

**ONTARIO COURT OF JUSTICE**  
Sitting under the provisions of the *Youth*  
*Criminal Justice Act*, SC 2002, c 1

**IN THE MATTER OF** an application by Glenn Johnson, Michael Smith and Timothy Hayne, representative plaintiffs in a class action under Ontario Superior Court of Justice Court File No 2291/13 CP, and Eric Sabourin, representative plaintiff in a class action under Ontario Superior Court of Justice Court File No 1406/19 CP, on behalf of the members of the respective classes they represent (the “Class Members”), for an Order, pursuant to the provisions of ss 119 and 123 of the *Youth Criminal Justice Act*, SC 2002, c 1 (“*YCJA*”), for access to, disclosure of, and use of certain documents;

**AND IN THE MATTER OF** certain documents retained or prepared pursuant to, or which are otherwise subject to, the *YCJA* or predecessor statutes, specifically s 116 records, relating to Class Members in the above-mentioned class actions held in the custody and control of His Majesty the King in right of Ontario.

**ORDER**

1. **WHEREAS** an application has been made by the Applicants, Glenn Johnson, Michael Smith, Timothy Hayne, and Eric Sabourin, on behalf of the Class Members they represent, for an Order pursuant to ss 119 and 123 of the *Youth Criminal Justice Act*, SC 2002, c 1 (the “*YCJA*”), that the persons specified in this Order be permitted to have access to and disclosure of and be permitted to use copies of records as defined by ss 2(1) and 116, created pursuant to or otherwise subject to the *YCJA* or predecessor statutes and in the possession and control of His Majesty the King in right of Ontario (“Ontario”) (the “Records”);

2. **AND WHEREAS** the Johnson Action (Ontario Superior Court of Justice Court File No 2291/13 CP) was certified as a class proceeding on August 23, 2016, and Glenn Johnson, Michael Smith, and Timothy Hayne are the Representative Plaintiffs bringing this class action;

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3. **AND WHEREAS** the Sabourin Action (Ontario Superior Court of Justice Court File No 1406/19 CP) was certified as a class proceeding on November 10, 2021 and Eric Sabourin is the Representative Plaintiff bringing this class action;

4. **AND WHEREAS** the combined Class in the Johnson and Sabourin Actions comprises all persons incarcerated at the EMDC between January 1, 2010 and November 10, 2021, including those held pending trial or other court appearance (the “Class Members”);

5. **AND WHEREAS** the Johnson and Sabourin Actions were settled pursuant to an agreement dated October 26, 2022 (the “Settlement Agreement”);

6. **AND WHEREAS** the Settlement Agreement designates a Claims Administrator and sets out a process by which a Class Member or his/her/their estate may submit a claim for compensation under the Settlement Agreement and thereby become a “Claimant” under the Settlement Agreement;

7. **AND WHEREAS** the Settlement Agreement sets out a process by which a Claimant may request that Ontario produce documents from the Claimant’s placement(s) in the EMDC between October 10, 2011 and November 10, 2021 from the Claimant’s institutional file and the Claimant’s healthcare file (together, the Claimant’s “Inmate File”);

8. **AND WHEREAS** the Settlement Agreement sets out a process by which Ontario may submit documents from a Claimant’s Inmate File to the Claims Administrator further to a Claim under the Settlement Agreement;

9. **AND WHEREAS** the Settlement Agreement also sets out a process by which retired judges

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or other senior legal practitioners (“Referees”) may assess certain Claims under the Settlement Agreement, which may include reviewing an Inmate File or documents from an Inmate File.

10. **AND WHEREAS** a Claimant’s Inmate File may include Records that identify that Claimant or other persons as having been dealt with under the *YCJA* or Records with respect to that Claimant or other persons that were created or kept for the purposes of the *YCJA*;

11. **AND WHEREAS** an Order is necessary to ensure that the employees and agents of Ontario, Class Counsel, the Claims Administrator, the Referees and Claimants may have access to the Inmate File for each Claimant;

12. **AND WHEREAS** counsel for the Applicants, being Class Counsel in the Johnson and Sabourin Actions, has a solicitor-client relationship with the Class Members in these Actions;

13. **AND WHEREAS**, as outlined in the Settlement Agreement, the parties to the Actions have agreed that access to and, potentially, use and disclosure of the information and records contained in Claimants’ Inmate Files, including Records subject to the *YCJA* or predecessor statutes, are necessary for the purposes of the claims administration process and the ultimate disposal of the Actions;

14. **AND WHEREAS** access to and disclosure of the Records are also necessary for the purposes of identifying those persons who may be entitled to participate in the Sabourin Action (the Sabourin Class Members) and providing them with proper notice as required by the *Class Proceedings Act, 1992*, SO 1992, c 6;

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15. **AND WHEREAS** I have read the materials filed and received written submissions from counsel for the Applicants and counsel for Ontario on this Application;

16. **AND WHEREAS** I am satisfied that the persons to whom access to the Records would be given have a valid and substantial interest in these records;

17. **AND WHEREAS** I am satisfied that it is desirable and necessary that these Records be made available in the interest of the proper administration of justice;

18. **AND WHEREAS** I have been advised that the disclosure of these Records as a whole or in part is not prohibited under any other Act of Parliament or the Legislature of the Province of Ontario;

19. **IT IS ORDERED THAT** in accordance with ss 119 and 123 of the *YCJA*, the following persons are permitted to access, disclose and/or use the Records for the sole purposes of carrying out the claims administration process set out in the Settlement Agreement and/or identifying the Sabourin Class Members and providing them with proper notice:

- (a) Ontario and its employees, agents and legal representatives;
- (b) the Claims Administrator as appointed by the Ontario Superior Court of Justice in the Actions and its employees;
- (c) Referees appointed by the Ontario Superior Court of Justice in the Actions to assess Class Members' claims and their employees;

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(d) Counsel for the Applicants, being Class Counsel in the Actions;

(e) Claimants, including their estates; and,

(f) any document management contractors retained by the persons listed above;

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20. **IT IS FURTHER ORDERED THAT** in accordance with the provisions of ss 119 and 123 of the *YCJA*, access to, disclosure of and use of the Records by and to the persons identified in the paragraph above is subject to the following conditions:

(a) the Records are to be accessed, disclosed, used and/or copied for the sole purposes of carrying out the claims administration process under the Settlement Agreement and/or identifying the Sabourin Class Members and providing them with proper notice;

(b) the Records shall be maintained in conditions of strict confidentiality and shall not be reproduced, disclosed, or published in any way except as provided for in this Order or as authorized under the *YCJA*; and,

(c) within 120 days of the conclusion of the claims administration process pursuant to the Settlement Agreement, the recipients of the Records under this Order, except for Claimants and their estates, shall ensure that all copies of the Records are destroyed;

21. **IT IS FURTHER ORDERED THAT** Ontario's employees can review any documents in Ontario's custody and control that may constitute records retained or prepared

pursuant to, or which are otherwise subject to, the *YCJA* or predecessor statutes, for the purpose of identifying Inmate Files and/or identifying the Sabourin Class Members and providing them with proper notice;

22. **IT IS FURTHER ORDERED THAT** in accordance with s 123(4) of the *YCJA*, the requirement that the Applicants give notice to the young people to whom the records relate is hereby waived;

23. **IT IS FURTHER ORDERED THAT** Ontario will redact information identifying individuals other than the Claimant (“Third Parties”) as having been dealt with under the *YCJA* from a Claimant’s Inmate File prior to its production;

24. **IT IS FURTHER ORDERED THAT** there will be no costs ordered on this Application.

DATE: March 12, 2023



Justice Craig Sigurdson

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GLENN JOHNSON et al  
Applicants

-and- HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
Respondent

Court File No.

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**PROCEEDING COMMENCED AT  
LONDON**

**ORDER**

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