

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 and Michael Smith, representative plaintiffs in a class action under Superior Court File No. 2291/13 CP and Timothy Hayne, representative plaintiff in a class action under Superior Court File No. 2855-16 on behalf of the members of the respective classes they represent, for an Order, pursuant to the provisions of sections 119 and 123 of the *Youth Criminal Justice Act*, S.C. 2002, c.1 (“*YCJA*”), for the disclosure of certain documents, specifically s. 116 records as defined by the *YCJA*;

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 members of the above-mentioned class actions held in the custody and control of Her Majesty the Queen in Right of Ontario, and/or an Agency of the Government of Ontario (the “Crown”), or which otherwise may assist in providing notice to Class members in Superior Court actions 2291/13 and 2855/16 (the “Class Actions”).

ORDER

WHEREAS an application has been made by the Applicants, Glenn Johnson, Michael Smith and Timothy Hayne by their counsel and on behalf of the class members that they represent for an Order pursuant to sections 119 and 123 of the *YCJA*, that those persons set out in this Order be permitted to have access to and disclosure of copies of files, documents records and other materials that are in the custody and control of the Crown, including records created pursuant to or otherwise subject to the *YCJA* or predecessor statutes, specifically s.116 records arising from or related to potential class members’ attendance, detention or residency at Elgin Middlesex Detention Centre in Ontario or similar institutions or which otherwise may assist in providing notice to class members (the “Records”).

AND WHEREAS it appears that these Records, which are subject to the *YCJA* or predecessor statutes, are likely relevant to and necessary to identify those persons who may be entitled to participate in the Class Actions and to provide them with proper notice as required under the *Class Proceedings Act* S.O. 1992, c. 6, and to engage in a meaningful disclosure, discovery and possible settlement process of the Class Actions.

AND WHEREAS I have heard submissions from counsel for the Applicants, counsel for the Crown and counsel for the *amicus curiae*, Justice for Children and Youth

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

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

AND WHEREAS I have been advised that 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.

AND WHEREAS I am informed that further applications will be required to address the issue of the use of the Records in any public proceeding in the Class Actions.

IT IS ORDERED that in accordance with the provisions of sections 119 and 123 of the *YCJA*, the Records may be accessed and disclosed to the persons identified below subject to the following conditions:

(a) disclosure is subject to any other applicable federal or provincial law, including any law prohibiting the disclosure of information relating to third parties and the Deemed Undertaking Rule contained in Rule 30.1 (3) of the *Rules of Civil Procedure* ;

(b) the Records are to be accessed and disclosed and copied for the purpose only of identifying those persons who may be entitled to participate in the Class Actions; to provide those people identified with proper notice, and to engage in a full and meaningful disclosure, discovery and potential settlement process in regard to the Class Actions..

(c) 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*;


(d) within 90 days of the completion of the Class Actions and the expiration of any appeal period, or upon settlement of the Class Actions, the recipients of the Records shall ensure that all copies of the Records are returned to the Crown or are destroyed.

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

The persons to whom access and disclosure is granted are:

- a. The solicitors for the Applicants herein;
- b. The Crown and its agents and employees;
- c. Any other Defendant or intended Defendant to the Class Actions;
- d. The legal representatives and insurers of the persons listed above;
- e. Any potential expert witness retained by the persons listed above; and
- f. Any document management contractors retained by the persons listed above to assist with the preparation and/or review of the documentary disclosure in the Class Actions.

DATE: November 7, 2017



 Madam Justice Jeanine LeRoy
 Justice Allan S. MacLure

GLENN JOHNSON et al.
Applicants

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Respondent

Court File No.

ONTARIO COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

ORDER

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