AMENDED THIS 27 JUNE 2022 PURSUANT TO
MODIFIÉ CONFORMÉMENT À
Electronically filed / Déposé par voie électronique : 27-Jun-2022
Toronto Superior Court of Justice / Cour supérieure de justice
☑ RULE/LA RÈGLE 26.02 (B)
☐ THE ORDER OF
L'ORDONNANCE DU
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Gerri Findlay Digitally signed by Gerri Findlay Date: 2022.07.19 12:07:52 -04'00'
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.: CV-20-00643396-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

MICHAEL FARRELL and KIMBERLY MAJOR

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:	Issued by:	______________________ Local Registrar
	Address of court office:	393 University Avenue, 10th floor Toronto, Ontario M5G 1E6

TO: **THE ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1

CLAIM

Overview

1. This proposed class action concerns individuals strip searched by the defendant in violation of federal legislation.

2. The *Corrections and Conditional Release Act* ("*CCRA*") limits suspicionless strip searches to "situations in which the inmate has been in a place where there was a likelihood of access to contraband."[1] However, the defendant is regularly conducting suspicionless strip searches in four situations that do not meet this prerequisite: when leaving a prison, leaving or entering a secure area, entering a family visitation area, and in prison-to-prison transfers. Although this is purportedly authorized by the regulations, it is clearly contrary to the *CCRA*. The plaintiffs seek to end these illegal strip searches and secure compensation and other remedies for the proposed class.

3. These are not trivial intrusions. The class members were forced to remove all of their clothing, bend over, spread open their buttocks, manipulate their genitalia, remove soiled tampons, and/or cough while squatting naked in front of others. All of their bodily orifices were inspected. These were conducted indiscriminately, without any suspicion of wrongdoing. The defendant has illegally strip searched the class members in the impugned situations hundreds of thousands of times and has thus violated their rights under the common law and the *Canadian Charter of Rights and Freedoms* ("*Charter*").

[1] *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 48.

Relief Claimed

4. The plaintiffs claim, on behalf of the class, for:

   a. Certification of this action as a class proceeding and related relief under the *Class Proceedings Act, 1992,* S.O. 1992, c. 6;

   b. Declarations regarding the lawful scope of suspicionless strip searches under the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("*CCRA*");

   c. Declarations that suspicionless strip searches in the impugned situations are tortious, *Charter* violations, and otherwise illegal;

   d. Declarations regarding infringements of rights under the *Charter* and otherwise;

   e. Declarations and orders regarding the expungement of records arising from strip searches in the impugned situations;

   f. Remedies under section 24 of the *Charter* for the *Charter* violations described below;

   g. Damages for the torts and *Charter* violations described herein in the amount of $800 million or any such amount that this Honourable Court deems just;

   h. Punitive and exemplary damages in the amount of $100 million or any such amount that this Honourable Court deems just;

   i. Special damages in an amount to be specified at a future date;

   j. Costs of this action on a substantial or full indemnity basis;

   k. Costs of notice and class administration;

l. Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

m. Such further and other relief as this Honourable Court deems just.

The Parties and Class

5. The plaintiff, Michael Farrell, is a 51-year-old father and grandfather.

6. The plaintiff, Kimberly Major, is a 55-year-old mother of four.

7. The plaintiffs bring this action pursuant to the *Class Proceedings Act, 1992* on their own behalf and on behalf of the following class: "all persons imprisoned in a federal penitentiary on or after June 18, 1992." In this pleading, "penitentiary" and "prison" mean a penitentiary as defined in the *CCRA.* June 18, 1992 is the date the *CCRA* first received royal assent. The plaintiffs propose that the date parameters for the class be set by the certification order or otherwise by court order. The plaintiffs retain the right to propose an amended class definition in the future, including in the certification motion materials.

8. The defendant, the Attorney General of Canada, is the name to be used in proceedings against the federal Crown relating to acts or omissions of employees or agents of the federal government, including the Correctional Service of Canada ("CSC").

Experiences of the Plaintiffs

Michael Farrell

9. Mr. Farrell was born on June 17, 1968. He was raised in a troubled family environment. He was removed from his family home before the age of ten and

shuffled between many foster homes. He suffered mental, physical, and sexual abuse in the child welfare system. He suffered particularly severe sexual abuse from one of his foster fathers as an 11-year-old.

10. As a young man, Mr. Farrell worked hard, formed relationships, and built a life for himself. He is the father of three grown children and the grandfather of four boys and one girl. He has worked as a truck driver and in various trades.

11. Mr. Farrell was prescribed opioids for back pain after an accident. This eventually turned into an addiction to illegal drugs. Mr. Farrell was incarcerated for drug-related offences. He pled guilty and takes responsibility for his actions.

12. While in federal prison, the defendant frequently forced Mr. Farrell to strip completely naked in front of others. Mr. Farrell was forced to bend over and spread open his buttocks so staff could inspect his anus. He was then ordered to touch, lift, and move his penis so that staff could look under and around it. At least two staff members were required to watch him throughout.

13. This experience was particularly traumatic for Mr. Farrell because of the sexual abuse he suffered as a child. When Mr. Farrell was forced to stand naked in front of other men, he relived the emotions of being abused as a child, such as powerlessness, humiliation, and shame. These emotions occurred immediately and lingered long afterwards, with different negative feelings coming to the fore at different times. Knowing this to be the case, Mr. Farrell fears strip searches and is anxious whenever he expects to be strip searched in the near future.

14. Mr. Farrell has been strip searched without individualized suspicion many times in the situations at issue in this action. In each case, he was not in a place where there was a likelihood of access to contraband. For example, Mr. Farrell was strip searched twice every time he was transferred from one prison to another – once when he left the first prison and again when he arrived at the second prison. In each case he was in secure custody throughout the transfer and had no opportunity to access contraband. These strip searches are particularly troubling because they are so unnecessary.

15. All of these invasive strip searches were contrary to federal legislation.

Kimberly Major

16. Ms. Major was born on August 7, 1964. She was raised in a good home by loving and caring parents. She was a good student and did well in school. However, unbeknownst to her parents, she was sexually abused as a very young girl, including by two teachers who molested her. She kept this secret for many years.

17. Ms. Major excelled in a career in sales and marketing. She started a family and had two children. After a divorce, she successfully provided for her family as a single mother. However, her life began to unravel in 1997 after she entered a new relationship that quickly became highly abusive. She was then beset with tragedy when her son died of cystic fibrosis at age 12. Her husband fractured her skull on multiple occasions and sexually abused her. He introduced her to drugs and she eventually became addicted to cocaine. She became involved in fraud with her husband, for which she was convicted and imprisoned.

18. Ms. Major has been strip searched without individualized suspicion many times in the situations at issue in this action. In each case, she was not in a place where there was a likelihood of access to contraband. For example, Ms. Major was strip searched when she left prison to attend medical appointments, to transfer to other prisons, and on release.

19. During these strip searches, Ms. Major was forced to allow each crevice and orifice of her naked body to be inspected by others. She was forced to actively facilitate this process. Ms. Major wears dentures because her jaw was broken by her abuser. She was required to remove it along with all of her clothes.

20. These strip searches were particularly traumatic for Ms. Major because of the sexual abuse she suffered as a child and an adult. As she would undress and stand naked, she would avoid all eye contact and stare at the ceiling. Her heart would race as intense emotions washed over her. She would feel completely worthless and unable to believe what was happening to her. She would try to take herself out of her body and imagine she was not there, reverting to the coping mechanism she used when her husband sexually abused her. These strip searches have caused deep emotional scars and exacerbated her pre-existing trauma.

21. Ms. Major is currently living in southern Ontario where she is raising her 11-year-old daughter.

Illegal Strip Searches of the Class

22. As noted above, this proposed class action concerns suspicionless strip searches conducted in four situations where the individual has *not* been in a place where

there was a likelihood of access to contraband. Those impugned situations are: leaving a penitentiary, leaving or entering a secure area, entering the family-visiting area, and prison-to-prison transfers.

23. The *CCRA* authorizes suspicionless strip searches only in circumstances prescribed in regulations.[2] The *CCRA* requires that those circumstances be limited to "situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body."[3] However, federal prisons conduct suspicionless strip searches in the impugned situations every day and those situations do not meet the prerequisite set out in the *CCRA*.

24. Suspicionless strip searches in the impugned situations are ostensibly authorized by the *Corrections and Conditional Release Regulations* (the "*CCRR*"). Those regulations purport to authorize suspicionless strip searches where "the inmate is entering or leaving a penitentiary or a secure area" and where "the inmate is entering or leaving the family-visiting area of a penitentiary," among other situations. [4] However, the regulations cannot authorize anything contrary to the legislation.

25. The class members were forced to undergo these strip searches through threats of penalties and potential physical force. Disciplinary charges are laid against those who refuse a strip search. These charges can result in an increased security

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[2] *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 48(a).
[3] *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 48(a).
[4] *Corrections and Conditional Release Regulations*, SOR/92-620, s. 48.

classification or the loss of residual liberties (e.g. temporary absences, work opportunities, etc.). This reduces opportunities to demonstrate readiness for parole and operates as a factor against parole. An individual who refuses a strip search believing it to be unlawful could be imprisoned for much longer as a result.

26. The plaintiffs estimate that the defendant has strip searched the class members hundreds of thousands of times within the applicable limitation period. Strip searches in the impugned situations continue to occur every day. The size of the class and number of legal breaches continues to grow. In this claim, facts pled in the past tense regarding strip searches in the impugned situations also apply to the ongoing and future strip searches in the impugned situations, and vice versa.

Suspicionless Strip Searches

27. This action concerns the most permissive and unfettered strip search power – the authorization to indiscriminately strip search an entire population without any specific justification on a *suspicionless* basis. This power, which is only authorized for use in limited circumstances, is found under s. 48 of the *CCRA*.

28. No amount of good behaviour can exempt an inmate from strip searches under s. 48 of the *CCRA*. Suspicionless strip searches may be undertaken indiscriminately and without there being any grounds relating to the individual. The guard need not believe, subjectively or objectively, that there is any possibility that the person may be carrying contraband. Nor is there any requirement for any prior judicial authorization, any individualized risk assessment, or any post-search

documentation. Nor is there any opportunity to challenge the grounds for the search, as no grounds are required.

29. In contrast, s. 49 of the *CCRA* authorizes strip searches in a much broader range of circumstances, but only "on reasonable grounds that an inmate is carrying contraband." CSC must prepare a post-search report for a s. 49 search detailing the reasons for said search. [5] CSC must provide a copy to the subject of the search on request.[6] The person can challenge the reasonableness of the grounds and argue the search was unlawful. If no post-search report is made, CSC has infringed the person's *Charter* rights under s. 8 (e.g. re the manner of the search) and s. 7 (procedural fairness). The suspicionless strip searches of the class members at issue in this action are distinguishable from the searches conducted on purported grounds under s. 49 as only the latter always must result in a post-search report.

30. Parliament limited the authorization to conduct suspicionless searches to certain situations under s. 48 of the *CCRA*. The defendant has gone beyond this legislated limit by conducting indiscriminate s. 48 strip searches even where the individual has not been in a place where there was a likelihood of access to contraband.

Seriousness of the Legal Breaches

31. Strip searches are a serious intrusion on individual liberty and therefore must be carefully confined to the four corners of any authorization in law. In 2001, the

[5] *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 67; *Corrections and Conditional Release Regulations*, SOR/92-620, s. 58.
[6] *Ibid.*

Supreme Court of Canada described strip searches as “one of the most extreme exercises of police power.”[7] It further described strip searches as follows:

> Strip searches are thus inherently humiliating and degrading for detainees regardless of the manner in which they are carried out…. The adjectives used by individuals to describe their experience of being strip searched give some sense of how a strip search, even one that is carried out in a reasonable manner, can affect detainees: “humiliating”, “degrading”, “demeaning”, “upsetting”, and “devastating”. Some commentators have gone as far as to describe strip searches as “visual rape”. Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault. The psychological effects of strip searches may also be particularly traumatic for individuals who have previously been subject to abuse. [citations omitted][8]

32. Strip searches are particularly harmful and degrading for women. *Most* federally sentenced women are trauma and abuse survivors. Rather than reducing the effects of traumatic exposure, prisons often reproduce traumatic events and exacerbate symptoms of previous trauma. In addition, during menstruation, women are forced to undergo the indignity of removing their soiled tampons in front of guards.

33. Unlawful strip searches continue to be a serious intrusion on individual liberty for prisoners who have been strip searched many times before. Although some individuals may become hardened to these experiences, this does not negate the intrusion on their liberty, autonomy, and dignity, nor excuse breaches of the law.

Causes of Action

34. The acts and omissions of the defendant constituted various causes of action, including:

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[7] *R. v. Golden*, 2001 SCC 83, at para. 89.
[8] *Ibid*. at para. 90.

a. Unreasonable search and seizure contrary to s. 8 of the *Charter*;

b. Infringement of the right to liberty and security of the person contrary to s. 7 of the *Charter*;

c. Trespass to the person (false imprisonment, assault, battery);

d. Intrusion on seclusion; and

e. Other causes of action arising from the material facts pled herein.

Charter s. 8 (unreasonable search and seizure)

35. The class members maintained a reasonable expectation of privacy over their own naked bodies. Strip searches are a serious invasion of privacy, as detailed above.

36. The plaintiffs assert, first and foremost, that the strip searches in the impugned situations were contrary to s. 8 of the *Charter* because they were not authorized by law (see e.g. paras. 22 to 24 above for details). Ensuring that there is clear legal authority for strip searches is a critical safeguard against unnecessary searches and abuse of this extreme power. Furthermore, the rule of law holds unique importance within prisons. Deprivations of rights and liberties behind prison walls must be unequivocally grounded in law. That was not the case here.

37. In the alternative, if suspicionless strip searches are authorized by law in one or more of the impugned situations, that law is not reasonable and is contrary to s. 8 of the *Charter*. Suspicionless strip searches in the impugned situations are not necessary for safety, security, or other pressing objectives. In the alternative, if suspicionless strip searches provide any benefits in the impugned situations, those

benefits are far outweighed by the attendant violations and could be achieved through less intrusive means and through more-highly-circumscribed authorizations.

Charter s. 7 (liberty and security of the person)

38. The strip searches were a serious deprivation of liberty, as detailed above (e.g. paras. 31 to 33 above). The strip searches also engaged the right to security of the person. For example, the strip searches violated the class members' physical and psychological integrity and caused significant harm, as discussed herein.

39. The strip searches were not authorized by law (see e.g. paras. 22 to 24) and therefore were not in accordance with the principles of fundamental justice.

40. In the alternative, if suspicionless strip searches are authorized by law in one or more of the impugned situations, the resulting deprivation of liberty and security of the person is not in accordance with the principles of fundamental justice.

   a. Any authorization of suspicionless strip searches in the impugned situations is arbitrary and has no connection with the legislative purpose. In these situations, there is no likelihood of access to contraband and therefore strip searches are not necessary for safety, security, or other pressing objectives. Unnecessary strip searches run counter to the legislative purposes set out in s. 3 of the *CCRA*, such as rehabilitation, reintegration, and "humane" custody.

   b. In addition, and alternatively, the authorization is overbroad and grossly disproportionate. If suspicionless strip searches provide any benefits in the impugned situations, they are far outweighed by the attendant violations and

could be achieved through less intrusive means and more-highly-circumscribed authorizations.

c. The criteria for said deprivation, if it is authorized by the *CCRA*, is too vague and insufficiently specific as it allows strip searches in the relevant situations without any limitation or criteria.

d. The authorization is also procedurally unfair as it provides the class members with no means to challenge strip searches in the prescribed situations and there is no requirement to keep records or to put mechanisms in place to monitor use of this extreme power.

Intrusion on seclusion

41. The strip searches were highly offensive invasions of the class members' privacy, unnecessary, and unlawful, as detailed above. The Commissioner and other employees intended to allow and direct suspicionless strip searches in the impugned situations and the guards intended to conduct those searches pursuant to said directions.

Trespass to the person (false imprisonment, assault, battery)

42. The strip searches of the class members in the impugned situations constituted false imprisonment. Each involved a deprivation of liberty against the class member's will caused by the defendant without lawful authority. Although the class members were already imprisoned, the strip searches constituted a significant loss of residual liberty, as described above. Furthermore, the class members were forced to remain where the strip search was to take place and

prevented from moving to the planned destination (e.g. leaving the prison) until the search was complete under threat of punishments or potential physical force (see e.g. para. 25 above).

43. The strip searches of the class members constituted assault and battery. Each involved unwanted touching and at least the threat of significant and harmful unwanted physical force to subdue any who object to the strip search (e.g. anyone believing them to be unlawful or unjustified) and were caused by the defendant without lawful authority. If class members attempted to ignore the demand for a strip search and proceed to the planned destination contrary to orders (e.g. leave the penitentiary), harmful physical contact would be imminent.

No justification under s. 1 of the Charter or otherwise

44. Without legal authorization, the infringements cannot be saved by s. 1 of the *Charter*.

45. In any event, suspicionless strip searches in the impugned situations run counter to the purposes of the *CCRA*. The *CCRA* repeatedly emphasizes the goal of "rehabilitation of offenders and their reintegration into the community."[9] It is very difficult for former prisoners to find work, repair relationships, and rebuild their lives, especially for those who are also recovering from abuse and/or addiction. Unnecessary strip searches cause psychological harm and exacerbate pre-existing trauma. This makes this task of reintegration all that much more difficult.

[9] *Corrections and Conditional Release Act,* S.C. 1992, c. 20, ss. 3(b), 4(c.2), 4(h), 5(b), 38, 94, & 100.

46. The vast majority of prisoners return to society. Prisoners who are emotionally scarred from their treatment in prison are more likely to re-offend. This increases crime. It is in the public interest to avoid unnecessary and harmful violations such as those at issue in this action.

47. The *CCRA* also requires that prisons be “humane”, “healthful”, and “free of practices that undermine a person’s sense of personal dignity.”[10] Unnecessary suspicionless strip searches run counter to these requirements.

48. Unnecessary suspicionless strip searches also promote an oppressive dynamic between class members and guards and contribute to a negative prison environment. Many guards find strip searches objectionable.

49. Eliminating unnecessary strip searches such as those at issue in this action would benefit society in general. This is not a case where individual freedoms and community safety are opposing interests. Both would be furthered by the ending these unnecessary strip searches.

Harm and Damages

50. The wrongful acts and omissions of the defendant caused serious, lasting, and foreseeable harm and damages, including as described below. The strip searches caused negative emotions such as powerlessness, humiliation, degradation, shame, anxiety, trauma, devastation and fear. They undermined the class members’ dignity, personal integrity, and self-worth.

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[10] *Ibid*. s. 3(a), 69 & 70.

51. The class members suffered and continue to suffer harm and damages which include the following:

a. emotional, physical and psychological harm;

b. impairment of mental and emotional health and well-being;

c. impaired mental development;

d. impaired ability to participate in normal family affairs and relationships;

e. alienation from family members;

f. depression, anxiety, emotional distress and mental anguish;

g. development of new mental, psychological and psychiatric disorders;

h. pain and suffering;

i. a loss of self-esteem and feelings of humiliation and degradation;

j. an impaired ability to obtain employment, resulting either in lost or reduced income and ongoing loss of income;

k. an impaired ability to deal with persons in positions of authority;

l. an impaired ability to trust other individuals or sustain relationships;

m. a requirement for medical or psychological treatment and counselling;

n. an impaired ability to enjoy and participate in recreational, social and employment activities;

o. punishment for failing to comply with strip search orders;

p. loss of friendship and companionship; and

q. the loss of general enjoyment of life.

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

53. Class members often decided to forgo critically important activities, such as family visits or medical appointments, simply to avoid strip searches in the impugned situations.

Charter Damages

54. The infringements of sections 7 and 8 of the *Charter* warrant damages to compensate the class members for loss and suffering, vindicate the rights in question, and deter future breaches. These infringements are not trivial. They relate to fundamental civil liberties that underpin Canadian democracy and they caused serious harm. The infringements of *Charter* rights are also independent wrongs worthy of compensation in their own right.

No immunity from Charter damages

55. The defendant does not enjoy an immunity from damages in these circumstances based on good governance considerations or any other countervailing considerations that could outweigh the importance of compensation, vindication,

and deterrence and displace the general rule that damages are warranted where causes of action have been made out and serious harms have been caused.

<u>No countervailing considerations</u>

56. There are no countervailing factors sufficient to negate an award of damages. In particular, an award of damages would not:

a. Undermine good governance or the rule of law;

b. Have a chilling effect on the legislature's rightful role;

c. Deter effective enforcement of the law;

d. Cause the defendant or its agents to overemphasize the importance of *Charter* rights to the detriment of safety or security; nor

e. Cause the defendant or its agents to be overly cautious about the limits set by enabling legislation to the detriment of safety or security.

<u>Conduct was clearly wrong, etc.</u>

57. In the alternative, if legitimate concerns regarding good governance were to exist (which is denied), the impugned conduct met the threshold of gravity sufficient to overcome those concerns.

58. The nature of the conduct was clearly wrong, including hundreds of thousands of strip searches that were illegal, unnecessary, harmful and inherently humiliating and degrading (see paras. 12 to 33 above).

<u>Knowledge and intentional conduct</u>

59. The defendant and its agents knew that suspicionless strip searches in the impugned situations:

  a. Were contrary to the restrictions set out in s. 48 of the *CCRA*;

  b. Were unconstitutional infringements of the *Charter*; and/or

  c. Were not necessary for safety or security reasons nor proportionate.

60. Sources of this knowledge include, but are not limited to the following:

  a. It is clear from any reasonable reading of the *CCRA* that suspicionless strip searches in the impugned situations contravene s. 48 of the *CCRA*. This is not a case where the common law and constitutional law developed over time.

  b. The defendant and its agents would have become aware of this fact when they reviewed the legislation and regulation as is required for the preparation of directives and other functions.

  c. It is obvious that inmates need not and should not be strip searched when they are released from prison (e.g. at the end of their sentence).

61. In 2015, the defendant and its agents developed and made a change to the subordinate regulation, the *CCRR*, to add “leaving a penitentiary” and “leaving … a secure area” to the list of prescribed circumstances in which suspicionless strip searches are authorized to occur. This was done on the recommendation of the then Minister of Public Safety and Emergency Preparedness, Stephen Blaney. However, the enabling legislation, the *CCRA*, was not amended at that time

despite the conflict between this change to the subordinate regulation and the *CCRA*.

62. The change to the regulation was made very shortly before the writ for the 2015 election was issued and in the final Canada Gazette published before that election (which saw a change in government). This change was developed and made despite knowledge of the apparent conflict with the enabling statute. This circumvented the democratic legislative processes involved in the passage of legislative amendments through Canada's duly elected parliament. This was contrary to the rule of law and the principle of parliamentary supremacy.

63. It was clearly wrong and bad faith to authorize and conduct suspicionless strip searches in the impugned situations with the knowledge that this was (a) contrary to s. 48 of the *CCRA*; (b) a breach of the *Charter*; and/or (c) not necessary for safety or security reasons nor proportionate.

<u>Imputed knowledge, wilful blindness, etc.</u>

64. In the alternative, the defendant and its agents ought to have known and/or were willfully blind to the fact that suspicionless strip searches in the impugned situations:

a. Were contrary to the restrictions set out in s. 48 of the *CCRA*;

b. Were unconstitutional infringements of the *Charter*; and/or

c. Were not necessary for safety or security reasons nor proportionate.

65. Had the defendant and its agents considered the issue, they would have come to the above conclusions. The defendant's failure to actively consider the issue and end its illegal practices constituted a clear and callous disregard for the class members' *Charter* rights and the harm caused by these highly intrusive searches.

66. The defendant and its agents had sufficient information to determine that suspicionless strip searches in the impugned situations contravened s. 48 of the *CCRA* since the advent of the *CCRA* in 1992. This conclusion was clear from the plain wording of the *CCRA* at that time.

67. The defendant and its agents had sufficient information to determine that suspicionless strip searches in the impugned situations were unconstitutional infringements of the *Charter* since at least 2001 when the Supreme Court of Canada released *R. v. Golden*.

68. Following the release of *R. v. Golden* in 2001, the defendant and its agents failed to conduct a review (or failed to conduct a sufficiently thorough review) of topics such as (a) the situations in which suspicionless searches were taking place in federal prisons; (b) whether suspicionless strip searches were necessary for safety or security in each of those situations; and (c) whether suspicionless strip searches were unconstitutional in any of those situations.

69. This is not the only area in which the defendant has failed to consider and address *Charter* rights in relation to strip searches. The defendant's failures in relation to the impugned strip searches are part of a larger pattern of disregard for the *Charter* rights and wellbeing of prisoners.

70. The defendant and its agents could have and should have adopted measures to avoid these strip searches. The defendant continued conducting these unnecessary intrusions despite the deep psychological harm they cause, without considering the appropriateness of their actions, and without considering alternatives. This was harsh and callous.

Punitive Damages

71. The nature of the defendant's wrongdoing as described herein is highly reprehensible, clearly wrong, harsh, callous, and departs to a marked degree from ordinary standards of decent behaviour. See, for example, paragraphs 12 to 33 and 54 to 70 above.

72. The class is highly vulnerable. This includes pre-existing vulnerabilities arising from poverty, discrimination, addiction, abuse, and other negative life circumstances. This also includes vulnerabilities arising from the high degree of control CSC wields over the class members' lives.

73. The relationship between the class members and CSC involves the highest level of dependence, reliance, responsibility, control, and vulnerability. CSC has responsibility for and control over all aspects of the class members' lives, such as what they eat, when they sleep, what residual liberty they maintain, whether they can see their families, and whether they can participate in programs to demonstrate readiness for parole.

74. The defendant has repeatedly been alerted to the breakdown of the rule of law within its prisons. These strip searches are yet another example.

75. Punitive damages are required to achieve the objectives of deterrence, retribution, and denunciation in this case.

Aggravated Damages

76. The harm caused by the defendant is amplified by the callous, reprehensible, and high-handed nature of its misconduct as detailed above, which was distressing and hurtful for the class.

Other

77. The plaintiffs plead and rely on relevant legislation, including the *Criminal Code*, *Canadian Charter of Rights and Freedoms, Corrections and Conditional Release Act* (and regulations), *Negligence Act*, and other legislation as counsel may advise.

78. The word “including” in this claim means “including, but not limited to,”.

79. Headings are used in this document for readability. Material facts underpinning a cause of action or issue may be found anywhere in this document whether or not the fact is expressly linked to the issue by a heading.

80. The plaintiffs propose that this action be tried at Toronto, Ontario.

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Elson Advocacy
Professional Corporation
1062 College Street, Lower Suite
Toronto, Ontario M6H 1A9

Kent Elson, LSO No. 57091I
Amanda Montgomery, LSO No. 79705M
Tel.: (416) 906-7305
kent@elsonadvocacy.ca
amanda@elsonadvocacy.ca

Abigail Deshman, LSO No. 56757T

Canadian Civil Liberties Association
90 Eglinton Avenue East, Suite 900
Toronto, Ontario M4P 2Y3
Tel: (416) 646-1404
adeshman@ccla.org

Counsel for the plaintiffs

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MICHAEL FARRELL et al. v. **ATTORNEY GENERAL OF CANADA**

Plaintiffs — Defendant

Court File No.: CV-20-00643396-00CP

SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Toronto

STATEMENT OF CLAIM

Elson Advocacy
Professional Corporation
1062 College Street, Lower Suite
Toronto, Ontario M6H 1A9

Kent Elson, LSO No. 57091I
Amanda Montgomery, LSO No. 79705M
Tel.: (416) 906-7305
kent@elsonadvocacy.ca; amanda@elsonadvocacy.ca

Abigail Deshman, LSO No. 56757T

Canadian Civil Liberties Association
90 Eglinton Avenue East, Suite 900
Toronto, Ontario M4P 2Y3
Tel: (416) 646-1404
adeshman@ccla.org

Counsel for the plaintiffs