



Fifth Amended Notice of Civil Claim – by order of Justice Tammen made October 3 2024

Amended a fourth time by Order of Justice Tammen made August 27 2024

Amended a third time pursuant to the Order of Mr. Justice Tammen made November 24 2023.

Amended a second time pursuant to agreement among the parties on 07 September 2023.

Amended pursuant to R. 6-1(1)(a) on 21 September 2022.

Original Filing Date: 24 April 2020

Court File No. VA-207500

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEAN CHRISTOPHER ROBERTS
JOSEPH RYAN LLOYD

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

FIFTH ~~FOURTH THIRD SECOND~~ AMENDED NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*

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

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

- (a) File a Response to Civil Claim in Form 2 in the above-named Registry of this court within the time for Response to Civil Claim described below; and
- (b) Serve a copy of the filed Response to Civil Claim on the Plaintiff.

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

- (a) File a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named Registry of this court within the time for Response to Civil Claim described below; and
- (b) Serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff:

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (b) If you reside in the united States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (c) If you reside elsewhere, within 49 days after the date on which the filed Notice of Civil Claim was served on you; or
- (d) If the time for Response to Civil Claim has been set by Order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. The Government of Canada, ~~in violation of~~ violated its duties and the human rights of federal inmates, ~~failed to adequately prepare for and respond to~~ during the COVID-19 pandemic which began in early 2020 (the "COVID-19 Pandemic"), despite obvious, foreseeable risks of harm.
2. ~~These systemic failures~~ This resulted in ~~loss of life, in widespread illness with permanent consequences, in~~ unprecedented restrictions of inmates' rights, ~~and in~~

~~damage to the public health.~~ The plaintiff, on his own behalf and on behalf of a proposed class of inmates, seeks remedies in relation to these wrongs.

The parties

2A. The Plaintiff, Dean Christopher Roberts, is an inmate at Mission Institution, a federal penitentiary located in Mission, British Columbia, and has an address for service care of #300-376 Harbour Road, Victoria, BC.

2B. Mr. Roberts was an inmate at Mission Institution at material times during the COVID-19 Pandemic.

2C. Mr. Roberts is an Indigenous person.

3. ~~The plaintiff,~~ Joseph Ryan Lloyd, is an inmate at Mission Institution, a federal carceral facility located in Mission, British Columbia, and has an address for service care of #300-376 Harbour Road, Victoria, BC.

4. Mr. Lloyd was an inmate at Mission Institution at material times during the COVID-19 Pandemic.

4A. Mr. Lloyd is an Indigenous person.

5. Mr. Roberts ~~Mr. Lloyd~~ brings this action on his own behalf and on behalf of a class proposed class (the “Class”), of which he is a member, and which is defined as follows:

All persons who, between 11 March 2020 and the date this matter is certified, were incarcerated, detained, or held in custody in a CSC Institution during a declared COVID-19 outbreak at that CSC Institution, and were confined to their cells for 20 or more hours in a day and/or deprived of the opportunity to

interact with others for a minimum of two hours in a day.

~~All persons, alive on the date that this matter is certified, who were incarcerated at a federal institution during the COVID-19 Pandemic.~~

5A. The time period (“Class Period”) described as “during the COVID-19 Pandemic” commences on or about 04 05 January 2020 and runs to the date that this matter is certified as a class action. The COVID-19 Pandemic is ongoing at the present time. The Class Period may be subject to further refinement as additional information becomes known to the plaintiffs.

5B. “Federal institution,” “incarceral facilities,” “incarceral institutions,” and “CSC facilities” each refer to “All Prisons and Penitentiaries holding Prisoners and Inmates in confinement” which are administered by CSC and CSC's Commissioner under ss. 5-6 of the Corrections and Conditional Release Act, SC 1992, C. 20 (the “CCRA”).

5C. For the purpose of the Class definition and the Class Period:

- a. “Prison” and “Prisoner” have the meanings defined in s. 2 (1) of the *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20 (the “PRA”); and
- b. “Penitentiaries” and “Inmates” have the meanings defined in ss. 2 (1) and 7(1) of the CCRA.

5D. Other class proceedings have been commenced, certified, and/or concluded in relation to CSC inmates:

a) with serious mental illness who were placed in administrative segregation (*Brazeau v. Canada*, Docket CV-15-53262500-CP (ONSC), *Gallone c. Canada*, C.S. Qué. Montréal 500-06-000781-167 (QCCS), judgment given in favour of the class following summary judgment on common issues in 2019);

b) placed in administrative segregation for more than 15 days (*Reddock v. Canada*, CV-17-570771-00CP (ONSC), *Gallone c. Canada*, C.S. Qué. Montréal 500-06-000781-167 (QCCS), judgment given in favour of the class following summary judgment on common issues in 2019);

c) placed in a structured intervention unit for more than 15 days (*Fournier c. Canada*, CS Qué. Montreal 500-06-001149-216 (QCCS), action certified in 2023);

d) who are Black and were subject to abuse on the basis of race while incarcerated by CSC (*Araya v. Canada*, T261-22, certified on December 13, 2023, no appeal taken);

e) over the age of 50 who were subject to physical, emotional and/or psychological abuse, and/or 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 (*B.W. v. Canada*, T-1853-21, certified on January 17, 2024, under appeal).

5E. None of the actions identified in the preceding paragraph advance claims or provide redress for confinement of CSC Inmates related to the COVID-19 Pandemic.

5F. The scope of this claim excludes the claims of class members in *Brazeau*, *Reddock*, and/or *Gallone* which are covered by or released through a judgment or settlement in those actions.

5G. To the extent that a claim of a Class member in this proceeding overlaps with a claim or claims covered by *Fournier*, those claims are excluded from this proceeding if the Class member opts out of this proceeding in compliance with the

opt-out procedure approved by the Court, unless the *Fournier* action is deauthorized (decertified).

5H. To the extent that a claim of a Class member in this proceeding overlaps with a claim or claims covered by *Araya*, those claims are excluded from this proceeding if the Class member opts out of this proceeding in compliance with the opt-out procedure approved by the Court, unless the *Araya* action is decertified.

5I. To the extent that a claim of a Class member in this proceeding overlaps with a claim or claims covered by *B.W.*, those claims are excluded from this proceeding if the Class member opts out of this proceeding in compliance with the opt-out procedure approved by the Court, unless the *B.W.* action is decertified.

6. Her Majesty the Queen in Right of Canada administers a system of federal carceral facilities through the Correctional Service of Canada (“CSC”), and both entities are represented in this matter by the named defendant, the Attorney General of Canada.
7. CSC is a federal agency within the Government of Canada’s Public Safety portfolio, mandated with the custody, care, and supervision of federal inmates.
8. CSC’s Commissioner is the senior executive officer of the organization and is accountable to the Minister of Public Safety and Emergency Preparedness Canada.
9. 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.
10. The *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the “CCRA”) and *Corrections and Conditional Release Regulations*, S.O.R. 92-620 (the “CCRR”) form

the legislative basis of CSC, setting out its responsibilities and the principles which must guide its actions.

11. As set out in s. 3 of the *CCRA*, CSC must contribute to the maintenance of a just, peaceful and safe society, by carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders.

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

13. Mission Institution falls under the administration of the Pacific Region of CSC, which consists of the province of British Columbia and the Yukon Territory.

14. CSC appoints and employs corrections officers and other staff to carry out the duties and obligations of operating and administering its carceral institutions ("CSC Staff").

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

The COVID-19 Pandemic

16. In late 2019 and early 2020, a novel coronavirus began to spread worldwide, resulting in a significant risk to public health in Canada due to the infectiousness of the virus and the severity of COVID-19, the disease caused by the virus.

17. The Class, as incarcerated persons, are particularly vulnerable to harm as a result of the COVID-19 Pandemic, as they were at all material times entirely dependent on CSC and CSC Staff for the necessities of life, including healthcare.

~~18. CSC failed, at a systemic level, to prepare for and respond to the COVID-19 Pandemic, despite obvious, foreseeable risks of harm. This results from CSC's failure to develop and implement, effectively or at all, operational strategies including by failing to:~~

- ~~a. take any adequate steps to mitigate the spread of infection within CSC facilities prior to widespread transmission of COVID-19 among the Class and CSC Staff, as particularized below and in paras. 18A-18R;~~
- ~~b. address longstanding issues of overcrowding and a lack of access to sufficient healthcare (as defined in para. 18E, below) in CSC facilities, both before and during the Class Period;~~
- ~~c. maintain an adequate supply of personal protective equipment ("PPE"), such as gloves, masks, and sanitizing agents, both before and during the Class Period;~~
- ~~d. distribute adequate PPE to the Class and CSC Staff, and failing, in a timely manner or at all, to mandate use of PPE at CSC facilities, both before and during the Class Period;~~
- ~~e. adequately sanitize CSC facilities to prevent the spread of COVID-19 among the Class and CSC Staff during the Class Period;~~
- ~~f. prepare facilities to safely and humanely effect quarantines for symptomatic or infected persons, both before and during the Class Period;~~
- ~~g. provide for sufficient social distancing among members of the Class and CSC Staff during the Class Period;~~

- ~~h. restrict access to communal spaces and other high-risk areas of CSC facilities, such as kitchens, where people must congregate in close proximity during the Class Period;~~
- ~~i. educate the Class and CSC Staff about appropriate protocols for avoiding transmission of COVID-19 during the Class Period, and educate the Class and CSC Staff about appropriate protocols for avoiding transmission of infectious disease generally before and during the Class Period;~~
- ~~j. implement or mandate adequate, timely testing for the Class, and for CSC Staff, and by relying on testing in the community for CSC Staff during the Class Period;~~
- ~~k. cease transfers of members of the Class between facilities, or cease instances of CSC Staff attending at multiple CSC facilities during the Class Period;~~
- ~~l. use available measures such as temporary release of low-risk or vulnerable members of the Class to ease overcrowding in CSC facilities, both before and during the Class Period;~~
- ~~m. permit CSC Staff to self-isolate or self-quarantine, including by directing CSC Staff to work at CSC facilities at times when those persons were awaiting test results for COVID-19 or were subject to self-isolation according to provincial or federal criteria during the Class Period; and~~
- ~~n. maintain adequate staffing levels or resources to maintain the health, safety, and residual freedoms or privileges of the Class, before and during the Class Period; and~~

- o. ~~failing to provide the necessities of living, such as adequate meals during the Class Period~~

~~(collectively, the “Systemic Failures”).~~

~~18A. In addition to the Systemic Failures identified above, the plaintiff alleges additional Systemic Failures, as CSC also failed at a systemic level to develop and implement, effectively or at all, operational strategies to:~~

~~a. conduct hazard assessments to identify particular risks for COVID-19 transmission within CSC Facilities during the Class Period;~~

~~b. conduct hazard assessments before the Class Period to identify risks associated with infectious disease transmission within CSC Facilities;~~

~~c. develop and implement policies, codes, guidelines, management, and operations procedures to protect the Class against infectious disease outbreaks such as the COVID-19 Pandemic, both before and during the Class Period;~~

~~d. ensure that Class members who tested positive for COVID-19 were not brought into contact with Class members or CSC Staff who had not tested positive;~~

~~e. ensure that any CSC Staff or visitors who tested positive for COVID-19, exhibited or experienced symptoms related to COVID-19, and/or had traveled outside of Canada within the previous 14 days, or had close contact with a person in relation to whom any of the foregoing applied, was not permitted to enter a CSC Facility for at least 14 days thereafter;~~

~~f. ensure that scheduled health care procedures were not cancelled as a result of the COVID-19 Pandemic, particularly due to shortages of CSC Staff and PPE or COVID-19 outbreaks;~~

~~g. “contract trace” instances of COVID-19 infection among Class members or CSC Staff;~~

~~h. provide Class members who exhibit any symptoms associated with COVID-19 with access to additional fluids;~~

~~i. preclude Class members from being “double bunked,” or ensure that only one inmate is housed in each cell;~~

~~j. provide all Class members with meaningful opportunity to access exercise, shower, and telephone amenities, or to prevent the cancellation of access to such amenities due to shortages of CSC Staff and PPE or COVID-19 outbreaks;~~

~~k. provide opportunities for Class members to leave their cells for periods greater than 20 minutes per day;~~

~~l. foster interaction between Class members and community supports such as family, chaplains, and/or legal advisors, or to prevent shortages of CSC Staff and PPE or COVID-19 outbreaks from causing the cancellation of access to such amenities;~~

~~m. establish designated areas of CSC Facilities for Class members infected with COVID-19;~~

~~n. ensure that CSC Staff who care for Class members who have tested positive for COVID-19 infection do not interact with other Class members;~~

~~o. ensure that Class members continue to have access to nutritious food;~~

~~p. conduct daily temperature checks of all Class members and CSC Staff;~~

~~q. ensure that Class members being released from CSC Facilities have access to healthcare and have sufficient resources to appropriately self-isolate;~~

~~r. employ high efficiency particulate air filtration systems, or other steps to mitigate or prevent the spread of COVID-19 infection through ventilation;~~

~~s. ensure that quarantined Class members were not held in areas of CSC Facilities used for solitary confinement or in conditions akin to administrative segregation or solitary confinement;~~

~~t. ensure contingency plans identify additional measures, including external resources, that may be employed during emergencies;~~

~~u. ensure that at least one exercise is conducted every 12 months to test the effectiveness of contingency plans and to give CSC Staff the necessary practice in their respective roles in the event of an operational emergency;~~

~~v. ensure staff follow processes and share information in responding to medical emergencies pursuant to GL 800-4—Response to Medical Emergencies;~~

~~w. enforce compliance with its COVID-19 policies among CSC Staff and Inmates;~~

~~x. inspect and confirm, before and during the COVID-19 Pandemic, that CSC Facilities have the capacity, resources, staffing, and equipment to deal with infectious disease outbreaks such as the COVID-19 Pandemic;~~

~~y. obtain independent verification, audits, inspection, or testing of CSC policies by outside expert bodies, before and during the COVID-19 Pandemic, to ensure sufficiency of CSC policies regarding infectious disease outbreaks, and compliance of procedures with appropriate public health guidance;~~

~~z. prevent inmates infected or suspected to be infected with COVID-19 from engaging in culinary work;~~

~~aa. institute sufficient respiratory hygiene, hand hygiene, and cough etiquette programs;~~

~~ab. develop a sufficient or any emergency staffing plan;~~

~~ac. develop sufficient or any plans for stockpiling and distributing PPE and other infection control supplies, before and during the COVID-19 Pandemic;~~

~~ad. educate inmates and staff about the signs and symptoms of COVID-19 infection so as to better screen and identify suspected cases~~

~~ae. carry out sufficient emergency planning; and/or~~

~~af. ensure an appropriate response capacity to emergencies, including the COVID-19 Pandemic.~~

~~18B. In paragraphs 18 and 18A, where reference is made to steps that ought to have been taken before the Class Period or the COVID-19 Pandemic, this means~~

sufficiently prior to the Class Period that the step or steps would have been effective in mitigating the impacts of COVID-19 on Class members. Where no reference to the timing of a step or steps is made, this means that the step or steps ought to have been taken during and throughout the Class Period.

18C. "Widespread transmission" means a high rate of infection among the Class and CSC Staff, occurring at all CSC Facilities throughout the Class Period.

18D. "Overcrowding" means Class members incarcerated in high-density circumstances, encompassing situations where:

a. the inmate occupancy level of a CSC Facility exceeds the official capacity of that facility; and/or

b. the practical capacity of that facility, taking into account the needs and security classifications of the inmate population as an aggregate, communal resources for inmates, space in the facility, and staffing levels.

18E. "Lack of access to sufficient healthcare" encompasses the failure to provide "essential health care" and "reasonable access" to "non-essential health care" as defined under s. 86(1) of the CCRA. This occurred throughout the Class Period at all CSC Facilities, and is particularized as follows:

a. inadequate medical staff at CSC Facilities, encompassing nurses, paramedics, physicians, and mental health practitioners;

b. inadequate medical resources at CSC Facilities, encompassing sufficient supplies of PPE, medications, medical devices, and medical equipment;

c. cancellation of scheduled healthcare treatments;

~~d. failure to provide treatment, whether for COVID-19 or other conditions, encompassing prescription medication, therapeutic diets, and other therapies, due to shortages of CSC Staff, healthcare providers, and supplies, or COVID-19 outbreaks;~~

~~e. inadequate testing for COVID-19 and COVID-19 symptoms, encompassing throat swabs, nasal swabs, saliva testing, antibody testing, screening questions, and temperature checks, due to lack of training, an operational failure to deploy testing, shortages of CSC Staff, healthcare providers, and supplies;~~

~~f. inability or refusal to medically isolate Class members infected or suspected to be infected by COVID-19; and/or~~

~~g. failure to provide appropriate living environments to facilitate Class members' access to health care due to shortages of CSC Staff, healthcare providers, and supplies, or COVID-19 outbreaks;~~

~~h. inadequate mental health supports due to shortages of CSC Staff, healthcare providers, and supplies, or COVID-19 outbreaks; and/or~~

~~i. as a result of the above, and on an aggregate, systemic level, departing from professionally accepted standards in relation to healthcare provided to Class members, contrary to s. 86(2);~~

~~18F. By "adequate supply" of PPE, the plaintiff means sufficient supply of PPE to prevent or mitigate the Systemic Failures, and to ensure that the living and working conditions of Class members are safe, healthful, and free of practices that undermine their sense of personal dignity. PPE consists of gloves, gowns, masks, eye~~

protection, sanitizer, sterilizer, and soap. At no time during the Class Period were these items adequately supplied to Class members or CSC Staff.

18G. “Timely” means that these steps should have been taken sufficiently prior to the Class Period that they would have been effective in mitigating the impacts of the COVID-19 Pandemic on the Class, and also throughout the Class Period. The PPE items “to which the plaintiff refers” are particularized in the preceding paragraph of this document.

18H. “Adequately sanitize” means sufficient cleaning of areas, items, and surfaces in CSC Facilities between uses so as to prevent or mitigate the transmission of COVID-19. Sanitization must be conducted using appropriate disinfectant cleaners, which have proven efficacy against coronaviruses, each time an area, item, or surface is used by a different person, and at regular intervals otherwise.

18I. “Sufficient social distancing” means maintaining a minimum distance of two metres between persons at CSC Facilities. CSC failed to provide sufficient physical space to permit social distancing among Class members and CSC Staff, failed to educate about or mandate social distancing, and failed to implement measures to depopulate CSC Facilities to facilitate social distancing. The defendant also failed to isolate Class members who tested positive for COVID-19 from other Class members. These steps should have been taken at all CSC Facilities.

18J. “Adequate testing” means the tests particularized at paragraph 18E(e) of this document, and means sufficient testing for COVID-19 and COVID-19 symptoms so as to identify Class members, CSC Staff, or visitors infected with COVID-19, or those with a high index of suspicion for COVID-19 infection, and isolate these persons from others or prevent them from entering CSC Facilities so as to facilitate treatment, mitigate transmission of COVID-19 to others, and enable contact tracing to be performed.

18K. “Low-risk members of the Class” means inmates:

- i. with low risk profiles for re-offending;
- ii. presenting little or no threat to the safety of the public;
- iii. with imminent release dates, and/or
- iv. requiring little or no degree of supervision.

18L. “Vulnerable members of the Class” means inmates who because of age and/or underlying health conditions are particularly susceptible to:

- i. infection by COVID-19;
- ii. the health consequences of COVID-19 infection; and/or
- iii. the psychological impacts of incarceration during the COVID-19 Pandemic.

18M. “Temporary release” means temporary absences as defined under ss. 17 and 116 of the CCRA. The other “available measures” known to the plaintiff at this time are parole granted in “exceptional cases” under s. 121(1), early release under s. 93(2), work release under s. 18 of the CCRA, and any other method for effecting depopulation of CSC Facilities in response to an infectious disease pandemic. CSC’s failure to provide rehabilitative and educational programming during the Class Period delayed Class members’ release from CSC Facilities due to non-completion of programs, non-compliance with correctional plans, and/or parole ineligibility.

~~18N. “Adequate staffing levels” means sufficient CSC Staff working at CSC Facilities to:~~

- ~~—— i. prevent or mitigate the Systemic Failures;~~
- ~~—— ii. ensure that the living and working conditions of Class members are safe, healthful, free of practices that undermine their sense of personal dignity; and/or~~
- ~~—— iii. preclude the need for CSC Staff to work at multiple facilities.~~

~~18O. “Adequate resources” means sufficient PPE, physical space, communal resources such as showers, kitchens, bathrooms, telephones, computers, and recreation areas, education, protocols, and policies, COVID-19 tests, and access to healthcare to:~~

- ~~i. prevent or mitigate the Systemic Failures; and~~
- ~~ii. ensure that the living and working conditions of Class members are safe, healthful, and free of practices that undermine their sense of personal dignity.~~

~~18P. “Necessities of life” includes adequate meals and means access to healthcare and other basic needs: personal care items, appropriate recreation and interaction with other human beings, and a safe, healthful working and living environment free of practices that undermine Class members’ sense of personal dignity.~~

~~18Q. “Adequate meals” means regular, healthful meals which satisfy nutritional (i.e. Canada’s Food Guide) and food safety (i.e. the Food Safety Code of Practice) standards, and which respect the therapeutic, religious, or conscientious dietary requirements of Class members. These meals ought to be served each day at~~

appropriately scheduled times (i.e. no less than four but no more than five hours apart).

18R. In paragraphs 18-18Q, "operational strategies" means the issuance of decisions, orders, directions, training, guidance, requirements, practices, policies, or procedures regarding the administration or operation of CSC Facilities at a systemic level.

~~19. As a result of the Systemic Failures:~~

~~a. COVID-19 transmitted rapidly and rampantly among the Class, resulting in injury and in some cases death of those infected;~~

b. CSC implemented draconian measures ~~to contain~~ during the COVID-19 Pandemic in its facilities, severely restricting the rights of the Class, infected and otherwise, such as:

- i. cancellation of visits to the Class from 13 March 2020 onward;
- ii. complete lockdown of Class members in isolation for 20 to more than 23 hours per day or more in some CSC Facilities (commenced at Mission Institution on 01 April 2020) at various times, with the full extent of these lockdowns being within the knowledge of CSC, and further particulars to be provided when they are known to the plaintiff;
- iii. ~~providing fewer than the required three meals per day to the Class;~~
- iv. ~~closure of canteens at CSC facilities;~~

- v. restriction and cancellation of educational, religious, and cultural programming;
- vi. restriction and cancellation of healthcare services;
- vii. restricting hygiene and exercise to 15 minutes per day, or less, for the Class; and
- viii. ~~using tear gas, rubber bullets, percussion grenades, and other forceful means to quell unrest at CSC facilities, which itself results from the Systemic Failures as well as the restriction of the rights of the Class;~~

(collectively, the “Rights Restrictions”); and

- c. the Class, including those not infected with COVID-19, suffered severe and prolonged psychological disturbance, ~~both as a result of the Rights Restrictions and as a result of close quarters incarceration in the context of CSC’s mismanaged response to the COVID-19 Pandemic;~~

~~all of which could have been mitigated or avoided altogether in the absence of the Systemic Failures.~~

19A. Mr. Lloyd ~~experienced all of the Systemic Failures and~~ was subject to the Rights Restrictions during his incarceration at the Mission Institution during the COVID-19 Pandemic, including confinement to his cell for greater than 20 hours per day for a period exceeding 15 days, and suffered harms as a result, particularized below.

19B. Mr. Roberts ~~experienced all of the Systemic Failures and~~ was subject to the Rights Restrictions during his incarceration at the Mission Institution during the

COVID-19 Pandemic, including confinement to his cell for greater than 20 hours per day for a period exceeding 15 days, and suffered harms as a result, particularized below.

19C. Mr. Roberts has been continuously incarcerated by CSC since January 1995.

19D. Beginning in late 2019 and early 2020, Mr. Roberts became aware of a new virus, which came to be called COVID-19. In January 2020, he learned that it was spreading between humans in China.

19E. In February 2020 Mr. Roberts was elected Chairman of the Inmate Wellness Committee at Mission Medium Institution.

19F. No steps were taken to prepare for COVID-19 at Mission Medium Institution prior to March 13 2020, when CSC's Commissioner cancelled all in-person visits at all CSC Institutions in Canada.

19G. On April 2 2020, Mission Medium Institution entered a "lockdown" state during which Inmates were confined to their cells. An internal announcement informed Inmates that COVID-19 cases had been identified in the institution and the confinement related to transmission risk management in response to the COVID-19 outbreak.

19H. Mr. Roberts contracted COVID-19 while at Mission Medium Institution, and was hospitalized as a result from April 7-11 2020.

19I. Mission Medium Institution remained under lockdown conditions when Mr. Roberts returned from hospital on April 11 2020. At that time, Inmates received a total of approximately 20 minutes out of their cells per day for cleaning, personal hygiene, and telephone calls. During this period:

a) CSC Staff sometimes missed or failed to provide Inmates with the 20-minutes of out-of-cell time;

b) Inmates received no fresh air or exercise in the yard during the 20-minutes of out-of-cell time referenced above; and

c) Inmates began to exhibit outward signs of mental deterioration and/or decompensation.

19J. The mental deterioration and decompensation referred to in the preceding paragraph includes:

a) self-harm, including the infliction of cuts and bruises, the sewing shut of an Inmate's lips;

b) intensification of symptoms of mental illness;

c) acting out, including by refusing to comply with orders from CSC Staff; and

d) development of mental illness symptoms, such as irritability, frustration, emotional lability, cognitive dysfunction, anxiety, depression, and/or suicidality.

19K. Mr. Roberts on several occasions raised concerns regarding deterioration or decompensation of Mission Medium Institution Inmates during the lockdown conditions to CSC Staff, including management employees, as well as to third parties such as the Office of the Correctional Investigator and Prisoners' Legal Services.

19L. On May 14 2020 Warden Shawn Huish declared that Mission Medium Institution was free of COVID-19. However, the lockdown conditions that had been instituted in response to the COVID-19 outbreak remained.

19M. In June 2020 Mr. Roberts and other Mission Medium Institution Inmates began receiving, for the first time since lockdown conditions began in early April 2020, access to fresh air and the outdoors: 45 minutes per Inmate per week, in addition to 20-minutes of out-of-cell time.

19N. Mr. Roberts' and other Mission Medium Inmates' out-of-cell time and yard time were gradually increased between June 15, 2020 and July 12, 2020. From April 2, 2020 to June 15, 2020 the institutional routine at Mission Medium Institution, which had been modified in response to COVID-19, called for all Inmates to be confined in their cells for between 22.25 and 24 hours per day.

19O. Mr. Roberts and other Mission Medium Institution Inmates were again subjected to lockdown conditions, limited to 20 minutes out-of-cell per day, in response to a subsequent COVID-19 outbreak between July 15-25, 2022, which resulted in similar experiences of mental decompensation and deterioration, as particularized above at para. 19J.

19P. Other CSC Institutions have imposed similar lockdown conditions on Inmates in response to COVID-19 outbreaks, resulting in similar experiences of mental decompensation and deterioration, as particularized above at para. 19J.

20. The ~~Systemic Failures~~ Rights Restrictions caused injury, damage, and loss to the Class, the particulars of which include:

- a. emotional, psychological, and psychiatric injury, or aggravation thereof, or both;
- b. physical injury, or aggravation thereof, or both;
- c. injury to dignity;
- d. human rights violations;
- e. pain and suffering;

- f. loss of amenities of life;
- g. loss of enjoyment of life;
- h. cost of medical and other treatment and care, past and future; and
- i. loss of earnings or earning capacity, past and future;-
- j. self-harm as a result of serious and prolonged emotional disturbance;
- k. delays in the delivery and administration of vaccines;
- l. missed court dates;
- m. stalled disciplinary processes;
- n. remaining in higher levels of security or at assessment centres for longer periods, with harsher conditions of confinement;
- o. reversion from Structured Intervention Units to conditions resembling administrative segregation; and
- p. delay or regression in release planning and community reintegration due to lack of programming in CSC Facilities.

21. At all material times, harm to the Class was foreseeable to and foreseen by CSC, which knew or ought to have known that:

- a. infectious diseases such as COVID-19 posed a risk of harm to Class members, whether directly through infection by disease, or indirectly via

restrictive measures implemented to contain the spread of disease and/or apprehension of infection by disease;

b. it was subject to duties under the CCRA, including:

i. pursuant to s. 70, to take all reasonable steps to ensure that the living and working conditions of Class members are safe, healthful, and free of practices that undermine their sense of personal dignity; and

ii. pursuant to s. 36 of the CCRA, to provide Class members with the opportunity to spend a minimum of four hours outside the inmate's cell, and the opportunity to interact, for a minimum of two hours, with others;

iii. pursuant to s. 87, to take into consideration each Class member's state of health and health care needs in relation to all decisions affecting that Class member;

c. infectious diseases such as COVID-19 pose a particular risk to the Class, who, as persons incarcerated in CSC institutions:

i. are held in close proximity with other inmates and CSC Staff;

ii. as a population are less physically and/or mentally healthy than persons outside of prisons;

iii. are more likely than persons outside of prisons to suffer from substance use disorders;

iv. have reduced access to healthcare; and

v. are particularly vulnerable to the spread of disease, the imposition of restrictive measures to contain disease, or the psychological impacts of the COVID-19 Pandemic;

~~d. there were means available, before and during the COVID-19 Pandemic, to prepare for and respond to the COVID-19 Pandemic which would significantly mitigate or eliminate altogether the risk of harm posed to members of the Class; and~~

~~e. by failing to adequately prepare for or respond to infectious disease pandemics, including the COVID-19 Pandemic, the defendant created risks of harm to the Class about which it knew or ought to have known, encompassing the types of harms and consequences alleged above.~~

Part 2: RELIEF SOUGHT

1. Mr. Roberts Lloyd and the Class seek:

- a. appointment of the Plaintiff as representative plaintiff for the Class, pursuant to s. 2 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
- b. damages pursuant to s. 24 of the *Charter*;
- c. damages for loss of dignity and violation of human rights;
- d. general damages;
- e. special damages;
- f. damages for future cost of care;
- g. damages for loss of earnings or earning capacity, past and future;
- h. aggravated damages;

- i. punitive damages;
- j. in-trust damages;
- k. special costs;
- l. interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79, and amendments thereto; and
- m. such further and other relief as to this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. CSC owes the Class a common law duty of care ~~and a fiduciary duty~~, which it breached ~~through the Systemic Failures, including~~ by:
 - a. failing to meet the standard of care required of an operator and administrator of correctional institutions or the standard of care required of corrections officers;
 - b. failing to take any care, or in the alternative, any reasonable care to ensure that the Class would be reasonably safe;
 - c. acting with reckless disregard to the safety of the Class;
 - d. exposing the Class to risks of damage or injury of which the defendant knew or ought to have known;
 - e. failing to adequate access to healthcare for the Class;
 - f. violating the *Charter* rights of the Class;
 - g. acting in contravention of the *CCRA* and *CCRR*; and

- h. failing to have any policies, or in the alternative, any reasonable policies in place concerning the above, and failing to implement any such policies.

1A. The applicable standard of care required CSC to develop and implement effective operational strategies ~~to prepare for and respond to the COVID-19 Pandemic, and to prevent, avoid, or mitigate the Systemic Failures, which duties arise from or are~~ commensurate with its obligations:

- a. to take all reasonable steps to ensure that CSC Facilities and environments, and the living and working conditions of Class members are safe, healthful and free of practices that undermine a person's sense of personal dignity (CCRA, s. 70);
- ~~b.~~
- c. to provide every Class member with essential health care and reasonable access to non-essential health care (CCRA, s. 86);
- d. to consider Class members' state of health and health care needs in all decisions affecting Class members (CCRA, s. 87);
- e. to act impartially and diligently in accordance with the *Mission of the Correctional Service of Canada (Corrections and Conditional Release Regulations, SOR/92-620, s. 3(b) (the "CCRR")*);
- f. to promote relationships between the Class members and the community, family, friends, and persons from outside the penitentiary (CCRA, 71(1));
- g. to take reasonable steps to prevent, avoid, or mitigate the harms and consequences alleged by the plaintiff;
- h. to lawfully justify the imprisonment of the Class in relation to deprivations of their residual liberties;

- i. to take reasonable care for his safety as a person in their custody and it is only if the prison employees failed to do so that the Crown may be held liable” (*MacLean v. R.*, [1973] S.C.R. 2);
- j. regarding the care and custody of Class members (CCRA, s. 5(a));
- k. to ensure that its premises are reasonably safe under occupiers' liability legislation and the common law;
- l. to provide opportunities for Class members to spend a minimum of four hours outside their cells in a day, and the opportunity to interact with others for a minimum of two hours in a day (CCRA, s. 36);
- m. to allow Class members meaningful opportunities to make any meaningful contribution to decisions affecting the inmate population as a whole (CCRA, s. 74);
- n. to provide Class members’ reasonable opportunities to freely and openly participate in religion and spirituality (CCRA, s. 75);
- o. to provide a range of programs designed to address the needs of Class members, and contribute to their successful reintegration into the community (CCRA, s. 76);
- p. to provide programs designed to address the needs of Indigenous Class members (CCRA, s. 80);
- q. to release certain Class members from penitentiaries upon statutory release or expiration of sentence (CCRA, s. 93(1);

- r. pursuant to the purpose stipulated under s. 3 and the guiding principles enumerated under s. 4 of the CCRA; and
- s. to ensure a safe and healthful penitentiary environment (CCRR, s. 83(1)).

1B. The duty of care owed to Class members flows from:

- a. the relationship of proximity between CSC and the Class members, as it was foreseeable that carelessness on the part of CSC or CSC staff would likely cause damage to Class members, who are persons entirely reliant on CSC and CSC Staff for all of their necessities of life while incarcerated;
- b. at all material times, CSC was fixed with knowledge of a clear, present, and significant danger to the Class, in relation to the COVID-19 Pandemic and other infectious disease pandemics;
- c. at material times, CSC represented to the Class that it was responsible for and would ensure that Class members' living conditions were at all material times safe, healthful, and free of practices that undermined their personal dignity. At all times, these representations were made systemically, through communiques, pamphlets, signage, Commissioners' Directives, and/or other written materials delivered to all Class members.
- d. At material times, CSC represented to Class members that it had and would continue to take steps in relation to the COVID-19 Pandemic to maintain a safe and secure environment, to prevent the spread of COVID-19 in CSC Facilities, and to limit the risk to the Class. At all times, these representations were made systemically, through communiques, pamphlets, signage, or other written materials delivered to all Class members.

- e. The ~~COVID-19 Pandemic, the Systemic Failures, and the~~ Rights Restrictions each posed a clear and foreseeable risk of harm to Class members;
- f. At all material times, CSC Staff and the other entities which owed duties of care to the Class were acting within the scope or course of their employment with CSC.
- g. The defendant is vicariously liable for the acts or omissions of CSC and CSC Staff.
- h. The law imposes a duty on the defendant to justify any deprivation of the liberty of Class members (*Frey v. Fedoruk et al.*, [1950] S.C.R. 517, at p. 523); and/or
- i. The defendant exercises power over the Class, who are persons entirely dependent on the defendant for all necessities of life while incarcerated. This encompasses the statutory power to make decisions affecting Class members, as recognized by s. 87 of the CCRA. This power may be exercised unilaterally by the defendant, and the Class members are vulnerable to that exercise of power.

1C. The fiduciary duty owed to the Class also flows from the grounds particularized in the preceding paragraph, and requires that CSC:

- a. take into consideration Class members' state of health and health care needs in making decisions which affect them, including at the aggregate and systemic level alleged in this pleading; and

- b. refrain from any exercise of power which detracts from the safety, health, or sense of personal dignity of the Class.

1D. CSC undertook to act in accordance with a duty of loyalty with regard to the best interests of Class members in protect ing the health, safety, and well being of Class members in CSC Facilities, and contravened that undertaking through the Systemic Failures.

1E. The Systemic Failures constitute acts and omissions which violate the fiduciary duty owed by the defendant to the Class, as the defendant prioritized their own interests, including reduced spending and staffing costs, in a manner which negatively affected Class members' legitimate practical and legal interests, resulting in injuries, damages, and loss.

1F. The defendant violated its fiduciary duty through systemic, operational, and procedural acts and omissions, or in the alternative at the policy making level, which placed the defendant's interests ahead of the interests of Class members by:

i. privileging the health and well being of CSC Staff ahead of Class members in relation to COVID-19, resulting in greater infection among Class members, as well as extensive restriction of their freedoms; and

ii. saving time, expense, and effort by ignoring, delaying, or failing to take adequate steps to prepare for and respond to COVID-19.

2. The Systemic Failures CSC violated the *Charter* rights of the Class as CSC:

- a. subjected the Plaintiff and the Class to cruel and unusual treatment or punishment contrary to s. 12 of the *Charter*, particularly through the Rights Restrictions;

- b. deprived the Plaintiff and the Class of the rights to liberty and security of the person in a manner out of accordance with the principles of fundamental justice contrary to s. 7 of the *Charter*. The Rights Restrictions imposed serious, prolonged psychological distress and interfered with the health of Inmates in a manner which was arbitrary, overbroad, and grossly disproportionate; and
 - c. Charter damages are an appropriate remedy for the above-noted breaches of the Charter, in the event that damages are not available under the other causes of action pleaded by the plaintiff, and because they fulfill the functions of:
 - i. compensation for the harm caused by the Systemic Failures, and the disregard for the rights, dignity, and basic human needs of Class members;
 - ii. vindication in relation to the breaches of Class members' rights;
 - iii. deterrence of future breaches by the defendant, which takes on enhanced importance in light of its ongoing role in incarcerating persons and the likelihood of future pandemics, or a recurrence of the COVID-19 Pandemic.
3. Through the ~~Systemic Failures Rights Restrictions~~, CSC engaged in high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.

~~3A. At all material times, CSC knew that infectious disease outbreaks posed a significant and disproportionate risk to Class members, due to the nature of incarceration and Class members' total dependency on CSC for all necessities of daily living. Prior to the discovery of COVID-19, the defendant knew or ought to have known about the recurrent and increasing risks of infectious disease outbreaks, given~~

~~previous such events, and the risk factors associated with CSC Facilities. CSC thus knew that it needed to take steps to protect Class members against infectious disease outbreaks, including COVID-19.~~

3B. Despite being fixed with the knowledge, and despite the substantial power CSC wields over Class members and the conditions in CSC Facilities, CSC failed to act to protect Class members' health, safety, and dignity in relation to the COVID-19 Pandemic, and engaged in the Systemic Failures particularized above. In so doing, CSC recklessly or wilfully contravened its duty to protect Class members, and thus acted in bad faith, and in a manner deserving of rebuke. For greater certainty, CSC's conduct in this regard gives rise to a right to punitive damages, since, in addition to the matters pleaded in this paragraph and para. 3A, above:

a) CSC's conduct constitutes wilful, or alternatively reckless or wilfully blind conduct by CSC with regard to the harms to Class members;

b) CSC's conduct constitutes gross negligence, i.e. a substantial departure from the recognized duty of care, which was high-handed and callous to the well-being of Class members;

c) CSC knew that the ~~Systemic Failures would lead to~~ lengthy lockdown-type conditions and arbitrary deprivations of residual liberty ~~of the sort which~~ had received the condemnation of the Courts in other legal proceedings, and nonetheless failed to take steps to prevent that from occurring;

~~d) CSC received and ignored warnings prior to the COVID-19 Pandemic about the Systemic Failures, and its inability to respond, adequately or at all, to an event of that nature;~~

e) CSC received and ignored warnings during the COVID-19 Pandemic ~~of that the Systemic Failures were resulting in~~ harm to Class members, due to the spread of

COVID-19 infection, and due to the consequences of deprivations of residual liberties resulting from the imposition of lockdown-type conditions;

f) CSC exposed Class members to lockdown-type conditions for longer than 15-days, a practice internationally recognized as torture; and

g) an award over and above compensatory damages to the Class is necessary to deter conduct associated with the Systemic Failures, both generally and specifically by CSC.

3C. CSC's conduct amounts to misfeasance in public office, as CSC deliberately disregarded its statutory obligations regarding Class members by engaging in the Systemic Failures, and was aware at all material times that harm would result from this. CSC proceeded despite its knowledge of harm, and as such acted wilfully, or in the alternative, recklessly or with wilful blindness. For greater clarity, this tort is advanced both as a claim of direct liability against CSC, and, in the alternative, on the basis of CSC's vicarious liability for individual office holders. The plaintiff identifies the individuals responsible, to the extent that they are known to the plaintiff at this time, as follows:

a) the organizational branch or office of CSC referred to as "National Headquarters" or NHQ (in respect of the matters pleaded at paras. 18 and 18A of the Notice of Civil Claim);

b) additionally or in the alternative, the Commissioner (in respect of the matters pleaded at paras. 18 and 18A of the Notice of Civil Claim);

c) additionally or in the alternative, the Assistant Commissioner, Health Services (in respect of the matters pleaded at paras. 18 and 18A of the Notice of Civil Claim);

d) additionally or in the alternative, the Regional Deputy Commissioners, Chiefs of Health Services, and Regional Managers, Public Health for each of the regions in

~~which GSC operates facilities (in respect of the matters pleaded at paras. 18 and 18A of the Notice of Civil Claim); and~~

~~e) additionally or in the alternative, Wardens and/or Institutional Heads of all GSC facilities (in respect of the matters pleaded at paras. 18 and 18A of the Notice of Civil Claim).~~

4. The Plaintiff pleads and relies on:

- a. the common law regarding claims in negligence and for misfeasance in public office, and the law of equity regarding the claim for breach of fiduciary duty;
- 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. the *Class Proceedings Act*;
- d. the *CCRA*;
- e. the *CCRR*;
- f. the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50; and
- g. such further and other statutes or authorities as counsel may advise.

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Email address for service: service@achesonlaw.ca

Place of Trial: Victoria, British Columbia

The Address of the Registry is: 800 Smithe Street
Vancouver, BC

DATED: 24 April 2020

~~AMENDED: 21 September 2022~~

~~AMENDED A SECOND TIME: 07 September 2023~~

~~AMENDED A THIRD TIME: November 24 2023~~

AMENDED A FOURTH TIME: March 14, 2024

FIFTH AMENDMENT: October 3, 2024

"RAJINDER SAHOTA"

RAJINDER S. SAHOTA

PATRICK DUDDING

Lawyers for the Plaintiff

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

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

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

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

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

b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Government of Canada, in violation of its duties and the human rights of federal inmates, failed to adequately prepare for and respond to the COVID-19 pandemic which began in early 2020, despite obvious, foreseeable risks of harm. These systemic failures resulted in ~~loss of life, in widespread illness with permanent consequences, in~~ unprecedented restrictions of inmates' rights, ~~and in damage to the public health.~~ The plaintiff, on his own behalf and on behalf of a proposed class of inmates, seeks remedies in relation to these wrongs.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

☒ another cause

A dispute concerning:

☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

☒ a class action

☒ constitutional law

Part 4:

Canadian Charter of Rights and Freedoms, R.S.C. 1985, App. II, No. 44, Schedule B

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

Corrections and Conditional Release Act, S.C. 1992, c. 20