

Court File No. CV-09-383001

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CORALEE SMITH, on her own behalf and as the Litigation Administrator of the
Estate of Ashley Smith, Deceased, DAWNA WARD and HERB GORBER**

Plaintiffs

and

**ATTORNEY GENERAL OF CANADA (in Right of the Minister of Public Safety),
COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA
KEITH COULTER, DEPUTY COMMISSIONER ONTARIO REGION
NANCY STABLEFORTH, WARDEN OF NOVA INSTITUTION FOR WOMEN
ALFRED LEGERE, ACTING WARDEN OF GRAND VALLEY INSTITUTION FOR
WOMEN CINDY BERRY, DEPUTY WARDEN OF GRAND VALLEY INSTITUTION
FOR WOMEN JOANNA PAULINE, ASSISTANT WARDEN OF GRAND VALLEY
INSTITUTION FOR WOMEN LAUNA GRATTON, TRAVIS McDONALD,
KAREN EVES, BLAINE PHIBBS, SHERRY FAIRCHILD, CHARLENE VENTER,
VALENTINO BURNETT, MELISSA MUELLER, LIZ GIBBONS,
GAETAN DESROCHES, KENNETH ALLEN and CORRECTIONAL SERVICES
EMPLOYEES JOHN DOE and JANE DOE**

Defendants

NOTICE OF MOTION

THE Attorney General of Canada, representing all defendants except Cindy Berry, Joanna Pauline and Karen Eves, will make a motion to the Court on a date to be determined, at 10:00 am, or as soon after that time as the motion can be heard, at 393 University Ave, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally;

THE MOTION IS FOR an Order:

- a) striking Keith Coulter, Nancy Stableforth, Alfred Legere, Launa Gratton, Travis McDonald, Blaine Phibbs, Sherry Fairchild, Charlene Venter, Valentino Burnett, Melissa Mueller, Liz Gibbons, Gaetan Desroches, Kenneth Allan, John Doe and Jane Doe from the Statement of Claim;
- b) correcting the style of cause to reflect the proper defendant, the Attorney General of Canada;
- c) awarding the costs of this motion to the Attorney General of Canada; and
- d) such other relief as counsel may advise or the Court deem just.

THE GROUNDS FOR THE MOTION ARE:

- a) Rule 21.01(1)(b), 21.01(3)(d), 25.06(1), and 25.11 of the Rules of Civil Procedure;
- b) There are no material facts pled against Keith Coulter, the former Commissioner of the Correctional Service of Canada, or Nancy Stableforth, the Deputy Commissioner for the Ontario Region;
- c) Crown servants cannot be vicariously or directly liable for the torts of the employees they supervise;
- d) The Crown, as represented by the Attorney General of Canada, is vicariously liable for the torts of Crown Servants committed in the course of their employment pursuant to section 3(b) of the *Crown Liability and Proceedings Act*;
- e) The above named defendants are not necessary parties to this action, are improperly named, and should be removed from the style of cause pursuant to sections 3, 10, 22, and 23 of the *Crown Liability and Proceedings Act* and Rule 5.04(2) of the Rules of Civil Procedure; and
- f) The Attorney General of Canada is the proper defendant where negligence is alleged against the federal Crown, in accordance with section 23(1) of the *Crown Liability and Proceedings Act*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The pleadings in this action; and
- b) Such further and other material as counsel may advise and this Honourable Court permit.

May 26, 2010

DEPARTMENT OF JUSTICE
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Per: Nancy Noble (LSUC 33407J) /
Susan Keenan (LSUC 50784Q)

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File: ORO 2-592797

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Joanna Pauline, and Karen Eves

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Solicitors for the Plaintiff

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Solicitors for the Defendant Cindy Berry

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Solicitors for the Defendant Joanna Pauline

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**CORALEE SMITH, on her own behalf and as the
Litigation Administrator of the Estate of Ashley Smith,
Deceased, DAWNA WARD and HERB GORBER**

and

**ATTORNEY GENERAL OF CANADA (IN RIGHT OF
THE MINISTER OF PUBLIC SAFETY et al.**

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF MOTION

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