

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHRISTOPHER BRAZEAU and DAVID KIFT

Plaintiffs

- and -

AMENDED THIS
MODIFIÉ CE

18 Nov 15

PURSUANT TO
CONFORMÉMENT À

RULE/LA RÉGLE 26.02

C

ATTORNEY GENERAL OF CANADA

Defendant

THE ORDER OF
L'ORDONNANCE DU

J. PERRELL

DATED / FAIT LE

13 Nov. 2015

M. Sagaria

Sagaria

Registrar

proceeding under the *Class Proceedings Act, 1992*

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE

TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.



Date: July 17, 2015

Issued by

YOUSSEF

Local registrar

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10th Floor
Toronto, ON M5G 1E6

TO: **THE ATTORNEY GENERAL OF CANADA**
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CLAIM

1. The Plaintiffs, on behalf of the Class described herein, claim:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative Plaintiffs for the Class (as defined below);
 - (b) a declaration that the Defendant breached its fiduciary duties to the Plaintiffs and the Class through the funding, operation, management, administration, supervision and control of the Federal Institutions (as defined below);
 - (c) a declaration that the Defendant is liable to the Plaintiffs and the Class for damages caused by its breach of its common law duties in relation to the establishment, funding, operation, management, administration, supervision and control of the Federal Institutions;
 - (d) damages for negligence and breach of fiduciary duty in the amount of \$500 million or any such amount that this Honourable Court deems appropriate;
 - (e) punitive damages in the amount of \$100 million;
 - (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;
 - (h) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
 - (i) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. Federal penitentiaries are becoming Canada's largest repositories for the mentally ill.
3. The population of Federal penitentiaries is currently more than 15,000. That number continues to grow.

4. A large portion of the prison population suffers from mental illness. Throughout the Canadian correctional system's history, those who were tasked with administering the care of this group have treated them with contempt, prejudice, indifference and abuse. Prisoners diagnosed with serious psychological disorders and illnesses ("**Mentally Ill Prisoners**") have suffered severe harm as a result of the Defendant's policies and procedures, and the failure of the Defendant to properly implement such policies and procedures.

5. All aspects of the lives and medical care of Mentally Ill Prisoners are dictated, controlled and provided for by the Defendant. Mentally Ill Prisoners are particularly vulnerable as a result of their disabilities and diagnosed illnesses.

6. The Defendant:

- (a) has failed to provide reasonable and/or acceptable health care to Mentally Ill Prisoners;
- (b) has subjected Mentally Ill Prisoners to cruel and unusual punishment in the form of extended periods of solitary confinement; and,
- (c) is responsible for physical and forceful punishments of Mentally Ill Prisoners when they exhibit symptoms of, and behaviours associated with, their medical conditions.

7. The Defendant's legislated mandate is to rehabilitate rather than punish Federal prisoners. In the case of Mentally Ill Prisoners, the Defendant is falling well short of this obligation. The Defendant's policies and practices promote the containment and isolation of Mentally Ill Prisoners, contrary to its duty to provide a reasonable standard of health care to all prisoners.

THE PARTIES

8. Chris Brazeau is a prisoner at the Edmonton Institution in Edmonton, Alberta. He is 34 years old and is originally from British Columbia. He suffers from Attention Deficit and Hyperactivity Disorder ("**ADHD**"), Generalized Anxiety Disorder and Post Traumatic Stress Disorder. He is currently serving a sentence of twelve years as a result

of robbery-related crimes. During his sentence, he has spent significant time in Administrative Segregation (or “**Solitary Confinement**”, as it is more commonly known) and has gone long periods without his necessary medications.

9. David Kift is a prisoner at the Joyceville Institution in Kingston, Ontario. He is 58 years old and is originally from Ontario. For 17 years, he served as an officer with the Royal Canadian Mounted Police (“RCMP”). He suffers from severe Post Traumatic Stress Disorder (“PTSD”) and depression. He often has suicidal thoughts. He is currently serving a sentence of six years as a result of gun possession-related crimes. During his sentence, he has spent time in Solitary Confinement and has gone long periods without his necessary medications.

9.10. The Defendant, Her Majesty the Queen in Right of Canada, is represented in the matter by the Attorney General of Canada (“**Canada**”). Canada represents the rights of Correctional Service Canada (“**CSC**”), which is the Federal Government body that administers the system of Federal correctional facilities across Canada (“**Federal Institutions**”). CSC is and was, at all times, responsible for the maintenance, oversight, funding and management of the governmental servants and agents who operate the Federal Institutions.

10.11. The Plaintiffs brings this action pursuant to the *Class Proceedings Act, 1992* on ~~his~~their own behalf and on behalf of all other Mentally Ill Prisoners incarcerated in Federal Institutions.

11.12. The proposed members of the Class are:

all persons who were diagnosed by a medical doctor with a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life as defined in s. 85 of the *Corrections and Conditional Release Act*, S.C. 1993, c. 20¹ either before or during their incarceration in a Federal Institution, were incarcerated

¹ S. 85 of the Act defines “mental health care” as the care of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behavior, the capacity to recognize reality or the ability to meet the ordinary demands of life.

between June 18, 1992 and the present and who were alive as of July 20, 2013 (the “Class”)

FAILURE TO PROVIDE ADEQUATE MEDICAL CARE

~~12.~~13. The *Corrections and Conditional Release Act* (The “Act”) requires that every Mentally Ill Prisoner is provided with essential health care and reasonable access to non-essential mental health care. This care is meant to further CSC’s legislated mandate of rehabilitating and reintegrating Mentally Ill Prisoners into the community. Such health care is to adhere to professional and community standards.² CSC is statutorily obligated to create safe and healthy living and working conditions for all prisoners.³

~~13.~~14. Canada has continuously failed to provide acceptable medical care to Mentally Ill Prisoners in accordance with the standards enshrined in the Act, and/or the common law.

Interruptions in Care

~~14.~~15. When Mentally Ill Prisoners are first admitted to Federal custody, many are unable to access *any* psychiatric medications for extended periods of time.

~~15.~~16. CSC physicians have insufficient time to meet and assess all new admissions to Federal custody. Mentally Ill Prisoners often wait more than a month for a physician to approve and/or prescribe medications. During that wait, CSC physicians and/or staff discontinue the Mentally Ill Prisoner’s previously prescribed medication.

~~16.~~17. The same interruption in care takes place each time a Mentally Ill Prisoner is transferred between Federal Institutions. In such circumstances, a Mentally Ill Prisoner is reassessed by the receiving Federal Institution’s physicians. Again, they are denied medication for an extended period.

~~17.~~18. This extended interruption in access to medication has a severe and lasting effect on a Mentally Ill Prisoner’s mental health and well-being. They:

² See ss. 85-89 of the Act.

³ See s. 70 of the Act.

- (a) withdraw from medications upon which they rely;
- (b) suffer a worsening and/or exacerbation of their medical conditions;
- (c) are less able to maintain emotional and/or physical control; and,
- (d) constitute a greater danger to themselves, to CSC staff and to the general population of the Federal Institutions.

~~18.19.~~ Such interruptions in care are especially egregious when a Mentally Ill Prisoner has received treatment at a Regional Treatment Centre (a psychiatric hospital) and is transferred back to a penitentiary. In such circumstances, the benefit of any treatment received at the Regional Treatment Centre is undermined as result of their inability to access medications.

The CSC Does Not Provide Commonly Prescribed Medications to the Class

~~19.20.~~ Mentally Ill Prisoners are systematically denied many commonly prescribed psychiatric medications. Mentally Ill Prisons may only access a limited array of drugs offered by the CSC drug formulary.

~~20.21.~~ For those Mentally Ill Prisoners who already rely on a particular medication when they are admitted to a Federal Institution, they face withdrawal and/or are forced to improperly taper from such medications.

~~21.22.~~ The psychological and emotional impacts of this practice are highly detrimental to Mentally Ill Prisoners. Their conditions become more severe as a result of failing to receive effective medication, which is a direct result of Canada's policies and practices regarding the treatment of Mentally Ill Prisoners.

~~22.23.~~ A physician's decision to prescribe one psychiatric drug over another is a medical decision and must be based solely on clinical criteria. Physicians' professional autonomy and clinical judgment are significantly restricted by Canada's policies and practices. The most effective, or even a reasonably effective, course of treatment is unavailable to many Mentally Ill Prisoners.

There are Insufficient Mental Health Professionals Available to the Class

23:24. Many Mentally Ill Prisoners have little or no access to therapy by mental health professionals. Those mental health professionals who provide services to the Class are only intermittently available. Mentally Ill Prisoners are unable to change medications when they suffer adverse reactions and/or dangerous side effects and have little to no access to meaningful therapies.

24:25. The delays, interruptions and failures in care described above are a direct result of a lack of funding and staffing in the Federal Institutions and Canada's operational decisions.

USE OF SOLITARY CONFINEMENT ON THE CLASS FOR EXTENDED PERIODS

25:26. In all circumstances, the use of Solitary Confinement for extended periods of time has a severely detrimental impact on the psychological well-being of a Mentally Ill Prisoner. Canada relies on this practice to contain and manage the Class rather than to treat their underlying illnesses. The use of Solitary Confinement on Mentally Ill Prisoners for extended periods constitutes cruel and unusual punishment, and runs contrary to the Act.⁴

Nature of Solitary Confinement

26:27. While in Solitary Confinement, a prisoner is placed in a small cell and is denied meaningful human contact or interaction for 23 hours per day. A prisoner's only human interaction is with CSC staff.

27:28. Prisoners *without* mental health issues suffer severe effects when in Solitary Confinement. Anxiety, depression and anger are common responses. For Mentally Ill Prisoners, the impacts of Solitary Confinement are greatly amplified. Extended periods in Solitary Confinement have the following impacts on Class members:

⁴ S. 69 of the Act states that no person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

- (a) difficulty separating reality from their own thoughts;
- (b) confused thought processes;
- (c) perceptual distortions;
- (d) paranoia;
- (e) psychosis;
- (f) worsening of pre-existing psychological conditions;
- (g) physical effects, such as lethargy, insomnia, palpitations and various eating disorders;
- (h) permanent difficulty coping with social interactions; and,
- (i) self-harm and suicide.

~~28.~~29. These effects frustrate the rehabilitative function of incarceration on Mentally Ill Prisoners. Mental illness cannot be properly treated while a Mentally Ill Prisoner is in Solitary Confinement. The Mentally Ill Prisoner is more likely to reoffend once they are released into the public as a result of the conditions of their incarceration. They are also more likely to lengthen their own sentences due to behaviours resulting from the conditions of their incarceration.

~~29.~~30. The Act generally allows for two types of Solitary Confinement: Disciplinary Solitary Confinement and Administrative Solitary Confinement. The conditions are the same but their purpose is different. Administrative Solitary Confinement is used to “maintain the security of the penitentiary or the safety of any person.” The confinement of Mentally Ill Prisoners almost always falls under the rubric of Administrative Solitary Confinement.⁵

~~30.~~31. CSC staff may segregate a Mentally Ill Prisoner for an indefinite period of time in Administrative Solitary Confinement. It is not uncommon for Class members to spend years in Administrative Solitary Confinement. Such circumstances are a “sentence within a sentence” and constitute a denial of natural justice and due process.

⁵ See ss. 31-37 of the Act.

~~31.32.~~ Third-party reviews of the use of extended periods of Solitary Confinement on Mentally Ill Prisoners have concluded that the practice should be eradicated in Canadian prisons. For example:

- (a) The Office of the Correctional Investigator of Canada has repeatedly criticized and called for an end to the prolonged use of Solitary Confinement on Mentally Ill Prisoners;
- (b) The Canadian Medical Association has advocated for the cessation of Solitary Confinement for those with mental health issues and recognizes that it should only be used for short periods; and,
- (c) The United Nations has defined its use as “cruel and unusual punishment” and has called for a ban on the use of Solitary Confinement on Mentally Ill Prisoners.

~~32.33.~~ The policies and practices are patently unreasonable in all of the circumstances. The carrying out of such policies is done in bad faith and does not constitute acceptable operational choices.

CSC STAFF ARE UNABLE TO CARE FOR MENTALLY ILL PRISONERS

~~33.34.~~ Federal Institutions are not funded, staffed or equipped to provide mental health care that is commensurate with community standards.

~~34.35.~~ CSC staff are unqualified to administer, control, protect and care for Class members. They lack knowledge and training to provide mental health care. They are not trained to recognize and to react to behaviours that are symptomatic of mental illness, and they are not trained to distinguish between aggressive behaviour and a mental health episode.

~~35.36.~~ CSC’s approach to governing inmate behaviour almost exclusively relies on force, compliance and behavioural inducement methods. In managing a rising number of high-risk interventions with offenders who may be suicidal, engaged in chronic self-injurious behaviour or suffering from acute psychiatric illness, CSC staff are under-equipped.

~~36.37.~~ For example, self-injury or suicide attempts are commonly responded to by uses

of force and/or extensive placement in Solitary Confinement. CSC staff rely on pepper spray, excessive physical force and physical restraints to control Mentally Ill Prisoners who are in the midst of mental health episodes. In situations where de-escalation or other tactics would be effective, CSC staff regularly rely on extreme force or extended isolation as a primary response rather than a last resort. Such practices exacerbate such episodes and Class members' underlying mental conditions.

THE PLAINTIFFS'S EXPERIENCES AS A MENTALLY ILL PRISONERS

~~37-38.~~ Mr. Brazeau is currently serving a sentence of twelve years at the Edmonton Institution. He began his sentence in 2003.

~~38-39.~~ Mr. Brazeau was diagnosed at a young age with severe ADHD. Since he began his sentence in 2004, he has been diagnosed by CSC physicians with ADHD, Post Traumatic Stress Disorder and Generalized Anxiety Disorder.

~~39-40.~~ Mr. Brazeau has been hospitalized as a result of his mental health conditions both before and during his incarceration.

~~40-41.~~ Mr. Brazeau has been involuntarily transferred numerous times among various Federal Institutions.

~~41-42.~~ Mr. Brazeau has been treated with extreme physical force, including pepper spraying, as a result of behaviours related to his psychological conditions.

~~42-43.~~ Mr. Brazeau has regularly been prescribed unsuitable and improper medications that have exacerbated his condition, and has not been allowed access to medications that would have significantly benefited him. Mr. Brazeau has not received mental health treatment that is commensurate with community standards.

~~43-44.~~ Mr. Brazeau has spent 12 consecutive months in Administrative Solitary Confinement. He spent over a month in Administrative Solitary Confinement in early 2015. Mr. Brazeau suffered significant worsening of his mental health problems during his time in Solitary Confinement, including anxiety, depression, self-harm, suicidal thoughts and visual and auditory hallucinations.

45. It is likely that Mr. Brazeau's condition will continue to deteriorate as a result of Canada's failure to create and implement policies that allow for the provision of proper health care. Mr. Brazeau's ability to successfully reintegrate himself into Canadian society is highly unlikely as a result of his sentence in the Federal Institutions.

46. Mr. Kift is currently serving a sentence of six (6) years at the Joyceville Institution in Kingston, Ontario. He began his sentence in 2014.

47. Mr. Kift served as an RCMP officer for 17 years. In 1992, after several traumatic experiences in his career, he was diagnosed by an RCMP psychologist with PTSD and related symptoms of depression. In 1996, at Mr. Kift's request, he was medically discharged from the RCMP. He receives a disability pension to this day through Veteran's Affairs Canada.

48. Mr. Kift has suffered, and continues to suffer, on account of his mental health conditions both before and during his incarceration. Prior to his incarceration, he had regular access to prescribed medication that effectively treated his mental health conditions.

49. Mr. Kift has been involuntarily transferred numerous times among various Federal Institutions.

50. Mr. Kift has regularly been provided with unsuitable and improper medications, if any at all, which have exacerbated his condition, and he has not been allowed access to medications that would have significantly benefited him. Mr. Kift's regular medications were arbitrarily discontinued by CSC staff. Mr. Kift has not received mental health treatment that is commensurate with community standards.

51. On many occasions, Mr. Kift has pleaded for adequate medical assistance. He has been repeatedly refused. He is not being appropriately treated for his mental illness at the Joyceville Institution.

52. Mr. Kift has spent time in Solitary Confinement. Mr. Kift suffered a significant worsening of his mental health conditions during this time, including anxiety, severe

depression, prolonged crying fits, self-harm, suicidal thoughts, among other conditions.

KNOWLEDGE OF CANADA

46.53. Canada knew or ought to have known of the impropriety of the policies and the negligent operation of such policies, including the failure to provide adequate medical care, the over-reliance on Solitary Confinement and the inadequacies of CSC staff.

47.54. The Office of the Correctional Investigator of Canada, an agency of the Federal Government, has highlighted deplorable conditions at Federal Institutions for Mentally Ill Prisoners in numerous reports. Such reports were delivered to CSC and were made public. For example, in the 2013-2014 annual report, the following was noted:

- (a) Issues involving the care and treatment of mentally disordered offenders have become an increasing preoccupation. In the 12 months preceding the report's publication there were more than 1,000 self-inflicted injuries involving 295 offenders recorded in Correctional Institutions, a rate that has more than tripled over the previous five years;
- (b) 28% of all use of force interventions involved an offender with a mental health concern as identified by CSC;
- (c) The use of pepper spray in nearly 60.4% of all use of force incidents suggests an increasing reliance on security-driven responses to behaviours that are often associated with mental illness. **These numbers should be cause for alarm;** and,
- (d) Addressing the rising number of incidents involving mentally disordered offenders by means of physical restraints, pepper spray or placements in isolation or observation cells are increasingly counter-productive and harmful practices.

48.55. As long ago as 2009, the Office of the Correctional Investigator of Canada's annual report has stated:

"In the past year, I have been very clear on the point that mentally disordered offenders should not be held in segregation or in conditions approaching solitary confinement...the use of prolonged segregation for managing prisoners can rarely be justified. There is growing international recognition and expert consensus that the use of solitary confinement should be prohibited for mentally ill offenders."

CANADA'S BREACHES OF DUTIES TO THE CLASS MEMBERS

~~49-~~56. Canada has a fiduciary relationship with all Class members. Canada created, planned, established, operated, financed, supervised, controlled and regulated the entire system of Federal Institutions during the Class Period.

~~50-~~57. Class members were systematically subjected to the institutional conditions, regime, punishments, Solitary Confinement and failure to provide adequate medical care by the CSC and were subjected to wrongful acts at the hands of Canada while imprisoned.

~~51-~~58. Mr. Brazeau and Mr. Kift experienced extended periods of Solitary Confinement in a number of Federal Institutions. ~~He has~~They have been deprived of health care that could assist ~~him~~them in ~~his~~their rehabilitation. ~~He~~They ~~has~~have suffered physical abuse at the hands of CSC staff during psychiatric episodes.

~~52-~~59. All Class members, including Mr. Brazeau and Mr. Kift, who have been incarcerated in Federal Institutions are persons to whom Canada owes a non-delegable fiduciary and common law duty which includes, but is not limited to: the duty to provide health care to a community standard; the duty to rehabilitate inmates and reintegrate them into the community; the duty to ensure that reasonable care was taken of the Class; the duty to protect the Class from severe disciplinary force; and, and the duty to protect the Class from cruel and unusual punishments. These fiduciary duties were performed negligently by Canada in breach of its special responsibility to ensure the safety and well-being of the Class.

~~53-~~60. Canada was responsible for:

- (a) the promotion of the health, safety and well being of Mentally Ill Prisoners;
- (b) the management, operation and administration of CSC;
- (c) decisions, procedures, regulations promulgated, operations and actions taken by the CSC and its employees, servants, officers and agents in Canada during the Class Period;

- (d) overseeing the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Federal Institutions;
- (e) for the creation, design and implementation of the policies regarding Solitary Confinement and medical care during the Class Period; and,
- (f) the selection, control, training, supervision, and regulation of the designated operators and their employees, servants, officers and agents, and for the care, control and well being of Mentally Ill Prisoners confined in the Federal Institutions during the Class Period.

~~§4.61.~~ At all material times, the Class members were within the knowledge, contemplation, power or control of Canada and were subjected to the unilateral exercise of Canada's power or discretion. By virtue of the relationship between the Class members and Canada being one of trust, reliance and dependence, Canada owes a fiduciary obligation to ensure that the Class members are treated fairly, respectfully, safely, are provided medical care at a community standard and in all other ways consistent with the obligations owed to a person under its care and control.

~~§5.62.~~ At all material times, Canada owed a fiduciary obligation to Mentally Ill Prisoners to act in their best interests, in the best interests of the population of the Federal Institutions generally, to provide proper health care services and to attempt to rehabilitate them to reintegrate them into Canadian society. The Class members relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

~~§6.63.~~ Through its servants, officers, employees and agents, Canada was in breach of its fiduciary duties to the class. Particulars of the breaches of duties of Canada include the following:

- (a) failure to take a responsible and good faith interest in the operation of the Federal Institutions and supervision of the Class members, despite its role in respect of the prisoners under its responsibility;
- (b) failure to investigate and oversee the psychological, mental and physical health of Class members in the Federal Institutions;
- (c) failure to provide adequate psychiatric and psychological medical care for Class members;

- (d) failure to provide access to psychiatric medications that are necessary for the Class members' emotional and physical well-being;
- (e) the use of extended periods of Solitary Confinement as a method of disciplining, controlling or containing Class members;
- (f) allowing for extended periods of Solitary Confinement as a method of disciplining, controlling or containing Class members with knowledge that it would exacerbate mental illness and cause physical consequences;
- (g) failure to recognize deterioration in the mental status and overall condition of Class members and to take steps to reverse this process;
- (h) engaging in forceful and punitive measures in order to control and contain Class members;
- (i) failure to properly train CSC staff to recognize and/or differentiate between mental health episodes and non-mental health-related inmate behaviours;
- (j) failure to follow its own policies regarding administration of psychiatric drugs;
- (k) hiring workers at the Federal Institutions who were not qualified to meet the needs of the individuals under their care and supervision;
- (l) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class members;
- (m) failure to properly supervise and/or monitor Class members;
- (n) failure to provide adequate financial resources or support to properly care and provide for Mentally Ill Prisoners;
- (o) failure to respond adequately, or at all, to complaints or recommendations that were made for Class members, with respect to both their condition and their treatment;
- (p) failure to safeguard the physical and emotional needs of Class members; and,
- (q) permitting cruel, unusual and/or excessive punishments to be perpetrated against the Class.

CANADA'S DUTY OF CARE

~~57.64.~~ Canada created, planned, established, initiated, operated, financed, supervised, controlled and regulated the Federal Institutions during the Class Period.

~~58.65.~~ Amongst other things, Canada was solely responsible for:

- (a) the management, operation and administration of CSC and its predecessor departments during the Class Period;
- (b) the administration of CSC and the Act and its predecessor statutes as well as any other statutes relating to Federal prisons and disabled persons and all regulations promulgated under these statutes and their predecessors during the Class Period;
- (c) the promotion of the health, safety and well-being of Class members during the Class Period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by CSC, its employees, servants, officers and agents and its predecessors during the Class Period;
- (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Federal Institutions during the Class Period; and,
- (f) the medical care and supervision of all Class members within the Federal Institutions and all activities that took place therein during the Class Period.

~~59.66.~~ Canada owed common law duties to the Class members which include, but are not limited to:

- (a) properly and effectively supervising the Federal Institution environment and the conduct of CSC staff and physicians to ensure that Mentally Ill Prisoners would not suffer undue harm;
- (b) providing health care to Mentally Ill Prisoners that is commensurate with community standards;
- (c) using reasonable care to ensure the safety, well-being and protection of Mentally Ill Prisoners;
- (d) setting or implementing standards of conduct for CSC staff to ensure that the health and well-being of Mentally Ill Prisoners are not significantly endangered; and,

- (e) creating policies that would not cause undue suffering or that amount to cruel and unusual punishment.

CANADA'S NEGLIGENCE

~~60-67.~~ Canada acted negligently and in breach of its duty of care to the Class in its establishment, operation, regulation, financing, supervision and control of the Federal Institutions.

~~61-68.~~ Canada breached its common law duties to the Class through its failure to provide adequate conditions or medical care to Mentally Ill Prisoners. In particular, without limitation, Canada acted negligently by:

- (a) failing to adequately, properly and effectively supervise Mentally Ill Prisoners and CSC staff;
- (b) failing to provide adequate medical care to Class members;
- (c) using Solitary Confinement for extended periods with knowledge of its negative impacts on the mentally ill;
- (d) failing to protect Class members from persons or situations that would endanger or be injurious to their health or well-being;
- (e) failing to use reasonable care in ensuring the safety, well-being and protection of Mentally Ill Prisoners by insulating them from practices that would endanger or would be injurious to their health or well-being;
- (f) failing to effectively rehabilitate Mentally Ill Prisoners toward their legislated goal of successful reintegration into the community; and,
- (g) failing to establish or implement standards of conduct for Mentally Ill Prisoners to ensure that no CSC employees or agents would endanger the health or well-being of such inmates.

~~62-69.~~ Class Members suffered damages as a result of Canada's negligence, the particulars of which are set out below. Such damages were reasonably foreseeable by Canada.

DAMAGES SUFFERED BY CLASS MEMBERS

~~63-70.~~ As a consequence of the negligence and breach of fiduciary duties by Canada and its agents for whom Canada is vicariously liable, Class Members suffered injury and

damages including:

- (a) exacerbation of mental illnesses;
- (b) development of new mental illnesses;
- (c) assault and battery;
- (d) emotional abuse;
- (e) psychological abuse;
- (f) an impairment of mental and emotional health amounting to severe and permanent disability;
- (g) infringement on liberty rights;
- (h) impaired ability to participate in or transition to a normal family life;
- (i) alienation from family, spouses and children;
- (j) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (k) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Federal Institution experience; and,
- (l) pain and suffering.

64.71. The foregoing damages resulted from Canada's breach of its fiduciary duty and its negligence.

65.72. As a consequence of the negligence and breach of fiduciary duties by Canada and its agents for whom Canada is vicariously liable, the Class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. Class members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of Canada's conduct for which they claim complete indemnity, compensation and payment from Canada.

66.73. Canada knew, or ought to have known, that as a consequence of its mistreatment of Class members, the Plaintiffs and Class members would suffer

significant mental, emotional, and psychological harm.

PUNITIVE AND EXEMPLARY DAMAGES

~~67.74.~~ The Plaintiffs pleads that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread physical, psychological, emotional, and medical abuse of Class members that occurred during the Class Period. Despite this knowledge, Canada continued to operate the Federal Institutions in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

~~68.75.~~ The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class members' interests, safety and well-being. Canada breached its fiduciary duty and duty of good faith owed to the Class Members.

~~69.76.~~ Over a lengthy time, the Plaintiffs and the Class members were treated in a manner that could only result in aggravated and increased mental illness for a vulnerable population already suffering from disability. The effects of Canada's actions have violated their rights and have altered the paths of their lives.

~~70.77.~~ Full particulars respecting the daily care, operation and control of the Federal Institutions are within the Canada's knowledge, control and possession.

~~71.78.~~ The Plaintiffs pleads and relies upon the *Corrections and Conditional Release Act*, S.C. 1993, c. 20.

~~72.79.~~ The Plaintiffs proposes this action be tried in the City of Toronto.

July 17, 2015

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Court File No.: CV-15-532262500-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

AMENDED STATEMENT OF CLAIM

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