

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF MONCTON  
BETWEEN:

JESSY TIMOTHY ROSE and LEE ALEXANDER  
MITCHELL,

Plaintiffs,

- and -

PROVINCE OF NEW BRUNSWICK

Defendant.



CERTIFICATION ORDER

WHEREAS THIS MOTION for certification as a class proceeding pursuant to section 3(3) of the *Class Proceedings Act*, RSNB 2011, c. 125 ("the *Act*") brought by proposed Representative Plaintiff, Jessy Timothy Rose, was heard on the 16th of July, 2020;

AND UPON READING the motion record filed by the proposed Representative Plaintiff;

AND UPON HEARING oral arguments by Class counsel and counsel for the Defendant, Province of New Brunswick;

AND UPON BEING SATISFIED that the proposed Representative Plaintiff has satisfied the requirements under section 6 of the *Act*;

AND UPON CONSIDERING the required form and content of the certification order mandated by section 10(1) of the *Act*;

IT IS HEREBY ORDERED THAT:

1. The within action is certified to proceed as a class proceeding under the *Class Proceedings Act*, RSNB 2011, c. 125.
2. The Class is defined as:

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*All persons who were inmates of the Southeast Regional Correctional Facility located in Shediac, New Brunswick, during the outbreak of a fire on October 25, 2017.*

3. The common issues be and are hereby certified as:

- i. Did the Defendant owe a duty of care to the class members at the Southeast Regional Correctional Facility (the “Correctional Facility”)?
- ii. Did the actions of an agent, staff, or employee of the Correctional Facility cause a fire to break out on October 25, 2017?
- iii. If the answer to common issue 2 is “yes”, was the action which resulted in the fire a breach of the standard of care?
- iv. If the answer to common issue 3 is “yes”, is the Defendant vicariously liable for the wrongful conduct of its agents, employees, and staff?
- v. Did agents, staff, or employees of the Correctional Facility, fail to take reasonable steps to ensure the safety and well-being of class member over the course of the October 25, 2017 fire?
- vi. If the answer to common issue 5 is “yes”, is the Defendant vicariously liable for the wrongful conduct of its agents, employees, and staff?
- vii. Did the Defendant breach the rights of the class members protected under section 7 of the Canadian Charter of Rights and Freedom (the “*Charter*”)?
- viii. If the answer to common issue 7 is “yes”, is the breach saved under section 1 of the *Charter*?
- ix. Did the Defendant breach the rights of the class members protected under section 12 of the *Charter*?
- x. If the answer to common issue 9 is “yes”, is the breach saved under section 1 of the *Charter*?

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- xi. Are *Charter* damages under Section 24 of the *Charter* a just and appropriate remedy?
4. Jessy Timothy Rose and Lee Mitchell are hereby appointed as the Representative Plaintiffs for the Class.
5. Valent Legal is hereby appointed as class counsel (“Class Counsel”).
6. Class members shall be notified that this proceeding has been certified as a class proceeding as follows:
- (a) By Class Counsel posting notice as approved by the Court on its website: [www.valentlegal.ca](http://www.valentlegal.ca);
  - (b) By disseminating to media via a press release as approved by the Court;
  - (c) Via direct mail to the last known address of class members; and
  - (d) Provided by Class Counsel to any person who requests it.
7. The expense of the notice herein shall be borne equally by the Plaintiffs and the Defendant.
8. A class member may opt in or out of the class proceeding by delivering a signed opt-in or opt-out form as approved by the Court to Class Counsel by **March 15, 2021**.
9. No Class Member may opt in or opt out of the class proceeding after the Opt In or Opt Out Deadline, except with leave of the Court.
10. Class Counsel shall serve on the Defendant, within sixty days of the expiry of the Opt In or Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.
11. The parties shall bear their own costs in relation to the motion for certification.

**DATED** at Moncton, New Brunswick, this 23<sup>rd</sup> day of November, 2020.



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The Honourable Chief Justice Tracey K. DeWare