CITATION: Chisholm v. His Majesty the King in Right of Ontario, 2026 ONSC 1901
COURT FILE NO.: CV-25-00744986-00CP
DATE: 20260330

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
JAMAREY CHISHOLM Plaintiff	)	*Louis Century*, *Geetha Philipupillai*, *Jamie Shilton*, *Umaiyahl Nageswaran* and *Gabriel Gross-Stein*, for the Plaintiff
– and –	)	
HIS MAJESTY THE KING IN RIGHT OF ONTARIO Defendant	)	*Sarah Pottle*, *Paul Kim*, *Ryan Ng*, *Sean Hanley*, *Savitri Gordian*, *Jennifer Boyczuk* and *Tess Moffat*, for the Defendant
	)	**HEARD:** In-writing

LEIPER J.

REASONS FOR DECISION

Introduction

[1] The defendant, His Majesty the King in Right of Ontario (“Ontario”), moves to defer filing a statement of defence in this proposed class proceeding brought by inmates of the Maplehurst Correctional Centre (“Maplehurst”) seeking damages for their alleged maltreatment while incarcerated at Maplehurst in December of 2023.

[2] Ontario submits that its pleading will likely need to be adjusted after the evidence is heard at the certification motion. Ontario also anticipates that a decision in the upcoming appeal from the decision in *R. v. Whitlock*, 2025 ONSC 6006, could affect its statement of defence. The *Whitlock* appeal will consider the findings of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) breaches and the stays of proceedings granted to three inmates who were at Maplehurst.

[3] Ontario submits that it also needs additional time to prepare its statement of defence, because of amendments to the plaintiff’s statement of claim which were served on March 10, 2026. Ontario submits these are exceptional circumstances which justify displacing the presumptive requirement for a defendant in a proposed class proceeding to serve a statement of defence in accordance with the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[4] The plaintiff opposes the order sought by the defendant. He submits that the defendant is presumptively required to deliver a statement of defence. He submits that the recent amendments to the statement of claim respond to issues raised by Ontario. As a result of those amendments, the plaintiff is no longer pursuing a claim for breach of fiduciary duty. He has also particularized the Crown servants involved in some of the impugned conduct. The plaintiff submits that Ontario is known to have investigated the underlying events, including for the purposes of defending the defence allegations in *Whitlock*. Finally, the plaintiff submits that requiring Ontario to deliver its statement of defence will advance the litigation because the plaintiff can decide whether to pursue a motion for summary judgment which could potentially dispose of the litigation without the need of a trial.

[5] The parties attended a case conference on March 26, 2026. I advised them that for reasons to follow, I was dismissing this motion. The parties made submissions on a timetable, which I fixed at the case conference. Pursuant to that timetable, Ontario will have the benefit of an extension of time and receipt of the plaintiff's motion record on certification before it must file its statement of defence.

[6] In brief, I am dismissing Ontario's motion because it raises efficiency concerns which I find do not justify depriving the plaintiff or the court of knowing its position on the pleaded facts in the amended statement of claim at the certification motion. Ontario has had the plaintiff's statement of claim since June of 2025. By the time its pleading is due, Ontario will have had over a year to deliver its pleading, which will be useful in framing the issues at certification.

Background Facts

[7] On June 9, 2025, the plaintiff served his statement of claim. He claims damages arising from the alleged mass strip search and harsh punitive measures carried out by prison authorities against inmates on Unit 8, under the direction of the Superintendent of Maplehurst on December 22-24, 2023. The claim alleges that all 192 inmates of Unit 8 were physically punished after one of the inmates on that unit seriously assaulted a guard.

[8] The claim alleges that the servants of the defendant engaged in a "coordinated operation which included unlawful cell-by-cell strip searches of the entire unit, systematic assaults, wrenching the wrists of the inmates using zip ties, pepper-spraying and beating inmates inside their cells," and otherwise depriving the 192 inmates of Unit 8 of their rights. The plaintiff alleges that the inmates in Unit 8 were subjected to intolerable living conditions including being deprived of clothing, bedding, toilet paper, medical treatment, and by lowering the temperature on Unit 8 to extreme cold.

[9] The plaintiff grounds his claim in misfeasance in public office, breach of sections 7, 8, 9, and 12 of the *Charter,* and negligence. His amended statement of claim particularizes the involvement of then-Deputy Solicitor General Karen Ellis, former Superintendent Winston Wong, and former Staff-Sgt. Darren Jones (the latter two had already been implicated in this action). Ontario submits that it will need to investigate this aspect of the claim to prepare its statement of defence, and that accessing former employees requires more time than preparing its defence with the assistance of current employees.

[10] The trial judge in *Whitlock* had the benefit of significant amounts of video evidence which revealed the treatment of the inmates in Unit 8, including their cells being stripped bare, their escort out of their cells wearing only underwear, their being confined using zip ties and having guns pointed at them. In some cases, inmates were unable to hold up their boxer shorts, leading to exposure of their buttocks. Others were observed to be grimacing as if in physical pain: *Whitlock* at para. 83. The trial judge found that the punitive measures were used to avenge the assault on the guard by one of the inmates on Unit 8.

[11] The trial judge noted at para. 510 of his reasons that this decision was limited to findings relative to the three accused before him (Joseph Richard Whitlock, Kulvir Singh Bhattia and Karn Veer Sandhu). He wrote:

> … the Crown stresses the need for individualization when it comes to the section 24(1) *Charter* analysis. I agree. This is not a commission of inquiry. This decision is not to be a report card on all of the activities at MCC in late December 2023, regardless of whether those activities impacted these three accused persons.

[12] Ontario challenges some but not all breaches of the *Charter* rights of the accused in *Whitlock*. Ontario has conceded in related litigation that it breached the s. 8 *Charter* rights of some accused: *R. v. Whitlock*, 2025 ONSC 6006 at para. 414; *R. v. Ritchie*, 2025 ONSC 4580 at para. 179; *R. v. Thamilarasan Velauther*, 2025 ONSC 6877 at para. 15.

[13] Conlan, J. decided *Whitlock* on October 24, 2025, after a 25-day hearing. The parties have not yet argued the appeal. The parties in this action agree that the appeal will not be argued by the first anniversary of this action. They expect that it is unlikely there will be a decision rendered until 2027, and potentially the decision could be released after the first set of target certification motion dates scheduled for May of 2027.

[14] Turning to the notice of appeal in *Whitlock*, Ontario's grounds for setting aside the stays of proceedings in *Whitlock* and seeking a new trial are broadly worded:

1. That the trial judge erred by materially misapprehending the evidence and/or making findings in the absence of evidence that go to the core of his findings of state misconduct and systemic issues;

2. The trial judge erred in finding a breach of s. 7 of the *Canadian Charter of Rights and Freedoms*;

3. The trial judge erred in finding a breach of s. 12 of the *Canadian Charter of Rights and Freedoms*;

4. The trial judge erred in assessing the extent of the breach of s. 8 of the *Canadian Charter of Rights and Freedoms*;

5. That the trial judge erred in law by applying the incorrect threshold for a stay of proceedings in a residual category case;

6. That the trial judge failed to consider material and relevant factors in deciding to issue a stay of proceedings; and

7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Other than the submission that findings on these matters may require amendments to Ontario's statement of defence, there is no evidence as to the specific factual portions of the pleading that could be affected by a finding by the Court of Appeal in *Whitlock*. Any legal findings which uphold findings of *Charter* breaches by the trial judge may easily be applied to Ontario's pleadings prior to trial, which will not realistically take place in 2027.

Legal Framework

[15] The rules of court apply to class proceedings: *Class Proceedings Act*, 1992, S.O. 1992, c. 6, s. 35 (the "*CPA*").

[16] A defendant is required to deliver a statement of defence within 20 days after service of a statement of claim, with an additional ten days provided if a defendant serves a notice of intent to defend: Rule 18.01(a) and 18.02(2) of the *Rules of Civil Procedure*.

[17] In a line of Ontario decisions including *Richard v. The Attorney General of Canada*, 2022 ONSC 6847, judges in Ontario have required defendants in class proceedings to file statements of defence, barring exceptional circumstances: *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2012 ONSC 1924, 110 O.R. (3d) 173; *Pennyfeather v. Timminco Limited,* 2011 ONSC 4257, 107 O.R. (3d) 201.

[18] As Glustein, J. noted in *Richard,* at para. 17, other provinces follow this practice: *Shaver v. Mallinckrodt Canada ULC,* 2021 BCSC 404, at paras. 28-30, 37; *Langevin v. Aurora Cannabis Inc.,* 2021 ABQB 887, at para. 14; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2015 BCSC 74, at paras. 31-34; *British Columbia v. Apotex Inc.,* 2020 BCSC 412, at para. 90; and *Gay v. New Brunswick (Regional Health Authority 7),* 2014 NBCA 10, 421 N.B.R. (2d) 1, at para. 25.

[19] There are a host of practical and policy reasons from the case law and logic that support having defendants deliver a statement of defence prior to certification, including:

i. A statement of defence assists the certification motion process by framing the issues including the "some basis in fact" hurdle for common issues, the proposed class, questions of preferability and the merits of the proposed litigation plan;

ii. A statement of defence provides important context to the litigation;

iii. A statement of defence which challenges pleading deficiencies in a statement of claim may lead to corrections and improved pleadings;

iv. The *Rules of Civil Procedure* are designed to be fair to both sides: requiring a statement of defence in the normal course is fair;

v. Requiring a defendant to serve a statement of defence serves the policy underlying rule 1.04 that the *Rules of Civil Procedure* that the rules "shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits";

vi. Requiring a defendant to serve a statement of defence avoids a perception that one side is securing a tactical advantage by holding back its position;

vii. A complete set of pleadings may lead to earlier resolution of the litigation, either by informing mediation or settlement discussions or by revealing substantive flaws in the plaintiff's claim;

viii. A complete set of pleadings will inform pre-trial procedural motions before the certification motion;

ix. A complete set of pleadings will aid case management and scheduling the appropriate amount of time for the certification motion;

x. Where the subject matter of the proceedings are the subject of the broader public interest, the efficiencies to be gained by having a complete set of pleadings serves public confidence in the administration of justice.

Analysis of the Issues on the Motion

[20] There is one issue on this motion: has Ontario demonstrated that the circumstances it raises are sufficiently exceptional to justify its request to defer serving and filing a statement of defence prior to the motion for certification?

[21] I consider Ontario's submissions in turn, beginning with the submission that it should be permitted to await a decision of the Court of Appeal in the *Whitlock* appeal. This submission rests on the need to amend Ontario's statement of defence after receipt of that decision.

[22] I accept that if Ontario pleads as part of its defence that it did not breach the *Charter* rights of the class members, and the Court of Appeal subsequently upholds the findings of *Charter* breaches as against three members of the class, that this may lead to amendments, or concessions by Ontario, as a result of that appellate guidance.

[23] In such an event, the issues may be narrowed, prior to or after certification. Certification is concerned with procedural questions, rather than substance. The certification judge does not make substantive findings as to *Charter* breaches. Ontario has not raised any issue as to the potential for inconsistent findings at certification if that motion is argued prior to the parties knowing of the outcome in the *Whitlock* appeal. If certification is ordered, and the decision in *Whitlock* leads to narrowing of the issues, that is easily considered in the lead-up to trial.

[24] In the event that the *Whitlock* appeal is allowed, the relief sought is a new trial. The proceedings will not be at an end. The findings will only be made in relation to three members of Unit 8. In that case, it is unlikely that Ontario would narrow its pleadings. The motion for certification would proceed based on the existing statement of defence.

[25] Ontario was required to file its defence well before the decision in *Whitlock* was released. There is no rule against concurrent or overlapping civil and criminal proceedings, and this is a common feature of litigation. While the parties can be expected to adjust or respond to findings from the Court of Appeal, it would be inefficient to hold this litigation in abeyance at such an early stage. The policy objectives of class proceedings are access to justice, behaviour modification and judicial economy: *Hollick v. Toronto (City),* 2001 SCC 68, [2001] 3 S.C.R. 158, at paras. 15-16. Moving litigation along in an orderly way, in accordance with the *Rules of Civil Procedure* respects these policy objectives. It also respects the strong public interest in timely justice.

[26] Further, given that different branches of the Crown law office are engaged in the various pieces of litigation, one might expect there are benefits from having several sets of experienced litigators engage with litigation flowing from one event such as this. Such benefits include paying attention to related legal theories, public interest considerations in both the criminal and civil contexts and a greater range of perspectives.

[27] Ontario has also submitted that it will require substantial time to properly prepare its Ontario's statement of defence and will need to investigate material facts including the latest set of allegations implicating the former Deputy Solicitor General Karen Ellis, who was added by the plaintiff in his amended statement of claim, filed on March 10, 2026.

[28] Other than this submission, Ontario did not provide any evidence as to why it seeks what will practically be more than 12 months, to conduct the necessary investigations to plead in a statement of defence.

[29] The amended statement of claim links Deputy Solicitor General Karen Ellis to an allegation that Ontario failed to investigate the incident in a timely way. This is not a new allegation. The relevant extracts from the amended statement of claim (with amendments underlined) follow:

> i. Deputy Solicitor General Karen Ellis did not order an investigation into the incident until June 2024, one day after the Ministry was sent detailed questions about the incident by a Toronto Star reporter. During these months of delay, critical evidence, including video evidence, was lost and/or destroyed. (See para. 54, Amended Statement of Claim.)
>
> ii. An investigation was eventually conducted by Correctional Services Oversight & Investigations in the Ministry of the Solicitor General. This investigation resulted in two investigation reports dated October 31, 2024 and April 23, 2025. Although these reports were disclosed to defence counsel for Class Members for use in criminal proceedings, the disclosure were subject to strict undertakings to prevent broader publication. ~~Ontario and its agents have~~ Neither the CSOI, Deputy Solicitor General Ellis, nor any other agent of Ontario has yet to publicized its their findings of wrongdoing and has have repeatedly opposed public access to its their own findings. (See para. 55, Amended Statement of Claim.)

[30] Given its existing investigations of the events of December 22-24, 2023, and the narrow additions found in the amended statement of claim, I am satisfied that several more months is

sufficient time for Ontario to serve its statement of defence. Pleadings do not require the same standard of preparation as trial readiness: *Richard* at paras. 23-30.

Conclusion

[31] Ontario's motion to defer filing a statement of defence is dismissed. It shall be filed in accordance with the timetable approved on March 26, 2026.

[32] If the parties are unable to agree as to the costs of the motion, they may propose a timetable for the exchange of submissions in writing.

Leiper J.

Released: March 30, 2026

CITATION: Chisholm v. His Majesty the King in Right of Ontario, 2026 ONSC 1901
COURT FILE NO.: CV-25-00744986-00CP
DATE: 20260330

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMAREY CHISHOLM

Plaintiff

– and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

REASONS FOR DECISION

Leiper J.

Released: March 30, 2026