

Form 4.02A

2021



Hfx. No.:

5 0 4 7 6 5

SUPREME COURT OF NOVA SCOTIA

Between:

SARA TESSIER

Plaintiff

and



THE ATTORNEY GENERAL OF CANADA, representing her Majesty the Queen in Right of Canada

Defendant

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

NOTICE OF ACTION

To: The Attorney General of Canada

Action has been started against you

The Plaintiff takes action against you.

The Plaintiff started the action by filing this notice with the court on the date certified by the Prothonotary.

The Plaintiff claims the relief described in the attached Statement of Claim. The claim is based on the grounds stated in the Statement of Claim.

Deadline for defending the action

To defend the action, you or your counsel must file a Notice of Defence with the Court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the Notice of Defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 – Action for Damages Under \$150,000.00

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, located on 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7 (telephone # 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Plaintiff designates the following address:

VALENT LEGAL
1741 Brunswick Street, Suite 401
Halifax, NS B3J 3X8
Tel: 902-443-4488
Fax: 902-443-6593
Email: mike@valentlegal.ca

Documents delivered to this address are considered received by the Plaintiff on delivery.

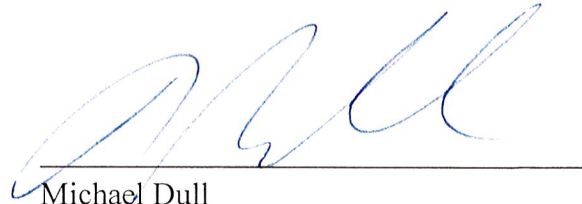
Further contact information is available from the Prothonotary.

Proposed place of trial

The Plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed this 10th day of March, 2021.



Michael Dull

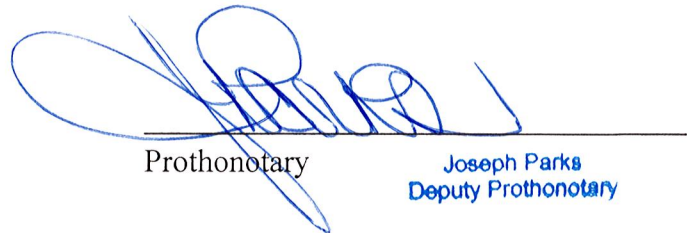
VALENT LEGAL

Solicitor for the Plaintiff

Telephone: (902) 443-4488

Prothonotary's Certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on March 10, 2021.



Prothonotary

Joseph Parks
Deputy Prothonotary

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. Overview

1. This action concerns sexual assaults, sexual misconduct, and sex-based discrimination within federal correctional institutions designated for women.
2. The proposed Class Members include prisoners of federal correctional institutions designated for women who have been subjected to the acts, attempts to commit the acts, or the threat of sexual assault, sexual misconduct and sex-based discrimination perpetrated by correctional staff and/or management.
3. Federal prisons designated for women largely condone and encourage a sexualized and discriminatory culture that fails to prevent, or allows for, sexual assault, sexual misconduct and sex-based discrimination to take place.
4. Sexual misconduct includes any behaviour or act of a sexual nature directed toward a prisoner, including acts or attempts to commit such acts, including sexual harassment, sexual comments or gestures, the use of suggestive and discriminatory language, sexual contact, sexual gratification, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy, strip searches carried out in a manner contrary to law or policy, inappropriate viewing, and conversations or correspondence suggestive of a romantic relationship between the prisoner and the perpetrator.
5. Sexual misconduct and discrimination are often carried out under the guise of one being in an intimate relationship with the correctional officer, and includes the exchange of goods, services or privileges for a sexual act.
6. The sexualized and discriminatory culture is caused by the Defendant's systemic failures to implement appropriate policies to mitigate against known risk of harms to class members by failing to properly train its staff and to identify, report, investigate, and properly resolve incidents of sexual assault, sexual misconduct, or sex-based discrimination. Furthermore,

prisoners who report incidents suffer from negative consequences that discourage further reporting.

7. As a result, sexual assault, misconduct and discrimination are pervasive in federal prisons designated for women, and cause tremendous harm, fear, humiliation and degradation to prisoners.
8. Women and gender diverse prisoners, which includes transgender, non-binary and Two Spirit people, are denied equal protection and benefit under the law. The conduct of the Defendant violates basic standards, including section 7, section 12, and section 15 of the *Canadian Charter of Rights and Freedoms* (“the *Charter*”).
9. The Plaintiff and proposed Class Members have suffered serious physical and psychological damages, out-of-pocket expenses and loss of income due to the Defendant’s breach of its duty of care and fiduciary duties.

II. Representative Plaintiff and Class

10. The Plaintiff, Sara Tessier, was born in 1974, and presently resides in the city of Halifax, in the Province of Nova Scotia.
11. At all material times, the Plaintiff was an inmate of the Nova Institution for Women, in Truro, Nova Scotia and in the exclusive custody and control of the Defendant.
12. In December of 2018, the Plaintiff was sexually assaulted by a correctional officer within the Nova Institution for Women.
13. The Plaintiff seeks to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, S.N.S. 2007, c. 28, as amended (“*CPA*”), as providing the basis for such certification. The Plaintiff, as the Representative Plaintiff, does not have any interest adverse to any of the members of the proposed Class. The Plaintiff states that there is an identifiable class that would be fairly and adequately represented to her; that the

Plaintiff's claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of the common issues.

14. The Plaintiff proposes to bring a Class Proceeding on behalf of herself and a Class of other prisoners of federal prisons designated for women who have experienced sexual assault, sexual misconduct, or discrimination on the basis of their sex, gender, gender identity or gender expression by the Defendant's employees while under the custody, care, and control of the Defendant. The proposed Class will be further defined in the Motion for Certification.

III. The Defendant

15. The Defendant, the Attorney General of Canada, representing her Majesty the Queen in Right of Canada, at all times material and relevant to this proceeding, is and was the operator, occupier and maintainer of federal corrections facilities in Canada, including the Nova Institution for Women, Fraser Valley Institution for Women, Edmonton Institution for Women, Grand Valley Institution for Women, the Joliette Institution for Women and the Okimaw Ohci Healing Lodge. All agencies, including but not limited to the Correctional Services of Canada, will be referred to as "the Defendant" and is deemed to include all its contractors, sub-contractors, agents, servants, employees and appointees.
16. The Defendant is and was, at all material times, responsible for the oversight and management of the governmental servants and agents within federal correctional institutions, who have day-to-day control over the proposed Class of prisoners at the Federal Institutions designated for women.
17. At all material times and relevant to this proceeding, the Defendant was responsible for the care, maintenance, protection and supervision of the proposed Class, including the Plaintiff, while they were in custody of federal correctional institutions.
18. At all material times, the Defendant knew, or ought to have known, of the sexual assaults, sexual misconduct, and sex-based discrimination perpetrated by federal corrections staff, and did not take appropriate steps to ensure that the Plaintiff and the proposed Class

Members would not be subjected to such conduct. Alternatively, the Defendant failed to take prompt and adequate measures to investigate and remedy such conduct.

19. At all material times, the Defendant, through its agents, employees, and servants created an atmosphere of tolerance, thereby implicitly encouraging the continuing sexual abuse and discrimination.
20. At all material times, the Defendant possessed the means to address the sexual abuse and discrimination perpetrated by its staff, and failed to both implement those means and take other reasonable steps to mitigate against such risk.

IV. Causes of Action

21. The Plaintiff pleads the following causes of action:
 - (a) Systemic negligence
 - (b) Breach of fiduciary duty
 - (c) Breaches of *Charter* rights
 - (i) Section 7
 - (ii) Section 12
 - (iii) Section 15

A) Systemic Negligence

22. The Plaintiff states that the Defendant, through its agents, its servants, and employees had a duty of care, informed by both common and statutory law, to provide appropriate and adequate care to the Plaintiff, including a duty to supervise, monitor, investigate, and provide proper protection against sexual assault, sexual misconduct, and sex-based discrimination.
23. The Plaintiff pleads and relies upon the *Corrections and Conditional Release Act* (“CCRA”), in particular section 4(g) and section 5.

24. The Defendant's agency, the Correctional Service of Canada, is responsible for the care and custody of inmates, pursuant to the *CCRA*. The Correctional Service of Canada is guided by the principal that correctional policies, programs and practices respect gender, sexual orientation, and gender identity and expression, and are responsive to the special needs of women.
25. The Plaintiff pleads and relies upon the Commissioner's Directive 060 Code of Discipline.
26. The Defendant's employees, all persons working at the Correctional Service of Canada or involved in their activities and interactions, are responsible for adhering to the Standards of Professional Conduct, in particular section 11, which states that an employee commits an infraction where they: maltreat, humiliate, harass, discriminate and/or are abusive, by word or action, to an offender; enter into any kind of personal relationship not approved by their authorized supervisor with an offender; give or receive any gift, gratuities, benefits or favours, or engage in personal business transactions with an offender; give to, or receives from any offender, either directly or indirectly, any contraband; or, fail to report situations of mistreatment, harassment and/or discrimination of offenders by employees. Additionally, section 1 states that any supervisor or manager is responsible for: ensuring that all employees are adequately trained and informed of the Standards of Professional Conduct and the Code of Discipline and other directives and regulations; promptly and impartially taking appropriate corrective action when necessary; and ensuring that any incident or allegation of misconduct which could also constitute a criminal offence is reported to the police of jurisdiction.
27. The Defendant, either directly or through its agents, employees, servants or assigns, has systemically breached the standard of care, the particulars of which are as follows but are not limited to:
 - (a) By failing to properly supervise the correctional staff members so as to prevent and minimize the risk of the Plaintiff and other proposed Class Members being subjected to sexual assault, sexual misconduct, and sex-based discrimination;

- (b) By failing to establish, or alternatively, failing to enforce adequate policies, procedures, codes of conduct, guidelines, and management and operations to minimize the risk of the Plaintiff and other proposed Class Members being subjected to sexual assault, sexual misconduct, and sex-based discrimination;
- (c) By failing to properly investigate allegations of sexual assault, sexual misconduct and/or discrimination in correctional institutions in a thorough, timely and impartial manner, or at all;
- (d) By failing to qualify or cause to be qualified or to screen for suitability, or to supervise, monitor, police or assess the agents, and employees, entrusted with the care, and protection of the Plaintiff and the other proposed Class Members;
- (e) By failing to provide adequate, or any, training and educational programs to corrections staff regarding the dangerous and harmful effects of sexual assault, sexual misconduct, and discrimination;
- (f) By failing to designate services and methods as protective services for the purposes of ensuring the safety of the Plaintiff and proposed Class Members under the wardship of the Defendant, or in the alternative, not properly designating and implementing those protective services;
- (g) By failing to make sufficient efforts to promote the universal understanding amongst corrections staff that sexual assault, sexual misconduct, and discrimination are harmful and will not be tolerated;
- (h) By subjecting the Plaintiff and proposed Class Members to a culture that normalized the occurrence of and tolerated sexual assault, misconduct, and discrimination, without corrective action, or guidance, or counselling, and overlooking and/or failing to identify and/or condoning such a culture and/or conduct;
- (i) By failing to protect the Plaintiff and other proposed Class Members from the continuation and re-occurrence of sexual assaults, sexual misconduct, and sex-based discrimination.
- (j) By failing to provide appropriate care and treatment for the Plaintiff and proposed Class Members after they experienced sexual assault, sexual misconduct, or sex-based discrimination;

- (k) By intimidating and discouraging the Plaintiff and the proposed Class Members from reporting sexual assault, sexual misconduct, or sex-based discrimination;
 - (l) By systematically punishing, retaliating against, or threatening to retaliate against Class Members who complain of sexual assault, sexual misconduct, or sex-based discrimination; and
 - (m) By failing to ensure that perpetrators of sexual assault, sexual misconduct, and sex-based discrimination were appropriately disciplined.
28. The Defendant knew, or ought to have known, about the sexual abuse, misconduct and sex-based discrimination perpetrated by its employees and the culture of sanctioned sexual harassment perpetuated in federal correctional institutions. The Defendant failed to take appropriate steps to address the systemic abuses.
29. Instances of sexual assaults, misconduct, and sex-based discrimination are often reported to persons in positions of authority in federal correctional institutions. Often times nothing is done by way of investigation or rectification. Alternatively, if steps are taken to investigate and/or rectify the reported conduct, these steps are inadequate and ineffective at remedying the ongoing conduct.
30. The Defendant's failure to adequately detect or respond to prolonged systemic abuse, misconduct, and sex-based discrimination amounts to systemic negligence.
31. The harm suffered by the Plaintiff and the proposed Class flow directly from the acts and/or omissions of the Defendant.

B) Breach of Fiduciary Duty

32. The Defendant owed the Plaintiff and proposed Class Members a fiduciary duty that included a duty to care for and protect them, and to act in their best interest at all material times, as particularized further below.

33. Given the circumstances of the relationship between the Class Members and the Defendant, and its employees and agents, including but not limited to their statutory obligations, authority and control over the Class Members in their custody, and given the relationship is one of trust, reliance, and dependency, the Defendant owed a fiduciary obligation to ensure that the Class Members were treated respectfully, fairly, and safely, to act in the best interests of those individuals, and to protect them from the harm alleged herein.
34. The Defendant was required but failed to put the Plaintiff and the proposed Class Member's interests ahead of the Defendant's interests, by perpetrating the above-mentioned conduct and/or allowing the above-mentioned conduct to occur.
35. The Plaintiff and proposed Class Members were entitled to rely and did rely on the Defendant to their detriment. As a result of their sex and their circumstances of incarceration, the Plaintiff and proposed Class Members were particularly vulnerable to the discretion and power exercised by the Defendant.
36. The unilateral exercise of power and discretion by the Defendant impacted the Plaintiff and proposed Class Member's fundamental human and personal interests. The discretion exercised by the Defendant also directly affected the perpetuation of sexual assault, sexual misconduct, and sex-based discrimination in federal corrections facilities designated for women, as it was wholly within the scope of that discretion to ensure that appropriate policies and procedures were in place.
37. The Plaintiff and proposed Class Members suffered losses and harms as a result of the breach of fiduciary duty by the Defendant.

C) Breach of *Charter* Rights

i) Section 7

38. Section 7 of the *Charter* guarantees the right to “life, liberty, and security of the person”, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
39. The Defendant’s impugned acts and/or omissions negatively impacts and contributes to the deprivation of the proposed Class Members’ security of the person by materially increasing their risk of experiencing sexual assault, sexual misconduct, or sex-based discrimination. The increased risk interferes with the prisoner’s personal autonomy and ability to control their own physical or psychological integrity. Sexual offences and sex-based discrimination are seriously impairing to an individual’s physical and mental health and can cause psychological harm.
40. The Defendant’s acts and/or omissions amount to a deprivation of section 7 *Charter* rights of the Plaintiff and proposed Class Members in a manner that is not in accordance with the principles of fundamental justice.

ii) Section 12

41. Section 12 of the *Charter* guarantees the right not to be subject to any cruel and unusual punishment.
42. A term of imprisonment is imposed as a penalty for an offence and amounts to a “punishment” for the purpose of section 12.
43. The act or threat of sexual assault, sexual misconduct, or sex-based discrimination is cruel and unusual insofar as it is grossly disproportionate.

44. The impugned conduct of the Defendant has had a serious and profound effect on the physical and psychological integrity of the Plaintiff and proposed Class Members. It cannot be saved by section 1 of the *Charter*.

iii) Section 15

45. Section 15 of the *Charter* guarantees that every individual is equal before and under the law, and has the right to equal protection and equal benefit of the law without discrimination.
46. The incidence of prior sexual violence and trauma is exceedingly high among prisoners in prisons designated for women. Individuals who have a history of experiencing sexual violence are at increased risk of sexual victimization. Such risks are further increased in the presence of power imbalances, and/or where a victim cannot escape their attacker. Both factors are present in carceral environments.
47. Owing to the increased incidence of prior sexual violence and trauma, and the greater overall incidence of sexual violence against women and gender diverse people compared to cisgender men, incarcerated women and gender diverse people are at greater risk of experiencing sexualized violence than incarcerated cisgender men.
48. The Defendants have failed to take measures to protect incarcerated women and gender diverse people from sexual victimization, notwithstanding their increased vulnerability to sexual violence within institutions designated for women, and contrary to the Defendants' stated priority of ensuring a safe and dignified environment for these populations.
49. The impugned distinction is discriminatory in so far as it perpetuates the disadvantage of women and gender diverse prisoners, who are already particularly vulnerable, and the object of stereotypes. As such, women and gender diverse prisoners are denied equal protection and benefit under the law.
50. The impugned distinction is not qualified under section 15(2) of the *Charter*. It is similarly not justified under section 1.

V. Vicarious Liability

51. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the actions of its agents, employees, servants, and contractors.
52. Specifically, the Defendant is vicariously liable for the sexual assault, sexual misconduct, and breaches of *Charter* rights perpetrated by its agents and employees.

VI. Damages

53. The Defendant knew, or ought to have known, that as a consequence of its mistreatment of Class Members, the Plaintiffs and Class Members would suffer significant harms.
54. As a consequence of the negligence and breach of fiduciary duties, and *Charter* breaches of the Defendant, and its agents and employees for whom the Defendant is vicariously liable, the Class Members suffered loss, injury, and damages, including, but not limited to, the following:
 - (a) Assault and battery;
 - (b) Emotional and psychological harm;
 - (c) Impairment of mental and emotional health and well-being;
 - (d) Development or exacerbation of mental illness;
 - (e) Impaired ability to participate in or transition to a normal family life;
 - (f) Impairment of the capacity to build healthy sexual and romantic relationships with others;
 - (g) Loss of self-esteem and feelings of humiliation and degradation;
 - (h) Addiction or substance abuse;
 - (i) Impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
 - (j) The need for ongoing psychological, psychiatric and medical treatment and counselling resulting from the experience of sexual abuse;

- (k) Infringement of security of the person rights; and
- (l) Pain and suffering.

55. As a consequence of the negligence and breach of fiduciary duties, and breaches of *Charter* rights by the Defendant, and its agents and employees for whom the Defendant is vicariously liable, the Class Members have required and will continue to require medical and psychological treatment, rehabilitation, counselling and other care, for which they claim complete indemnity, compensation and payment from the Defendant.

VII. Aggravated, Punitive, and Exemplary Damages

56. The Plaintiff submits that the conduct of the Defendant's employees, for which the Defendant is vicariously liable, herein amounts to a reckless or willful disregard and gross violation of the privacy rights of the Plaintiff and proposed Class Members.

57. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages.

VIII. Relief Sought

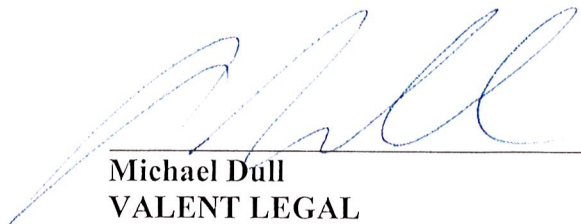
58. The Plaintiff repeats the foregoing paragraphs and seeks the following relief:

- (a) An Order certifying this proceeding as a Class Proceeding and appointing the Plaintiff as the Representative Plaintiff for the Class or Classes;
- (b) A declaration that the Defendant is vicariously liable for the actions of the Defendant's agents and employees;
- (c) A declaration that the impugned acts/omissions of the Defendant constitute breaches of section 7, section 12, and section 15 rights as guaranteed by the *Canadian Charter of Rights and Freedoms*;
- (d) Damages or such other remedy as the Court may consider just an appropriate pursuant to Section 24 of the *Canadian Charter of Rights and Freedoms*;
- (e) General damages for pain and suffering;

- (f) Special damages, the particulars of which will be delivered;
- (g) Aggravated, punitive and/or exemplary damages;
- (h) Pre-judgement interest pursuant to the *Judicature Act*;
- (i) Costs and Disbursements, inclusive of any financing charges; and
- (j) Such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this ¹⁰ day of *March*, 2021.



Michael Dull
VALENT LEGAL
401-1741 Brunswick Street
Halifax, NS B3J 3X8
Ph: (902) 443-4488
Fax: (902) 443-6593
Solicitor for the Plaintiff

TO: The Prothonotary
AND TO: The Defendant
Their Solicitors or Agents