

AMENDED AGAIN ON FEBRUARY 25, 2026 PURSUANT TO R. 200

AMENDED JULY 21 2023 UNDER R. 200 OF THE *FEDERAL COURTS RULES*

|                              |                                                                                                      |
|------------------------------|------------------------------------------------------------------------------------------------------|
| e-document-6 T-1853-21 ID 94 |                                                                                                      |
| F<br>I<br>L<br>E<br>D        | FEDERAL COURT<br>COUR FÉDÉRALE<br><br>February 25, 2026<br>25 février 2026<br><br>Ginette Lischenski |
| D<br>É<br>P<br>O<br>S<br>É   |                                                                                                      |
| VAN                          | 44                                                                                                   |

Court File No. T-1853-21

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**BETWEEN:**

**B.W.**

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**SECOND (FRESH) AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANT:**

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date            FEBRUARY 25 2026

Issued by: \_\_\_\_\_

Address of local office:     Federal Court of Canada  
                                 Pacific Centre, PO Box 10065  
                                 3<sup>rd</sup> Floor, 701 West Georgia Street  
                                 Vancouver, British Columbia V7Y 1B6

TO:    The Attorney General of Canada  
         His Majesty the King in Right of Canada  
         Attn: Deborah Babiuk-Gibson, David Shiroky  
         Department Of Justice Canada  
         #300, 10423 -101 Street NW  
         Edmonton, AB T5H 0E7

## CLAIM

### A. RELIEF SOUGHT

1. The plaintiff claims on his own behalf and on behalf of the Class (as hereinafter defined):
  - a. an order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the *Federal Court Rules*, SOR/98-106;
  - b. an order pursuant to Rules 334.12, 334.16 and 334.17 of the *Federal Court Rules* appointing the plaintiff as the representative plaintiff for the Class;
  - c. an order that the plaintiff is permitted to bring this action under the pseudonym B.W.;
  - d. a declaration that Canada was, and continues to be, systemically negligent in failing to fulfill its obligations to the Class pursuant to the *Corrections and Conditional Release Act*, and the *Corrections and Condition Release Regulations*, SOR/92-620, specifically in the funding, oversight, operation, supervision, control, maintenance and support of CSC Facilities, and CSC Staff who committed physical, emotional and psychological abuse of Class members incarcerated in CSC Facilities.
  - e. [retained for numbering]
  - f. a declaration that Canada and its agents systemically violated, and continue to violate, sections 7 and 15(1) of the *Charter* in a manner that is not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*;
  - g. [retained for numbering]
  - h. a declaration that Canada is liable to the Class for damages caused by its negligence in relation to the funding, operation, supervision, control, maintenance, oversight and support of CSC Facilities and CSC Staff;
  - i. a declaration that Canada is liable to the Class for damages under section 24(1) of the *Charter* for breach of sections 7 and 15(1) of the *Charter* in relation to the actions of CSC Staff;

- j. general damages in an amount exceeding \$50,000;
- k. special damages in an amount exceeding \$50,000;
- l. damages for future cost of care in an amount exceeding \$50,000;
- m. damages for loss of earnings or earning capacity, past and future in amounts exceeding \$50,000;
- n. punitive, exemplary, and/or aggravated damages in an amount exceeding \$50,000;
- o. costs of this action on a substantial indemnity scale or in an amount that provides full indemnity;
- p. the costs of notice of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Court Rules*;
- q. pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7; and
- r. such further and other relief as the Honourable Court deems just.

## **B. OVERVIEW OF THE ACTION**

2. This action concerns the Government of Canada's failure to address systemic mistreatment of Older Inmates within CSC Facilities. The Correctional Service of Canada, in contravention of the *Charter* and its the statutory responsibilities which inform the common law duty of care it owes to Older Inmates, has caused or contributed to Abuse of Older Inmates and their Inability to Access Healthcare, as defined and particularized below. This conduct imposed disproportionate impacts on Older Inmates by perpetuating, reinforcing, and exacerbating disadvantage.
3. The Plaintiff seeks orders that will vindicate the rights of Older Inmates, deter systemic discrimination and mistreatment of these persons in the future, and compensate for the losses inflicted on the proposed Class. The pith of the

Plaintiff's claim is that the operations of CSC perpetuate and promote Age-Based Discrimination, and create a system in which unlawful mistreatment of Older Inmates occurs. That system harms Older Inmates by exposing them to physical, emotional and psychological abuse (the Abuse of Older Inmates), and by denying them access to healthcare services while incarcerated (the Inability to Access Healthcare).

4. CSC has known about Age-Based Discrimination, Abuse of Older Inmates, and their Inability to Access Healthcare for Decades, but failed to act despite a duty to do so.
5. Older Inmates are regularly subjected to physical, emotional and psychological abuse by CSC Staff, and by younger inmates, because they are Older Inmates. Older Inmates are also regularly denied access to healthcare services and items that they require. The Defendant has long known that these events commonly take place in CSC Facilities, and has taken no action to prevent them.
6. CSC has exclusive jurisdiction over CSC Staff and CSC Facilities. The Defendant funds, oversees, operates, supervises, controls, maintains, and supports CSC, CSC Staff, and CSC Facilities. CSC is responsible for the mistreatment of Older Inmates in CSC Facilities. The lives of Class members have been permanently impacted as a result of the Defendant's negligence and *Charter* breaches.
7. The Plaintiff brings this action on his own behalf and behalf of all persons who are alive on the date this proceeding is certified and who allege that, while over the age of 50 and incarcerated in a Federal prison during the Class Period, they were:
  - a) subjected to physical, emotional and/or psychological abuse;

b) physically or psychologically harmed because they were unable to access or denied access to approved or specially-authorized Health Services, Medical Equipment, and/or Supplies, as defined in CSC's National Essential Health Services Framework, for 30 days or more; and/or

c) physically or psychologically harmed because they were unable to pay for Health Services, Medical Equipment, and/or Supplies, as defined in CSC's National Essential Health Services Framework, for 30 days or more.

### C. DEFINITIONS

8. The following definitions apply for the purposes of this Statement of Claim:

- a. [retained for numbering]
- b. “**CCRA**” means the *Corrections and Conditional Release Act*, S.C. 1992, c. 20;
- c. “**CCRR**” means the *Corrections and Conditional Release Regulations*, SOR/92-620;
- d. “**Charter**” means the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.
- e. “**Class**” or “**Class Members**” means all persons who meet the Class definition set out at para. 7, above.
- f. “**Class Period**” means the period from 17 April 1982 through to the date this action is certified;

- g. [retained for numbering]
- h. **“CSC”** means the Correctional Service of Canada;
- i. **“CSC Facilities”** means all Prisons and Penitentiaries holding prisoners and inmates in confinement which are administered by CSC and the Commissioner of the CSC under ss. 5 – 6 of the *CCRA*;
- j. **“Healthcare Services Items”** means the Health Services, Medical Equipment, and Supplies identified in Appendix A of CSC's National Essential Health Services Framework.
- k. **“Inmate”** means a person incarcerated in a CSC Facility.
- l. [retained for numbering]
- m. **“Older Inmates”** means members of the Class.
- n. **“Penitentiary”** means a facility of any description, including all lands connected therewith, that is operated, permanently or temporarily, by the Service for the care and custody of inmates, or any facility designated as such under s. 7 of the *Corrections and Conditional Release Act*;
- o. **“Statutory Principles”** means the principles outlined under s. 4 of the *CCRA*, as particularized below.
- p. [retained for numbering]

## **D. THE PARTIES**

### **a) The Representative Plaintiff**

9. The representative plaintiff is B.W., an inmate incarcerated at a medium security penitentiary in British Columbia. He was born on July 4, 1961 and is 62-years old.
10. The plaintiff has sustained harm as a result of physical, emotional and psychological abuse he experienced while incarcerated, as well as deprivation of healthcare services.
11. Due to his age and associated disabilities, the plaintiff has routinely experienced harassment, intimidation, assaults, and recently, a severe battery while incarcerated.
12. The plaintiff brings this action under a pseudonym due to fear of further repercussions from CSC Staff and inmates. Harassment, threats, and batteries, could be further aggravated and perpetuated through the disclosure of B.W.'s identity.
13. The plaintiff will, if required by the court as a condition of acting as a representative plaintiff, reveal his identity.
14. The plaintiff brings this action pursuant to the *Federal Court Rules* on his own behalf and on behalf of the Class.

### **b) The Defendant**

15. His Majesty the King in right of Canada administers a system of federal carceral facilities (the "CSC Facilities") through the CSC, and both entities are represented in this matter by the named defendant, the Attorney General of



Canada.

16. The Correctional Service of Canada is the entity responsible for, amongst other things, the care, custody, and rehabilitation of federally incarcerated inmates.
17. Pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (the “*CLPA*”), the federal Crown is liable for the wrongful or negligent acts and omissions of the CSC, as well as CSC’s employees, agents, and/or servants.
18. As per s. 23(1) of the *CLPA*, this proceeding is brought against the Attorney General of Canada.

## **E. NATURE OF THE ACTION**

### **The Role and Responsibilities of CSC**

19. The CSC is a federal agency within the Government of Canada’s Public Safety portfolio, mandated with the custody, care, and supervision of federal inmates.
20. CSC was created on 10 April 1979 through the merging of the Canadian Penitentiary Service and National Parole Service. In this pleading, CSC includes both the current agency and its predecessor entities.
21. CSC’s Commissioner is the senior executive officer of the organization and is accountable to the Minister of Public Safety and Emergency Preparedness Canada.
22. 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 probation sentences or a term of imprisonment of less than two years are the responsibility of the provinces and territories.

23. CSC operates pursuant to the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the “CCRA”) and the *Corrections and Conditional Release Regulations*, S.O.R. 92-620 (the “CCRR”). The CCRA and CCRR set out CSC’s responsibilities and the principles which must guide its actions.

24. As per s. 3 of the CCRA, the CSC is responsible for contributing to the maintenance of a just, peaceful and safe society by carrying out sentences imposed by courts through safe and humane custody, control, and supervision of offenders and by assisting these offenders in rehabilitating and reintegrating into the community as law-abiding citizens.

25. CSC manages more than forty CSC Facilities located across Canada. National headquarters performs overall planning, policy development, and administration for CSC, while regional headquarters are responsible for overseeing the operations of CSC Facilities situated within their assigned regions.

26. CSC’s duties, pursuant to s. 5 of the CCRA, include:

- a. the care and custody of inmates;
- b. the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;
- c. the preparation of inmates for release; and
- d. parole, statutory release supervision and long-term supervision of offenders;

collectively, the “Statutory Duties”.

27. Pursuant to s. 4 of the *CCRA*, in fulfilling the responsibilities outlined above the CSC is bound by the following principles, amongst others:

- a. that the sentence is carried out having regard to all relevant available information;
- b. that CSC use the least restrictive measures consistent with the protection of society, staff members, and offenders;
- c. effective delivery of programs to offenders, including correctional, educational, vocational training and volunteer programs, with a view to improving access to alternatives to custody in a penitentiary and to promoting rehabilitation; and
- d. correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups;

collectively, the “Statutory Principles”.

28. CSC appoints and employs corrections officers and other staff to carry out the Statutory Duties and uphold the Statutory Principles (“CSC Staff”).

29. CSC is vicariously liable for the actions of CSC Staff.

30. CSC exercises exclusive control and management of CSC Facilities, CSC Staff, and Inmates.

31. CSC exercises exclusive control over Inmates' physical and geographic location, ability to affiliate with other persons, daily routine and activities, necessities of

daily living, access to healthcare, employment and educational opportunities, cultural, leisure, fitness, and spiritual activities, and communication with non-Inmates.

32. Pursuant to s. 70 of the *CCRA*, CSC must take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity.

33. Pursuant to s. 69 of the *CCRA*, no person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

34. Pursuant to s. 3 of the *CCRR*, all CSC Staff shall:

- a. be familiar with the *CCRA*, the *CCRR*, "and every written policy directive that relates to the staff member's duties";
- b. perform the staff member's duties impartially and diligently and in accordance with the principles set out in the Act and in the Mission of the Correctional Service of Canada, published by the Service, as amended from time to time; and
- c. encourage and assist offenders to become law-abiding citizens.

35. On January 24, 2008 CSC promulgated Commissioner's Directive 567-1 to govern the Use of Force by CSC Staff. The Directive provides, *inter alia*, that its objective is to "ensure the use of force is appropriate and in accordance with CSC policy and applicable legislation." It further states that CSC's Director General,

Security, "shall ensure that ... inmates work and live in as safe and secure environment as is reasonably possible."

36. Since February 1, 2016 the Use of Force by CSC Staff has been governed by a revised Commissioner's Directive 567-1, which provides, *inter alia*, that CSC's security procedures relating to use of force "are within the scope of the law and CSC policies" and "limited only to what is necessary and proportionate to attain the purpose of the CCRA."
37. CSC must also act in accordance with s. 25 of the *Criminal Code*, R.S.C., 1985, c. C-46, which requires CSC and CSC Staff to use force that is intended or likely to cause death or grievous bodily harm only when the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.
38. In practice, CSC regularly breaches its mandate to treat Older Inmates in a non-discriminatory manner. CSC Staff regularly discriminate against Older Inmates, particularly by subjecting them to physical, emotional and psychological abuse, whether by employing excessive and unnecessary force to them, by directing hateful speech and language at them, or by permitting other Inmates to do those things to Class members, as well as through the application of discriminatory policies and practices which systematically disadvantage Older Inmates, particularly as regards their access to healthcare services, as particularized below.
39. [retained for numbering]
40. For decades, Older Inmates have been identified by and to CSC as a group among the Inmate population which:

- a. is growing rapidly, from a minute proportion of Inmates in the 1980s to greater than 25% of Inmates in 2023;
- b. suffers from accelerated aging relative to members of the non-Inmate community, such that Older Inmates tend to experience age-related health ailments usually associated with persons ten years older than the Inmate;
- c. has unique needs and vulnerabilities stemming from their increased age and associated physical and mental health ailments, including particular vulnerability to use of force by CSC Staff, and susceptibility to assault, intimidation, and bullying by other Inmates;
- d. requires protection and accommodation within CSC Facilities and by CSC Staff, including age-cohorted living options, as well as specialized training for CSC Staff;
- e. frequently require accommodations to complete their activities of daily living or to engage in gainful employment; and
- f. despite all of the above and the circumstances of incarceration, are expected to take responsibility for aspects of their own healthcare and well-being by self-funding access to certain healthcare services.

41.[retained for numbering]

42.[retained for numbering]

43.[retained for numbering]

44.[retained for numbering]

45. The pre-existing disadvantages of Class members include:

- a. susceptibility to ailments and disease, including far greater prevalence of chronic health conditions, mental health conditions, and disability;
- b. vulnerability to assault or coercion as a result of age-related infirmity;
- c. the effects of long-term incarceration (e.g. institutionalization) and social isolation;
- d. enhanced dependence on CSC and CSC Staff for the necessities of living; and
- e. increased need for accommodation, such as accessibility devices, treatments, and age-appropriate programming.

46. [retained for numbering]

### **Systematic Abuse of Older Inmates and Inability to Access Healthcare**

47. While incarcerated, Class members are regularly subjected to physical, emotional and psychological abuse by CSC Staff and by younger Inmates. Common incidents of abuse involve (the "Abuse of Older Inmates"):

- a. unnecessarily beating, hitting, pepper-spraying, and otherwise applying force to the bodies of Older Inmates;
- b. directing abuse and slurs at Older Inmates;
- c. confining Older Inmates in segregation or "structured intervention units" rather than protecting their personal safety through other means;

- d. permitting or bringing about physical, emotional, and psychological assault or abuse of Older Inmates by placing them in situations where they are vulnerable to assault or abuse by younger Inmates; and
- e. failing to intervene when or encouraging younger Inmates to assault or direct abuse at Older Inmates.

48. Younger Inmates do not face the same physical, emotional and psychological abuse experienced by Class members.

49. As pleaded above, Older Inmates experience, as a group, greater need for Healthcare Services Items than younger Inmates as a result of their advanced age and greater propensity for developing physical and mental ailments. However, Older Inmates frequently encounter delays, refusals, or an inability to access Healthcare Services Items as a result of conduct by CSC, since (the "Inability to Access Healthcare"):

- a. CSC frequently delays or refuses to provide Healthcare Services Items to Older Inmates, despite that a healthcare professional has prescribed or otherwise indicated that those Healthcare Services Items are required by Class members, including where the Healthcare Services Items are designated as "approved" in the National Essential Health Services Framework, or are specially-authorized for the Class member.
- b. CSC expects Class members to self-fund Healthcare Services Items required by Older Inmates but which are not designated by CSC as "approved" in the National Essential Health Services Framework.
- c. Since 1981 CSC has restricted Inmate earnings to a maximum of \$6.90 per day. As CSC does not provide accommodated employment for Older Inmates, unemployment among Class members is common, which limits their income to \$2.50 per day.



Due to CSC-imposed impoverishment, Older Inmates cannot access the Healthcare Services Items they require, for instance by purchasing services which are not designated as "approved," or by obtaining services for themselves when CSC delays or refuses to provide Healthcare Services Items.

50. [retained for numbering]

51. At all material times, the Defendant had knowledge of the Abuse of Older Inmates, and the Inability to Access Healthcare. As early as 1994, CSC published research which demonstrated that Older Inmates were a growing population with unique needs in correctional settings. In 1998, CSC's Research Branch concluded that this circumstance called for the development of measures, strategies and master plans to address [the] needs [of Older Inmates]."

52. While CSC would develop a strategy for Older Inmates in 2001, which incorporated a number of specific initiatives aimed at mitigating the specific vulnerabilities of this group, as well as avoiding overtly harmful outcomes such as the Abuse of Older Inmates and the Inability to Access Healthcare, it chose not to implement that strategy, abandoning it altogether by 2003.

53. In 2010, 2014, 2016, 2017, and 2019 (among other years), the Office of the Correctional Investigator would report upon the plight of Older Inmates, pointing out that they required protection as they were suffering harm as a result of the Abuse of Older Inmates and the Inability to Access Healthcare. The OCI issued numerous specific recommendations for addressing these issues, which were ultimately ignored by CSC. The Senate Standing Committee on Human Rights reported on these issues in 2021 as well.

54. After abandoning its 2001 strategy on Older Inmates, CSC would not develop a new strategy respecting Class members until May 2018. Even now, that strategy has not been promulgated - it is not binding. Despite numerous warnings over the course of decades that it needed to take action to prevent the Abuse of Older Inmates and the Inability to Access Healthcare, CSC ignored this burgeoning issue, resulting in widespread harm to Class members.

55. None of these reports or initiatives identified above have impacted CSC practices or eliminated, prevented, or mitigated the Abuse of Older Inmates and the Inability to Access Healthcare.

56. It is well-known within CSC Facilities that Older Inmates are improperly targeted by CSC Staff and younger Inmates on the basis of their age and disability.

57. At all material times, CSC knew or ought to have known about the Abuse of Older Inmates and the Inability to Access Healthcare, and that it had not effectively, meaningfully, or successfully eliminated, mitigated, or minimized the risk of the Class being subjected to or harmed by these phenomena.

58. [retained for numbering]

## **F. THE PLAINTIFF'S EXPERIENCES**

59. B.W., a long-term inmate within his penitentiary, has experienced a severe and ongoing degradation of his mental and physical wellness during his time in federal custody. His needs as an aging inmate have been neglected by CSC and CSC Staff.

60. B.W. has experienced multiple batteries and assaults at the hands of younger inmates placed within his living unit, including:

- a) a physical attack in February 2017, when a younger inmate (C.C.) struck him in the head with such force that he was rendered unconscious and subsequently fell down a flight of stairs;
- b) repeated threats, intimidation, and bullying by a younger inmate, for approximately one year beginning around September 2018, after the inmate learned of a confidential complaint that B.W. made against him for intimidation; and
- c) an attempt to instigate a physical fight by a younger inmate in December 2018.

61. After reporting one such battery in early 2017, B.W. was harassed, intimidated, and threatened by younger inmates until he agreed to assist his assailant in getting released back into the general population of Mission Institute.

62. By virtue of his age, B.W. is unable to protect himself from these younger inmates. He is completely reliant on CSC Staff to protect his physical and mental health.

63. Despite B.W.'s vulnerabilities and his repeated pleas to CSC and CSC Staff, his requests for adequate supervision, protection, and separation from younger, violent inmates have yet to be addressed.

64. Following a series of assaults and batteries on older inmates by younger inmates, B.W. was informed by CSC and CSC Staff in early 2020 that a living unit would be designated specifically for inmates aged 55 and older. This promise remains unfulfilled.

64.1 Despite CSC staff informing B.W. and other older inmates in early 2020 that their unit was designated to exclusively house older inmates, the CSC continued place younger inmates in the unit.

65. As a result, B.W. is left without recourse when he experiences violent or abusive behavior from younger inmates. Reporting assaults or batteries committed by younger inmates results in increased aggression, intimidation and threats from other inmates.

66. B.W.'s experience of batteries and assaults have resulted in serious and prolonged mental suffering. Despite this, CSC and CSC Staff have refused to provide him with even basic trauma counselling. B.W. continues to live each day in fear and apprehension of suffering further physical and mental harm at the hands of younger inmates.

66.1 B.W. has also faced substantial difficulty in obtaining adequate health care and medical treatment during his time in the CSC penitentiary.

66.2 B.W. has had difficulty obtaining diagnosis and treatment, including for cancer prevalent in his family history:

(a) B.W. had spots on his head assessed by a CSC physician for skin cancer, and was provided no information about the spots or the threat that they may pose;

(b) B.W. requested a referral to a dermatologist in January 2019, but was not given an appointment until 10 months later;

(c) the dermatologist informed B.W. that the spots could eventually develop into skin cancer and removed them;

(d) following a biopsy in October 2020, B.W. did not receive his skin cancer diagnosis until nearly 3 weeks after his results were communicated to his CSC facility; and

(e) following surgery to remove his carcinoma in 2021, B.W. has still been unable to attend his dermatologist for re-assessment.

66.3 B.W. has been unable to access important health care items and has suffered debilitating pain as a result:

- (a) B.W. must purchase 'optional' health care items using his wages, which the CSC limits to less than \$7.00 per day;
- (b) B.W. was advised by a CSC physician in December 2020 to trial orthotics as a treatment for severe foot pain he had developed;
- (c) the orthotics, deemed non-essential by the CSC, were untenable for B.W. to purchase on his limited wages, in part due to the other 'optional' items he is required to purchase, such as multi-vitamins and sunscreen to treat his skin cancer; and
- (d) 'optional' health care items may become more inaccessible to B.W. if he becomes unable to work as he ages.

## **F2. CLASS MEMBER CALVIN CONLEY'S EXPERIENCES**

66.4 Calvin Conley is 62-years old. He has spent the majority of the last four decades under the supervision or custody of CSC. He has been incarcerated at several CSC institutions in Ontario and British Columbia in that time, including Millhaven Institution, Matsqui Institution, Joyceville Penitentiary, Kingston Penitentiary, and Warkworth Institution.

66.5 As he has aged, Mr. Conley has increasingly suffered from a number of bodily ailments, as detailed below.

66.6 Like B.W., Mr. Conley has repeatedly struggled to access adequate health care during his time in CSC institutions, in the face of underlying health conditions and disabilities, including:

- a. rheumatoid arthritis (“RA”);
- b. right shoulder injury resulting in partial disability;
- c. right and left knee injuries resulting in pain, stiffness, and instability;
- d. low-back pain; and
- e. reliance on dentures.

66.7 The CSC failed to provide Mr. Conley with the medically prescribed knee brace he required, despite his worsening knee instability that necessitated its use.

66.8 Mr. Conley's need for a knee brace was determined in 2013, and was provided to him by CSC in 2014.

66.9 In October 2020 and January 2021, Mr. Conley was assessed by a CSC physician, but they did not provided him with a knee brace.

66.10 The absence of the knee brace makes basic mobility significantly more painful and difficult for Mr. Conley.

66.11 After complaining to CSC National Headquarters, Mr. Conley received a letter in June 2021 indicating that a knee brace had been ordered for him. This letter, from Jennifer Wheatley, Assistant Commissioner (Health Services) acknowledged the lengthy delay in provision of Mr. Conley's knee brace.

66.12 Despite this letter and repeated assurances made by CSC, Mr. Conley was never provided with a knee brace.

66.13 In February 2022, his left knee collapsed, causing significant injuries including broken dentures and a fractured right hand.

66.14 Mr. Conley would not have suffered the injuries described in the preceding paragraph had he been provided with the knee brace.

66.15 Mr. Conley experienced repeated, humiliating, and painful delays in accessing appropriate dental care in CSC custody.

66.16 Mr. Conley was missing his lower denture when he returned to CSC custody on 17 September 2020 and submitted a request to see the CSC dentist the following day.

66.17 Mr. Conley was not assessed by a dentist until 9 November 2020, when he was informed that he required new dentures and abutments.

66.18 Despite his inability to chew and eat his food properly without dentures, the CSC refused to provide Mr. Conley with permanent dentures for nearly a year.

66.19 The dentures Mr. Conley received were ill-fitting and caused cuts and sores in his mouth and, despite his complaints, the CSC failed to have Mr. Conley assessed by the CSC dentist.

66.20 Mr. Conley was reduced to swallowing chunks of unchewed food which caused pain and gastrointestinal problems.

66.21 While Mr. Conley was provided with new dentures in July 2021, the abutments were not replaced, causing his dentures to be ill-fitting. he continues to suffer from cuts and sores in his mouth as a result.

66.22 Mr. Conley experienced disability-related discrimination in his employment with CSC institutions.

66.23 Mr. Conley worked as a tutor for other inmates, which required extended periods of sitting and weekly walks to the institution's school building located half a mile from his living unit.

66.24 The CSC did not provide any accommodation to Mr. Conley, despite his documented injuries and disabilities.

66.25 The CSC's modest \$2.50 basic pay allowance imposes significant economic pressure on Mr. Conley to work, despite his symptoms and the painful ramifications of his tutoring work. He frequently has to endure significant pain as a result of working, and yet cannot afford to self-fund items he requires for his health and well-being, such as dentures, abutments, or a knee brace.

## **G. CAUSES OF ACTION**

### **a) Negligence of CSC**

67. The Defendant owes a duty of care to Class members as incarcerated persons.

68. This duty falls within an established category of duties, as jurisprudence from the Supreme Court of Canada recognizes that prison authorities owe a duty of care to Inmates to "take reasonable care for [their] safety as [persons] in their custody."

69. In the alternative, if the duty owed by the Defendant does not fall into an established category, its conduct in funding, oversight, operation, supervision, control, maintenance, and support of CSC Facilities.

70. In their dealings with Class members, CSC and CSC Staff must conduct themselves in a manner consistent with the principles and obligations identified at paras. 32-37, above, and the Statutory Principles.

71. Through itself or the CSC Staff, the Defendant was in a relationship of proximity with Class members as a result of its operation of CSC Facilities during the Class Period. As a result of its conduct in operating CSC Facilities, exerting control over the activities of CSC Staff, its assumption of the care and custody of Older Inmates, and its statutory authority and responsibilities with respect to those matters, the Class had a proximate relationship with the Defendant and CSC Staff.

72. During the Class Period, Class Members were in the care and control of CSC and CSC Staff during their time in CSC Facilities and expected that they would not be treated by the Defendant in a manner that would cause them physical or emotional harm.



73. The Defendant knew or ought to have known that in its funding, oversight, operation, supervision, control, maintenance, and support of CSC Facilities could and would result in compensable physical and emotional harm to Class members. The Defendant had particular knowledge of the actual harms perpetrated on Class members as a result of internal reports, community knowledge, complaints by Class Members and other public scrutiny of the negligence and breaches alleged herein.
74. The Defendant knew or ought to have known that its failure to take reasonable care to protect against the Abuse of Older Inmates and Inability to Access Healthcare, would result in harm to Class Members.
75. The Defendant knew or ought to have known that its failure to ensure that CSC Facilities operated with. and CSC Staff applied, the standards provided to younger Inmates would result in harm to Older Inmates.
76. In the alternative, the Defendant knew or ought to have known that its failure to ensure that CSC Facilities operated with. and CSC Staff applied, the standards adapted to respond to the particular needs and vulnerabilities of Older Inmates, would result in harm to Older Inmates.
77. Class Members had the reasonable expectation that CSC would operate CSC Facilities in a manner that was substantially similar to the care, control and supervision provided to younger Inmates during the Class Period.
78. Canada was obliged to fund and operate CSC Facilities with a reasonable standard of care, which includes, but is not limited to:
- a. establishing, implementing and enforcing appropriate policies and procedures to ensure that Class members would be free from physical,

emotional and psychological abuse, i.e. the Abuse of Older Inmates, and would not be impeded in access to healthcare, i.e. the Inability to Access Healthcare;

- b. establishing, implementing and enforcing appropriate policies and procedures to ensure that Class Members would not be unnecessarily or inappropriately harmed during their time in custody;
- c. ensuring that CSC Staff, who were agents of the Defendant, were adequately educated, licensed and trained in order to fulfill their employment obligations in a manner that would not cause physical, emotional or psychological harm to Class Members;
- d. investigating, adjudicating and, if necessary, reporting to the appropriate law enforcement authorities complaints by Class Members of physical or emotional abuse;
- e. overseeing the acts and behaviours of CSC Staff in a manner that would protect Class Members from the Abuse of Older Inmates and other acts of brutality;
- f. acting in a timely and concerted fashion by, among other things, establishing and implementing policies and procedures to ensure that incidents of Abuse of Older Inmates would not re-occur; and
- g. such other and further obligations of the Defendant as the plaintiff may advise and this Honourable Court may consider.

79. During the Class Period, the Defendant breached the common law duty of care owed to Class members by the following acts and omissions, including but not limited to:

- a. failure to adequately, properly and effectively care for Class Members;
- b. failure to implement appropriate policies and procedures to ensure the Class Members were detained free from physical, emotional, psychological and verbal abuse, and would have access to Healthcare Services Items;
- c. failure to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures by CSC Staff during the Class Period;
- d. failure to establish or implement standards of conduct for CSC Staff to ensure that no employee would endanger the health or well-being of any Class member;
- h. failure to provide any or an adequate program or system through which abuse, discrimination, or barriers in accessing Healthcare Services Items could be recognized, reported, investigated or addressed;
- i. failure to oversee the acts of CSC Staff in a way that would protect Class members from discrimination, physical violence, assault, brutality, and the Abuse of Older Inmates;
- j. failure to ensure that CSC Staff working in CSC Facilities with Older Inmates were properly trained and had the appropriate certification to be involved in the care and custody of Class members;
- k. failure to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;

l. failure to properly maintain administrative records; and

m. such other and further grounds as the plaintiff may advise and this Honourable Court may consider.

80. At all relevant times, the Defendant had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, the Defendant and CSC continued to turn a blind eye to the Abuse of Older Inmates by CSC Staff, and the Inability to Access Healthcare. The Defendant knew, or reasonably should have known, that the Class Members would suffer the significant harms particularized below.

81. [retained for numbering]

82. [retained for numbering]

b) ***Charter Breaches***

83. Section 7 of the *Charter* guarantees that every individual has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

84. As a government actor, the Defendant owed, and continues to owe, duties under the *Charter* to the Class members.

85. The frequency, duration, and severity of the conduct that the Class members are subjected to at the hands of the Defendant and its agents, particularized above, engages the *Charter* rights of life, liberty and security of the person. Such wrongful conduct constitutes a breach of the Class members' *Charter* rights to life, liberty and security of the person.

86. The widespread use of excessive force by CSC Staff on Class Members is arbitrary, and grossly disproportionate with the purpose of use of force upon detention. It is not carried out in keeping with any principle of fundamental justice.

87. The widespread Abuse of Older Inmates is arbitrary, and grossly disproportionate with the purpose and principles governing Class members' incarceration, under the *CCRA*, *CCRR* and otherwise, as particularized above at paras. 32-37.
88. The widespread Inability to Access Healthcare is arbitrary, and grossly disproportionate with the purpose and principles governing Class members' incarceration, under the *CCRA*, *CCRR* and otherwise, as particularized above at paras. 32-37.
89. Section 15(1) of the *Charter* guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on age or mental or physical disability.
90. The Defendant's conduct, including the Abuse of Older Inmates, and the Inability to Access Healthcare has resulted in Class members being treated differently and worse than younger Inmates. This difference in treatment is based on enumerated grounds listed in the preceding paragraph.
91. In light of the foregoing, Class members have been discriminated against based on, *inter alia*, their age and mental or physical disability. The Defendant's conduct is discriminatory on its face, in its effect, and in its application. In particular, such actions included but are not limited to:
- a. the Defendant allowed CSC Staff to target Older Inmates during their time in custody;
  - b. the Defendant allowed CSC Staff to use excessive force while Older Inmates were in custody;

- c. the Defendant allowed CSC Staff to engage in Abuse of Older Inmates;
- d. the Defendant allowed CSC Staff to perpetuate the Inability to Access Healthcare; and
- e. the Defendant was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of discrimination (i.e. the Age-Based Discrimination) which encompasses the Abuse of Older Inmates and the Inability to Access Healthcare.

92. There is no justification in a free and democratic society for the Defendant's breaches of s. 7 or 15(1) of the Charter.

93. [retained for numbering]

94. [retained for numbering]

## **H. HARM AND DAMAGES**

95. Throughout the Class Period, Class members suffered from injury, damage, and loss as a result of the Abuse of Older Inmates and the Inability to Access Healthcare, whether construed under the law of negligence and/or breach of ss. 7 and 15(1) of the *Charter*, which is particularized as follows:

- a. assault and battery;
- b. emotional injury and abuse, or aggravation thereof, or both;
- c. psychological injury and abuse, or aggravation thereof, or both;
- d. psychiatric injury, or aggravation thereof, or both;
- e. mental and emotional distress, including impairment of mental and emotional health amounting to a severe and permanent disability;
- f. impaired ability to participate in normal family life;
- g. isolation from family and community, and alienation from family, spouses and children;

- h. suicidal ideation;
- i. physical injury, or aggravation thereof, or both;
- j. loss of cultural identity;
- k. impaired dignity and self-worth;
- l. pain and suffering;
- m. substance addiction;
- n. premature death;
- o. loss of earning capacity, past and future;
- p. pecuniary loss;
- q. special damages;
- r. loss of enjoyment of life;
- s. cost of medical and other treatment and care, past and future; and
- t. such further and other matters as the Plaintiff may advise.

96. At all material times, the Defendant has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures pleaded above would continue to create, continue to aggregate and contribute to the Class members' injuries and damages.

97. As a result of the Defendant's conduct, Class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care.

98. The Defendant and CSC Staff knew or ought to have known that as a consequence of its negligence breaches of sections 7, and 15 of the *Charter*, all Class members would suffer the damages for which the Defendant is directly or vicariously liable for as described above.

99. The plaintiff and the Class are entitled to general and special damages flowing from CSC's negligence and breach of the *Charter*, including, *inter alia*, damages for the Class Members' future care costs and past and future loss of earning capacity.

100. The Class is entitled to damages under s. 24(1) of the *Charter* in restitution for the violation of their constitutional rights and freedoms. In the circumstances, monetary *Charter* damages will:

- a. provide compensation for the suffering and loss of dignity of the Class;
- b. vindicate the Class's fundamental rights; and
- c. deter systemic violations of a similar nature moving forward.

101. Punitive and exemplary damages are appropriate in this case. CSC and CSC Staff acted in a callous, high-handed manner with wanton disregard for the Class' interests, dignity, safety, and wellbeing. At all material times, CSC and CSC Staff knew or ought to have known about the Abuse of Older Inmates and Inability to Access Healthcare and failed to act despite the clear and immediate risk they posed to the plaintiff and the Class.

102. The Defendant and CSC Staff had specific and complete knowledge of the widespread Abuse of Older Inmates and Inability to Access Healthcare during the Class Period. Despite this knowledge, Canada continued to allow CSC Staff to employ excessive force to Older Inmates, to target Older Inmates, to engage in Abuse of Older Inmates, and to perpetuate the Inability to Access Healthcare, thereby permitting the perpetration of grievous harm to the Class Members throughout the Class Period.



## I. AUTHORITIES PLEADED BY THE PLAINTIFF

103. The Plaintiff pleads and relies on the following:

- a. *Federal Court Rules*, SOR 98/106;
- b. *Canadian Charter of Rights and Freedoms* Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11;
- c. *Federal Courts Act*, R.S.C. 1985, c. F-7;
- d. *Corrections and Conditional Release Act*, S.C. 1992, c. 20;
- e. *Corrections and Conditional Release Regulations*, SOR/92-620;
- f. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
- g. *Charter of Human Rights and Freedoms*, CQLR, c. C-12; and
- h. such further and other statutes or authorities as counsel may advise.

104. The plaintiff proposes that this action be tried in Vancouver, BC.

February 25, 2026

~~July 21, 2023~~

~~01 December 2021~~



---

**AVIZE LAW GROUP**

300 – 376 Harbour Road  
Victoria, BC V9A 3S1

**Patrick Dudding**

**Rajinder S. Sahota**

Tel: (250) 384 6262

Lawyers for the Plaintiff