

Court File No. T-1963-19

## FEDERAL COURT

BETWEEN:

PAULO STEIN

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
DEC 06 2019		
AURÉLIE ADELSON		
OTTAWA, ON	-1-	

Plaintiff

—and—

HER MAJESTY THE QUEEN

Defendant

## STATEMENT OF CLAIM

## SIMPLIFIED ACTION

TO THE DEFENDANTS:

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 Courts 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.

(Date)

Issued by:

Address of local office:

Thomas D'Arcy McGee Building

AURÉLIE ADELSON  
REGISTRY OFFICER  
AGENT DU GREFFE

06/12/2019

90 Sparks Street, Main Floor  
Ottawa, Ontario  
K1A 0H9

TO: **The Hon. David Lametti**  
**ATTORNEY GENERAL OF CANADA**  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

### CLAIM

1. The plaintiff claims:

- a. Compensatory damages for the harm caused to him, by the negligence of the Defendant and her servants in causing him physical injury, pain and emotional anxiety contrary to their duty of reasonable care to protect him against harm and to provide him with reasonable medical care in the amount of \$30,000
- b. Punitive damages in the amount of \$10,000;
- c. Pre-judgment and post-judgment interest pursuant to the *Federal Court Act*, R.S.C. 1985, c F-7
- d. His costs in this action on a substantial indemnity basis

### The parties

2. The Plaintiff was at all times material to this claim, unless otherwise described, an offenders confined to Beaver Creek Institution (BCI), a medium security institution operated by the Correctional Service of Canada ("CSC") pursuant to the Corrections and Conditional Release Act S.C. 1992, c.20 ("the CCRA"), the Corrections and Conditional Release Regulations, SOR/92-620 (the Regulations").
3. As an inmate of CSC he is entitled to health services provided by CSC employees and by health service professionals who work under contract with CSC. These include the

services stipulated under the CCRA and Regulations, as well as, CSC policy, including, without limiting the generality of the foregoing, essential health care for physical illness or injuries such as pain and conditions causing pain. The services provided are to comply with accepted professional rules and standards governing physicians and other health care providers under Ontario Law and policy.

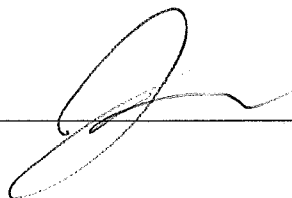
**Material facts and submission arising from them**

1. On or about December 23, 2017, the plaintiff seriously injured his ankle while entering the gym at BCI.
2. He slipped on the floor, which was wet because institutional staff had not repaired a leak in the roof and because they had posted no signage warning inmates, including the plaintiff, of the wet floor and the danger of slipping on it.
3. He was seen by BCI health care staff, the servants or agents of the Defendant, soon thereafter and they assessed the injury as a sprain, saying the plaintiff would soon recover.
4. In the following days his condition did not improve and he experience heightened pain and lack of mobility.
5. He continued to make requests to health services for treatment as his ankle continued to swell and his pain was severe.
6. After a wait of several days or weeks he finally saw Dr. Hill, an institutional physician. in the health care department of BCI.
7. Plaintiff was given an X-ray and told that he did not have a broken ankle. Staff declined his request to be given an MRI..

8. He continue to be in pain and to endure severe swelling . The pain and discomfort in his ankle persisted.
9. Staff at BCI refused to provide him an MRI, saying that he was fraudulently seeking drugs.
10. On or about June 6, 2018, plaintiff was finally placed on a waiting list for treatment but did not receive treatment other than medication.
11. He was not sent for an MRI until he was transferred to Collins Bay Institution. He received the procedure from there in November, 2019.
12. He continued, and continues, to have a swollen ankle and shooting pains, especially at night. He cannot place much pressure on the ankle and occasionally it becomes numb.
13. He has not yet seen the results of the MRI but his symptoms are continuous.
14. The Respondent's servants and agents, the health service staff and non-health service staff of BCI, carried out their services with respect to the plaintiff under the control and direction of the defendant's servants, the Warden of BCI and other CSC managers and staff. They were, accordingly, in an employment relationship with the defendant and her servants.
15. As health care practitioners and as correctional personnel, the defendant's servants exercising health care functions had a duty of reasonable care to provide treatment to the plaintiff in a timely, effective fashion, meeting his health care needs in order to address or prevent reasonably foreseeable harm to him that could be caused by their acts or omissions.
16. The other servants of the defendant at BCI had a duty of care as custodians to protect the plaintiff from harm and to address or prevent reasonably foreseeable harm to him that could be caused by their acts or omissions.

17. The health care servants of the defendant herein, or any or all of them at various junctures, by not providing the plaintiff with effective and timely health care and diagnosis, failed to provide the plaintiff with reasonable care or to protect him from pain, suffering and emotional harm despite the foreseeable results of their failing to do so – his pain, suffering and the on-going disability in his ankle.
18. They are liable for the harm caused by this negligence.
19. The members of the staff of BCI, who failed to dry the floor of the gymnasium and to provide appropriate warning of the wet floor to persons entering the gym, breached their duty of reasonable custodial care to protect the plaintiff from injury.
20. It was foreseeable that their breach of this duty could cause the injuries and harm that the plaintiff incurred, as set out above and it did cause there injuries and harm.
21. They are liable for the harm caused by this negligence.
22. Moreover, the servants and agents of the respondent, or any of them, breached their duties of care toward the plaintiffs in a manner that discloses arrogance and significant disregards for the plaintiff's personal needs and dignity.
23. This harm is impossible to quantify and should be sanctioned in order to ensure that it will not re-occur in future. This is all the more necessary considering the significant power of the defendant's servants over the plaintiff and other inmates in a penitentiary context.
24. The defendant is vicariously liable for the misconduct of her servants, above, which they committed in the course of the exercise of their duties and functions.
25. All of which is respectfully submitted.

Ottawa, December 4, 2019

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a horizontal stroke, positioned above a horizontal line.

J. Todd Sloan  
Barrister and Solicitor  
680 Eagleson Road  
Kanata, Ontario  
K2M 2Y1  
Telephone: 613-986-3609  
Facsimile: 613-2380-1391

Solicitor for the Plaintiff

<b>PAULO STEIN</b>  <b>Plaintiff</b>	<b>and</b>	<b>HMTQ</b>  <b>Defendant</b>	<b>Court File No</b>
<b>FEDERAL COURT</b>			
<b>STATEMENT OF C;AIM</b>			
<b>J. Todd Sloan</b> <b>Barrister and Solicitor</b> <b>Telephone: (613) 986-3609</b> <b>Facsimile: (613) 280-1391</b> <b>Counsel for the Plaintiff</b>			