CITATION: Good v. Toronto Police Services Board, 2020 ONSC 6332
COURT FILES NO.: CV-10-408131CP
CV-15-524523CP
DATE: 20201022

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN:

SHERRY GOOD

Plaintiff

and

TORONTO POLICE SERVICES BOARD

Defendant

AND BETWEEN:

THOMAS HOWARD TAYLOR

Plaintiff

and

TORONTO POLICE SERVICES BOARD

Defendant

Proceedings under the *Class Proceedings Act, 1992*

BEFORE: Justice Edward P. Belobaba

COUNSEL: *Eric K. Gillespie Murray Klippenstein and Kathleen Coulter* for the Moving Parties / Plaintiffs

Kevin McGivney, Glenn Zakaib and Jonathan Thoburn for the Responding Party / Defendant

HEARD: October 19, 2020

SETTLEMENT AND LEGAL FEES APPROVAL

[1] After almost a decade in litigation, these two high-profile class actions against the Toronto Police for wrongful arrest and detention have settled.

[2] The Good and Taylor class actions were brought on behalf of the hundreds of protestors and members of the public who were arrested and detained by Toronto Police during the G20 Summit that was held in Toronto in June 2010.

[3] As part of the settlement, Toronto Police have acknowledged that "many hundreds of members of the public were detained or arrested when they should not have been and were held in detention in conditions that were unacceptable" and that they "regret that mistakes were made."

[4] The proposed settlement with the defendant Toronto Police Services Board, the body with jurisdiction over the city's police force, has four components:

- Financial compensation to all class members (up to a maximum total of $16.5 million); every class member will receive between $5000 and $24,700 depending on the level of harm experienced (minus agreed-to deductions for the Class Proceedings Fund and class counsel legal fees);
- Police acknowledgement of wrong-doing;
- Police commitment to reforms in the policing of future public demonstrations; and
- Police commitment to expunge the arrest records of class members.

[5] The representative plaintiffs, Sherry Good and Thomas Taylor, ask this court to approve both the proposed class action settlement and class counsels' legal fees.

[6] At the approval hearing on October 19, 2020, I advised counsel that I had reviewed the affidavit and other written material filed in support of the approval motion. I then invited and heard their additional oral submissions. Having reviewed the five written objections that were in the filed material, I also invited two of the objectors who were present in court to explain the basis for their objections – and they did so.

[7] At the conclusion of the hearing, I was satisfied that the proposed settlement was fair and reasonable and in the best interests of the class. I was also satisfied that class counsels' legal fees were reasonable. I told counsel that both the proposed settlement and the legal fees were approved and I signed the requisite order. I advised everyone that I would release a written decision shortly, setting out my reasons in more detail.

[8] These are the reasons for my decision.

Background

[9] With class counsels' permission, I track the background narrative as described in their factum.

(1) The events of June 26 and 27, 2010

[10] On December 7, 2009, the Government of Canada announced that it would host a summit of the leaders of the Group of Twenty countries (the "G20") in Toronto. The Summit was held seven months later over the weekend of June 26 and 27, 2010.

[11] Given the experience at previous G20 and other summits, it was widely expected that political demonstrations would occur both before and during the Summit. As part of its planning process, Toronto Police set up a temporary Detention Centre for potential G20-related arrests on Eastern Avenue.

[12] As expected, thousands of people peacefully participated in public demonstrations. However, there were also instances of vandalism and property damage.

[13] The police made many arrests. In five specific areas of the city, they conducted "mass arrests" by surrounding and containing large numbers of demonstrators and other individuals who just happened to be at that particular location. In the end, more than 1,000 people were arrested and/or detained by Toronto Police.

(2) The class actions

[14] Ms. Sherry Good, who was detained in the mass arrest at the corner of Queen St. West and Spadina Ave. in downtown Toronto, commenced a class action (the "Good Action") in August 2010.

[15] The proposed class action included all individuals "in the City of Toronto who were arrested and/or subjected to mass detention by police, on June 26 and 27, 2010, and were: i) released without charge; or ii) imprisoned in the Eastern Avenue Detention Centre".

[16] The motion for certification was heard over the course of seven days in December of 2012 and January of 2013. In May 2013, the motions judge issued reasons dismissing the certification motion.1 Ms. Good appealed the denial of certification to the Divisional

Court. The Divisional Court allowed the appeal and granted certification but ordered that the class proceeding be divided into two actions.2

[17] As a result of this court order, Mr. Thomas Taylor issued a statement of claim on in March 2015 on behalf of the Detention Centre class. And Ms. Good amended the pleadings in her action, limiting her claim to the five mass-arrest locations (and not including the Detention Centre subclass, now the subject of the Taylor action).

[18] The defendant's appeal to Court of Appeal was dismissed3 as was its attempt to seek leave to appeal to the Supreme Court of Canada. Six years into the litigation, the certification of the two class actions was now beyond dispute. The next step was the trial.

(3) Mediation

[19] In June 2017, soon after I assumed case management responsibilities, I suggested that mediation with the assistance of a judge acting as mediator may be beneficial. The parties were open to this suggestion and Justice Morgan agreed to mediate the matter. The mediation was conducted in June 2018.

[20] By the end of the second day of the mediation, the parties had agreed on the monetary component as described above. The non-monetary component required a further mediation which was held in January 2019. Again, with the assistance of Justice Morgan, the parties were able to agree on the specific language describing the non-monetary aspects of the settlement agreement.

(4) Settlement

[21] The class consists of some 1000 individuals who were wrongfully arrested and detained in five different locations in downtown Toronto. There are six subclasses: the five initial arrest locations (the U of T Gymnasium, Queen and Spadina, the Esplanade, Eastern Avenue and Parkdale) and the so-called Detention Centre, which held the class members who were transported to the detention site from the five mass-arrest locations.

[22] As already noted, the settlement agreement consists of both a monetary and a non-monetary component.

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1 *Good v. Toronto (Police Services Board),* 2016 ONCA 250.

2 *Dabbs v. Sun Life Assurance,* (1998) 40 O.R. (3d) 429 (Gen. Div.), aff'd (1998) 41 O.R. (3d) 97 (C.A.), leave to appeal to S.C.C. refused Oct. 22, 1998; *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.).

3 *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686.

Monetary component

[23] The settlement includes a commitment by the defendant to pay individual class members on a per-claim basis in specified amounts, up to an aggregate maximum of $16.5 million, as compensation for breaches of their rights and for individual harms sustained.

[24] The parties have agreed upon specific amounts of compensation payable to individuals based on their subclass. The actual amount payable to class members in each subclass varies and is based on the differing circumstances and experiences at each of the six locations. The longer the detention and the harsher the conditions of confinement (no toilet, no water, the severity of police conduct) the larger the compensation amount.

[25] These individual payments vary from $5000 to a high of $24,700:

- $5,000 for class members arrested in the Eastern Avenue and Parkdale subclasses;
- $11,000 for class members arrested in the Esplanade subclass;
- $12,000 for class members arrested in the Queen and Spadina subclass;
- $16,000 for class members arrested in the U of T Gymnasium subclass;
- Plus - an additional $8,700 for any class member who was transferred to and held at the Detention Centre.

[26] For example, a member of the Gymnasium subclass who was transferred to the Detention Centre after arrest will receive $16,000 plus $8,700 for a total of $24,700. A member of the Esplanade subclass who was transferred to the Detention Centre after arrest will receive $11,000 plus $8,700 for a total of $19,700.

[27] These compensation amounts are subject to a 10 per cent deduction for the Class Proceedings Fund and a 12.5 per cent deduction as a contribution towards class counsel legal fees.

Non-monetary component

[28] The non-monetary acknowledgements and commitments by the defendant police board were as important to the class as the monetary compensation amounts, even more so.

[29] A key provision is the defendant's acknowledgement of wrong-doing. As already noted, the Toronto Police Services Board has agreed that "many hundreds of members of the public were detained or arrested when they should not have been and were held in detention in conditions that were unacceptable" and that the police "regret that mistakes were made."

[30] Equally important to the class members was the commitment by the defendant to implement reforms in the policing of future public protests and to ensure that class members' arrest records would be expunged. The defendant agreed to issue a press release describing the non-monetary aspects of the settlement as soon as the overall settlement was judicially approved. This public statement by the police has now been made.

Settlement approval

[31] The applicable law on the approval of class action settlements is well established. The court must be satisfied that the proposed settlement is fair, reasonable and in the best interests of the class. The settlement need not be perfect or ideal. The settlement will be approved if it falls within a zone of reasonableness.4

[32] As I noted in court during the approval hearing, the monetary and non-monetary features of this settlement were fair and reasonable and very much in the best interests of the class. My exact words were that "this is not just a good settlement; it is a very good settlement."

[33] I said this for the following reasons.

- The settlement is the result of a successful mediation and is recommended not only by experienced class counsel and dedicated representative plaintiffs but also by the class members, several of whom filed personal affidavits in support. Only five written objections were received (two of the objectors also attended in court). The objections - about the compensation amounts and the allocation system –were genuine and heartfelt but they cannot undermine what is a very good settlement for the vast majority of the class.

- Class counsel reviewed comparable mass-arrest settlements in the U.S. and correctly concluded that the compensation herein was more favorable than in the American cases and, in any event, within the zone of reasonableness.

- The option of proceeding to trial was considered but sensibly rejected. A trial would mean several more years of litigation, including appeals. The outcome of a trial was unpredictable and the risks of losing at trial were real given the legal defences available to the defendant. According to class counsel, the defendant would almost certainly argue two "themes": first, that there was a great deal of deliberate and violent vandalism during the Summit weekend, which (the defendant would argue) justifiably led to the measures taken by police; and second, that there was such a wide variation amongst the experiences (and conduct) of the class members that the case should not have been certified as a class action – and should now be decertified.

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4 *Brown v. Canada (Attorney General),* 2018 ONSC 3429.

- There was also no reason to believe that the compensation amounts that would be awarded at trial if the class prevailed would be more generous than those set out in the settlement agreement.

- Finally, even if the class were to prevail at trial, the court would not be able to impose the non-monetary components that were just as important, if not more important, to the class than monetary compensation. Indeed, as the representative plaintiffs and several class members confirmed, this class action was about "more than money."

[34] For all of these reasons, this is a very good resolution of the two class actions. The settlement is fair and reasonable and in the best interests of the class.

Legal fees approval

[35] Class counsels' request for legal fees is also fair and reasonable.

[36] The original retainers agreed to by the class representatives contemplated a "base fee plus multiplier" approach to class counsels' legal fees. However, class counsel decided to seek an approval of legal fees in an amount that they say is less than what would have resulted from the application of the multiplier principle.

[37] In particular, class counsel are seeking court approval for legal fees that amount to about 28 per cent of the $16.5 million compensation amount recovered for class members. However, the actual impact on class members will only be about 12.5 per cent because the defendant has agreed to contribute just under $3 million for the payment of the legal fees - over and above the $16.5 million for class member compensation. This means that the balance to be paid by class members is about 12.5 per cent. This amount will be deducted from the class member's individual compensation cheque.

[38] I note that over the course of the decade-long litigation, class counsel docketed more than 8000 hours in lawyer and law student time - about $3 million in legal fees. The disbursements amount is a relatively modest $23,373.

[39] I also note that both Ms. Good and Mr. Taylor support the requested legal fees and find them to be fair and reasonable and that no class member has suggested otherwise.

[40] In sum, I have no difficulty approving the requested legal fees and disbursements. If the retainer agreements had originally provided for a 28 per cent contingent recovery for legal fees, I would have approved this amount. As discussed in *Cannon,*5 and as further refined in *Brown*,6 this contingency fee amount is presumptively valid on the facts herein and should be approved.

Disposition

[41] Both the proposed settlement and the requested legal fees and disbursements are approved as fair and reasonable.

[42] Order to go as per the draft order that I signed at the conclusion of the hearing on October 19, 2020.

[43] My compliments again to counsel on both sides for achieving such a fair and reasonable resolution of the two class actions.

Signed: *Justice Edward P. Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

Date: October 22, 2020