

**THE KING'S BENCH**

**Winnipeg Centre**

(Proceeding under *The Class Proceedings Act*)

BETWEEN:

**JAMES DARREN AUDY**\*

Plaintiff

- and -

**THE GOVERNMENT OF MANITOBA**

**FILED MAY 02 2024**

Defendant

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**STATEMENT OF CLAIM**

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(Proceeding under *The Class Proceedings Act*)

**BETWEEN :**

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**THE GOVERNMENT OF MANITOBA**

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C.130

**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 a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the King's Bench Rules, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

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

**A. FRIESEN  
DEPUTY REGISTRAR  
COURT OF KING'S BENCH  
FOR MANITOBA**

Issued by \_\_\_\_\_  
Deputy Registrar

\_\_\_\_\_  
Date: May 2, 2024

Address of court office 100C - 408 York Avenue  
Winnipeg, Manitoba R3C 0P9

TO:       **The Government of Manitoba**  
          c/o Minister of Justice and Attorney General  
          104 Legislative Building  
          450 Broadway  
          Winnipeg, MB R3C 0V8

**CLAIM**

1. On behalf of the Class described herein, the Plaintiff claims:
  - (a) an order certifying this proceeding as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as Representative Plaintiff for the Class;
  - (b) a declaration that the Defendant has breached the common law and statutory duties of care it owes to the Plaintiff and the Class in relation to the operation, management, administration, supervision, and/or control of the Provincial Custodial Facilities;
  - (c) a declaration that the Defendant has breached the fiduciary duty it owes to the Plaintiff and the Class in relation to the operation, management, administration, supervision, and/or control of the Provincial Custodial Facilities;
  - (d) a declaration that the Defendant has violated the Plaintiff and Class Members' rights under section 7 of the *Charter*;
  - (e) a declaration that the practices and/or failures of the Defendant in the care and custody of the Plaintiffs and Class Members constitute cruel, inhumane, and degrading treatment or punishment contrary to section 12 of the *Charter*;
  - (f) damages for negligence and/or compensation for breach of fiduciary duty in an amount that the Court deems appropriate;
  - (g) damages for breach of the *Charter* pursuant to subsection 24(1) of the *Charter* in an amount that the Court deems appropriate;
  - (h) punitive damages in an amount that the Court deems appropriate;
  - (i) pre-judgment and post-judgment interest pursuant to the *Court of King's Bench Act*, C.C.S.M. c. C280;
  - (j) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;

- (k) costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to subsections 24(1) and 33(6) of *CPA*; and
- (l) such further and other relief as this Honourable Court may deem just.

## **DEFINITIONS**

2. In this Statement of Claim, the capitalized terms have the following meanings:

- (a) The "**Act**" means *The Correctional Services Act*, C.C.S.M. c. C230;
- (b) "**Charter**" means the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11;
- (c) "**Class**" and "**Class Members**" mean:
  - (i) **Inmates with a Serious Mental Illness**
    - (A) All current and former inmates, who were subjected to Disciplinary Segregation or Preventive Segregation for any length of time at one of the Provincial Custodial Facilities between May 4, 2022 and the present;
    - (B) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders ("**DSM**"):
      - (I) Schizophrenia (all sub-types),
      - (II) Delusional disorder,
      - (III) Schizophreniform disorder,
      - (IV) Schizoaffective disorder,
      - (V) Brief psychotic disorder,

- (VI) Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- (VII) Psychotic disorder not otherwise specified,
- (VIII) Major depressive disorders,
- (IX) Bipolar disorder I,
- (X) Bipolar disorder II,
- (XI) Neurocognitive disorders and/or Delirium, Dementia and Amnesic and Other Cognitive Disorders,
- (XII) Post-Traumatic Stress Disorder;
- (XIII) Obsessive Compulsive Disorder; or
- (XIV) Borderline Personality Disorder;

and who suffered from their disorder, in a manner described in Appendix “A”, and,

- (C) who reported such diagnosis and suffering to the Defendant and/or its agents before or during their Disciplinary Segregation or Preventive Segregation (“**SMI Inmates**”);

(ii) **Youth Inmates**

- (A) All current and former inmates who, while under the age of 18, were subjected to Preventive Segregation at one of the Provincial Custodial Facilities for any length of time between May 4, 2022 and the present;

(iii) **Inmates in Prolonged Solitary Confinement**

- (A) All current and former inmates who were subjected to Solitary Confinement for 15 or more consecutive days at one of the

Provincial Custodial Facilities between May 4, 2022 and the present ("**Prolonged Inmates**").

- (d) "**Class Period**" means the period between May 4, 2022 and the present;
- (e) "**CPA**" means *The Class Proceedings Act*, C.C.S.M. c. C130;
- (f) "**Defendant**" means the Government of Manitoba;
- (g) "**Disciplinary Segregation**" means the segregation of an inmate pursuant to s. 13(1)(e) of the *Regulation*;
- (h) "**Mandela Rules**" means *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, adopted by the United Nations General Assembly on December 17, 2015;
- (i) "**OLA**" means *The Occupiers' Liability Act*, C.C.S.M. c. O8;
- (j) "**PACA**" means *The Proceedings Against the Crown Act*, C.C.S.M. c. P140;
- (k) "**Plaintiff**" means James Darren Audy;
- (l) "**Preventive Segregation**" means the segregation of an inmate pursuant to s. 20(1) of the *Regulation*;
- (m) "**Provincial Custodial Facility**" means a building or property owned, controlled, and/or operated by the Defendant that is listed in section 2 of the *Regulation* or was at any time during the Class Period designated as a "custodial facility" or as a "correctional institution" under the *Act*, the *Regulation*, and any previous versions thereof or other regulations under the *Act*;
- (n) The "**Regulation**" means the *Correctional Services Regulation*, Man. Reg. 128/99; and

- (o) **"Solitary Confinement"** means Disciplinary Segregation or Preventive Segregation in a room or area without any meaningful human contact, where such segregation has a duration of at least twenty-two (22) hours in a day.

### **OVERVIEW**

3. Solitary Confinement is "a dungeon inside a prison." Solitary Confinement cells are sites of torture and of cruel, inhuman, and degrading punishment. Inmates at Manitoba's Provincial Custodial Facilities are subjected to these conditions every day for indefinite periods of time.
4. Solitary Confinement is the segregation of an inmate in a room or area without any meaningful human contact. According to international and domestic authorities, as well as moral and legal standards, Manitoba's segregation practices in the Provincial Custodial Facilities amount to Solitary Confinement.
5. Solitary Confinement cells are often smaller than parking spaces, and at some facilities are as small as 4.71m<sup>2</sup>. Many of them lack windows. Inmates often sleep on mats on the floor. The cells are often covered in filth, blood, and excrement.
6. For all Class Members, placement into Solitary Confinement imposes conditions of torture and cruel, inhuman, or degrading punishment. After only a short time, any prisoner's physical and mental health deteriorate. Such damage is often irreversible and will have a substantial and lasting effect on that person's life. For SMI Inmates and Youth inmates, the damage is immediate and any period in Disciplinary Segregation or Preventive Segregation is not justifiable.
7. Class Members are left for weeks, months, and even years in Solitary Confinement with little or no concern for the lasting physical and psychological consequences. This practice is regularly carried out with respect to inmates with serious mental illnesses and children as young as 12 years old.
8. Solitary Confinement is systemically and grossly used without due process or oversight in every Provincial Custodial Facility. It is routinely used as an inmate management strategy without regard for the severe harm it inflicts on inmates.



9. The Defendant has continued to rely on the practice of Solitary Confinement in the face of widespread recommendations to eliminate its use and accumulating judicial decisions finding the practice contrary to both the *Charter* and the other legal duties owed to inmates. In light of these authorities, the Defendant's conduct constitutes a reprehensible dereliction of its responsibilities to the Class Members, and demands deterrent and punitive relief so as to bring the Defendant into compliance with basic constitutional, international, statutory equitable, and common law standards.

### **THE PLAINTIFF AND THE CLASS**

10. James Darren Audy is a former inmate of Provincial Custodial Facilities in Manitoba. He is 36 years old. He is Indigenous.

11. In 2023, Mr. Audy experienced approximately four months of Solitary Confinement at the Winnipeg Remand Centre. During his life, Mr. Audy has experienced Solitary Confinement at other Provincial Custodial Facilities in Manitoba as well.

12. The Plaintiff brings this action pursuant to the *CPA* on his own behalf and on behalf of a Class made up of SMI Inmates, Youth Inmates, and Prolonged Inmates.

### **THE DEFENDANT AND ITS RESPONSIBILITY FOR THE PROVINCIAL CUSTODIAL FACILITIES**

13. The Government of Manitoba is named in this proceeding pursuant to the provisions of the *PACA* and the amendments thereto.

14. Pursuant to s. 4(1)(a) of the *PACA*, the Government of Manitoba is vicariously liable for torts committed by its officers and agents.

15. The Government of Manitoba operates the Provincial Custodial Facilities for both adults and youth through the Corrections Division of Manitoba Justice. The Corrections Division establishes, maintains, operates, manages, supervises, and controls the Provincial Custodial Facilities.

16. The Provincial Custodial Facilities are or were "custodial facilities" pursuant to the *Act* and the *Regulation*. Pursuant to s. 2 of the *Regulation*, the Provincial Custodial Facilities include:

- (a) Agassiz Youth Centre;
- (b) Brandon Correctional Centre;
- (c) Headingley Correctional Centre;
- (d) Manitoba Youth Centre;
- (e) Milner Ridge Correctional Centre;
- (f) Portage Correctional Centre;
- (g) Winnipeg Remand Centre
- (h) Women's Correctional Centre; and
- (i) The Pas Correctional Centre.

17. Under the s. 4 of the *Act*, the responsible minister designates the Commissioner of Corrections, who in turn is responsible for designating a facility head for each of the Provincial Custodial Facilities.

18. Section 24 of the *Act* states that facility heads are responsible for:

- (a) the safe, secure and efficient operation of the Provincial Custodial Facilities;
- (b) the well-being of the inmates of the Provincial Custodial Facilities;
- (c) making arrangements that will help the inmates of the Provincial Custodial Facilities to relocate in the community;
- (d) the operation within the Provincial Custodial Facilities of rehabilitative and other programs for inmates established under subsection 13(1); and
- (e) the administration of the *Act* within the Provincial Custodial Facilities.

19. In accordance with the *Act* and the *Regulation*, the facility head of a Provincial Custodial Facility or the designate of a facility head is also responsible for:

- (a) administering the institution;
- (b) issuing to the employees of the institution such directions as may be necessary to fulfil the responsibilities of a facility head;
- (c) establishing rules for the conduct and activities of inmates in a Provincial Custodial Facility;
- (d) establishing rules for the maintenance and management of a Provincial Custodial Facility;
- (e) appointing the body responsible for decisions regarding inmate discipline;
- (f) imposing restrictions on the movement, location, and conditions of inmates within a Provincial Custodial Facility;
- (g) appointing the chair of the board responsible for the disposition of charges issued in respect of disciplinary offences;
- (h) decisions respecting the placement of inmates in Preventive Segregation, or the designation of a person who will be responsible for such decisions; and
- (i) designating a person or persons who will conduct reviews of decisions to place inmates in Preventive Segregation.

20. At all material times, the Government of Manitoba, through and with its agents, servants and employees, owned and were responsible for the operation, management, and supervision of the Provincial Custodial Facilities. The Provincial Custodial Facilities are under the sole jurisdiction and control of, and were operated by, the Government of Manitoba. The Government of Manitoba retains and authorizes its servants, agents, representatives, and employees to operate the Provincial Custodial Facilities. The Government of Manitoba gives instructions to its servants, agents, representatives, and employees as to the manner in which the Provincial Custodial Facilities are to function and operate. The Government of Manitoba, through and with its agents, also controls, discipline, and terminate employees that staff the Provincial Custodial Facilities.

21. The Defendant owns and has responsibility and control over the conditions of the premises of the Provincial Custodial Facilities, the activities conducted on those premises, and the persons allowed to enter those premises. The Defendant is an occupier over each and every Provincial Custodial Facility pursuant to the *OLA*. Under s. 3 of the *OLA* and s. 4(1)(c) of the *PACA*, the Defendant owes a duty of care to persons on the premises of the Provincial Custodial Facilities, including the Class Members, and is liable for breaches of that duty.

### **DISCIPLINARY SEGREGATION AND PREVENTIVE SEGREGATION**

22. The *Act* and the *Regulation* set out forms of segregation which, when operationalized, often amount to Solitary Confinement: Disciplinary Segregation and Preventive Segregation.

23. Disciplinary Segregation may be ordered as a penalty in respect of a disciplinary offence pursuant to s. 13(1)(e) of the *Regulation*. It may not be ordered for longer than a period of fifteen days. However, it is often carried out for longer than fifteen days, in breach of the *Regulation* as well as the statutory, common law, and *Charter* duties owed to the Class.

24. Under s. 6 of the *Regulation*, Youth Inmates cannot be subjected to disciplinary penalties, including Disciplinary Segregation. In practice, Youth Inmates and SMI Inmates are regularly subjected to Disciplinary Segregation or Preventative Segregation for disciplinary purposes.

25. Under s. 20(1) of the *Regulation*, an inmate may be placed in Preventive Segregation if a facility head or designate of a facility head believes, on reasonable grounds,

(a) that the inmate is acting or intends to act in a manner that could jeopardize the security of the custodial facility or the safety of a person;

(a.1) that the inmate is directing or counselling, or intends to direct or counsel, another person to act in a manner that could jeopardize the security of the custodial facility or the safety of a person;

(b) that the continued presence of the inmate in the non-segregated inmate population would jeopardize the security of the custodial facility or the safety of a person;

(c) that the continued presence of the inmate in the non-segregated inmate population would interfere with an investigation that could lead to a criminal charge or a charge in respect of a disciplinary offence;

(d) that the continued presence of the inmate in the non-segregated inmate population would jeopardize the inmate's own safety; or

(e) that the segregation of the inmate is required to carry out a search under the *Regulation*;

and the facility head or designated person is satisfied that there is no reasonable alternative to the segregation.

26. In practice, the Defendant places inmates in Preventive Segregation for a multitude of reasons, and often provides no reason at all. Viewed as a whole, the justification for segregation in the Provincial Custodial Facilities is overwhelmingly administrative.

27. There is no limit on the length of time any inmate can be subjected to Preventive Segregation in Manitoba. As a result, inmates are placed into Preventive Segregation for weeks, months, and in some cases, years.

28. The decision to place an inmate into Preventive Segregation is not subject to an independent review process. Rather, the decision of a facility head or designate to place an inmate into Preventive Segregation is reviewed by a designate of the facility head.

29. The extensive use of Preventive Segregation is not being used as a last resort, but rather as a routine inmate management strategy across the Provincial Custodial Facilities. In the youth Provincial Custodial Facilities, more than one third of all instances of Preventive Segregation on Youth Inmates are for durations of much longer than one day, contrary to international law and the *Charter*.

30. Further, while s. 6 of the *Regulation* prohibits the use of Disciplinary Segregation for Youth Inmates, the Defendant routinely places Youth Inmates into Preventive Segregation for disciplinary reasons.

31. Notwithstanding the different procedures through which inmates are placed into Disciplinary Segregation or Preventive Segregation, the conditions of confinement, including the very cells into which inmates are placed, are the same.

32. Inmates are often placed into Preventive Segregation pending disciplinary hearings, after which they are given penalties of Disciplinary Segregation. Notwithstanding the procedural differences between the two forms of segregation, where this occurs, it constitutes a single, continuous period of segregation. Thus, despite the fifteen-day limit on Disciplinary Segregation, the actual period of time spent in Solitary Confinement by an inmate subject to disciplinary processes will be much longer. In many cases, it will be indefinite.

33. Notwithstanding policies adopted by the Defendant which define "Segregation" as lasting for 18 or more hours in a day, Class Members placed into Preventive Segregation or Disciplinary Segregation are kept in their cells for at least 22 hours per day. Commonly, Class Members are only permitted 30 minutes out of cell per day, during which they must complete showers, make phone calls, and attend to other matters. Overwhelmingly, the experience of Preventive Segregation or Disciplinary Segregation in Manitoba is that of total isolation and separation.

34. In recent years, the Defendant has adopted policies which purport to reduce the harms of Solitary Confinement by implementing the Mandela Rules, including by purporting to provide the Class Members with "meaningful human contact" during placements in Preventive Segregation and Disciplinary Segregation. Such "meaningful human contact" is not possible for Class Members held in Solitary Confinement in the Provincial Custodial Facilities.

35. These policies remain facially inadequate in comparison with applicable standards, including domestic and international law, including by, *inter alia*, not imposing limits on the time that a Class Member can be kept in Solitary Confinement during a day, or on the number of consecutive days that a Class Member can be kept in Solitary Confinement.

36. Below the surface of these policies, Class Members continue to be subjected to extreme isolation, without any meaningful human contact, for extended periods of time, without access to proper medical care. These policies remain contrary to the Mandela Rules and other binding domestic and international laws. These policies constitute a half-measure designed to shield the

Defendant from outside scrutiny and liability. They were drafted, implemented and carried out in bad faith.

### **THE HARMFUL EFFECTS OF SOLITARY CONFINEMENT**

37. The use of Solitary Confinement has a severely detrimental impact on the physical and psychological well-being of an inmate.

38. While in Disciplinary Segregation or Preventive Segregation, an inmate is placed in a small cell, typically smaller than a parking space and in some facilities as small as 4.71m<sup>2</sup>.

39. Solitary Confinement will have, *inter alia*, the following impacts on Class Members:

- (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.

40. Adult inmates *without* mental health issues suffer severe effects when in Solitary Confinement. At fifteen days, all inmates will suffer serious and lasting psychological and emotional harm, including anxiety, anger, and depression.

41. For SMI and Youth Inmates, the impacts of segregation are greatly amplified. *Any* time spent in Disciplinary Segregation or Preventive Segregation for SMI and Youth Inmates can be catastrophic, and will always cause long-lasting and permanent, physical and psychological harm.

42. The effects of Solitary Confinement frustrate the rehabilitative goals of the *Act* and *Regulation*. Facility programming, including rehabilitative programming, is not available to segregated inmates. Mental and physical conditions cannot be properly assessed and treated while an inmate is in Solitary Confinement. Inmates are also more likely to lengthen their own sentences due to behaviours resulting from the conditions of their incarceration.

### **THE DEFENDANT'S KNOWLEDGE OF THE HARMS OF SOLITARY CONFINEMENT**

43. For years, the Defendant has known or ought to have known of the harms caused by the manner in which Solitary Confinement is practiced in Manitoba, and that the practice is inconsistent with legal and international standards.

44. Public third-party reviews of segregation in Manitoba have raised concerns about the practice. For example:

- (a) The Manitoba Ombudsman's 2001 and 2003 Annual Reports raised concerns about the fairness of the processes for both the initial decision to place an inmate in segregation and subsequent reviews of that decision;
- (b) In February 2019, the Manitoba Ombudsman released a report on segregation in Manitoba's youth Provincial Custodial Facilities finding that:
  - (i) "segregation can cause psychological harm and the risk of harm increases with the amount of time spent in segregation";
  - (ii) "Segregation increases the likelihood that an inmate will self-harm or attempt suicide";
  - (iii) "segregation can have significant negative consequences for a youth"; and
  - (iv) The Provincial Custodial Facilities for youth "inappropriately reference disciplinary segregation as a reason why youth may be segregated";



- (c) In 2019, the Manitoba Advocate for Children and Youth released a report on the placement of youth into Solitary Confinement at the Provincial Custodial Facilities and found that:
- (i) "the uses of segregation and solitary confinement are common";
  - (ii) "segregation and solitary confinement can cause extreme psychological and psychiatric harms to youth"; and
  - (iii) "children as young as 12, 13, and 14 are being subjected to solitary confinement for longer than 24 hours at a time";

The Manitoba Advocate concluded that "solitary confinement, for longer than 24 hours per day, must be prohibited for youth in Manitoba custody facilities".

- (d) On June 25, 2021, the Manitoba Advocate for Children and Youth issued an update to its 2019 report, concluding that the Defendant was continuing to place youth into Solitary Confinement, resulting in continuing harm to Youth Inmates.
- (e) On March 21, 2023, Judge Stacey Cawley issued her report following the inquest into the death of Jeffrey Owen Tait following approximately 23 days in Preventive Segregation at the Headingley Correctional Centre. Judge Cawley concluded that "the decline of [Mr. Tait]'s mental health and death occurred while he was housed in segregation for an extended period of time", and that the Defendant had failed to provide proper training to correctional officers to recognize the signs of mental health emergencies among Inmates in Preventive Segregation and Disciplinary Segregation.

45. In Canada and internationally, it has long been well-accepted that Solitary Confinement causes harms to inmates that cannot be justified and that the practice should end. For example:

- (a) In 1991, the United Nations General Assembly adopted the *Rules for the Protection of Juveniles Deprived of Their Liberty*, which prohibit, *inter alia*, the use of Solitary Confinement for all persons under the age of 18;

- (b) In 1996, Justice Louise Arbour released her report on the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, concluding that the "indeterminate, prolonged duration" of segregation "often does not conform to the legal standards" and "is inconsistent with the *Charter* culture which permeates other branches of the administration of criminal justice";
- (c) In 2001, the United Nations Committee on the Rights of the Child urged all state parties to the *Convention on the Rights of the Child*, which Canada ratified on December 12, 1991, to "ensure that children are not subjected to solitary confinement, unless it is in their best interests and subject to court review";
- (d) In 2007, an international task force of experts in the areas of prisons, solitary confinement, and torture released *The Istanbul Statement on the Use and Effects of Solitary Confinement*, which recommended an absolute prohibition on the use of solitary confinement for children;
- (e) In 2008, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded that the placement of an inmate into solitary confinement for longer than 15 days constitutes cruel, inhuman or degrading treatment;
- (f) In his 2009-2010 Annual Report, the federal Correctional Investigator reported that "mentally disordered offenders should not be held in segregation or in conditions approaching solitary confinement", and that "between one-third and as many as 90% of prisoners experience some adverse symptoms in solitary confinement, including insomnia, confusion, feelings of hopelessness and despair, hallucinations, distorted perceptions and psychosis";
- (g) In his 2014-2015 Annual Report, the federal Correctional Investigator recommended a prohibition on prolonged segregation for inmates suffering from serious mental illnesses;
- (h) In 2015, the United Nations General Assembly adopted the Mandela Rules, which stipulate that solitary confinement should only be used "in exceptional cases as a

last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority." The Mandela Rules also stipulate that "solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities" and should also be prohibited in respect of children;

- (i) In 2015-2016, Ontario conducted a Comprehensive Segregation Review which concluded that prolonged segregation in excess of 15 days is "psychologically harmful to inmates";
- (j) In 2016, the Ontario Ombudsman provided written submissions to the Government of Ontario titled "Segregation: Not an Isolated Problem" which recommended the abolition of indefinite segregation and any segregation for a duration of more than 15 days;
- (k) In 2016, the West Coast Prison Justice Society released a report titled "Solitary: A Case for Abolition" which concluded that "solitary confinement makes prisoners with existing mental disabilities worse, and can cause severe psychological symptoms, including self-harm and suicide, in prisoners without existing mental disabilities"; and
- (l) In 2016, the College of Family Physicians of Canada issued a position statement recommending the abolition of solitary confinement for administrative purposes, as well as the wholesale abolition of solitary confinement for youth and the establishment of independent review processes for the placement of any inmate into solitary confinement.
- (m) In June 2021, the British Columbia Ombudsperson released a report titled "Alone: The Prolonged and Repeated Isolation of Youth in Custody", which concluded, *inter alia*, that youth segregation "carries significant risks of psychological harm", and that "youth in custody should not be isolated from other youth in custody except as a last resort when all other options have failed", and even then only subject to "strict time limits and effective, independent oversight".

46. Given the notoriety of these authorities, the Defendant had actual knowledge, or ought to have known, that it has long been the case that the practice of Solitary Confinement in respect of the Class Members is harmful, avoidable, unnecessary, and unjustifiable.

### **THE PLAINTIFF'S EXPERIENCES IN PREVENTIVE SEGREGATION**

47. James Darren Audy is an Indigenous man. The Defendant has placed Mr. Audy into Solitary Confinement at Provincial Custodial Facilities on multiple occasions.

48. Mr. Audy's most recent experience in Solitary Confinement occurred in 2023 at the Winnipeg Remand Centre. Mr. Audy was placed in Preventive Segregation for four consecutive months. He was not given an explanation for why he was being placed into Preventive Segregation.

49. Mr. Audy's segregation cell at the Winnipeg Remand Centre was about 12' x 6'. It was dirty, and had only a thin mat to sleep on. Breakfast, lunch, and dinner were served on a tray which was slid through the cell door. There was no programming available.

50. During his four months in Solitary Confinement at the Winnipeg Remand Centre, Mr. Audy was given 30 minutes out of cell each day. Mr. Audy was required to choose whether to use those 30 minutes to make a phone call or take a shower.

51. Mr. Audy's placements in Solitary Confinement, including the four-month placement in 2023, caused serious and lasting emotional and psychological harm. Mr. Audy experienced hallucinations and suicidal thoughts. His mental health deteriorated to the point where he began banging his head against the wall, at one point splitting it open. It was only at that point that he began receiving psychiatric attention, and was given quetiapine and clonazepam.

52. To this day, Mr. Audy has PTSD and flashbacks to being in Solitary Confinement.

53. Mr. Audy tried on multiple occasions to have his placement in Solitary Confinement at the Winnipeg Remand Centre reviewed. On one occasion, after he asked for a review form, he had to wait several days, still in Solitary Confinement, to receive it. When he eventually received a review form, he wasn't given a pencil to complete it. His request for a pencil also took several days, while Mr. Audy remained in Solitary Confinement. After he was finally able to deliver the completed form to a correctional officer, he was not informed of the outcome of his request. On another

occasion, Mr. Audy watched a correctional officer tear up his review form after Mr. Audy gave it to him.

### **SYSTEMIC NEGLIGENCE OF THE DEFENDANT**

#### **The Duty of Care Owed to the Class Members**

54. The Defendant and its agents owe and owed a common law duty of care to the Class Members. This duty of care required the Defendant to refrain from conducting itself in a manner which would result in reasonably foreseeable harm to the Class Members.

55. The Defendant and its agents planned, established, operated, and/or controlled the Provincial Custodial Facilities during the Class Period. In these circumstances, the duty of care owed by the Defendant is systemic, and is located in the Defendant's responsibility for the operational directives, standing orders, procedures, and practices which govern the use of Solitary Confinement.

56. In particular, under the *Act* and the *Regulation*, and through its control over the Provincial Custodial Facilities, the Defendant and its agents are and were solely responsible for:

- (a) developing, implementing, and supervising compliance with operational directives, standing orders, procedures, and systemic practices at the Provincial Custodial Facilities;
- (b) the operationalization of the *Act* as well as any other statutes relating to the Provincial Custodial Facilities and all regulations promulgated under those statutes during the Class Period;
- (c) properly and effectively supervising the conduct of the staff working at the Provincial Custodial Facilities to ensure that these staff would not cause Class Members to suffer foreseeable harm;
- (d) appointing and supervising staff or agents charged with the conduct of the review of a decision to place an inmate into Preventive Segregation;

- (e) the medical care and supervision of all Class Members within the Provincial Custodial Facilities and all activities that took place therein during the Class Period; and
- (f) the operation, maintenance, administration, supervision, inspection, and/or auditing of the Provincial Custodial Facilities during the Class Period.

57. As the party which controls and operates the Provincial Custodial Facilities, the Defendant has and had *de facto* control over substantially all aspects of the Class Members' well-being.

58. For the same reasons, the harm and damages suffered by the Class Members were reasonably foreseeable results of the acts and omissions of the Defendant and its agents.

59. Additionally, the Defendant owes a duty of care to the Class Members as the occupier of the Provincial Custodial Facilities pursuant to s. 3 of the *OLA*, and is liable for breaches of this duty under s. 4(1)(c) of the *PACA*. The content of this duty is substantially the same as the duty imposed by common law and described above at paragraphs 54-56.

### **The Defendant's Negligent Conduct**

60. The Defendant and its agents breached its duty of care to refrain from conducting itself in a manner which would result in reasonably foreseeable harm to the Class Members.

61. The Defendant and its agents breached its common law and statutory duties to the Class through its failure to properly supervise, oversee and control the operations of the servants, employees and agents of the Government of Manitoba working at the Provincial Custodial Facilities. The gross carelessness of the Defendant and its agents rendered its conduct with respect to Solitary Confinement irrational and/or in bad faith.

62. In particular, the Defendant and its agents acted negligently by:

- (a) failing to recognize that extended periods in Solitary Confinement constitutes torture or cruel, degrading or inhuman punishment;

- (b) subjecting SMI Inmate Class Members to any period of Disciplinary Segregation or Preventive Segregation;
- (c) subjecting Youth Inmate Class Members to any period of Preventive Segregation;
- (d) subjecting any Class Member to periods of Solitary Confinement of 15 days or more;
- (e) failing to remove Class Members from Solitary Confinement in a timely fashion in order to avoid permanent injury;
- (f) placing Youth Inmates into Preventive Segregation for disciplinary reasons;
- (g) over-relying on Solitary Confinement for administrative purposes within the Provincial Custodial Facilities;
- (h) preventing the Class Members from being able to receive adequate medical and mental health care by subjecting them to Solitary Confinement;
- (i) failing to investigate or report ongoing harm suffered by Class Members;
- (j) failing to set or implement standards of conduct for the staff of a Provincial Custodial Facility with respect to the health and well-being of the Class Members subjected to Solitary Confinement;
- (k) failing to adequately, properly, and effectively supervise the conduct of the employees, representatives, and agents of the Government of Manitoba to ensure that the Class Members would not suffer foreseeable harm;
- (l) failing to implement adequate operational directives, standing orders, procedures, and systemic practices for recognizing and reporting potential harm to Class Members due to use of Solitary Confinement;
- (m) failing to adequately supervise the Provincial Custodial Facilities, including their administration and activities;

- (n) failing to properly exercise discretion in determining an appropriate length of time for Class Members to spend in Disciplinary Segregation and Preventive Segregation;
- (o) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the Provincial Custodial Facilities and their use of Solitary Confinement;
- (p) failing to provide proper and reasonable medical and psychological/psychiatric treatment for Class Members after learning of their exposure to Solitary Confinement; and,
- (q) failing to respect Class Members' religious practices and rights during their Solitary Confinement.

**THE DEFENDANT BREACHED THE FIDUCIARY DUTY OWED TO THE CLASS MEMBERS**

63. The Defendant owes and owed a fiduciary duty to the Class Members. The fiduciary duty owed by the Defendant required and requires it to care for and protect the Class Members and to protect their best interests at all material times.

64. The Defendant created, planned, established, operated, financed, supervised, and controlled the entire system of Provincial Custodial Facilities during the Class Period.

65. While incarcerated at the Provincial Custodial Facilities during the Class Period, the living conditions of the Class Members were wholly determined by the Defendant. Class Members are and were entirely dependent upon the Defendant and are and were subjected to the unilateral exercise of the Defendant's power and discretion. Class Members have and had a reasonable expectation that the Defendant would act in their best interests with respect to their care and in the operation of the Provincial Custodial Facilities.

66. The Class Members have and had a reasonable expectation that the Defendant would act in their best interests with respect to their mental and physical healthcare and well-being given the Defendant's assumption of responsibility for the care of inmates, by virtue of factors including:



- (a) the unilateral assumption of responsibility for the care of the Class Members by the Defendant;
- (b) the historic duties of the Defendant owed to inmates;
- (c) the involvement of the Defendant in establishing, controlling and overseeing the Provincial Custodial Facilities;
- (d) the dependence of the Class Members on the Defendant;
- (e) the vulnerability of the Class Members as a result of their incarceration at the Provincial Custodial Facilities; and
- (f) the involuntary nature of the relationship between the Class Members and the Defendant.

67. While all of the Class Members are and were highly vulnerable to the discretionary acts and decisions of the Defendant, SMI Inmates and Youth Inmates are particularly vulnerable given their disabilities and age, respectively. Through its control and operation of the Provincial Custodial Facilities, the Defendant exercised overriding power and influence over the SMI Inmates and Youth Inmates, who have and had no choice but to depend on the Defendant for their basic conditions of life.

68. Because the relationship between the Class Members and the Defendant is and was one of trust, reliance, and dependence, the Defendant owes and owed to the Class Members a non-delegable fiduciary duty whose content is consistent with the content of the common law and statutory duty of care described above at paragraphs 54-56.

69. By the conduct particularized above at paragraph 62, the Defendant breached this fiduciary duty.

### **THE DEFENDANT'S BREACHES OF THE CHARTER**

**The Placement of Class Members into Solitary Confinement Violates Sections 7 and 12 of the Charter**

70. The conditions particularized above at paragraph 62 violate the basic human rights of the Class Members and, as such, constitute a violation of their rights and freedoms under sections 7 and 12 of the *Charter*.

71. The Defendant created, planned, established, operated, supervised, and controlled the entire system of Provincial Custodial Facilities during the Class Period. The Defendant is responsible for the system of Solitary Confinement.

72. The frequency and duration of Solitary Confinement that the Class Members are subjected to engage the interests of liberty and security of the person. The Defendant's conduct deprives Class Members of their rights to life, liberty and security of the person, contrary to the principles of fundamental justice, in a manner that violates section 7 of the *Charter*.

73. The frequency, duration, and conditions of Solitary Confinement that the Class Members are subjected to violate the rights of Class Members to be held in custody in humane and safe facilities. The treatment endured by the Class Members is so excessive as to outrage standards of decency and is grossly disproportionate. The use of the Solitary Confinement at the Provincial Custodial Facilities thus constitutes cruel, inhumane, and degrading treatment or punishment contrary to section 12 of the *Charter*.

74. There are no justifications for the frequency, duration, and conditions of the Solitary Confinement to which the Class Members are subjected.

75. To the extent that they may be prescribed by law, the Defendant's breaches of ss. 7 and 12 of the *Charter* cannot be justified in a free and democratic society.

**The Process for Reviewing Preventive Segregation Placements Violates Section 7 of the *Charter***

76. The absence of an independent process for the review of Preventive Segregation decisions violates s. 7 of the *Charter*.

77. The decision of a facility head or designate to place an inmate into Preventive Segregation is administrative decision which engages the inmate's liberty and security of the person interests under s. 7 of the *Charter*.

78. The principles of fundamental justice require that the decision to place an inmate into Preventive Segregation be meaningfully reviewed by an independent decision-maker.

79. However, at the Provincial Custodial Facilities, the decision of a facility head or designate to place an inmate into Preventive Segregation is reviewed by individuals designated by the facility head.

80. Because the individuals responsible for reviewing Preventive Segregation are designated by facility heads of Provincial Custodial Facilities (or their designates), the review process substantially lacks independence. The practical effect of this lack of independence is that the inmates placed into Preventive Segregation have never had the benefit of a fair and meaningful review process.

81. The process for reviewing Preventive Segregation that is followed at the Provincial Custodial Facilities does not meet the requirements of s. 7 of the *Charter*. To the extent that this infringement may be prescribed by law, it cannot be justified under s. 1 of the *Charter*.

### **The Plaintiff and the Class Members are Entitled to *Charter* Damages**

82. In the circumstances, pursuant to section 24(1) of the *Charter*, monetary damages are an appropriate remedy for violation of the Class Members' *Charter* rights. An award of *Charter* damages is appropriate so as to:

- (a) compensate Class Members for their suffering and loss of dignity;
- (b) vindicate Class Members' fundamental rights; and,
- (c) deter the Defendant from engaging in rights violations of a similar nature.

83. The Defendant has declined to reform Solitary Confinement as practiced in Manitoba despite years of accumulating judicial decisions and authoritative recommendations concerning substantially identical systems in other jurisdictions. When attempting such reforms, the Defendant failed to adopt policies which comply with applicable (and known) binding international and domestic legal standards. Further, even those half-hearted reforms were ineffectively

implemented. As a result Manitoba's system of Solitary Confinement remains substantially the same as it has been for many years.

84. The Defendant has acted with clear disregard for the *Charter* rights of the Class Members. A remedy of *Charter* damages is necessary to vindicate the violations of the Class Members' fundamental rights and to deter the Defendant from further violations.

85. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

### **DAMAGES SUFFERED BY CLASS MEMBERS**

86. The Class Members suffered damages as a result of the Defendant's negligence and breaches of the *Charter*, the particulars of which are set out herein.

87. The Defendant knew, or ought to have known, that as a consequence of its operation, management, and control of the Provincial Custodial Facilities, or lack thereof, in breach of their common law, constitutional, and fiduciary duties, the Class Members would suffer immediate and long-term physical, mental, emotional, psychological, and spiritual harm.

88. Members of the Class were traumatized by their experiences arising from their placements in Solitary Confinement at the Provincial Custodial Facilities. As a result of the Defendant's negligence, breach of fiduciary duty, and violation of the Class Members' *Charter* rights, the Class Members suffered and continue to suffer damages which include, but are not limited to, the following:

- (a) emotional, physical, and psychological harm;
- (b) impairment of mental and emotional health and well-being;
- (c) impaired mental development;
- (d) impaired ability to participate in normal family affairs and relationships;
- (e) alienation from family members;
- (f) depression, anxiety, emotional distress, and mental anguish;

- (g) development of new mental, psychological, and psychiatric disorders;
- (h) pain and suffering;
- (i) loss of self-esteem and feelings of humiliation and degradation;
- (j) impaired ability to obtain employment, resulting either in lost or reduced income and ongoing loss of income;
- (k) impaired ability to deal with persons in positions of authority;
- (l) impaired ability to trust other individuals or sustain relationships;
- (m) a requirement for medical or psychological treatment and counselling;
- (n) impaired ability to enjoy and participate in recreational, social, and employment activities;
- (o) loss of friendship and companionship; and
- (p) loss of general enjoyment of life.

89. As a result of these injuries, the Class Members have required, and will continue to require, further medical treatment, rehabilitation, counselling, and other care. Class Members will require future medical care and rehabilitative treatment, or have already required such services, as a result of the Defendant's conduct, for which they claim complete indemnity, compensation, and payment from the Defendant for such services.

### **PUNITIVE DAMAGES**

90. The cruel, inhuman, and degrading treatment to which the Class Members have been subjected has violated their rights and irreparably altered the paths of their lives.

91. The reprehensible conduct of the Defendant warrants condemnation. The Defendant has maintained an enormously harmful system of Solitary Confinement with wanton and callous disregard for the Class Members' rights, interests, safety, and well-being. The Defendant has breached the duty of good faith owed to the Class.

92. In these circumstances, an award of punitive damages is appropriate.

**RELEVANT LEGISLATION**

93. The Plaintiff pleads and relies on:

- (a) *Canadian Charter of Rights and Freedoms Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11;
- (b) *The Class Proceedings Act*, C.C.S.M. c. C130;
- (c) *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11;
- (d) *The Correctional Services Act*, C.C.S.M. c. C230;
- (e) *Correctional Services Regulation*, Man. Reg. 128/99;
- (f) *Court of King's Bench Act*, C.C.S.M. c. C280;
- (g) *Court of King's Bench Rules*, Man. Reg. 553/88;
- (h) *The Limitations Act*, S.M. 2001, c. 44;
- (i) *The Occupiers' Liability Act*, C.C.S.M. c. O8;
- (j) *The Proceedings Against the Crown Act*, C.C.S.M. c. P140.

Date: May 2, 2024

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### **APPENDIX "A"**

- Significant impairment in judgment (including all of the following: the inability to make decisions, confusion, and disorientation);
- Significant impairment in thinking (including both paranoia and delusions that make the offender a danger to self or others);
- Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interfered with ability to effectively interact with other offenders or staff);
- Significant impairment in communications that interferes with ability to effectively interact with other offenders or staff;
- Hallucinations; delusions; or, severe obsessional rituals that interferes with ability to effectively interact with other offenders or staff;
- Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; or
- Chronic and severe self-injury.

Please note: the glossary of the relevant DSM is to be used to interpret the foregoing terms where appropriate.