

S.C. No. 20 - A0084

SUPREME COURT OF YUKON

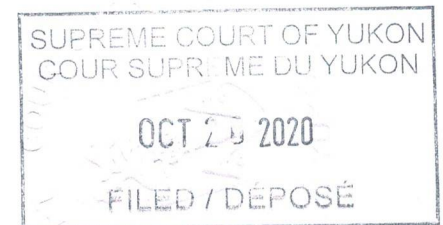
BETWEEN:

**RAY HARTLING
MARK LEWIS LANGE** on their own behalf and on behalf of all other
inmates of the Whitehorse Correctional Centre who were incarcerated in the
Secure Living Unit, the Segregation Unit or in conditions similar thereto
between October 20, 2014 and the present

PLAINTIFFS

AND:

**GOVERNMENT OF YUKON
ATTORNEY GENERAL OF YUKON
WHITEHORSE CORRECTIONAL CENTRE
ERIC HENDRIKS, Assistant Deputy Superintendent
(Whitehorse Correctional Centre)
JAYME CURTIS, Superintendent (Whitehorse Correctional Centre)
TRISHA RATEL, Director of Corrections (Whitehorse Correctional Centre)**



DEFENDANTS

STATEMENT OF CLAIM

Ray Hartling, Mark Lewis Lange c/o:

LAROCHELLE LAW
4133 4th Avenue
Whitehorse, Yukon

Vincent Larochelle (vincent@larochellelaw.ca)
Tel: 867.333.3608

**Government of Yukon
Attorney General of Yukon
Whitehorse Correctional Centre
Eric Hendriks, Assistant Deputy Superintendent (Whitehorse Correctional Centre)
Jayme Curtis, Superintendent (Whitehorse Correctional Centre)
Trisha Ratel, Director of Corrections (Whitehorse Correctional Centre)**

c/o Legal Services Branch
Department of Justice
Government of Yukon
2nd Floor, 2134 Second Avenue
Whitehorse, Yukon Y1A 5H6

TAKE NOTICE that this action has been commenced against you by the plaintiffs for the claims set out in this Statement of Claim.

IF YOU INTEND TO DEFEND this action, or if you have a counterclaim, YOU MUST

- (a) GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in the registry of this court, at the address shown below, within the time for appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this Statement of Claim, and
- (b) FILE A STATEMENT OF DEFENCE in Form 10 in the registry of this court within the time for defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the time for appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the time for defence provided for below.

TIME FOR APPEARANCE

If this Statement of Claim is served on a person in Yukon, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Statement of Claim is served on a person outside Yukon, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days from the end of the time for appearance provided for above.

<p>(1) The address of the registry is:</p> <p>The Law Courts 2134 Second Avenue Whitehorse, Yukon. Y1A 5H6 Telephone: (867) 667-5937 Fax: (867) 393-6212</p>
<p>(2) The plaintiff's ADDRESS FOR DELIVERY (Required: Residential address or business address AND postal address in Yukon) is:</p> <p>LAROCHELLE LAW 4133 4th Avenue Whitehorse, Yukon Y1A 1H8</p> <p><u>Optional</u>:</p> <p>Email address: vincent@larochellelaw.ca;</p> <p>Telephone: 867.333.3608</p>
<p>(3) The name and office address of the plaintiff's lawyer is:</p> <p>Vincent Larochelle LAROCHELLE LAW 4133 4th Avenue Whitehorse, Yukon Y1A 1H8</p>

STATEMENT OF CLAIM
(Rules 5(11), 8, 20)

The Parties

1. Ray Hartling and Mark Lewis Lange were inmates incarcerated at the Whitehorse Correctional Centre (“WCC”).
2. The WCC is a multi-level territorial correctional facility for adults operated by the Defendant Government of Yukon (“Yukon”).
3. Between October 20, 2014 and October 20, 2020, Ray Hartling and Mark Lewis Lange were incarcerated in what was known as the Secure Living Unit (“SLU”).
4. During this same time period, Mr. Hartling and Mr. Lewis also spent time in what was known as the Segregation Living Unit (“SEG”).
5. Ray Hartling was born on April 17, 1971. Mr. Hartling moved to the Yukon in or around 1992.
6. Between March 2016 and July 2019, Mr. Hartling spent over 36 months in the custody of the Whitehorse Correctional Centre.
7. During this period of custody, Mr. Hartling was kept in both SLU and SEG too often to recall with complete accuracy.
8. Further, Mr. Hartling had a psychological breakdown during his numerous stays in either SLU or SEG, and his sense of time and chronology has also been affected.
9. When spending time in SEG, Mr. Hartling was kept in his cell between 22 to 23 hours per day.
10. Between March 15 to March 18, 2018, Mr. Hartling had a psychological breakdown while in SEG. He covered his cell with his own feces and was left there by WCC correctional officers for an extended period of time.
11. While spending time in SLU between February 2018 to April 2018, Mr. Hartling tried slitting his wrists with a nail clipper.
12. At all times during Mr. Hartling’s stay, WCC was aware that he suffered from anxiety attacks, ADD and depression. WCC received regular reports from a psychiatrist who saw Mr. Hartling while he was in the custody of the WCC.

13. Mr. Hartling was released from WCC in July of 2019. Although he has since found full-time employment, he has been left permanently scarred by his stay at WCC. He suffers from PTSD and depression, thinking about his time spent in both SLU and SEG.
14. Mr. Mark Lewis Lange was incarcerated at the WCC between June 2014 and December 2015, and spent significant amounts of time in the SLU or SEG.
15. Mr. Lange returned to WCC in January 2019, and remained there for approximately six months until June 2019.
16. From January 2019 until June 2019, Mr. Lange spent the most part of this period in the SLU or SEG.
17. The respondents at all times knew that Mr. Lange suffers from Attention Hyperactivity Disorder, Fetal Alcohol Spectrum Disorder, and significant brain injury repercussions. The respondents were also aware that Mr. Lange has anti-social personality disorder.
18. Ray Hartling and Mark Lewis Lange bring this Action in their own names and on behalf of all other inmates of the Whitehorse Correctional Centre (WCC) who were incarcerated in the Secure Living Unit (SLU), in the Segregation Unit (SEG), or in conditions similar thereto between October 20, 2014 and the present.
19. This representative Action is brought on behalf of the following sub-classes of persons. In some cases, Plaintiffs are members of multiple sub-classes:
 - Class 1:** All inmates who were incarcerated in the SLU between October 20, 2014 and the present;
 - Class 2:** All inmates who were incarcerated in the SLU between October 20, 2018 and the present;
 - Class 3:** All inmates diagnosed with or suffering from serious mental illness who were incarcerated in the SLU between October 20, 2014 and the present;
 - Class 4:** All inmates who were incarcerated for at least 15 days in the SLU between October 20, 2014 and the present;
 - Class 5:** All inmates who were incarcerated in the SEG between October 20, 2014 and the present.
20. The Defendant Eric Hendriks is the Assistant Deputy Superintendent at WCC. He is one of the persons responsible for supervising the placement of inmates who are housed in the SLU.
21. The Defendant Jayme Curtis was the Superintendent of WCC since July 29, 2013 and therefore the person in charge of the Plaintiffs' incarcerations. As of May 8, 2018, he has

been acting as the Director of Corrections. As Superintendent, he was in charge of the safe, secure and efficient operation of WCC, the well-being of the inmates and the administration of the *Corrections Act, 2009*, S.Y. 2009, c. 3. He was also required to establish the rules for WCC pursuant to s. 15 of the *Corrections Act*.

22. The Defendant Trisha Ratel was the Director of Corrections (Whitehorse Correctional Centre) until May 7, 2018.

The Secure Living Unit

23. The SLU was created pursuant to Policy B4.6 of the *Yukon Corrections: Adult Custody Policy Manual* effective January 1, 2012 and Revised October 25, 2016 (the “**WCC Policy Manual**”).
24. WCC does not officially designate the SLU unit as segregation, but rather as a ‘secure/special living unit’. WCC has a Segregation Unit, which is distinct from the SLU.
25. There is no meaningful distinction between the SLU and the Segregation Unit at the WCC.
26. The conditions in the SLU constitute segregation and, at times, solitary confinement, as defined in the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UNGAOR, 70th Sess., UN Doc. A/Res/70/175 (17 December 2015).
27. Inmates in SLU experience the following deprivations:
 - a) They are separated from the general population;
 - b) They spend a significant amount of time alone in their cell;
 - c) They have very limited interactions with other inmates, and have interactions with very few inmates;
 - d) They are subject to increased observation and monitoring;
 - e) Their movements within the correctional centre are restricted;
 - f) They have significantly diminished access to educational, cultural, therapeutic and spiritual programming;
 - g) They have little to no employment opportunities;
 - h) They have no access to the outdoors; and

- i) They otherwise have diminished access to amenities available to general population inmates, for example canteen items.
28. Placement recommendations and decisions for placing an inmate in the SLU were discussed and confirmed at daily management briefings, which are chaired by Mr. Curtis as Superintendent.
29. Inmates placed in the SLU did not receive the benefit of procedural rights under ss. 21(3), (4) and (5) (entitled 'Separate Confinement – longer term') of the *Corrections Regulation*, Y.O.I.C. 2009/250. WCC did not provide any appeal process for placement in the SLU.
30. Some Plaintiffs subject to an intermittent sentence were placed in the SLU every weekend when they were incarcerated in the WCC, without any legal basis for doing so.
31. The operation of the SLU has resulted in an overuse of administrative segregation at the WCC.

The Segregation Unit

32. The SEG unit was created pursuant to Policy B4.2 of the WCC Policy Manual.
33. Inmates were routinely held in the SEG without any justification nor authority, and for significant periods of time.
34. In addition to suffering from the same deprivations as inmates held in the SLU, inmates held in SEG spend from 22 to 23 hours per day in their cell with no access to any entertainment or programming.

Charter Breaches

35. The operation of the SLU, the SEG and the application of similar conditions breached the Plaintiffs' rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* ("**Charter**"), including s. 7 (life, liberty, and security of the person) and s. 12 (cruel and unusual treatment).
36. Prolonged periods of isolation of the Plaintiffs has led to a host of negative consequences for their mental health.
37. In the cases of members of Class 3, pre-existing psychiatric disorders rendered them especially susceptible to the negative effects of isolation.
38. By operation of the WCC, the Government of Yukon breached the Plaintiffs' rights under s. 7 of the *Charter* by the absence of an adequate review process for placements in segregation.

39. The absence of an adequate review process caused all Plaintiffs harm.
40. Incarceration in the SLU or SEG also:
 - a) Constituted and continues to constitute a significant deprivation of the Plaintiffs' liberty; and
 - b) Breached and continues to breach the Plaintiffs' right to life by subjecting them to a practice that creates a significant risk of suicide.
41. The breaches of s. 7 of the Charter were not done in accordance with the principles of fundamental justice because the placement in the SLU or SEG was both an overbroad and disproportionate government action.
42. Incarceration in the SLU of Plaintiffs for more than 15 consecutive days (Class 4):
 - a) Breached and continues to breach their right to security of the person because it put them at risk of harm and did harm them; and
 - b) Is unconstitutional as cruel and unusual treatment contrary to s. 12 of the *Charter*.
43. Incarceration in the SLU for Plaintiffs with a pre-existing psychiatric condition (Class 3) constitutes cruel and unusual treatment contrary to s. 12 of the *Charter*.
44. Incarceration in the SEG for all Plaintiffs constitutes cruel and unusual treatment.
45. Damages on a class-wide basis under s. 24(1) of the *Charter* are a just and appropriate remedy to serve the functions of vindication and deterrence.
46. Yukon has previously admitted that placement of inmates in the SLU without procedural safeguards breached s. 7 of the *Charter*. Notwithstanding this admission, Yukon has done nothing to address the situation.

False Imprisonment

47. The transfer of the Plaintiffs out of general population to a more restrictive environment amounts to imprisonment.
48. This imprisonment was against the will of the Plaintiffs.
49. The imprisonment was directly caused by the Defendants Yukon, Hendriks, Curtis and/or Ratel.
50. The imprisonment of the Plaintiffs was in all cases unlawful.

51. This Honourable Court has already determined that the SLU and Policy B4.6 are *ultra vires* the *Corrections Act*: *Sheepway v. Hendriks*, 2019 YKSC 50, *per* Veale C.J.
52. In the event that the Court does not award *Charter* damages for breaches of the Plaintiffs' s. 7 and 12 *Charter* rights, the Plaintiffs seek damages for false imprisonment. For all certainty, tort damages are sought in the alternative so as to avoid double recovery.
53. Individuals falsely imprisoned in the SLU outside the date range of Class 2 reserve their rights to advance claims in false imprisonment and raise the issue of discoverability in individual trials.

Legislative Framework

54. The Plaintiffs plead and rely on:
 - a) S. 51(f) of the *Corrections Act, 2009*, S.Y. 2009, c.3, as amended;
 - b) S. 21 of the *Corrections Regulation*, Y.O.I.C. 2009/250;
 - c) SS. 7, 12 and 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11; and
 - d) Rules 5(11), 8 and 20 of the *Yukon Rules of Court*, YOIC 2009/65.

THE PLAINTIFFS CLAIM AS FOLLOWS:

- a) *Charter* damages for compensation, vindication and deterrence of \$10,000.00 for each breach of the members of Class 1's section 7 rights.
- b) *Charter* damages for compensation, vindication and deterrence of \$10,000.00 for each breach of the members of Class 3, Class 4 and Class 5's section 12 rights.
- c) The total *Charter* damages payable pursuant to paragraphs (a) and (b) be paid into a fund to be distributed *pro rata* among the class, after fees and disbursements.
- d) A declaration that members of Class 2 were falsely imprisoned and are entitled to damages flowing therefrom.
- e) The damages awarded in paragraphs (a), (b) and (c) are without prejudice to the Class Members' claiming at the individual issues' trials additional *Charter* damages as compensation for the contraventions of the *Charter* and false imprisonment, including punitive damages.
- f) Costs.
- g) Where applicable, interest in accordance with the *Judicature Act*, R.S.Y. 2002, c. 128.
- h) Such further and other relief as this Honourable Court deems just.

Dated at Whitehorse, Yukon Territory, this 20th day of October 2020.



Vincent Larochelle
Lawyer for the Plaintiffs

NOTICE OF CASE MANAGEMENT CONFERENCE

TAKE NOTICE that this action is exempt from mandatory Case Management Conference because Petitioners are represented by counsel, pursuant to Practice Direction (Civil-10).

Dated at Whitehorse, Yukon Territory, this 20th day of October 2020.



Vincent Larochelle
Lawyer for the Plaintiffs

S.C. No. _____

SUPREME COURT OF YUKON

BETWEEN:

**RAY HARTLING
MARK LEWIS LANGE on their own behalf and on behalf of all other
inmates of the Whitehorse Correctional Centre who were incarcerated in the
Secure Living Unit, the Segregation Unit or in conditions similar thereto
between October 20, 2014 and the present**

PLAINTIFFS

AND:

**GOVERNMENT OF YUKON
ATTORNEY GENERAL OF YUKON
WHITEHORSE CORRECTIONAL CENTRE
ERIC HENDRIKS, Assistant Deputy Superintendent
(Whitehorse Correctional Centre)
JAYME CURTIS, Superintendent (Whitehorse Correctional Centre)
TRISHA RATEL, Director of Corrections (Whitehorse Correctional Centre)**

DEFENDANTS

STATEMENT OF CLAIM

LAROCHELLE LAW
4133 4th Avenue
Whitehorse, Yukon

Vincent Larochelle (vincent@larochellelaw.ca)
Tel: 867.333.3608