

FEDERAL COURT

BETWEEN:

CANADIAN WOMEN’S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

STATEMENT OF DEFENCE

August 31, 2026

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OVERVIEW

1. Canada's accommodation of the needs of gender diverse inmates does not infringe the rights guaranteed to cisgender women inmates under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") or the *Canadian Bill of Rights* ("*Bill of Rights*").
2. Commissioner's Directive 100: *Gender Diverse Offenders* ("CD 100") is an ameliorative policy that forms part of a broader, integrated legislative and policy framework governing intake assessment, security classification, placement, transfer, and correctional programming for all offenders incarcerated in a federal institution. As part of this framework, CD 100 guides the Correctional Service of Canada ("CSC") in accommodating gender diverse offenders.
3. A gender-diverse offender's request to be placed in, or transferred to, an institution that better aligns with their gender identity or expression is determined through an individualized assessment that considers the offender's risks and needs, CSC's security and operational requirements, and health and safety considerations for the offender, other inmates, and CSC staff at the receiving institution.
4. The Plaintiff's allegations of harm relating to the placement and transfer of gender diverse offenders into women's institutions are vague, lack specificity and are insufficiently connected to CD 100 to warrant the declaratory relief they are seeking.

A. DEFENDANT'S ADMISSIONS, DENIALS AND NO KNOWLEDGE OF CLAIMS

5. Subject to the facts as outlined below, Canada admits to the facts in paragraphs 5 - 8, 23 (second and third sentence), 24 (second sentence), 25, 27 (first and third sentence), 28 (second

sentence), 29, 31, 45 (first sentence), 46 (first and second sentence), 50, 56, 62, 64, and 68 contained in the Claim.

6. Canada has no knowledge of the facts contained at paragraph 4 of the Claim regarding the Plaintiff's organizational structure.

7. For the reasons provided below, unless specifically admitted, Canada denies the remaining allegations in the Claim.

B. THE RELEVANT PARTIES AND NON-PARTIES TO THIS ACTION

i) The Defendant

8. The Attorney General of Canada defends this action pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 on behalf of the King in Right of Canada ("Canada" or "Defendant").

9. CSC is a federal government agency responsible for administering sentences of imprisonment for a term of two years or more, subject to some statutory exceptions under the *Criminal Code*, RSC 1985, c C-46.

10. CSC is responsible for managing penal institutions of various security levels and supervising offenders under conditional release in the community, in compliance with the *Corrections and Conditional Release Act*, SC 1992, c 20 ("CCRA") and the *Corrections and Conditional Release Regulations*, SOR/92-620 ("CCRR"). CSC also has policy instruments and operational documents for carrying out the purposes and provisions of the legislation and regulations.

11. In response to paragraph 6 of the Claim, CSC operates five women's institutions and a healing lodge for women:

- a. Fraser Valley Institution, Abbotsford, BC
- b. Edmonton Institution for Women, Edmonton, AB
- c. Grand Valley Institution for Women, Kitchener, ON
- d. Nova Institution for Women, Truro, NS
- e. Joliette Institution, Joliette, QC
- f. Okimaw Ohci Healing Lodge, Maple Creek, SK

12. CSC operates thirty-three institutions and three healing lodges for men.

13. CSC also operates the Regional Psychiatric Centre in Saskatoon, which accommodates both men and women with mental health needs.

ii) The Plaintiff

14. The Plaintiff is Canadian Women's Sex-Based Rights ("CAWSBAR"). In response to paragraphs 7 and 8 of the Claim, CAWSBAR was granted public interest standing on May 14, 2026.

iii) Non-Party Inmates

15. In the Response to the Demand for Particulars, the Plaintiff identified 45 cisgender women inmates who were allegedly impacted in 59 incidences of harm involving 19 gender diverse instigators as described at paragraphs 38 to 41 of the Claim. None of these individuals are named parties to this Claim, and Canada has no knowledge if they are aware of this action. In this Defence, Canada refers to these individuals by their initials.

16. The term “gender diverse” 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 encompasses all gender identities, including transgender, non-binary, and two-spirit. CD 100 is not specific to transgender inmates (or as referred to in the Claim “Trans-Identifying Male Inmates”), but to all inmates who identify as gender diverse. To remain consistent with CD 100, the term gender diverse offender or inmate will be used throughout this Defence.

17. In this Defence, the term “cisgender woman” is used, as opposed to “Female” as used in the Claim, to refer to individuals whose gender identity corresponds to the gender assigned to them at birth based on observed sexual characteristics. The Claim’s use of the term “Female” to refer solely to cisgender women risks mischaracterizing or misgendering gender diverse inmates, and this Defence avoids that usage for clarity and accuracy.

C. INTERIM POLICY BULLETIN 584 & COMMISSIONER’S DIRECTIVE 100

18. On June 19, 2017, *Bill C-16: An Act to amend the Canadian Human Rights Act and the Criminal Code* (“Bill C-16”) came into force. Bill C-16 amended the *Canadian Human Rights Act* (“CHRA”) to add gender identity and gender expression to the list of prohibited grounds of discrimination. Contrary to the first line of paragraph 23 of the Claim, on October 16, 2016, Bill C-16 was not passed by Canadian Parliament, but rather was the date of the second reading of the bill in the House of Commons, which was completed on October 18, 2016.

19. On December 27, 2017, *Interim Policy bulletin 584: Bill C-16 (Gender Identity or Expression)* (“IPB 584”) was introduced to reflect the amendments made to the CHRA. IPB 584 was a transitory policy that provided guidance on a wide range of topics concerning how gender diverse inmates should be accommodated in correctional settings. IPB 584 overrode any contrary

direction found in other Commissioner's Directives and Guidelines until they were updated to also reflect the amendments made to the *CHRA*.

20. Contrary to paragraph 26 of the Claim, IPB 584 did not for the first time "permit" gender diverse inmates to be placed in institutions without completing gender-affirming genital surgery. The provisions of the *CCRA* and its regulations did not have a formal requirement that inmate placements or transfers were to be based on sex assigned at birth or on genitalia. CSC had the implicit authority to place inmates according to gender identity prior to the introduction of IPB 584.

21. IPB 584 set out CSC's legal obligation to accommodate gender identity or expression in the inmate intake, placement, and transfer processes in accordance with the *CHRA*. IPB 584 replaced Guidelines 800-5: *Gender Dysphoria* ("GL 800-5"). Contrary to paragraph 22 of the Claim, gender diverse inmates could be placed in women's institutions while GL 800-5 was in force.

22. *Bill C-83: An Act to amend the Corrections and Conditional Release Act and another Act* ("Bill C-83") received Royal Assent on June 21, 2019, with amendments to paragraph 4(g) of the *CCRA* coming into force on this date. Paragraph 4(g) of the *CCRA* was amended to require that CSC's correctional policies, programs and practices respect religious differences, sexual orientation, and gender identity and expression, and be responsive to the special needs of visible minorities, in addition to the protected characteristics already listed in that provision.

23. In September 2020, CSC established the Gender Considerations Secretariat ("GCS") to support the policy development and implementation, monitoring, and ongoing management changes related to gender diverse inmates.

24. On May 9, 2022, CD 100 was promulgated. CD 100 replaced IPB 584 and, among other things, sets out CSC’s policy framework for accommodating gender identity and gender expression in the administration of sentences for gender diverse offenders, including decisions regarding placement and transfers between a men’s and women’s institution.

25. CD 100 is an ameliorative policy that was developed following extensive consultations with various internal and external stakeholders, subject-matter experts, inmate committees, staff, bargaining agents, members of the 2SLGBTQI+ community and several organizations, including the Canadian Human Rights Commission.

26. CD 100 and its associated guidance document, *Gender Diverse Offenders: A Decision-Making Guide*, provide CSC staff with direction and tools to support the accommodation of gender diverse offenders in CSC care and custody, including in respect to institutional placements and transfers, access to washrooms and showers, dress requirements, and the management of sex and gender information.

27. Contrary to paragraph 2 of the Claim, CD 100 does not in itself authorize the transfer of any inmates. This authority comes directly from the *CCRA* and its regulations. The purpose of CD 100 is to provide direction to CSC on how to exercise this authority to accommodate gender diverse inmates, while ensuring their safety and dignity and the safety and dignity of others.

28. In response to the second sentence of paragraph 27 and to paragraph 28 of the Claim, while CD 100 overrides all contrary CDs, policies, and guidelines until they are updated to reflect the amendments to the *CHRA*, it is not a stand-alone directive. CD 100 must be read alongside other policies, such as CD 705-1: *Preliminary Assessments and Post-Sentence Community Assessments* (“CD 705-1”), CD 705-7: *Security Classification and Penitentiary Placement* (“CD 705-7”), CD

710-2: *Transfer of Inmates* (“CD 710-2”), and Guidelines 710-2-3: *Inmate Transfer Process* (“GL: 710-2-3”). CD 100 must also be read alongside the relevant provisions of the *CCRA* and *CCRR* when determining where a gender diverse inmate will be placed or transferred.

29. In response to the first sentence of paragraph 28, and paragraphs 30 and 31 of the Claim, Canada pleads that under CD 100 a gender diverse offender’s request to be placed in, or transferred to, an institution that better aligns with their gender identity or expression does not override CSC’s obligations to consider that request in light of the individual’s health and safety, as well as the health and safety of other inmates and CSC staff.

30. In response to paragraph 32 of the Claim, the “cost” an inmate could face for falsely declaring their gender identity is a negative impact on their risk assessment and/or security classification. Paragraph 49 of CD 100 does not state otherwise.

31. Paragraph 49 of CD 100 addresses situations where a gender diverse offender’s voluntary transfer request to an institution that better aligns with their gender identity or expression is denied or the application is withdrawn. It ensures that any impact a denial or withdrawn application may have on the offender’s Security Reclassification Scale (“SRS”) or Security Reclassification Scale for Women (“SRSW”), whichever applies, does not impact their assigned security classification of maximum, medium or minimum. Rather, any change in this classification would result from a re-assessment of the relevant legislative security factors found in the *CCRA* and *CCRR*.

D. INDIVIDUALIZED ASSESSMENT FOR PENITENTIARY PLACEMENT OR TRANSFER

32. The admissions process for all offenders, including gender diverse offenders, is an individualized two-step process involving a preliminary assessment followed by an intake assessment.

33. Once placed in an institution, gender diverse offenders can request to be transferred to an institution that better aligns with their gender identity or expression. This transfer process takes place pursuant to the *CCRA*, the *CCRR*, CD 100, CD 705: *Intake assessment process and correctional plan framework* (“CD 705”), CD 710-2, GL 710-2-3, and CD 710-6: *Review of Inmate Security Classification* (“CD 710-6”).

34. In response to paragraph 30 of the Claim, an offender’s self-identification of being gender diverse does not determine whether they will be placed in or transferred to a women’s institution that better aligns with their sex. Rather, that determination is made by the Deputy Commissioner for Women on a case-by-case basis and involves a thorough assessment that weighs various risk factors.

35. Following sentencing and prior to admission to federal custody, newly sentenced gender diverse offenders are interviewed as part of the preliminary assessment process. During the interview, they are provided with an opportunity to identify any gender-related needs and to indicate their preferred institution type (men’s or women’s) for intake admission. If their preference is to be admitted to an institution that better aligns with their gender, CSC will first determine whether it has sufficient information to assess the risks and needs of that offender to properly consider this accommodation request.

36. In instances where sufficient information exists, a case conference to consider the type of intake site will be held and a decision will be made. Otherwise, the intake site for initial assessment will be based on the offender's current sex. These case conferences allow CSC staff to discuss and gain an understanding of an offender's criminal pathway, risks and needs, and make informed decisions concerning their specific gender-related needs.

37. After the preliminary assessment process is completed, the intake assessment process is carried out pursuant to the *CCRA*, the *CCRR*, paragraphs 36 to 39 and Annex B of CD 100, and CD 705. As part of this process, gender diverse offenders undergo a placement assessment to determine the security level and facility where they will be placed. Once placed in an institution, gender diverse offenders can request to be transferred to an institution that better aligns with their gender identity or expression.

38. The preliminary assessment process for gender diverse offenders returning to federal custody from the community is slightly different. If a returning offender was previously accommodated in an institution that better aligned with their gender identity or expression, they may be returned to that institution type unless new information identifies health, safety or security concerns that cannot be resolved. Where such concerns exist, a case conference will be held to determine the appropriate institution for the gender diverse offender.

39. Canada denies the risks and harms as articulated by the Plaintiff at paragraphs 30, 32, 34, and 36-47 of the Claim, and pleads that the safeguarding measures within CD 100 and all other legislative, regulatory and policy guidelines that must be considered, provide an appropriate framework to manage any harms that may arise from the placement or transfer of gender diverse

inmates to a Women's institution. This includes the involuntary transfer, including emergency transfer, of a gender diverse offender to an institution that aligns with their sex.

40. By way of example, the Defendant refers to the allegations raised by the Plaintiff regarding gender diverse inmate M/A in the Response to the Demand for Particulars, as it relates to the allegations at paragraphs 30 and 35 of the Claim. M/A was initially transferred to a women's institution in late 2017, where she spent six months prior to being transferred back to a men's institution at her own request. On March 6, 2025, M/A was transferred to Grand Valley Institution for Women. Following an incident on March 10, 2025, M/A was transferred back to Millhaven, a men's institution, on an emergency, involuntary basis. An individualized assessment was conducted for M/A regarding her transfer back to Millhaven and the decision was approved by CSC. M/A filed a *habeas corpus* application to challenge this decision in the Ontario Superior Court of Justice that was dismissed in January 2026.

41. Most gender diverse offenders serve their sentence in an institution that aligns with their sex. Before a gender diverse offender is placed or transferred to an institution that does not align with their sex, a case conference will take place with the offender and CSC staff.

42. The *Gender Diverse Offenders: A Decision-Making Guide* provides several examples of factors to consider when making a transfer or placement decision, including:

- a. Whether there would be an adverse impact on the offender population at the receiving institution because of the offender's criminal offence(s)? If so, to what extent? Can these impacts be mitigated and what options have been considered?
- b. Has the offender population at the receiving institution, including the Inmate Committee, expressed concerns?

- c. Does the offender have a history of violence or sexual violence and/or could their placement or transfer trigger issues of trauma for offenders at the receiving institution?
- d. Would the offender's presence in the institution pose a risk towards inmates or their children that are participating in the Institutional Mother-Child Program, including the residential component of the program?
- e. Has the offender voiced concerns for their safety due to their gender identity or expression?
- f. Does the offender's criminal offence(s) elevate their risk to be targeted, stigmatized, or ostracized by the offender population of the receiving institution?
- g. Whether the receiving institution has the level of supervision and physical security infrastructure required to safely manage the offender?

43. In response to paragraph 53 of the Claim, a gender diverse offender is not automatically referred to a program solely because it aligns with their gender identity. Rather, their carceral risk and needs are also individually assessed and considered before a determination is made on where they are referred.

44. Referrals to correctional programming for all offenders, including gender diverse offenders, are individualized and based on actuarial risk in conjunction with needs identified by supplementary assessments and/or an analysis of criminal history conducted during the intake assessment process.

45. Guideline 726-2: *National Correctional Program Referral Guidelines*, provides a framework for referrals to correctional programs that effectively address an offender's risk and needs and assigns them to the most appropriate correctional programs that will contribute to their rehabilitation and safe reintegration. This process ensures that regardless of whether a gender diverse offender is housed in a men's or women's institution, they are referred to the appropriate program based on their risk factors and needs directly linked to their offence and their criminal history to mitigate risk and recidivism.

E. RESPONSE TO SPECIFIC ALLEGATIONS OF HARM

46. The incidents of harm alleged in the Claim are general in nature and lack specificity. In the Response to the Demand for Particulars, the Plaintiff identifies 13 gender diverse inmates that have allegedly "taken and will continue to take advantage of CD 100" as plead at paragraph 30 of the Claim. Canada denies this allegation, and further states that CD 100 is designed to meet the needs of gender diverse inmates in accordance with the *CHRA* while also ensuring their safety and dignity, and the safety of others in the institutions and community. This is carried out by an individualized assessment process for gender diverse inmates seeking to be placed or transferred to institutions that reflect their gender identity or expression.

47. Out of the 13 gender diverse inmates identified in the Response to the Demand for Particulars, the Plaintiff provides no particulars or specific allegations relating to gender diverse inmates, M/A, F/C, F/A and E/A. Rather, it is their mere presence in a women's institution that is alleged to cause harm to cisgender women inmates.

48. In response to the allegations at paragraphs 38 to 41 of the Claim, the Defendant wholly denies that any alleged harm to inmates housed in women's institutions flowed from the implementation of CD 100.

49. In the Response to the Demand for Particulars, the Plaintiff identified 45 cisgender women inmates who were allegedly impacted in 59 incidences of harm as described at paragraphs 38 to 41 of the Claim. For 45 of the 59 alleged incidences, insufficient particulars were provided to allow Canada to respond, including the date range for when the alleged incident took place, the name of the alleged victim or instigator, the institution in which the alleged incident took place, or a combination of this information was not provided. Canada's response to the remaining 14 claims that took place at Grand Valley Institution for Women, Fraser Valley Institution, and the Okimaw Ohci Healing Lodge is detailed below.

i) Grand Valley Institution for Women, Kitchener, ON

50. In the Response to the Demand for Particulars, the Plaintiff identifies 30 cisgender women inmates at Grand Valley Institution for Women ("GVI") who were involved in 40 incidents of harm allegedly instigated by 10 gender diverse offenders. For 30 of these incidents, the incident was either not reported to CSC, or the Defendant was unable to identify the alleged complainant with the name provided by the Plaintiff. The Defendant has no knowledge of these incidents and cannot confirm that they occurred. The Defendant's response to the remaining 10 incidents is set out below.

51. In the Response to the Demand for Particulars, the Plaintiff alleges that gender diverse inmate S/M, was an instigator in six incidents against three cisgender women inmates, A/S, K/C, and A/D. The first two incidents involved complainant A/S. The first incident took place in April 2020, when A/S filed a complaint against S/M, and resulted in S/M being charged with one count of sexual assault and one count of criminal harassment in May 2020.

52. S/M was not involved or charged in the second and related incident involving A/S that also took place in May 2020. Rather this second incident involved a different inmate who had threatened A/S to drop the sexual assault allegations against S/M. Upon investigation, A/S stated that the instigator of this second incident had apologized to her and that she was not concerned for her safety.

53. The third incident involving gender diverse inmate S/M took place in May 2020 and involved cisgender woman inmate K/C. However, contrary to the Response to the Demand for Particulars, K/C was not a complainant or victim in this incident but rather another instigator. Both S/M and K/C were observed yelling at each other and a report was written citing both inmates for disciplinary problems and both were found to be instigators.

54. The remaining three incidents involving gender diverse inmate S/M raised in the Response to the Demand for Particulars are all part of the same incident that took place in 2019. The Plaintiff alleges that S/M sexually assaulted, physically assaulted, and harassed cisgender woman inmate A/D. However, A/D was released from custody in 2013, and S/M was institutionalized at GVI between 2018-2020. As A/D and S/M were never at GVI at the same time, they never interacted and no incidents occurred between them.

55. The seventh alleged incident raised in the Response to the Demand for Particulars took place in November 2018 and alleges that gender diverse inmate M/H was an instigator in an incident involving cisgender woman inmate M/Y. M/Y accused M/H of sexual assault and M/H was placed in segregation pending further investigation. The investigation was undertaken by Waterloo Regional Service Police, Special Victims Unit (SVU) who interviewed M/Y. M/Y spent her time with the police refusing to speak about the incident, and instead demanded she be given the officers' pens. When her request was refused, M/Y refused to co-operate with police any further. The SVU considered the matter to be closed, and no charges were laid against M/H.

56. The eighth incident raised in the Response to the Demand for Particulars identified gender diverse inmate KF/R as the instigator and cisgender woman inmate K/S as the complainant. In response to a complaint filed by K/S in October 2024, KF/R was charged with two counts of sexual assault.

57. The ninth incident raised by the Plaintiff identifies gender diverse inmate KF/R as the alleged instigator and cisgender woman inmate K/R as the complainant. The Plaintiff alleges that KF/R sexually assaulted K/R in 2023. However, this was a false allegation that K/R made in October 2024. Approximately one year later in 2025, K/R retracted her complaint and admitted that it was false. As a result, K/R was issued a formal warning for public mischief by the Waterloo Regional Police.

58. The tenth and final incident raised by the Plaintiff in the Response to the Demand for Particulars alleges that gender diverse inmate K/E harassed A/S, a cisgender woman inmate. This is incorrect. Rather, in May 2022, there was an incident regarding interpersonal issues between K/E, A/S, and another inmate. During this incident K/E and A/S were involved in a verbal

argument. The instigator was identified as A/S with K/E and the other inmate as associates to the matter. A fourth inmate was involved as an intervener.

ii) Fraser Valley Institution, Abbotsford, BC

59. In the Response to the Demand for Particulars, the Plaintiff identifies nine cisgender women inmates at Fraser Valley Institution (“FVI”) who were involved in 10 incidents of harm allegedly instigated by seven gender diverse offenders. For seven of these incidents, the incident was either not reported to CSC, or the Defendant was unable to identify the alleged complainant with the name provided by the Plaintiff. The Defendant has no knowledge of these incidents and cannot confirm that they occurred. The Defendant’s response to the remaining three incidents is set out below.

60. The first incident raised in the Response to the Demand for Particulars alleges that gender diverse inmate T/D physically assaulted cisgender woman inmate D/H. This is incorrect. In 2017, CSC received information that both T/D and D/H were involved in a physical altercation, and upon investigation both were found to be instigators for the assault. As a result, CSC submitted charges on both inmates. During the investigation, D/H admitted that the physical altercation started because she called T/D a derogatory name.

61. The second incident raised in the Response to the Demand for Particulars alleges that in 2019, gender diverse inmate CK/T physically assaulted cisgender woman inmate S/N. However, the Plaintiff has mischaracterized this incident. In 2019, CK/T and S/N were both found to have been physical with one another during an argument, and charges were submitted on both inmates because they were both instigators. After this incident, CK/T disclosed to correctional staff that she no longer wanted to be housed with any other female inmates as they did not accept her and

have done everything to disrespect her. CK/T was then placed in the Structured Intervention Unit (“SIU”) because she was adamant not to be housed with any other female inmates.

62. The third incident raised in the Response to Demand for Particulars also involved gender diverse inmate CK/T and cisgender woman inmate L/B. In 2021, L/B alleged that CK/T had sexually and physically assaulted her in the past. An investigation took place and a police file was opened in September 2021. During the investigation, L/B refused to speak to the police and CK/T was transferred to the SIU. L/B is now deceased.

iii) Okimaw Ohci Healing Lodge, Maple Creek, SK

63. In the Response to the Demand for Particulars, the Plaintiff identifies two cisgender women inmates at the Okimaw Ohci Healing Lodge who were both involved in an alleged incident involving gender diverse inmate A/B. For one of these incidents, the alleged harm was not reported to CSC, and the Defendant cannot confirm if the alleged incident occurred. The second incident involved cisgender woman inmate R/L who in August 2019, disclosed to CSC staff that she had been sexually assaulted by A/B but was unwilling to pursue charges or provide further details. R/L did not provide any details as to the date, time, or nature of the alleged assault to allow CSC to verify her claim. Given R/L’s lack of cooperation, the investigation ended.

iv) Alleged Impacts on the Institutional Mother-Child Program

64. The Institutional Mother Child Program (“MCP”) developed by CSC, is offered at all five federal women’s institutions and the Okimaw Ohci Healing Lodge. The objective of the MCP is to foster positive relationships between federally incarcerated mothers and their child(ren) by keeping them together, where appropriate and providing a supportive environment that promotes stability and continuity for the mother-child relationship. Commissioner’s Directive 768:

Institutional Mother-Child Program (“CD 768”) operates in the best interests of the child and ensures that the safety of the child(ren) is paramount.

65. CD 768 provides guidance on the implementation, the maintenance, and the monitoring of the MCP. There are residential and non-residential components to the program and specific eligibility requirements with a priority on the safety of the child(ren). In particular, CD 768 makes clear that those living within the Mother-Child Unit must not have committed an offence against a child or an offence which could reasonably be seen as endangering a child. Further, the risk to children is managed in a number of ways during the residential component of the program including, the requirement a child must be supervised by their mother or by a babysitter at all times, physical barriers (for example locked doors), correctional officer presence, Mother-Child Coordinators presence, and regular counts/check-ins and formal observation reports.

66. In the Response to the Demand for Particulars, the Plaintiff identified three cisgender women inmates, S/D, K/S, and A/L, who were all enrolled in the MCP and housed with their children at FVI. At paragraph 46 of the Claim, the Plaintiff alleges that while enrolled in the MCP, these inmates experienced psychological harm and fear for their safety and the safety of their children due to the presence of gender diverse inmates, T/D and M/H, who were incarcerated at FVI at the same time. Contrary to paragraph 46, at no time were T/D or M/H housed in the MCP unit.

67. The Defendant further states there is no record that S/D, K/S, or A/L filed complaints against T/D and M/H regarding any alleged fear for their safety, the safety of their children, or that the presence of these gender diverse inmates impacted their participation in the MCP.

F. NO BREACH OF THE *CHARTER OF RIGHTS AND FREEDOMS*

68. In response to paragraphs 50 to 63 of the Claim, Canada denies any infringement of the *Charter*, as alleged, or at all. Canada denies that the *Charter* rights of any cisgender women inmates pursuant to sections 7, 12, or 15 have been violated. Aggregate generic statements of alleged harm flowing from the implementation of CD 100 are insufficient to ground a common *Charter* breach.

69. As it relates to section 7, and in response to paragraphs 51 to 55 of the Claim, Canada denies there was any deprivation of the life, liberty, or security of the person of identified cisgender women inmates, as a result of the implementation of CD 100.

70. In the alternative, and to the extent that state conduct may have caused a deprivation of the life, liberty, or security of the person of cisgender women inmates, which it is not admitted, any deprivation is consistent with the principles of fundamental justice under section 7 of the *Charter*. In each specific factual context, CD 100 has been implemented in good faith and consistent with the principles of fundamental justice, including not being arbitrary, overbroad, or grossly disproportionate.

71. In response to paragraph 58 of the Claim, the Defendant denies that cisgender women inmates were subjected to cruel and unusual punishment contrary to section 12 of the *Charter*, or that any of the Defendant's actions or omissions subjected these inmates to cruel and unusual punishment contrary to section 12 of the *Charter*. Further, whether treatment or punishment is so excessive, and whether such excess outrages standards of decency, are fact and circumstance-specific determinations which cannot be determined on a systemic or collective basis.

72. The facts as plead by the Plaintiff do not demonstrate that CD 100 results in inferior correctional services for cisgender women inmates in comparison to male inmates. CD 100 does not create a distinction or perpetuate an unfair or objectionable disadvantage based on an enumerated or analogous ground within the meaning of s. 15(1) of the *Charter*. The Directive is neutral in purpose, applies uniformly to all persons subject to it, and does not subject cisgender women inmates to differential treatment based on a protected ground or immutable characteristic. In the alternative, Canada states that pursuant to section 15(2) of the *Charter*, CD 100 is an ameliorative policy aimed at improving the condition of a disadvantaged group, namely gender diverse inmates.

i) Section 1

73. Alternatively, if any of the identified cisgender women inmates' section 7, 12, or 15 *Charter* rights are engaged and were violated, as alleged, any such breach is justified under Section 1 of the *Charter* as a reasonable limit demonstrably justified in a free and democratic society.

ii) Section 28

74. In response to paragraph 62 of the Claim, the Plaintiff has failed to plead any facts to establish the applicability of section 28 of the *Charter*. Section 28 is a general provision that ensures notwithstanding anything in the *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

G. NO BREACH OF THE *CANADIAN BILL OF RIGHTS*

75. The *Bill of Rights* is a federal statute that controls the interpretation and application of all other federal statutes and regulations. The *Bill of Rights* codifies rights and freedoms that were understood in 1960 to inhere in the legal tradition.

76. As it relates to s. 1(a) of the *Bill of Rights* and in response to paragraph 65 of the Claim, Canada denies that the placement or transfer of gender-diverse offenders to women's institutions deprives cisgender women inmates of their right to security and further denies that such placements or transfers are carried out without due process of law.

77. As it relates to s. 1(b) of the *Bill of Rights* and in response to paragraphs 66 to 67 of the Claim, Canada pleads that its objective to accommodate gender diverse inmates is a valid federal objective that is neither arbitrary nor capricious. Canada denies that the placement or transfer of gender diverse inmates into women's prisons creates a distinction based on sex. Canada further denies that the proper test under s. 1(b) is whether CD 100 imposes a burden on, or denies a benefit to, cisgender women inmates that has the effect of reinforcing, perpetuating, or exacerbating disadvantage, as plead by the Plaintiff at paragraph 67 of the Claim.

78. As it relates to section 2(b) of the *Bill of Rights* and in response to paragraphs 69 and 70 of the Claim, the Defendant denies that the placement or transfer of gender diverse inmates into women's institutions is punishment for cisgender women inmates, or that it is intrinsically incompatible with their dignity.

H. RELIEF SOUGHT

79. The Defendant denies that the Plaintiff is entitled to any of the declaratory relief sought at paragraph 71 of the Claim.

80. With respect to the Plaintiff's request for relief under s. 24(1) of the *Charter*, the Defendant states that, as a public interest litigant, the Plaintiff is not entitled to such a remedy.

81. Canada pleads and relies on:

- a. Bill C-16, [*An Act to amend the Canadian Human Rights Act and the Criminal Code*](#), 1st Sess, 42nd Parl, 2017 (assented to 19 June 2017)
- b. Bill C-83, [*An Act to amend the Corrections and Conditional Release Act and another Act*](#), 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019)
- c. *Canadian Bill of Rights*, [SC 1960, c 44](#)
- d. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), [1982, c 11](#)
- e. *Canadian Human Rights Act*, [RSC 1985, c H-6](#)
- f. *Corrections and Conditional Release Act*, [SC 1992, c 20](#)
- g. *Corrections and Conditional Release Regulations*, [SOR/92-620](#)
- h. *Criminal Code*, [RSC 1985, c C-46](#)
- i. *Crown Liability and Proceedings Act*, [RSC 1985, c C-50](#)
- j. CSC, “Commissioner’s Directive 100: [Gender Diverse Offenders](#)” (last modified 13 October 2023)
- k. CSC, “Commissioner’s Directive 705: [Intake Assessment Process and Correctional Plan Framework](#)” (last modified 10 July 2025)
- l. CSC, “Commissioner’s Directive 705-1: [Preliminary Assessments and Post-Sentence Community Assessments](#)” (last modified 15 July 2025)
- m. CSC, “Commissioner’s Directive 705-7: [Security Classification and Penitentiary Placement](#)” (last modified 17 March 2023)
- n. CSC, “Commissioner’s Directive 710-2: [Transfer of Inmates](#)” (last modified 25 January 2023)
- o. CSC, “Guidelines 710-2-3: [Inmate Transfer Processes](#)” (last modified 14 November 2025)
- p. CSC, “Commissioner’s Directive 710-6: [Review of Inmate Security Classification](#)” (last modified 19 January 2026)
- q. CSC, “Commissioner’s Directive 768: [Institutional Mother-Child Program](#)” (last modified 14 July 2025)
- r. *Federal Courts Act*, [RSC 1985, c F-7](#)

- s. CSC, “Guideline 726-2: [National Correctional Program Referral Guidelines](#)” (last modified 30 April 2025)
- t. CSC, Guidelines 800-5 “Gender Dysphoria” (last modified 5 December 2016), now revoked
- u. CSC, “[Interim Policy Bulletin 584 Bill C-16 \(Gender Identity or Expression\)](#)” (last modified 27 December 2017), now revoked

82. Canada requests that the claim be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, in the Province of Ontario, this August 31, 2026.

[REDACTED]

Monmi Goswami
Mariam Shanouda
Oliver Backman
Counsel for the Defendant

TO: Federal Court

AND TO: **CHARTER ADVOCATES CANADA**

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