

Court File No.: T-390-19

BETWEEN:

FEDERAL COURT

Adrian Kinkead

- and -

Her Majesty the Queen



Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

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 described by the *Federal Court 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 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.

FEV
FEB 28 2019, 2019

Issued by: ORIGINAL SIGNED BY
FRANK FEDORAK
A SIGNÉ L'ORIGINAL

Address of Local Office: Vancouver Local Office
Pacific Centre
701 West Georgia Street
P.O. Box 10065
Vancouver, BC
V7Y 1B6

Registry of the Federal Court: Phone: (604) 666 – 3232
TDD: (604) 666 – 9228
Fax: (604) 666 – 8181

(Name and address of defendant)

To: **Her Majesty the Queen**
Attorney General of Canada
Nathalie G. Drouin, Deputy Attorney General of Canada
Per: Department of Justice
Department of Justice,
Public Safety, Defence and Immigration Law
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: (604) 666-8959 Fax: (604) 666-2639

Solicitor for the Defendant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of FEV FEB 28 2019 A.D. 20 _____

Dated this _____ day of FEV FEB 28 2019 20 _____



FRANK FEDORAK
REGISTRY OFFICER
AGENT DU GREFFE

Claim

1. The Plaintiff claims the following:

Relief

- A. Damages, exclusive of interests and costs, as follows:
 - i. General Damages;
 - ii. Punitive or Exemplary Damages;
 - iii. Aggravated Damages;
 - iv. The monetary relief exceeds \$50,000.00;

- B. An Interlocutory Injunction ordering the Defendant to cease and desist subjecting the Plaintiff to criminal harassment or torture;

- C. Declarations that:
 - i. The Plaintiff is entitled as of right to adequate food and a healthful living environment;
 - ii. The Plaintiff is entitled as of right to adequate health care;
 - iii. The Plaintiff is entitled as of right to not be subjected to medical treatment or experimentation without his consent;

- D. Costs of this proceeding;

- E. Pre and post judgment interest; and

- F. Such further and other relief as this Honorable Court may deem just.

Facts

2. The Plaintiff, Adrian Kinkead, is a self-represented federal prisoner incarcerated during the material timeframe at a Correctional Services of Canada ("CSC") site known as Mission Medium Institution ("Mission"), a medium-security penitentiary in the Province of British Columbia, and begs the Court's guidance and assistance in this matter.

3. The Defendant, Her Majesty the Queen in right of Canada, bears responsibility for the acts or omissions of federal government personnel undertaken during their employment: in the case at bar, Mr. Ralph Goodale, Minister of Public Safety and Emergency Preparedness; Mr. Don Head, the former Commissioner of Corrections ("Commissioner") for the CSC; Ms. Anne Kelly, the current Commissioner for the CSC; Ms. Marie-Claude Rioux, a CSC-employed "dietician"; and Mission staff.

4. The CSC is a federal agency within the Department of Justice. The CSC is constituted under the *Corrections and Conditional Release Act*, 1992, c. 20, ("CCRA") and *Corrections and Conditional Release Regulations*, SOR/92-620 ("CCRR"), of which federal government employees are duty bound to safeguard the rights of federal prisoners and provide for their needs, including, but not limited to, the provision of food and medical treatment.

5. The Plaintiff is a lactose-intolerant Muslim and requires a halal (Islamic kosher), dairy-free, therapeutic diet, which CSC Crown servants at Mission had consistently provided to Mr. Kinkead hitherto approximately October 2016 and inconsistently thereafter.

6. The Plaintiff pleads that CSC Crown servants at Mission seized an unpublished manuscript and publishing contract belonging to Mr. Kinkead in February 2016; took umbrage to the contents of the book; and, in retaliation, subjected Mr. Kinkead to defamatory, unsolicited criticism and discontinued Mr. Kinkead's dairy-free diet beginning in October 2016, thereby causing injury to Mr. Kinkead.

7. The Plaintiff pleads that Mr. Kinkead sought assistance verbally and by way of documented requests to Food Services, Health Services and senior managerial staff at Mission from approximately October 2016 to 27 November 2017, whereupon the then Chief of Food Services at Mission, Mr. Chad Sterling, reinstated Mr. Kinkead's dairy-free diet. Subsequently, Mission Food Services staff members sometimes disregarded Mr. Sterling's order; continued serving dairy products to the Plaintiff; and in so doing inflicted intermittent psychological and physical harm on Mr. Kinkead.

8. The Plaintiff pleads that, in a letter dated 17 September 2017, Mr. Kinkead provided lawful notice of the issue currently before the Court and requested assistance of Mr. Ralph Goodale, who, in a letter dated 07 December 2017, endorsed the harmful

acts and omissions of CSC Crown servants against Mr. Kinkead, thereby lending legitimacy and contributing to the Plaintiff's continued suffering.

9. The Plaintiff pleads that, on 21 February 2018, Mr. Kinkead consulted with a CSC-employed dietician, Ms. Marie-Claude Rioux, during which Ms. Rioux expressed her unilateral intention to "cure" Mr. Kinkead's lactose-intolerance. Ms. Rioux summarily dismissed the Plaintiff's concerns; threatened to discontinue Mr. Kinkead's dairy-free diet; and, without Mr. Kinkead's consent, subsequently instructed the Mission Food Services staff to impose a "lactose-reduced diet" treatment plan on Mr. Kinkead. The aforesaid treatment plan began on 28 February 2018 and has thenceforth caused continuous harm to the Plaintiff.

10. The Plaintiff pleads that, in a letter dated 06 March 2018, Mr. Kinkead provided lawful notice of the matter currently before the Court and requested the timely intervention and assistance to resolve this issue of the then CSC Commissioner, Mr. Don Head, who did not respond to Mr. Kinkead's letter and has since retired from the CSC.

11. The Plaintiff pleads that, on 26 March 2018, Mr. Kinkead filed a "high priority," "sensitive," formal Final Level Grievance through the redress process provided to federal prisoners under the *CCRA*, seeking timely resolution of what aspects of this matter that could have been resolved via the aforesaid procedure. The previously

mentioned formal grievance is as of yet unanswered, further frustrating the Plaintiff's repeated efforts to obtain even partial relief in this matter.

12. The Plaintiff pleads that, in a letter dated 10 August 2018, Mr. Kinkead provided lawful notice of the issue currently before the Court and requested the timely intervention and assistance of the current CSC Commissioner, Ms. Anne Kelly. In a letter dated 07 December 2018, Commissioner Kelly endorsed her CSC subordinates' harmful acts and omissions against Mr. Kinkead in this matter, much to Mr. Kinkead's continuing suffering.

13. The Plaintiff pleads that, as a result of the abovementioned circumstances, the Defendant neglected its statutory duties under the *CCRA* and abused its power with respect to providing Mr. Kinkead's medical and dietary necessitates, and in so doing caused aggravated injury that amounts to subjecting Mr. Kinkead to torture, including, but not limited to:

- i. Prolonged psychological pain and suffering: apprehension of food insecurity, lingering feelings of anxiety, disappointment, helplessness, despair, anger, frustration, degradation, humiliation, dehumanization, hopelessness, resentment, disillusionment, grief, apprehension of harassment, oppression, intimidation, mental fatigue;
- ii. Multiple occasions of dairy-induced physical pain and suffering: abdominal distension, explosive diarrhoea, flatulence and debilitating

cramps, diarrhoea-induced dehydration, nausea, hunger, a daily lack of energy and vigor, headaches, loss of sleep; and

- iii. Unnecessary adversity: loss of positive interpersonal interactions with many CSC staff members at Mission, non-consensual medical experimentation, cruel and inhumane treatment, deprivation of bodily integrity, violation of security of person, and fear of more governmental reprisal regarding this issue and lawsuit.

14. The Plaintiff pleads that the Defendant knew or ought to have known that depriving Mr. Kinkead of a dairy-free diet; denying Mr. Kinkead timely resolution of this issue; and subjecting Mr. Kinkead to contradictory and disproportionately harsh treatment would cause Mr. Kinkead psychological and physical harm but was reckless or did not care.

15. The Plaintiff pleads that the Defendant was motivated by actual or express malice and acted in bad faith in its discontinuation of Mr. Kinkead's dairy-free, therapeutic diet, which it had provided to Mr. Kinkead hitherto, but stopped in, October 2016; reinstated in October 2017; and then permanently discontinued in February 2018, to Mr. Kinkead's continuing pain and suffering.

16. The Plaintiff pleads that the Defendant, by its operation and management of Mission Institution from February 2018 to the present, breached Mr. Kinkead's rights

under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c11 ("*Charter*"), as follows;

- i. The Defendant breached the Plaintiff's rights by subjecting Mr. Kinkead to nonconsensual, illness-inducing medical treatment or experimentation pursuant to sections 86 - 88 of the *CCRA*, contrary to sections 7, 12, and 15 of the *Charter*;
- ii. The Defendant breached the Plaintiff's rights by intentionally exposing Mr. Kinkead to illness-inducing foods pursuant to sections 83 (2) (a) of the *CCRR*, contrary to sections 7, 12 and 15 of the *Charter*;
- iii. The Defendant, by its regulation of the Plaintiff's dietary requirements pursuant to sections 75 and 86 – 88 of the *CCRA* and sections 83 (2) (a) and 100(1) of the *CCRR*, breached Mr. Kinkead's right to fully practice his religion, contrary to sections 2(a), 7, and 15 of the *Charter*;
- iv. The harm to which the Plaintiff has been subjected as a result of the Defendant's activities in this matter or the provisions of the *CCRA* (ss. 75 and 86 - 88) or *CCRR* (ss.83 (2) (a) and 100(1)) that may be cited as statutory authority for such activities cannot be saved by section 1 of the *Charter*, thus,
- v. The Plaintiff claims a remedy or remedies, including damages, as of right pursuant to section 24(1) of the *Charter*.

17. The Plaintiff pleads that the Defendant failed in its fiduciary obligation under the CCRA to safeguard Mr. Kinkead's interests; caused Mr. Kinkead serious and prolonged psychological and physical injury as a result; and is liable in these circumstances.

All of which is respectfully submitted this 29th day of January 2019

A handwritten signature in black ink, appearing to read 'A. Kinkead', written over a horizontal line.

Signature of Plaintiff

Plaintiff's address for service:

Adrian Kinkead
8751 Stave Lake Rd.
P.O. Box 60
Mission, B.C., V2V 4L8