

MAR 04 2011



S-111463

NO.
Vancouver REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

BOBBYLEE WORM, also known as BOBBI LEE WORM

PLAINTIFF

AND:

The ATTORNEY GENERAL OF CANADA

DEFENDANT

NOTICE OF CIVIL CLAIM

Name and address of plaintiff:

BobbyLee Worm, also know as Bobbi Lee Worm
c/o B.C. Civil Liberties Association
550-1188 West Georgia Street
Vancouver, BC V6E 4A2

Name and address of defendant:

The Attorney General of Canada
PO Box 9044, Stn Prov Govt
Victoria, BC V8W 9E2

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) send 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
- (c) 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(s):

- (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 a copy of 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.

PART 1 STATEMENT OF FACTS

The Plaintiff

1. BobbyLee Worm, also known as Bobbi Lee Worm ("Ms. Worm"), is a 24 year old aboriginal woman who is originally from Saskatchewan. Ms. Worm is a prisoner at the Fraser Valley Institution, a prison for women operated by the Correctional Service of Canada ("CSC"). Ms. Worm is currently serving a sentence of 6 years and 4 months, which commenced on June 7, 2006, for offences including robbery. She is a first time offender. Her sentence is currently scheduled to end in October 2012. Ms. Worm has served the majority of her sentence in segregation.

2. Solitary confinement, or “segregation”, as it is known in Canadian prison terminology, is the practice of maintaining a prisoner in a state of near isolation under conditions which result in significant periods of sensory deprivation and social isolation. While in segregation Ms. Worm can be confined to her cell, deprived of meaningful human contact, for up to 23 hours a day, for months at a time. At the time of her sentencing, the sentencing Court was not asked to consider that Ms. Worm could spend the greater part of her sentence in segregation. Ms. Worm’s current segregation is authorized under a federal regime known as “administrative segregation,” further described below.
3. Ms. Worm suffers from a serious history of trauma and abuse. Many of her family members were sent to residential schools. She suffered extreme physical, emotional and sexual abuse throughout her childhood and adolescence. Ms. Worm was introduced to drugs by peers and was addicted at an early age. She has, however, achieved three years of institutional sobriety.
4. As a result of her abusive childhood and adolescence, Ms. Worm suffers from post traumatic stress disorder (“PTSD”) and depression. Both of these illnesses require proper monitoring and ongoing treatment.

The Defendant

5. The Attorney General of Canada is the minister of Her Majesty the Queen in right of Canada in whose name proceedings against the Crown in right of Canada must be taken pursuant to s. 23 of the *Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50*.

Administrative Segregation

6. The *Corrections and Conditional Release Act, S.C. 1992, c. 20* (“*Corrections Act*”) makes provision for various circumstances in which the administration of a facility may order that a prisoner be subjected to segregation. When a prisoner is segregated, she is removed from the general prison population and held in a separate cell in isolation from other prisoners and staff. Prisoners held in segregation have very limited contact with other human beings, limited access to rehabilitative programs and limited access to medical and psychiatric treatment.

7. The *Corrections Act* provides for two types of segregation: disciplinary and administrative segregation. A prisoner can be placed into disciplinary segregation as punishment for misconduct in the course of her imprisonment. A prisoner subject to disciplinary segregation is afforded various substantive and procedural protections. The most significant of these protections, as provided for by s. 44(1)(f) of the *Corrections Act*, are:
 - a. Segregation can only be imposed for the most serious disciplinary offences; and
 - b. Segregation may be imposed for a maximum of thirty days; or where sanctions of segregation are served consecutively, to a maximum of 45 days, pursuant to the *Corrections and Conditional Release Regulations*, SOR/92-620, s. 40(2).
8. A prisoner can be placed in administrative segregation pursuant to sections 31 through 37 of the *Corrections Act*. Under the power to impose administrative segregation, the institutional head of a facility may segregate a prisoner for an indefinite period of time for a variety of reasons, including a reasonable belief that the prisoner has, has attempted, or intends to act in a manner that threatens the safety of the institution or any person and the presence of the prisoner in the general population would jeopardize the institution or any person. Segregation for administrative purposes may only be imposed if there is no reasonable alternative to segregation.
9. The *Corrections Act* and regulations promulgated thereunder provide for an ongoing review of the prisoner's solitary confinement in administrative segregation, but do not provide objective criteria for determining when segregation must end and do not set any time limit on how long a prisoner may be segregated. Thus, in practice, prisoners may spend years in administrative segregation. The decision to impose administrative segregation and the ongoing review of administrative segregation are not carried out by a judicial officer.

The Management Protocol

10. CSC has developed and instituted a program known as the Management Protocol, which governs how institutional heads manage female prisoners who are deemed to be high risk. A primary feature of the Management Protocol is the use of prolonged and indefinite

administrative segregation. While institutional heads follow the Management Protocol to govern their management of such female prisoners, the Management Protocol has not been given effect by regulation or legislation.

11. The Management Protocol consists of a series of phases, each consisting of differing levels of physical liberty and access to prison services and prisoner programming. Prisoners on the Management Protocol may graduate to less restrictive phases of the Protocol or regress to more restrictive phases, depending on their conduct. In all phases, however, movement and association are extremely structured and regulated. Women in the most restrictive phases of the Management Protocol have no contact with other women prisoners, often for months at a time. The decision to place a prisoner on the Management Protocol and the ongoing review of a prisoner's placement on the Management Protocol are not carried out by a judicial officer.
12. It is exceedingly difficult for a woman who has been placed on Management Protocol to ever return to normal prison conditions. Women on the Management Protocol must "earn" their way back to more normal prison conditions. The Management Protocol effectively imposes a "zero tolerance" policy for aggressive behaviour; aggressive behaviour is broadly defined to include physical or "emotional" behaviour, and can include behaviours that are unrelated to a woman's level of risk, such as swearing or being disrespectful to staff. The approach embodied in the Management Protocol tends to result in prisoners being kept in segregation for prolonged periods of time, and being returned to segregation as a result of actions which would not warrant segregation if the prisoner were in the general prison population.
13. The standards of behaviour prisoners must meet to be graduated to less restrictive phases of the Management Protocol are extremely difficult to assess or meet. These standards are vague, indeterminate, and effectively unintelligible.

Effects of Prolonged Segregation

14. Segregation constitutes a significant limitation on the liberty of a prisoner, even within the context of the already severe limitations on liberty imposed under normal prison conditions. While in segregation, a prisoner is denied any meaningful level of human

contact or interaction. To the extent that there is contact with other human beings, it is largely limited to interaction with correctional staff and largely in a functional context.

15. The practice of isolation, particularly where it is imposed for extended periods of time, has significant adverse effects. Prolonged isolation is detrimental to the physical, psychological, social and spiritual health of prisoners. Prisoners who are subject to extended periods of isolation are observed to suffer from a wide variety of adverse effects, including:

- a. Psychosis;
- b. Major depression;
- c. Hallucinations;
- d. Paranoia;
- e. Aggression;
- f. Rage;
- g. Loss of appetite;
- h. Self harm;
- i. Suicidal behaviour; and
- j. Disruption of sleep patterns.

16. The harsh and punitive effects of prolonged solitary confinement are such that many of the rehabilitative functions of incarceration, expected to be fulfilled at the time of a prisoner's sentencing, are frustrated by the confinement. Additionally, the negative effects of solitary confinement tend to make it increasingly difficult for a prisoner to ever leave solitary confinement. In particular, these effects:

- a. Make it difficult or impossible to properly treat pre-existing mental illness (such as PTSD) that contribute to potentially criminal or anti-social conduct;
- b. Make it difficult for the prisoner to interact appropriately with other prisoners and tend to make it harder for her to control her anger and conduct toward other prisoners; and
- c. Create new psychiatric disorders which contribute to potentially criminal or anti-social behaviour.

17. The negative effects of solitary confinement are compounded by the fact that prisoners held in segregation do not receive the same access to programs which can assist in their ongoing rehabilitation and treatment. These prisoners are largely denied access to programs which involve contact with other prisoners and are generally only afforded access to individual programs if the resources are available to provide such programs. Such resources are, in fact, scarce or non-existent.
18. Unfortunately, for the reasons described above, the Management Protocol may lead prisoners to develop aggressive and anti-social behaviours. Thus, the use of administrative segregation in the Management Protocol creates an effective "Catch-22". Paradoxically, prisoners on the Management Protocol are rendered increasingly incapable of satisfying the Management Protocol's zero-tolerance requirement given the adverse, physical, psychological and social effects of extended and indefinite solitary confinement. Prisoners whose segregation is administered pursuant to the Management Protocol cannot hope to leave segregation until they exhibit behaviours that segregation actually works against.
19. The use of prolonged solitary confinement has been examined on a number of occasions by independent review bodies. The 1996 *Commission of Inquiry into certain events at the Prison for Women in Kingston*, conducted by Madam Justice Louise Arbour, expressed serious concerns about the indefinite and prolonged nature of solitary confinement permitted under the administrative segregation regime. A key recommendation of Madam Justice Arbour's final report was that prisoners should not be made to spend more than 30 consecutive days in administrative segregation, and that in any event, segregation should be imposed no more than twice in a calendar year. The 2009 *Annual Report of the Office of the Correctional Investigator* also strongly criticized the prolonged use of administrative segregation, and recommended that the Management Protocol be immediately rescinded.
20. Prolonged solitary confinement has been found by international human rights bodies to constitute either torture or cruel, inhuman and degrading treatment. The European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has found that "[s]olitary confinement can, in certain circumstances, amount

to inhuman and degrading treatment” and that subjecting a prisoner to a “regime of isolation” with “little or nothing by way of activity” for “very long periods” constitutes inhuman treatment. Likewise, the Inter-American Court of Human Rights has found that “prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhuman treatments, damaging to the person’s psychic and moral integrity and the right to respect of the dignity inherent to the human person.” The United Nations Committee Against Torture has recommended that the practice of solitary confinement be abolished. To address the harmful effects of solitary confinement, a working group of 24 international experts adopted on December 9, 2007 the *Istanbul Expert Statement on the Use and Effects of Solitary Confinement*, calling on states to limit the use of solitary confinement to very exceptional cases, for as short a time as possible, and only as a last resort.

Ms. Worm’s Experience in Segregation

21. Ms. Worm is serving her sentence in a maximum security facility. During the course of her incarceration, Ms. Worm fought with other prisoners. Following these fights, prison administrators at Fraser Valley Institution subjected her to administrative segregation and placed her on the Management Protocol.
22. Ms. Worm has been held in segregation for the majority of her sentence. During her imprisonment, she has shown significant signs of psychological deterioration attributable to being segregated for an extended period of time. Furthermore, while segregated, she has been unable to access the treatment necessary for her pre-existing PTSD.
23. The Fraser Valley Institution has provided some limited programming such as counselling services to Ms. Worm but it has been delayed and inadequate. As a result it is likely that Ms. Worm’s situation will continue to deteriorate and she will have an increasingly difficult time leaving segregation before the end of her sentence. There is a significant risk that Ms. Worm will spend all, or nearly all, of the rest of her prison sentence in administrative segregation and suffer the long-term consequences of such isolation.

24. The application of the Management Protocol to Ms. Worm has had the additional effect of essentially denying her access to appropriate aboriginal spiritual services.

Tortious Conduct

25. The prison administrators of the Fraser Valley Institution responsible for the management and care of Ms. Worm are employees of Canada.

26. In managing Ms. Worm's detention and, in particular, in placing her in administrative segregation and subjecting her to the Management Protocol, the prison administrators owe Ms. Worm a duty of care to ensure that any such decisions are carried out lawfully and with due regard to Ms. Worm's welfare.

27. The prisoner administrators who placed Ms. Worm in administrative segregation did so without lawful authority and without due regard to the harm that would be suffered by Ms. Worm as a result. This failure amounted to a breach of the expected standard of care and constituted negligence on the part of the prison administrators.

28. As a result of these actions by the prison administrators Ms. Worm:

a. Was unlawfully imprisoned; and

b. Suffered personal harm of a psychological and emotional nature.

PART 2 RELIEF SOUGHT

29. Ms. Worm seeks the following relief:

a. A declaration that sections 31, 32, and 33 of the *Corrections Act*, which provide for indefinite administrative segregation, are of no force and effect pursuant to s. 52 of the *Constitution Act, 1982* in that:

i. They constitute an unjustifiable breach of s. 7 of the *Canadian Charter of Rights and Freedoms* and deprive Ms. Worm of her liberty and security of the person otherwise than in accordance with the principles of fundamental justice;

- ii. They constitute an unjustifiable breach of s. 12 of the *Canadian Charter of Rights and Freedoms* and constitute cruel and unusual punishment.
- b. A declaration that the Management Protocol is of no force and effect pursuant to s. 52 of the *Constitution Act, 1982* in that:
 - i. It constitutes an unjustifiable breach of s. 7 of the *Canadian Charter of Rights and Freedoms* and deprives Ms. Worm of her liberty and security of the person otherwise than in accordance with the principles of fundamental justice;
 - ii. It constitutes an unjustifiable breach of s. 12 of the *Canadian Charter of Rights and Freedoms* and constitutes cruel and unusual punishment.
- c. Damages for breach of s. 7 and s. 12 of the *Canadian Charter of Rights and Freedoms* pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*.
- d. Damages for unlawful imprisonment and negligence;
- e. Costs.

PART 3 LEGAL BASIS

30. The Canadian Charter of Rights and Freedoms provides that every person is guaranteed certain rights subject only to such reasonable limits as may be prescribed by law in a free and democratic society, including:
- a. Pursuant to s. 7, 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; and
 - b. Pursuant to s. 12, the right not to be subjected to any cruel and unusual treatment or punishment.
31. Administrative segregation and the Management Protocol each constitutes a breach of s. 7 because:

- a. They each deprive a person of a significant liberty interest in that they deny a person for an indefinite period of time any meaningful social contact with other human beings;
 - b. They each deprive a person of security of the person in that they expose them to physical, psychological, social and spiritual trauma arising out of indefinite isolation from other human beings and from being denied, for an indefinite period of time, any meaningful social contact with other human beings;
 - c. They increase through administrative means the severity of the term of incarceration imposed by the Court; and
 - d. They are imposed without judicial supervision.
32. The Management Protocol further constitutes a breach of s. 7 because the standards of behaviour that prisoners must meet to be graduated from the Management Protocol, or to be moved to less restrictive phases of the Management Protocol, are indeterminate and vague.
33. This breach of s. 7 is not reasonably justifiable in a free and democratic society because:
- a. It is not minimally infringing of the right;
 - b. It is disproportionate in relation to the nature of the problem it is attempting to remedy;
 - c. There are alternative means available to address the problems it is attempting to remedy.
34. Administrative segregation and the Management Protocol each constitute a violation of s. 12 because they impose an effective penalty on the person which:
- a. Is disproportionate given the nature of the problem it is designed to address;
 - b. Carries with it the risk of significant psychological harm which may cause physical harm; and

c. Is indefinite in nature and duration.

35. This breach of s.12 cannot be reasonably justified in a free and democratic society for the reasons outlined above.

36. Ms. Worm has suffered psychological harm as a result of her detention under administrative segregation and the Management Protocol. This harm demands the payment of damages.

37. Additionally, Canada is vicariously liable for the tortious acts of the prison administrators of the Fraser Valley Institution and, as such, is liable to pay damages for:

- a. The unlawful confinement of Ms. Worm; and
- b. The negligence of the prison administrators in placing Ms. Worm in administrative segregation and subjecting her to the Management Protocol.

Plaintiff's address for service:

B.C. Civil Liberties Association
550-1188 West Georgia Street
Vancouver, BC V6E 4A2
Attention: Grace Pastine
Carmen Cheung

Fax number address for service (if any)

E-mail address for service (if any)

grace@bccla.org

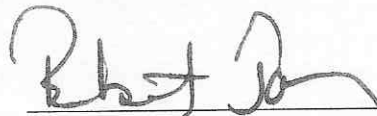
Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: March 4, 2011



Signature of Lawyer for the Plaintiff
Robert Janes

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:

Claim for declaratory relief and damages arising out of unlawful detention in solitary confinement.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

*[Put an "x" in **one** box below for the case type that best describes this case.]*

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Put an "x" in all boxes below that apply to this case.]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

PART 4:

The Plaintiff relies on the following enactments:

Constitution Act, 1982