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**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN: APRIL NEARY
FIRST PLAINTIFF

AND: APRIL NEARY, as the
Administratrix of the Estate
of the late Douglas Michael Neary
SECOND PLAINTIFF

AND: TAINIA MARIE NEARY
THIRD PLAINTIFF

AND: CORY DOUGLAS JAMES NEARY
FOURTH PLAINTIFF

AND: HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOAR
DEFENDANT

STATEMENT OF CLAIM

The Parties

1. The First Plaintiff, April Neary, is the widow of the late Douglas Michael Neary. At all times material to this action she was resident of the Province of Newfoundland and Labrador. Her address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador A1C 1T2. Her contact telephone number is 709-739-6688.

2. The Second Plaintiff, April Neary, is the Administratrix of the Estate of the late Douglas Michael Neary. At all times material to this action she was a resident of the Province of Newfoundland and Labrador. The Second Plaintiff's address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador A1C 1T2. The contact telephone number is 709-739-6688.
3. The Third Plaintiff, Tainia Marie Neary, is the mother of the deceased, Douglas Michael Neary. At all material times she was a resident of Newfoundland and Labrador. Her address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador A1C 1T2. Her contact telephone number is 709-739-6688. At all times material she enjoyed a close and loving relationship with her son, Douglas Michael Neary. About a year before the deceased death she moved in with the deceased and his family to provide care and comfort after he had a medical operation. She continued to live with the First Plaintiff and her family after her son died. She remains close to her daughter-in-law and grandchildren.
4. The Fourth Plaintiff, Cory Douglas James Neary, is the elder brother of the deceased, Douglas Michael Neary. At all material times he was a resident of Newfoundland and Labrador. His address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador A1C 1T2. His contact telephone number is 709-739-6688. At all times material the Fourth Plaintiff enjoyed a close and loving relationship with his brother, Douglas Michael Neary.
5. The Defendant is Her Majesty in Right of Newfoundland and Labrador. The Defendant's address for service is Department of Justice and Public Safety, PO Box 8700, 4th Floor, East Block, Confederation Building. St. John's, NL A1B 4J6. The Defendant's phone number is 709- 729-5942.

6. The Defendant, Her Majesty in Right of Newfoundland and Labrador, at all times relevant, operated Her Majesty's Penitentiary pursuant to the Prisons Act, R.S.N.L. 1990 c. P-21 and the regulations. By virtue of the said Prisons Act and Regulations the Defendant was responsible for:
 - (i) The organization, efficiency, government, management, administration, inspection, guarding and securing of the Penitentiary;
 - (ii) Prescribing the duties of Penitentiary staff;
 - (iii) Regulating the instructing of the Penitentiary staff;
 - (iv) The custody, treatment, maintenance, diet, clothing, training, employment, discipline, correction, searching, prevention of escape, punishment of inmates; and
 - (v) Provisions of health care to inmates within the Penitentiary.
7. The staff of the Penitentiary, pursuant to section 2(e) of the Prisons Act includes the Superintendent, Assistant Superintendent, commissioned officers and non-commissioned officers, correctional officers and other persons employed at the Penitentiary.
8. The Superintendent, pursuant to the Prisons Act, may make rules not inconsistent with Prisons Act respecting routines, procedures and duties to be carried out by the prison staff.
9. The Plaintiffs plead Proceedings Against the Crown Act, R.S.N.L. c. P-26 and state that pursuant to section 5 of the said Proceedings Against the Crown Act the Crown is liable for damages in respect of a tort committed by its officers or agents, and in particular including the Superintendent and staff of Her Majesty's Penitentiary as defined in section 2(e) of the Prisons Act.

Background

10. Douglas Michael Neary died at Her Majesty's Penitentiary on August 31, 2017 at approximately 00:35 hours. At the time he was being held on remand. Douglas Michael Neary was not serving a custodial sentence and had not been convicted of any crime at the time of his death.

11. Douglas Michael Neary was thirty-seven (37) years old at the time of his death. Douglas Michael Neary's trade was generally that of a painter and plasterer. At the time of his death he was the sole owner of the business "Always Your Choice Painter and Painter Inc." Prior to that he was a sole proprietor of another business called "S & K Finishing".
12. At the time of his death Douglas Michael Neary was married. Mr. Neary and his wife (the First Plaintiff) had been together for seventeen (17) years and married for eight (8) years. They were in a loving and committed relationship.
13. Douglas Michael Neary was initially taken into custody on August 3, 2017. Douglas Michael Neary had no prior criminal record. This was the first time he had been incarcerated. He was released on an Undertaking. Douglas Michael Neary was re-arrested on August 11, 2017 for breaches of his undertaking.
14. Prior to admission to Her Majesty's Penitentiary, Douglas Michael Neary was assessed by Penitentiary nurse practitioners at the City Lockup on August 3 and 5, 2017. Mr. Neary advised the institutional nursing staff he suffered social anxiety, depression, bipolar disorder and was taking psychiatric medication. Upon his initial arrest his family informed police officers that he had a drug and alcohol addiction issue.
15. Douglas Michael Neary was assessed by Penitentiary institutional psychiatrist, Dr. Jasbir Gill, on August 11, 2017. Upon admission to Her Majesty's Penitentiary Mr. Neary was again assessed this time by an institutional Classification Officer. The Classification Officer deemed Douglas Michael Neary as a high-risk inmate. A suicide assessment was conducted by a Classification Officer. It was noted he had been subject to a psychiatric assessment upon his detention on August 11, 2017 while at the lock up.

16. On or about August 16, 2017 Douglas Michael Neary hurt his hand in a closing door at the prison. In fact, he broke a bone or bones in his hand. He repeatedly requested assistance through correctional officers to see the institutional doctor. Mr. Neary requested ice. He was not provided anything for the pain. His hand and wrist swelled. He complained to the institutional nurse. He requested correctional officers to bring him to the hospital. He was refused health care or medical attention. He was refused any assistance. One of the correctional officers told him to stop whining.
17. On or about August 17, 2017 Mr. Neary was eventually brought to the Health Sciences Centre where it was determined he had a fracture. His hand was put in a cast.
18. While at the hospital, under the supervision of Correctional Officers, Douglas Michael Neary was shackled in handcuffs. The Plaintiffs plead the correctional officers exceeded the force necessary in the placement of the shackles and handcuffs and such conduct was beyond that required to keep Mr. Neary subdued or restrained. Mr. Neary was not a flight risk. The Plaintiffs plead the use of force against Mr. Neary amounted to intentional infliction of physical harm. Furthermore, the actions of the correctional officers while Mr. Neary was at the hospital and their treatment of Mr. Neary were demeaning, caused physical harm and caused psychological harm, pain and suffering.
19. While at the Health Sciences Center on or about August 17, 2017 Douglas Michael Neary asked the attending correctional officers if he would be receiving his doctor prescribed medication. He was told he would have to wait to see what the Health Sciences doctor said. He requested the Correctional Officers to call the Penitentiary nurse to have the medication verified. Mr. Neary was in handcuffs and was unable to call the institutional nurse himself. The attending correctional officers refused to permit him to call the institutional nurse and told him to wait until he was seen by a hospital doctor. The attending correctional

officers then proceeded to engage in degrading, demeaning and denigrating actions. One of the correctional officers attempted to scare him. He went so far as to putting on doctor's gloves and shining a light in Mr. Neary's eyes and ears while Mr. Neary was shackled and in handcuffs. The correctional officer went on to tell him he did not need any medications. While being treated by the attending physician Mr. Neary asked for his medications. The attending correctional officers informed the attending physician that Mr. Neary would receive his medications when he returned to the Penitentiary. Mr. Neary understood he would not get them upon his return because it would be too late. Nevertheless, no efforts were made to obtain pain relieving medication.

20. Throughout his incarceration Douglas Michael Neary was assessed by institutional staff, including penitentiary institutional psychiatrist, Dr. David Craig. Throughout his medical attention he complained of increased anxiety, expressed concerns about his anti-depressants, described panic attacks, reported his self-esteem was deflated and expressed being generally overwhelmed as he had no firsthand experience on the operations of the institution.
21. On August 29, 2017 Douglas Michael Neary informed correctional officers that he had feared for his safety as inmates were threatening him for his medications. He passed a note on this issue to a correctional officer. He was transferred from the remand unit for medical observation.
22. On or about August 28 or 29, 2017 Douglas Michael Neary was taken off his mental health care medication.
23. At some point Douglas Michael Neary was transferred to cell #6 in the West Wing Unit. At all times material this unit was under observation by a closed circuit television recording system.
24. On August 30, 2017 the inmates were locked down for the night. Mr. Neary had placed a sheet tied to the right corner of his cell. This was in breach of HMP Standing Order 3.02 which states: "It is imperative to ensure that windows/bars in

each cell/range have not been tampered with and there is nothing blocking it (i.e. towels, blankets, cereal boxes, etc.).” The Plaintiffs plead the Standing Order was issued under the authority of the Prisons Act.

25. There had been a light left on in Mr. Neary’s cell. This was in breach of Standing Orders which require all lights be off by 23:30 hours (Standing Order 23.09 –Cell Lights). The Plaintiffs plead the Standing Order was issued under the authority of the Prisons Act.
26. At approximately 00:30 hours on August 31, 2017 a correctional officer entered the West Wing unit to conduct an hourly count of inmates. The correctional officer observed the bed sheet covering the bars in Mr. Neary’s cell. The correctional officer observed Mr. Neary hanging against the bars. The correctional officer called for emergency services.
27. Institutional staff initiated resuscitation efforts. Mr. Neary was transferred to the Health Sciences Centre. Mr. Neary was pronounced dead at 01:23 hours.
28. When the correctional officer carrying out the inmate count at 00:30 hours called for other correctional staff, one of the correctional officers left his one person post on the East Wing Bottom Unit. This was a breach of Prison Regulation 7(1)(j): “An officer shall not be asleep on duty or leave a post without being properly relieved.” The correctional officer had left his post and responded to the emergency without being properly relieved. The Plaintiffs plead the Prison Regulation 7(1)(j) was issued under the authority of the Prisons Act.

The Defendant’s Duties

29. The Plaintiffs plead the Defendant’s obligations include the duty to provide inmates with essential health care services and take reasonable steps to ensure that living conditions of inmates are safe, healthy and to ensure that inmates receive proper health care and are treated with dignity and respect, and they do not commit suicide.

30. The Plaintiffs plead that at all times material the deceased, Douglas Michael Neary, was under the supervision, care, custody and control of the Defendant, including the Defendant's Superintendent of Prisons, correctional officers, supervisors and institutional medical staff (including doctors, nurses, licensed nurse practitioners and psychiatrists).
31. The Plaintiffs plead the action or inaction of the Defendant's Superintendent of Prisons, correctional officers, supervisors and institutional medical staff and their failure to abide by policies and procedures resulted in Mr. Neary's suffering and death.
32. The Plaintiffs rely in part, on findings set out in the "Newfoundland and Labrador Corrections and Community Services: Deaths in Custody Review" dated December 12, 2018 in identifying institutional failings and negligence, and plead, *inter alia*, the Defendant's conduct, or lack thereof, included:
 - (i) Breaches of Standing Orders;
 - (ii) Incarcerating Douglas Michael Neary in a dilapidated facility which was overcrowded and constant state of disrepair;
 - (iii) Failure to provide adequate recreation and exercise opportunities;
 - (iv) Failing to amend the legislation governing the operation of Her Majesty's Penitentiary to bring operational systems into line with current corrections best practices;
 - (v) Failing to recognize the rights of inmates and implement legislation and institutional policies, practices and procedures respecting inmates rights;
 - (vi) Creating and perpetuating an environment of arbitrary decision making which was unfair to inmates;
 - (vii) Ignoring existing policies;
 - (viii) Failing to adequately staff Her Majesty's Penitentiary;
 - (ix) Leaving health related complaints to be assessed by institutional, non-qualified, non-medical staff;
 - (x) Failing to ensure mandatory training requirements for correctional officers were completed, in particular, but not limited to basic First Aid procedures and Mental Health Awareness;
 - (xi) Failing to develop and/or maintain an adequate, if any, training programme for correctional officers;
 - (xii) Carrying out inmate counts at scheduled times;
 - (xiii) Failing to maintain a properly operating CCTV security system;

- (xiv) Failing to implement an efficient Communication and Information Management system;
- (xv) Failing to recognize the changing needs of inmates in recent years and provide adequate programmes, staff and resources;
- (xvi) Failure to have communications and consultations with inmates' outside health care providers respecting diagnosis, therapy and/or medications; and
- (xvii) Failure to address the abysmal lack of communication between the forensic psychiatric unit and the prison administration, as identified in the 1993 Justice Reid Judicial Inquiry Report on the death of Michael William Simon, Jr.

Claims

Statutory Breach – Failure to provide Health Care

33. The Plaintiffs plead the Defendant, through the Superintendent of Prisons, correctional officers, supervisors and institutional medical staff, failed to provide proper health care to Douglas Michael Neary, the particulars of which include but are not limited to:

- (i) failing to provide competent and reasonable health care;
- (ii) failing to provide essential health care, including mental health care;
- (iii) failing to provide reasonable access to medical care, including, but not limited to failing to bring Mr. Neary to hospital when he broke his hand,
- (iv) failing to provide necessities of life;
- (v) failing to provide health care that conformed to professionally accepted standards;
- (vi) failing to create a proper body within the institution to perform the functions of identifying needs and services requirements for prioritization of mental health services, monitoring and documenting the clinical progress of inmates on a regular basis; and
- (vii) failing to provide a continuum of essential health care at Her Majesty's Penitentiary and in particular with respect to mental health services consistent with professional and community standards including individual assessment in appropriate facilities.

Liability for Negligence

34. The Plaintiffs state the Defendant owed a duty of care to the Plaintiffs to take reasonable care of Douglas Michael Neary's health and safety as a person in the custody of Her Majesty's Penitentiary.

35. Douglas Michael Neary was completely dependent on the Defendant and its staff to implement measures to provide him with appropriate medical treatment, health care, including psychological treatment and personal safety.
36. The Plaintiffs state the Defendant, through its Superintendent of Prisons, correctional officers, supervisors and institutional medical staff, individually and/or collectively, breached the aforesaid duty of care owed to them through their actions and/or inactions in the face of an inmate in need of specialized care, in the case Douglas Michael Neary. The Plaintiffs state Mr. Neary's medical crisis and subsequent death arose due to the negligence and or reckless indifference of the Defendant by it's employees and agents. The Plaintiffs state the negligent and/or reckless actions and/or inactions of the Defendant as pled herein caused Douglas Michael Neary's death and injury which the Defendant's staff including Superintendent of Prisons, correctional officers, supervisors and medical staff knew or ought to have known said death and injury would occur as a result of their negligence and/or reckless indifference.
37. Without restricting the generality of the foregoing, the Plaintiffs plead some of the particulars of the negligent conduct are as follows:
 - (i) Breaches of law and policy by which the Defendant failed to meet their standard of care;
 - (ii) Failing to have a comprehensive health assessment completed on the deceased, Douglas Michael Neary;
 - (iii) Providing piecemeal and inconsistent mental health services to inmates generally and Douglas Michael Neary in particular;
 - (iv) Failing to ensure that correctional employees were competent and received proper, if any, training necessary to manage inmates specialized needs such as those of Douglas Michael Neary;
 - (v) Failing to ensure care and assessment by a doctor in a timely and sufficient manner following his incident of injury to his hand;
 - (vi) Failing to provide appropriate psychiatric attention or treatment;
 - (vii) Failing to ensure Douglas Michael Neary did not have access to materials that could be used to harm himself;
 - (viii) Failing to ensure prison protocol was followed, including but not limited to, ensuring that blankets were not put up to prevent correctional officers from viewing cells;

- (ix) Failing to exercise the standard of care required by the Defendant and its Superintendent of Prisons, supervisors, correctional officers and medical staff;
- (x) Failing to take into consideration very significant suicide pre-indicators such as drug and alcohol use or abuse, dependence on substances, stressors on first time inmates, presence of anxiety and depression and concluding that Douglas Michael Neary was a low risk for suicide; and
- (xi) Discontinuing his medications.

38. The Defendant's obligation included the duty to take reasonable steps to protect vulnerable and at-risk inmates, of which Douglas Michael Neary was one, and to take reasonable care of inmates. The Plaintiffs plead the Defendant failed to provide a safe and healthy environment for Douglas Michael Neary, as an inmate on remand.
39. The Plaintiffs plead the Defendant had an obligation to provide Douglas Michael Neary with essential health care that conformed to professionally acceptable standards. The Plaintiffs repeat paragraph 38 above and state the Defendant breached this obligation and were negligent in doing so.
40. The Plaintiffs state Douglas Michael Neary's death was preventable and that the death was caused or contributed to by the Defendant's negligent conduct as set out herein.
41. The Plaintiffs plead the Defendant knew or ought to have known Douglas Michael Neary would become suicidal, which in fact did occur, and were negligent in failing to prevent the suicide.
42. Throughout the period of his incarceration, and especially closer towards August 31, 2017, instead of being attentive to Mr. Neary's mental health and physical needs the Defendant knowingly or recklessly exasperated his mental illness which the Defendant knew or ought to have known would have increased Mr. Neary's likelihood of harm to himself and the likelihood of damages to the Plaintiff.

43. The Plaintiffs state they suffered negligence as a result of the negligent conduct of the Defendant with said damages including the death of Douglas Michael Neary and the losses resulting there as more particularly delineated below.

Infliction of Mental Suffering and Psychiatric Damage

44. The Plaintiffs plead that Douglas Michael Neary was subject to degrading, demeaning and abusive behaviour by correctional officers' conduct when he was brought to the Health Sciences Centre, for which the Defendant is directly and vicariously liable. The particulars of which said conduct are set out in paragraphs 17-20 above.
45. The Plaintiffs plead the Defendant, and its correctional officers, knew or ought to have known that their conduct, as described herein, would cause Douglas Michael Neary to suffer psychiatric harm and/or other losses including his death.
46. The Plaintiffs repeat paragraphs 17-20 above, *ad seriatim*, respecting the treatment of Douglas Michael Neary while at the Health Sciences Center and elaborate with respect to further intentional infliction of mental suffering and psychiatric damage as follows:
- (i) On or about August 22, 2017 Douglas Michael Neary requested paper so he could make a phone call. He was told no because the printer was broken. When another correctional officer gave paper to another inmate Mr. Neary pointed this out and was told by the correctional officers to "fuck off and go have a cry somewhere". When Mr. Neary asked for the correctional officer's name he was told it was his first time in jail and he was going to end up learning, which Douglas Michael Neary took as a threat. The correctional officer next came to Mr. Neary's cell and tried to incite him into doing something. The correctional officer poked fun at Mr. Neary and intimidated him. Later that night the same correctional officer came to his cell and continued to incite him.
 - (ii) On or about August 24, 2017, after Douglas Michael Neary had been requesting medical tape for two days due to the tightness of his cast and having not yet received any tape, he asked to speak to a supervisor. At the same time, he had still been requesting, for two or three days, to make an outside phone call. A correctional officer came into his personal space, threatening him and got close to his face and told Douglas Michael Neary

that he better think about asking any more questions or he would end up with more than a broken hand. The same correctional officer followed him into his cell and threatened him again and then locked him in his cell. Later this correctional officer came screaming at Mr. Neary and told him that if he heard one more word out of him, he would bring him to the first floor where there were no cameras. Mr. Neary took this as a direct threat. This demeaning, degrading and taunting behaviour by the correctional officers was seen and observed by other inmates. It is not known if these inmates were interviewed in the investigation undertaken by the Royal Newfoundland Constabulary into the death of Douglas Michael Neary.

47. Mr. Neary felt so threatened by the correctional officers' conduct that when it came time for supper at 4:15 p.m. he refused to leave his cell for supper because he felt unsafe. He was locked in his cell and did not have supper that evening.
48. The Defendant's correctional officers actions were even more egregious as the Defendant held a special position of authority over Douglas Michael Neary and was responsible for his health and safety while being held at Her Majesty's Penitentiary.
49. The Defendant was aware, or ought to have been aware, that such reprehensible conduct towards inmates, in particular Douglas Michael Neary, was likely to cause harm and anguish Douglas Michael Neary and to the Plaintiffs herein if Mr. Neary harmed himself.

Abuse of Public Office

50. The Defendant is a holder of public office, exercising public and/or statutory functions. The Plaintiffs plead the Prisons Act R.S.N.L. 1990 c.P-21 and Regulations, which provide for the governance and operation of adult custody institutions in the province, and specifically Her Majesty's Penitentiary in St. John's, Newfoundland.
51. The Plaintiffs repeat and rely on the allegations set out herein and state the Defendant deliberately violated the law in respect to conditions of confinement, the provision of health care services, following its own procedures, Standing

Orders and Regulations and failing to provide necessaries of life to Douglas Michael Neary.

52. The Defendant was aware that its' unlawful conduct was likely to injure the Plaintiffs.
53. In the alternative the Defendant was reckless, its conduct was unlawful and likely to injure the Plaintiffs.
54. The Plaintiffs plead that in violating the law as described the Defendant caused harm and losses to the Plaintiffs, as described further below, which harm and losses resulted from the unlawful and preventable death of Douglas Michael Neary.

Breach of Fiduciary Duty

55. The Plaintiffs state the Defendant owed a fiduciary duty to Douglas Michael Neary to ensure his health and safety while he was in the custody of superintendent of prisons.
56. The Plaintiffs repeat paragraph 30 here and state that by virtue of being in the custody of the Superintendent of Prisons, Douglas Michael Neary was at the mercy of the discretion of the Defendant. The Defendant, by virtue of the custodial relationship, was in a position to unilaterally exercise power over Douglas Michael Neary so as to affect his legal and/or practical interests. Thus the Defendant owed a fiduciary duty to attend to Douglas Michael Neary's physical health care and psychological needs and to ensure his incarceration at Her Majesty's Penitentiary was in compliance with the law.
57. The Defendant breached the fiduciary duties owed to Douglas Michael Neary throughout his incarceration at Her Majesty's Penitentiary. The Defendant's breach of its fiduciary duties caused harm and losses and damages to the Plaintiffs. The Plaintiffs plead the Defendant breached its fiduciary duties owed to Douglas Michael Neary and the Plaintiffs as follows:

- (i) Failure to properly attend to Douglas Michael Neary's physical needs, health care and mental health needs;
- (ii) Failure to provide appropriate access to mental health treatment;
- (iii) Permitting correctional officers to demean, distress, taunt and undermine Douglas Michael Neary's sense of security and well-being while incarcerated;
- (iv) Permitting Douglas Michael Neary to be housed in circumstances that were a breach of Penitentiary rules, regulations, operational procedures and/or protocols; and
- (v) Failure to provide proper medication to Douglas Michael Neary.

58. For the reasons set out in paragraphs 55-57 above, the Plaintiffs state that the Defendant breached fiduciary duties owed to Douglas Michael Neary throughout his time at Her Majesty's Penitentiary and thereby caused loss and damages to the Plaintiffs as a result of the unlawful and preventable death of Douglas Michael Neary.

Breach of Section 7 of the Charter of Rights and Freedoms

59. The Plaintiffs state Douglas Michael Neary had a constitutional 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. The Plaintiffs plead and rely on the section 7 of the Constitutional Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982 c. 11 (The Charter).

60. At all times material Douglas Michael Neary relied on the Defendant to provide him with a safe and healthy custodial environment and to take steps to protect him. The Plaintiffs state the Defendant knew or ought to have known that Douglas Michael Neary was a high risk inmate, or suicidal, or subject to suicidal intention, and failed to intervene to prevent his suicide.

61. The Plaintiffs state the Defendant breached Douglas Michael Neary's constitutional right to life when they failed, *inter alia*, to:

- (i) Provide him with timely and potential lifesaving mental health care and treatment when the Defendant knew or ought to have known that Douglas

Michael Neary's psychological condition was deteriorating in the lead-up to his death;

- (ii) Recognize that Douglas Michael Neary's behaviour, including his drug addictions and other psychological circumstances, were pre-cursors to suicide; and
- (iii) Develop and implement a treatment plan that would address Douglas Michael Neary's health care needs.

62. The Plaintiffs plead the Defendant relied on force and control measures, rather than developing strategies to treat Douglas Michael Neary's mental health condition, in a manner which deprived Douglas Michael Neary's right to life, liberty and security of the person to which he was entitled pursuant to section 7 of the Charter and thereby breached his section 7 Charter rights.
63. The Plaintiffs repeat paragraphs 45 to 49, *ad seriatim* and state these actions caused or contributed to Douglas Michael Neary's untimely death.
64. The Plaintiffs state the Defendant is vicariously liable for its employees breach of Douglas Michael Neary's Charter rights.

Breach of Section 12 of the Charter of Rights and Freedoms

65. The Plaintiff states Douglas Michael Neary had the right not to be subject to cruel and unusual treatment or punishment. The Plaintiffs plead and rely on section 12 of the Charter.
66. The Plaintiffs plead and rely on the Defendant's breach of law and policy as set out above in paragraphs 5,6,7,8,9,44-49, *ad seriatim*. The Plaintiffs state the Defendant's conduct constitutes cruel and unusual treatment or punishment in:
- (i) Failing to develop and implement a treatment plan for Douglas Michael Neary's mental health care needs;
 - (ii) Failing to adequately take Douglas Michael Neary's state of health (both before and during his incarceration) into consideration in decision-making regarding his security classification, placement and general treatment while incarcerated;
 - (iii) Treating Douglas Michael Neary's reported fear of physical harm from other inmates in a cavalier and dismissive manner rather than as a mental health issue requiring treatment; and

(iv) The Plaintiffs also repeat paragraphs 45 to 49 *ad seriatim* and state this behaviour by correctional officers constituted cruel and unusual treatment or punishment.

67. The Plaintiffs repeat paragraph 66(iv) and paragraphs 44 to 49, *ad seriatim*, and state the correctional officers conduct was egregious, grossly inappropriate and deliberate in that the correctional officers knew Douglas Michael Neary was a first time inmate, had special mental health needs and intentionally, cruelly and viciously took advantage of his fears, insecurities and terror all of which constituted cruel, unusual treatment or punishment which caused or contributed to his untimely demise.

68. The Plaintiffs plead the correctional officers knew, or ought to have known, that as a new inmate with no experience being incarcerated in Her Majesty's Penitentiary, Douglas Michael Neary was deemed a high risk to harm inmate. The correctional officers knowingly and maliciously violated his section 12 Charter rights.

69. The Plaintiffs state the Defendant is vicariously liable for its employees breach of Douglas Michael Neary's Charter rights

Breach of Section 15 of the Charter of Rights and Freedoms

70. The Plaintiffs plead Douglas Michael Neary had the right to equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disability. The Plaintiffs plead and rely on section 15 of the Charter.

71. The Plaintiffs plead as a remand inmate at Her Majesty's Penitentiary, that Douglas Michael Neary's mental health and physical injuries were not properly assessed or treated in timely manners by appropriate health care professionals, and were in fact intentionally ignored.

72. While an inmate with diagnosed mental health issues Douglas Michael Neary did not receive the same health care treatment at Her Majesty's Penitentiary he would have received had he not been incarcerated, which said institutional treatment was inferior medical treatment which negatively impacted his mental health and contributed to his death, thereby violating his rights under section 15(1) of the Charter rights to the equal protection of the law without discrimination based on mental disability.
73. The Plaintiffs plead Douglas Michael Neary did not receive medical health care and/or mental health care equal to non-incarcerated individuals and that Douglas Michael Neary's section 15 Charter rights were thereby breached.

Damages

74. The First Plaintiff repeats the preceding paragraphs and states as a result of the Defendant's (i) breach of statutory duties, (ii) negligence, (iii) infliction of mental suffering, (iv) abuse of public office and breaches of law and policies, (v) breach of statutory duties, (vi) vicarious liability, (vii) breach of fiduciary duty, and (viii) breaches of Charter rights, the First Plaintiff suffered damages and losses, including but not limited to:
- (i) Funeral and burial costs for Douglas Michael Neary;
 - (ii) Loss of Income from the death of Douglas Michael Neary;
 - (iii) Loss of care, guidance and companionship from the death of Douglas Michael Neary;
 - (iv) Loss of consortium from the death of Douglas Michael Neary;
 - (v) Loss of society from the death of Douglas Michael Neary;
 - (vi) Loss of affection from the death of Douglas Michael Neary;
 - (vii) Economic loss associated with loss of opportunity;
 - (viii) Loss of employment benefits;
 - (ix) Loss of future pension benefit incomes;
 - (x) Personal loss of employment resulting from inability to maintain employment while dealing with stress arising from the death of Douglas Michael Neary;
 - (xi) Loss of equity from the sale of the home;
 - (xii) Moving expenses to relocate her family out of province for new job opportunity;

- (xiii) Counselling expenses for private counsellor and therapy required as arising from the death of Douglas Michael Neary;
- (xiv) Depression, panic, anxiety and psychological stress upon learning of her husband's death and realizing it could have been prevented; and
- (xv) Any other losses as may become apparent on future analysis.

75. The First Plaintiff repeats the preceding paragraphs hereof and states that at the time of his death the deceased, Douglas Michael Neary, left two minor children. The First Plaintiff claims on behalf of the two minor children as follows:

- (i) Loss of care, guidance, companionship and affection;
- (ii) Contribution to costs associated with child support, special expenses, general expenses for raising the children including school, sports, extra-curricular activities, post-secondary education etc.
- (iii) Such other losses by the minor children as may become apparent upon future analysis.

76. The Second Plaintiff repeats the preceding relevant paragraphs and states as a result of the Defendant's (i) breach of statutory duties, (ii) negligence, (iii) infliction of mental suffering, (iv) abuse of public office and breaches of law and policies, (v) breach of statutory duties, (vi) vicarious liability, (vii) breach of fiduciary duty, and (viii) breaches of Charter rights, the Second Plaintiff suffered damages and losses, including but not limited to:

- (i) Funeral and burial costs;
- (ii) Loss of Income from the death of Douglas Michael Neary;
- (iii) Loss of care, guidance and companionship from the death of Douglas Michael Neary;
- (iv) Loss of consortium from the death of Douglas Michael Neary;
- (v) Loss of society from the death of Douglas Michael Neary;
- (vi) Loss of affection from the death of Douglas Michael Neary;
- (vii) Economic loss associated with loss of opportunity;
- (viii) Loss of employment benefits;
- (ix) Loss of future pension benefit incomes;
- (x) Loss of business revenue;
- (xi) Private Counselling and therapeutic expenses for the deceased's wife and children arising from mental health issues associated with the death of Douglas Michael Neary; and
- (xii) Any other losses or damages as may become apparent on future analysis.

77. The Third and Fourth Plaintiffs, Tainia Marie Neary and Cory Douglas James Neary repeat the claims herein and state they have suffered losses and damages as a direct result of the conduct of the Defendant and claim damages as following:

- (i) Depression;
- (ii) Anxiety;
- (iii) Nervousness and Irritability;
- (iv) Moods swings;
- (v) Insomnia, Sleep Disturbance and Nightmares;
- (vi) Emotional trying times;
- (vii) Loss of care, guidance and companionship.

Charter Damages

78. The Plaintiffs state that an award of damages pursuant to section 24(1) of the Charter is appropriate and just in the circumstances, as a result of the Defendant's breaches of section 7, 12 and 15 of the Charter.

79. It was foreseeable the Defendant's conduct would lead to Douglas Michael Neary's death while under the care, control and custody of the Defendant, thereby constituting a breach of the deceased's right to life, liberty and security of the person pursuant to the Charter. The Plaintiffs state that the right to life pursuant to section 7 is a fundamental right that must be maintained. The Plaintiffs state that an award of Charter damages will serve to deter future deprivation of the right to life, liberty and security of the person by the Defendant.

Aggravated and Punitive Damages

80. The Plaintiffs state the conduct of the Defendant towards Douglas Michael Neary demonstrated a wanton apathy for his rights and constituted deliberate, malicious, cruel, vindictive, reprehensible disregard for Douglas Michael Neary's health and safety, which said conduct caused or contributed to his untimely demise thus warranting an award for aggravated and punitive damages.

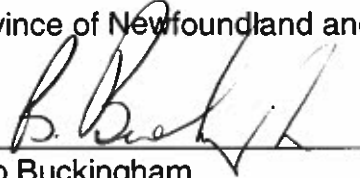
Other Claims and Damages

81. The Plaintiffs further claim as follows:

- (a) A declaration that the Defendant's conduct breached section 7 of the Constitution Act, 1982 Schedule C to the Canada Act 1982 (UK), 1982, c. 11.
- (b) A declaration that the Defendant's conduct breached section 12 of the Constitution Act, 1982 Schedule C to the Canada Act 1982 (UK), 1982, c. 11.
- (c) A declaration that the Defendant's conduct breached section 15 of the Constitution Act, 1982 Schedule C to the Canada Act 1982 (UK), 1982, c. 11.
- (d) Damages, to be determined, for: (i) breach of right to life, liberty and security of the person; (ii) not to be subjected to any cruel and unusual punishment; (iii) to equal protection, equal benefit of the law without discrimination pursuant to section 24(1) of the Constitution Act, 1982 Schedule C to the Canada Act 1982 (UK), 1982, c. 11.
- (e) Punitive and Aggravated Damages – to be ascertained;
- (f) Special damages, including all funeral costs and headstone, child support etc. – to be ascertained;
- (g) Pre-Judgment and Post-Judgment Interest pursuant to the *Judgment Interest Act* – to be ascertained;
- (h) Costs of the action on a solicitor and own client basis – to be ascertained;
- (i) Such further and other relief this Honourable Court deems just and equitable in all the circumstances.

82. The Plaintiffs propose that this proceeding be tried at the Judicial Centre of St. John's, Newfoundland and Labrador.

DATED AT the City of St. John's, in the Province of Newfoundland and Labrador, this 30th day of August, 2019.



Bob Buckingham
Solicitor for the Plaintiffs
Whose address for service is:
Bob Buckingham Law
81 Bond Street
St. John's, NL A1C 1T2

TO: The Defendant
Her Majesty in Right of the Province
of Newfoundland and Labrador
Department of Justice and Public Safety
PO Box 8700
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6

ISSUED AT the City of St. John's, in the Province of Newfoundland and Labrador, this 30
___ day of August, 2019.

Orig. sgd by: Linda Boyles

~~Assistant~~ Deputy Registrar

2019 01 G 5404

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN: **APRIL NEARY**

FIRST PLAINTIFF

AND: **APRIL NEARY, as the**
 Administratrix of the Estate
 of the late Douglas Michael Neary

SECOND PLAINTIFF

AND: **TAINIA MARIE NEARY**

THIRD PLAINTIFF

AND: **CORY DOUGLAS JAMES NEARY**

FOURTH PLAINTIFF

AND: **HER MAJESTY IN RIGHT OF**
 NEWFOUNDLAND AND LABRADOAR

DEFENDANT

NOTICE TO DEFENDANT

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff(s) are entitled to, without further notice to you unless within 10 days. After service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's a defence and unless within the same time a copy of your defence is served upon the Plaintiff(s) of the Plaintiff(s) solicitor(s) at the Plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the Plaintiff(s) or the Plaintiff's solicitor(s) within days from the service of this notice upon you, then this proceeding will be stayed.

TO: The Defendant
Her Majesty in Right of
Newfoundland and Labrador
Department of Justice and Public Safety
PO Box 8700
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6

3. THAT I was able to identify the person, _____, by _____ identifying himself/herself as the above _____.
4. THAT I understand it is an offence to give false information in an Affidavit.

SWORN TO at St. John's, in the
Province of Newfoundland and Labrador,
this ____ day of _____, 2019,
before me:
