

Original NOCC filed November 26, 2018
Amended pursuant to Rule 6-1(1) on January 31, 2019



No. S1812656
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CODY CRAGG

Plaintiff

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**

Defendant

AMENDED NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days

after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: — STATEMENT OF FACTS

Overview

1. This is a proposed class action on behalf of persons subjected to certain types of what is referred to under applicable legislation as “**Separate Confinement**”, but more commonly known as “**Solitary Confinement**”, at British Columbia correctional centres (“**BC Correctional Centres**”) between April 18, 2005, and the present.

2. Under Solitary Confinement practices, inmates are placed in cells and denied any meaningful human contact for at least 22 hours per day.

3. In British Columbia, inmates are subjected to Solitary Confinement for either disciplinary or administrative reasons. “**Disciplinary Solitary Confinement**” may only be imposed as a punishment for the most serious offences committed by an inmate. “**Administrative Solitary Confinement**” may be imposed in instances unrelated to any conduct of the inmate, but where Solitary Confinement is deemed necessary to maintain the security of the BC Correctional Centre or the safety of any person.

4. The proposed class is composed of those persons who, between April 18, 2005 and the present, were involuntarily subjected to either:

- (a) **“Prolonged Solitary Confinement”** (being Solitary Confinement for at least fifteen consecutive days); or
- (b) Solitary Confinement when the person suffers from mental illness (**“Solitary Confinement of Mental Health Disordered Inmates”**).

5. Each instance of Prolonged Solitary Confinement, and/or Solitary Confinement of Mental Health Disordered Inmates, constitutes cruel, inhumane and degrading treatment. Both practices ignore the right of prisoners to due process. Both practices cause or aggravate serious psychological and physical damage. Both practices are contrary to domestic and international law. There can be no justification for Prolonged Solitary Confinement or Solitary Confinement of Mental Health Disordered Inmates.

6. The Defendant has long been aware of the harm caused by Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates. It has long been urged to abolish these practices. It has failed to do so. Both practices continue to be employed in BC Correctional Centres.

7. BC Correctional Centres have a mandate of rehabilitation and reintegration of inmates back into the community. By subjecting Class members to Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates, the Defendant has breached, and continues to breach, its duties to this vulnerable group.

The Parties

8. The Plaintiff is Cody Cragg. He is a 29 year old Aboriginal male from Victoria, British Columbia. He has been diagnosed with Borderline Personality Disorder, Obsessive Compulsive Disorder, Anti-Social Personality Disorder, Polysubstance Disorder and Alexithymia.

9. Mr. Cragg was incarcerated at Prince George Regional Correctional Centre, in Prince George, British Columbia from April 2014 to May 2018. He has been subjected to both Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates during his incarceration. As a result, Mr. Cragg is a member of both subclasses of the proposed class.

10. The Defendant is Her Majesty the Queen in Right of the Province of British Columbia ("BC"). The Defendant represents "**BC Corrections**"; the provincial government body that administers the system of BC Correctional Centres. BC Corrections is headed by the "**Provincial Director**". BC Corrections is and was, at all times, responsible for the maintenance, oversight, funding, and management of the government servants, employees, agents, and contractors who operate the BC Correctional Centres.

The Proposed Class

11. The Plaintiff brings this action pursuant to the *Class Proceedings Act* on his own behalf and on behalf of all other Class members.

12. As referred to above, the proposed members of the Class are:

- (a) All persons who were involuntarily subjected to a period of Prolonged Solitary Confinement at a BC Correctional Centre between April 18, 2005 and the present;
and
- (b) All persons who were involuntarily subjected to Solitary Confinement of Mental Health Disordered Inmates at a BC Correctional Centre for any period between April 18, 2005 and the present.

13. For the purposes of the proposed class, "**Mental Health Disordered Inmates**" means all inmates in custody at a BC Correctional Centre who were diagnosed with an Axis I Disorder or Borderline Personality Disorder, where the diagnosis by a health care practitioner occurred either before or during custody in a BC Correctional Centre between April 18, 2005 and the present.

14. For the purposes of the Class Period, the date of final resolution of the common issues, in whatever applicable form that may take, will serve as the end date thereto.

The Defendant's Duties

15. BC Corrections is mandated, by both legislation and reasonably applicable community standards, to provide programs, services, and treatment of inmates in BC Correctional Centres that fosters their rehabilitation and reintegration into the community.

Fiduciary Duty

16. BC and its servants and agents created, planned, established, operated, financed, supervised, controlled, and regulated the entire system of BC Correctional Centres during the Class Period. While incarcerated at the BC Correctional Centres during the Class Period, the

living conditions of Class members were wholly determined by BC. Class members were entirely dependent upon BC and were subjected to the unilateral exercise of BC's power and discretion.

17. During the Class Period, BC was responsible for, *inter alia*, the following:

- (a) the health, safety and well-being of inmates in BC Correctional Centres;
- (b) the management, operation, and administration of BC Corrections;
- (c) procedures and regulations promulgated, and decisions and actions taken by BC Corrections and its employees, servants, officers, and agents in BC;
- (d) overseeing the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, and auditing of the BC Correctional Centres; and
- (e) the selection, control, training, supervision, and regulation of BC Corrections staff and independent contractors, as well as others with responsibility for the care and control of Class members in BC Correctional Centres.

18. Class members had a reasonable expectation that the Defendant would act in their best interests with respect to their care and in the operation of the BC Correctional Centres. Because the relationship between Class members and BC was one of trust, reliance and dependence, BC owed non-delegable fiduciary duties to all Class members including, but not limited to, duties to:

- (a) act in the best interests of Class members and in the best interests of the population of the BC Correctional Centres as a whole;
- (b) ensure that the Class members are treated fairly and respectfully;
- (c) rehabilitate Class members and reintegrate them into the community;
- (d) provide care and maintain conditions of detention at a reasonable standard;
- (e) conduct inspection and supervision of BC Correctional Centres and all activities that took place therein during the Class Period;
- (f) appropriately monitor the mental and physical health of Class members, including Class members with undiagnosed mental disorders, and provide appropriate care;

- (g) protect Class members from severe disciplinary force;
- (h) protect Class members from cruel and unusual treatment or punishment and torture, including:
 - (i) by implementing appropriate oversight and independent review for the decision to administer and continue Administrative Solitary Confinement; and
 - (ii) by prohibiting Prolonged Solitary Confinement;
- (i) protect Class members from Solitary Confinement of Mental Health Disordered Inmates;
- (j) protect Class members under the age of 18 from Solitary Confinement;
- (k) adhere to domestic and international laws, conventions, treaties, rules, norms, and commentary regarding the treatment of inmates, including the prohibition of Prolonged Solitary Confinement; and
- (l) create appropriate policies and procedures to ensure the performance of the duties set out above.

Duty of Care

19. The Defendant owed a common law duty of care to the Plaintiff and other Class Members to conform with the standard of care of a reasonable and prudent prison operator, administrator, and manager. That duty included, at minimum, the obligation to act in accordance with applicable legislation, and domestic and international policy norms including, *inter alia*:

- (a) the *Canadian Charter of Rights and Freedoms*;
- (b) the *Correction Act*, S.B.C. 2004, c. 46;
- (c) the *Correction Act Regulation*, B.C. Reg. 58/2005;
- (d) BC Corrections policies;
- (e) customary international law;

(f) domestic and international policy norms.

20. The discharge of BC's duties were the responsibility of its servants and agents, each of whom owed a common law duty of care to the Class members for whom they were responsible.

Charter Duty

21. All Class members, including the Plaintiff, are persons who have rights under the *Canadian Charter of Rights and Freedoms* (the "**Charter**") including, but not limited to:

- (a) the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice, which right includes (i) the right to care and treatment at community standards, (ii) the right to be free from severe disciplinary force, and (iii) the right to due process and natural justice in the imposition and continuation of a punishment; and the (iv) the right to be rehabilitated and reintegrated into the community
- (b) the right not to be arbitrarily detained or imprisoned;
- (c) the right not to be punished twice or to receive additional punishment for the same offence;
- (d) the right not to be subject to cruel and unusual punishment;
- (e) the right not to be discriminated against on the grounds of mental illness.

22. At all material times, the Class members were within the knowledge, contemplation, power, and control of BC, a government actor bound by the *Charter*.

The Defendant's Breaches

23. BC's servants and agents made, and continue to make, decisions with respect to the design, organization, administration, and staffing of the BC Correctional Centres, as well as the policies and procedures applied therein. These individuals also made, and continue to make, decisions with respect to the initiation, review, and continuation of Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates. Such decisions are deliberate, premeditated, and done with full knowledge of the likely consequences.

24. As a result of these decisions, each of the Plaintiff and the Class Members was subjected to Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates.

25. As a result of these decisions, each of the Plaintiff and the Class Members was subjected to Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates when there was no other, lawful basis for Solitary Confinement.

26. Particulars of BC's systemic mistreatment of Class members, in breach of its fiduciary duties, duty of care, and *Charter* duties include the following:

- (a) failure to take a responsible and good faith interest in the operation of the BC Correctional Centres and supervision of the Class members;
- (b) subjecting Class members to Prolonged Solitary Confinement, which constitutes cruel, inhuman, and degrading treatment, and in some cases, torture;

- (c) subjecting Class members to Solitary Confinement of Mental Health Disordered Inmates, which constitutes cruel, inhuman, and degrading treatment, and in some cases, torture;
- (d) subjecting Class members under the age of 18 to Solitary Confinement, which constitutes cruel, inhuman, and degrading treatment, and in some cases, torture;
- (e) subjecting Class members to Administrative Solitary Confinement, which constitutes a more severe restriction on their liberty, a further detention not ordered at the time of sentencing, and a punishment, despite the fact that they were not convicted of a subsequent offence;
- (f) failure to implement appropriate safeguards to ensure that it was necessary and appropriate to subject Class members to Solitary Confinement, considering:
 - (i) the best interests of the Class members; and
 - (ii) the best interests of the population of the BC Correctional Centres as a whole;
- (g) failure to implement an appropriate mechanism to review the continued Solitary Confinement of Class members and terminate their Solitary Confinement at the earliest possible opportunity;
- (h) failure to ensure that Class members are accorded appropriate procedural fairness and due process rights, including access to counsel;

- (i) failure to consider and address pre-existing mental and/or physical conditions of Inmates upon their imprisonment;
- (j) failure to accord with duties of inspection and supervision of BC Correctional Centres and all activities that took place therein;
- (k) failure to investigate and oversee the psychological, mental, and physical health of Class members in the BC Correctional Centres;
- (l) failure to provide adequate psychiatric and psychological care for Class members;
- (m) failure to adequately communicate with Inmates in response to individual requests made for accommodation based on mental and/or physical needs;
- (n) engaging in forceful and punitive measures in order to control and contain Class members;
- (o) applying excessive force to restrain Inmates;
- (p) engaging in humiliating and degrading conduct towards Inmates in a manner that does not recognize Inmates' inherent human dignity and right to respect;
- (q) failure to properly train and supervise BC Corrections staff;
- (r) failure to follow BC Corrections' policies regarding the use of Solitary Confinement, Administrative Solitary Confinement, and Prolonged Administrative Solitary Confinement;

- (s) failure to follow BC Corrections' policies regarding the use of Solitary Confinement of Mental Health Disordered Inmates;
- (t) putting BC's own interests, and those of its servants and agents, ahead of the interests of Class members;
- (u) failure to construct facilities to provide Class members with an environment that would foster meaningful human contact while addressing appropriate security concerns;
- (v) failure to maintain facilities in a clean and sanitary manner such that Inmates would not have an enhanced risk of becoming sick and/or contracting a disease;
- (w) failure to provide Inmates with necessary and meaningful entertainment, such as books, magazines and television, in order to foster their mental and physical health;
- (x) failure to adequately investigate alternatives to Solitary Confinement and Prolonged Solitary Confinement;
- (y) realizing cost savings by constructing and managing the BC Correctional Centres in a manner that prioritizes Solitary Confinement over appropriate alternatives with lesser restrictions on the liberty of Class members;
- (z) failure to provide adequate financial resources or support to properly care and provide for Class members;

- (aa) failure to provide adequate necessities for Inmates to maintain their personal hygiene;
- (bb) failure to respond adequately, or at all, to complaints or recommendations that were made for the care of Class members, including with respect to the use of Solitary Confinement;
- (cc) failure to safeguard the physical and emotional needs of Class members; and
- (dd) failure to implement an appropriate mechanism to monitor the mental and physical health of Class members, including Class members with undiagnosed mental disorders, and provide appropriate care.

Aggravated Nature of the Breaches

27. The ready use of Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates in BC Correctional Centres, as well as the domestic and international consensus on the impropriety of these practices, are issues that have long been drawn to the attention of BC.

28. Based on the above domestic and international consensus on their use, the Defendant knew, or ought to have known, of the extensive and improper use of such cruel, inhuman and degrading treatment and punishments at BC Correctional Centres.

29. BC and its servants and agents knew or ought to have known that its policies for the use, administration, management, supervision, and control of Prolonged Solitary Confinement and

Solitary Confinement of Mental Health Disordered Inmates were unlawful and in breach of their fiduciary duties, duty of care, and the *Charter* rights of Class members, as described below.

30. BC, including its ministers, senior officers, directors, and senior staff, had specific and complete knowledge of the widespread physical, psychological, and emotional abuse of Class members that occurred during the Class Period, including the routine detention of Class members in Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates. Despite this knowledge, BC continued to operate the BC Correctional Centres in an irresponsible and indifferent fashion and authorized the perpetration of grievous harm to the Class members.

Effects of Solitary Confinement

31. Each of the Plaintiff and the Class Members suffered severe adverse effects when subjected to Prolonged Solitary Confinement or Solitary Confinement of Mental Health Disordered Inmates. Those effects included, but were not limited to, in individual cases:

- (a) anxiety;
- (b) anger and hostility;
- (c) depression;
- (d) difficulty separating reality from their own thoughts;
- (e) confused thought processes;
- (f) perceptual distortions and hallucinations;
- (g) paranoia;
- (h) psychosis;
- (i) worsening and exacerbation of pre-existing mental and physical conditions;

- (j) physical effects, such as lethargy, sudden excessive sweating, insomnia, back and joint pains, heart palpitations, deteriorating eyesight, weight loss, shaking and various eating disorders;
- (k) difficulty coping with social interactions;
- (l) self-harm and suicide;
- (m) hopelessness;
- (n) mood swings;
- (o) social withdrawal;
- (p) physical and verbal outbursts;
- (q) short attention span and concentration;
- (r) disorientation;
- (s) hallucinations;
- (t) paranoia;
- (u) psychosis;
- (v) boredom and irritability; and
- (w) continued intolerance of social interaction.

DAMAGES SUFFERED BY CLASS MEMBERS

32. As a consequence of the breach of fiduciary duties, systemic negligence, and breach of the Class members' *Charter* ss. 7, 9, 11(h), 12, and 15 rights by BC Corrections and its servants and agents, for whom BC is vicariously liable, Class members suffered injury and damages including:

- (a) assault and battery;
- (b) emotional abuse;
- (c) psychological abuse;

- (d) an impairment of mental and emotional health amounting to severe and permanent disability;
- (e) exacerbation of existing, and development of new, mental, psychological and/or psychiatric disorders;
- (f) infringement of liberty rights;
- (g) infliction of additional punishments for the same offence, and without any subsequent offence;
- (h) infringement on their security of the person;
- (i) arbitrary detention;
- (j) cruel, unusual or degrading treatment;
- (k) torture;
- (l) impaired ability to participate in or transition to a normal family life;
- (m) undue alienation from family, spouses and children;
- (n) an impairment of the capacity to function in the workplace and a permanent impairment in the capacity to earn income;
- (o) the need for ongoing psychological, psychiatric, and medical treatment for disorders resulting from the experience of Prolonged Administrative Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates; and,
- (p) pain and suffering.

33. Additionally, Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates increase the likelihood that inmates subjected thereto will again be subjected to Solitary Confinement, or that they will lengthen their sentences by committing disciplinary infractions.

34. The harm and damages suffered by the Class members were reasonably foreseeable as a result of the Defendant's acts and omissions.

35. BC Corrections and its servants and agents knew, or ought to have known, that as a consequence of its mistreatment of Class members, the Plaintiff and Class members would suffer significant mental, emotional, physical, and psychological harm, including the harms described above.

The Plaintiff's Experiences in Solitary Confinement

36. Mr. Cragg was incarcerated at Prince George Regional Correctional Centre in Prince George, British Columbia from April 2014 to May 2018.

37. Mr. Cragg has been mentally ill since he was a teenager.

38. Mr. Cragg was diagnosed with Borderline Personality Disorder, Obsessive Compulsive Disorder, Anti-Social Personality Disorder, Polysubstance Disorder and Alexithymia. This diagnosis was made by prison doctors in 2014 while he was serving his sentence at the Prince George Regional Correctional Centre.

39. Mr. Cragg was placed in Solitary Confinement in 2014 at the Prince George Regional Correctional Centre for 23 continuous months. Between late fall 2016 and summer 2017, Mr. Cragg spent a period of many continuous months in Solitary Confinement.

40. Mr. Cragg suffered a significant worsening of his mental health conditions during his time in Solitary Confinement at Prince George Regional Correctional Centre, including suicidal ideation.

PART 2: — RELIEF SOUGHT

41. The Plaintiff, on behalf of the Class described herein, claims:

- (a) an order certifying this action as a class proceeding pursuant to s. 4 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and appointing the Plaintiff as the representative Plaintiff for the Class as defined herein;
- (b) a declaration that the Defendant breached its fiduciary duties to the Plaintiff and the Class through the establishment, use, operation, management, administration, supervision, and control of Prolonged Solitary Confinement in the manner described herein at the BC Correctional Centres;
- (c) a declaration that the Defendant breached its fiduciary duties to the Plaintiff and the Class through the establishment, use, operation, management, administration, supervision, and control of Solitary Confinement of Mental Health Disordered Inmates in the manner described herein at the BC Correctional Centres;
- (d) a declaration that the Defendant is liable to the Plaintiff and the Class for damages caused by its breach of its common law duty of care in relation to its establishment, use, operation, management, administration, supervision, and control of Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates in the manner described herein at the BC Correctional Centres;
- (e) a declaration that the Defendant has violated the Plaintiff's and Class members' rights under ss. 7, 9, 11(h), 12 and 15 of the *Canadian Charter of Rights and Freedoms* in relation to its establishment, use, operation, management, administration, supervision, and control of Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates in the manner described herein at the BC Correctional Centres;
- (f) a declaration that the practices of the Defendant in relation to the Prolonged Solitary Confinement and/or Solitary Confinement of Mental Health Disordered Inmates of the Plaintiff and Class members constitute cruel, inhumane, and degrading treatment or punishment;
- (g) an order that the Defendant to pay damages or such other remedy as the Court may consider just and appropriate pursuant to s. 24 of the *Canadian Charter of Rights and Freedoms*;
- (h) an order that the Defendant pay damages for personal injury, including but not limited to damages for emotional and mental abuse, pursuant to the *Health Care Costs Recovery Act*;
- (i) an order for damages for negligence, and breach of fiduciary duty;
- (j) punitive damages;
- (k) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

- (l) such further and other relief as this Honourable Court may deem just.

PART 3: — LEGAL BASIS

42. Through its servants, officers, employees, and agents, BC performed its fiduciary duties neglectfully or carelessly, in breach of its special responsibility to ensure the safety and well-being of the Class members.

43. BC is vicariously liable for these breaches. The identities of the particular servants, officers, employees, and agents who perpetrated the misconduct of BC are known to BC.

44. The Defendant owed the Plaintiff and each of the Class Members a fiduciary duty and breached that duty through its conduct as set out above at paras. ~~X-X~~23 to 30.

45. The Defendant owed the Plaintiff and each of the Class Members a duty of care and breach that duty through its conduct as set out above at paras. ~~X-X~~23 to 30.

46. As the result of the Defendant's breaches, the Plaintiff and each of the Class Members has suffered and will continue to suffer damages.

47. The Defendant's conduct as set out above at paras. ~~X-X~~23 to 30 breached the rights of the Plaintiff and each of the Class Members pursuant to ss. 7, 9, 11(h), 12 and 15 of the *Canadian Charter of Rights and Freedoms*, as constituting:

- (a) a deprivation of liberty and/or security of the person that is not in accordance with the principles of fundamental justice as a result of the acts and omissions being arbitrary, overbroad and/or having consequences that are grossly disproportionate, as well as failing to provide Class Members with procedural fairness and due process contrary to s. 7 of the *Charter*;
- (b) an arbitrary detention or imprisonment, contrary to s. 9 of the *Charter*;
- (c) where Solitary Confinement was ordered ~~without a conviction for a further offence or disciplinary infraction~~, including but not limited to instances where Prolonged Solitary Confinement was ordered for disciplinary purposes and where Solitary Confinement was ordered for the protection of the inmate, it constitutes:

- (i) a subsequent punishment over and above the sentence that the inmate was condemned to serve, contrary to ss. 7 and 11(h) of the *Charter*; and
 - (ii) a deprivation of the inmate's liberty contrary to the principle of fundamental justice that detention for the protection of the inmate may only be ordered in the best interest of the inmate and never on account of the wrongful acts of others, in contravention of s. 7 of the *Charter*; and
- (d) cruel and unusual treatment or punishment, contrary to s. 12 of the *Charter*, that is:
- (i) grossly disproportionate to the imprisonment that would be appropriate in the circumstances, and/or;
 - (ii) so excessive as to outrage standards of decency; and
- (e) discrimination on the basis of an enumerated or analogous ground, namely, mental illness, contrary to s. 15 of the *Charter*.

48. The aforementioned breaches are not saved by s.1 of the *Charter*, which only applies to limitations on *Charter* rights that are "prescribed by law". In the alternative, the breaches described above cannot be justified in a free and democratic society, and, as such, s. 1 of the *Charter* is of no application.

49. In the circumstances, the Plaintiff and the Class members are entitled to monetary damages pursuant to s. 24(1) of the *Charter* for violation of the Class members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and
- (c) deter systemic violations of a similar nature; and,
- (d) incentivize the Defendant to ensure that future *Charter* violations are remedied as soon as possible.

50. There are no countervailing considerations that render damages inappropriate or unjust in this case.

51. Further, where the Plaintiff and the Class Members have suffered personal injuries as a result of the Defendant's breaches of its fiduciary duties and breaches of the Plaintiff's and the Class Members' section 7, 9, 11(h), 12 and 15 Charter rights, they claim the past and future cost of health care services, pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27.

52. The high-handed and callous conduct of the Defendant warrants the condemnation of the Court.

53. The use of Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates in BC Correctional Centres constitutes a core policy decision.

54. In the alternative, the use of Prolonged Solitary Confinement and Solitary Confinement of Mental Health Disordered Inmates in BC Correctional Centres constitutes an operational decision by BC Corrections, and the Defendant is therefore not immune from suit in this regard.

55. To the extent that relief is sought in tort, it is expressly pleaded that such relief is sought for the vicarious liability of BC Corrections' employees, servants, officers, and agents. The Plaintiff pleads and relies on section 2 of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

Plaintiff's address for service:

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900-980 Howe Street
Vancouver, British Columbia V6Z 0C8

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Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

January 31, 2019

Dated: ~~November 26, 2018~~


_____ per
Lawyer for the Plaintiff

J. Kenneth McEwan, Q.C./Kirk M. Baert

McEwan Cooper Dennis LLP/Koskie Minsky LLP

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: — Concise Summary of Nature of Claim:

A claim for damages for breach of fiduciary duty, negligence, and breach of *Charter* rights.

Part 2: — This Claim Arises From the Following:

A dispute concerning:

a matter not listed here

Part 3: — This Claim Involves:

a class action

constitutional law

Part 4 – List no more than 3 applicable enactments:

Correction Act, S.B.C. 2004, c. 46

Correction Act Regulation, B.C. Reg. 58/2005

Class Proceedings Act, R.S.B.C. 1996, c. 50

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