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Charlotte Torgerson
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Court File No.: T-456-16

FEDERAL COURT

BETWEEN:

~~William Wei Lin LIANG~~ Kanor Kabutey

PLAINTIFF

AND:

~~HER~~ HIS MAJESTY THE KING ~~QUEEN~~

DEFENDANT

CERTIFIED CLASS PROCEEDING

STATEMENT OF DEFENCE TO THE
~~SECOND~~ THIRD FURTHER AMENDED STATEMENT OF CLAIM

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1. The Defendant, ~~Her~~ His Majesty the King ~~Queen~~ ("Defendant" or "Crown"), admits the allegations contained in paragraphs ~~20~~, 22, ~~24, 25, 27, 28, 29, 30, 31 and 40~~ 42, 43 and 53 of the ~~Second~~ Third Further Amended Statement of Claim ~~dated April 10, 2019~~ filed January 11, 2024 (the "Claim"; originally dated ~~on~~ March 15, 2016).

2. Except as expressly admitted, the Defendant denies each and every allegation and paragraph in the Claim and puts the Plaintiff to the strict proof thereof.

The Parties

3. In response to paragraph 2 of the Claim, the Defendant admits that ~~William Wei Lin Liang~~ Kanor Kabutey ("Plaintiff" or "Representative Plaintiff") was a federal inmate serving a sentence of imprisonment under the jurisdiction of the Correctional Service of Canada ("CSC") and was subject to the jurisdiction of the Parole Board of Canada ("PBC" or "Board"), all of which were or are federal organizations operated by the Crown.

4. In response to paragraph 3 of the Claim, the Defendant admits that, subject to section 17 of the *Federal Courts Act*, RSC 1985, c-F-7, section 48 of the *Federal Courts Act* and the schedule thereto permits ~~Her~~ His Majesty the King ~~Queen~~ to be named as a party defendant in a proceeding against the Crown. ~~Section 2 defines the Crown as "Her Majesty in right of Canada".~~ Per a September 9, 2022 Practice Direction from the Federal Court, where the Crown is a party to a proceeding, the proper designation is "His Majesty the King".

5. In response to paragraph 4 of the Claim, the Defendant denies that ~~her~~ his liability (which is not admitted) for damages under section 24(1) of the *Charter* would be in the nature of vicarious liability for actions of her employees. The *Charter* applies "to the Parliament and government of Canada" under section 32(1)(a) of the *Charter*, not to individuals. If liability for damages can in law be assessed against the government of Canada under section 24(1) of the *Charter* for the enactment of a law subsequently found unconstitutional, as distinct from its application in individual cases, which is not admitted, such liability does not flow from the knowledge or imputed knowledge or opinions of individuals, whether Crown servants, agents or employees, Ministers of the Crown or members of the "Executive Government".

6. The Defendant says paragraphs 8, 9, 11 and 14 of the Claim are advanced primarily by way of argument.

Relevant Events

7. In response to paragraphs 6, 7, 9 to 12, 21 and 22 of the Claim, the Defendant states that starting on November 1, 1992 in respect of full parole and starting on July 3, 1997 in respect of day parole and prior to March 28, 2011, sections 119.1 and 125-126.1 of the *Corrections and Conditional Release Act*, SC 1992, c 20 ("*Act*" or "*CCRA*") provided that eligible offenders were to be considered under an accelerated parole review ("APR") process.

8. Eligible offenders were those who were first time federal offenders who had not been convicted of an offence listed in Schedule I (violent offences) of the *Act* and who had not received judicial determination of their parole eligibility with an

offence in Schedule II of the *Act* (drug offences), or were not subject to another exception mentioned in subsection 125(1) of the *Act*.

9. The APR process allowed eligible offenders to be reviewed for day parole and potentially released after serving the greater of 1/6 or six months of their sentence.

10. In further response to paragraphs 12 to 14 of the Claim, the Defendant states that there was debate prior to the enactment of an *Act to amend the Corrections and Conditional Release Act* (cited as the *Abolition of Early Parole Act* ("*AEPA*")), and that it was subsequently voted on and approved by the House of Commons and Senate and passed into law in accordance with the required parliamentary process.

~~The Plaintiff and Section 11(*i*) of the *Charter*~~ History of this Proceeding

11. In response to paragraph 20 of the Claim, the Defendant states that ~~the Plaintiff~~ William Wei Lin Liang commenced a Petition on August 9, 2013 against the Attorney General of Canada in the Supreme Court of British Columbia ("BCSC") seeking an order for relief in the nature of *habeas corpus*, with, if necessary, *certiorari in aid*, pursuant to sections 7, 10(1), 11(*i*) and 24(1) of the *Charter* and declaratory relief under section 52(1) of the *Constitution Act, 1982* that the remaining portions of the transitional provision of the *AEPA* are of no force and effect. ~~The Plaintiff's~~ Mr. Liang's claim was later adjudicated upon in conjunction with another petition commenced on August 15, 2013 in the BCSC by Leslie John McCulloch (file 26408).

12. In further response to paragraph 20 of the Claim, the Defendant states that ~~the Plaintiff~~ Mr. Liang commenced a proposed class proceeding and proposed simplified action on March 15, 2016 against the Attorney General of Canada in the Federal Court seeking damages pursuant to section 24(1) of the *Charter* for the infringement or denial of constitutional rights or freedoms as guaranteed by s. 11(*i*) of the *Charter*, as determined by the Court of Appeal of British Columbia on May 20, 2014 in *Liang v Canada (Attorney General)*, 2014 BCCA 190, leave to appeal to SCC refused, 2015 CanLII 3372. On November 19, 2020, the action was

certified as a class proceeding and ~~the Plaintiff~~ Mr. Liang appointed as the Representative Plaintiff. On January 8, 2024, the Plaintiff was substituted in place of Mr. Liang as the Representative Plaintiff.

Accelerated Parole Review

13. In response to paragraphs ~~34~~ 47 and ~~37~~ 50 of the Claim, the *AEPA* came into effect on March 28, 2011 and retrospectively repealed the APR provisions of the *Act*. As a result, the normal parole provisions of the *Act* applied. With particular respect to paragraph ~~37~~ 50 of the Claim, the Defendant denies that the immediate effect of the repeal was an automatic increase in the length of time a person would be incarcerated. If the APR provisions had remained in force, some would not have received APR even if they had been eligible. Some also ultimately did not receive it after the retrospective provision had been declared unconstitutional. Further, only offenders serving a sentence of more than three years would have seen their day parole eligibility date change. All offenders serving a sentence of three years or less had an APR day parole which coincided with the regular day parole at 6 months into the sentence. In those cases, the test for parole was the only distinguishing feature. A test alone does not constitute an automatic increase in the period of incarceration.

14. Following the legislative process and debate, Parliament decided to abolish APR, and abolish it retrospectively, and passed legislation to that effect, namely, the *AEPA.*

15. In further response to paragraph 20 of the Claim, the Defendant admits that on October 10, 2013, Justice Smith of the BCSC declared pursuant to section 52(1) of the *Constitution Act, 1982* that the transitional provision in the *AEPA* was not valid to the extent it applied to offenders sentenced for offences committed before March 28, 2011, as this was contrary to section 11(*i*) of the *Charter* and not justified under section 1 of the *Charter* (“Declaration”).

16. In further response to paragraph 20 of the Claim, the Declaration was effective immediately in the Province of British Columbia because the BCSC denied the Defendant's request for a one-year suspension of the declaration of constitutional invalidity. The Declaration was upheld by the BCCA on May 20, 2014. The Supreme Court of Canada ("SCC") denied the Defendant leave to appeal on January 29, 2015. These proceedings only dealt with the violation of Mr. Liang and Mr. McCulloch's rights and the Defendant denies that these proceedings or the SCC's denial of leave confirmed a violation of the rights of all individuals across Canada sentenced after the repeal of APR for offences committed before its repeal, as alleged.

17. ~~In response to paragraph 24 of the Claim, the Defendant admits that on May 2, 2012, the Plaintiff was convicted in Richmond, British Columbia by a judge of the Provincial Court of British Columbia for *Controlled Drugs and Substances Act* offences that were alleged to have occurred between June 30, 2010 and November 24, 2010 in Richmond, British Columbia~~ In response to paragraph 23 of the Claim, pursuant to the order of Justice Barnes dated November 19, 2020, the class is comprised of:

> *"individuals* who were sentenced on or after March 28, 2011, for offences committed before March 28, 2011, and not for any offences committed prior to November 1,1992, who, as a result of s.10(1) of the Abolition of Early Parole Act ("AEPA") removing their access to accelerated parole review ("APR"):*
>
> *(i) in the case of individuals with offence dates between July 3, 1997 and March 28, 2011, were released from prison after their APR day parole eligibility date**;*
>
> *(ii) in the case of individuals with offence dates between November 1, 1992 and July 2, 1997, were denied full parole solely due to grounds which would not have been applicable had the APR*

criteria applied to their full parole review;

> **The term "individuals" is defined to mean persons who were, or are, offenders as described in the Abolition of Early Parole Act, the Correctional and Conditional Release Act, and the International Transfer of Offenders Act.*
>
> *** The term "APR day parole eligibility date" is to be understood with reference to s.119.1 of the Corrections and Conditional Release Act SC 1997 c.17, which provides, "The portion of the sentence of an offender who is eligible for accelerated parole review under sections 125 and 126 that must be served before the offender may be released on day parole is six months, or one sixth of the sentence, whichever is longer."*

This definition excludes the following three groups:

a. *Individuals who subsequently were reviewed under the APR scheme but received a "not directed" decision from a panel of the Parole Board on the APR criteria;*

b. *Individuals who had their access to the APR scheme removed by s.10(1) of the AEPA but were released on, or prior to, their APR day parole eligibility date;*

   and

c. *Individuals convicted of offences with commission dates both before and after (i.e. straddled) November 1, 1992, and who were sentenced after March 28, 2011.*

18. In response to paragraphs ~~32~~ 45, ~~33~~ 46 and ~~34~~ 47 of the Claim, the *AEPA* came into effect on March 28, 2011 and retrospectively repealed the APR provisions of the *Act*. As a result, the normal parole provisions of the *Act* applied.

19. In particular response to paragraph ~~34~~ 47 of the Claim, the Defendant denies that the immediate effect of the repeal was an automatic increase in the length of time a person would be incarcerated because some of the affected inmates would not have received APR even if they had been eligible even if the APR provisions had remained in force. Some also ultimately did not receive it after the retrospective provision had been declared unconstitutional. Further, only offenders serving a sentence of more than three years would have seen their day parole eligibility date change. All offenders serving a sentence of three years or less had an APR day parole which coincided with the regular day parole at 6 months into the sentence. In those cases, the test for parole was the distinguishing feature. A test alone does not constitute an automatic increase in the period of incarceration.

20. In response to paragraph ~~38~~ 51 of the Claim, consideration for APR has been held to be a one-time process, and after a decision of "not directed", an offender was no longer eligible for APR.

21. In response to paragraph ~~44~~ 57 of the Claim, the Defendant admits ~~she~~ he knows the particulars of the number of offenders under the control of the CSC who were subject to the retrospective abolition of APR.

The Plaintiff's Custodial History

22. On ~~May 28, 2012,~~ March 23, 2012, the Plaintiff was sentenced to a term of ~~5~~ 8 years and ~~5~~ 6 months imprisonment, after being credited for a period of pre-trial custody. On February 3, 2014, the Plaintiff received a further sentence of 1 year (the "Second Sentence"), to be served consecutively with his original sentence. The Plaintiff's index offences principally occurred between 2008 and 2010 ~~The entirety of his sentence was served in British Columbia.~~

23. The Plaintiff resided in Ontario ~~has continued to live in British Columbia~~ after serving his sentence.

24. Following the Second Sentence, ~~The~~ the Plaintiff's eligibility date for unescorted temporary absence became ~~was~~ ~~April 22~~ October 22, 2013. His eligibility for day parole under APR would have been ~~April 22~~ October 23, 2013. His eligibility for day parole under regular review became ~~was~~ ~~September 18, 2013~~ November 22, 2014. His full parole date ~~was~~ became ~~March 18, 2014~~ May 23, 2015. His statutory release date became ~~was January 7, 2016~~ July 24, 2018 and the warrant expiry date for his sentence became ~~was~~ ~~October 27, 2017~~ September 22, 2021

24.1 In response to paragraph 38, the Plaintiff applied for day parole under regular review shortly after reaching his eligibility date to do so, though later withdrew his application before it was considered by the Board.

25. ~~Subsequent to the BCSC issuing the Plaintiff a declaration of constitutional invalidity regarding the legislative provision of the *AEPA* that had retrospectively abolished APR, the Plaintiff was reviewed under the APR process.~~ In response to paragraph 40, the Plaintiff was notified of his eligibility for APR on or about June 15, 2015. In a PBC decision dated ~~November 6, 2013~~ July 10, 2015, he was directed to be released on ~~day~~ APR full parole ~~at his eligibility dates~~ as the Board concluded that there was no reliable evidence to conclude ~~was not satisfied that there were reasonable grounds to believe~~ that, if released, the Plaintiff was likely to commit an offence involving violence before the expiration of his sentence. However, the Board imposed ~~two~~ five special conditions for release that were to remain in effect until warrant expiry or until removed or modified by the Board.

26. On ~~November 7, 2013~~ July 14, 2015, the Plaintiff was released on ~~day~~ APR full parole~~, with Correctional Services Canada issuing him a certificate reflecting the two special conditions imposed by the Board, with a specified end date for those conditions of March 18, 2014. The certificate required him to reside at the Guy Richmond Community Residence Facility (CRF) in Vancouver while on day parole, with a travel radius stipulated for the Vancouver area only.~~

27. ~~On March 18, 2014, the Plaintiff was issued a full parole certificate that maintained the two special conditions until October 27, 2017 and the travel radius, and that changed the residential address in British Columbia.~~

28. While on ~~day and~~ full parole, the Plaintiff was also subject to other PBC conditions provided for in section 161 of the *Corrections and Conditional Release Regulations* ("*CCRR*"). These conditions apply automatically to release unless varied by the PBC.

Liability

29. In response to paragraph ~~36~~ 49, the Defendant acknowledges that the BCSC Declaration was upheld by the BCCA and by the SCC.

30. However, the Defendant denies ~~she~~ he is liable to the Plaintiff under section 24(1) of the *Charter* or at all. The Claim as alleged is (a) not permitted under law, or, alternatively, (b) does not meet the threshold for liability, as required by *Mackin v New Brunswick*, 2002 SCC 13.

A. The Claim is not Permitted under Law

31. As the Plaintiff's Claim trenches on matters that fall within the scope of Parliament's established parliamentary privileges, this Court and all courts in Canada lack jurisdiction to adjudicate these matters. This lack of jurisdiction respects the separation of powers between the courts and legislative branch of government and provides Parliament with the autonomy it needs to discharge its constitutional role in the Canadian democratic system of government.

32. Further and in the alternative, the Defendant pleads that the Claim does not contain justiciable issues. The constitutional separation of powers renders it inappropriate for the Court to inquire into the legislative process, which is a matter within the purview of Parliament.

***Charter* Liability**

33. This Court has not spoken as to the constitutionality of the retrospective provisions of the *AEPA*, nor whether they infringe the *Charter*.

34. Damages are not an available remedy for the mere enactment of legislation that was later determined by the courts to be unconstitutional. Such liability would undermine the fundamental nature of the Canadian constitution by ignoring Parliament's privilege, as a distinct, independent, democratic and sovereign constitutional actor, to enact statutes that are only thereafter subject to judicial review for constitutionality. Moreover, the Defendant denies that the conduct of any Crown servants in relation to the enactment or implementation of the *AEPA* was negligent, clearly wrong, in bad faith, or an abuse of process or willfully blind, as referenced in *Mackin v New Brunswick*, 2002 SCC 13, to ground a claim in damages.

35. Immunity from liability for proceedings in Parliament is a well-recognized category of parliamentary privilege, which has constitutional status. For this reason, damages for the enactment of legislation later ruled to be unconstitutional are not an appropriate remedy within the meaning of section 24(1) of the *Charter*.

36. Parliament is incapable of acting in a manner that can in law be labelled as wrong or in bad faith, or as an abuse of power. A court that condemns Parliament in such terms improperly intrudes into the functions and privileges of Parliament.

37. The Executive, however defined, is not responsible in law or under the Canadian constitution for the enactment of legislation. The practical ability or inability of the executive, through its control or lack of control of a House of Commons majority, is not constitutionally cognizable by the judiciary. The executive's recommendation and introduction of a Bill has no effect *per se*. A Bill becomes law only after Parliamentary process unfolds and it is adopted by the Senate and the House of Commons and given royal assent by the Governor General.

38. In response to paragraphs 9, 10 and 17, the Plaintiff's allegation that "Crown employees, servants and/or agents and state actors in their control acted in bad faith […] in proposing, advocating for and pursuing a bill", the principle of parliamentary privilege prohibits the judiciary from scrutinizing these allegations.

39. Liability in damages cannot be assessed on the basis that the enactment of legislation (as distinct from its application) occurred as a result of "conduct that is clearly wrong, in bad faith, or an abuse of power" on the part of individuals, whether Crown servants, agents or employees, Ministers of the Crown or members of the "Executive Government", because that would be incompatible with Canada's constitutional structure.

40. The Plaintiff's theory necessarily implies that the executive must, as a matter of constitutional law, refrain from introducing legislation when a serious risk of constitutional challenge exists. However, a restraint on the executive in the introduction of legislation is a fetter on the sovereignty of Parliament itself.

41. An award of damages predicated on an assessment that the enactment of legislation (as distinct from its application) occurred as a result of "conduct that is clearly wrong, in bad faith or an abuse of power" necessarily undermines good governance because it fails to respect the separation of powers. The process of legislating cannot give rise to liability in damages, because it would require courts to unacceptably scrutinize the proceedings of the Senate and House of Commons, which are protected by parliamentary privilege.

42. Parliament, the executive and the courts each play their distinct role in Canada's constitutional structure. The executive's role in the legislative process interacts with that of Parliament through the cabinet, connecting the legislative and executive parts of the state.

B. Threshold Under *Mackin v New Brunswick*, 2002 SCC 13 is not Met

43. In the alternative the Defendant states that the Claim does not contain material facts to support a claim that there were any actions by the Defendant in relation to the passing, enactment or implementation of legislation that may be found to be unconstitutional that were clearly wrong, taken in bad faith, or were an abuse of power. The allegations to this effect at paragraphs 8, 9, 11, 14, 15, 16, 17, 18 and ~~42~~ 55 of the Claim are no more than bare assertions or conclusions. Further, the Defendant denies that any action of this nature by the Defendant took place.

44. In response to paragraph 18, the Plaintiff alleges that Crown employees, servants, agents or actors engaged in actionable conduct by implementing statutory measures that they knew to be unconstitutional. Such an allegation of bad faith conduct in the implementation of the *AEPA* is inconsistent with the principle of the rule of law.

45. Good governance and the rule of law require that public officials responsible for the practical implementation of legislation implement any valid legislation as written, notwithstanding their personal views on the constitutionality of the legislation itself. Their duty to implement the law exists as long as, and until, the legislation has been declared unconstitutional by a court in the applicable jurisdiction. As such, state action by Crown employees, servants or agent in merely implementing, on its terms a statute which is subsequently declared invalid does not give rise to public law damages, including *Charter* damages.

46. In response to paragraphs 18 and 20-22 of the Claim, the Defendant complied as soon as reasonably possible with binding court judgments concerning section 10(1) of the *AEPA* in the respective jurisdictions of courts across Canada, unless or until they were stayed or overturned by appellate courts.

47. In further response to paragraphs 18 and 22 of the Claim, the Defendant states that following each of the decisions of the BCSC in *Liang v Canada (Attorney General)*, 2013 BCSC 1859, the Alberta Court of Queen's Bench in *Fehr v Canada (Attorney General)*, 2015 ABQB 627, the Manitoba Court of Appeal in *Nucci et al v Canada (Attorney General)*, 2015 MBCA 122, *Lapple v Canada (Attorney General)*, 2015 ONCA 385, the Ontario Court of Appeal in *Frost v Canada (Attorney General),* 2016 ONCA 386, and the Quebec Court of Appeal in *Parent c Guimond*, 2016 QCCA 159, the Defendant promptly worked to provide access to APR to affected offenders in the respective jurisdictions of each court, and instructed ~~her~~ his employees or servants to process any offenders affected by each judgement in the respective jurisdictions of each court going forward from the dates of those judgments.

48. The Defendant further denies that the facts alleged in paragraphs 8 through 18 of the Claim constitute wrongful conduct, bad faith or an abuse of power on the part of Crown servants, agents or employees, Ministers of the Crown or members of the "Executive Government". Specifically, these alleged facts do not constitute conduct that is grossly negligent, deliberately wrong, reckless, in bad faith or an abuse of power. In addition, paragraphs 16 and 18 contain bald assertions of conclusion rather than material fact.

49. In the alternative, and in specific response to paragraphs 8 through 11 of the Claim, the Defendant denies that any Crown servants, agents or employees, Minister of the Crown or members of the "Executive Government" actually acted in bad faith at any time, as alleged or at all, with respect to the *AEPA*, and put the Plaintiff to the strict proof thereof.

50. The Defendant pleads that negligence is not included or listed in the test set out in *Mackin v New Brunswick*, 2002 SCC 13, regarding conduct which is "clearly wrong, in bad faith or an abuse of power", and negligence is, in any event, insufficient to engage that test.

51. The Defendant states that ~~her~~ his servants, agents and employees acted at all times in accordance with their statutory authority and fulfilled their statutory obligations under the *CCRA*, the *AEPA*, and any applicable common law.

52. The Defendant states that at all times its servants acted in accordance with their statutory authority in a *bona fide* manner in an effort to fulfill their statutory obligations, and did fulfil them.

53. In the further alternative, *Charter* damages are neither appropriate nor just because they will not serve the objective of compensating the Plaintiff for loss and suffering caused by the breach; vindicating the right by emphasizing its importance and gravity of the breach; or deterring state agents from committing future breaches.

54. In the further alternative, if *Charter* damages are appropriate and just in the above respects, which is not admitted but specifically denied, then such an award

is nevertheless still inappropriate due to countervailing considerations, including the existence of alternative remedies, double recovery and concerns for said governance.

55. In the further alternative, if some *Charter* remedy is appropriate and just, which is not admitted and is specifically denied, the appropriate remedy is not monetary consideration.

Negligence

56. The Defendant states that at all material times ~~she~~ he met any obligations under the *AEPA* to the Plaintiff and class members and that, pursuant to section 3 of the *Crown Liability and Proceedings Act*, the Crown cannot be held directly liable for negligence.

57. The Defendant denies that he ~~she~~, or his ~~her~~ servants, owed any duty of care to the Plaintiff or to any member of the class in respect of the interests or losses for which compensation is claimed in this action. In the alternative, the Defendant states that if a duty of care was owed to the Plaintiff and class members, which is not admitted but expressly denied, the Defendant acted appropriately in all circumstances and the standard of care was met.

58. In the further alternative, if the Defendant, or ~~her~~ his servants, owed a duty of care to the Plaintiff and any class members and if any standard of care was not met, the Plaintiff and any class members have not suffered loss or damages by any breach of such standard of care.

The Plaintiff's Claim is Time Barred

59. The Defendant states that the claims of the Plaintiff and other class members are statute barred due to the applicable limitation period(s).

60. In particular, under section 32 of the *Crown Liability and Proceedings Act* and section 39(1) of the *Federal Courts Act*, the provincial limitations law applies to actions against the Crown that are based on causes of action arising in a province.

61. The causes of action upon which the Claim is based arise within the province in which the class member was incarcerated at the material time.

62. Under the *Limitations Act*, ~~RSBC 1996, c 266~~ *2002*, SO 2002 c. 24, Sch B ("~~former~~ *Limitation Act*") the applicable limitation period for the Plaintiff's Claim is two years from the date the alleged ~~cause of action arose~~ claim was or ought to have been discovered.

63. The Plaintiff's Claim was brought more than two years after his alleged cause of action arose. More than two years had passed since the Plaintiff ought reasonably to have known of any alleged injury, loss or harm to the Plaintiff due to the enactment and/or alternatively, due to the implementation as alleged or at all of section 10(1) of the *AEPA*. As the *AEPA* came into effect on March 28, 2011 and the Plaintiff was sentenced on ~~May 28~~ March 13, 2012, the Plaintiff had until ~~May 28~~ March 13, 2014 to file any claim for damages under the *Charter* or otherwise.

64. The Defendant further pleads that limitation periods do not begin to run from the date of court judgments about the constitutional invalidity of legislation but rather from when and where a cause of action arose.

65. Accordingly, the Claim by the Plaintiff and all other class members who were incarcerated in ~~British Columbia~~ Ontario at the material time is statute barred in whole or in part by virtue of the above provisions. The claims by class members who were incarcerated in other jurisdictions at the material time are similarly statute barred in whole or in part by virtue of provincial and territorial limitation period legislation applicable to them.

~~The Plaintiff~~ Class Members Cannot Re-litigate this Matter

66. ~~The Plaintiff and some other~~ Some class members have already sued the Defendant with respect to the constitutionality of the *AEPA*. As a result, they have no legal right to sue the Defendant again in respect of the same cause of action. The Defendant pleads and relies on the doctrines of *res judicata*, estoppel and abuse of process with respect to ~~the Plaintiff and~~ any ~~other~~ class members who previously participated in the earlier litigation on the constitutionality of s.10(1) of the *AEPA*.

Compensable Damages

67. The Defendant denies that the Plaintiff or any members of the class have suffered any harm, detriment, loss or damages recoverable by law. The Defendant further denies that the Plaintiff or any member of the class has suffered any pecuniary damages or any emotional distress beyond that which is a normal part of everyday life.

68. In the alternative, if the Plaintiff or any member of the class has suffered harm, detriment, loss, or damage, which is denied, then:

a. such harm, detriment, loss or damage was not caused by the acts or omissions of the Defendant, as alleged or at all and the Defendant is not liable;

b. the harm, detriment, loss or damage was caused all or in part by the negligence of the Plaintiff and class members or, in the alternative, the negligence of the Plaintiff and class members was a material contribution to the harm, detriment, loss or damage;

c. the harm, detriment, loss or damage as a result of a pre-existing psychological or psychiatric conditions and/or prior or subsequent accident, sickness, injury or mishap for which the Defendant is not responsible at law;

d. the Plaintiff and class members breached their duty to mitigate any harm, detriment, loss, or damages allegedly incurred;

e. the harm, detriment, loss, or damages allegedly incurred by the Plaintiff and class members are not capable of being quantified on an aggregate basis;

f. the harm, detriment, loss, or damages were not reasonably foreseeable;

g. the harm, detriment, loss, or damages are excessive and/or too remote to be recoverable at law; and

h. the harm, detriment, loss, or damages were not proximately raised by any alleged conduct of the Defendant.

69. The Defendant denies that the Plaintiff is entitled to damages under section 24(1) of the *Charter*, or at all.

70. The Defendant states that ~~her~~ his servants, agents, and employees acted at all times in accordance with their statutory authority and fulfilled their statutory obligations under the *CCRA* and the *AEPA*.

71. The Defendant states that at all times its servants acted in accordance with their statutory authority in a *bona fide* manner in an effort to fulfill their statutory obligations, which they did fulfil.

72. The Defendant further states that if the Plaintiff suffered the damages alleged, the Defendant's intent was not to injure the Plaintiff or cause damages, nor was the injury foreseeable. The Defendant holds the Plaintiff to the strict proof thereof.

73. The Defendant states that the Plaintiff is not entitled to the damages, as alleged or at all claimed, nor to costs on a full or substantial indemnity basis as claimed, as the Defendant's conduct was not reckless, malicious, arrogant, high-handed and outrageous. On costs, the Defendant pleads and relies upon the *Federal Courts Rules* and *quantum meruit*.

74. The Defendant states that if the Plaintiff did sustain the losses and damages claimed, which is not admitted but denied, the Plaintiff caused or contributed to the Plaintiff's own damages by the Plaintiff's own negligence or conduct.

General

75. The Defendant pleads privilege, including parliamentary privilege, solicitor-client privilege, litigation privilege and Cabinet privilege.

76. The Defendant pleads and relies upon the *Federal Courts Act*, RSC 1985, c F-7; *Crown Liability and Proceedings Act*, RSC 1985, c C-50; *Correctional and Conditional Release Act*, SC 1992, c 20; *Abolition of Early Parole Act*, SC 2011, c

11, 0IC SOR/2011-30; *Canada Evidence Act*, RSC 1985, c C-5; *Parliament of Canada Act*, RSC 1985, c P-1; *Governor General's Act*, RSC 1985, c G-9; *Negligence Act*, RSBC 1996, c 333; *Contributory Negligence Act*, RSA 2000, c C-27; *The Contributory Negligence Act*, RSS 1978, c C-31; *The Tortfeasors and Contributory Negligence Act*, CCSM c T9; *Negligence Act*, RSO 1990, c N.1; *Civil Code of Québec*, CQLR c CCQ-1991; *Contributory Negligence Act*, RSNB 2011, c 131; *Contributory Negligence Act*, RSNS 1989, c 95; *Contributory Negligence Act*, RSPEI 1988, c C-21; *Contributory Negligence Act*, RSNL 1990, c C-33; *Contributory Negligence Act*, RSY 2002, c 42; *Contributory Negligence Act*, RSNWT 1988, c C-18.

77. The Defendant pleads and relies upon the *Limitation Act*, RSBC 1996, c 266, *Limitation Act*, SBC 2012, c 13; *Limitations Act*, RSA 200, c L-12, *Limitations Act, The*, SS 2004, c L-16.1; *Limitation of Actions Act, The*, CCSM c L150; *Limitations Act*, *2002*, SO c 24, Sch B; *Civil Code of Québec*, CQLR c CCQ-1991; *Limitation of Actions Act*, SRB 2009, c L-8.5; *Limitation of Actions Act*, SNS 2014, c 35; *Statute of Limitations*, RSPEI 1988, c S-7; *Limitations Act*, SNL 1995, c L-16.1; *Limitation of Actions Act*, RSY 2002, c 139; *Limitation of Actions Act*, RSNWT 1988, c L-8; and *Limitation of Actions Act*, RSNWT(Nu), c L-8; and the *Contributory Negligence Act*, RSNWT (Nu) 1988, c C-18, and any other or previous limitations statutes that were applicable and in force during the material time.

78. In response to paragraph ~~48~~ 61, the Defendant denies that the Plaintiff is entitled to pre-judgment interest by reason of the application of the doctrine of laches and the Plaintiff's delay in proceeding with this action.

79. Alternatively, any pre-judgment interest would run from the filing date of the Further Amended Statement of Claim dated March 27, 2017 rather than from the struck Statement of Claim dated March 16, 2016.

80. In further response to paragraph ~~48~~ 61, the Defendant denies that the Plaintiff is entitled to costs under Rule 334.39 of the *Federal Courts Rules*.

81. The Defendant proposes that this trial take place in the location that will promote the interests of justice based on consideration of such factors as the location of the events, parties, witnesses, and the availability of court resources to allow for an expeditious hearing of this action.

82. The Defendant pleads that the Claim be dismissed, with any entitlement to costs only being determined at the conclusion of the proceedings, or any applicable parts thereof, pursuant to Rule 334.39 of the *Federal Courts Rules*.

~~January 26, 2021~~
March 12, 2024

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