Original Filed January 5, 2025
Amended Pursuant to the Order of Associate Judge Ring, dated May 13, 2025

Court File No.: T-39-25

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN

JORDELL ANTHONY SELLARS

PLAINTIFF

-and-

ATTORNEY GENERAL OF CANADA

DEFENDANT

Brought pursuant to the *Federal Court Rules,* SOR/98-106

FRESH AS AMENDED STATEMENT OF CLAIM

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

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

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated:

Issued by: _____
(Registry Officer)

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: **ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
900 – 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

CLAIM

CLAIM

1. The Plaintiff claims:

   a) An order certifying this action as a class proceeding under Part 5.1 of the *Federal Courts Rules,* SOR/98-106, and appointing the Plaintiff as Representative Plaintiff for the Class, as defined below;

   b) A declaration that His Majesty the King in Right of Canada, as represented by the Attorney General of Canada (collectively "the Defendant", "Canada" or the "Crown") through its conduct violated or caused to be violated rights of the Plaintiff and the Class Members protected under s. 15 of the *Canadian Charter of Rights and Freedoms*;

   c) A declaration that Canada owed the Plaintiff and the Class Members a duty of care and that Canada breached that duty of care in a manner that constituted systemic negligence which caused loss to the Plaintiff and the Class Members;

   d) Damages pursuant to s. 24(1) of the *Charter* for breach of s.15 protected *Charter* rights;

   e) Damages for breach of the duty of care resulting from the systemic negligence of Canada, including pecuniary and non-pecuniary damages;

   f) Damages equal to the cost of administering the distribution to Class Members;

   g) Special damages in an amount to be determined;

   h) Exemplary and punitive damages;

   i) Pre-judgement and post-judgment interest pursuant to the *Federal Court Act,* R.S.C. 1985, c. F-7;

   j) Such further and other relief as this Honourable Court may deem just.

NATURE OF THE ACTION

2. This action arises from Canada's continuous and continuing breaches of the rights of Indigenous persons in federal correctional institutions ("**Federal Institutions**") and on conditional release. Canada has knowingly, systemically, and in a discriminatory fashion underfunded programs, facilities, personnel, and services for Indigenous persons serving sentences administered by Correctional Service of Canada ("**CSC**"). In so doing it has failed to protect, and has in fact violated, the rights of Indigenous persons serving sentences administered by CSC. Further, Canada has consistently made arbitrary and negligent operational decisions that have contributed to and exacerbated the systemic denial of rights. Fundamentally, Canada has treated

rights held by the Class Members as privileges to be meted out as rewards, or not at all. These failures have long been made known to Canada, including repeatedly by the Office of the Correctional Investigator, but no meaningful change has occurred.

THE PLAINTIFF AND THE CLASS

The Plaintiff

3. The plaintiff, Jordell Anthony Sellars, is a First Nations person currently incarcerated in Kent Institution in Agassi, British Columbia (the "**Plaintiff**"). The Plaintiff is a member of the Xat'sull First Nations. He grew up in various places throughout British Columbia. His father taught the Plaintiff how to live off of the land.

4. The Plaintiff's parents and grandparents were survivors of the residential school system.

5. In July 2022, the Plaintiff was arrested for involvement in a shooting at the Williams Lake Rodeo. The Plaintiff pleaded guilty to aggravated assault in September 2023, and was sentenced to 9 years imprisonment in October 2023.

6. The Plaintiff has recently been living in a Structured Intervention Unit (SIU).

7. During his incarceration, the Plaintiff has tried to engage with as much Indigenous focused programming as he can. However, the Plaintiff's experience is that Indigenous programming is treated as a privilege to be provided as a reward, or not at all.

8. The Plaintiff was offered an opportunity to do the maximum security pre-Pathways Initiative day program while classified as a maximum security inmate. He successfully completed the program, and was reclassified as a medium security inmate. After an incident caused him to be reclassified back as a maximum security inmate, he asked to be allowed to participate again in the program, which he had enjoyed and found helpful. He was refused, on the grounds that he could not do the program a second time. His experience is that there are insufficient spots in that program for the Indigenous offenders at Kent Institution.

9. The Plaintiff has participated in sweat lodge ceremonies while in the pre-Pathways program and would like to continue to do so, but is not permitted to participate in a sweat while living in a SIU.

10. The Plaintiff would like to live in a healing lodge or in a dedicated pathways unit, but due to his security classification he has not been provided an opportunity to do so.

11. The Plaintiff occasionally is allowed to participate in pipe ceremonies, but only rarely, generally if someone he knew died. The Plaintiff is not entitled to possess certain culturally important items, like a drum and a buckskin case.

12. The Plaintiff has worked successfully and has developed a close personal relationship with an Elder. However, the Elder has a lot of obligations and inmates to meet with and cannot consistently make time for the Plaintiff.

13. The Plaintiff worked to make more traditional food available for First Nations people in prison, but has been met with a variety of excuses, including proximity to a butcher and a lack of adequate FOODSAFE certification. He has tried to meet these objections, including by locating a butcher and working to obtain FOODSAFE certification, but has been met with further resistance.

The Class

14. The Plaintiff and the Class Members are all "Aboriginal People" within the meaning of s. 35 of the Constitution *Act*, 1982.

15. The Plaintiff seeks to represent the following proposed class (the "**Class**" or the "**Class members**"):

> All First Nations, Inuit, and Métis Persons in Canada who were incarcerated in, or on conditional release from, a Federal Institution, between April 17, 1985 and the present (the "**Class Period**").
>
> "**First Nations Persons**" means individuals (a) who have or who are entitled to have status under the *Indian Act,* R.S.C., 1985, c. I-5; or (b) have met requirements for band member status pursuant to membership rules per s. 10 – 12 of the *Indian Act;* or (c) are recognized as members or citizens of a First Nation under agreements, treaties, or a First Nation's customs, traditions and laws.
>
> "**First Nation**" means a band as defined in s. 2(1) of the *Indian Act,* R.S.C., 1985, c. I-5, or a First Nations peoples with a modern treaty or land claims agreement.
>
> "**Inuit Person**" means individual Indigenous peoples in Canada who are registered with an Inuit land claim organization or meet the membership requirements to be so registered with an Inuit land claims organization or similar organization.

"**Métis Person**" means individuals who have membership in or meet the membership requirements of one of the following Métis organizations as of the date of certification of this action: Manitoba Métis Federation, Métis Nation Saskatchewan, Métis Nation British Columbia, Métis Nation of Ontario, or Métis Nation of Alberta;

THE DEFENDANT

16. His Majesty the King in Right of Canada is represented in this Action by the Attorney General of Canada. CSC is the Federal Government agency that administers the Federal Institutions.

FACTUAL BACKGROUND

Indigenous Overrepresentation in Federal Institutions

17. Indigenous people make up a disproportionately high percentage of people serving sentences administered by the Federal government.

18. Indigenous people account for approximately 5% of the adult population in Canada, but as of March 2023 constituted 32% of all individuals in Federal custody, and Indigenous women account for 50% of Federally incarcerated women. Further, as of May 2024, 35% of men and 75% of women in Federal maximum security facilities are Indigenous.

19. In addition to being overrepresented in the Federal correction system generally, Indigenous peoples are also disproportionately overrepresented in custodial settings (as compared to community supervision), use of force incidents, maximum security facilities, Structured Intervention Units (formerly segregation), Security Threat Group affiliations, self injury incidents, attempted suicide incidents, and suicides.

20. Indigenous individuals are increasingly entering the Federal correction system at a younger age, spending more time incarcerated, and returning to Federal correction facilities at rates higher than their non-Indigenous counterparts. Indigenous men have the highest rates of recidivism of any group.

The Mandate of CSC Including With Respect to Indigenous Persons

21. The *Corrections and Conditional Release Act,* S.C. 1992, c. 20 ("***CCRA***"), defines the purpose of the Federal correction system:

> 3 The purpose of the Federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by
>
> > (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
> >
> > (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

22. Section 4 of the *CCRA* sets out principles that guide CSC in carrying out its purpose as defined in s. 3, including:

> (c) the Service uses the least restrictive measures consistent with the protection of society, staff members and offenders;
>
> (c.1) the Service considers alternatives to custody in a penitentiary, including the alternatives referred to in sections 29 and 81;
>
> (c.2) the Service ensures the effective delivery of programs to offenders, including correctional, educational, vocational training and volunteer programs, with a view to improving access to alternatives to custody in a penitentiary and to promoting rehabilitation;
>
> (d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;
>
> (g) correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups;
>
> (i) staff members are properly selected and trained and are given
>
> > (i) appropriate career development opportunities,
> >
> > (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and
> >
> > (iii) opportunities to participate in the development of correctional policies and programs.

23. Section 75 of the *CCRA* recognizes that an "inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons."

24. Section 79.1 of the *CCRA* requires CSC take into account certain matters when making decisions regarding Indigenous persons:

> 79.1 (1) In making decisions under this Act affecting an Indigenous offender, the Service shall take the following into consideration:
>
> (a) systemic and background factors affecting Indigenous peoples of Canada;
>
> (b) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system and that may have contributed to the offender's involvement in the criminal justice system; and
>
> (c) the Indigenous culture and identity of the offender, including his or her family and adoption history.

25. Section 80 of the *CCRA* mandates that programs be designed to address the needs of Indigenous people:

> 80 Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of Indigenous offenders.

26. Section 100 of the *Corrections and Conditional Release Act Regulations,* SOR/92-620 (the "**Regulations**"), provides that people in Federal custody are entitled to express religion or spirituality in accordance with s. 75 of the *CCRA* to the extent the expression does not jeopardize the security of the penitentiary or the safety of any person, or involve contraband.

27. Section 101 of the Regulations provides that CSC shall "ensure that, where practicable, the necessities that are not contraband and that are reasonably required by an inmate for the inmate's religion or spirituality are made available to the inmate". This includes in particular "interfaith chaplaincy services, facilities for the expression of the religion or spirituality, a special diet as required by the inmate's religious or spiritual tenets, and the necessities related to special religious or spiritual rites of the inmate".

28. The Commissioner of Corrections is empowered to issue directives setting rules guiding the operation of CSC, and has exercised that discretion in respect of Indigenous offenders including through Commissioner's Directive 702: Indigenous Offenders ("**Directive 702**").

29. Directive 702 sets out its purpose as to "respond to specific needs of Indigenous offenders by providing effective interventions, through a Continuum of Care model".

30. The "Indigenous Corrections Continuum of Care model" is defined in Directive 702 as "a care model that provides specific approaches to address the needs of Indigenous offenders".

31. The Indigenous Corrections Continuum of Care is further described in Directive 702, Annex B, which explains that the concept of the "Medicine Wheel" is "at the centre of the Continuum of Care" and "reflects research findings that culture, teachings and ceremonies (core aspects of Indigenous identity) appear critical to the healing process". Directive 702 recognizes that "correctional interventions developed and implemented for Indigenous offenders must take into consideration the past, the present and the future direction of Indigenous peoples as a whole and of the Indigenous person as an individual."

32. Annex B to Directive 702 goes on to observe that the "Continuum of Care recognizes that Indigenous communities must be involved in supporting Indigenous offenders during their healing journey and reintegration, as they link offenders to their history, culture and spirituality."

33. Directive 702 requires that the Director General, Indigenous Initiatives Directorate, "will ensure operational practices and interventions respect the specific needs of Indigenous offenders in the Continuum of Care".

34. Directive 702 requires that Institutional Heads (defined in the *CCRA* as "the person who is normally in charge of the penitentiary") will "ensure staff working with Indigenous offenders are culturally competent relative to their role and have an understanding of the Indigenous Corrections Continuum of Care model".

35. Directive 702 requires that the District Director will ensure that "staff working with Indigenous offenders are culturally competent relative to their role and have an understanding of the Indigenous Corrections Continuum of Care model".

CSC Commitments to Address Indigenous Corrections

36. In recent years CSC has repeatedly publicly acknowledged the profound problems with its treatment of Indigenous persons in custody or on conditional release. CSC has issued an array of plans for addressing Indigenous overrepresentation in the Federal correctional system and other issues relating to Indigenous offenders. These plans are set out in documents including the *Aboriginal Continuity of Care Model* (2003), *Strategic Plan for Aboriginal Corrections* (2006, renewed in 2013), and the *National Indigenous Plan – A National Framework to Transform Indigenous Corrections* (2017). CSC has committed to, among other things:

a) Expanding Healing Lodges;

b) Expanding Section 84 releases;

c) Expanding the Pathways Program;

d) Increasing the numbers of Indigenous staff and the cultural competence of staff;

e) Creating greater collaboration with Indigenous communities;

f) Enhancing culturally-appropriate interventions and programs;

g) Addressing the mental health needs of Indigenous offenders; and

h) Improving reintegration results in an effort to close the gap between Indigenous and non-Indigenous offenders.

37. CSC has failed to fulfill these commitments in a meaningful way consistent with the scope of the problem.

Systemic Problems with Indigenous Focused Services in Federal Institutions

Healing Lodges

38. Healing lodges are facilities designed for Indigenous offenders which are intended to offer culturally appropriate services and programs in a way that incorporates Indigenous values, traditions and beliefs. The goal of a healing lodge is to address factors that led an individual to incarceration, and to prepare that individual for reintegration into society.

39. In the 1980s, prison and community advocates including the Native Women's Association of Canada, the Aboriginal Women's Caucus of the Elizabeth Fry Society, and the Native Sisterhood proposed the concept of a healing lodge. Healing lodges were conceived of as places where Indigenous persons serving Federal sentences could feel safe to heal, could be on the land, and could have the support of Elders, community and families. The concept was that these lodges were to be located away from the penitentiary environment, and were to be owned and operated by the local Indigenous community.

40. In 1990, the Task Force on Federally Sentenced Women recommended that one of the five new regional Federal facilities for women should be specifically for Indigenous women, and the Native Women's Association of Canada proposed that the facility be operated as a healing lodge. This led to the creation of the Okimaw Ohci Healing Lodge, a 29 bed facility located at the Nekaneet First Nation in Saskatchewan.

41. When Okimaw Ochi was opened, CSC committed that it would retain authority only temporarily and would transfer ownership and operation of the lodge to the local community, consistent with the original vision for healing lodges. Such a transfer never occurred.

42. In 2016, the Auditor General of Canada found that Indigenous persons released from healing lodges were more likely to successfully complete their supervision than people released from minimum security institutions.

43. There are currently four healing lodges that are operated by CSC:

a) Kwìkwèxwelhp Healing Village;

b) Pê Sâkâstêw Centre;

c) Willow Cree Healing Lodge; and

d) Okimaw Ohci Healing Lodge

(the "**CSC Run Healing Lodges**").

44. Despite the original vision of Healing Lodges being owned and operated by Indigenous communities, CSC has no plan in place to transfer the CSC Run Healing Lodges to Indigenous communities. The CSC Run Healing Lodges operate under the same policies as other prisons, with the result that they provide services more akin to mainstream minimal security prisons than the original vision for Healing Lodges.

45. There are currently six healing lodges that are operated by an Indigenous community or a partner organization. These community healing lodges are made possible by s. 81 of the *CCRA,* which empowers the Minister or their delegate to enter into an agreement with an Indigenous governing body or organization for the provision of correctional services to Indigenous offenders. The community run healing lodges are:

a) Stan Daniels Healing Centre (operated by the Native Counselling Service of Alberta);

b) O-chi-chak-ko-sipi Healing Lodge (operated by the Ochichakkosipi First Nation);

c) Waseskun Healing Centre;

d) Buffalo Sage for Women (operated by the Native Counselling Services of Alberta);

e) Prince Albert Grand Council Spiritual Healing Lodge; and

f) Eagle Women's Lodge

(the "**Community Run Healing Lodges**").

46. Under s. 114 of the Regulations, if an individual in Federal custody asks to be transferred to the care of an Indigenous authority under s. 81(3) of the *CCRA,* including a Community Run Healing Lodge, the Commissioner or staff must within 60 days consider the request, consult with the authority, make a decision, and give the individual notice of the decision.

47. CSC has conducted studies showing, and the fact is, individuals at Community Run Healing Lodges show greater improvement in areas including family/marital issues, substance use, and community functioning as compared to individuals at CSC Run Healing Lodges.

48. There are programs available at Community Run Healing Lodges that are not available at CSC Run Healing Lodges. These include the *Spirit of a Warrior* and *In Search of your Warrior* programs. Further, Community Run Healing Lodges offer better opportunities for interactions and involvement with the local community.

49. Despite the clear and acknowledged benefits that many Indigenous people under CSC control could reap from being placed in a Community Run Healing Lodge, at present only approximately 2% of the Indigenous individuals currently serving a Federal sentence are doing so at a Community Run Healing Lodge.

50. Since the first healing lodge was opened, the Office of the Correctional Investigator has made ten formal public recommendations on the need for more, better funded community run healing lodges that more closely align with the original vision. This includes the report issued by the Office of the Correctional Investigator in October 2013 entitled "Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act" ("**Spirit Matters**"). In that report the Correctional Investigator recommended:

> 2. CSC should develop a long-term strategy for additional Section 81 agreements and significantly increase the number of bed spaces in areas where the need exists. Funding for this renewed strategy should either be sought from Treasury Board or through internal reallocation of funds and amount to no less than the $11.6 million re-profiled in 2001 and adjusted for inflation.
>
> 3. CSC should re-affirm its commitment to Section 81 Healing Lodges by: (a) negotiating permanent and realistic funding levels for existing and future Section 81 Healing Lodges that take into account the need for adequate operating and infrastructure allocations and salary parity with CSC, and (b) continuing negotiations with communities hosting CSC-

> operated Healing Lodges with the view of transferring their operations to the Aboriginal community.

51. Numerous other Federal entities have called for increased funding and availability of healing lodges. The Truth and Reconciliation Commission of Canada in 2015 issued its Calls to Action, which included #35, “eliminate barriers to the creation of additional Aboriginal Healing Lodges within the Federal correctional system”.

52. The Standing Committee on Public Safety and National Security in 2018 recommended that CSC “increase the number of agreements with Indigenous communities under section 81 of [*CCRA*]” and that Canada “increase funding to Indigenous communities for agreements under section 81 of the *Corrections and Conditional Release Act* in order to address the funding gap between healing lodges operated by Indigenous communities and those operated by the Correctional Service Canada”.

53. The Standing Committee on the Status of Women in 2018 issued recommendations as follows:

> Recommendation 64: That the Government of Canada, in consultation with Indigenous peoples and communities, create and provide adequate funding for healing lodges operated by Correctional Service Canada and communities and to other culturally appropriate programming for Indigenous female offenders in urban communities.
>
> Recommendation 65: That the Government of Canada, in consultation with Indigenous peoples and communities, increase the number of and provide adequate resources for agreements concluded with Indigenous communities under section 84 of the Corrections and Conditional Release Act.
>
> Recommendation 66: That the Government of Canada, in consultation with Indigenous peoples and communities, provide additional resources to Correctional Service Canada and Indigenous communities to increase the use of sections 29, 81 and 84 of the Corrections and Conditional Release Act.

54. The National Inquiry into Missing and Murdered Indigenous Women and Girls issued recommendations as follows:

> 14.1 We call upon Correctional Service Canada to take urgent action to establish facilities described under sections 81 and 84 of the Corrections and Conditional Release Act to ensure that Indigenous women, girls, and 2SLGBTQQIA people have options for decarceration. Such facilities must be strategically located to allow for localized placements and mother-and-child programming.
>
> 14.2 We call upon Correctional Service Canada to ensure that facilities established under sections 81 and 84 of the Corrections and Conditional Release Act receive funding parity

> with Correctional Service Canada-operated facilities. The agreements made under these sections must transfer authority, capacity, resources, and support to the contracting community organization.

55. The Standing Senate Committee on Human Rights in its report entitled Human Rights of Federally-Sentenced Persons recommended:

> Recommendation 19: That the Correctional Service of Canada increase its use of section 81 of the Corrections and Conditional Release Act with a view to ensuring that Federally sentenced persons, particularly Federally-sentenced Indigenous women and men, are able to build and/or maintain ties with their families, communities and culture.
>
> Recommendation 51: That the Correctional Service of Canada increase the number of section 81 agreements by raising awareness of this section and guiding communities through the process as well as funding the establishment of individualized options as well as group Healing Lodges.

56. In 2023 Canada issued "The *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan" (the "**UNDRIP Action Plan**"), as required under the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. The UNDRIP Action Plan requires CSC to:

> Expand existing Section 81 Healing Lodge capacity, identify geographical gaps to capitalize on developing additional Healing Lodges and revisit communities that previously expressed interest in a Section 81 Healing Lodge

57. Pursuant to s. 6(1) of the *United Nations Declaration on the Rights of Indigenous Peoples Act,* Canada is obliged to implement the UNDRIP Action Plan.

58. There still is no Healing Lodge capacity at all in the Ontario, Atlantic or North regions.

59. In the Pacific Region there is only a single CSC Run Healing Lodge, and no Community Run Healing Lodge.

60. For Indigenous women there are only three healing lodges in total, and all are located in the Prairies.

61. As of June 2023, there was a total of 389 beds for Federally sentenced individuals at healing lodges, 271 for men and 118 for women. Only 139 of those beds are in the Community Run Healing Lodges.

62. As of June 2023, there were approximately 4,200 Indigenous individuals in Federal custody. This means that only 9% of the total Indigenous population could be housed at any given time in a healing lodge, whether community or CSC run.

63. In the last decade healing lodge space has only increased by 53 beds, which does not keep up with the rate of increase in Indigenous people in Federal custody. On a per Indigenous person in Federal custody basis, the availability of healing lodge spaces has decreased over the previous decade.

64. In June 2023 the Office of the Correctional Investigator issued a report entitled "Ten Years Since *Spirit Matters*: A Roadmap for the Reform of Indigenous Corrections in Canada." In that report the Correctional Investigator concluded that the failure to secure additional healing lodge services should not be blamed on Indigenous communities. Rather, the report concluded, and the fact is, that:

> The [CSC]'s lack of meaningful and coordinated community outreach and engagement is beyond excuse, given the trajectory of overrepresentation and the dozens of calls-to-action on this very issue. In prioritizing prison-based initiatives, the Service's demonstrable inertia regarding Section 81 reveals an unwillingness to utilize it to its fullest extent, even at the behest and direction of the Minister. An agency that has otherwise shown both the interest and ability to think ambitiously about custodial practice must be expected to apply such thinking to community-based alternatives, particularly when they already have such tools for the job sitting idly in their toolbox.

65. The Correctional Investigator is an office created under Part III of the *CCRA.* It has a function defined in s. 167 of the *CCRA* of:

> **167 (1)** It is the function of the Correctional Investigator to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of, the Commissioner that affect offenders either individually or as a group.

66. CSC has consistently underfunded Community Run Healing Lodges as compared to CSC Run Healing Lodges. In 2023-24, CSC's spending on the six Community Run Healing Lodges amounted to only 34% of their total spending on Healing Lodges (meaning CSC allocates 66% of its total spending to its four CSC Run Healing Lodges). As found by the Office of the Correctional Investigator, CSC spends approximately 40% less per person for each resident at a Community Run Healing Lodge as compared to a CSC Run Healing Lodge.

67. Funding for Community Run Healing Lodges is based on a per-diem funding model, whereby the healing lodges bill CSC based on pre-approved rates for individuals housed. The funding agreements are temporary, operating on five year cycles, and are subject to change and approval by CSC. Consequently, Community Run Healing Lodges have no guarantee of permanency or ability to cover unexpected costs.

68. The underfunding of Community Run Healing Lodges has led to an array of negative outcomes as compared to CSC Run Healing Lodges, including:

a) Aging infrastructure of facilities that is comparatively worse at Community Run Healing Lodges as compared to CSC Run Healing Lodges;

b) A disparity in ability to recruit, train and retain staff;

c) A disparity in staff wages for equivalent jobs;

d) A disparity in funding for daily basics such as bedding and hygiene products;

e) A disparity in ability to transport residents to community programs and services; and

f) A disparity in ability to support individuals with complex mental and physical health needs.

69. Staff at Community Run Healing Lodges are routinely paid significantly less than staff working at equivalent roles in CSC Run Healing Lodges. This leads to staff regularly leaving Community Run Healing Lodges in order to take similar roles at CSC Run Healing Lodges. Such staff turnover imposes significant costs on Community Run Healing Lodges who must take on the responsibility of training new staff.

70. The disparities in funding led the Office of the Correctional Investigator in 2023 to recommend that CSC:

> Co-develop, with communities and organizations, a new funding model for Section 81 agreements and significantly increase funding to Section 81 Healing Lodges to better support their specific needs and to address the existing disparities with state-run lodges, in order to achieve resourcing parity.

Pathways Program

71. Pathways is a program offered within CSC institutions. It is mandated by Directive 702, which sets out that the Senior Deputy Commissioner “will develop guidelines regarding Pathways

Initiatives that must be followed." Directive 702 also requires that the "Pathways Initiatives will be implemented pursuant to GL 702-1 – Establishment and Operation of Pathways Initiatives."

72. The nature of Pathways is set out in GL 702-1, issued by CSC, which describes the "Pathways concept" as an "Elder-driven intensive healing initiative based on the Indigenous Medicine Wheel, also known as the Four Directions Medicine Wheel". CSC promises that the program will provide "increased ceremonial access" and "an increased ability to follow a more traditional Indigenous healing path consistent with Indigenous traditional values and beliefs". CSC describes the program as being "for inmates who show genuine motivation and commitment to making emotional, mental, physical and spiritual changes." CSC states that to "participate in Pathways an inmate must be willing to follow traditional healing as a way of life, 24 hours a day."

73. Pathways is available at certain low and medium security Federal Institutions. At some facilities there is a dedicated Pathways unit, at others it is a day program. At maximum security facilities Pathways is not available, but a pre-pathways day program is available at some facilities.

74. The Pathways initiative is designed to be Elder driven, but in operation it is not. Rather, it is routinely operated by CSC staff. Pathways initiatives are regularly understaffed and have too few or no Elders available.

75. Though CSC promises that Pathways will offer increased ceremonial access and an increased ability to follow a more traditional Indigenous healing path, CSC in its operation routinely provided the Pathways program with insufficient resources and opportunities for activities such as:

a) Language education;

b) Traditional foods;

c) Crafts;

d) Smudging; and

e) Sweat lodges.

76. The Pathways program is designed to be intensive, and to allow individuals to follow a healing path 24 hours a day. However, in operation there are often insufficient activities, ceremonies and counseling, leading to long stretches of involuntary idleness for Pathways participants.

77. Pathways received a total budget of only $3.6M in 2022-2023, representing 5% of CSC's budget allocations for all Indigenous initiatives.

78. CSC has, in its operation, undermined the policy goals of the Pathways program by using beds on the Pathways unit as overflow beds open to people not in the Pathways program (who are often not Indigenous).

79. Pathways programs often conflict with the schedule for core correctional and vocational programs, participation in which can better one's chance for conditional release. Pathways participants are therefore often forced to choose between engaging in Pathways or participating in other programs that may assist in obtaining conditional release.

80. CSC has in operation set preconditions for Pathways participation that are unduly onerous, excluding all but the most compliant, engaged and committed candidates from participating in the program.

81. The Office of the Correctional Investigator has concluded, and the fact is, that individuals who succeed in Pathways would in fact benefit from earlier supervised release, and "that those who most benefit from this initiative could be equally of better served in non-custodial settings". The Office of the Correctional Investigator has also recommended that CSC conduct "a review of current Pathways participants to identify and recommend individuals for Healing Lodge placements and other non-custodial alternatives (e.g., section 84 agreements)."

82. CSC has failed to ensure that guards administering the Pathways program have appropriate training in Indigenous culture, history and the trauma experienced by Indigenous peoples. Staff are often assigned to Pathways despite not having volunteered to participate and having inadequate training. This has led to many incidents where staff acts in a way hostile to the policy goals of the Pathways program.

83. The Office of the Correctional Investigator has concluded, and the fact is, that "Pathways participants across all sites have experienced regular mistreatment by some operations staff involuntarily assigned to the initiative."

84. Further, CSC has provided inadequate support to ensure Pathways participants have an appropriate continuum of care and support on their healing journey once they are no longer incarcerated (including during any period of conditional release).

Indigenous Initiatives Outside of Pathways and Healing Lodges

85. CSC has developed the Aboriginal Integrated Correctional Program Model (later renamed the Indigenous Integrated Correctional Program Model, "**IICPM**") and the Inuit Integrated Correctional Program ("**IICP**"). These programs are intended to include a weekly ceremonial session, culturally relevant materials, and Elder involvement.

86. However, Indigenous persons continue to have a lack of adequate or timely access to Indigenous focused correctional programing.

87. In 2016 the Auditor General found that "Indigenous offenders did not have timely access to Correctional Service Canada's correctional programs, including those specifically designed to meet their needs". At that time the Auditor General found that Indigenous individuals had to wait almost five months, on average, to start correctional programing after admission into Federal custody. The Auditor General found that many individuals become eligible for parole before they complete the programs.

88. Despite these findings, CSC has failed to take meaningful steps to ensure that Indigenous persons have access to this programing in a timely way or at all. The result is many Indigenous individuals end up being forced to take non-culturally specific programs.

89. Even if access to the programs is available to an individual, there is frequently in operation insufficient Elders to operate the program, and insufficient funding and support for appropriate ceremonial sessions.

90. Further, the materials offered by CSC and the IICPM and IICP are deficient in that they generally offer pan-Indigenous concepts at a broad level, and are not appropriately tailored to the history, community, and spiritual traditions of the Indigenous group in which an individual belongs.

91. CSC also routinely fails to make available necessities reasonably required for the religion or spirituality of Indigenous persons in Federal custody, including by not making medicine bundles available in a timely way or at all.

92. CSC has discriminated against Indigenous persons in custody by requiring that they sign up and undergo a screening process in advance before participating in spiritual practices such as sweats or pow wows. Non-Indigenous persons in Federal custody are not subject to a comparable screening process to participate in spiritual practices.

93. Additionally, CSC provides insufficient access to trauma treatment and substance use treatment to meet the needs of Indigenous offenders who have experienced personal and/or intergenerational trauma and/or struggle with substance use.

Denial of Access to Elders

94. CSC relies on Elders to provide a range of services and supports to Indigenous persons in Federal custody and on conditional release.

95. In Directive 702 CSC recognizes that "Elder/Spiritual Advisor" means:

> [A]ny person recognized by an Indigenous community as having knowledge and understanding of the traditional culture of the community, including the physical manifestations of the culture of the people and their spiritual and social traditions and ceremonies. Knowledge and wisdom, coupled with the recognition and respect of the people of the community, are the essential defining characteristics of an Elder/Spiritual Advisor. Elders/Spiritual Advisors are known by many other titles depending on the region or local practices.

96. Directive 702 describes the role of Elders/Spiritual Advisors as:

> The Elder/Spiritual Advisor will:
>
> a. provide counselling, teachings and ceremonial services
>
> b. provide advice to the Institutional Head when required regarding ceremonies, ceremonial objects, traditional medicines or sacred grounds within the institution
>
> c. as a member of the Case Management Team, participate in case conferences as required

97. The *CCRA,* s. 83(1), states that Elders and Indigenous Spiritual Leaders have the same status as other religions and other religious leaders.

98. The *CCRA*, s. 83(2), requires that CSC "take all reasonable steps to make available to Indigenous inmates the services of an Indigenous spiritual leader or elder after consultation with (a) the national Indigenous advisory committee established under section 82; and (b) the appropriate regional and local Indigenous advisory committees."

99. Further, the *CCRA* requires that, if CSC considers it appropriate in the circumstances, it shall seek advice from an Indigenous spiritual leader or Elder when providing correctional services to an Indigenous person, particular with respect to mental health and behaviour.

100. CSC contracts approximately 130 Elders/Spiritual Advisors to provide spiritual, ceremonial, counseling and programmatic services at CSC facilities. Given the approximately 4,200 Indigenous individuals incarcerated, this means that there is roughly 1 Elder/Spiritual Advisor for every 30 Indigenous prisoners. This ratio does not meet needs or demand.

101. Directive 702 and its associated guidelines and other policy statements set out expectations for Elders/Spiritual Advisors. Elders/Spiritual Advisors are contractually expected to participate in CSC case management, and upon request provide CSC with advice and guidance on issues affecting Indigenous peoples in Federal custody.

102. In order to allow Elders/Spiritual Advisors to complete their work, CSC is bound by contract, law, and/or policy to provide them with appropriate supports, resources, confidential facilities, authority, and orientation.

103. CSC has in operation failed to provide appropriate support, resources, facilities, authority, orientation, and oversight for the delivery and management of Elder services.

104. CSC has failed to hire sufficient Elders/Spiritual Advisors to ensure that all Indigenous persons in Federal custody or on conditional release have regular or meaningful access to an Elder or Spiritual Advisor.

105. A 2022 audit of the management of Elder services conducted by CSC (the "**Elder Audit**") found that 87% of the institutions selected for the audit did not have sufficient Elders to provide the necessary services to the Indigenous persons in Federal custody interested in following a traditional healing path.

106. The Elder Audit also concluded that there is no strategic plan outlining Elder resourcing, funding and site requirements for Elder services.

107. The Elder Audit concluded that in each of 2017-2018, 2018 – 2019, 2019-2020, and 2020-2021 CSC in operation spent less than budgeted on Elder services.

108. CSC has employed Elders/Spiritual Advisors on terms significantly less favorable than those given to other Spiritual Advisors in the employ of CSC, such as chaplains. Specifically, unlike chaplains employed by CSC, Elders/Spiritual Advisors:

a) do not have access to a pension;

b) do not receive vacation time; and

c) do not receive paid sick days.

109. Elders/Spiritual Advisors also receive less pay than chaplains in the employ of CSC.

110. The range of pay as of April 2023 for an Elder/Spiritual Advisor is $72,600 to $83,800 annually. Conversely, the top range of pay for a Chaplain ranges from $82,223 to $89,892.

111. Further, Elders/Spiritual Advisors do not have job security as their employment is structured as contractors rather than employees.

112. CSC's operations are such that hiring Elders/Spiritual Advisors takes an inordinate amount of time, such that applicants have often moved on and taken other jobs when a contract with CSC is offered.

113. CSC's operations further place administrative burdens on Elders/Spiritual Advisors that are onerous and greatly diminishes the available time to work with Indigenous persons in Federal custody or on conditional release. This includes high volumes of written work, which can be a challenge if the Elder/Spiritual Advisor is accustomed to working within an oral tradition.

114. Elders are supposed to be supported by oscapio (helpers), Elder's Assistants, and Indigenous Liaison Officers. However, all of these positions are poorly paid with high turnover.

115. Further, unlike Chaplains, Elders/Spiritual Advisors are regularly not given their own dedicated space to work. The spaces that they do have are often insufficient, and are at times unsanitary and unsafe.

116. Elders/Spiritual Advisors are not given the financial support and autonomy to run programming as they see fit and appropriate, including teaching of Indigenous languages, Indigenous health and well-being interventions, access to country foods, seasonal and traditional feasts, land-based harvesting and gathering activities, and other group outings.

117. CSC has in operation failed to create a strategic plan setting out resourcing, funding, or requirements for Elder services.

118. CSC does not offer consistent Elder/Spiritual Advisor services from one Federal Institution to another, both as between security classifications and between different facilities with the same security classification.

119. Despite being asked to fill a broad array of roles for CSC, Elders/Spiritual Advisors do not receive adequate orientation training, mentoring, or direction. There is no consistent process to go over contractual expectations, safety and security considerations or relevant policies.

120. CSC staff are not appropriately trained on cultural sensitivity and the work of the Elders/Spiritual Advisors, which leads to situations where Elders/Spiritual Advisors are treated inappropriately or without respect.

121. CSC interferes with the work of Elders/Spiritual Advisors by precluding use of certain medicines like tobacco in ceremony.

122. CSC's expectations of the work of Elders/Spiritual Advisors are insufficiently sensitive to the differences in cultural and spiritual practices of different Indigenous traditions.

123. CSC provides inadequate services and training to Elders/Spiritual Advisors, particularly in light of the high incidents of trauma suffered by individual Elders/Spiritual Advisors.

124. The Elder Audit concluded, and the fact is, that "there is limited oversight of the management of Elder services, particularly with regard to the performance and service delivery".

125. CSC has not integrated Elders/Spiritual Advisors into the decision-making structures of CSC.

Denial of Access to Culture, Community, Religion and Spirituality

126. Cumulatively, CSC spending on Healing Lodges, Pathways, and Elders/Spiritual Advisors amounts to approximately 3% of CSC's total budgetary allocation.

127. In operation, access to culturally appropriate healing opportunities and opportunities for spiritual practice is treated by CSC as a privilege that may be given to Indigenous persons at CSC's discretion, and not as a right.

128. CSC routinely fails to provide medicine bundles to Indigenous persons in Federal custody who request one.

129. Further, CSC in operation may hold a lack of interest in Indigenous spirituality or culture against an Indigenous individual in Federal custody. For Indigenous individuals who do not participate in spiritual or cultural activities, CSC may raise this as a negative when it comes to

recommendations for parole eligibility. There is no practice of holding a non-Indigenous individual in Federal custody's lack of interest in spiritual or cultural activities against them with respect to parole eligibility.

130. Similarly, the spirituality and culture taught in the programs offered by CSC is often a form of pan-indigeneity which may not accord with the traditions, customs, and beliefs of the individual Indigenous person.

Elder Reviews

131. When an Indigenous individual in Federal custody decides to follow a healing path CSC policy requires that Elders/Spiritual Advisors engage in one-on-one counselling with the individual and produce written "Elder Reviews". These documents are used for a variety of purposes, including in making determinations about parole and security classification, and generally provide CSC with information on the individual's progress on the healing path.

132. In operation, CSC has systemically provided insufficient resources and attention to allow individuals to have adequate access to Elders/Spiritual Advisors and Elder Reviews. One on one counselling routinely does not occur, or when it does occur it is not adequately documented in a proper Elder Review.

133. The outcome of this is individuals are either denied access to a traditional healing path, or if they engage in such a path have insufficient documentation so that Canada can make determinations in accordance with its own policies on their suitability for parole, re-classification, or programs including Healing Lodges or Pathways.

Conditional Release

134. When Indigenous offenders are released on parole or other forms of conditional release, the vast majority have limited, if any, access to Elders/Spiritual Advisors, Indigenous-specific programming and treatment (including trauma treatment and substance use treatment), and Indigenous cultural and spiritual practices.

135. There are very few CRFs that are Indigenous run or that otherwise offer in-house Elder support and access to Indigenous-specific resources, programming, treatment and spiritual and cultural practices.

136. The vast majority of CRFs do not offer in-house Elder support, Indigenous-specific programming and/or treatment, or cultural and spiritual practices. Even where such resources are available in-house to some degree, in practice access is inadequate, difficult to obtain and/or delayed.

137. Furthermore, Indigenous-specific resources are often not available in the greater community in which the CRF is located, or such resources are extremely limited. Where such resources are available, what little access is provided is often made available weeks if not months after the Indigenous offender is released on parole. Furthermore, in many cases, Indigenous offenders' conditions of release include travel restrictions which limit or effectively preclude access to such resources.

138. This lack of, inadequate, or delayed access to Indigenous-specific resources regularly occurs even when the offender , CSC and the Parole Board of Canada agree that the resources are critical to the offender's success on conditional release and to their correctional progress, rehabilitation and successful reintegration back into the community.

139. In many cases, Indigenous offenders have their parole suspended and/or revoked due to breaches (or alleged breaches) of conditions of parole (such as substance use or an alleged "deterioration in attitude") before they have had the opportunity to access any of the Indigenous-specific resources that formed part of their release plan.

140. CSC has known for years that the vast majority of Indigenous offenders lack meaningful, if any, access to Indigenous-specific resources on parole and other forms of conditional release, but has failed to take reasonable steps to address the problem.

Impact on the Plaintiff and Class Members and Causation of Loss

141. As described above, the conduct of Canada in funding and implementing programs and resources for Indigenous offenders is contrary to policy, objectively inadequate and discriminatory. As a result of this conduct, the Plaintiff and the other Class Members have suffered the reduced ability to practice their culture and religious or spiritual beliefs.

142. The additional barriers faced by Indigenous offenders in accessing culturally- appropriate programs and other resources contributes to the overrepresentation of Indigenous people in the Federal correctional system, as described in paragraphs 17 to 20 above.

143. Canada has, through its conduct described in this claim, caused the following losses to be suffered by the Plaintiff and the Class:

a) Loss of culture;

b) Loss of the opportunity to practice culture;

c) Loss of ability to act in accordance with religious or spiritual beliefs or practices;

d) Loss of ability to access services in a timely manner;

e) Loss of liberty;

f) Physical, emotional, spiritual, and mental pain and disabilities;

g) Injury to dignity and self-respect;

h) Breach of a constitutionally protected right (s.15 of the *Charter*); and

i) The cost of out of pocket substitutes for services and products improperly denied by Canada.

CAUSES OF ACTION

Breach of Charter of Rights and Freedoms

144. Section 15 of the *Charter of Rights and Freedoms* provides that:

> 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.

145. Canada has systemically engaged in discrimination on the basis of race, religion, and national or ethnic origin as against Indigenous persons in Federal custody, including the Plaintiff and the Class Members.

146. The manner in which Canada administers the sentences of federal offenders adversely impacts and disadvantages Indigenous offenders. Indigenous offenders as a group continue to experience more restrictive confinement over the course of their sentences and disproportionately worse correctional outcomes, as compared with Non-Indigenous offenders. Indigenous offenders are overrepresented in higher security institutions and in segregation/SIU placements, they are granted temporary absences and day- or full parole less often than other prisoners, and they are released into the community later in their sentences than other offenders.

147. Canada's conduct has reinforced, perpetuated, exacerbated and compounded a history of disadvantage, mistreatment and discrimination in which the lives, liberty and interests of Indigenous persons are treated as less deserving of concern and attention than the lives, liberty and interests of non-Indigenous members of Canadian society.

148. While Canada has publicly declared its commitment to addressing the crisis of Indigenous overrepresentation in federal custody, and has taken some steps, including through legislation, intended to address the problem, the steps it has taken have been grossly inadequate. Indigenous offenders continue to be overrepresented in higher security institutions and segregation/SIU placements, continue to be granted conditional release (including temporary absences and day- or full parole) less often than other prisoners, and continue to be released into the community later in their sentences than other offenders.

149. Canada's breach of the s. 15 protected rights of the Plaintiff and the Class Members includes both a failure to adopt policies that are not discriminatory and a failure to ensure that the policies are not carried out in a discriminatory fashion. Canada has treated access to Indigenous culture and spiritual practices as a privilege to be meted out as a reward rather than as a right. In so doing it has treated the Plaintiff and the Class Members in a discriminatory way as compared to non-Indigenous persons in Federal custody. It has perpetuated stereotypes and prejudice as against Indigenous persons, Indigenous culture, and Indigenous spirituality.

150. Canada has systemically underfunded services aimed at Indigenous persons, as compared to services aimed at non-Indigenous persons. As a result, because of their race, religion, or national or ethnic origin, the Plaintiff and the Class Members have been denied services that non-Indigenous persons in Federal custody receive.

151. Canada has failed to ensure that there are adequate Elders/Spiritual Advisors to serve the needs of the Indigenous population in Federal custody. As a component of this failure, it has provided inequitable treatment to Indigenous Elders/Spiritual Advisors as compared to non-Indigenous chaplains employed by CSC, offering them lower pay, lower job security, and fewer benefits.

152. Canada has systemically denied timely or adequate access to Indigenous programing to persons in Federal custody or on conditional release. This has the effect of forcing Indigenous persons in Federal custody to choose between waiting for Indigenous programming (in the hope it will eventually be provided) and engaging with non-Indigenous focused programing, in which

case they, among other things, risk having non-participation in Indigenous programming held against them in decisions respecting classification and conditional release .

153. Canada has systemically denied or imposed discriminatory barriers in relation to access to Indigenous programming including Healing Lodges and Pathways, preventing Indigenous persons from engaging in spiritual or cultural practices.

154. Canada has failed to properly staff and train Indigenous programing at Federal Institutions, resulting in Indigenous persons in Federal custody facing harassment or arbitrary barriers when seeking to engage with spiritual or cultural practices.

155. Canada has treated Indigenous spirituality as interchangeable leading to adoption of a pan-Indigenous approach to spirituality that does not reflect the variety of practices, traditions, and customs of differing groups. This is discriminatory as compared to the treatment of other religious and spiritual practices. Broadly, Canada failed to ensure its policies, programs and practices respect of the ethnic, cultural and spiritual/religious practices of Indigenous persons and are responsive to the needs and rights of Indigenous persons.

156. Canada has discriminated against Indigenous persons by having a practice of holding a lack of interest in spiritual and cultural activities against individuals when assessing parole eligibility and security classification.

157. Canada's breaches of section 15 cannot be justified under section 1 of the *Charter.* These violations were not prescribed by law, and in any event cannot be demonstrably justified in a free and democratic society.

Negligence

158. Canada was in a relationship of proximity to the Plaintiff and the Class Members by virtue of holding them in custody and/or imposing conditions and overseeing their conditional release. Canada had control over the Plaintiff and the Class Members for the entirety of the time they are in custody or on conditional release. Canada owes a duty of care to the Plaintiff and the Class Members.

159. Canada's duty to Indigenous persons in custody or on conditional release is informed by the precept of the honour of the Crown, which requires that the Crown act honourably and in good faith in all of its dealings with Indigenous peoples.

160. Canada's duties to the Plaintiff and the Class Members are non-delegable.

161. Through legislation and policy documents including the *CCRA* and Directive 702, Canada has undertaken a policy of providing correctional programs designed particularly to address the needs of Indigenous offenders. Policies aimed at this goal include adopting the Indigenous Continuum of Care model, making Elders/Spiritual Advisors available, creation of Indigenous Correctional Programming, including IICPM and IICP, making healing lodges available, establishing the Pathways Program, and providing Indigenous programming to people on conditional release.

162. Canada owed a duty to act with reasonable care when carrying out these policies.

163. Canada owed a duty to fund and operate CSC Facilities and programs with reasonable care.

164. Canada has been systemically and routinely negligent in operating these and similar policies, including by violating its own policies or practices, by failing to give effect to high level policy decisions, and by undermining the intent of such policy decisions. Specifically, Canada was systemically negligent in operation of policies by:

a) Imposing arbitrary and unnecessary barriers to participation in the Pathways Program or space at a Healing Lodge;

b) Failing to provide adequate spaces in Healing Lodges in general, and Community Run Healing Lodges in particular, to serve the needs of the Indigenous population in Federal custody;

c) Failing to provide any Healing Lodges in the Ontario, Atlantic, and North Regions;

d) Failing to provide any Community Run Healing Lodges in the Pacific Region;

e) Failing to provide any Healing Lodges for Indigenous women outside of the Prairie Region;

f) Consistently underfunding Community Run Healing Lodges as compared to CSC Run Healing Lodges;

g) Failing to ensure that the Pathways Program is in operation Elder-driven;

h) Failing to ensure that the Pathways Program has sufficient resources to offer access to ceremony and an increased ability to follow a more traditional Indigenous healing path;

i) Failing to ensure that Individuals in the Pathways Program are able to follow a healing path 24 hours a day;

j) Using beds dedicated for the Pathways program for non-participants in the program, including non-Indigenous persons;

k) Failing to ensure that guards administering the Pathways Program have appropriate training;

l) Failing to ensure that operations staff are not involuntarily assigned to the Pathways Program;

m) Failing to ensure that staff assigned to the Pathways program do not mistreat individuals in the program;

n) Failing to provide adequate support for Indigenous individuals once they leave Federal custody so as to allow them access to culturally appropriate programs (including while on conditional release);

o) Failing to provide timely or adequate access to Indigenous focused Correctional Programming;

p) Failing to create culturally appropriate material for Indigenous focused Correctional Programming;

q) Failing to ensure appropriate access to Elders and Spiritual Advisors is available;

r) Placing unreasonable burdens on Elders/Spiritual Advisors that prevent them from adequately performing their work for Indigenous persons in Federal custody;

s) Failing to provide adequate support for Elders/Spiritual Advisors;

t) Failing to provide appropriate workspace for Elders/Spiritual Advisors;

u) Failing to provide appropriate training, mentoring or direction for Elders/Spiritual Advisors;

v) Failing to provide consistent Elder/Spiritual Advisor services from one facility to another;

w) Failing to provide appropriate training for staff on cultural sensitivity and the work of Elders/Spiritual Advisors;

x) Precluding the use of certain medicines by Elders/Spiritual Advisors;

y) Failing to integrate Elders/Spiritual Advisors into the decision making structures of CSC;

z) Failing to provide appropriate Indigenous focused programming and support to people on conditional release;

aa) Failing to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of its systemic failures in the operation of its high level policies in respect of Indigenous persons; and

bb) Such other and further failures as the Plaintiff may advise.

165. Canada had a duty to have in place management and operation procedures adequate to prevent the systemic denial of rights held by the Plaintiff and the Class Members, and Canada breached this duty by:

a) Failing to have in place management and operation procedures to ensure adequate spaces were available in the Healing Lodges and the Community Run Healing Lodges;

b) Failing to have in place management and operation procedures to ensure adequate geographic distribution of Healing Lodges;

c) Failing to have in place management and operation procedures to ensure adequate funding of Healing Lodges;

d) Failing to have in place management and operation procedures to ensure Healing Lodges were adequately staffed;

e) Failing to have in place management and operation procedures to ensure Healing Lodges were Elder-driven;

f) Failing to have in place management and operation procedures to ensure adequate funding of the Pathways Program;

g) Failing to have in place management and operation procedures to ensure guards assigned to the Pathways Program were adequately trained;

h) Failed to have in place management and operation procedures to ensure that staff working with Indigenous persons are culturally competent relative to their role and have an understanding of the Indigenous Corrections Continuum of Care Model;

i) Failing to have in place management and operation procedures to ensure guards assigned to the Pathways Program did not mistreat or abuse Indigenous people in the program;

j) Failing to have in place management and operation procedures to ensure Healing Lodges were Elder-driven;

k) Failing to have in place management and operation procedures to ensure that Indigenous persons leaving Federal custody had access to culturally appropriate programs (including on conditional release);

l) Failing to have in place management and operation procedures to ensure that Indigenous persons in Federal Custody had access to Indigenous focused correctional programming;

m) Failing to have in place management and operation procedures to ensure that reasonable access to the services of Elders and Spiritual Advisors was available;

n) Failing to have in place management and operation procedures to ensure that Elders and Spiritual Advisors were properly supported in their work;

o) Failing to have in place management and operation procedures to ensure that Elders and Spiritual Advisors received proper training;

p) Failing to have in place management and operation procedures to ensure consistency in the care provided by Elders and Spiritual Advisors from one facility to another;

q) Failing to have in place management and operation policies to ensure that Indigenous persons on conditional release had appropriate access to Indigenous programming;

r) Failing to have in place management and operation policies to ensure that when making decisions that affect Indigenous offenders, CSC takes into account: (i) systemic and background factors affecting Indigenous peoples of Canada; (ii) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system and that may have contributed to the offender's involvement in the criminal justice system; and (iii) the Indigenous culture and identity of the offender, including his or her family and adoption history; and

s) Such other and further failures as the Plaintiff may advise.

166. It was reasonably foreseeable that Canada's failures in operation of its policies aimed at Indigenous persons in Federal custody would harm the Plaintiff and the Class.

167. Canada at all times knew or ought to have known that the systemic failures in operation of its policies aimed at Indigenous persons in Federal custody or on conditional release was causing significant harm to the Plaintiff and the Class Members.

168. Canada's breach of a duty of care has caused loss to the Plaintiff and the Class Members including loss of culture, loss of ability to act in accordance with religious or spiritual beliefs or practices; unnecessary restraints on liberty; and non-pecuniary damages.

DAMAGES

Compensatory Damages

169. As a result of the negligence of Canada and its agents and servants, the Plaintiff and the Class Members claim compensation for injuries including but not limited to:

a) Loss of culture;

b) Loss of the opportunity to practice culture;

c) Loss of ability to act in accordance with religious or spiritual beliefs or practices;

d) Loss of ability to access services in a timely manner;

e) Unnecessary restraints on liberty;

f) Physical, emotional, spiritual, and mental pain and disabilities;

g) Breach of a constitutionally protected right (s.15 of the *Charter*);

h) Injury to dignity, feelings and self-respect; and

i) Class members had to fund out of pocket substitutes, where available, for services and products improperly denied by Canada.

Charter Damages

170. The Plaintiff and the Class Members have suffered loss as a result of the Crown's breach of s. 15(1) of the *Charter.* An award of damages under s. 24(1) of the *Charter* is appropriate because it would compensate the Plaintiff and the Class members for the loss they have suffered, and would fulfil the purposes of vindicating rights and deterring future *Charter*-infringing conduct by Canada. In the circumstances, damages under s. 24(1) should be calculated so as to disgorge from the Crown the benefits it took by failing to provide adequate and equal funding to services to Indigenous persons in Federal custody, and/or as are needed to accomplish the goals of compensation, vindication and deterrence.

Punitive Damages

171. The high-handed manner in which the Canada repeatedly disregarded calls to address the systemic issues highlighted in this claim warrants condemnation of Canada. Canada, and its agents, had complete knowledge of the failures outlined in this claim, and the harm that it was doing to Indigenous persons in Federal custody. It proceeded in callous indifference to the harm that it was causing, and in so doing perpetuated and exacerbated the historic mistreatment of Indigenous peoples by Canada.

STATUTES RELIED ON

172. The Plaintiff relies on the common law and the following, as amended:

a) *Canadian Human Rights Act,* R.S.C. 1985, c. H-6;

b) *Constitution Act, 1867* and *Constitution Act, 1982*;

c) *Correction and Conditional Release Act,* S.C. 1992, c. 20;

d) *Corrections and Conditional Release Regulations,* (SOR/92-620);

e) *Crown Liability and Proceedings Act,* R.S.C. 1985, c. C-50;

f) *Federal Courts Act,* R.S.C. 1985, c. F-7;

g) *Federal Courts Rules,* SOR/98-106;

h) *Financial Administration Act,* RSC, 1985, c. F-11;

i) *Indian Act,* R.S.C. 1985, c. I-5;

j) *Interpretation Act,* R.S.C. 1985, c. 121; and

k) *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

The Plaintiff proposes that this action be tried at Vancouver, British Columbia.

Dated: 13/May/2025

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