

AMENDED THIS 18TH DAY OF
NOVEMBER PURSUANT TO RULE
26.02(A)

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McGregor

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Court File No. 1406/19 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ERIC SABOURIN

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED 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 an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 15, 2019 Issued by _____
Local Registrar
Address of court office: London Courthouse
80 Dundas Street
London, ON N6A 6A3

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
c/o Ministry of the Attorney General
Crown Law Office – Civil Law
720 Bay Street, 8th Floor
Toronto, ON M5G 2K1

CLAIM

DEFINED TERMS

1. The following definitions apply for the purpose of this Statement of Claim:
 - (a) **“Claim Period”** means between May 18, 2017 and November 10, 2021;
 - (b) **“Class”** and/or **“Class Members”** means all persons incarcerated at the EMDC between May 18, 2017 and November 10, 2021, including those held at the EMDC pending trial or other court appearance; and,
 - (c) **“EMDC”** means the Elgin-Middlesex Detention Centre.

RELIEF CLAIMED

2. The Plaintiff, Mr Sabourin, claims:
 - (a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff of the Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
 - (b) a declaration that,
 - (i) the conditions at the EMDC and the practices of the Defendant in the care and custody of Mr Sabourin and the other Class Members at the EMDC during the Claim Period constitute an infringement of and deprivation of the right to life, liberty and security of the person as guaranteed by s 7 of the *Canadian Charter of Rights and Freedoms*;

- (ii) the conditions at the EMDC and the practices of the Defendant in the care and custody of Mr Sabourin and the other Class Members at the EMDC during the Claim Period constitute cruel, inhumane and degrading treatment or punishment contrary to s 12 of the *Canadian Charter of Rights and Freedoms*;
- (iii) in the operation of the EMDC during the Claim Period, the Defendant violated Mr Sabourin's and the Class Members' rights under ss 7 and 12 of the *Canadian Charter of Rights and Freedoms*;
- (iv) the conditions at the EMDC and the practices of the Defendant in the care and custody of Mr Sabourin and the other Class Members at the EMDC during the Claim Period violate the terms of the court orders by which Mr Sabourin and Class Members were remanded to the EMDC; namely, to keep the prisoners safely and securely during their incarceration or period of remand;
- (c) damages or such other remedy as the Court may consider just and appropriate pursuant to s 24 of the *Canadian Charter of Rights and Freedoms*;
- (d) aggregate damages for negligence, assault and battery in the amount of \$300,000,000.00;
- (e) directions pursuant to s 26 of the *Class Proceedings Act*;
- (f) punitive, aggravated or exemplary damages in the amount of \$25,000,000.00;

- (g) in the alternative, directions that individual assessments of damages be conducted;
- (h) pre-judgment and post-judgment interest in accordance with the provisions of the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (i) costs of this action on a substantial indemnity basis, together with all applicable taxes; and,
- (j) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Plaintiff and the Class

3. Mr Sabourin is an individual ordinarily resident in the Municipality of North Huron, who was imprisoned at the EMDC from approximately September 13, 2019 to approximately October 17, 2020, when he was transferred to the St Lawrence Valley Treatment Centre. Mr Sabourin was previously incarcerated at the EMDC from February 2015 to in or around November 2016, when he was transferred to the Central North Correctional Centre.
4. Mr Sabourin seeks to represent the following Class of which he is a member:

All persons incarcerated at the EMDC between May 18, 2017 and November 10, 2021, including those held at the EMDC pending trial or other court appearance.

The Defendant

5. The Defendant, Her Majesty the Queen in right of Ontario, is named in this proceeding pursuant to the provisions of the *Proceedings Against the Crown Act*, RSO 1990, c P 27, s 9, and the amendments thereto.

6. The EMDC is a correctional institution as defined by the *Ministry of Correctional Services Act*, RSO 1990, c M 22, as amended. The EMDC is located on Exeter Road in the City of London.
7. The Defendant owns and operates the EMDC under the direction of the Ministry of Community Safety and Correctional Services.
8. The Defendant is the employer of the staff who work at the EMDC, including superintendents, supervisory staff, guards, medical staff, and other employees. The Defendant and its employees, servants and agents together were responsible for the proper care, supervision and custody of Mr Sabourin and the other Class Members during the Claim Period.
9. Mr Sabourin pleads and relies upon the provisions of the *Proceedings Against the Crown Act*, including ss 2, 3, 5 and 13.

OVERVIEW

10. This action concerns the overcrowded, unsanitary and unsafe conditions at the EMDC during the Claim Period. Those conditions result from the acts and omissions of the Defendant and its employees, servants and agents for whom the Defendant is in law responsible. The conditions particularized below violate the basic human rights of the Class Members and, as such, constitute a violation of their rights under ss 7 and 12 of the *Canadian Charter of Rights and Freedoms*.
11. In addition, the Defendant and its employees, servants and agents have fostered an atmosphere of violence, brutality and intimidation by their failure to adhere to and follow

policies in place for the proper management and supervision of prisoners at the EMDC during the Claim Period. The Defendant's conduct, and that of its employees, servants and agents for whom it is in law responsible, constitute systemic negligence and/or a breach of the duties owed by the Defendant to Mr Sabourin and the other Class Members.

12. The Defendant's mistreatment of prisoners is a violation of their basic human rights and, as such, constitutes a violation of their rights under ss 7 and 12 of the *Canadian Charter of Rights and Freedoms*.

OVERCROWDED CONDITIONS AT THE EMDC

13. The EMDC was constructed in the 1970s and was designed to hold approximately 150 inmates.
14. Although some alterations have been made to the facility since it was originally constructed, the inmate capacity was not significantly increased.
15. During the Claim Period, the number of persons in custody regularly exceeded 400.
16. The cell blocks at the EMDC were designed to comprise ten cells, each to be occupied by a single inmate, with two additional rooms for recreational purposes. Cells were later modified and a concrete slab was installed in order to house two inmates per cell. During the Claim Period, the cells routinely housed more than two prisoners even though the cell was designed for one prisoner and had sleeping accommodation for only two prisoners. The ventilation and plumbing systems were designed for ten prisoners in the cell block and were not updated or expanded to handle the overcrowding during the Claim Period.

17. In addition, the rooms that were originally intended for recreational purposes were converted to “welfare cells.” These rooms were re-designed to hold two prisoners, but often held as many as five, resulting in unsafe and unsanitary conditions.
18. Throughout the Claim Period, the number of prisoners per cell routinely exceeded the capacity for the cells.
19. As a result of the overcrowding at the EMDC, Class Members were forced to live in unhygienic and unsanitary conditions; in particular,
 - (a) prisoners were required to sleep on the floor of cells immediately beside or touching upon the toilets present in the cell;
 - (b) the toilets in the cells and in the washrooms were frequently left unclean and/or did not properly function, thereby causing noxious smells and contaminated water to overflow;
 - (c) cells were not cleaned so as to remove bacteria and prevent illness or infection;
 - (d) cells and washroom areas had black mold and bed bugs were common; and,
 - (e) sick prisoners were not separated and removed from the cells they shared with other prisoners.
20. Mr Sabourin states that the living conditions at the EMDC during the Claim Period fell below the standard required to humanely and safely house prisoners.

21. The Defendant and its employees, servants and agents were at all material times aware of the unhygienic and unsanitary conditions at the EMDC and, despite this knowledge, took no steps to remedy the conditions.
22. Mr Sabourin states that the Defendant owed a duty to the Class Members to ensure that during their custody and incarceration at the EMDC, the conditions of the EMDC were such that prisoners were housed in a humane, sanitary and safe manner.
23. Mr Sabourin states that the unsanitary, unhygienic and unsafe conditions of the EMDC during the Claim Period are the result of the negligence of the Defendant and its employees, servants and agents; in particular,
 - (a) the Defendant permitted overcrowding at the EMDC to the point where the conditions referred to above were prevalent throughout the Claim Period;
 - (b) the Defendant took no steps to relieve the overcrowding or to provide further or alternative sanitary facilities for prisoners;
 - (c) the Defendant failed to ensure that the toilets in the cells and washrooms were properly maintained and functioning;
 - (d) the Defendant failed to ensure that the toilets in cells and washrooms were kept in a clean and hygienic state;
 - (e) the Defendant failed to make timely or reasonable inspections of the cells and washrooms to ensure that the toilets were functioning and hygienic;

- (f) the Defendant failed to respond to numerous complaints made by prisoners with respect to the overcrowded conditions or the unhygienic and unsanitary state of the cells and washrooms;
 - (g) the Defendant failed to separate patients who were sick and likely to be contagious from prisoners who were not then ill; and,
 - (h) the Defendant permitted the conditions at the EMDC to reach the point where the conditions were inhumane, unsanitary and unhygienic.
24. Mr Sabourin states that the aforesaid negligence of the Defendant constitutes systemic negligence that results from the Defendant's failure to follow its own policies, protocols and standards for housing prisoners, or from the Defendant's failure to have in place practices, policies, protocols or standards to ensure the humane and sanitary housing of prisoners in the Defendant's care at the EMDC.
25. Further, prisoners were frequently confined to their cells for long periods of time, thereby exacerbating the unsanitary and unhealthy conditions within the cells. The Defendant took no steps to relieve the overcrowded conditions, nor did the Defendant take any steps to mitigate the unsanitary and unhealthy conditions within the cells, ranges and washrooms despite the obvious and apparent poor conditions in which prisoners were held.
26. Further, prisoners' mental health, addictions and creed-related needs were not, and are still not, adequately accommodated contrary to the Ontario *Human Rights Code*, RSO 1990, c H 19.

27. Mr Sabourin states that the conditions at the EMDC during the Claim Period violate the rights of the Class Members to be held in custody in a humane, safe and sanitary facility and, as such, constitute cruel, inhumane and degrading treatment or punishment contrary to s 12 of the *Canadian Charter of Rights and Freedoms*.
28. Further, or in the alternative, Mr Sabourin states that the conditions at the EMDC and the aforesaid conduct of the Defendant constitute an infringement of and deprivation of the right to life, liberty and security of the person as guaranteed by s 7 of the *Canadian Charter of Rights and Freedoms*.
29. The Class Members were in the care, custody and control of the Defendant and, as such, they were subject to the unilateral exercise of discretion or power by the Defendant and its employees, servants and agents while in the EMDC.
30. The Defendant has undertaken, by legislation, court order or otherwise, to provide for the custody, care and supervision of the Class Members while incarcerated at the EMDC. Mr Sabourin pleads and relies upon the provisions of the *Ministry of Correctional Services Act*, as amended and in force during the Claim Period, and in particular, ss 1, 4-8, 14, 20 and 24, together with the regulations thereto.
31. Mr Sabourin states that there exists between the Defendant and Mr Sabourin and the other Class Members a relationship pursuant to which the Defendant owed an obligation to Mr Sabourin and the other Class Members to,
- (a) house Mr Sabourin and the other Class Members in a humane, sanitary and safe manner;

- (b) take reasonable steps to correct deficiencies within the EMDC where such deficiencies result in inhumane, unsanitary and unsafe conditions; and,
 - (c) exercise its discretion and power for the protection of Mr Sabourin and the other Class Members provided that the exercise of such discretion and power was consistent with its statutory and other obligations.
32. Mr Sabourin states that the Defendant breached its obligations by virtue of the inhumane, unsafe, unsanitary and unhygienic conditions which it permitted to exist and caused to continue during the Claim Period.
33. Mr Sabourin also pleads and relies upon,
- (a) the Ontario *Human Rights Code*;
 - (b) the *United Nations Declaration of Human Rights*, articles 3 and 5;
 - (c) the *United Nations International Covenant on Civil and Political Rights*, articles 7 and 10;
 - (d) the *Compendium of the UN Standards and Norms in Crime Prevention and Criminal Justice*; and,
 - (e) the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, ss 7-10, 12, 14, 19, 20, 22-27, 35, 46, 57, 60, 63, 67, 82, 84-86 and 88.

VIOLENCE AND SAFETY

34. Despite the overcrowded conditions at the EMDC during the Claim Period, the Defendant did nothing to modify or increase the supervision and care provided to prevent or minimize violence among inmates.
35. The Defendant and its employees, servants and agents regularly and routinely failed to properly supervise and oversee prisoners at the EMDC in the cells, ranges, washrooms and other parts of the facility.
36. Because of the layout and design of the cell blocks, guards were often unable to see or hear what was transpiring in the cell block and routinely closed the doors to the guard stations so as not to see or hear what was happening in the cell blocks.
37. The Defendant knew or ought to have known at all material times that the overcrowding together with the unsanitary and unhygienic conditions at the EMDC were likely to increase the frequency and severity of violence between inmates.
38. Rather than take steps to mitigate this risk, the Defendant and its employees, servants and agents instead encouraged and promoted violence upon and among inmates, which fostered an atmosphere of brutality and intimidation; in particular,
 - (a) guards failed to supervise and oversee prisoners while in their cells or on the ranges;
 - (b) guards discouraged inmates who were physically assaulted from making any complaint;

- (c) guards failed to follow the protocols and procedures in place for victims of assault;
- (d) guards used excessive force for which there was no follow-up investigation by supervisory staff;
- (e) guards inflicted excessive, inappropriate and unnecessary physical assaults on inmates;
- (f) guards instructed or encouraged inmates to assault other inmates, particularly sex offenders;
- (g) prisoner complaints of physical assaults or intimidation by guards or other inmates were ignored or dismissed;
- (h) proper investigations of physical assaults were not conducted;
- (i) victims of physical assaults were not protected against further assaults by the same or other inmates;
- (j) guards abdicated their supervisory and protective roles to inmates in each range;
- (k) guards advised inmates to follow the “inmate rules” set by the usually larger and more violent inmates known as “servers”;
- (l) guards permitted the “servers” to set their own “inmate rules” and to enforce those “inmate rules” with impunity;

- (m) guards discouraged complaints about the conditions and practices at the EMDC and encouraged violence against those who made complaints;
 - (n) prisoners were not taken promptly for medical treatment and/or were discouraged from seeking medical treatment for injuries sustained; and,
 - (o) prisoners who suffered serious physical injuries or illness did not receive prompt or appropriate medical care and treatment.
39. Mr Sabourin states that the Defendant is a party to the assaults and batteries that took place on inmates, whether perpetrated by guards or by other inmates, by virtue of the Defendant's conduct described above.
40. The Defendant had policies which mandated:
- (a) the level and manner of supervision to be provided to inmates;
 - (b) the steps to be taken when an inmate complained of a physical assault;
 - (c) the steps to be taken when an inmate complained of an anticipated physical assault and/or threats of violence;
 - (d) the steps to be taken when staff knew or ought to have known that a prisoner was at risk of physical assault or intimidation;
 - (e) the steps to be taken to investigate and respond to allegations of physical assault or abuse of inmates by guards; and,

- (f) the steps to be taken to ensure that injured or sick inmates received prompt medical attention and, where necessary, ongoing medical treatment.

41. Mr Sabourin states that the Defendant owed a duty of care to Mr Sabourin and the other Class Members to:

- (a) ensure the safety of prisoners in the Defendant's custody;
- (b) take reasonable steps to prevent, discourage and investigate acts of physical violence among inmates;
- (c) adhere to the policies referred to in the preceding paragraph;
- (d) properly train, supervise and inspect its employees, servants and agents to ensure that they were qualified and performed their duties in an appropriate manner and, where necessary, take remedial action, including disciplinary action;
- (e) provide appropriate mechanisms for complaint by victims of violence within the EMDC, whether such violence was occasioned by another inmate or by the guards;
- (f) report and investigate those incidents and take appropriate actions; and,
- (g) take such measures as are necessary to protect vulnerable prisoners and those who have been the victim of violence from further intimidation and physical assaults.

42. Mr Sabourin states that the Defendant and its employees, servants and agents were systemically negligent and breached their duty of care owed to Mr Sabourin and the other Class Members; in particular:

- (a) the Defendant failed to take reasonable steps to prevent, discourage or investigate intimidation and violence to inmates;
- (b) the Defendant permitted practices that encouraged physical violence and discouraged the reporting of assaults and intimidation;
- (c) the Defendant failed to adhere to the policies in place to ensure the safety of prisoners and prevention of violence to and among prisoners;
- (d) the Defendant failed to properly or adequately supervise and investigate complaints that were made by prisoners who were the victims of intimidation and assault by other inmates or by guards;
- (e) the Defendant permitted the more violent and aggressive inmates to set the “inmate rules” and impose their own discipline and punishment;
- (f) the Defendant failed to have in place policies, practices and training for its employees, servants and agents to protect prisoners from violence and intimidation;
- (g) the Defendant failed to separate or segregate vulnerable inmates, victims of assaults or intimidation, and inmates who suffered from mental or physical disabilities;
- (h) the Defendant failed to separate or segregate unconvicted prisoners from convicted inmates; and,

- (i) the Defendant had in place inadequate protocols and procedures or practices to respond to complaints or to monitor the risk of physical violence and intimidation within the EMDC.
43. Mr Sabourin states that by its conduct and omissions, the Defendant systematically fostered a culture of violence, brutality and intimidation at the EMDC such that the safety and security of Mr Sabourin and the other Class Members was at constant risk during the Claim Period.
44. Mr Sabourin states that the Defendant and its employees, servants and agents callously disregarded the safety and security of Mr Sabourin and the other Class Members and permitted conditions of violence, brutality and intimidation to persist at the EMDC throughout the Claim Period.
45. The Defendant allowed a culture to develop whereby the more powerful inmates controlled the cell blocks. Those inmates, known as “servers,” set the “inmate rules” and meted out punishment indiscriminately within the cell block. The Defendant recognized, accepted and encouraged their actions as self-appointed rulers of the cell blocks.
46. The Defendant was at all material times aware that violence occurred against prisoners by these servers within the cell blocks but did nothing to protect prisoners.
47. Mr Sabourin states that the Defendant tacitly approved of the violence and control by servers to the point where written “inmate rules” and notices posted by servers within the cell block were known to the Defendant and prisoners were instructed to follow those “inmate rules” or risk being beaten.

48. Mr Sabourin states that the Defendant allowed a climate of fear and intimidation to exist within the EMDC thereby putting at risk all Class Members to threats, violence, neglect or other abuse from other prisoners and guards.
49. Mr Sabourin states that the practices of the Defendant in the care and custody of Mr Sabourin and the other Class Members during the Claim Period constitute cruel, inhumane and degrading treatment or punishment contrary to s 12 of the *Canadian Charter of Rights and Freedoms*.
50. Further, Mr Sabourin states that the practices of the Defendant in the care and custody of Mr Sabourin and the other Class Members at the EMDC during the Claim Period constitute an infringement of and deprivation of the right to security of the person as guaranteed by s 7 of the *Canadian Charter of Rights and Freedoms*.
51. Mr Sabourin states that the court orders by which prisoners were remanded to the EMDC during the Claim Period expressly provided that the prisoner was to be kept safe during his or her incarceration at the EMDC. At no time did the Defendant advise the Courts that it was unable to comply with the court orders pursuant to which prisoners were remanded to the EMDC.
52. Mr Sabourin states that the conditions at the EMDC and the practices of the Defendant described above constitute a violation of the remand orders by which prisoners were incarcerated at the EMDC.
53. Further, or in the alternative, Mr Sabourin states that Mr Sabourin and the other Class Members were entirely dependent and reliant upon the due exercise of power and control

by the Defendant and its employees, servants and agents, in their administration of the EMDC and the enforcement of the policies governing safe custody, protection and the prevention of violence and intimidation of prisoners.

54. Mr Sabourin states that the Defendant owed a duty to Mr Sabourin and the other Class Members consistent with its statutory and other legal obligations to act in the best interests of Mr Sabourin and the other Class Members to discourage, prevent, investigate and act upon incidents and complaints of physical violence and intimidation to prisoners.
55. Mr Sabourin states that the Defendant breached its obligations to Mr Sabourin and the other Class Members by virtue of its practices described above that encouraged intimidation of and violence against prisoners at the EMDC during the Claim Period, and its failure to take steps to prevent the occurrence and/or recurrence of intimidation and violence. Prisoners at the EMDC were at the mercy of the Defendant and its employees, servants and agents, whose conduct encouraged and fostered an atmosphere of violence, brutality and intimidation.

MEDICAL CARE AND TREATMENT

56. There is no infirmary unit at the EMDC. Although ill or injured inmates were occasionally placed in segregation cells in proximity to the health centre, such cells were not dedicated for ill or injured inmates and were not monitored by EMDC health centre staff.
57. There were no medically trained personnel on duty and no access to onsite health care for prisoners between 11 pm and 7 am during the Claim Period.

58. Further, Mr Sabourin states that throughout the Claim Period, there was no comprehensive policy or protocol for communication among medical staff as well as between medical and operational staff with regard to inmate health care needs.
59. Mr Sabourin states that the Defendant owed a duty of care to Mr Sabourin and the other Class Members to:
- (a) provide reasonable medical care and treatment for prisoners at the EMDC;
 - (b) take reasonable steps to segregate prisoners who were contagious from the general prison population;
 - (c) provide competent and trained medical personnel to deal with sick or injured prisoners;
 - (d) transport prisoners to local hospitals where more serious medical attention was required and do so in a timely manner;
 - (e) identify prisoners at risk because of their mental or physical disability or illness and ensure that their medications were not taken by other inmates; and,
 - (f) follow policies and procedures to document injuries sustained by inmates while in the EMDC.
60. Mr Sabourin states that the medical care and treatment provided by and available to Mr Sabourin and the other Class Members during the Claim Period was completely inadequate; in particular,

- (a) prisoners were discouraged from seeking medical attention for injuries or illnesses by the Defendant's employees, servants or agents;
- (b) prisoners were discouraged from reporting injuries sustained by assaults on prisoners by guards or other prisoners;
- (c) prisoners did not receive medication or treatment prescribed by doctors and/or did not receive such medication or treatment in a timely and/or regular fashion;
- (d) prisoners did not receive regular or appropriate follow-up for injuries suffered at the EMDC;
- (e) patient care instructions from doctors and hospitals were regularly and routinely disregarded;
- (f) prisoners were not transferred to outside hospitals for prompt and necessary medical care and treatment;
- (g) the Defendant employed medical staff who were not trained or qualified to diagnose serious illness or injuries;
- (h) prisoners who were placed in isolation or segregation received no medical supervision;
- (i) prisoners who required special services or care for physical and mental illness were housed with other prisoners in the general population without regard to their special needs;

- (j) no steps were taken to ensure that medications provided to prisoners were not confiscated by other prisoners;
 - (k) special medical and dietary needs were frequently ignored or disregarded and, in any event, were not met; and,
 - (l) the Defendant failed to have in place medical personnel to address illnesses and/or injuries, resulting in a lack of treatment or lack of timely treatment of these illnesses and/or injuries.
61. Mr Sabourin states that the Defendant and its employees, servants and agents regularly and routinely failed to follow policies in place at the EMDC during the Claim Period for the medical care and treatment of prisoners and the recording and reporting of injuries suffered at the EMDC.
62. Mr Sabourin states that the Defendant was negligent in failing to follow the policies in place for the care, treatment, recording and reporting of illness and injury.
63. Further, or in the alternative, Mr Sabourin states that the Defendant failed to put in place appropriate policies, practices and supervision to ensure that Class Members received appropriate and timely medical care and treatment during the Claim Period. The Defendant's conduct, described above, constitutes systemic negligence.
64. Further, Mr Sabourin states that the conduct of the Defendant and its employees, servants and agents, described above, constitutes cruel, inhumane and degrading treatment or punishment contrary to s 12 of the *Canadian Charter of Rights and Freedoms*.

65. Further, Mr Sabourin states that the conduct of the Defendant and its employees, servants and agents, described above, constitutes an infringement of and deprivation of the right to security of the person as guaranteed by s 7 of the *Canadian Charter of Rights and Freedoms*.
66. Further, or in the alternative, the failure to provide appropriate and timely medical care and treatment violated the remand orders by which prisoners were incarcerated at the EMDC.
67. Mr Sabourin states that Mr Sabourin and Class Members depended and relied entirely upon the Defendant and its employees, servants and agents with respect to the provision of medical care and treatment while incarcerated at the EMDC during the Claim Period.
68. Mr Sabourin states that there existed between the Defendant and Mr Sabourin and the other Class Members a duty pursuant to which the Defendant owed an obligation to Mr Sabourin and the other Class Members to ensure that they received appropriate and timely medical care and treatment for injuries and illnesses while in the Defendant's custody and care at the EMDC.
69. Mr Sabourin states that the Defendant breached its obligations owed to Mr Sabourin and the other Class Members by failing to provide appropriate and timely medical treatment and care to Mr Sabourin and the other Class Members.
70. Mr Sabourin states that the Defendant was at all material times aware of the inadequate care and treatment by virtue of complaints made by prisoners and family members of prisoners as well as published media reports.

71. Mr Sabourin states that notwithstanding its knowledge of the inadequate and inappropriate medical care and treatment available to Mr Sabourin and the other Class Members during the Claim Period, the Defendant took no steps to remedy or mitigate its negligence and/or breach of duty.

THE REPRESENTATIVE PLAINTIFF'S EXPERIENCE

72. Mr Sabourin was an inmate at the EMDC from approximately September 13, 2019 to approximately October 17, 2020, when he was transferred to the St Lawrence Valley Treatment Centre. Mr Sabourin was previously incarcerated at the EMDC from February 2015 to in or around November 2016, when he was transferred to the Central North Correctional Centre.
73. During his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin observed that the dangerous, violent, overcrowded, unsanitary and unsafe conditions at the EMDC had worsened since his February 2015 to November 2016 incarceration there.
74. During his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin was assigned, at different times, to Ranges 2 Left, 1 Left and 3 Left.
75. Upon arriving on a range at the EMDC, Mr Sabourin was required to read a list of “inmate rules” set by the larger and more violent inmates and posted prominently on the wall beside the television. Mr Sabourin was required to read these “inmate rules” and once finished, tap the side of the television and then go shower. This practice was well-known and tacitly approved by the EMDC staff.

76. During his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin observed that the correctional officers' minimal supervision of inmates at the EMDC allowed larger inmates known as "servers" or "heavies" (i.e., inmates who have appointed themselves as enforcers of "inmate rules" they have set) to be violent and to control the range through intimidation and fear.
77. Mr Sabourin observed that anyone who failed to comply with the "inmate rules" would be dealt with harshly. He also observed other inmates enforcing these rules through physical means and/or by expulsion from the range. If a prisoner disobeyed a rule set by the "servers" or "heavies," or failed to follow their directions, the prisoner would face physical punishment or have to leave the range.
78. Mr Sabourin also observed that violence was pervasive in every aspect of prison life at the EMDC, including from the selection of television programs to the distribution of food. Mr Sabourin regularly witnessed inmates assaulting other inmates and saw inmates leaving the range on stretchers and/or with very serious injuries resulting from these inmate-on-inmate assaults. Often assaults on one inmate were perpetrated by as many as seven other inmates, frequently at the direction of a "server" or "heavy."
79. Mr Sabourin observed that the correctional officers at the EMDC knew that the "servers" or "heavies" were in control of the range and enforcing that control through violence. Correctional officers appeared disinterested in intervening, investigating or taking positive steps to improve conditions or to protect inmates from violence.

80. In addition to violence, during his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin also experienced overcrowding and observed that often, there were more people to a cell than there were beds available.
81. Throughout the entire time of his imprisonment at the EMDC from September 13, 2019 to October 17, 2020, Mr Sabourin was required to live in cramped cells with three inmates housed together in a cell originally designed for just one inmate. These cells had been retrofitted so that they each contained two cement slabs elevated from the floor on which a mattress was placed to make a bed. The retrofitted cell layout was such that the inmate sleeping on the floor was pressed between the toilet and the wall. Mr Sabourin observed that this was a common experience among inmates at the EMDC.
82. Mr Sabourin also observed as many as five inmates assigned to a “welfare cell” that only contained two beds (one top bunk and one bottom bunk). This meant that three inmates in this cell had to sleep on the floor.
83. During Mr Sabourin’s September 13, 2019 to October 17, 2020 incarceration at the EMDC, staffing-related and other lockdowns occurred on a frequent basis, resulting in (1) the frequent cancellation of exercise yard time and the few rehabilitative programs available; and, (2) limited access to telephones and showers. Mr Sabourin observed that when combined with the overcrowded conditions, these lockdowns and program cancellations led to worsening conditions and increased violence at the EMDC.
84. During his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin observed that correctional officers did not consistently enforce policies, institutional rules, and

standing orders and that newer correctional officers did not appear to be adequately trained.

85. During his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin observed that the EMDC was filthy and poorly maintained. The facility had a pungent and putrid odour; a failed plumbing system caused frequent flooding on the floor; dirty water dripped from the ceiling; and, hygiene issues were common. Mr Sabourin regularly observed food stuck to the walls and floors for days. He tried hard to keep his cell clean, but it remained filthy despite his efforts.
86. Mr Sabourin also observed that the ventilation ducts at the EMDC were full of dust and dirt from dried skin and other airborne particles.
87. While incarcerated at the EMDC between September 13, 2019 to October 17, 2020, Mr Sabourin witnessed other inmates making “jail brews” by fermenting fruit, vegetables, bread and sugar in shampoo bottles, pop bottles and/or garbage bags. Inmates often became drunk from consuming these brews.
88. Mr Sabourin also witnessed frequent drug use and overdoses amongst the inmates.
89. Mr Sabourin states that at all material times the Defendant knew or ought to have known of the threats, violence, overcrowding and unsanitary conditions that he and the other Class Members endured at the EMDC during the Claim Period, but took no steps to address those issues.
90. In addition to the conditions and experiences described above, during his September 13, 2019 to October 17, 2020 incarceration, Mr Sabourin experienced difficulty accessing

healthcare at the EMDC. There was often a long waiting list to see a doctor or psychologist. While at the EMDC, Mr Sabourin developed an abscessed tooth and was in extreme pain. Despite his repeated requests to see a dentist, Mr Sabourin never got to see one to receive treatment.

DAMAGES

91. Mr Sabourin states that the Defendant knew, or ought to have known, that as a consequence of its negligence, breach of duty and violation of rights guaranteed by ss 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Mr Sabourin and the other Class Members would suffer significant physical, emotional and psychological harm.
92. Mr Sabourin and the other Class Members have been sexually, physically, mentally and emotionally traumatized by their experiences arising from their incarceration at the EMDC during the Claim Period as a consequence of the conditions and conduct of the Defendant and its servants, agents and employees as described above. In general, and without restricting the generality of the foregoing, Mr Sabourin and the other Class Members have suffered:
 - (a) physical injuries;
 - (b) fear and intimidation;
 - (c) adverse effects on interpersonal relationships;
 - (d) an impaired ability to complete or pursue education;
 - (e) an impaired ability to obtain and sustain employment, resulting in lost or reduced income and ongoing loss of income;

- (f) reduced earning capacity;
 - (g) an impaired ability to deal with persons in authority;
 - (h) an impaired ability to trust other people or to sustain intimate relations;
 - (i) an impaired ability to express emotions in a normal and healthy manner;
 - (j) psychological disorders, including depression and anxiety;
 - (k) post-traumatic stress disorder;
 - (l) a need for medical and psychological treatment and counselling;
 - (m) an increased need for medical and psychological treatment and counselling;
 - (n) an impaired ability to enjoy and participate in recreational, social, athletic and employment activities;
 - (o) physical pain and suffering;
 - (p) loss of friendship, companionship and support of friends and community; and,
 - (q) loss of enjoyment of life.
93. Mr Sabourin states that the damages suffered by Mr Sabourin and the other Class Members were an entirely foreseeable consequence of the conduct of the Defendant.
94. Mr Sabourin pleads that the Defendant's conduct and actions in the circumstances have caused Mr Sabourin and the other Class Members to develop certain psychological

defence mechanisms in order to survive the conditions and abuse at the EMDC. These defence mechanisms include denial, repression, dissociation and guilt.

95. Further, Mr Sabourin states that the fear and intimidation instilled in Class Members as a consequence of the violence and conditions prevalent at the EMDC have prevented Class Members from coming forward or rendered them unable to pursue their claims.
96. The Defendant's conduct prevented the Class Members from discovering the wrongfulness of the Defendant's actions, the nature of their injuries, and/or the nexus between their injuries and the abuse.
97. The Class Members have received little or no meaningful therapy regarding the abuse suffered at the EMDC. They are still in the process of coming to understand and appreciate the full extent of the injuries caused to them by the abuse and the nexus between the abuse and injuries caused by the abuse. The Class Members require therapy and medical attention. The Class Members were incapable of commencing the proceeding before now because of their physical, mental or psychological condition.
98. Further, as a result of the conduct of the Defendant above, the Class Members have incurred out-of-pocket expenses, including medical expenses, hospital accounts, x-ray accounts, physician accounts, prescription drugs, medical, transportation and rehabilitation costs, lost income, housekeeping and other related expenses. The full particulars of these accounts will be delivered to the Defendant prior to trial.

99. Mr Sabourin proposes that this action be tried in the City of London, in the Province of Ontario.

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Defendant

Court File No. 1406/19 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

FRESH AS AMENDED STATEMENT OF CLAIM

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