

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

JULLIAN JORDEA REDDOCK AND CARSON CAMBELL

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF DEFENCE

A. OVERVIEW

1. The Attorney General of Canada (AGC) defends this action on behalf of Her Majesty the Queen in Right of Canada who is, pursuant to sections 3, 10 and 23 of the *Crown Liability and Proceedings Act*, responsible for actions committed by the Crown's servants, when they act in their official capacities, in good faith and within the scope of their employment.

2. Except where expressly admitted herein, the Defendant denies the allegations made in the Amended Statement of Claim and puts the Plaintiffs to the strict proof thereof. The Defendant denies that the Plaintiffs' use of the term "solitary confinement" has any legal or evidentiary consequences in the determination of liability.

3. The Defendant admits the allegations contained in paragraphs 8, 11, 18, 58 and 88 of the Amended Statement of Claim.

4. The Defendant has no knowledge of the allegations contained in paragraph 49 of the Amended Statement of Claim.

5. Except as otherwise stated herein, the Defendant denies the allegations contained in paragraphs 1, 1 to 7, 2 (2nd #2 on p.5), 9, 10, 14, 15, 16, 17, 19, 20, 21, 22 to 48, 50 to 57, and 59 to 87 of the Amended Statement of Claim.

B. INAPPROPRIATE CLASS PROCEEDING

6. This action is not appropriate, as claimed or in any respect, for certification as a class proceeding. In particular:

- (a) the claim does not disclose a reasonable cause of action in tort or under the *Charter* as against the Crown;
- (b) the claim of the proposed class members does not raise common issues;
- (c) the proposed class is overly broad;
- (d) a class action is not the preferable procedure for the resolution of the claims;
- (e) the Plaintiffs would not fairly and adequately represent the interests of the proposed class members;
- (f) there are conflicts of interest between the Plaintiffs and the proposed class members; and
- (g) such further and other grounds as will be relied upon during the application for certification of the class action.

C. THE PLAINTIFFS

7. Jullian Jordea Reddock (Mr. Reddock) has been sentenced to federal incarceration twice. His first federal sentence was for robbery and he was sentenced to 2 years, 9 months and 15 days. For his most recent sentence which commenced on May 2, 2012, he was sentenced to 5 years and 1 month for manslaughter and uttering threats to cause death or harm. He has a long history of criminal convictions starting at age 13. He has approximately 35 convictions and of these 21 involve violence including Assault (X5), Assault with a Weapon, Robbery (X2), Robbery with Violence (X3), Carry Concealed Weapon (X2) and Utter Threats (X2). His parole was denied by the Parole Board of Canada

on April 2, 2015. His warrant expiry date was June 1, 2017 and therefore he is no longer under CSC's jurisdiction.

8. Carson Campbell (Mr. Campbell) has also been sentenced to federal incarceration twice. His second sentence which was for 4 years, 9 months, and 10 days for armed robbery, which commenced on December 16, 2013. Mr. Campbell was convicted on one count of Robbery. He was placed on day parole on July 18, 2016. On December 25, 2016, a warrant was issued for his apprehension and suspension after Mr. Campbell failed to return to the Community Residential Facility (CRF) where he resided and was therefore considered unlawfully at large. The next day, Mr. Campbell returned to the CRF and was found to have violated parole by consuming alcohol and he was returned to custody on December 26, 2016. On January 11, 2017, the suspension of parole was cancelled and Mr. Campbell was returned to the community. Since February 21, 2017 he has been on statutory release, and is required to have four face-to-face meetings per month with his parole officer. Mr. Campbell's warrant expiry date is September 25, 2018.

D. BACKGROUND

1) CORRECTIONAL SERVICE OF CANADA

9. The Correctional Service of Canada (CSC) is the federal government agency responsible for administering sentences of a term of two years or more, as imposed by the court.

10. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and (b) assisting in the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

11. The protection of society is the paramount consideration for CSC in the corrections process.

12. CSC is responsible both for managing institutions of various security levels and supervising offenders in the community. More specifically, CSC is responsible for:

- (a) the care and custody of inmates;
- (b) the provision of correctional, educational and other programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;
- (c) the preparation of offenders for release;
- (d) parole supervision, statutory release supervision and long-term supervision of inmates; and
- (e) the maintenance of a program of public education about the operations of CSC.

13. CSC operates under the rule of law and in particular, the *Corrections and Conditional Release Act (CCRA)*, S.C. 1992, c. 20, and the *Corrections and Conditional Release Regulations, (CCRR)* SOR/92-620 which provide its legislative framework.

14. CSC policies are contained in Commissioner's Directives (CDs) which set out services, standards, corporate responsibilities and accountabilities within CSC relating to the fundamental roles, responsibilities and procedures for the provision of correctional services.

15. CDs necessarily have evolved over time to keep pace with, amongst other things, best practices, changes in mental and physical health care, research and technological advances and provincial, professional and community standards.

16. CSC's involvement in the criminal justice process begins once an offender is sentenced to a term of imprisonment of two years or more. Offenders given probationary sentences or sentenced to a term of imprisonment of less than two years are the responsibility of the provinces/territories. Juvenile corrections (those under 18 years of age) are also administered by the provinces and territories and are governed by the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

17. CSC operates under three levels of management: national, regional, and institutional/district parole offices. CSC is headed by the Commissioner of Corrections,

who reports to the Minister of Public Safety and Emergency Preparedness Canada. The Commissioner is supported by an Executive Committee of national and regional officials.

18. CSC manages 43 institutions, including four Aboriginal healing lodges, 14 Community Correctional Centres, and 91 parole offices. Of the 43, 37 are men's institutions and five are women's institutions.

19. CSC also operates 5 Regional Treatment Centres (RTCs). These are hybrid facilities that are both a federal penitentiary and a psychiatric treatment centre in accordance with provincial mental health legislation. Each province and territory regulates the practice of its health care professionals. CSC professionals must be licensed for autonomous practice and adhere to the standards of their governing bodies, and must operate within their scope of practice and competence.

20. Between April 1, 2016 and March 31, 2017, there were an average of 13,626 men and 684 women in custody in federal institutions on any given day.

E. ADMINISTRATIVE SEGREGATION

21. Administrative segregation is governed by sections 31 to 37 of the *CCRA* and sections 19 to 23 of the *CCRR*.

22. The purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates. Administrative segregation is not imposed as a punitive measure.

23. If administrative segregation were not available, there would be a significant risk to persons within the penitentiaries CSC operates. Those persons could include the inmate, other inmates, staff or visitors depending on the circumstances. When allowing an inmate to associate with other inmates would jeopardize the inmate's safety or the safety of others in the institution, the first imperative is to eliminate the potential threat in order to prevent the potential of death, significant injury or jeopardy to security that might lead to any of these.

24. In addition, requiring that an inmate be released from administrative segregation after a certain set number of days could also jeopardize the safety and security of the institution, the inmate and others in the institutions if there are no safe reintegration options available for that inmate.

25. The key principles underlying the use of administrative segregation are:

- (a) To ensure administrative segregation is only used for the shortest period of time necessary, when there are no reasonable and safe alternatives;
- (b) To ensure that the administrative segregation of an inmate occurs only when specific legal requirements are met and that restrictions are based on the least restrictive requirements to meet the objectives of the *CCRA*;
- (c) To ensure a fair, reasonable and transparent decision-making process based on a review of all relevant information;
- (d) To contribute to the safety of staff and inmates and to the security of the institution by providing a safe and humane administrative segregation process; and
- (e) To ensure that certain inmates are not placed in administrative segregation, and that certain other inmates are only placed there in exceptional circumstances.

a) **Legislation**

26. There are two types of segregation – administrative and disciplinary. Administrative segregation is used by CSC as a last resort to manage the risk to the security of the penitentiary or the safety of any person presented by the inmate’s association with other inmates.

27. Separately, the *CCRA* provides for a disciplinary system, the purpose of which is to encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates’ rehabilitation and successful reintegration into the community.

28. Pursuant to subsection 31 of the *CCRA*, the Institutional Head, meaning the Warden or their delegate, may order that an inmate be admitted to administrative segregation if they are satisfied that there is no reasonable alternative and they believe on reasonable grounds that:

- (a) The inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person and allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person;
- (b) Allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of the *CCRA* regarding a serious disciplinary offence; or
- (c) Allowing the inmate to associate with other inmates would jeopardize the inmate's own safety.

29. Subsection 31(2) of the *CCRA* requires that an inmate be released from administrative segregation at the earliest appropriate time.

30. CSC's policies and practices with regard to administrative segregation must be assessed based on the facts established in this proceeding and not on the basis of terminological categories seeking to equate CSC's conduct with "solitary confinement" as practiced in other jurisdictions. The Defendant denies that the Plaintiffs' use of the term "solitary confinement" has any legal or evidentiary consequences in the determination of liability.

31. The possibility of placement in administrative segregation pursuant to the provisions of the *CCRA* was an inherent part of the sentence initially imposed on the Plaintiffs and the class members.

32. Section 19 of the *CCRA* requires inmates be given written reasons for any involuntary placement in administrative segregation within one working day of their placement. Current policy requires this in all cases of administrative segregation.

33. Normally, before admission to administrative segregation, consultation occurs as soon as practicable with members of the Case Management Team to ensure that the admission is justified and that all alternative options have been considered.

34. Section 87 of the *CCRA* and CSC policy require that an inmate's state of health and health care needs be taken into account when rendering decisions regarding administrative segregation. CD 709, Administrative Segregation, outlines procedures to identify, monitor

and address mental health needs of inmates placed in administrative segregation. It requires that prior to an inmate being placed in administrative segregation, the case be reviewed by a mental health professional to provide a written opinion as to whether there are mental health issues that could preclude the inmate's placement in segregation. In addition, a suicide risk screening is conducted upon placement; and a registered health care professional (normally a nurse) must visit each inmate in segregation daily, including weekends and holidays. Regular mental health checks and/or assessments of the inmate are also conducted, and mental health services are provided as required.

35. Pursuant to section 37 of the *CCRA*, an inmate in administrative segregation has the same rights and conditions of confinement as other inmates, except for those that can only be enjoyed in association with other inmates, those that cannot be enjoyed due to the limitations specific to the administrative segregation area, or because of security requirements. These rights and conditions of confinement are described more fully below.

36. There is an internal CSC review process in place whereby placement in administrative segregation is overseen and reviewed to ensure the release of the inmate from administrative segregation at the earliest appropriate time:

- (a) On the first working day by the Institutional Head, if the decision to place the inmate in administrative segregation was made by a delegate;
- (b) On the fifth working day by the Institutional Segregation Review Board, chaired by the Deputy Warden;
- (c) On day 30 by the Institutional Segregation Review Board, chaired by the Warden, and every 30 subsequent days thereafter;
- (d) No later than the 40th day, the Regional Deputy Commissioner will review the recommendation of the Regional Segregation Review Board and determine whether the placement in administrative segregation continues to be justified;
- (e) The National Long Term Segregation Review Committee, chaired by the Senior Deputy Commissioner at National Headquarters, reviews any placements that have reached 60 days, or when an inmate has reached 4 placements in a calendar year or 90 cumulative days in a calendar year;
- (f) At any time, an institution may hold an ad hoc segregation review if there are new or additional factors to be considered.

37. A Parole Officer is required to meet with the inmate within 2 working days of their admission in order to discuss reintegration options. If the inmate remains in administrative segregation after the Institutional Segregation Review Board fifth-working-day review, the Parole Officer, in consultation with other Case Management Team members and based upon his or her meeting with the inmate, develops a Reintegration Action Plan (RAP) by the tenth working day that will be consistent with the inmate's Correctional Plan. The RAP outlines the actions to be taken to ensure the inmate's safe release from administrative segregation at the earliest appropriate time, and to monitor and support the inmate immediately following release from administrative segregation.

b) Commissioner's Directives

38. Administrative segregation procedural safeguards are reinforced in CD 709 and Guidelines 709-1. These policies provide, *inter alia*, that an inmate in administrative segregation has access to:

- (a) correctional programs and interventions;
- (b) case management services;
- (c) spiritual support;
- (d) psychological counselling and access to a psychiatrist as required;
- (e) the opportunity to be out of their cell for a minimum of two hours every day;
- (f) the opportunity to shower each day, including weekends and holidays (this time is not included in the minimum two hours out of the cell);
- (g) immediately upon admission, access to personal property items related to hygiene, religion and spirituality, medical care and non-electronic personal items, subject to safety and security concerns;
- (h) their remaining personal property items within 24 hours of admission, subject to safety and security concerns;
- (i) access to legal counsel without delay;
- (j) the ability to file a complaint or grievance (CD 081);
- (j) structured visits from inmate committee members, peer support or advocacy groups such as the Elizabeth Fry Society and the John Howard Society; and
- (k) access to visits and the ability to make telephone calls.

39. Inmates in administrative segregation are offered opportunities to shower and have outdoor yard time as set out in the policies at the relevant time and as operational requirements permit. Currently, these are offered daily. Inmates may choose not to avail themselves of those opportunities.

40. Inmates are provided contact with CSC staff and others in accordance with the applicable policies in place at the relevant time.

41. Direction for CSC personnel, including health care professionals, with respect to roles and responsibilities in regard to psychological and other services related to the management of risk and to assist case management decision-making can also be found in CD 705; CD 705-5: Supplementary Assessments; CD 712-1: Pre-release Decision Making; CD 712-2: Detention; CD 708: Special Handling Unit; CD 710-2: Transfer of Inmates; CD 800: Health Services and CD 843: Interventions to Preserve Life and Prevent Serious Bodily Harm (Management of Self-Injurious and Suicidal Behaviour prior to August 1, 2017).

42. The CDs provide that the provision of regular health assessments, including mental health assessments, for inmates in administrative segregation includes the following obligations:

- (a) Prior to admission to administrative segregation, the case will be reviewed by a health professional to provide an opinion as to whether there are mental health issues that could preclude the inmate's placement in segregation or if a referral to Mental Health Services is appropriate. The review will be conducted pursuant to the Health Consultation and Assessment for Administrative Segregation Guidelines;
- (a) A mental health professional, or other mental health staff under the supervision of a mental health professional, must provide a written opinion on the inmate's current mental health status, any noted deterioration of mental health and the appropriateness of a referral to Mental Health Services (if applicable) within the first 25 days of admission to administrative segregation and an assessment of current mental health status once every subsequent 60 days. This assessment is completed pursuant to the Health Consultation and Assessment for Administrative Segregation Guidelines;
- (b) A health care professional must visit each inmate in administrative segregation daily, including on weekends and holidays; and

- (c) A health care professional provides comments to the Institutional Segregation Review Board in regards to the physical/mental health of every inmate being presented to the Segregation Review Board.

F. RESPONSE TO THE ALLEGED EFFECTS OF PROLONGED ADMINISTRATIVE SEGREGATION

43. With respect to paragraphs 15-19 of the Amended Statement of Claim, the Defendant states as follows.

44. The Defendant denies that administrative segregation has caused the Plaintiffs or members of the proposed class severe or any adverse mental effects and puts them to strict proof thereof.

45. The Institutional Head is required to release a segregated inmate at the earliest appropriate time. Placement in administrative segregation is restricted to very specific circumstances, and may only ever be considered when there is no reasonable alternative to administrative segregation. Daily rounds by a health professional (normally a nurse) are required so that inmates who may show signs of negative mental health effects may be identified and treated.

46. CSC continuously works on its administrative practices to ensure that they meet the requirements of the *CCRA*. Health and mental health policies provide a process to address any mental health and medical needs that may arise.

47. All inmates placed in administrative segregation must be reviewed for mental health issues both at the outset and in the initial period of admission to segregation. Ongoing assessments are meant to ensure that, if the inmate's mental health needs increase while in segregation, services are offered (including a re-consideration of reasonable alternatives in those changed circumstances).

48. By virtue of an enhanced CD 709 issued August 1, 2017 inmates with serious mental illness with significant impairment are now excluded from administrative segregation, along with inmates who are certified in accordance with provincial mental health legislation, and inmates who are actively engaging in self-injury or are at elevated

or imminent risk for suicide. Additionally, unless exceptional circumstances exist, pregnant inmates, inmates with significant mobility impairment or inmates in palliative care cannot be admitted to segregation. The mental health of all other inmates placed in administrative segregation is reviewed on admission, assessed by health care professionals at regular intervals throughout their placement, and assessed on daily visits by nurses charged with determining their mental and physical health care needs and/or risk of suicide or self-injury. If the inmates' mental health needs increase while in administrative segregation, services are offered including consideration of diversion to intermediate mental health care or psychiatric hospital care.

49. CSC constantly has to balance any mental health concerns with the need to ensure the safety of persons within the penitentiaries CSC operates. Those persons could include the inmate, other inmates, staff, or visitors, depending on the circumstances. Administrative segregation is authorized when it is the only reasonable response to the circumstances described in subsection 31(3) of the *CCRA*, and only then for the shortest time appropriate.

G. RESPONSE TO THIRD PARTIES AND INTERNATIONAL SOURCES

50. With respect to paragraphs 18 and 29, the Defendant admits that some of the statements referred to therein appear in various reports, international conventions, covenants and rules but denies they are determinative of any of the alleged failures complained of.

H. MR REDDOCK'S EXPERIENCES IN ADMINISTRATIVE SEGREGATION

51. In answer to paragraphs 30 to 44 of the Amended Statement of Claim, the Defendant states as follows.

52. Mr. Reddock served his first federal sentence from 2006 to 2009 in four separate institutions: Millhaven Assessment Unit, Kingston Penitentiary, Regional Reception Centre (Special Handling Unit) and Millhaven Institution. Each admission to administrative segregation was based on the specific circumstances presented at the time, and for different reasons. Some of the reasons he was placed into administrative

segregation include, *inter alia*, many voluntary requests by him to be placed there, he assaulted other inmates and CSC staff, for his own protection as a result of his behaviour, incompatibles within a particular institution or for his aggressive behaviour.

53. During his second sentence from 2012 to 2017, he was again administratively segregated on various different occasions in 7 separate institutions. Each admission to administrative segregation was based on the specific circumstances presented at the time, and for different reasons. Some of this included, *inter alia*, threats made by him to harm inmates and CSC staff, voluntary requests to be administratively segregated, for his own safety as a result of him being assaulted and him owing debts to other inmates, assaulting other inmates and incompatibles.

I. MR. CAMPBELL'S EXPERIENCES IN ADMINISTRATIVE SEGREGATION

54. In answer to paragraphs 45 to 49 of the Amended Statement of Claim, the Defendant states that CSC has not found records indicating that Mr. Campbell was placed in administrative segregation in a federal institution, as alleged. The Defendant puts the Plaintiffs to the strict proof of these allegations.

J. THE NEED FOR ADMINISTRATIVE SEGREGATION

55. With respect to paragraphs 50 to 56 of the Amended Statement of Claim, the Defendant denies that the Crown, or the Crown's employees, servants and agents have acted unlawfully or that Canada's policies or practices regarding the use of administrative segregation contravene the legislation or policies in place at the relevant time.

56. Inmates sentenced to imprisonment for two years or more include some of Canada's most violent and dangerous offenders. Despite CSC's efforts to achieve its statutory goals of protecting society and assisting in the rehabilitation and reintegration of inmates, inmates often engage in violent and dangerous behaviours including, *inter alia*, maintaining affiliations with gangs and criminal organizations, participating in an underground economy of contraband and illegal commodities, participating in an unwritten inmate Code requiring violent responses to specified conduct and making and using home-made weapons. There is the constant possibility of violence and other threats discussed

below, jeopardizing the safety and security of the institution requiring constant changes on a moment by moment basis.

57. If an inmate demonstrates assaultive or threatening behaviour or engages in muscling, extortion or intimidation, this creates a real or potential threat to the safety of staff, other inmates, themselves, or to the security of the institution. Where the threat appears to reasonably exist, placing such inmates in administrative segregation allows the risk to be fully assessed.

58. CSC is required to explore safe alternatives for a segregated inmate. These include but are not limited to meeting with individuals involved to attempt to resolve whatever issue required the placement in the first place, on a different range, or transfer to another facility either within or outside the region. Sometimes there are no viable options; however CSC is required to continue to evaluate reasonable alternatives in order to try and alleviate the administrative segregation placement.

59. Often times, inmates voluntarily request to be placed in administrative segregation for various reasons such as they have received threats, they want to be away from the general population, they are afraid they will harm someone else or be harmed.

60. Other times, inmates who have been placed in administrative segregation will refuse all alternatives provided to them, and insist on remaining in administrative segregation. These cases pose a significant challenge to CSC. Some inmates may continuously sabotage any efforts of reintegrating them in a population. They may issue threats of harm or death to a person or themselves, they may purposely act in a manner that jeopardizes the safety and security of the institution, they may adopt behaviours that are generally not accepted in population, by way of examples.

61. With respect to paragraph 52 of the Amended Statement of Claim, the Defendant admits that the Prime Minister's mandate letter to the Minister of Justice directs her to implement recommendations from the inquest into the death of Ashley Smith regarding the use of solitary confinement, but denies that this is determinative of any of the alleged failures complained of.

K. NO CLAIM FOR EQUITABLE RELIEF

62. The Defendant denies that the Crown realized cost savings resulting in unjust gains from the use of administrative segregation.

63. Even if costs savings were realized, which is denied, the Plaintiffs and proposed class members did not suffer any corresponding deprivation, and specifically, did not suffer any financial or economic deprivation which caused any alleged enrichment.

64. In any event, the use of administrative segregation with respect to the Plaintiffs and proposed class members is not unlawful, but was on each occasion carried out under the authority of, and within the requirements and limitations set out in the *CCRA*.

65. Therefore, in response to paragraphs 81 to 84 of the Amended Statement of Claim, the Defendant denies:

- (a) that Canada realized unjust gains;
- (b) that Canada must account to the Class for any reason and is liable to disgorge any gains;
- (c) that the Plaintiffs and the proposed class members are entitled to a constructive trust over any monies; and
- (d) that the Plaintiffs and proposed class members are entitled to waive torts of negligence, false imprisonment, intentional infliction of mental suffering, assault and battery, the commission of which is specifically denied by the Defendant who puts the Plaintiffs and class members to proof of same.

L. NO MISTREATMENT OF CLASS MEMBERS

66. The Defendant denies the allegations of systemic mistreatment in paragraphs 62 to 66 of the Amended Statement of Claim. The Defendant further denies there was any mistreatment of the Plaintiffs or any of the proposed class members as alleged and puts the Plaintiffs and the proposed class members to the strict proof thereof.

67. The Defendant denies that the Plaintiffs or the proposed class members were, or are, systemically subjected to punishments or administrative segregation contrary to the requirements of the law, denied access to essential health care or reasonable access to non-

essential mental health care that would have contributed to their rehabilitation and successful reintegration into the community or were subjected to wrongful acts. CSC employees, agents and servants did not engage in forceful or punitive measures to gain control or contain the Plaintiffs or proposed class members as alleged.

68. At all times, the employees, agents and servants of the Crown acted reasonably, responsibly, in good faith and for no improper purpose and took into account the best interests, physical and mental health and wellbeing of the proposed class members, and the safety and security of the institution and other inmates.

69. The AGC denies that it was engaged in cost saving measures or that it constructed and managed any institutions in a manner that prioritized administrative segregation over appropriate alternatives to it. At all times, the employees, agents and servants of the AGC explored reasonable alternatives to administrative segregation and it was only used when there were no reasonable alternatives.

M. NO FIDUCIARY DUTY OWED TO THE CLASS MEMBERS

70. The AGC denies that any employees, agents or servants of the Crown owed a fiduciary duty to the Plaintiffs or proposed class members and states that the Amended Statement of Claim fails to disclose a reasonable cause of action in fiduciary duty. The claim in fiduciary duty should be struck and dismissed.

71. CSC is responsible for contributing to the maintenance of a just, peaceful and safe society as set out in section 3 of the *CCRA*. This duty is owed equally to all inmates. There is no obligation on CSC to put the interests of a particular inmate over and above those of other inmates or society as a whole. At all times, the Defendant acted in good faith and in a reasonable manner.

72. Recognition of a fiduciary duty to an inmate or a class of inmates conflicts with the interest of all inmates, the safety of the institution and society as a whole.

73. In the alternative, if a fiduciary duty was owed, which is not admitted but is specifically denied, there was no breach of such duty. At all material times, all employees,

agents and servants acted in good faith, reasonably and the interests of the safety and security of the institution, the inmates and society as a whole.

N. NO NEGLIGENCE

74. The Defendant states that the Amended Statement of Claim fails to disclose a reasonable cause of action in negligence and that this claim should be struck and dismissed.

75. The Defendant denies that the Crown is directly liable to the Plaintiffs and relies on sections 3 and 10 of the *Crown Liability and Proceedings Act*. The Defendant further denies that any Crown servants, agents and employees for whom the Crown is in law vicariously liable acted negligently. At all times Crown officials administered the *CCRA* and made decisions about administrative segregation reasonably, in good faith, based on their knowledge of relevant facts at the time decisions were made, and for statutory purposes. The AGC denies that the Crown or any employees, agents or servants of the Crown owed a private law duty of care to the Plaintiffs not to place them in administrative segregation as alleged, or at all.

76. There can be no private law duty of care owed by the Crown to inmates that undermines the statutory scheme that officials are legally required to administer. In any event, any such duty if found, which is not admitted but denied, is negated as a result of important policy reasons.

77. Any administrative segregation experienced by Mr. Reddock was within the parameters of section 31 of the *CCRA*. Further, any periods of administrative segregation were governed by section 31 of the *CCRA*. All employees, servants, and agents were properly and adequately trained and performed their duties in a competent, professional and prudent manner.

78. If the AGC, its employees, agents or servants owed any duty of care, which is not admitted but specifically denied, then the employees, agents or servants acted, administered and enforced the *CCRA* and the *CCRR* in a reasonable and prudent manner, pursuant to the policies, programs, procedures and practices in place from time to time and, at all material times, maintained a reasonable standard of care. All relevant actions and

decisions, including decisions made regarding individual inmates, were valid exercises of discretion, made in good faith and met a reasonable standard of care.

79. If the Crown, her employees, agents or servants owed any duty of care or duty pursuant to the *CCRA* or *CCRR*, and were in breach of any such duty, which is denied, and if the Plaintiffs or any proposed class members suffered any loss, injury or damage, which is denied, such loss, injury or damage was not caused or contributed to by any negligence, breach of any duty or want of care on the part of the Defendant or any person for whom the Defendant is responsible in law.

80. The Defendant specifically denies the allegations with respect to systemic negligence. At all material times, the Defendant, her employees, agents and servants met the standard of care reasonably expected in a correctional environment. The Defendant did not create, perpetuate or allow to gather an atmosphere or system that amounted to systemic negligence. At all material times, the Defendant, and the Defendant's employees, agents and servants acted effectively and responsibly at the interface of critical decision-making that happens every day in correctional facilities and on an ever-shifting factual terrain.

81. The AGC expressly denies that any employee, agent or servant treated the Plaintiffs or any proposed class members cruelly, inhumanely or in a degrading manner or punished or tortured them in any way.

O. INTENTIONAL TORTS

82. The AGC denies that any servant, agent or employee inflicted emotional harm or mental suffering on the Plaintiffs or the class members either intentionally, negligently or otherwise, and puts the Plaintiffs to the strict proof thereof.

83. The AGC denies that any servant, agent or employee committed assault or battery on any of the Plaintiffs or proposed class members and puts the Plaintiffs and the proposed class members to the strict proof thereof.

84. The incarceration of the Plaintiffs and all proposed class members was done pursuant to a valid warrant of committal and therefore, justified. There is no basis for a

claim of false imprisonment. Any force that was applied was reasonably required in all of the circumstances. The Defendant pleads and relies on section 25(1) of the *Criminal Code*.

P. NO BREACHES OF THE CHARTER

85. The Defendant denies that any *Charter* right of the Plaintiffs or any proposed class members have been breached and puts the Plaintiffs to the strict proof thereof. Aggregate generic statements of alleged misconduct are insufficient to ground a breach of a *Charter* right. Each decision to place an inmate in administrative segregation, and the length of the placement, is highly fact and circumstance specific.

86. The Plaintiffs do not challenge the legislative scheme but rather impugn government conduct as being without legal authority. The Defendant states that the recourse for the Plaintiffs and proposed class members is to pursue appropriate administrative law remedies.

87. The Plaintiffs make broad, generalized allegations of institutional failure and as such seek to apply the *Charter* as a general tool for judicial review of government decisions. The Defendant states that these generalized allegations are not justiciable.

1) No Breach of Section 7

88. Section 7 of the *Charter* requires that laws or state actions that deprive anyone of life, liberty or security of the person conform to the principles of fundamental justice.

89. In answer to paragraphs 72 and 73(a) & (c)(ii) of the Amended Statement of Claim, the Defendant denies that any of its actions or omissions limited any proposed class members' right not to be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice, under section 7 of the *Charter*.

90. The Defendant further denies that the Plaintiffs have identified any principle of fundamental justice that arises from the circumstances alleged in the Amended Statement of Claim, or at all.

91. Alternatively, if any of the proposed class members' section 7 *Charter* rights were limited as alleged, which the Defendant denies, the Defendant says that any infringement was demonstrably justified in a free and democratic society and hence saved by section 1 of the *Charter*.

2) No Breach of Section 9

92. Section 9 safeguards the right not to be arbitrarily detained or imprisoned. It defines the circumstances in which a detention is permitted or prohibited.

93. In answer to paragraph 73(b) of the Amended Statement of Claim, the Defendant states that a lawful detention is not arbitrary within the meaning of section 9 of the *Charter* unless the law authorizing the detention is itself arbitrary. The Defendant denies that sections 31 to 37 of the *CCRA*, which authorize and constrain CSC's use of administrative segregation, are arbitrary.

94. Further, detention is not arbitrary where there are standards that are rationally related to the purpose of the power of detention and it is readily apparent that not only is the incarceration statutorily authorized, but the legislation narrowly defines a class of inmates with respect to whom it may properly be invoked, and prescribes quite specifically the conditions under which incarceration may take place.

95. The Defendant denies that any of its actions constituted over-reliance on administrative segregation and denies that its practices with regard to administrative segregation violated section 9.

96. Alternatively, if any of the proposed class members' section 9 *Charter* rights were engaged and limited as alleged, which the Defendant denies, any infringement was demonstrably justified in a free and democratic society and hence saved by section 1 of the *Charter*.

3) No Breach of Section 11(h)

97. Section 11(h) prevents the state from trying or punishing any person for an offence for a second time if that person has been finally acquitted of the offence, or finally found guilty and punished for the offence.

98. In answer to paragraph 73(c) of the Amended Statement of Claim, the Defendant denies that proposed class members were punished a second time by placement in administrative segregation. In addition, the use of administrative segregation as provided for in the *CCRA* formed part of the Plaintiffs' and proposed class members' settled expectation of liberty at the time of sentencing.

99. Alternatively, if any of the proposed class members' section 11(h) *Charter* rights were limited as alleged, which is denied, the Defendant states that any infringement was demonstrably justified in a free and democratic society and hence saved by section 1 of the *Charter*.

4) No Breach of Section 12

100. Section 12 prevents the state from imposing punishment or treatment that is so excessive as to outrage our standards of decency.

101. In answer to paragraph 73(d) of the Amended Statement of Claim, the Defendant denies that proposed class members were subjected to cruel and unusual treatment or punishment contrary to section 12 of the *Charter* or that any of the Defendant's actions or omissions subjected proposed class members to cruel and unusual treatment or punishment contrary to section 12 of the *Charter*.

102. In any event, the Defendant states that whether treatment or punishment is so excessive and whether such excessiveness outrages standards of decency are fact- and circumstance-specific and cannot, therefore, be determined on a systemic or collective basis.

103. Alternatively, if any of the proposed class members' section 12 *Charter* rights were engaged and limited as alleged, which is denied, the Defendant states that any infringement

was demonstrably justified in a free and democratic society and hence saved by section 1 of the *Charter*.

104. In the alternative, and in addition, in light of the allegations of a violation of section 7, the Plaintiffs' and proposed class members' claim is redundant.

Q. LIMITATIONS

105. In further answer to the Amended Statement of Claim as a whole, the Defendant pleads that the Plaintiffs' claims against the Crown in respect of any equitable relief, systemic mistreatment, fiduciary duty, negligence, intentional torts or any alleged breach of sections 7, 9, 11(h) and/or 12 of the *Charter* are statute-barred. The Defendant pleads and relies on the *Crown Liability and Proceedings Act*, section 32, the *Public Authorities Protection Act*, R.S.O. 1990, c. P38, the *Limitations Act*, R.S.O. 1990, c. 15, as amended, the *Limitations Act*, S.O. 2002, c. 24, Schedule B, and any additional limitations provisions applicable in the other provinces and territories of Canada.

R. NO DAMAGES WARRANTED

106. In answer to paragraphs 77-80 of the Amended Statement of Claim, the Defendant states as follows.

107. If a breach of the proposed class members' *Charter* rights, or any one of them, is found, then a remedy pursuant to section 24(1) of the *Charter* is not appropriate and just, including an award of monetary damages, which would not serve the objectives of compensation, vindication and deterrence, and would be inappropriate based on countervailing factors.

108. Further, the claim for section 24(1) damages is premised on particular *Charter* violations in individual circumstances, which cannot reasonably be assessed in the aggregate or in a factual vacuum based on a series of generalized allegations of misconduct.

109. Further, declaratory relief pursuant to section 24(1) is not an appropriate remedy.

110. The Defendant denies that the Plaintiffs or any of the proposed class members suffered any injury, loss or damages as alleged as a result of any act or omission of the Defendant and puts the Plaintiffs to the strict proof thereof.

111. In the alternative, the Defendant states that any injury, loss or damages suffered by any of the Plaintiffs or the proposed class members was either unforeseeable or caused by the negligence and actions of the Plaintiffs and the proposed class members. The Defendant specifically denies that any actions of the Defendant, her employees, agents or servants caused or materially contributed to any injuries or damages claimed by the Plaintiffs or the proposed class members.

112. The Defendant states that if the Plaintiffs or any proposed class members did suffer injury, loss or damage as alleged, which is denied, they caused or contributed to their injury, loss or damage for the reasons below:

- (a) They behaved in such a manner as to require the placement in a federal penitentiary and then behaved in such a manner as to require the placement in administrative segregation and the continuation of administrative segregation;
- (b) They asked to be placed in administrative segregation and/or refused to leave administrative segregation when it was determined that the inmate could do so;
- (c) Such injury, loss or damage was caused or exacerbated by pre-existing, subsequent or other conditions, unrelated to placement in administrative segregation;
- (d) Such injury, loss or damage is excessive or too remote; and
- (e) The Plaintiffs and the proposed class members have taken no, or inadequate, steps to mitigate their loss.

113. With respect to paragraphs 81-84 of the Amended Statement of Claim, the Defendant denies that she has been unjustly enriched to the extent of unjust gains by administering the *CCRA* provisions that allow the use of administrative segregation. The Defendant puts the Plaintiffs and the proposed class members to the strict proof thereof.

114. With respect to the claim for punitive and exemplary damages in paragraphs 85-87 of the Amended Statement of Claim, such damages are awarded against a defendant only in exceptional circumstances for “high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour”.

Punitive damages are not appropriate in this case. There is no evidence of the conduct required for an award of such damages.

115. The Defendant pleads and relies upon the *Corrections and Conditional Release Act*; the *Corrections and Conditional Release Regulations*; all *Commissioner's Directives*, the defence of statutory authority; the *Crown Liability and Proceedings Act*, RSC 1985 c. C-50, the *Public Authorities Protection Act*, R.S.O. 1990, c. P38 and the *Limitations Act*, R.S.O. 1990, c. 15, as amended, the *Limitations Act*, S.O. 2002, c. 24, Schedule B and the various limitations provisions or similar provisions applicable throughout the provinces and territories in Canada.

116. The Defendant states that the Plaintiffs are not entitled to the relief sought or any relief and requests that this action be dismissed with costs on a substantial indemnity basis.

117. The Defendant proposes this action be tried in the City of Toronto.

January 19, 2018

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STATEMENT OF DEFENCE

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