CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-

SUPERIOR COURT
(Class Actions)

SEAN RYAN, [redacted]

Applicant

v.

ATTORNEY GENERAL OF CANADA, with an office at Quebec Regional Office, Department of Justice Canada, Guy Favreau Complex, East Tower, 9th floor, 200 René-Lévesque Boulevard West, Montreal, Quebec, H2Z 1X4

Defendant

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Art 575 *C.C.P.*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUÉBEC SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

I- 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,

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

and in prison-to-prison transfers (henceforth, the "impugned situations"). Although this is purportedly authorized by the regulations, it is clearly contrary to the *CCRA*. The plaintiff seeks 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 searches 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 *Canadian Charter of Rights and Freedoms*[2] ("*Charter*") and has acted contrary to its obligations under the *Civil Code of Québec* ("*Civil Code*")[3], including those obligations set out in the *Québec Charter of human rights and freedoms*[4].

II- THE PARTIES

A. The Applicant and the Class He Seeks to Represent

4. The Applicant, Chi Mokaman, legally known as Sean Ryan, is a 65-year-old Mi'kmaw man.

5. He seeks to institute a class action based on the *Charter* and the *Civil Code* on behalf of the following class:

> All persons imprisoned in a federal penitentiary in Québec on or after June 18, 1992.
>
> *Toutes les personnes incarcérées dans un pénitencier fédéral au Québec à partir du 18 juin 1992.*

6. In this application, "penitentiary" and "prison" mean a penitentiary as defined in the *CCRA*.

B. The Defendant

7. 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").

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[2] *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
[3] CQLR c CCQ-1991, see arts. 1457, 1376, 1457, 1463, and 1464.
[4] CQLR c C-12, see arts. 1, 4, 5, 24.1, 25, and 49.

8. Correctional Services of Canada ("CSC") is the federal government department that manages the penitentiaries and is responsible for the care and custody of inmates serving sentences of two or more years.

III- EXPERIENCES OF THE APPLICANT

9. Sean Ryan is the legal name and the used in the prison system by Chi Mokaman.

10. Chi Mokaman was born on July 20, 1959.

11. Chi Mokaman is a Mi'kmaw man. He is an artist and wood carver. In the prison system, he dedicated much of his time to being a helper to the Elders and to strengthening and repairing his links to his culture and spirituality. He now lives in the community.

12. Mr. Mokaman is a residential school survivor. He was in a residential school between the ages of 6 and 9. He had a traumatic childhood. From a young age, he experienced and witnessed extreme violence and abuse of force, from his parents, and from authority figures, including representatives of the federal government.

13. Mr. Mokaman had an unstable and violent childhood. His parents abused alcohol and drugs. The family lived in poverty. Most of his family also struggled with alcohol and addiction. His parents were under investigation by child protection authorities for child molestation, but often fled with the children.

14. Chi Mokaman and his siblings were all victims of physical and sexual abuse committed by their parents and other family members. Mr. Mokaman was sexually abused by his parents from the age of 4. They did not stop until he left his family entirely at the age of 16.

15. He started to run away at the age of 9. He started to live on the street at the age of 13.

16. He was sexually abused by two police officers while living on the street at the age of 14.

17. Mr. Mokaman learned at a young age to distrust authorities, since he and many of his family members were abused by people in positions of power.

18. Mr. Mokaman was first incarcerated in provincial jail when he was 15 and in the federal system at the age of 16.

19. Mr. Mokaman has taken responsibility for his actions in relation to his convictions.

20. During his first period of incarceration in a federal prison, he experienced sexual abuse on a regular basis from a priest working at the Springhill Institution, Nova Scotia. He also experienced sexual abuse by other inmates until the age of 19.

21. Physical abuse by guards was also part of his early experience in the prison system. At the beginning of his incarceration, strip searches would also include physical abuse.

22. Mr. Mokaman's difficult childhood and history of sexual abuse by his parents were well known to Canada from the beginning of the class period, as part of the Aboriginal social history included in his official profile.

23. Mr. Mokaman also has a history of mental illness as a result of these experiences and as a result of his time in the prison system. His emotional fragility, history of self-harm, suicide attempts and trauma were all known to the CSC.

24. While incarcerated, Mr. Mokaman completed a university degree and approximately ten other vocational courses. He worked closely with elders, participated to Indigenous traditions and ceremonies in all institutions, and was considered a helper to others in the prison system.

25. Since 2021, Mr. Mokaman has been living in freedom in his community. He has worked very hard to heal and to move forward after the abuses he experienced as a child and as an incarcerated person.

26. Throughout almost 50 years of incarceration in federal institutions, Mr. Mokaman was subject to suspicionless strip searches thousands of times in the impugned situations described in this class action. In each case, he was not in a place where there was a likelihood of access to contraband.

27. Mr. Mokaman was incarcerated in almost every federal institution in Québec (Archambault Institution, Regional Reception Centre, Federal Training Centre, Leclerc Institution, La Macaza Institution, Waseskun Healing Centre), as well as most of institutions from Ontario, British-Colombia, Nova Scotia and New Brunswick. He was transferred dozens, perhaps hundreds of times.

28. He was strip searched at each transfer between institutions, when leaving and entering an institution. He was strip reached when released.

29. Mr. Mokaman had throat cancer in 2019 while incarcerated. He received more than thirty cancer treatments at an external hospital. Each time he was brought to the

hospital to receive his cancer treatment, he was strip searched before leaving the institution.

30. While incarcerated, Mr. Mokaman received regular visits. He was strip searched as a condition of seeing his visitors.

31. Mr. Mokaman would dread transfers from one institution to another, visits from relatives and his hospital treatments, since each time would involve at least two strip searches.

32. Despite small variations between institutions and over time, the procedure for these searches was similar. He would always be asked to bend over and remove all of his clothes. There would always be two or more guards watching him.

33. During these strip searches, Mr. Mokaman was forced to allow each crevice and orifice of his naked body to be inspected by total strangers. He was forced to actively facilitate this process. He would be asked to squat and lift his genitals. He felt each time that he was forced to give away a part of himself.

34. These searches made Mr. Mokaman feel humiliated and degraded.

35. These strip searches reactivated the trauma of his childhood, as well as the sexual and physical violence he experienced from his parents and other persons in positions of authority. They caused lasting emotional and psychological scars.

36. Mr. Mokaman became convinced that he deserved absolutely no respect or human dignity. Those strip searches made him feel less than a human being, that he was a sick person. He felt diminished and worthless, feelings he experienced growing up.

37. The guards that perpetrated these strip searches claimed to have the legal authority to dehumanize him and humiliate him. The fact that they represented the justice system made him believe that the society shared the same opinion of him — that he was less than human, that he was not worthy of even the most basic forms of respect or human dignity.

38. As a residential school survivor and Indigenous man, Mr. Mokaman experienced direct abuses of power at the hands of the federal government. The routine and suspicionless strip searches he experienced perpetrated his distrust towards the government, the justice system and society in general.

39. His experience in the prison system and these abusive strip searches cannot be separated from his Indigenous identity. In many ways, these institutions and practices

continued the violence and mistreatment that his people and ancestors were subjected to and further separated him from his culture.

40. One of the reasons these strip searches are harmful is precisely because they are so unnecessary. Mr. Mokaman felt they were completely useless, as he was being moved from one secure area to another while already in custody. He believed that the Correctional Service would use these occasions only to make him feel humiliated.

41. As Mr. Mokaman healed, he began to see these strip searches as a deep injustice, and part of a pattern of systemic abuse inflicted on him and others like him.

42. Today, he lives with five decades of memories that he is forced to revisit each time he removes his clothes and bends over. Those violations still haunt him and go to the very core of his sense that he is a person with dignity, a person that matters.

IV- FACTS GIVING RISE TO AN ACTION FOR THE APPLICANT AND EACH MEMBER OF THE CLASS

A. Illegal Strip Searches of the Class

43. 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:

    a. leaving a penitentiary;

    b. leaving or entering a secure area;

    c. entering the family-visiting area; and

    d. prison-to-prison transfers.

44. The *CCRA* authorizes suspicionless strip searches only in circumstances prescribed in regulations.[5] 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."[6] 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*.

45. 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

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5 *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 48(a).
6 *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 48(a).

or leaving the family-visiting area of a penitentiary," among other situations.[7] However, the regulations cannot authorize anything contrary to the legislation.

46. 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 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.

47. 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

48. 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.*

49. 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.

50. 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.[8] CSC must provide a copy to the subject of the search on request.[9] 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

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7 *Corrections and Conditional Release Regulations*, SOR/92-620, s. 48.

8 *Corrections and Conditional Release Act,* S.C. 1992, c. 20, s. 67; *Corrections and Conditional Release Regulations*, SOR/92-620, s. 58.

9 *Ibid.*

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.

51. 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

52. 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 Supreme Court of Canada described strip searches as "one of the most extreme exercises of police power"[10]. 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][11]

53. 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.

54. 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.

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[10] *R. v. Golden*, 2001 SCC 83, at par. 89.
[11] *Ibid.* at par. 90.

B. Causes of Action

55. The acts and omissions of the Defendant ground various causes of action, including:

    a) Unreasonable search and seizure, contrary to section 8 of the *Charter*;

    b) Infringement of the right to liberty and security of the person in a manner not in accordance with the principles of fundamental justice, contrary to section 7 of the *Charter*;

    c) Violation of the Defendant's extracontractual obligations under the *Civil Code of Québec* and the *Québec Charter of human rights and freedoms*.

Section 8 of the Charter (unreasonable search and seizure)

56. 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.

57. The plaintiff asserts, 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, as detailed above. 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.

58. 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.

Section 7 of the Charter (liberty and security of the person)

59. Strip searches in the impugned situations also constitute a serious deprivation of liberty, as detailed 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.

60. The strip searches were not authorized by law and therefore were not in accordance with the principles of fundamental justice.

61. In the alternative, even 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.

No justification under s. 1 of the Charter or otherwise

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

63. 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."[12] 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.

64. 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

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

in the public interest to avoid unnecessary and harmful violations such as those at issue in this action.

65. The *CCRA* also requires that prisons be "humane", "healthful", and "free of practices that undermine a person's sense of personal dignity."[13] Unnecessary suspicionless strip searches run counter to these requirements.

66. 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.

67. 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.

Liability under the Civil Code of Quebec* and the Quebec *Charter of human rights and freedoms

68. The Defendant is also liable under the *Civil Code* for its conduct and those of its subordinates, as suspicionless strip searches in the impugned situations constitute a civil fault causing injury to class members.

69. 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. The invasion of the class members' privacy was carried out without the consent of the person and/or without the invasion being authorized by law.

70. The strip searches of the class members in the impugned situations amounted to false imprisonment and constituted wrongful interference with their liberty interests. 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. 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.

71. The strip searches of the class members constitute assault and battery, and wrongfully interfered with the class members' bodily integrity. Each involved unwanted

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

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.

72. 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.

73. The nature of the Defendant's wrongdoing is highly reprehensible, clearly wrong, harsh, callous, and departs to a marked degree from the applicable standard of reasonable and decent behaviour.

74. The gravity of the Defendant's wrongdoing is even more serious given that the class is highly vulnerable. This includes pre-existing vulnerabilities arising from poverty, discrimination, addiction, abuse, and other negative life circumstances, as detailed in **Exhibit P-1** to **P-5**, **P-8** and **P-11**. This also includes vulnerabilities arising from the high degree of control CSC wields over the class members' lives.

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

76. The defendant is liable under the *Civil Code of Québec* for its conduct and those of its subordinates as described herein. The defendant is bound by the ordinary rules of civil liability in Québec. Its conduct, as detailed in this Claim, constitutes a violation of the duties incumbent upon it within the meaning of article 1457 *Civil Code of Québec* and it is therefore bound to make reparation to class members for the injury caused by that fault.

77. Those duties include both the defendant's general obligations and those obligations set out in the Québec *Charter of human rights and freedoms*. For example, the defendant's conduct, as detailed in this Claim, violates the rights to personal security, inviolability and liberty (articles 1, 24), the right to dignity (article 4), the right to privacy and the protection against unreasonable search and seizure (articles 5, 24.1) and the right to be treated with humanity and with the respect due to the human person while detained (article 25). It also represents an unlawful and intentional interference with those rights, which entitles class members to punitive damages pursuant to article 49 of the Québec Charter of human rights and freedoms.

C. Harm and Damages

78. 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.

79. The class members suffered and continue to suffer harm and damages which include, as detailed in Exhibit P-1, 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.

80. 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.

81. 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

82. 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.

83. 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.

84. 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.

85. 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.

86. 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, as detailed above.

87. 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.

88. Sources of this knowledge include, but are not limited to the following (see also **Exhibits P-7**, **P-8**, and **P-10**):

    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, civil 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).

89. 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 (see **Exhibit P-9**). 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*.

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

95. 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*.

96. 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.

97. 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.

98. 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.

D. Interpretation

99. Headings are used in this document for readability. 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.

100. The word "including" in this document means "including, but not limited to,".

V- CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

101. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, for the following reasons:

    a. Class members are numerous (see **Exhibit P-6**) and dispersed across Quebec and Canada;

    b. Due to confidentiality of inmate information, it is impossible to know the identity of all class members;

    c. Given the costs and risks inherent in litigation of this nature, and particularly in light of the highly vulnerable and marginalized state of the vast majority of class members (as detailed in Exhibit P-1), individuals will hesitate to institute an individual action against the Defendant. Even if class members themselves could afford such individual litigation, the judicial system could not as it would be overloaded;

    d. Individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delays and expenses for all parties and the judicial system;

    e. It would be impossible to contact each and every class member to obtain mandates and to join them in one action; and

    f. In these circumstances, a class action is the only procedure that will allow class members to effectively pursue their respective rights and seek justice.

102. The claims of class members raise identical, similar or related questions of fact and law, namely:

    a. Did the suspicionless strip searches of the class members in the impugned situations infringe s. 8 of the *Charter* on the basis that:

        i. They were not authorized by the *Corrections and Conditional Release Act* ("*CCRA*"); or

        ii. They were authorized by the *CCRA* in one or more of the impugned situations but said legal authorization was unreasonable?

    b. Did the suspicionless strip searches of the class members in the impugned situations infringe s. 7 of the *Charter* on the basis that:

        i. They constituted a deprivation of liberty or security of the person under s. 7 of the *Charter*; and

ii. Legislation authorizing said deprivation in the impugned situations was arbitrary, overbroad, grossly disproportionate, procedurally unfair or otherwise not in accordance with a fundamental principle of justice?

c. If yes, was this justified under s. 1 of the *Charter*?

d. Did the suspicionless strip searches of the class members in the impugned situations constitute a breach of the Defendant's obligations under the *Civil Code*?

e. What is the applicable limitation period?

f. If the impugned conduct was authorized by the *CCRA* at the time and said authorization was subsequently found to be unconstitutional, are the class members barred from obtaining relief pursuant to s. 24 of the *Charter* on that basis, including *Charter* damages?

g. If a *Charter* breach or breach of the Defendant's extracontractual obligations has been established, can damages be determined on an aggregate basis in whole or in part? If yes, what quantum of aggregate damages is warranted?

h. Are declarations regarding the lawfulness of suspicionless strip searches in the impugned situations warranted?

i. Are orders regarding the expungement of disciplinary records arising from illegal searches or other non-monetary remedies warranted?

j. Should the Defendant pay interest, and if yes, at what rate?

VI- CONCLUSIONS SOUGHT

103. The conclusions sought by the Applicant are as follows:

GRANT the Applicant' action against the Defendant on behalf of all the members of the class;

DECLARE that suspicionless strip searches carried out in the impugned situations are unlawful;

DECLARE that suspicionless strip searches carried out in the impugned situations violate sections 7 and 8 of the *Charter*;

DECLARE that suspicionless strip searches carried out in the impugned situations are wrongful and constitute a civil fault;

CONDEMN the Defendant, pursuant to the *Charter* and the *Civil Code*, to pay the class members damages for the purposes of compensation, vindication, and deterrence in an amount to be determined by the Court, with interest as well as the additional indemnity provided for in article 1619 of the *Civil Code of Quebec*;

ORDER the Defendant to respect and comply with any other declaration or order of the Court made pursuant to subsection 24(1) of the *Charter* deemed necessary to safeguard the rights of class members and to provide an appropriate and just remedy for the violation of their rights, including but not limited to declarations and orders regarding the expungement of records arising from strip searches in the impugned situations;

ORDER collective recovery of the claims in accordance with articles 595-598 of the *Civil Code of Procedure*;

RECONVENE the parties within 30 days of the final judgment in order to determine the modalities for recovery and distribution;

THE WHOLE with costs, including expert fees, notice fees and all fees related to the administration of distribution to the class.

VII- STATUS OF THE REPRESENTATIVE

104. The Applicant requests that he be ascribed status of representative.

105. Mr. Ryan is in a position to represent the class members adequately:

a. He has been imprisoned in a federal penitentiary in Quebec on or after June 18, 1992 and is thus a member of the proposed class;

b. He has endured suspicionless strip searches in the impugned situations;

c. He is willing and able to devote the time required in order to fulfill her role as class representative;

d. He has a good understanding of the case and her role as a class representative;

e. He is in a position to provide the lawyers with information relevant to this class action;

f. He has no conflict of interest with the proposed class or its members; and

g. He is acting in good faith with the sole purpose of obtaining justice for himself and each of the class members.

VIII- JUDICIAL DISTRICT

106. The Applicant requests that the present class action be brought before the Superior Court in the district of Montréal as a large portion of class members reside in Montréal or its surroundings.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the application;

AUTHORIZE the bringing of a class action in the form of an action to recover damages for the purposes of compensation, vindication and deterrence pursuant to the *Civil Code of Quebec* and the *Canadian Charter of Rights and Freedoms*;

APPOINT the applicant as representative of the persons included in the class herein described as:

> All persons imprisoned in a federal penitentiary in Québec on or after June 18, 1992.
>
> *Toutes les personnes incarcérées dans un pénitencier fédéral au Québec à partir du 18 juin 1992.*

IDENTIFY the principal questions of fact and law to be treated collectively as the following:

a. Did the suspicionless strip searches of the class members in the impugned situations infringe s. 8 of the *Charter* on the basis that:
    i. They were not authorized by the *Corrections and Conditional Release Act* ("*CCRA*"); or
    ii. They were authorized by the *CCRA* in one or more of the impugned situations but said legal authorization was unreasonable?
b. Did the suspicionless strip searches of the class members in the impugned situations infringe s. 7 of the *Charter* on the basis that:
    i. They constituted a deprivation of liberty or security of the person under s. 7 of the *Charter*; and
    ii. Legislation authorizing said deprivation in the impugned situations was arbitrary, overbroad, grossly disproportionate, procedurally unfair or otherwise not in accordance with a fundamental principle of justice?
c. If yes, was this justified under s. 1 of the *Charter*?

d. Did the suspicionless strip searches of the class members in the impugned situations constitute a breach of the Defendant's obligations under the *Civil Code*?

e. What is the applicable limitation period?

f. If the impugned conduct was authorized by the *CCRA* at the time and said authorization was subsequently found to be unconstitutional, are the class members barred from obtaining relief pursuant to s. 24 of the *Charter* on that basis, including *Charter* damages?

g. If a *Charter* breach or breach of the Defendant's extracontractual obligations has been established, can damages be determined on an aggregate basis in whole or in part? If yes, what quantum of aggregate damages is warranted?

h. Are declarations regarding the lawfulness of suspicionless strip searches in the impugned situations warranted?

i. Are orders regarding the expungement of disciplinary records arising from illegal searches or other non-monetary remedies warranted?

j. Should the Defendant pay interest, and if yes, at what rate?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Applicant' action against the Defendant on behalf of all the members of the class;

DECLARE that suspicionless strip searches carried out in the impugned situations are unlawful;

DECLARE that suspicionless strip searches carried out in the impugned situations violate sections 7 and 8 of the *Charter*;

DECLARE that suspicionless strip searches carried out in the impugned situations are wrongful and constitute a civil fault;

CONDEMN the Defendant, pursuant to the *Charter* and the *Civil Code*, to pay the class members damages for the purposes of compensation, vindication, and deterrence in an amount to be determined by the Court, with interest as well as the additional indemnity provided for in article 1619 of the *Civil Code of Quebec*;

ORDER the Defendant to respect and comply with any other declaration or order of the Court made pursuant to subsection 24(1) of the *Charter* deemed necessary to safeguard the rights of class members and to provide an appropriate and just remedy for the violation of their rights, including but not limited to declarations and orders regarding the expungement of records arising from strip searches in the impugned situations;

ORDER collective recovery of the claims in accordance with articles 595-598 of the *Civil Code of Procedure*;

RECONVENE the parties within 30 days of the final judgment in order to determine the modalities for recovery and distribution;

THE WHOLE with costs, including expert fees, notice fees and all fees related to the administration of distribution to the class.

SET the deadline for opting out of the class action at 30 days from the date of the publication of the notice to class members;

DECLARE that all class members that have not opted out of the class action in the prescribed delay will be bound by any judgment to be rendered on the class action;

ORDER the publication of a notice to class members in accordance with article 579 of the Code of Civil Procedure, pursuant to a further order of the Court;

THE WHOLE with costs, including the costs of all publication of notices.

Montréal, July 2, 2024

Trudel Johnston & Lespérance

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Toronto, July 2, 2024

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SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the plaintiff has filed this *Application for authorization to institute a class action and to obtain the status of representative* in the Superior Court in the judicial district of Montreal.

Exhibits supporting the application

In support of the application, the plaintiff intends to rely on the following exhibits:

Exhibit P-1: Affidavit of Dr. Kelly Hannah-Moffat, sworn on June 11, 2021 (expert opinion on strip searching in federal prisons)

Exhibit P-2: Office of the Correctional Investigator, *Indigenous People in Federal Custody Surpasses 30%,* January 21, 2020

Exhibit P-3: Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report,* 2013

Exhibit P-4: Correctional Service of Canada, *National Prevalence of Mental Disorders Among Federally Sentenced Women Offenders,* 2018

Exhibit P-5: Correctional Service of Canada, *National Prevalence of Mental Disorders Among Incoming Federally-Sentenced Male Offenders,* 2015

Exhibit P-6: Public Safety Canada, *Corrections and Conditional Release Statistical Overview 2019 Annual Report*

Exhibit P-7: Memorandum from ADCO Hatcher dated December 29, 2004 re *Strip-Searching of Offenders Leaving the Institution*

Exhibit P-8: Documents released by the Correctional Service of Canada relating to the above-mentioned memorandum

Exhibit P-9: Regulations Amending the Corrections and Conditional Release Regulations, P.C. 2015-863 June 19, 2015

Exhibit P-10: United Nations Standard Minimum Rules for the Treatment of Prisons (Nelson Mandela Rules)

Exhibit P-11: Standing Senate Committee on Human Rights, *Human Rights of Federally-Sentenced Persons,* June 2021

These exhibits are available upon request.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, rue Notre-Dame Est, Montréal, Québec, H2Y 1B6,within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of this summons. However, in family matters or if you have no domicile, residence or establishment in Québec, it must be filed within 3 months after service; or
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with plaintiff is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

However, if the application pertains to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the plaintiff or the defendant, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to

be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you.

Transfer of application to the Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Convening a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing that, the protocol is presumed to be accepted.

Notice of presentation of an application

Applications filed in the course of a proceeding and applications under Book III or V of the Code—but excluding applications pertaining to family matters under article 409 and applications pertaining to securities under article 480—as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

NOTICE OF PRESENTATION

RECIPIENTS: **ATTORNEY GENERAL OF CANADA**
Quebec Regional Office, Department of Justice Canada
Guy Favreau Complex, East Tower, 9th floor
200 René-Lévesque Boulevard West,
Montreal, Quebec, H2Z 1X4

TAKE NOTICE that the present *Application for authorization to institute a class action and to obtain the status of representative* shall be presented in the Class Actions Division of the Superior Court, at the Montréal Courthouse situated at 1, Notre-Dame Street East, Montréal, at a date, time, and room determined by the coordinating judge.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, July 2, 2024

Trudel Johnston & Lespérance

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500-06-001319-249

SUPERIOR COURT
(Class actions)
DISTRICT OF MONTREAL

SEAN RYAN

Applicant

v.

ATTORNEY GENERAL OF CANADA

Defendant

Our file: 1491-1 BT-1415

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (ART 575 C.C.P.)

ORIGINAL

Name of attorneys: Mtre Lex Gill
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