

Amended pursuant to the Consent Order entered June 21, 2017
Original filed January 19, 2015.

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. S-150415
Vancouver Registry

JUN 21 2017 IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and
THE JOHN HOWARD SOCIETY OF CANADA

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

AND:

WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND and
CRIMINAL DEFENCE ADVOCACY SOCIETY

INTERVENORS

AMENDED NOTICE OF CIVIL CLAIM

Name and address of each Plaintiff

British Columbia Civil Liberties Association
and The John Howard Society of Canada
c/o Farris, Vaughan, Wills & Murphy LLP
25th Floor 700 West Georgia Street
Vancouver BC V7Y 1B3

Name and address of each Defendant

Attorney General of Canada
900 - 840 Howe Street
Vancouver BC V6Z 2S9

This action has been started by the plaintiff(s) 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(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, British Columbia Civil Liberties Association (“BCCLA”), is a non-profit, advocacy group incorporated in 1963 pursuant to British Columbia’s *Society Act*, R.S.B.C. 1996, c. 433, with a registered office located at 900 Helmcken Street, Vancouver, British Columbia, V6Z 1B3.
2. The plaintiff, The John Howard Society of Canada (“JHSC”), was formed in 1962 and is a registered non-profit charity incorporated in 1978 pursuant to the *Canada Corporations Act*, R.S.C. 1970, c. C-32 and granted continuance in 2014 under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 with a registered office located at 809 Blackburn Mews, Kingston, Ontario, K7P 2N6.

3. The defendant, Attorney General of Canada (“Canada”), has an address for service at 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.

BCCLA

4. The objects of BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights in British Columbia and Canada. To that end, BCCLA prepares position papers, engages in public education, assists individuals to address violations of their rights and takes legal action as a plaintiff.
5. In addition to BCCLA’s long standing interest in matters of prisoners’ rights and policy, BCCLA has been extensively involved in advocacy and education in respect to a wide range of issues related to post-sentencing rights of prisoners, including administrative segregation. BCCLA has an extensive history of making submissions to courts and government bodies with respect to penal policy and the constitutional limits on the State’s right to punish its citizens.
6. BCCLA has consistently opposed prolonged, indefinite administrative segregation and administrative segregation imposed without the use of any objective criteria and without mandatory external oversight, arguing that the principles of liberty, autonomy and equality, as well as the humanitarian commitment to preventing unnecessary suffering and to preserving the dignity of the individual, justify a change in the law.

JHSC

7. The objects of JHSC include encouraging penal reform, developing enlightened public opinion regarding correctional programs and problems, and cooperating with agencies and services in the correctional field and with governments in furtherance of these objects.
8. JHSC is dedicated to offering services and programs to people in conflict with the law, consulting with government on existing and proposed legislative and administrative initiatives in the criminal justice system, and providing public education on criminal justice issues. Local John Howard Societies in sixty communities across Canada provide direct services to prisoners at both the provincial and the federal level, and provide post-imprisonment services in order to assist released offenders in their reintegration into the community as law-abiding citizens.
9. JHSC makes submissions on criminal justice legislation to Parliamentary and Senate Committees and attends formal consultations held by the Correctional Service of Canada, the Parole Board of Canada, and the Department of Justice, together with other non-governmental organizations, on issues that affect incarcerated persons.
10. JHSC participates in public education to promote an understanding of the circumstances which contribute to offending and the measures which should be taken to address it.

Public Interest Standing

11. BCCLA and JHSC have sufficient interest to be granted public interest standing, in that:
 - a. this claim raises a serious challenge to the constitutional validity and administration of ss. 31, 32, and 33 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“*CCRA*”) (collectively, the “impugned laws”);
 - b. BCCLA and JHSC have a demonstrated, serious, and genuine interest in the subject matter of this litigation;
 - c. the issues of whether there is a constitutional right to be free from prolonged, indefinite administrative segregation and to be free from administrative segregation imposed without the use of appropriate criteria and without mandatory external oversight are relevant to all Canadians;
 - d. JHSC is comprised of dozens of member societies in communities across Canada providing direct services to inmates who have a direct and personal stake in these issues, as they have been placed in administrative segregation in the past and may be placed in administrative segregation at any time;
 - e. the resources and expertise of both BCCLA and JHSC confirm their capacity to bring forward the claim and to ensure that the issues will be presented in a sufficiently concrete and well-developed factual setting;
 - f. the claim raises issues in the public interest that transcend the interests of any single prisoner who may be directly affected by administrative segregation;
 - g. the claim raises a comprehensive challenge to multiple provisions of the *CCRA* based on multiple constitutional provisions: it is a systemic challenge that differs in scope from an individual challenge to a discrete issue;
 - h. segregation units in Canadian penitentiaries are highly inaccessible, generating barriers for inmates to access counsel and pursue legal claims as individual plaintiffs;
 - i. segregated inmates face the risk of retaliation for pursuing legal claims against those charged with their ongoing custody, generating barriers for inmates to access counsel and pursue legal claims as individual plaintiffs;
 - j. since 2000, there have been tens of thousands of placements in segregation, and yet no Canadian court has adjudicated a claim brought by an individual prisoner resembling the present claim;
 - k. it is unreasonable to expect prisoners to bring on and carry through to completion a lengthy and involved legal challenge of the type set out in this claim; and

- l. the claim is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court.

Administrative Segregation

12. The *CCRA* makes provision for various circumstances in which the administration of a penitentiary may order that an inmate be subjected to segregation. When an inmate is segregated, he or she is removed from the general penitentiary population and held in a separate cell in isolation from other inmates and staff. Inmates held in segregation have very limited contact with other human beings, limited access to rehabilitative programs and limited access to medical and psychiatric treatment.
13. The *CCRA* provides for two types of segregation: disciplinary and administrative segregation. An inmate can be placed into disciplinary segregation as punishment for a breach of disciplinary offences, specified in s. 40 of the *CCRA*, in the course of his or her imprisonment. An inmate subject to disciplinary segregation is afforded various substantive and procedural protections. The most significant of these protections are:
 - a. disciplinary segregation may only be imposed for the most serious disciplinary offences, pursuant to s. 44(1)(f) of the *CCRA*;
 - b. disciplinary segregation may only be imposed for a maximum of 30 days or, where sanctions of segregation are served consecutively, to a maximum of 45 days pursuant to s. 40(2) of the *Corrections and Conditional Release Regulations*, SOR/92-620 (“*CCRR*”);
 - c. disciplinary segregation is to be adjudicated by an independent chairperson, pursuant to s. 24 of the *CCRR*;
 - d. the independent chairperson shall not find the inmate guilty of a disciplinary offence unless satisfied beyond a reasonable doubt, based on evidence presented at a hearing, that the inmate committed the offense in question, pursuant to s. 43(3) of the *CCRA*; and
 - e. an inmate who is charged with a serious disciplinary offence is to be given a reasonable opportunity to retain and instruct legal counsel for the hearing, pursuant to s. 31(2) of the *CCRR*.
14. An inmate can be placed in administrative segregation pursuant to ss. 31 through 37 of the *CCRA*. Under the power to impose administrative segregation, the institutional head of a penitentiary may segregate an inmate for an indefinite period of time for a variety of highly general reasons, including a reasonable belief that the inmate has attempted, or intends to act in a manner that threatens the safety of the penitentiary or any person and the presence of the inmate in the general population would jeopardize the penitentiary or any person. The legislation states that segregation for administrative purposes may only be imposed if there is no reasonable alternative to segregation, but unlike the disciplinary

segregation regime, there is no independent decision-maker to serve as a check on the assessment of that standard.

15. The *CCRA* and regulations promulgated thereunder provide for ongoing internal reviews of the inmate's 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 an inmate may be segregated. In practice, inmates spend months and 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 or other independent person or body. Unlike the disciplinary segregation regime, there is no independent decision-maker, no access to legal counsel at any administrative review, no standard of proof of beyond a reasonable doubt, and no time limits for confinement. While the administrative segregation regime is potentially a greater interference with liberty and a far more severe treatment than disciplinary segregation, it entails fewer protections for inmates.

Effects of Prolonged Segregation

16. Segregation constitutes a significant limitation on the liberty of an inmate, even within the context of the already severe limitations on liberty imposed under normal conditions within the penitentiary. While in segregation, an inmate is denied meaningful interactions. The segregated inmate is stigmatized and isolated, and is unaware of when or how he or she might be released from this status. 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.
17. The practice of segregation, particularly where it is imposed for extended periods of time, has significant adverse effects. Prolonged segregation is detrimental to the physical, psychological, social, and spiritual health of inmates. Inmates who are subject to extended periods of segregation are observed to suffer from a wide variety of adverse effects, including:
 - a. delirium;
 - ~~a~~b. psychosis;
 - ~~b~~c. major depression;
 - ~~e~~d. hallucinations;
 - ~~d~~e. paranoia;
 - ~~e~~f. aggression;
 - ~~f~~g. rage;
 - ~~e~~h. loss of appetite;

- hi. self harm;
 - jk. suicidal behaviour; and
 - kl. disruption of sleep patterns.
18. The harsh and punitive effects of prolonged segregation are such that many of the rehabilitative functions of incarceration, expected to be fulfilled at the time of an inmate's sentencing, are frustrated by the confinement. Time in segregation also intensifies the severity of a court-imposed sentence, frustrating the court's temporal imposition of a "fit sentence."
19. Additionally, the negative effects of segregation tend to make it increasingly difficult for an inmate to meet the behavioural requirements that might be required so as to achieve release. In particular, these effects:
- a. make it difficult or impossible to properly treat pre-existing mental illness (such as post traumatic stress disorder) that contribute to potentially criminal or anti-social conduct;
 - b. make it difficult for the inmate to interact appropriately with other inmates and tend to make it harder for him or her to control his or her anger and conduct toward other inmates; and
 - c. create new psychiatric disorders which contribute to potentially criminal or antisocial behaviour.
20. The negative effects of administrative segregation are compounded by the fact that inmates held in segregation do not receive the same access to ordinary occupational and programming opportunities which can assist in their ongoing rehabilitation and treatment. These inmates are largely denied access to programs which involve contact with other inmates 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.
21. The use of prolonged segregation has been the subject of critical commentary on a number of occasions by both domestic and international independent review bodies. In virtually all such studies or reviews, prolonged segregation – defined as extending beyond 15 days and not terminable at the option of the inmate – has been found to constitute either torture or cruel, inhuman, and degrading treatment.

Part 2: RELIEF SOUGHT

1. The plaintiffs seek the following relief:
- a. a declaration that ss. 31, 32 and 33 of the *Corrections and Conditional Release Act*, (the "impugned laws") unjustifiably infringe ss. 7, 9, 10, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter"), Part I of the

Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the “*Constitution Act, 1982*”) and are of no force and effect;

- b. further or in the alternative, a declaration that the administration of the impugned laws unjustifiably infringe ss. 7, 9, 10, 12 and 15 of the *Charter*;
- c. costs, including special costs and applicable taxes on those costs; and
- d. such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. The plaintiffs rely on:

- a. s. 52 of the *Constitution Act 1982*, and
- b. the *Charter* and, in particular, ss. 1, 7, 9, 10, 12, 15 and 24 thereof.

Section 7 of the *Charter*

2. Section 7 of the *Charter* states as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

3. The right to life is engaged and infringed by state-imposed conditions that cause an individual to end their own life.
4. The right to liberty is engaged and infringed by state-imposed conditions that restrict an inmate’s freedom of action, increase the severity of the term of incarceration imposed by Court and by the denial of an individual’s meaningful social contact with other human beings.
5. The right to security of the person is engaged and infringed by state-imposed conditions that expose an individual to physical, psychological, social and spiritual trauma arising out of prolonged, indefinite segregation from other human beings and from being denied, for a prolonged, indefinite period of time, any meaningful social contact with other human beings.

Principles of Fundamental Justice

6. The impugned laws on their face and/or in their administration are arbitrary. Prolonged, indefinite administrative segregation undermines the purposes of the impugned laws.

7. The impugned laws on their face and/or in their administration are overbroad. To the extent the impugned laws authorize prolonged, indefinite administrative segregation, it applies to conduct that bears no relation to the impugned laws purpose.
- ~~7~~8. The impugned laws on their face and/or in their administration are grossly disproportionate. The gravity of the infringements on the *Charter* rights of individuals subjected to prolonged, indefinite administrative segregation are grossly disproportionate to the benefit and legislative purpose of the impugned laws.
- ~~8~~9. The impugned laws on their face and/or in their administration offend the principle of fundamental justice requiring procedural fairness because the said infringements are imposed without the use of any appropriate criteria and without judicial or external supervision or independent oversight.
- ~~9~~10. The impugned laws on their face and/or in their administration offend the principle of fundamental justice requiring reasonable accommodation of the disabled because they fail to reasonably accommodate persons with mental disabilities even though such accommodation would not be unreasonable, impracticable or otherwise amount to undue hardship.

Sections 9 and 10 of the *Charter*

~~10~~11. Sections 9 and 10 of the *Charter* state as follows:

9. Everyone has the right not to be arbitrarily detained or imprisoned.
10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is unlawful.

~~11~~12. Sections 9 and 10 are engaged and infringed by the impugned laws and/or their administration in so far as they authorize or compel indefinite administrative segregation without recourse to appropriate criteria, without informing the inmate of the reasons therefor, without the ability for the inmate to retain and instruct counsel without delay and to be informed of that right, and without the right to external oversight of the continuing administrative segregation.

Section 12 of the *Charter*

~~12~~13. Section 12 of the *Charter* states as follows:

12. Everyone has the right not to be subjected to any cruel or unusual treatment or punishment.

~~13~~14. Prolonged, indefinite administrative segregation is an excessive measure that violates basic standards of decency in that it causes significant psychological deterioration and physical harm, and is a denial of basic human dignity. Segregation which can be prolonged and which has no known end date is a practice that defies evolving sensibilities regarding penal norms. The impugned laws on their face and/or in their administration deliver harms that are grossly disproportionate to its stated purpose of addressing security within penitentiaries.

Section 15 of the *Charter*

~~14~~15. Section 15 of the *Charter* states as follows:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

~~15~~16. The impugned laws on their face and/or in their administration infringe the right to equality under s. 15(1).

~~16~~17. The impugned laws on their face and/or in their administration target the mentally ill or, in the alternative, are applied so as to target the mentally ill for segregation placements for discriminatory reasons.

~~17~~18. The impugned laws on their face and/or in their administration target aboriginal inmates or, in the alternative, are applied so as to target aboriginal inmates for segregation placements for discriminatory reasons.

~~18~~19. The impugned laws on their face and/or in their administration create inequality by imposing particularly egregious suffering on the mentally ill whereas the impugned laws do not have that same effect on persons of requisite physical ability.

~~19~~20. This disadvantage perpetuates prejudice and stereotyping about individuals with mental disabilities.

Section 1 of the *Charter*

~~20~~21. Section 1 of the *Charter* reads as follows:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

~~2122~~. The said infringements of ss. 7, 9, 10, 12 and 15 cannot be justified pursuant to the criteria of s. 1, the burden of proof of which lies on Canada.

Plaintiffs' address for service: Farris, Vaughan, Wills & Murphy LLP
PO Box 10026, Pacific Centre South
25th Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3

Fax number address for service (if any): 604.661.9349

E-mail address for service (if any): jarvay@farris.com

Place of trial: Vancouver, British Columbia

The address of registry is: 800 Smithe Street, Vancouver, BC, V6Z 2C5

Dated: ~~19 Jan 2015~~ 21 Jun 2017



Signature of

Plaintiff lawyers for Plaintiffs

Joseph J. Arvay, Q.C. and Alison M. Latimer

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

1. (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

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A challenge to the constitutional validity of sections 31, 32, and 33 of the *Corrections and Conditional Release Act* or, in the alternative, a challenge to the constitutional validity of the application of sections 31, 32, and 33 of the *Corrections and Conditional Release Act*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check 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:

[Check 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: *[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982
Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No.5*

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