claim I may have.</p> <p>Signature: _____</p> <p>If you sign here, you will NOT get any money from the class action.</p> <p>Date: _____</p>

SCHEDULE "C"

	Witness Signature: _____ Witness Name: _____ Date: _____
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