

Court File No. T-468-18

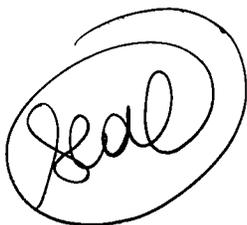
FEDERAL COURT

FEDERAL COURT OF APPEAL  
COUR D'APPEL FÉDÉRALE  
MAR 12 2018  
RECEIVED / REÇU  
OTTAWA, ON

BETWEEN:

TIMOTHY NOME

Plaintiff



And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

STATEMENT OF CLAIM

Defendant  
FEDERAL COURT OF APPEAL  
COUR D'APPEL FÉDÉRALE  
FILED MAR 12 2018  
Valerie Jean-Gilles  
DEPOSE  
OTTAWA, ON

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

**VALERIE JEAN-GILLES**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

March 12, 2018

**TO: The Honourable Jody Wilson - Raybould**  
ATTORNEY GENERAL OF CANADA  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

### CLAIM

1. The Plaintiff claims from the Defendant::

- a) Compensatory damages in the amount of \$200,000 for the pain, suffering and emotional distress inflicted on the Plaintiff by the Defendant's servants, for whose conduct the Defendant is vicariously liable, caused by their:
  - i) Assault and battery of the Plaintiff and the conspiracy to commit this
  - ii) Malfeasance in public office
  - iii) Negligence
- b) Damages in the amount of \$100,000 for the breach of the Plaintiff's rights under s. 7 and ss. 15(1) of the Canadian Charter of Rights and Freedoms Part I of *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11. ("the Charter"), pursuant to ss.24(1) of the Charter.

- c) Punitive damages in the amount of \$50,000
- d) Pre-judgment and post-judgment interest pursuant to the *Federal 4*.
- e) His costs in this action on a substantial indemnity basis.
- f) Such further and other relief as this Honourable Court shall deem just.

### **The Parties and the Servants of the Defendant**

2. At material times, the Plaintiff was an offender, resident at Kent Institution, a facility operated by the Correctional Service of Canada (CSC) by servants of the Defendant pursuant to the Corrections and Conditional Release Act S.C. 1992, c.20 ("CCRA") and the Corrections and Conditional Release Regulations, SOR/92-620 ("the CCRRs").

3. The servants of the Defendant herein were, and are, obliged to ensure that offenders' rights and entitlements under the CCRA and under the common law relationship of custodian and prisoner are respected, including, without limiting the generality of the foregoing their rights to protection from harm, safe and humane conditions of confinement at the least restrictive level of confinement commensurate with their needs and the safety and security of CSC institutions

### **Material Facts and Pleadings**

4. On January 7, 2017, at approximately 12:10 hours, as the Plaintiff, an Orthodox Jew, was preparing for Havdallah afternoon prayers, he was attacked and assaulted by three inmates, who poured boiling oil, extracted from food being prepared in a microwave

cooker, on his face and neck, causing him second degree burns and extreme pain, suffering and emotional distress.

5. This assault was the culmination of a series of actions on the part of the employees of CSC at Kent Institution, servants of the Defendant, intended to deliberately place the Plaintiff at extreme peril by placing him in association with inmates who they knew would cause him harm on the basis of their prejudice toward him on religious grounds.

6. On July 5, 2016, Bobbi Sandu ,the Warden of Kent's decided to place an inmate, Shane Gow on thme same range as the Plaintiff Mr. Gower is and was a well-known supremacist who staff knew would harbour animus toward the Plaintiff and attempt to do him harm.

7. Mr. Gower did indeed assault the Plaintiff on that day.

8. After a period of segregation for his own safety, the Plaintiff was released by the Defendant's servants to a range in association with racists whom they knew would harbor an animus toward the defendant. At the behest of inmates on the Inmate committee, staff moved the defendant to a protected situation on another range for his own protection.

9. On August 11, 2016 staff placed the offender in segregation in a cell featuring a large swastika on its wall, knowing that this would be highly offensive and threatening to the Plaintiff.

10. The Plaintiff was then released to a range K-002 where he was subjected to a series of events involving harassment on the basis of his religion.

11. In November, 2016 a Correctional Officer Ritch Kahn shouted racist and abusive insults at the Plaintiff while he was participating, on the phone, in a religious ceremony at his synagogue.

12. When the Plaintiff indicated to the Warden his intention to commence legal actions against staff, the Warden moved him to F-block where he was placed in association with four or more racist inmates who were members of the UN Gang, a white supremacist, anti-Semitic group.

13. Despite the Plaintiff's repeated requests to be moved to a range where he could safely engage in programs, he was kept in his dangerous situation.

14. Staff were well aware that the Plaintiff was endangered by this placement. Another Jewish inmate asked staff, at a segregation review hearing, that he be permitted to go to F-block, where the Plaintiff resided. This inmate was told by staff that it was likely that the Plaintiff would be attacked and that therefore this was not a safe place for the other inmate to reside.

15. Shortly thereafter the Plaintiff and other inmates were moved to A-block, a location adjacent to a "pod" where a number of UN Gang members resided.

16. An inmate member of the inmate committee pulled three UN Gang members aside to give them authorization to attack the Plaintiff.

17. On January 7, 2017 these three inmates did indeed batter the Plaintiff by throwing boiling-hot butter on him from the above-mentioned microwave and then physically beating him.

18. Prior to the attack Correctional staff had arranged to have a shank (home-made knife) placed in the Plaintiff's cell as a pretext for an assault.

### **Assault and Battery**

19. The Warden and staff members, all servants of the Defendant, harboured animus toward the Plaintiff because of his religion and his many complaints against the institution, including in interviews with local media.

20. They knowingly placed the Plaintiff in dangerous situations with known white supremacist inmates whom they knew would at some point assault or even murder the Plaintiff. They did little or nothing to protect him against such assaults, which did take place, culminating in the January 7, 2017 attack.

21. They did not intervene even when they saw that an attack was occurring.

22. In so doing the Warden and staff members of Kent institution, or some or any of them, despite having a duty of care at common law and arising from the CCRA to protect the Plaintiff from harm and to maintain him in safe, humane custody, did cause him to be repeatedly placed in a situation where harm was very likely to occur, and did occur, causing the Plaintiff pain, suffering and emotional distress.

23. Accordingly they committed assault and battery upon the Plaintiff.

### **Malfeasance in Public Office**

24. As well, the Warden and staff members of Kent institution, or some or any of them, did target the Plaintiff maliciously and exceeded their authority in causing him foreseeable pain, suffering and emotional distress by arranging for him to be assaulted and battered.

25. All of the said servants held office at the nomination and designation of the Commissioner of Corrections, an officer named by Cabinet to manage the CSC, Principal in their authority was the obligation to save and protect the Plaintiff and other inmates from harm. In their misconduct they patently exceeded this authority and targeted the Plaintiff for severe harm.

### **Negligence**

26. In the alternative to the above, the Defendant's servants identified above caused the Plaintiff harm by their negligence. They had a duty of reasonable care as custodians of the Plaintiff, both at common law *per se* and, as evidenced by their statutory duty of care under the CCRA to protect him from harm and to maintain him in safe and humane custody.

27. Nevertheless, reasonably knowing the foreseeable harm that would arise from placing the Plaintiff with known antagonists, they did place him with these inmates and harm did indeed ensue.

### **Charter Violations**

28. As well the Defendant's servants, above, breached the Plaintiff's right to liberty and security of the person under s.7 of the Charter and did so for unlawful purposes under ss.15(1) of the Charter.

29. The Plaintiff's security of the person was patently violated by the assaults that the Defendant's servants facilitated and his life was threatened.

30. The context of these breaches was the Defendant's servants' deliberate plan to target and harm the based on their anti-Semitic prejudice toward him, and that of the inmates whom they knowingly permitted to assault him.

31. There was insufficient justification for this harm either as an aspect of the servants' duty of care or pursuant to s.1 of the Charter.

### **Punitive damages**

32. The servants of the Defendant, above, caused the plaintiff harm in violation of their fundamental obligations as custodians and peace officers. Herein, the defendant's servants' conduct was egregiously insidious and carried out with disdain and arrogance toward the Plaintiff. This aspect of their misconduct cannot be adequately measured or compensated by compensatory damages.

33. This Honourable Court should sanction and deter misconduct such as this, which occurred in circumstances where the plaintiff was completely at the mercy of the staff involved.

### **Vicarious liability**

34. In all aspects of the misconduct set out above, the Defendant was vicariously responsible for the actions of her servants, which was carried out in the course of their duties and functions.

All of which s respectfully pleaded and submitted.

The Plaintiff proposes that the trial take place in Ottawa.

Dated at Ottawa this 12<sup>th</sup> day of March, 2018



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