

**FEDERAL COURT**

B E T W E E N :

**CANADIAN WOMEN’S SEX-BASED RIGHTS**

Plaintiff

and

**HIS MAJESTY THE KING**

Defendant

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**MOTION RECORD**

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January 23, 2026

**ATTORNEY GENERAL OF CANADA**

Department Of Justice Canada  
Ontario Regional Office

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Per: Monmi Goswami, Oliver Backman

[Redacted]  
[Redacted]  
[Redacted]

Counsel for the Defendant

TO: The Administrator  
Federal Court of Canada

[REDACTED]  
[REDACTED]  
[REDACTED]

AND TO: **CHARTER ADVOCATES CANADA**

[REDACTED]

**Chris Fleury**

[REDACTED]  
[REDACTED]

**Allison Pejovic**

[REDACTED]  
[REDACTED]

**James Manson**

[REDACTED]  
[REDACTED]

Counsel for the Plaintiff

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**TAB 1**

T-1146-25

**FEDERAL COURT**

B E T W E E N :

**CANADIAN WOMEN'S SEX-BASED RIGHTS**

Plaintiff

and

**HIS MAJESTY THE KING**

Defendant

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Defendant, His Majesty the King in right of Canada, will make a motion to the Federal Court under Rule 359 of the *Federal Courts Rules*, SOR/98-106 ("*Rules*").

**THE MOTION IS FOR**

1. An Order striking the Plaintiff's Statement of Claim, dated April 7, 2025 ("**Claim**") in its entirety, pursuant to rules 221(1)(a), (c), and (f) of the *Rules*, without leave to amend;
2. An Order for costs to the Defendant; or
3. In the alternative, should this Court not grant the Order to strike out the claim, an Order extending the time for filing a defence by 60 days from the date of the Court's Order dismissing the motion;
4. Such further and other relief as this Court deems appropriate.

**THE GROUNDS FOR THE MOTION ARE**

1. The Plaintiff seeks a declaration that the Defendant's Commissioner's Directive 100 violates the rights of all Female Inmates detained in women's prisons that are protected under sections 7, 12, and 15 of the *Canadian Charter of Rights and*

*Freedoms*, and sections 1 and 2 of the *Canadian Bill of Rights*, and is therefore void and of no force and effect.

2. The Plaintiff's Statement of Claim should be struck because it discloses no reasonable cause of action against the Defendant, is frivolous, and is an abuse of process.
  - a. The allegations contained in the claim are bald assertions that lack detail and are inadequately particularized preventing the Defendant to plead a response.
  - b. The lack of material facts renders the Claim unmanageable and prevents the Court from properly adjudicating the Claim.
  - c. While the Plaintiff provided a response to a request for particulars dated October 27, 2025, this response did not cure the deficiencies in the Plaintiff's claim and allow for the Defendant to adequately plead a response.
  - d. The Plaintiff does not want to amend their Claim to include and expand on the particulars provided on October 27, 2025, or restrict their Claim to the incidences of alleged harm they outlined in their response, rendering the Claim unmanageable.
  - e. The bald assertions and unlimited scope of the claim do not allow for a workable discovery.
  - f. It is an abuse of process for the Plaintiff to bring this claim in the hope that sufficient facts may be gleaned on discovery to support the bald allegations contained in their Claim.
3. The defects in the Plaintiff's Claim cannot be cured by an amendment.
4. Rules 174, 181, 221, 400, 401 of the *Rules*.
5. Sections 7, 12, and 15 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11.
6. Sections 1 and 2 of *Canadian Bill of Rights*, SC 1960, c 44.
7. Such further and other grounds as counsel may submit and this Honourable Court may accept.
8. By Order of Case Management Judge [REDACTED] dated November 24, 2025, the Defendant's Motion to Strike will be heard in-person on March 3, 2026, starting at 10:00 am.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Statement of Claim;
2. Plaintiff's Response to Particulars;
3. Such further and other material as counsel may advise and this Honourable Court may allow.

DATE, December 4, 2025

  
**ATTORNEY GENERAL OF CANADA**

Department of Justice  
  
  


**Per: Monmi Goswami, Oliver Backman**  
 Counsel for the Defendant

TO: The Administrator  
 Federal Court of Canada


AND TO: **Charter Advocates Canada**


Chris Fleury


Allison Pejovic



[REDACTED]

James Manson

[REDACTED]

[REDACTED]

Counsel for the Plaintiff



**TAB 2**

**FEDERAL COURT**

BETWEEN:

**CANADIAN WOMEN'S SEX-BASED RIGHTS**

Plaintiff

and

**HIS MAJESTY THE KING**

Defendant

**AFFIDAVIT OF [REDACTED]**

I, [REDACTED] Senior Paralegal, for the Department of Justice, in the City of [REDACTED] SWEAR THAT:

1. I am employed as a Senior Paralegal in the [REDACTED] Regional Office of the Department of Justice. In the ordinary course of my duties, I assist counsel employed in the National Litigation Sector. Monmi Goswami and Oliver Backman are counsel for the Defendant in this matter. As such, I have knowledge of the matters deposed to in this affidavit. Wherein my statements are based on information and belief, I have so stated.

2. On September 29, 2025, the Defendant served a Request for Particulars on the Plaintiff pursuant to Rule 181 of the *Federal Courts Rules*. Attached hereto and marked as Exhibit "A" is a copy of the Defendant's Request for Particulars signed and served on September 29, 2025.

3. On October 27, 2025, the Plaintiff responded to the Defendant's Request for Particulars served on September 29, 2025. Attached hereto and marked as Exhibit "B" is a copy of the Plaintiff's response to the Defendant's Request for Particulars dated October 27, 2025.

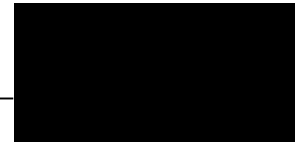
4. I make this affidavit in support of the Defendant's position and for no other or improper purpose.

SWORN remotely in the City of  
[REDACTED]  
on January 23, 2026, in accordance  
with O. Reg 431/20, Administering  
Oath or Declaration Remotely.

  
Terence Allen Ellis,  
a Commissioner, s/o, Province of Ontario, for  
the Government of Canada, Department of Justice,  
Expiry December 14, 2026

Commissioner for Taking Affidavits

*(or as the case may be)*



**THIS IS EXHIBIT "A"**  
**Referred to in the affidavit of**

**[REDACTED]**

**Sworn remotely on the 23<sup>rd</sup> day of January, 2026**



Torlene Allen Esq.  
is Commissioner, etc., Province of Ontario, for  
the Government of Canada, Department of Justice.  
Expires December 14, 2026.

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**Commissioner for Taking Affidavits**



Via Email

Our File Number:

September 26, 2025

Chris Fleury  
Charter Advocates Canada

Dear Chris Fleury:

**Re: Canadian Women's Sex-Based Rights ("CAWSBAR") v. HMK  
T-1146-25**

Pursuant to Rule 181 of *Federal Court Rules* The Defendant is writing to request particulars of the allegations contained in CAWSBAR's Statement of Claim. The particulars requested are the following:

Relevant paragraph of Statement of Claim	Particulars requested
30	Who are the male offenders you are referring to in this paragraph that have previously taken advantage of CD-100?
35	Who are the inmates that were transferred to a women's prison, then removed from the prison following criminal activity or serious misconduct, and then transferred back to a women's prison that you refer to in the last sentence of this paragraph?  Which institutions were these inmates initially transferred out of and then transferred back to?
38	For each of the alleged incidents of sexual assault you refer to in this paragraph, please list: <b>(a)</b> who was the female inmate that was sexually assaulted, <b>(b)</b> who was the "Trans-identifying Male Inmate" who sexually assaulted the female inmate, <b>(c)</b> what year and month the sexual assault took place, <b>(d)</b> in which institution

	did the sexual assault take place, <b>(e)</b> whether the sexual assault was reported to institution staff, and <b>(f)</b> what the institution's response was.
39	For each of the alleged incidents of sexual harassment you refer to in this paragraph, please list: <b>(a)</b> who was the female inmate that was sexually harassed, <b>(b)</b> who was the "Trans-identifying Male Inmate" who sexually harassed the female inmate, <b>(c)</b> what year and month the sexual harassment incident took place, <b>(d)</b> in which institution did the sexual harassment take place, <b>(e)</b> whether the incident of sexual harassment was reported to institution staff, and <b>(f)</b> what the institution's response was.
40	For each alleged incident of physical assault you are referring to in this paragraph, please list: <b>(a)</b> who was the female inmate that was physically assaulted, <b>(b)</b> who was the "Trans-identifying Male Inmate" that physically assaulted the female inmate, <b>(c)</b> what year and month the physical assault took place, <b>(d)</b> in which institution did the physical assault take place, <b>(e)</b> whether the physical assault was reported to institution staff, and <b>(f)</b> what the institution's response was.
41	For each alleged incident of harassment you are referring to in this paragraph, please list: <b>(a)</b> who was the female inmate that was harassed, <b>(b)</b> who was the "Trans-identifying Male Inmate" who harassed the female inmate, <b>(c)</b> what year and month the harassment took place, <b>(d)</b> in which institution did the harassment take place, <b>(e)</b> whether the harassment was reported to institution staff, and <b>(f)</b> what was the institution's response was.
46	Who is the "Tran-identifying Male Inmate" that was housed in or near the Mother-Child Program in a Women's Prison referred to in the third sentence of the paragraph?  In which institution was this "Tran-identifying Male Inmate" serving their sentence, and when?  Who are the female inmates you refer to in the fourth sentence of the paragraph that suffered psychological harm and feared for the safety of their children?
52	Which specific rules of CD-100 that you refer to in the first sentence of the paragraph are overly broad?

53	What are the unmet needs of the gender diverse offenders including “Trans-Identifying Male Inmates” that you refer to in this paragraph, and how are they a result of CD-100?
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I ask that you respond to this request by October 27, 2025.

Sincerely,

**Goswami,  
Monmi**

Digitally signed by Goswami, Monmi  
DN: C=CA, O=GC, OU=Jus-Jus, CN="Goswami,  
Monmi"  
Reason: I am the author of this document  
Location:  
Date: 2025.09.29 13:33:56-04'00'  
Foxit PDF Editor Version: 13.1.6

Monmi Goswami  
Senior Counsel

**THIS IS EXHIBIT “B”  
Referred to in the affidavit of**

**[REDACTED]**

**Sworn remotely on the 23<sup>rd</sup> day of January, 2026**

  
Terence Allen Ellis,  
a Commissioner, sworn, Province of Ontario, for  
the Government of Canada, Department of Justice,  
Ottawa December 16, 2025.

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**Commissioner for Taking Affidavits**





[REDACTED]

October 27, 2025

VIA ELECTRONIC MAIL

Christopher Fleury

[REDACTED]

Monmi Goswami

[REDACTED]

Ms. Goswami:

RE: *CAWSBAR v. His Majesty The King* (Court File No. T-1146-25)

In reply to your letter of September 26, 2025, please find below further particulars with respect to allegations made in the statement of claim.

Particulars Requested	CAWSBAR's Response to Request
Who are the male offenders you are referring to in this paragraph that have previously taken advantage of CD-100? ( <i>Para 30 of SoC</i> )	The male offenders who have taken advantage of CD-100 are:  [REDACTED]

<p>Who are the inmates that were transferred to a women's prison, then removed from the prison following criminal activity or serious misconduct, and then transferred back to a women's prison that you refer to in the last sentence of this paragraph?</p> <p>Which institutions were these inmates initially transferred out of and then transferred back to? (<i>Para 35 of SoC</i>)</p>	<p>The inmate referred to in this paragraph is [REDACTED]</p> <p>[REDACTED] was initially placed in the Fraser Valley Institution for Women in or about 2020. He was transferred out of that institution and spent time in male institutions, including the maximum security penitentiary in Millhaven Ontario. [REDACTED] was ultimately transferred to the Grand Valley Institution for Women in or about March of 2025.</p>
<p>For each of the alleged incidents of sexual assault you refer to in this paragraph, please list: (a) who was the female inmate that was sexually assaulted, (b) who was the "Trans-identifying Male Inmate" who sexually assaulted the female inmate, (c) what year and month the sexual assault took place, (d) in which institution did the sexual assault take place, (e) whether the sexual assault was reported to institution staff, and (f) what the institution's response was. (<i>Para 38 of SoC</i>)</p>	<p>Incident #1</p> <p>[REDACTED]</p> <p>c) 2020-2022 d) Grand Valley Institution for Women e) Yes f) [REDACTED] was removed from the housing unit in which he was residing. Waterloo police were called to investigate and ultimately charged Mehlenbacher with sexual assault.</p> <p>Incident #2</p> <p>[REDACTED]</p> <p>c) December 2023-July 2024 d) Grand Valley Institution for Women e) Yes f) The incidents were first reported to indigenous elder [REDACTED] and were ignored. They were subsequently reported to [REDACTED] who intervened with an indigenous "circle". Ultimately, [REDACTED] was removed from Pathways House and placed in another house in medium security.</p> <p>Incident #3</p> <p>[REDACTED]</p> <p>c) In or about 2023 d) Grand Valley Institution for Women</p>

- e) No
- f) N/A

## Incident #4

[REDACTED]

- c) October 2023
- d) Grand Valley Institution for Women
- e) Yes
- f) Radcliffe was ultimately moved to maximum security within the institution.

## Incident #5

[REDACTED]

- c) July 2024
- d) Grand Valley Institution for Women
- e) Yes
- f) Waterloo Police spoke to the victim about the incident. [REDACTED] was moved to maximum security.

## Incident #6

[REDACTED]

- c) Grand Valley Institution for Women
- d) 2018
- e) Yes
- f) The victim was taken from the institution to a sexual assault clinic. Police were called to investigate.

## Incident #7

[REDACTED]

- c) Grand Valley Institution for Women
- d) 2018
- e) Yes
- f) [REDACTED] was placed in segregation for two days and transferred to the Structured Living Environment afterwards.

## Incident #8

[REDACTED]

- c) Okimaw Ohci Healing Lodge
- d) 2019-2020

	<p>e) Unknown f) Unknown</p> <p>Incident #9 [REDACTED]</p> <p>c) Grand Valley Institution for Women d) 2020 e) Unknown f) Unknown</p> <p>Incident #10 [REDACTED]</p> <p>c) Fraser Valley Institution for Women d) Unknown e) Yes f) Unknown</p> <p>Incident #11 [REDACTED]</p> <p>c) 2017 d) Grand Valley Institution for Women e) No f) N/A</p> <p>Incident #12 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #13 [REDACTED]</p> <p>b) Unknown c) Unknown d) Nova Institution for Women e) Unknown f) Unknown</p>
For each of the alleged incidents of sexual	<p>Incident #1 [REDACTED]</p>

<p>harassment you refer to in this paragraph, please list:</p> <p>(a) who was the female inmate that was sexually harassed, (b) who was the "Trans-identifying Male Inmate" who sexually harassed the female inmate, (c) what year and month the sexual harassment incident took place, (d) in which institution did the sexual harassment take place, (e) whether the incident of sexual harassment was reported to institution staff, and (f) what the institution's response was. (Para 39 of SoC)</p>	<div data-bbox="576 163 933 210" style="background-color: black; width: 220px; height: 22px; margin-bottom: 5px;"></div> <p>c) 2019</p> <p>d) Grand Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #2</p> <div data-bbox="576 441 1036 529" style="background-color: black; width: 283px; height: 42px; margin-bottom: 5px;"></div> <p>c) Grand Valley Institution for Women</p> <p>d) 2018</p> <p>e) Yes</p> <p>f) The victim filed a grievance. She was informed that, because her warrant of committal had expired, she no longer had access to the offender complaint and grievance process</p> <p>Incident #3</p> <div data-bbox="576 877 933 966" style="background-color: black; width: 220px; height: 42px; margin-bottom: 5px;"></div> <p>c) Grand Valley Institution for Women</p> <p>d) 2019-2022</p> <p>e) Yes</p> <p>f) <div data-bbox="625 1081 828 1127" style="background-color: black; width: 125px; height: 22px; display: inline-block;"></div> was removed from the housing unit as described in the above-mentioned sexual assault.</p> <p>Incident #4</p> <div data-bbox="576 1234 831 1323" style="background-color: black; width: 157px; height: 42px; margin-bottom: 5px;"></div> <p>c) Grand Valley Institution for Women</p> <p>d) 2018-2019</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #5</p> <div data-bbox="576 1554 847 1642" style="background-color: black; width: 167px; height: 42px; margin-bottom: 5px;"></div> <p>c) Grand Valley Institution for Women</p> <p>d) 2018</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #6</p> <div data-bbox="576 1873 883 1961" style="background-color: black; width: 189px; height: 42px; margin-bottom: 5px;"></div>
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	<p>c) July 2024  d) Grand Valley Institution for Women  e) Yes  f) [REDACTED] was removed from Pathways house and placed into medium security.</p> <p>Incident #7  [REDACTED]</p> <p>c) 2019  d) Grand Valley Institution for Women  e) Unknown  f) Unknown</p> <p>Incident #8  [REDACTED]</p> <p>c) 2017-2018  d) Grand Valley Institution for Women  e) Unknown  f) Unknown</p> <p>Incident #9  a) Unknown  [REDACTED]</p> <p>c) Unknown  d) Grand Valley Institution for Women  e) Unknown  f) Unknown</p> <p>Incident #10  [REDACTED]</p> <p>c) 2019-2020  d) Grand Valley Institution for Women  e) Unknown  f) Unknown</p> <p>Incident #11  [REDACTED]</p> <p>c) July 2024  d) Grand Valley Institution for Women  e) Yes  f) Waterloo Police spoke to the victim about the incident.</p>
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	<p>Incident #12</p> <p>[REDACTED]</p> <p>c) 2017</p> <p>d) Grand Valley Institution for Women</p> <p>e) No</p> <p>f) N/A</p> <p>Incident #13</p> <p>[REDACTED]</p> <p>c) Unknown</p> <p>d) Grand Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #14</p> <p>[REDACTED]</p> <p>c) 2020-2021</p> <p>d) Grand Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #15</p> <p>[REDACTED]</p> <p>c) 2018-2020</p> <p>d) Grand Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #17</p> <p>[REDACTED]</p> <p>c) 2017-2019</p> <p>d) Grand Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p> <p>Incident #18</p> <p>[REDACTED]</p> <p>b) Unknown</p> <p>c) Unknown</p> <p>d) Fraser Valley Institution for Women</p>
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	<p>e) Unknown f) Unknown</p> <p>Incident #19 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #20 [REDACTED]</p> <p>b) Unknown c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #21 [REDACTED]</p> <p>c) 2018-2019 d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #22 [REDACTED]</p> <p>c) Unknown d) Edmonton Institution for Women e) Unknown f) Unknown</p> <p>Incident #23 [REDACTED]</p> <p>b) Unknown c) 2017-2020 d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #24 [REDACTED]</p>
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- b) Unknown
- c) Unknown
- d) Fraser Valley Institution for Women
- e) Unknown
- f) Unknown

## Incident #25

[REDACTED]

- b) Unknown
- c) Unknown
- d) Nova Institution for Women
- e) Unknown
- f) Unknown

## Incident #26

[REDACTED]

- c) Unknown
- d) Edmonton Institution for Women
- e) Unknown
- f) Unknown

## Incident #27

[REDACTED]

- c) Unknown
- d) Grand Valley Institution for Women
- e) Unknown
- f) Unknown

## Incident #28

[REDACTED]

- c) Unknown
- d) Fraser Valley Institution for Women
- e) Unknown
- f) Unknown

## Incident #29

[REDACTED]

- c) 2020
- d) Okimaw Ohci Healing Lodge
- e) Unknown
- f) Unknown

	<p>Incident #30</p> <p>[REDACTED]</p> <p>c) 2018-2019 d) Fraser Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #31</p> <p>[REDACTED]</p> <p>c) Unknown d) Fraser Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #32</p> <p>[REDACTED]</p> <p>c) Unknown d) Fraser Valley Institution for Women e) Unknown f) Unknown</p>
<p>For each alleged incident of physical assault you are referring to in this paragraph, please list: (a) who was the female inmate that was physically assaulted, (b) who was the "Trans-identifying Male Inmate" that physically assaulted the female inmate, (c) what year and month the physical assault took place, (d) in which institution did the physical assault take place, (e) whether the physical assault was reported to institution staff, and (f) what the institution's response was. (Para 40 of SoC)</p>	<p>Incident #1</p> <p>[REDACTED]</p> <p>c) 2018 d) Fraser Valley Institution for Women e) No f) N/A</p> <p>Incident #2</p> <p>[REDACTED]</p> <p>c) Unknown d) Edmonton Institution for Women e) Unknown f) Unknown</p> <p>Incident #3</p> <p>[REDACTED]</p> <p>c) 2018 d) Grand Valley Institution for Women</p>

	<p>e) No f) N/A</p> <p>Incident #4 [REDACTED]"</p> <p>c) 2021 d) Fraser Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #5 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #6 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p>
<p>For each alleged incident of harassment you are referring to in this paragraph, please list: (a) who was the female inmate that was harassed, (b) who was the "Trans-identifying Male Inmate" who harassed the female inmate, (c) what year and month the harassment took place, (d) in which institution did the harassment take place, (e) whether the harassment was reported to institution staff, and (f) what was the institution's response was. (Para 41 of SoC)</p>	<p>Incident #1 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #2 [REDACTED]</p> <p>c) Unknown d) Grand Valley Institution for Women e) Unknown f) Unknown</p> <p>Incident #3 [REDACTED]</p>

- [REDACTED]
- c) Unknown
  - d) Grand Valley Institution for Women
  - e) Yes
  - f) Unknown

## Incident #4

- [REDACTED]
- i) 2018-2020
  - j) Grand Valley Institution for Women
  - k) Unknown
  - l) Unknown

## Incident #5

- [REDACTED]
- c) 2018-2020
  - d) Grand Valley Institution for Women
  - e) Unknown
  - f) Unknown

## Incident #6

- [REDACTED]
- c) Unknown
  - d) Edmonton Institution for Women
  - e) Unknown
  - f) Unknown

## Incident #7

- [REDACTED]
- b) Unknown
  - c) 2017-2020
  - d) Grand Valley Institution for Women
  - e) Unknown
  - f) Unknown

## Incident #8

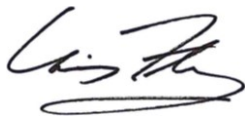
- [REDACTED]
- b) Unknown
  - c) Unknown
  - d) Edmonton Institution for Women
  - e) Unknown
  - f) Unknown

	<p>Incident #9</p> <p>[REDACTED]</p> <p>b) Unknown</p> <p>c) Unknown</p> <p>d) Fraser Valley Institution for Women</p> <p>e) Unknown</p> <p>f) Unknown</p>
<p>Who is the "Tran-identifying Male Inmate" that was housed in or near the Mother-Child Program in a Women's Prison referred to in the third sentence of the paragraph?</p> <p>In which institution was this "Tran-identifying Male Inmate" serving their sentence, and when?</p> <p>Who are the female inmates you refer to in the fourth sentence of the paragraph that suffered psychological harm and feared for the safety of their children? (<i>Para 46 of SoC</i>)</p>	<p>The Trans-identifying Male Inmates referred to in paragraph 46 of the claim are [REDACTED].</p> <p>[REDACTED] were housed in the Fraser Valley Institution for Women at the relevant time. The exact time period is unknown.</p> <p>The female inmates who suffered psychological harm as well as fear for the safety of their children were:</p> <p>[REDACTED]</p>
<p>Which specific rules of CD-100 that you refer to in the first sentence of the paragraph are overly broad? (<i>Para 52 of SoC</i>)</p>	<p>The plaintiff refers to CD-100 as a whole and relies on paragraph 52 of the statement of claim as pled.</p>

Yours sincerely,

CHARTER ADVOCATES CANADA

Per:



Christopher Fleury, James Manson, Allison Pejovic  
Counsel for the plaintiff

**TAB 3**



**FEDERAL COURT**

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: April 7, 2025

Issued by: \_\_\_\_\_

  
Alice Prodan Gil  
Senior Registry Officer

Address of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
\_\_\_\_\_  
\_\_\_\_\_



## CLAIM

### SUMMARY

1. This claim concerns the legally and constitutionally protected rights of all Canadian Female Inmates incarcerated in Federal Institutions, and in particular, their right to be protected from mental, physical and sexual abuse by Trans-identifying Male Inmates with whom they are forcibly confined. The Plaintiff, Canadian Women’s Sex-Based Rights (“CAWSBAR”), pleads that such forced confinement has caused, and will continue to cause, serious harm to Female Inmates.

2. The practice of transferring/placing Male inmates into Female Prisons is authorized by a directive of the Commissioner of Corrections, namely Commissioner’s Directive 100: *Gender Diverse Offenders* (“CD-100”). CAWSBAR contends that CD-100 clearly and directly violates the rights of Female Inmates under sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and is not saved by section 1. CAWSBAR also contends that these policies are in breach of Female Inmates’ rights under sections 1(a), 1(b) and 2(b) of the *Canadian Bill of Rights*.

3. The capitalized defined terms used in this Statement of Claim are set out in the annexed Schedule “A”.

### THE PARTIES

4. CAWSBAR is a federally incorporated non-profit organization. Since 2019, CAWSBAR has worked to preserve the sex-based rights and protections of women and girls across Canada. Among other activities, CAWSBAR advocates for women’s sex-based rights and protections in the context of prisons, washrooms and changing rooms, sporting competitions, and other venues traditionally reserved for Biological Females.

5. The Defendant, his Majesty the King (“**Canada**”), is named in these proceedings pursuant to the provisions of sections 17 and 48 of the *Federal Courts Act* and the accompanying schedule. Canada funds and administers Correctional Services Canada (“**CSC**”), which is the federal government body that administers Federal Institutions, including Women’s Prisons. CSC has a duty to ensure the safe and humane custody and supervision of Inmates and to assist in their rehabilitation and their reintegration into the community. CSC is and was, at all material times, responsible for the oversight, funding and management of the governmental servants, employees, agents, and contractors who operate the Federal Institutions.

6. As of the current date, CSC administers six Women’s Prisons which are as follows:

- i. Fraser Valley Institution (33344 King Road, Abbotsford, British Columbia);
- ii. Edmonton Institution for Women (11151-178th Street, Edmonton, Alberta);
- iii. Okimaw Ohci Healing Lodge (located on the Nekaneet First Nation, near Maple Creek, Saskatchewan);
- iv. Grand Valley Institution for Women (1575 Homer Watson Boulevard, Kitchener, Ontario);
- v. Joliette Institution (400 Marsolais Street, Joliette, Quebec); and
- vi. Nova Institution for Women (180 James Street, Truro, Nova Scotia).

#### PUBLIC INTEREST STANDING

7. CAWSBAR proposes to conduct this proceeding as a public interest litigant. CAWSBAR meets the test for public interest standing and thus has standing to commence and maintain this proceeding. CAWSBAR raises a serious and justiciable issue, namely: the significant harms to Female Inmates caused by the placement and transfer of Trans-identifying Male Inmates within

Women's Prisons, and the resulting breach of Female Inmates' legal and constitutional rights. CAWSBAR, by way of its advocacy work on behalf of women including Female Inmates, has a real stake and a genuine interest in the issues raised.

8. The proposed litigation is a reasonable and effective way to bring the issue before the Court. CAWSBAR has the capacity, resources, and expertise to litigate this claim. There is no other viable alternative method of proceeding. Further, as a result of the marginalized status of Female Inmates as described herein, as well as their incarceration which presents separate practical obstacles, it is difficult or impossible for an individual Female Inmate to bring such a proceeding.

## BACKGROUND

### *The Differences Between Male and Female Inmates*

9. When compared with Male Inmates, Female Inmates exhibit distinct behavioural patterns leading to, and during, their incarceration. These differences are primarily a result of innate biological and resultant psychological differences between Men and Women.

10. These differences manifest themselves in a variety of ways including, but not limited to:

- i. Female Inmates are substantially less likely than Male Inmates to have been convicted of serious violent crimes;
- ii. Female Inmates are less likely than Male Inmates to be repeat violent offenders;
- iii. Female Inmates are substantially less likely to have been convicted of a sexual offence; and,
- iv. Female Inmates are on average shorter, smaller, and physically weaker than Male Inmates.

11. As a result of these differences, Female Inmates represent less of a physical danger to both other inmates and to correctional officers / staff than Male Inmates.

12. CSC's policies, and in particular the historical sex segregation of Federal Institutions, have long recognized the physical and psychological differences between Men and Women and that they are incompatible when incarcerated together.

*Female Inmates as a Marginalized and Vulnerable Group*

13. Female Inmates are a marginalized and vulnerable group. They have historically, and in the present day, faced significant challenges in achieving their full and equal participation in Canadian society, even upon their release from custody. These challenges include, but are not limited to: poverty, unemployment, under-education, and lack of familial supports.

14. Female Inmates account for a small minority of all persons housed in Federal Institutions. The population of Female Inmates is itself made up of a disproportionate number of members of further marginalized and disadvantaged groups. In particular, aboriginal Women are greatly over-represented among Female Inmates.

15. Female Inmates are significantly more likely than Women in general, or Male Inmates, to have been the victim of physical, sexual or psychological abuse. This abuse is suffered primarily at the hands of Men.

16. Female Inmates are significantly more likely than Women in general, or Male Inmates, to have experienced, or to currently experience, mental health problems including serious mental illness. This is further aggravated by the lack of mental health care resources available in Federal Institutions.

*Trans-identifying Male Inmates*

17. A sentence of two years or longer is required for a person to qualify for a federal prison sentence in Canada. Serious criminal activity and/or a lengthy criminal record is required in order to qualify for such a sentence. For this reason, Trans-identifying Male Inmates housed in Federal Institutions are *not* reflective of the general population of Trans persons in Canada.

18. In general, Trans-identifying Male Inmates exhibit the behavioural disposition of their biological sex rather than that of their chosen gender. For example, Trans-identifying Male Inmates often display levels of aggression and violence that are more likely to correspond with Male Inmates as opposed to Female Inmates.

19. While the majority of Female Inmates are heterosexual and attracted to Men, the majority of Trans-identifying Male Inmates are sexually attracted to Women, or to both Men and Women.

20. Trans-identifying Male Inmates are significantly more likely to have been convicted of a sexual offence than either Female Inmates or Male Inmates.

21. The number of individuals identifying as Trans has increased significantly in recent years, both in Federal Institutions and in the Canadian population more generally. Due to the relatively small population of Female Inmates, the transfer of even a small number of Trans-identifying Male Inmates into Women's prisons has had a disproportionate impact, as described in further detail herein.

## THE TRANSFER OF MALE INMATES TO FEMALE INSTITUTIONS

### *Legislative Framework*

22. Prior to the year 2017, transfers or penitentiary placements were based solely on inmates' genitalia. A Trans-identifying Male Inmate could only be transferred to a Women's Prison if he completed what was then termed "sex reassignment surgery". CSC did not permit transfers of pre-operative Male Inmates identifying as Trans into Women's Prisons under any circumstances. CSC determined that the identified risks to Female Inmates in this situation were too high.

23. In October of 2016, the Canadian Parliament passed Bill C-16 (*An Act to Amend the Canadian Human Rights Act and the Criminal Code*). The Bill became law on June 19, 2017. Bill C-16 amended the *Canadian Human Rights Act* to include gender identity and gender expression as prohibited grounds of discrimination.

24. Section 4(g) of CSC's governing legislation, the *Corrections and Conditional Release Act* ("CCRA") was also amended. Respect for "gender identity and expression" was added to its Guiding Principles. Section 4 (g) of the CCRA now provides that:

*correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups.*

25. The purpose of the CCRA, as laid out in section 3 of that act, is to:

*contribute to the maintenance of a just, peaceful and safe society by:*

*(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and*

*(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.”*

26. Following the amendment of section 4 of the *CCRA*, CSC published Interim Policy Bulletin 584 (Gender Identity or Expression) (“**IPB 584**”). IPB 584 permitted, for the first time in Canadian history, the transfer of Trans-identifying Male Inmates with fully intact Male genitalia into Women’s Prisons.

27. In May of 2022, IPB 584 was replaced by CD-100. CD-100 overrides other policies found in Commissioner’s Directives or guidelines and sets official direction relating to all Trans inmates. The purpose of CD-100, as described in the directive is as follows:

*To provide direction on procedural changes that reflect the Correctional Service of Canada’s (CSC’s) commitment to meeting the needs of its gender diverse offender population in ways that respect their human rights and ensure their safety and dignity as well as the safety of others in the institutions and community*

28. CD-100 creates a presumption that Trans Inmates will be placed according to their “gender identity or expression” so long as there are not “overriding health or safety concerns that cannot be resolved”. Section 36 of CD-100 reads as follows:

*After completing the intake assessment process, offenders will be placed according to their gender identity or expression in a men’s or a women’s institution, if that is their preference, regardless of their sex (i.e., anatomy) or the gender/sex marker on their identification documents. In the event there are overriding health or safety concerns that cannot be resolved, the offender will be placed in a site that better aligns with their current sex (i.e., anatomy).*

29. CD-100 defines the phrase “*overriding health or safety concerns*” as “*matters, substantiated through evidence or information, which would jeopardize the health or safety of the gender diverse offender, other offenders, staff, or members of the public.*”

*Risks Involved with The Current Practice*

30. A standard of self-identification removes scrutiny from the transfer process. It does not adequately respond to the risk that Male offenders have taken and will continue to take advantage of CD-100 to gain access to vulnerable Women.

31. Trans-identifying Male Inmates with convictions for sexual offences and/or other serious violent crimes toward women and girls have been granted transfers to Women’s Prisons.

32. A Male Inmate seeking to exploit CD-100 and gain access to vulnerable Women bears no cost of falsely declaring a Trans identity. In particular, section 49 of CD-100 states that:

*In the event the request is denied or the offender withdraws their application, their security classification will remain unchanged and will not be impacted by the results of the [Security Reclassification Scale / Security Reclassification Scale for Women], which might have changed their security classification.*

33. The risks created by transferring a Trans-identifying Male Inmate to a Female Prison are not eliminated or alleviated by drugs (hormones) and/or surgery. Hormone therapy does not guarantee that the Trans-identifying Male Inmate with male genitalia will not have erectile capacity. Neither penectomy (surgical removal of the penis) nor gonadectomy (surgical removal of the testes) change other characteristics indicative of Male criminality including aggression and potential for violence.



34. Trans-identifying Male Inmates are frequently housed in the Structured Living Environment (“SLE”) of Female Prisons. The SLE houses Female Inmates with psychiatric illnesses, emotional disorders and mental disabilities who are at an even greater risk of the harms described herein.

35. Once the transfer to a Women’s Prison is made, it is very rare for CSC to involuntarily transfer the Trans-identifying Male Inmate back to a Federal Institution for Men, no matter the nature of the misconduct and/or crime(s) perpetrated on Female Inmates. Even after such a removal from a Women’s Prison following criminal activity or serious misconduct, CSC has and will transfer the Trans-identifying Male Inmate back to a Women’s Prison.

### HARMS TO FEMALE OFFENDERS

#### *Unique Context of The Carceral Setting*

36. The impact of the transfer and placement of Trans-identifying Male Inmates in Women’s Prisons is aggravated by Female Inmates’ vulnerable status as described above, and particularly their past experiences of abuse at the hands of Men.

37. Further, incarceration presents a unique context where Female Inmates are forced to live, for extended periods of time, in very close quarters with individuals who are anatomically and biologically of the opposite Sex. Leaving is not an option should the situation become intolerable for the Female Inmate.

#### *Rape and Sexual Assault*

38. Female Inmates have been sexually assaulted by Trans-identifying Male Inmates both with and without male genitalia. In addition to the inherent trauma and harm associated with such

incidents, Female Inmates are also exposed to increased risks of pregnancy and sexually transmitted infections.

### *Sexual Harassment*

39. Female Inmates have experienced sexual harassment from Trans-identifying Male Inmates. This includes, but is not limited to: stalking, including following women to the bathroom and showers; remaining directly outside of private stalls; making sexually inappropriate, aggressive, and/or sexually suggestive comments; and grooming behaviours.

### *Assault*

40. Female Inmates have been physically assaulted by Trans-identifying Male Inmates. Trans-identifying Male Inmates are physically larger and stronger than the average Female Inmate. The force generated during an assault by a Trans-identifying Male Inmate is far beyond what a Woman is typically capable of. The average Female Inmate is easily overpowered by the average Trans-identifying Male Inmate.

### *Harassment*

41. Female Inmates have experienced harassment from Trans-identifying Male Inmates. This includes, but is not limited to verbal threats, yelling, ridicule including name-calling, and defamation.

### *Physical Impacts*

42. As a result of the harms described above, Female Inmates have suffered bruising, contusions, and cuts resulting in bleeding.

### *Psychological Impacts*

43. As a result of the placement of Trans-identifying Male Inmates in Women's Prisons, Female Inmates have experienced Post-Traumatic Stress Disorder, flashbacks of stressful, violent, and/or emotionally disturbing events involving men, anxiety, anger, depression, and hopelessness.

44. Female Inmates who are housed with Trans-identifying Male Inmates suffer from a loss of privacy and dignity knowing that a Biological Male can see them in a state of undress.

### *Impact on Programming*

45. Women's Prisons provide group-based psychological programs for the purpose of healing childhood sexual trauma. Once placed or transferred into a Female Prison, Trans-identifying Male Inmates with convictions for sexual offences or violent offences involving women and children are permitted access to such programs. This causes, and will continue to cause, many Female Inmates to experience serious difficulty in participating in such programs, or to avoid them altogether. This undermines the efficacy of the programs and, in turn, the rehabilitative nature of a custodial sentence.

46. Women's Prisons also permit mothers of young children to reside with their children while in custody. This ameliorative program, known as the Mother-Child Program, is meant to assist mothers in maintaining the natural maternal bond as between the mother and her child. At least one Trans-Identified Male Inmate who has convictions for violent sexual offences involving an infant was housed in or near the Mother-Child Program in a Women's Prison. The presence of this Trans-Identified Male Inmate near mothers and children caused the Female Inmates serious psychological harm as well as fear for the safety of their children. This undermines the efficacy of the Mother-Child Program and, in turn, the rehabilitative nature of a custodial sentence.

*Further Consequences for Expressing Concerns*

47. Female Inmates are reluctant to speak out or complain about the harms caused by Trans-identifying Male Inmates. Complaints are often viewed by correctional officers and staff as harassment, intolerance, and/or “transphobia”. Female Inmates do not speak out for fear of an entry on their institutional record which will eventually be considered by the Parole Board of Canada, and which could impact the decision to grant or not grant parole.

*Limited Information and Further Particulars*

48. As a public interest litigant, the Plaintiff’s knowledge and pleadings are based primarily on information provided by current and former Female Inmates. The great majority of information and documentation regarding harms to Female Inmates is solely in the possession, power, and control of CSC.

49. CAWSBAR relies on such further particulars of harm as may be discovered throughout the course of this action.

CHARTER BREACHES

*Section 7*

50. Section 7 of the *Charter* provides: *Everyone has 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.*

51. The transfer of Trans-identifying Male Inmates into Women’s Prisons has deprived Female Inmates of their right to security of the person. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

52. CD-100's rules regarding the placement and transfer of Trans-identifying Male Inmates into Women's Prisons are overly broad and therefore contrary to the principles of fundamental justice. Such placements and transfers extend beyond what is necessary to achieve CD-100's purpose and in doing so create a vast array of unnecessary harms for Female Inmates, as described herein.

53. Further and in the alternative, CD-100 is arbitrary where it permits serious harms for Female Inmates without furthering its purpose of meeting the needs of its gender diverse offender population in ways that respect their human rights and ensure their safety and dignity. In particular, Women's Prisons are designed and managed by CSC in ways that are responsive to carceral, rehabilitative and other needs that are specific to Women. The needs of Trans-identifying Males Inmates are not met, or are inadequately met, in this environment.

54. Further and in the alternative, CD-100 creates a vast array of unacceptable harms for Female Inmates, as described herein, which are grossly disproportionate to CD-100's purpose, and therefore contrary to principles of fundamental justice.

55. Further and in the alternative, CD-100's placement and transfer of Trans-identifying Male Inmates into Women's Prisons is contrary to such principles of fundamental justice as will be advised prior to trial.

## *Section 12*

56. Section 12 of the *Charter* states: *Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.*

57. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons has a significant impact on Female Inmates' liberty and security interests and is therefore punishment.

58. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons is intrinsically incompatible with Female inmates' human dignity. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

*Section 15*

59. Section 15 of the *Charter* provides that:

*Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

60. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons creates a distinction based on sex. While Male Inmates are regularly transferred to Women's Prisons, the reverse does not occur. In the alternative, the transfer of Female Inmates to Male Prisons is extraordinarily rare.

61. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons imposes a burden and denies benefits to Female Inmates in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim. The exposure of Female Inmates to such harms and risks of harm also undermines their rehabilitative efforts, as well as the duty of CSC to contribute to such rehabilitative efforts. As a result, Female Inmates receive less benefit from the rehabilitative aspects of a custodial sentence. This in turn reinforces, perpetuates and exacerbates the disadvantages Female Inmates face as described in paragraphs 13-16 of this claim.

## *Section 28*

62. The Plaintiff further pleads and relies upon section 28 of the *Charter* which provides that: *Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.* This interpretative provision applies to each of the sections of the *Charter* cited above.

## *Section 1*

63. The infringements of Female Inmates' section 7, 12 and 15 *Charter* rights are not reasonable limits prescribed by law and cannot be demonstrably justified in a free and democratic society, in accordance with section 1 of the *Charter*.

## BREACHES OF THE CANADIAN BILL OF RIGHTS

### Section 1(a) and (b)

64. Section 1(a) and (b) of the *Canadian Bill of Rights* ("**CBR**") states:

*1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,*

*(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;*

*(b) the right of the individual to equality before the law and the protection of the law;*

65. The transfer of Trans-identifying Male Inmates into Women's Prisons has deprived Female Inmates of their right to security of person. In this regard the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

66. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons creates a distinction based on sex. While Male Inmates are regularly transferred to Women's Prisons, the reverse does not occur. In the alternative, the transfer of Female Inmates to Male Prisons is extraordinarily rare.

67. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons imposes a burden and denies benefits to Female Inmates in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim. The exposure of Female Inmates to such harms and risks of harm also undermines their rehabilitative efforts, as well as the duty of CSC to contribute to such rehabilitative efforts. As a result, Female Inmates receive less benefit from the rehabilitative aspects of a custodial sentence. This in turn reinforces, perpetuates and exacerbates the disadvantages Female Inmates face as described in paragraphs 13-16 of this claim.

*Section 2(b)*

68. Section 2(b) of the *CBR* states:

*Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to:*

*(b) impose or authorize the imposition of cruel and unusual punishment;*



69. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons has a significant impact on Female Inmates' liberty and security interests and is therefore punishment.

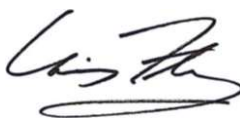
70. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons is intrinsically incompatible with Female inmates' human dignity. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

#### RELIEF SOUGHT

71. CAWSBAR seeks the following relief:

- i. a declaration that it has public interest standing to commence and maintain this proceeding;
- ii. a declaration pursuant to section 52(1) of the *Constitution Act, 1982* or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 *Charter* protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates into Female Prisons, and that it is therefore void and of no force or effect;
- iii. in the alternative, a declaration pursuant to section 52(1) of the *Constitution Act, 1982* or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 *Charter* protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates with fully intact male genitalia into Female Prisons, and that it is therefore void and of no force or effect;
- iv. a declaration that CD-100 be construed and applied as not to authorize infringements of Female Inmates' rights and freedoms under the *Canadian Bill of Rights*; and
- v. such further and other relief as this Honourable Court may deem just.

72. CAWSBAR does not seek costs, whether successful or not.
73. Where this matter is being brought in the public interest and regarding a subject of national importance, the Plaintiff pleads that costs ought not be awarded against it, even if it is unsuccessful.
74. CAWSBAR proposes that this action be tried at Toronto Ontario.



April 7, 2025

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**CHARTER ADVOCATES CANADA**

[REDACTED]  
[REDACTED]

**Chris Fleury, LSO #67485L**

[REDACTED]  
[REDACTED]

**Allison Pejovic, LSA #24411**

[REDACTED]  
[REDACTED]

**James Manson, LSO #54963K**

[REDACTED]  
[REDACTED]

**Counsel for the Plaintiff**

## **SCHEDULE “A”**

In this Statement of Claim, the following capitalized terms have the following meanings, including singular or plural usage as the context requires:

- i. **“Canada”** means the Defendant, the Attorney General of Canada.
- ii. **“CAWSBAR”** means the Plaintiff, Canadian Women’s Sex Based Rights.
- iii. **“CSC”** means the Correctional Service of Canada.
- iv. **“CD 100”** means Commissioners Directive 100: *Gender diverse offenders*.
- v. **“Female”** or **“Biological Female”** means of or denoting the sex that can bear offspring or produce eggs, distinguished biologically by the production of gametes (ova) that can be fertilized by male gametes.
- vi. **“Female Inmate”** means a Female who is or was serving a criminal sentence in a Women’s Prison.
- vii. **“Gender”** means a person’s perception of themselves in relation to Biological Sex, as well as a range of other identities that do not correspond to the Male/Female Sex binary.
- viii. **“Male”** or **“Biological Male”** means of or denoting the Sex that produces small, typically motile gametes, especially spermatozoa, with which a Female may be fertilized or inseminated to produce offspring.
- ix. **“Male Inmate”** means a Male who is or was serving a criminal sentence in a Federal Institution.
- x. **“Man”** means an adult Male.

- xi. **“Prison”** means a correctional institution in Canada which is funded and administered by CSC.
- xii. **“Sex”** or **“Biological Sex”** means either of the two main categories (Male and Female) by which humans are distinguished on the basis of their reproductive functions, as observed at or prior to birth.
- xiii. **“SLE”** means Structured Living Environment, a living unit within Women’s Prisons providing mental health care for minimum and medium security inmates.
- xiv. **“Trans”** or **“Trans-identifying”** means a person who identifies with a Gender that does not correspond with their Biological Sex.
- xv. **“Women’s Prisons”** means a Federal Institution that has historically been reserved solely for Female Inmates.
- xvi. **“Woman”** means an adult Female.

# TAB 4

**FEDERAL COURT**

**B E T W E E N :**

**CANADIAN WOMEN’S SEX-BASED RIGHTS**

Plaintiff

and

**HIS MAJESTY THE KING**

Defendant

**THE DEFENDANT’S WRITTEN REPRESENTATIONS  
MOTION TO STRIKE**

**PART I – OVERVIEW**

1. The Plaintiff’s Statement of Claim (the “Claim”) is entirely devoid of material facts and should be struck without leave to amend.
2. The Claim fails to plead the required material facts to establish a reasonable cause of action for any infringement under the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) or under the *Canadian Bill of Rights*. Instead, the Plaintiff makes sweeping allegations that lack detail or foundation and are simply bald, conclusory statements.

3. The Claim's deficiencies cannot be cured with an amendment given that the Plaintiff admits that it will need to establish through discovery the majority of information it is required to plead. Consequently, it is plain and obvious that the Claim will fail.

## **PART II – STATEMENT OF FACTS**

4. The Plaintiff, Canadian Women's Sex-Based Rights,<sup>1</sup> filed the Claim on April 7, 2025, and seeks public interest standing.<sup>2</sup>

5. The Claim alleges that before 2017, whether an inmate was determined to be a female for the purpose of a transfer or penitentiary placement in a women's prison, was based solely on the inmates' genitalia.<sup>3</sup> The Claim further alleges that sometime in or after 2017, the Correctional Service of Canada ("CSC") published an interim policy on gender identity or expression which accommodated gender diverse offenders<sup>4</sup> by placing them in accordance with their gender identity.<sup>5</sup> In May 2022, the CSC replaced the interim policy with Commissioner's Directive 100 ("CD 100") which sets out new guidelines for the placement and transfer of gender diverse offenders.<sup>6</sup>

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<sup>1</sup> Referred to as CAWSBAR throughout the Claim.

<sup>2</sup> Statement of Claim dated April 7, 2024, T-1146-25 at para 7 ["Claim"].

<sup>3</sup> Claim, at para 22.

<sup>4</sup> The term gender diverse offender is an umbrella term for gender identities or gender expressions that differ from dominant cultural or societal expectations based on sex assigned at birth and includes individuals that are referred to in the Statement of Claim as "Trans-identifying Male Inmates".

<sup>5</sup> [Interim Policy Bulletin 584 Bill C-16](#): online [Interim Policy Bulletin \(IPB\) 584 Bill C-16 \(Gender Identity or Expression\)](#) (2017-12-27)

<sup>6</sup> Claim, at para 27.

6. The Claim alleges that unnamed gender diverse offenders have assaulted,<sup>7</sup> sexually assaulted,<sup>8</sup> harassed,<sup>9</sup> and sexually harassed inmates<sup>10</sup> in unidentified women's prisons. Further, it is alleged that gender diverse offenders have interfered with programming meant to benefit inmates in women's prisons, including the Mother-Child Program.<sup>11</sup> The Claim is bereft of details, information or explanation as to the dates, the individuals involved, and the location of the institution where the alleged assaults, harassment, and interference occurred.

7. It is based on these bald assertions that the Claim pleads all female inmates<sup>12</sup> have allegedly suffered a violation of their right to security of the person under s. 7 of the *Charter*,<sup>13</sup> their right to be free from cruel and unusual treatment under s. 12,<sup>14</sup> and their right to equality under s. 15.<sup>15</sup> The Plaintiff also claims violations of ss. 1 and 2 of the *Bill of Rights*.<sup>16</sup>

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<sup>7</sup> Claim, at para 40.

<sup>8</sup> Claim, at para 38.

<sup>9</sup> Claim, at para 41.

<sup>10</sup> Claim, at para 39.

<sup>11</sup> Claim, at paras 45 - 46.

<sup>12</sup> The Statement of Claim provides a definition of "Female" that aligns with the concept of sex, rather than gender identity. CD 100 sets out CSC's definitions for "sex" and "gender". In our materials, where we refer to "Females" we are referring to biological sex for the sake of clarity and easier comparison between the materials of the Plaintiff and the Defendant.

<sup>13</sup> Claim, at para 51.

<sup>14</sup> Claim, at para 57.

<sup>15</sup> Claim, at para 61.

<sup>16</sup> Claim, at paras 65, 67.



8. In response to a request for particulars, the Plaintiff outlined the alleged incidents they rely on to substantiate these claims.<sup>17</sup> However, as discussed below, the particulars provided do not remedy the fundamental issues described above.

### **PART III – POINTS IN ISSUE**

9. Should the Claim be struck without leave to amend?

### **PART IV – SUBMISSIONS**

#### **A. THE CLAIM SHOULD BE STRUCK UNDER RULE 221**

10. The Statement of Claim should be struck pursuant to Rule 221 of the *Federal Courts Rules* (the “*Rules*”) because it fails to disclose a reasonable cause of action (Rule 221(1)(a)), is frivolous (Rule 221(1)(c)), and is otherwise an abuse of process of the Court (Rule 221(1)(f)).<sup>18</sup>

11. Pleadings that are inadequately particularized to allow the opposing party to plead in response are also subject to being struck under Rule 221 for failure to comply with the requirement in Rule 174 that they contain “a concise statement of the material facts on which the party relies.”<sup>19</sup> The Federal Court of Appeal provides the following guidance on how Rule 174 should be interpreted:

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<sup>17</sup> *Letter from Plaintiff to Monmi Goswami* dated October 27, 2025, “Exhibit B” to the affidavit of [REDACTED] Defendant's Motion Record at 10 - 21 [“Particulars”].

<sup>18</sup> Federal Courts Rules, SOR/98-106, [s 221](#).

<sup>19</sup> Federal Courts Rules, SOR/98-106, [s 174](#)

*While the contours of what constitutes material facts are assessed by a motions judge in light of the causes of action pleaded and the damages sought, **the requirement for adequate material facts to be pleaded is mandatory. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars*** [emphasis added and citations omitted].<sup>20</sup>

12. Pursuant to Rule 181, a pleading “shall contain particulars of every allegation contained therein.” Thus, a statement of claim must tell the defendant “who, when, where, how and what gave rise to its liability.”<sup>21</sup> Bald assertions do not constitute material facts.<sup>22</sup>

13. On a Rule 221 motion, the material facts pled in the claim must be taken as true. However, before facts can be taken as true, “they must be supported by sufficient particularization and must not be bare assertions or conclusory legal statements based on assumptions and speculation”.<sup>23</sup>

14. As explained in detail below, the Claim should be struck in its entirety, without leave to amend. The Claim has no reasonable prospect of success, contains no material facts, is frivolous, and an abuse of process.

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<sup>20</sup> *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 (CanLII), at para 20 [“Mancuso”], leave to appeal denied at [2016] S.C.C.A. No. 92.

<sup>21</sup> *Mancuso* at para 19.

<sup>22</sup> *Bigeagle v Canada*, 2023 FCA 128 at para 39, leave to appeal denied at 2024 CanLII 50586 (SCC).

<sup>23</sup> *Doan v Canada*, 2023 FC 968 at para 48, relying on *Jensen v Samsung Electronics Co. Ltd.*, 2021 FC 1185, at para 79.

**1) Claim should be struck because it discloses no reasonable cause of action under ss.7,12 and 15 of the Charter**

15. It is “plain and obvious” that this claim has no reasonable prospect of success and should be struck as it lacks material facts that can give rise to a cause of action.<sup>24</sup>

16. The strict requirement for material facts is not lesser or different because this is a constitutional claim. Rather, the need for facts is particularly important in *Charter* litigation. In *MacKay v. Manitoba*, the Supreme Court of Canada (“SCC”) established that decisions concerning the *Charter* “should not and must not be made in a factual vacuum” as attempting to do so would “trivialize the *Charter* and inevitably result in ill-considered options.”<sup>25</sup> This cautious approach arises in part from the fact that *Charter* cases often have the potential to “profoundly affect the lives of Canadians and all residents of Canada.”<sup>26</sup> Almost 30-years later, in *Ernst v Alberta Energy Regulator*, the SCC again emphasized that the absence of an adequate factual basis for assessing a law’s constitutionality “is not just a technicality that could be overlooked, but rather it is a flaw that is fatal to the [plaintiff’s] position.”<sup>27</sup>

17. In *Mancuso*, the Federal Court of Appeal confirmed that the requirement for material facts in *Charter* litigation applies even where only declaratory relief is sought:

*... right to the remedy does not translate into licence to circumvent the rules of pleading. Even pure declarations of constitutional validity require sufficient material facts to*

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<sup>24</sup> *Bennett v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 393 at paras 42-46 [“*Bennett*”].

<sup>25</sup> *MacKay v Manitoba*, [1989] 2 SCR 357 at pp 361-362 [MacKay].

<sup>26</sup> *MacKay* at pp. 361-362.

<sup>27</sup> *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at para 22, per Cromwell J. (emphasis in original).

***be pleaded in support of the claim. Charter questions cannot be decided in a factual vacuum...***<sup>28</sup> [emphasis added].

18. Here, while the Claim pleads that due to the Defendant's policy, female inmates were assaulted and harassed, it does not set out sufficient particulars which could give rise to the Defendant's liability, denying the Court the tools necessary to fully answer the following fundamental questions: (a) when the alleged events took place; (b) in which institutions they occurred; (c) how they happened; (d) what policies concerning transfers were applicable at the time; (e) who was the victim or the perpetrator; (f) whether the assaults were known or unknown to the Crown; (g) what incidents preceded the assaults; (h) how the Crown responded; or (i) any other circumstances.<sup>29</sup>

19. For example, paragraph 38 of the Claim states: "Female Inmates have been sexually assaulted by Trans-Identifying Male Inmates both with and without male genitalia. In addition to the inherent trauma and harm associated with such incidents, Female Inmates are also exposed to increased risks of pregnancy and sexually transmitted infections." While the Claim makes these troubling and concerning allegations it fails to provide essential details to enable the Defendant to investigate these claims and to provide a defense.

20. To support its claims under ss. 7, 12 and 15 of the *Charter*, and ss. 1 and 2 of the *Bill of Rights*, the Plaintiff pleads and relies on the harms described in paragraphs

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<sup>28</sup> *Mancuso* at para 32.

<sup>29</sup> *Canada v Stonechild*, 2025 FCA 105, at para 4; *Claim*, at paras 36 - 49.

36 – 49 of the Claim. However, the alleged harms pled in these paragraphs are conclusionary statements of unnamed gender diverse offenders who have assaulted,<sup>30</sup> sexually assaulted,<sup>31</sup> harassed,<sup>32</sup> and sexually harassed<sup>33</sup> inmates in unidentified women's prisons. Without pleading further facts such as who was involved in these acts, their frequency, where they allegedly took place, and what was the Defendant's response, these conclusionary statements fail to establish any reasonable cause of action.

21. While the Plaintiff's response to particulars provides more detail and context on these incidents, it fails to flesh out the key material facts that are necessary for the Defendant and the Court to understand how the events are connected to the policy at issue and to understand their application to the alleged *Charter* contraventions.

22. Based on the above appellate level jurisprudence, the Plaintiff's claims of violations of the *Charter* and the *Bill of Rights* as currently pled must fail.<sup>34</sup>

**a) Section 7 of Charter**

23. The Claim fails to plead a reasonable cause of action for a s. 7 infringement. The material facts necessary to establish a causal link between the application of CD

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<sup>30</sup> *Claim*, at para 40.

<sup>31</sup> *Claim*, at para 38.

<sup>32</sup> *Claim*, at para 41.

<sup>33</sup> *Claim*, at para 39.

<sup>34</sup> *Stuart v Canada*, 2019 FC 801 at paras 44 - 45; and *Bennett*, at paras 42 - 43.

100, how it infringes a female inmate's right to security, and how it is not in accordance with the principles of fundamental justice, are not plead.<sup>35</sup>

24. The Plaintiff pleads that "CD-100's rules regarding the placement and transfer of Trans-identifying Male Inmates into Women's Prisons are overly broad and therefore contrary to the principles of fundamental justice".<sup>36</sup> However, the Plaintiff does not anchor this statement with a specific incident, specify which provision(s) of CD 100 they are referring to, or explain why or how CD 100 is overly broad such that it is inconsistent with the principles of fundamental justice.

25. The Plaintiff further and in the alternative pleads that CD 100 is arbitrary in that it subjects female inmates to the risk of serious harm without furthering its purpose of adequately meeting the needs of gender diverse offenders.<sup>37</sup> The Plaintiff provides no facts as to: (a) which specific needs of gender diverse offenders they are referring (b) how these needs are not being adequately met, or (c) how this failure to adequately meet these needs is a result of CD 100. Without these facts, there is nothing explaining how CD 100 contravenes a principle of fundamental justice. Based on the same omissions, the Plaintiff's second alternative argument that CD 100 creates a vast array of unacceptable harms for female inmates that are grossly disproportionate to its purpose, also fails to establish that CD 100 contravenes a principle of fundamental justice.

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<sup>35</sup> *Ewert v Canada*, 2018 SCC 30 at para 68.

<sup>36</sup> *Claim*, at para 52.

<sup>37</sup> *Claim*, at para 53.

**b) Section 12 of the Charter**

26. The Claim fails to plead a reasonable cause of action for a s. 12 infringement because the material facts necessary to meet the test for a s. 12 violation have not been plead.

27. Section 12 of the *Charter* prohibits cruel and unusual treatment or punishment and involves a comparative approach.<sup>38</sup> Section 12 is infringed when “the treatment or punishment is so excessive as to outrage standards of decency and surpass all rational bounds of treatment or punishment.”<sup>39</sup> This is a relatively high standard to meet<sup>40</sup> and each case must be considered on its own facts.<sup>41</sup>

28. To establish a s. 12 violation, the Plaintiff must plead how the state’s action, in this case the application of CD 100, is a consequence of conviction and part of a sanction which is either: (i) in furtherance of sentencing purposes and principles; or (ii) has a significant impact on the claimant's liberty or security.<sup>42</sup> They must also plead how the application of CD 100 is “so excessive as to outrage standards of decency” or “grossly disproportionate to what would have been appropriate”.<sup>43</sup>

29. However, with respect to s. 12, the Plaintiff only pleads two sentences: (i) the transfer of gender diverse offenders to Women’s Prisons has a significant impact on

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<sup>38</sup> *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243 at para 82 [“CCLA”].

<sup>39</sup> *Meigs v. Canada*, 2013 FC 389 at para 18(c), relying on *Piche v Canada (Solicitor General)*, [1984] FCJ No 1008, aff’d 1989 CanLII 7246 (FCA), [1989] FCJ No 204 (CA) [“Meigs”].

<sup>40</sup> *Meigs*, at para 18(c).

<sup>41</sup> *Ogiamien v Ontario*, 2016 ONSC 3080 at para 140.

<sup>42</sup> CCLA, at paras 84, 85.

<sup>43</sup> CCLA, 2019 ONCA 243 (CanLII), at para 86.

female inmates' liberty and security interests and is therefore punishment,<sup>44</sup> and (ii) the transfer of gender diverse offenders to Women's Prisons is intrinsically incompatible with female inmates' human dignity.<sup>45</sup> The Plaintiff pleads nothing further to explain these conclusions or provide any other details to establish a s. 12 infringement. Resultantly, the Plaintiff has failed to plead a reasonable cause of action for a s. 12 infringement.

**c) Section 15 of the Charter**

30. The Claim fails to plead a reasonable cause of action for a s. 15 infringement because the material facts necessary to establish: (i) CD 100 creates a distinction based on sex, and (ii) this distinction imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage for female inmates, have not been plead.<sup>46</sup>

31. Section 15 of the *Charter* provides that every individual is equal before and under the law and has the right to equal benefit of the law without discrimination, and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disability.<sup>47</sup>

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<sup>44</sup> *Claim*, at para 57.

<sup>45</sup> *Claim*, at para 58.

<sup>46</sup> *R. v. Sharma*, 2022 SCC 39 at para 28 [*"Sharma"*]; *R v CP*, 2021 SCC 19 at paras 56 & 141; *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27 [*"Fraser"*]; *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 at paras 19 - 20 [*"Taypotat"*].

<sup>47</sup> *Sharma*, at para 27.



32. The Plaintiff pleads that the transfer of gender diverse offenders into Women's Prisons creates a distinction based on sex, because while gender diverse offenders are regularly transferred to Women's Prisons, the reverse does not occur.<sup>48</sup> The Plaintiff further pleads that this difference imposes burdens and denies benefits to female inmates in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage for them. However, the Plaintiff does not explain what burden or benefit they are referring to or what disadvantage is being reinforced, perpetuated, or exacerbated. It simply states the conclusion.

33. The Claim also pleads that the transfer of gender diverse offenders into female prisons exposes female inmates to unspecified risk and harms that undermine the rehabilitative aspects of their custodial sentence. Again, other than pleading this conclusion, the Plaintiff does not explain which rehabilitative aspects they are referring to, or how they are undermined.

34. The factual context necessary to determine whether s. 15 has been breached has not been pled.

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<sup>48</sup> *Claim*.

**d) Sections 1 and 2 of the Bill of Rights**

35. The Plaintiff's claims regarding ss. 1 and 2 of the *Canadian Bill of Rights*<sup>49</sup> are substantially the same as what is pled for ss. 7, 12 and 15 of the *Charter*. The Defendant relies on the above arguments for why these claims should also be struck.

**e) Plaintiff's response to particulars and refusal to amend Claim**

36. In response to a request for further particulars, the Plaintiff provided additional information on the alleged incidents of harm that included some names of alleged victims, perpetrators, and in which institution the alleged incidents took place.<sup>50</sup> However, the details contained in the response still need to be expanded on and incorporated into the Claim to allow the Defendants to plead a full and proper defense. For example, the claim as it is currently plead still requires the Defendant to speculate on how alleged incidences of harm that took place prior to the implementation of CD-100 are relevant, or how s. 15 of the *Charter* is engaged. The Plaintiff also does not restrict their claim to the alleged incidences of harm provided in their response to particulars or plead which specific provisions of CD-100 are overly broad.

37. On October 30, 2025, the Court convened a Case Management Conference ("CMC") with the parties to schedule the Defendant's motion to strike and the Plaintiff's motion for public interest standing. At the CMC the Defendant advised that it may not be necessary to bring a motion to strike if the Plaintiff agreed to amend their claim to include and expand on the details provided in their response to particulars and define

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<sup>49</sup> *Claim*, at paras 64-70.

<sup>50</sup> *Particulars*.

the scope of their Claim. As a result, the CMC was adjourned until November 13, 2025, to allow the parties to discuss this possibility.<sup>51</sup> However, the Plaintiff did not agree to amend their Claim, and the motion was set down for a hearing.<sup>52</sup> As further explained below, if this motion is granted, leave to amend should not be granted.

## **2) Claim should be struck because it is frivolous**

38. Under Rule 221(1)(c), a claim that has no rational basis in fact is frivolous and must be struck, because a claim without material facts prevents the Defendant from answering and the Court from regulating the litigation.<sup>53</sup> In this case, the lack of material facts renders the claim unmanageable and prevents this Court from properly adjudicating the dispute and the Defendant from properly responding.<sup>54</sup>

39. Without the anchor of a particular incident or incidents, the claim places into issue almost everything involving gender diverse offenders in federally administered women's prisons. As the Federal Court of Appeal held in *Luciuk*, "any potential for a manageable trial and informed *Charter* analysis is compromised by the unconstrained scope of the claim."<sup>55</sup> The Plaintiff's broad allegations invite the Federal Court to step into the role of a public inquiry, conducting an open-ended investigation of whether

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<sup>51</sup> *Canadian Women's Sex-Based Rights v His Majesty the King*, 30 October 2025, T-1146-25 (FC).

<sup>52</sup> *Canadian Women's Sex-Based Rights v His Majesty the King*, 24 November 2025, T-1146-25 (FC).

<sup>53</sup> *Hill v Canada*, 2025 FC 242 at para 10 ["Hill"]; *Shebib v Canada*, 2016 FC 539 at para 12, citing *Ceminchuk v Canada*, [1995] F.C.J. No. 914 at para 10 (per Prothonotary Hargrave) ["Shebib"].

<sup>54</sup> *Canada (Minister of National Revenue - MNR) v Sharp*, 2022 FCA 138 at para 80.

<sup>55</sup> *Luciuk (Guardian ad litem of) v Canada*, 2023 FCA 241 at para 132.

gender diverse offenders should be permitted in women's prisons. Trial courts are fundamentally unsuited to this inquisitorial role.<sup>56</sup>

40. Moreover, the lack of material facts prevents a fair trial for the Defendant. The principal function of pleadings is to define the issues in dispute between the parties and to give notice of the case to be met.<sup>57</sup> In this case, if the Claim is not struck, the Defendant must be prepared to defend its actions in an unknown and undefined number of incidents. For example, while the Plaintiff's response to particulars provides some details of the acts of harm they allege happened at paragraphs 36 to 49 of the Claim, the Plaintiff does not restrict their Claim to only these incidents. This is significant given that the allegations raised at paragraphs 36 to 49 are what the Plaintiff relies on to establish that the Defendant breached the rights of all female inmates that are protected under ss. 7, 12 and 15 the *Charter* and ss. 1 and 2 *Bill of Rights*. The Plaintiff also does not indicate which specific provisions within CD 100 they are referring to when they plead that "CD-100's rules regarding the placement and transfer of Trans-identifying Male Inmates into Women's Prisons are overly broad and therefore contrary to the principles of fundamental justice".<sup>58</sup>

41. Pleadings also establish the relevancy of evidence on discovery.<sup>59</sup> Here, the Plaintiff's bald assertions do not allow for workable discovery; the Claim potentially

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<sup>56</sup> *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para 33, leave to appeal refused at [2015] S.C.C.A. No. 39, relied on in *BM v Ontario*, 2025 ONSC 4575 (CanLII) at paras 57-58.

<sup>57</sup> *Sivak v Canada*, 2012 FC 272 at para 11.

<sup>58</sup> *Claim*, at at para 52.

<sup>59</sup> *Mancuso*, at para 17.

relates to the records and experiences of every female inmate in every women's prison in Canada from 2017 onward, or possibly even earlier. While the Plaintiff's response to particulars provides context on some alleged incidents, the Plaintiff has refused to amend their claim or limit the scope of their claim to these alleged incidents.

### **3) The Claim should be struck because it is an abuse of process**

42. Under Rule 221(1)(f), a claim is an abuse of process where it has been brought in the hope that sufficient facts may be gleaned on discovery to support its bald allegations.<sup>60</sup>

43. In the Claim, the Plaintiff excuses the lack of material facts by referring to further details that may emerge in discoveries: "CAWSBAR relies on such further particulars of harm as may be discovered throughout the course of this action."<sup>61</sup> This is an abuse of process. A plaintiff is not permitted to bring an action in the hope that discovery will uncover the necessary material facts.<sup>62</sup> It is a defendant's right to have an abusive claim struck before being subjected to an intrusive and costly discovery process.<sup>63</sup>

44. As the SCC held in *Imperial Tobacco*, "It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses."<sup>64</sup> Or, as the

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<sup>60</sup> *Eli Lilly Canada Inc. v Nu-Pharm Inc.*, 2011 FC 255 at paras 8-9 ["Nu-Pharm"]; *Williams (c.o.b. IT Essentials) v. Cisco Systems, Inc.*, 2019 FC 116 at para 26, appeal dismissed at 2019 FCA 291 at paras 3 and 6 ["Cisco"].

<sup>61</sup> *Claim*, at para 49.

<sup>62</sup> *Nu-Pharm* at para 9; *Cisco*, at para 26.

<sup>63</sup> *Badawy v 1038482 Alberta Ltd.*, 2018 FC 807 (CanLII), at para 26, relying on *Mancuso* at para 43.

<sup>64</sup> *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 22.

Federal Court of Appeal succinctly put it, “[an] action at law is not a fishing expedition and a plaintiff who starts proceedings simply in the hope that something will turn up abuses the Court’s process.”<sup>65</sup> In this case, the Claim openly and unequivocally proclaims that it is a speculative attempt to gather “particulars of harm”.<sup>66</sup>

45. In sum, the Claim should be struck. The law is settled that a plaintiff cannot establish a breach of the *Charter* without first setting out proper factual allegations in the statement of claim.<sup>67</sup> A claim that only relies on bald assertions is meritless, frivolous, and an abuse of process.<sup>68</sup>

## **B. THE CLAIM SHOULD BE STRUCK WITHOUT LEAVE TO AMEND**

46. While the Plaintiff describes itself as a litigant who has “the capacity, resources, and expertise to litigate this claim” it has failed to plead the required material facts before filing their claim. As the claim is currently plead, there is no scintilla of a cause of action.<sup>69</sup> Rather, at the heart of the Claim is a factual void.

47. Prior to the Defendant filing this motion, the Plaintiff was given the opportunity to amend their Claim, which it refused. It should be inferred from this refusal that the Plaintiff cannot fix the deficiencies in their Claim with an amendment. This inference is supported by the Plaintiff’s acknowledgement at paragraphs 48 to 49 of the Claim that

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<sup>65</sup> *Kastner v Painblanc*, [1994] F.C.J. No. 1671 (C.A.) at para 4. See also *Nu-Pharm Inc* at para 9.

<sup>66</sup> *Claim*, at para 49.

<sup>67</sup> *Michel v Canada (Attorney General)*, 2025 FCA 58 at paras 76-77.

<sup>68</sup> *Mancuso*, at para 27; *Shebib*, at para 12; *Nu-Pharm*, at paras 8-9; *Cisco*, at para 26.

<sup>69</sup> *Hill*, at para 12.

it will need to establish through discovery the “majority of information and documentation regarding harms to Female Inmates.” This is true with respect to both the incidents outlined in their response to particulars as well as the unnamed and unquantified further incidents they seek to bring into the ambit of this proceeding.

48. Moreover, striking the claim without leave to amend will not significantly prejudice the Plaintiff at this early stage in litigation. The Plaintiff is free to file a different statement of claim in the future based on actual occurrences, should it be in a position to do so.

## **PART V – ORDER SOUGHT**

49. The Defendant requests an order striking the Statement of Claim in its entirety, without leave to amend, with costs.

50. In the alternative, the Defendant requests that it be given 60 days from the date of the Court’s Order to file its Statement of Defence.

## **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Toronto this January, 23, 2026.



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Monmi Goswami/ Oliver Backman  
Counsel for the Defendant

TO: The Administrator  
Federal Court of Canada

[REDACTED]  
[REDACTED]  
[REDACTED]

AND TO: **Charter Advocates Canada**

[REDACTED]  
[REDACTED]  
[REDACTED]

Chris Fleury

[REDACTED]  
[REDACTED]

Allison Pejovic

[REDACTED]  
[REDACTED]

James Manson

[REDACTED]  
[REDACTED]

Plaintiffs



## LIST OF AUTHORITIES

1. *Badawy v 1038482 Alberta Ltd.*, 2018 FC 807
2. *Bennett v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 393
3. *Bigeagle v Canada*, 2023 FCA 128
4. *BM v Ontario*, 2025 ONSC 4575
5. *Canada (Minister of National Revenue - MNR) v Sharp*, 2022 FCA 138
6. *Canada v Stonechild*, 2025 FCA 105
7. *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243
8. *Doan v Canada*, 2023 FC 968
9. *Eli Lilly Canada Inc. v Nu-Pharm Inc.*, 2011 FC 255
10. *Ernst v Alberta Energy Regulator*, 2017 SCC 1
11. *Ewert v Canada*, 2018 SCC 30
12. *Fraser v Canada (Attorney General)*, 2020 SCC 28
13. *Hill v Canada*, 2025 FC 242
14. *Jensen v Samsung Electronics Co. Ltd.*, 2021 FC 1185
15. *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30
16. *Kastner v Painblanc*, [1994] F.C.J. No. 1671
17. *Luciuk (Guardian ad litem of) v Canada*, 2023 FCA 241
18. *MacKay v Manitoba*, [1989] 2 SCR 357
19. *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227
20. *Meigs v. Canada*, 2013 FC 389
21. *Michel v Canada (Attorney General)*, 2025 FCA 58
22. *Ogiamien v Ontario*, 2016 ONSC 3080
23. *R v CP*, 2021 SCC 19
24. *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42
25. *R. v. Sharma*, 2022 SCC 39
26. *Shebib v Canada*, 2016 FC 539
27. *Sivak v Canada*, 2012 FC 272.
28. *Stuart v Canada*, 2019 FC 801
29. *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852
30. *Williams (c.o.b. IT Essentials) v. Cisco Systems, Inc.*, 2019 FC 116

## APPENDIX A - STATUTES AND REGULATIONS

### *Federal Courts Rules, SOR/98-106*

<p><b>174.</b> Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.</p>	<p><b>174.</b> Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.</p>
<p><b>181(1)</b> A pleading shall contain particulars of every allegation contained therein, including</p> <p style="padding-left: 40px;"><b>(a)</b> particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and</p> <p style="padding-left: 40px;"><b>(b)</b> particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.</p>	<p><b>181(1)</b> L'acte de procédure contient des précisions sur chaque allégation, notamment:</p> <p style="padding-left: 40px;"><b>a)</b> des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;</p> <p style="padding-left: 40px;"><b>b)</b> des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.</p>
<p>Motion to strike</p> <p><b>221.</b> (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it</p> <p style="padding-left: 40px;"><b>(a)</b> discloses no reasonable cause of action or defence, as the case may be,</p> <p style="padding-left: 40px;"><b>(b)</b> is immaterial or redundant,</p> <p style="padding-left: 40px;"><b>(c)</b> is scandalous, frivolous or vexatious,</p> <p style="padding-left: 40px;"><b>(d)</b> may prejudice or delay the fair trial of the action,</p> <p style="padding-left: 40px;"><b>(e)</b> constitutes a departure from a previous pleading, or</p>	<p>Requête en radiation</p> <p><b>221.</b> (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :</p> <p style="padding-left: 40px;"><b>a)</b> qu'il ne révèle aucune cause d'action ou de défense valable;</p> <p style="padding-left: 40px;"><b>b)</b> qu'il n'est pas pertinent ou qu'il est redondant;</p> <p style="padding-left: 40px;"><b>c)</b> qu'il est scandaleux, frivole ou vexatoire;</p> <p style="padding-left: 40px;"><b>d)</b> qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;</p>

<p>(f) is otherwise an abuse of the process of the Court,</p> <p>and may order the action be dismissed or judgment entered accordingly.</p>	<p>e) qu'il diverge d'un acte de procédure antérieur;</p> <p>f) qu'il constitue autrement un abus de procédure.</p> <p>Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.</p>
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*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11

<p><b>7</b> Everyone has 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.</p>	<p><b>7</b> Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p>
<p><b>12</b> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.</p>	<p><b>12</b> Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.</p>
<p><b>15 (1)</b> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p> <p><b>(2)</b> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p><b>15 (1)</b> La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</p> <p><b>(2)</b> Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.</p>

*Canadian Bill of Rights*, S.C. 1960, c. 44

<p><b>1</b> It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of</p>	<p><b>1</b> Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé</p>
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<p>race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,</p> <p>(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;</p> <p>(b) the right of the individual to equality before the law and the protection of the law...</p>	<p>et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe :</p> <p>a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;</p> <p>b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;</p>
<p><b>2</b> Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the <i>Canadian Bill of Rights</i>, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to</p> <p>...</p> <p>(b) impose or authorize the imposition of cruel and unusual treatment or punishment;</p>	<p><b>2</b> Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la <i>Déclaration canadienne des droits</i>, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme</p> <p>...</p> <p>b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;</p>

**T-1146-25**

**FEDERAL COURT**

BETWEEN

**CANADIAN WOMEN'S SEX-BASED RIGHTS**

Plaintiff

and

**HIS MAJESTY THE KING**

Defendant

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**MOTION RECORD**

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**Attorney General of Canada**  
Department of Justice Canada

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Per: Monmi Goswani / Oliver Backman**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Counsel for the Defendant**