

Court File No.

T-469-18

FEDERAL COURT

FEDERAL COURT OF APPEAL
COUR D'APPEL FÉDÉRALE

MAR 12 2018

RECEIVED / REÇU
OTTAWA, ON

BETWEEN:



TIMOTHY NOME

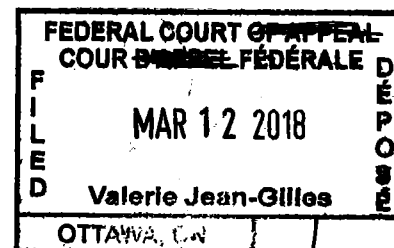
Plaintiff

And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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 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



 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 same
 - ii) Malfeasance in public office
 - iii) Negligence
- b) Punitive damages in the amount of \$50,000
- 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.

e) 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 March 2, 2017, at about 4 a.m., the Plaintiff had been roused and was naked in his cell, preparing his effects for his transfer that day from Kent to Stony Mountain Institution in Manitoba.

5. He was assaulted and beaten by at least six Correctional Officers, causing him pain and suffering, including, but not limited to, a broken foot and wrenched arm and shoulder.

6. This attack was unprovoked and without legal justification as the Plaintiff had done or said nothing to justify or to fight back against the assault. This lack of provocation or justification on the Plaintiff's part continued throughout the incident until the Plaintiff was removed from his cell and removed from the institution for transit to Manitoba.

7. The Plaintiff, despite his pleas for assistance and obvious demonstration of pain and suffering, was not afforded adequate medical attention by CSC employees and agents until he arrived in Stony Mountain Institution twelve hours after the assault.

8. The evening before the assault, the Plaintiff had been informed by the Warden of Kent Institution, Bobbi Sandhu, that he was going to receive a “going away present” from the Kent staff on the following morning. The Warden indicated subsequent to the incident that the assault had occurred as part of a pre-planned use of force to remove the Plaintiff from his cell.

9. The Warden and staff of Kent Institution, servants of the Defendant, or some or any of them conspired to assault and batter the Plaintiff and to cause him foreseeable pain, suffering and emotional distress because of the Plaintiff’s previous complaints against Kent staff for their mistreatment of him and his complaints to Canadian Press Reporter Colin Perkel about the same behaviours – which reporter broadcasted Information about the Plaintiff’s complaints on February 21, 2017.

10. The Defendant’s servants, above, or some or any of them, conspired to commit the assault and battery in violation of the duty of care to protect the Plaintiff and to retain him in safe and humane conditions as evidenced by the CCRA and as custodians at common law. They did so as well in retaliation for the Plaintiff’s exercise of his rights of expression, including his right to complain of mistreatment and to exercise his spirituality under the CCRA. They did commit the assault and battery and did cause him considerable injury, pain, suffering and emotional distress.

11. As well, in breach of their duty of care at common law and arising from the CCRA to provide the Plaintiff with timely, adequate and essential medical care, the said servants of the Defendant, or some or any of them, failed to direct or provide medical care for twelve hours after the assault, causing the Plaintiff further injuries, pain, suffering and emotional distress, and exacerbating his original harm. Herein they could foresee that the said harm would be caused by their failure to provide care.

12. Further, the Warden of Kent Institution and some or all of the other servants of the Defendant

involved in the harm caused to the Plaintiff, above, caused this harm while holding public office and targetted the Plaintiff maliciously and exceeded their authority in causing him foreseeable pain, suffering and emotional distress by conspiring to assault and batter him and by actually doing so. 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. They thus harmed the Plaintiff, as set out above, in circumstances denoting their malfeasance in public office.

13. The servants of the Defendant, above, carried out their conspiracy to cause the plaintiff harm in violation of their fundamental obligations as custodians and peace officers. Herein, the defendant's servants' conduct was deliberate, malicious, egregiously insidious and carried out with disdain and arrogance toward the Plaintiff over whom they held significant power.. This aspect of their misconduct cannot be adequately measured or compensated by compensatory damages.

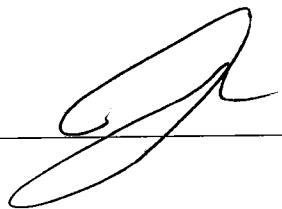
14. Accordingly this Honourable Court should sanction and deter misconduct such as this, which occurred in circumstances where the plaintiff was completely at the mercy of the staff involved.

15. 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 is respectfully submitted and pleaded.

The Plaintiff proposes that the matter be tried in Ottawa.

.Ottawa, March 9, 2018

A handwritten signature in black ink, appearing to be 'J. Todd Sloan', is written over a horizontal line.

J. Todd Sloan
Barrister and Solicitor
680 Eagleson Road
P.O. Box 45043
Kanata, Ontario
K2M 2Y1

Telephone: 613-986-3609
Facsimile: 613-280-1391
Solicitor for the Plaintiff

| | | | |
|--|--|--|---|
| <p>THE ATTORNEY GENERAL OF CANADA</p> <p>Defendant</p> | <p>and</p> <p>TIMOTHY NOME</p> <p>Plaintiff</p> | | <p>Court File No.</p> |
| | | <p>FEDERAL COURT OF CANADA</p> <p>PROCEEDING COMMENCED AT OTTAWA, ONTARIO</p> <p>STATEMENT OF CLAIM</p> | <p>J. Todd Sloan Barrister and Solicitor</p> <p>Telephone: (613) 986-3609 Facsimile: (613) 280-1391 Counsel for the Applicants</p> |