

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

PLAINTIFF

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

NOTICE OF CIVIL CLAIM

Name and address of each Plaintiff

British Columbia Civil Liberties Association
c/o Alison M. Latimer
Barrister and Solicitor
1200 - 1111 Melville Street
Vancouver BC V6E 3V6

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 PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, the 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 306 – 268 Keefer Steet, Vancouver, British Columbia, V6A 1X5.
2. The defendant, Attorney General of Canada (“**Canada**”), has an address for service at 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.

BCCLA

3. 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 an intervener and plaintiff.
4. In addition to BCCLA’s long standing interest in matters of prisoners’ rights and policy, BCCLA has been extensively involved in advocacy and education with respect to a wide range of issues related to post-sentencing rights of prisoners, including solitary confinement. 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.
5. BCCLA has consistently opposed prolonged, indefinite solitary confinement and solitary confinement imposed without the use of any objective criteria and without mandatory external oversight, arguing that these practices offend 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.

Public Interest Standing

6. BCCLA has sufficient interest to be granted public interest standing, in that:
 - a. this claim raises a serious challenge to the prolonged and indefinite use of restrictive movement routines and lockdowns in respect of whether such restrictive policies are authorized by the *Corrections and Conditional Release Act*, SC 1992, c 20 (“*CCRA*”) and *Corrections and Conditional Release Regulations*, SOR/92-620 (“*Regulations*”), and if so, whether such laws and/or their administration are constitutionally valid;
 - b. BCCLA has a demonstrated, serious, and genuine interest in the subject matter of this litigation;
 - c. the issues of whether prolonged and indefinite use of lockdowns and restrictive movement routines are authorized by the law and, if so, whether there is a constitutional right to be free from the prolonged and indefinite use of a restrictive movement routine or lockdown are relevant to all Canadians;
 - d. the resources and expertise of BCCLA confirm its capacity to bring forward the claim and to ensure that the issues will be presented in a sufficiently concrete and well-developed factual setting;
 - e. the claim raises issues in the public interest that transcend the interests of any single prisoner who may be directly affected by a restrictive movement routine or lockdown;
 - f. the claim raises a comprehensive challenge to the impugned laws and their administration based on multiple constitutional provisions: it is a systemic challenge that differs in scope from an individual challenge to a discrete issue;
 - g. Canadian penitentiaries are highly inaccessible, generating barriers for inmates to access counsel and pursue legal claims as individual plaintiffs;
 - h. 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;
 - i. since at least 2012, there have been thousands of inmates subjected to prolonged and indefinite use of restrictive movement routines and thousands of inmates subjected to prolonged and indefinite lockdowns, and yet no Canadian court has adjudicated a claim brought by an individual prisoner resembling the present claim;
 - j. 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
 - k. the claim is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court.

Restrictive Movement Routines

7. The *CCRA* and *Regulations* do not explicitly authorize prolonged and indefinite use of restrictive movement routines.
8. Sections 97 of the *CCRA* authorizes the Commissioner to make rules for (a) the management of the Service (b) for the matters described in section 4 [Principles that guide Service] and (c) generally for carrying out the purposes and provisions of Part I of the *CCRA* and the *Regulations*.
9. Section 98 of the *CCRA* authorizes the Commissioner to designate as Commissioner's Directives any or all rules made under s. 97.
10. Pursuant to these powers, the Commissioner issued *Commissioner's Directive 566-3: Inmate Movement* ("CD 566-3") in 2012, requiring institutional heads to ensure that "a Standing Order is in place to monitor and control inmate movement at all times".
11. The stated policy of CD 566-3 is "to provide direction for controlling and monitoring inmate movement".
12. Section 4 of the *CCRR* imposes duties on an institution head, under the direction of the Commissioner, for among other things the care, custody and control of all inmates in the penitentiary and the management, organization and security of the penitentiary.
13. At each federal institution, the institutional head has implemented a standing order required by CD 566-3.
14. Standing orders that impose conditions of confinement equally or more restrictive to those imposed under the previous administrative segregation regime or the current Structured Intervention Unit ("SIU") regime – need to have appropriate procedural protections. Such routines are imposed without any of the procedural rights afforded under the prior administrative segregation regime or the current SIU regime. They are often imposed for prolonged and indefinite periods of time.
15. Conditions of confinement more restrictive than those imposed in SIUs, without appropriate procedural safeguards, are not authorized by the *CCRA*. CSC must use the least restrictive measures consistent with the protection of society, staff and offenders. Restrictive movement routines are not in accordance with s. 4 of the *CCRA*.
16. In the alternative, if they are so authorized, the *CCRA* is constitutionally invalid to that extent.

Modified Routines and Lockdowns (collectively "Lockdowns")

17. The *CCRA* and *Regulations* do not explicitly authorize the use of prolonged and indefinite lockdowns.
18. Pursuant to sections 97 and 98 of the *CCRA*, the Commissioner issued *Commissioner's Directive 568-1* ("CD 568-1").

19. CD 568-1 also does not authorize lockdowns. However, it defines a lockdown as “a non-routine situation which results in full suspension of all activities/ privileges and the inmates are locked in their cells on a non-individualized basis.”
20. Many lockdowns constitute solitary confinement under the *Mandela Rules*. This means that lockdowns result in mass solitary confinement of all inmates in a unit or an entire institution. Inmates are locked in their cells for 22 or more hours a day, with little or no access to meaningful human contact.
21. Lockdowns are authorized by wardens. They can be as short as a few hours or go on for weeks or even months. They are often imposed for prolonged and indefinite periods of time.
22. Lockdowns are frequent in federal penitentiaries. Lockdowns are sometimes ordered to address a security incident. Lockdowns are sometimes ordered for operational and administrative reasons, including foreseeable and scheduled events, rather than true exigencies. Some operational and administrative rationales for the use of lockdowns include: staff shortages, training, lunches, leaves, to save overtime costs, and for construction.
23. Although section 83(2)(d) of the *CCRA* requires one hour of exercise each day even when inmates are on lockdown, this is often not provided.
24. Lockdowns are also inconsistent with s. 4 of the *CCRA*.
25. CD 568-1 requires CSC to report to the Regional office all *complete* lockdowns of an institution immediately, and all non-routine *partial* lockdowns within one working day.
26. Modified routines are not defined in policy or law. They are similar to a lockdown but some movement is provided for on a modified routine.
27. Lockdowns are imposed without any of the procedural rights afforded under the prior administrative segregation regime or the current SIU regime.

Effects of Restrictive Movement Routines and Lockdowns

28. Restrictive movement routines and lockdowns constitute 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 a penitentiary. While subjected to a restrictive movement routine or lockdown, an inmate is denied meaningful interactions. Such inmates are isolated, and unaware of when or how they might be granted their residual liberty. 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.
29. The practices of restrictive movement routines and lockdowns, particularly where such practices are imposed for extended periods of time, have significant adverse effects. Prolonged and indefinite use of restrictive movement routines and lockdowns are detrimental to the physical and psychological health of inmates. Inmates who are subjected to extended use of restrictive movement routines and lockdowns are observed to suffer from a wide variety of adverse effects, including:

- a. anxiety;
 - b. hallucinations;
 - c. panic;
 - d. paranoia;
 - e. ruminations and intrusive obsessional thoughts;
 - f. self-harm;
 - g. social withdrawal;
 - h. suicidal thoughts and behaviours;
 - i. mental illness.
30. The harsh and punitive effects of prolonged and indefinite use of restrictive movement routines and lockdowns 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 subjected to restrictive movement routines and lockdowns also intensifies the severity of a court-imposed sentence, frustrating the court's temporal imposition of a "fit sentence."
31. Additionally, the negative effects of restrictive movement routines and lockdowns 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 them to control their anger and conduct toward other inmates; and
 - c. create new psychiatric disorders which contribute to potentially criminal or antisocial behaviour.
32. The negative effects of lockdowns are compounded by the fact that inmates held in such conditions 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.
33. The prolonged and indefinite use of restrictive movement routines and lockdowns has been the subject of critical commentary on a number of occasions.

Part 2: RELIEF SOUGHT

1. The plaintiff seeks the following relief
 - a. a declaration that prolonged and indefinite lockdowns and restrictive movement routines are not authorized by law;
 - b. a declaration that the administration of prolonged and indefinite lockdowns and restrictive movement routines unjustifiably infringes ss. 7, 12 and 15 of the *Charter*;
 - c. in the alternative, if prolonged and indefinite lockdowns and restrictive movement routines are authorized by law, a declaration that the law is to that extent of no force and effect;
 - d. costs, including special costs and applicable taxes on those costs; and
 - e. such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

2. The plaintiff relies on:
 - a. the inherent jurisdiction of the court to grant declaratory relief;
 - b. section 52 of the *Constitution Act, 1982*, and
 - c. the *Charter* and, in particular, ss. 7, 12, 15, and 24 thereof.

Section 7 of the Charter

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

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.

4. The right to life is engaged and infringed by state-imposed conditions that cause an individual to end their own life.
5. 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.
6. 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 use of restrictive movement routines and lockdowns and from being denied, for a prolonged, indefinite period of time, meaningful social contact with other human beings.

Principles of Fundamental Justice

7. Prolonged and indefinite use of restrictive movement routines and lockdowns undermine the purposes of the impugned laws and are therefore arbitrary.
8. The gravity of the infringements on the *Charter* rights of individuals subjected to prolonged and indefinite use of restrictive movement routines and lockdowns are grossly disproportionate to the benefit and legislative purpose of the impugned laws.
9. The said infringements are imposed without the use of any appropriate criteria and without judicial or external supervision or independent oversight and therefore offend the principle of fundamental justice requiring procedural fairness.

Section 12 of the *Charter*

10. 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.

11. Prolonged and indefinite imposition of restrictive movement routines or lockdowns 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. These practices, which can be prolonged and which have no known end date, are practices that defy evolving sensibilities regarding penal norms. The impugned laws on their face and/or in their administration deliver harms that are grossly disproportionate to their purposes.

Section 15 of the *Charter*

12. 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.

13. Prolonged and indefinite use of restrictive movement routines and lockdowns creates inequality by imposing particularly egregious suffering on mentally ill and/or disabled or racialized or Indigenous inmates whereas the impugned laws do not have that same effect on persons of requisite health and/or ability or non-racialized or non-Indigenous persons.
14. This disadvantage perpetuates prejudice and stereotyping about individuals with mental disabilities and Indigenous persons.

Section 1 of the *Charter*

15. 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.

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

Plaintiff's address for service: Alison Latimer, Barrister & Solicitor
1200 - 1111 Melville Street
Vancouver BC V6E 3V6

Fax number address for service (if any): None

E-mail address for service (if any): alison@alatimer.ca

Place of trial: Vancouver, British Columbia

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

Dated: 12 Oct 2021



Signature of lawyer for plaintiff
Alison M. Latimer

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

[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 restrictive movement routines and lockdowns in respect of whether such restrictive policies are authorized by the *Corrections and Conditional Release Act*, SC 1992, c 20 (“**CCRA**”) and *Corrections and Conditional Release Regulations*, SOR/92-620 (“**Regulations**”), and if so, whether such laws and/or their administration are constitutionally valid.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

- a motor vehicle accident
- medical malpractice
- another cause
- 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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NOTICE OF CIVIL CLAIM

Alison Latimer
Barrister & Solicitor
1200 - 1111 Melville Street
Vancouver BC V6E 3V6
Tel: 778.847.7324
File No. 0017