

AMENDED STATEMENT OF CLAIM

Background and Summary

1. The individual plaintiff, Michael Mark Anthony Devlin (“Mr. Devlin”) currently resides at Cowansville Springhill Institution, 400 Chem. Fordyce Cowansville, QC J2K 3G6 ~~330 McGee St., Springhill, Nova Scotia B0M 4X0~~. Mr. Devlin is 39 years old and has been incarcerated since he was 17 years old.
2. The public interest plaintiff, the John Howard Society of Canada (“John Howard”), located at 809 Blackburn Mews, Kingston, Ontario K7P 2N6, Canada, is a registered non-profit charity under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c.23.
3. Defendant Attorney General of Canada by way of Correctional Services Canada (collectively referred to as “Defendant CSC”) operates the federal penitentiary Atlantic Institution (“Renous”) in New Brunswick, ~~and~~ Springhill Institution in Nova Scotia, and Millhaven Institution in Ontario, and is charged with and responsible for the operation of all federal penitentiaries in Canada. Defendant CSC is also responsible to administer, in part, federal sentences of incarceration that are given to those convicted in the courts of Canada. The address for service of Defendant CSC is % Atlantic Regional Office, Department of Justice Canada, 5251 Duke Street, Suite 1400, Halifax, Nova Scotia B3J 1P3.
4. Dr. Camille Haddad is a primary care physician who provides medical services to incarcerated persons at Renous (“Defendant Haddad”). The address of Defendant Haddad is 250 Pleasant Street, Miramichi, New Brunswick E1V 1Y5.
5. The College of Physicians and Surgeons of New Brunswick (“Defendant College”) is the provincial regulator of primary care physicians in New Brunswick. The address of Defendant College is 1 Hampton Rd, Suite 300, Rothesay, NB E2E 5K8.

6. Mr. Devlin makes a claim for ~~breaches of fiduciary duty, negligence, assault and battery~~, and breaches of his constitutional rights pursuant to sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), seeking both personal damages and systemic remedies under ss. 24(1) and 52 of the *Charter*.
7. Mr. Devlin and John Howard makes a claim for public interest systemic remedies for constitutional breaches pursuant to sections 7, 12, and 15 of the *Charter*, and with respect to the validity of federal legislation per the doctrine of interjurisdictional immunity and the division of powers.
8. Mr. Devlin alleges that, since being incarcerated at the age of 17, Defendant CSC’s administration of his sentence has not been responsive to his therapeutic and rehabilitative needs. Instead, Defendant CSC’s treatment of Mr. Devlin has been antagonistic and adversarial rather than rehabilitative ~~which is in breach of its fiduciary duties~~. The tortious and unconstitutional conduct of Defendant CSC is reflected, in part, in Mr Devlin’s history of medical treatment the medical treatment and lack a thereof which Defendant CSC has provided to Mr. Devlin.
9. John Howard alleges that the treatment of Mr. Devlin by Defendant CSC, and some of its agents or employees is further reflective of its systemic conduct in penitentiaries across Canada, particularly with respect to medical care.
10. Both Mr. Devlin and John Howard allege that as section 2 of the *Canada Health Act* R.S.C. 1985, c. C-6 (“CHA”) (definition section) has excluded federal prisoners as insured persons, Canada has impermissibly legislated and acted to impair a core area of provincial jurisdiction and responsibility over health care, this being the delivery of health care services.
11. In any event of the constitutional validity of section 2 of the *CHA*, both Mr. Devlin and John Howard further say that the *CHA* exclusion of federal prisoners as insured persons causes and has caused Mr. Devlin and federal prisoners to be provided with a substandard and second-tier level of health care as against that provided to other and everyday Canadian residents by their provincial governments, in violation of ss. 7, 12, and 15 of the *Charter*.
12. Mr. Devlin and John Howard further allege that as ss. 85-86 of the

Corrections and Conditional Release Act, S.C. 1992, c. 20 (“CCRA”) require CSC to control and administer the delivery of health care services for federal prisoners. Canada has impermissibly legislated and acted in a core area of provincial jurisdiction over health care.

13. In any event of the constitutional validity of ss. 85-86 of the CCRA, Mr. Devlin and John Howard further allege such sections both cause and have caused federal prisoners to be provided with a substandard and second-tier level of health care as against that provided to other and everyday Canadian residents by their provincial governments, in further violation of ss. 7, 12 and 15 of the Charter.

Public Interest Standing

14. John Howard has sufficient interest to be granted public interest standing, in that:
- a. This claim raises a serious challenge to the constitutional validity of certain definitions in the *CHA* as well as to ss. 85, 86, and 867 of the *CCRA Corrections and Conditional Release Act, S.C. 1992, c. 20 “CCRA”*; both of which fundamentally impact the lives, health, and well-being of federal prisoners;
 - b. John Howard has a demonstrated, serious, and genuine interest in the subject matter of this litigation. As part of its general work in advocating on behalf of federal prisoners, John Howard has also been extensively involved in advocating for the medical needs of federally incarcerated people.
 - c. John Howard has been involved in general advocacy to promote just, effective, and humane corrections and has involved itself in numerous public interest interventions in cases impacting federal prisoners at all levels of court in Canada, including several interventions at the Supreme Court of Canada.
 - d. the issue of the conduct of Defendant CSC and its agents or employees with particular respect to medical care provided to incarcerated persons is of interest to all Canadians;
 - e. John Howard is comprised of dozens of member societies in communities across Canada providing direct services to

incarcerated persons who have a direct and personal stake in these issues, as they have been incarcerated in federal penitentiaries;

- f. the resources of John Howard confirm their capacity to bring forward the claim and to ensure that the issues will be presented in a sufficiently concrete and well-developed factual setting;
- g. the claim raises issues that are in the public interest that transcend the interests of any single incarcerated person who may be directly affected by the conduct of Defendant CSC in providing medical services;
- h. the claim raises a comprehensive challenge to the *CCRA* and *CHA* based ~~on~~ ~~based~~ on ss. 7, 12 and 15 of the *Charter* as well as with respect to the federal/provincial division of powers under and under s. 91 of the *Constitution Act*; it is a systemic challenge that differs in scope from an individual challenge to a discrete issue;
- i. Claims of this nature present the possibility of being lengthy and arduous. Accordingly, it is unreasonable to expect incarcerated individuals, many of whom will be released from incarceration prior to the conclusion of a claim of this nature, to bring it forward by themselves; and
- j. the claim is, in all of the circumstances, a reasonable and effective means of bringing this matter before the Court.

Unconstitutionality of the *Canada Health Act*: Division of Powers

- 15. As per section 92(7) of Canada's *Constitution Act*, 1982, the responsibility for the delivery of health care services for Canadian residents, subject to limited exceptions, has been conferred on the provinces.
- 16. Under s. 7 of the *CHA*, provinces are required to meet certain criteria to be, and to remain, eligible for federal funding; these being public administration, comprehensiveness, universality, portability, and accessibility in their provincial health insurance programs.
- 17. Section 2 of the *CHA* excludes federal prisoners as insured persons.
- 18. The *CHA* specifically recognizes that Canadians, through a system of insured health services, have made outstanding progress in treating sickness and alleviating the consequences of disease and disability among

all income groups. The *CHA* further recognizes that access to quality health care without financial or other barriers is critical to maintaining and improving the health and well-being of Canadians, and that the Parliament of Canada wishes to encourage the development of health services throughout Canada by assisting the provinces in meeting the costs thereof.

19. In excluding federal prisoners as insured persons, the federal government has created a gap in the funding and delivery of healthcare services to federal prisoners, insofar as other Canadians who are not so excluded can receive healthcare services provided and paid for by the provinces.
20. This gap in the funding and delivery of health care services requires the federal government, through Defendant CSC, to both fund and have control over the delivery of health care services to federal prisoners.
21. Sections 85-86, and more specifically section 86.1, of the *CCRA* require Defendant CSC to take responsibility for the administration and delivery of health care to federal prisoners.
22. Mr. Devlin and John Howard state that by legislating and effectively making CSC responsible for the administration and delivery of healthcare services to federal prisoners, as against such administration and delivery by local provincial health care authorities, the federal government has, and does, impair a core area of provincial jurisdiction and responsibility for health care, this being the overall administration and delivery of healthcare services.
23. Accordingly, with respect to excluding federal prisoners as insured persons, section 2 of the *CHA* should be declared *ultra vires* the legislative and operational authority of the federal government and/or inapplicable insofar as such legislation and operation impairs the core area of provincial responsibility for the delivery of health care services. As ss. 85-86 of the *CCRA* make Defendant CSC responsible for health care as it relates to federal prisoners, accordingly these sections should also be declared *ultra vires* the legislative and operational authority of the federal government and/or inapplicable insofar as such legislation and operation impairs the core area of provincial responsibility for the delivery of health care services.

The *CHA* and *CCRA* as being in violation of Sections 7, 12 and 15 of the Charter

24. In any event of the division of powers validity of the *CHA* and/or the *CCRA*, John Howard and Mr. Devlin state that section 2 of the *CHA* and the *Canada Health Act* R.S.C. 1985, c. C-6 (definition section), uninsured persons which excludes federally incarcerated persons from its definition of insured persons, along with sections 85-86~~7~~ of the federal *CCRA*, have created and will continue to create which govern the medical care of incarcerated persons, together have created and create separate, operationally unequal, and substandard medical care for Mr. Devlin and other incarcerated persons in federal penitentiaries and as against that provided to everyday and other Canadian residents by their provincial governments. As such, s. 2 of the *CHA* and ss. 85-86 of the *CCRA* have resulted, and will continue to result, in the violation of Mr. Devlin's and other federal prisoners' rights under sections 7, 12, and 15 of the *Charter* in numerous ways, including, though not necessarily limited to, the following:
25. The general operational mandate of Defendant CSC is to provide for the housing and safe and humane custody of prisoners sentenced to federal terms of incarceration in Canada. Defendant CSC is also responsible for assisting federal prisoners in their rehabilitation and reintegration into the community through the provision of programs in the community and in the penitentiary. The further operational mandate of Defendant CSC is to provide security services with respect to the custody and supervision of federal prisoners, while, in all cases, and as enumerated in section 3.1 of the *CCRA*, making the protection of society the paramount consideration.
26. Section 85 of the *CCRA* defines health care as it is to be provided to federal prisoners. Section 86(1) of the *CCRA* states that Defendant CSC shall provide every prisoner with essential health care and reasonable access to non-essential health care. Under section 86(2), Defendant CSC also shall provide health care in a manner that conforms to professionally accepted standards. Pursuant to section 86.1 of the *CCRA*, in providing such health care, Defendant CSC is also required to support the independence of registered health care professionals, and to support such provision in a patient-centric manner.
27. Mr. Devlin and John Howard state that ss. 85-86 of the *CCRA* fail to

define what constitutes the proper delivery of health care services to federal prisoners, while further failing to make the provision of such proper services mandatory for Defendant CSC. More specifically, section 86(2) of the *CCRA* fails to require Defendant CSC to provide the same standard of health care to federal prisoners as that which would be provided by provincial health delivery systems to other Canadians and individuals living in the community.

28. Mr. Devlin and John Howard state the hallmark of patient-centric health care is, among other things, creating the delivery of health care services by health care professionals in a manner that is independent of considerations that interfere with a focus on the medical needs for a patient to fully recover from an illness. Such independence must include health care professionals not being required to report to non-medical staff and to non-independent medical staff; the absence of health care professional compensation structures that are not effectively independent; and the absence of competing resource allocation priorities which undermine the delivery of health care in a patient-centred manner.

29. Mr. Devlin and John Howard state that as section 2 of the *CHA* has excluded federal prisoners as insured persons, and ss. 85-86 of the *CCRA* further specifically makes Defendant CSC primarily responsible for the administration and delivery of health care services to federal prisoners, Defendant CSC has not and will not be able to provide health care services to federal prisoners in a manner that is patient-centred and independent. This is and will be the case notwithstanding the mandate of section 86.1 of the *CCRA* for Defendant CSC to support patient-centred and independent health care delivery systems.

30. Mr. Devlin and John Howard state that those who are defined as insured persons under the *CHA* obtain the benefits of health care that is delivered and provided by provincial health care authorities. It is further stated that the structure of health care as delivered and administered by the provinces is and will primarily be able to provide health care in a manner that is patient-centric and otherwise respects the principle of the independence of health care professionals.

31. Mr. Devlin and John Howard state that, as uninsured persons under the CHA, federal prisoners do not and will not receive the same level of health care services as that which is provided by provincial health care delivery systems.
32. In practice, the delivery of health care services by Defendant CSC has been, is, and will be operationalized in ways that create a two-tiered, inferior health care system and which fails to deliver and support independent health care as mandated under section 86.1 (a), (b) and (c) of the CCRA.
33. Such problematic operationalization is further compromised by gaps regarding the proper delivery of health care services inherent in ss. 85-86 of the CCRA.
34. This non-patient centred and non-independent operationalization manifests in other numerous ways, including, though not limited to, the following:
 - a. Defendant CSC fails to ensure that health care professionals report to medical staff acting independently of CSC general operations.
 - b. Defendant CSC fails to ensure that health care professional compensation structures are independent of Defendant CSC's control and influence.
 - c. Defendant CSC fails to ensure that resource allocation is delivered without control or influence from Defendant CSC.
 - d. the ability of Defendant CSC physicians to prescribe regulated medication for incarcerated persons is cumbersome and more regulated when compared to requirements for physicians treating patients in the community, effectively creating obstructions and disincentives for Defendant CSC physicians to prescribe appropriate medicines;
 - e. the CCRA regulations and policies provide fewer pharmaceutical options for federally incarcerated persons than non-incarcerated

persons;

- f. federal medical funding ratios in the federal prisons are unequal in comparison to that provided for the general community;
- g. care for various health conditions in federal penitentiaries including, though not necessarily limited to, chronic pain, substance abuse disorder, and mental health ailments, dental and geriatric needs, chronic and critical care, long-term, and acute illnesses is-are delivered systemically below the level of care provided in the community;
- h. Defendant CSC's legislated and regulated structure of medical care interferes with the independence of licensed physicians and interferes with the physician-patient relationship with incarcerated persons by prioritizing CSC operations over patient centred care;
- i. Defendant CSC's control over federal prisoner's personal health records, has caused prisoners, other health care providers, and authorized third parties to have delayed and restricted access to such records. This impairs any prisoner's ability to take necessary steps or otherwise make necessary decisions respecting their personal health;
- j. there is, and will be, a lack of competent supervision, regulation, and accountability of those providing health care services to federal prisoners, unlike what is and would be the case under a provincially-regulated health care system;
- k. health care in penitentiaries will not be responsive to the specific and local needs of prisoners who have come from and will be released into the local community;
- l. prisoners are not be able to immediately avail themselves of health care services once released from incarceration;
- m. other such evidence of unconstitutionality that may appear in the

evidence tendered at the trial of this matter.

35. Mr. Devlin also states that this unequal medical system has left Mr. Devlin's resulted in Defendant CSC poorly managing his care. For Mr. Devlin specifically, this has exacerbated his lower back condition and leaving his chronic pain poorly managed by medical services delivered at Renous and as he transferred between institutions.
36. Mr. Devlin and John Howard state that as s. 2 of the *CHA* and ss. 85-86 of the *CCRA* cause, and in all likelihood will cause, the delivery of sub-standard and second-tier health care to federal prisoners, they unjustifiably infringe section 7 of the *Charter*.
37. The section 7 *Charter* right to life is engaged and infringed by a federal government-imposed system of healthcare delivery that deprives federal prisoners of the quality of medical treatment that they would otherwise receive in the community. This sub-standard and second-tier treatment results in the reduction of prisoner lifespan, and an ongoing possibility of a reduction of such lifespan, along with a general reduction in the quality of life that may be enjoyed by Canadians who are not incarcerated in federal penitentiaries.
38. The section 7 *Charter* right to liberty is engaged and infringed by state interference with the ability of federal prisoners to take steps regarding their health and to access health care services that are available to other Canadians, while also not having autonomy over health care decisions that are integral to their personhood.
39. The section 7 *Charter* right to security of the person is engaged and infringed by the impact that a sub-standard and second-tier delivery of health care services has and will continue to have on federal prisoners as against the health and well-being that may be enjoyed by other Canadians by way of provincially-delivered health care systems. Security of the person interests are further engaged by the psychological impact that is and may be visited upon federal prisoners concerned about their health, well-being, and treatment in a sphere where they receive sub-standard and second-tier health care, and where operational concerns of Defendant CSC

take priority over health care.

40. The objective of the *CHA* is to promote the equal health and well-being of all Canadians and to promote a universal standard of health care across Canada by way of the provincial delivery of insured health care. The objectives of ss. 85-86 of the *CCRA* are to deliver proper health care services to federal prisoners in an independent and patient-centred manner that is otherwise in accordance with the CSC mandate.
41. In excluding federal prisoners as insured persons under s. 2 of the *CHA*, and as pleaded herein, the objectives of the *CHA* cannot be met so far as federal prisoners are concerned. Such arbitrariness has been and will continue to be extended to the conduct of Defendant CSC in the administration and operationalization of health care services.
42. The *CCRA* requires Defendant CSC to be responsible for the delivery of health care services to federal prisoners, while requiring Defendant CSC to support the independence of health care professionals and support patient-centric health care. Mr. Devlin and John Howard state that the provision of Defendant CSC's health care services is, by its very structure, not independent and cannot create, protect and ensure clinical independence and patient-centred care. Such arbitrariness has been and will be extended to the conduct of Defendant CSC in the administration and operationalization of health care services.
43. To the degree that the legislative requirements of the *CCRA* allow for an operationalization of health care services that are balanced against security and public safety concerns and the general mandate of Defendant CSC, the impact of such legislation and operationalization is grossly disproportionate to the security and public safety objectives sought.
44. Mr. Devlin and John Howard further state that the exclusion of federal prisoners as insured persons and further unconstitutional actions taken by Defendant CSC in the administration and delivery of health care services are not proportional to any needs of Defendant CSC in housing federal prisoners nor in protecting public safety, nor proportional to any other identified needs as may be articulated by Defendant CSC.

45. Mr. Devlin and John Howard state that any such violations of s. 7 of the Charter by s. 2 of the CHA and ss. 85-86 of the CCRA cannot be justified as reasonable limits on s. 7 rights pursuant to s. 1 of the Charter.
46. Mr. Devlin and John Howard further say that the substandard health care and treatment of federal prisoners that has resulted from the operation of section 2 of the CHA and ss. 85-86 of the CCRA, is cruel treatment and further constitutes punishment beyond that provided for by sentences of incarceration that have been given to such prisoners. This has infringed Mr. Devlin's and federal prisoners' right to not be subjected to any cruel and unusual treatment or punishment under s. 12 of the Charter. Such violations of s. 12 of the Charter cannot be justified as a reasonable limit on s. 12 rights under s. 1 of the Charter.
47. Mr. Devlin and John Howard further state that the impugned provisions of the CHA and CCRA discriminate against and ultimately result in the unequal treatment of federal prisoners, in violation of s. 15 of the Charter. The impugned provisions unjustifiably create a regime in which federal prisoners, including, in particular, those prisoners with disabilities, are treated differently from other Canadians and cannot avail themselves of the benefits other Canadians receive from provincial health care delivery systems. This differential treatment results in an inequality in the provision of health care which is delivered to federal prisoners as against that which is provided to other Canadians who may avail themselves of the benefits of independent and patient-centric care that is more likely to be provided by provincial health care delivery systems. Mr. Devlin and John Howard state that such discrimination and inequality cannot be justified as a reasonable limit on rights in a free and democratic society pursuant to s. 1 of the Charter.
- ~~48. John Howard further says that this substandard treatment extends to other sectors of medical care for federally incarcerated persons, including chronic and critical care.~~
- ~~49. In particular, Mr. Devlin and John Howard state that the Canada Health Act R.S.C. 1985, c.C-6 (definition of insured persons), and the CCRA, ss.~~

~~85-87, along with any associated regulations and Defendant CSC policies effectively act, in operation, contrary to sections 7, 12 and 15 of the Charter.~~

~~Unconstitutional and negligent interference with solicitor-client relationship by Defendant CSC~~

- ~~50. On or about September 2018, Mr. Devlin engaged counsel to assist him with a Canadian Human Rights Commission complaint. Mr. Devlin was incarcerated at Renous at that time.~~
- ~~51. While at Renous and over the course of the next year and a half, the Canadian Human Rights Commission investigated Mr. Devlin's complaint and forwarded the matter to a tribunal for a hearing.~~
- ~~52. During that time, staff interfered with Mr. Devlin's solicitor-client relationship by:~~
- ~~a. interfering with solicitor-client phone calls by:
 - ~~i. failing to facilitate them;~~
 - ~~ii. charging for them;~~
 - ~~iii. discouraging and misinforming counsel about the availability of confidential communications for solicitor-client calls at Renous.~~~~
 - ~~b. interfering with Mr. Devlin's solicitor-client mail by:
 - ~~i. opening it; and/or~~
 - ~~ii. not delivering it.~~~~
 - ~~c. interfering with visitation by legal counsel with Mr. Devlin by implying:
 - ~~i. that Mr. Devlin could only be seen during a single day of any given week.~~~~
- ~~53. As the result of such actions Mr. Devlin suffered various and sundry losses including breaches of written solicitor-client privilege by the institution; delays in his timely and effective communication with his legal counsel and compelling his counsel and Mr. Devlin to hold solicitor-client confidential phone calls on the Defendant CSC monitored pay phones.~~

- ~~54. Mr. Devlin and John Howard state that Defendant CSC is and has been in breach of its duties under the *CCRA*. Mr. Devlin and John Howard state that Defendant CSC knew or ought to have known that such standards were being breached and what the impacts of these breaches would or could be.~~
- ~~55. Mr. Devlin and John Howard state that these breaches of Defendant CSC's statutory and regulatory duties as it relates to solicitor-client activities regularly occur in various other institutions and involve breaches at a systemic level.~~
- ~~56. Mr. Devlin and John Howard state that Defendant CSC acted in breach of their fiduciary duties, negligently, contrary to Defendant CSC policies and unconstitutionally under section 7 of the *Charter*, impacting his rights to life, liberty, and security of person.~~

~~**Breach of Fiduciary Duty, Assault and Battery and Negligence of Defendants CSC and Haddad**~~

- ~~57. Mr. Devlin and John Howard state that Defendant CSC negligently and in breach of their fiduciary duty failed to provide oversight of their contracted doctors. This lack of oversight failed to ensure their doctors provided appropriate medical services. That is, this lack of oversight failed to prevent the continued delivery of poor medical services to Mr. Devlin and to other federally incarcerated persons across Canada.~~
58. Dr. Haddad negligently breached his duty of care as Mr. Devlin's physician when he failed to exercise the degree of skill and knowledge which would reasonably be expected of a normal prudent practitioner of the same experience and standing, in similar circumstances, and taking into account their area of specialization.
59. Dr. Haddad breached the following duties to Mr. Devlin:
- a. the duty to diagnose.

- b. the duty to treat,
 - c. the duty to chart,
 - d. duty to refer (when another physician is needed),
 - e. a fiduciary duty to act with utmost good faith and with loyalty,
 - f. a duty to avoid conflicts of interest,
60. In particular, Dr. Haddad arbitrarily and abruptly terminated Mr. Devlin's medications upon transfer to Renous in April 2017. This arbitrary termination occurred without a reasonable diagnosis and (documented or undocumented) treatment plan. This is a breach of Dr. Haddad's duties to diagnose, to treat, to chart and as well as Dr. Haddad's fiduciary duty to act with utmost good faith and with loyalty toward Mr. Devlin.
61. Mr. Devlin states Defendants ~~CSC and Haddad~~ ~~is~~ ~~are~~ ~~each~~ ~~jointly~~ ~~and~~ ~~severally~~ liable when Defendant Haddad punitively, unreasonably and quickly withdrew (or otherwise "tapered") his medication (Suboxone) contrary to CSC directives on tapering in the winter of 2019 and provided no alternate care for his chronic pain condition. Dr. Haddad breached his duty to diagnose and treat Mr. Devlin's lower back pain and unavoidable withdrawal from opioid agonist; breached his duty to chart Mr. Devlin's withdrawal process; breached his fiduciary duty to act with utmost good faith and with loyalty toward Mr. Devlin when he punitively reduced his medicine; breached his duty to avoid conflicts of interest with CSC security and the medical best interests of Mr. Devlin by punitively reducing Mr. Devlin's medicines.
62. Mr. Devlin further states that Defendant Haddad punitively threatened to withhold his other medications ~~at that time~~ in the winter of 2019, thereby breaching his fiduciary duty to act with utmost good faith and with loyalty toward Mr. Devlin.
63. Following this substandard treatment, Mr. Devlin complained about Defendant Haddad. In the spring of 2019, Mr. Devlin declined care from

Defendant Haddad. After having received Mr. Devlin's complaint, Defendant CSC failed to provide Mr. Devlin with another primary care physician after he complained about Defendant Haddad and declined care from Dr. Haddad in the spring and summer of 2019. Accordingly, Defendant CSC was negligent in failing to allocate the appropriate healthcare resources which would allow for other physicians to provide treatment in situations where patients have raised complaints against doctors.

64. Notwithstanding being aware of Mr. Devlin's complaints, Defendant Haddad failed to refer Mr. Devlin to another primary care physician, but rather continued to provide care to Mr. Devlin. Accordingly, Defendant Haddad breached his duty by failing to refer Mr. Devlin to another physician. In failing to refer Mr. Devlin to another physician he failed to avoid a conflict of interest when treating Mr. Devlin after becoming aware of Mr. Devlin's complaints against him.
65. As the result of such actions, Mr. Devlin suffered various and sundry losses including increased generalized pain since then and intense withdrawal symptoms which made him sick and caused intense, unnecessary pain and put his life at risk through increased risk of suicide and increased risk of overdose driven by relapse to non-medical opioids in an attempt to alleviate intolerable pain and withdrawal symptoms.
66. Furthermore, Mr. Devlin states that Defendant CSC's general non-medical negligent treatment of him has caused him emotional harm and impaired his ability to bring forward this medical negligence claim. Such treatment has included various actions against him, including, though not limited to, the conversion/destroying of his self-created artwork, his art supplies, and his limited medical records in his possession upon transfers between institutions including his most recent transfer to Cowansville Institution, and Defendant CSC's refusal to provide him with his full medical records.
- ~~67. employees assaulted him when two Defendant CSC correctional officers manhandled him back to his cell in March 2020 while at Springhill Institution.~~

- ~~68. Mr. Devlin states that these actions above in this section amounted to assault and battery, or, in the alternative, negligent conduct, by Defendants CSC and Haddad, contrary to Defendant CSC policies.~~
- ~~69. Both Defendants CSC and Haddad both jointly and individually owed fiduciary duties to with Mr. Devlin.~~
- ~~70. Further, they were in breach of sections 7, 12 and 15 of the *Charter*, impacting Mr. Devlin's rights to life, liberty, and security of person, constituted cruel and unusual punishment, and failed to accommodate his disability.~~
71. Mr. Devlin and John Howard further state that the actions of punitively tapering and arbitrarily terminating his medication by Defendants CSC and Haddad are systemically experienced by incarcerated persons in Renous and other federal penitentiaries across Canada and have been, and are, in violation of sections 7, 12 and 15 of the *Charter*.
- ~~72. Mr. Devlin and John Howard further state that the improper and excessive use of force by Defendant CSC against Mr. Devlin, as detailed herein, are reflective of systemic practices by Defendant CSC and has been, and is, in violation of sections 7 and 12 of the *Charter*.~~

Negligence: Failure to Regulate

73. Mr. Devlin called and wrote to the Defendant College to complain about the medical services of Defendant Haddad in the winter of 2019 and states that they further failed to respond.
74. In May 2020, and since then, Mr. Devlin followed up again with the Defendant College about Defendant Haddad. He has yet to receive a response of any sort from the Defendant College.
75. By failing to consider Mr. Devlin's complaint because he was a federal prisoner, the Defendant College in bad faith failed to assess:
- a. the negligence ~~and assault~~ claims documented in this Statement of

Claim;

- b. whether Defendant Haddad unethically threatened to remove Mr. Devlin's neurologic pain medicine;
 - c. whether, contrary to their code of ethics, Defendant Haddad continued to treat Mr. Devlin in August 2019 after Mr. Devlin made complaints to the Defendant College and to Defendant CSC about Defendant Haddad's conduct;
 - d. Such other negligence of Defendant Haddad as may appear from the evidence.
76. As the result of such actions Mr. Devlin suffered various and sundry losses including continued unwanted and negligent medical services by Defendant Haddad which negatively impacted his health and safety.
77. In particular, but not limited to, the Defendant College ~~was negligent~~ acted in bad faith by failing to oversee Defendant Haddad's professional services as required under the *Medical Act*, (NB) chapter 74 of 7 Elizabeth II, 1958, sections 54, 55, 57 and 58.

Remedies

78. Mr. Devlin, as an individual plaintiff, therefore requests the following relief from the Defendants and each of them jointly and severally:
- a. General damages for pain and suffering;
 - b. Special damages, the particulars of which will be forwarded prior to trial;
 - c. Punitive damages;
 - d. Remedies under sections 24 (1) or/and 52 of the *Charter*, including but not limited to allowing Mr. Devlin treatment from a private practice general practitioner medical doctor and specialist not

contracted with Defendant CSC, pending government rectification of the *CHA Canada Health Act* R.S.C. 1985, c.C-6 (definition of insured persons) and the *CCRA*;

e. Costs.

79. John Howard, as an individual plaintiff, requests from Defendant CSC:

a. Special public interest costs.

80. Both John Howard and Mr. Devlin request:

a. Pursuant to section 52 of the *Charter*, declarations:

- i. that section 2 of the *CHA* is of a declaration of unconstitutionality of with regard to its definition of insured persons as it relates to federal prisoners insofar as it is *ultra vires* federal jurisdiction to legislate and operate in a core area of the provincial power to administer and deliver health care;
- ii. ~~A declaration of the unconstitutionality of sections 85-86 of the *CCRA*, concerning sections 85-87 and concerning Commissioner Directives as they relate to evidence presented at trial insofar as it is *ultra vires* federal jurisdiction to legislate and operate in a core area of the provincial power to administer and deliver health care;~~
- iii. ~~A declaration of that section 2 of the *CHA Canada Health Act* R.S.C. 1985, c.C-6 is unconstitutionality with regard to the exclusion of federal prisoners as insured persons and as this relates to breaches of ss. 7, and/or 12, and/or 15 of the *Charter*; its definition of insured persons;~~
- iv. that sections 85 and 86 of the *CCRA* are unconstitutional with regard to the statutorily-mandated control by Defendant CSC of the funding and delivery of health care, as this relates to a breach of ss. 7, and/or 12, and/or 15 of

the Charter;

- v. that section 2 of the CHA as it relates to federal prisoners, and sections 85-86 of the CCRA, are of no force and effect and/or inapplicable.

b. Pursuant to section 24 (1) of the Charter:

- i. ~~Charter~~-damages related to s. 15 breaches from Defendant CSC to establish an endowment that will allow for an independent medical services training and an advocacy centre on an ongoing basis;
- ii. ~~Charter~~-damages related to s. 15 breaches from Defendant CSC to establish an endowment for an independent prison advocacy service to be maintained on an ongoing basis;

c. Pre-judgment interest;

d. Such other relief as the Honourable Court sees fit to grant.

PLACE OF TRIAL: THE LAW COURTS, HALIFAX, NOVA SCOTIA

DATED at Halifax, Halifax Regional Municipality, Nova Scotia, this 30 day of June 2020.

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DATED at Halifax, Halifax Regional Municipality, Nova Scotia, this day of September 2021.

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