

THE KING'S BENCH

Winnipeg Centre

BETWEEN :

DARLENE AHMO, as Administrator of the Estate of WILLIAM WALTER AHMO,
late of the City of Winnipeg, in the Province of Manitoba

Plaintiff

- and -

THE GOVERNMENT OF MANITOBA, ROBERT JEFFREY MORDEN, JOHN DOE
and JANE DOE, and other PERSONS UNKNOWN

Defendants

STATEMENT OF CLAIM

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Corey Shefman | Chanel Carlson
OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
Tel: 416.981.9330
Fax: 416.981.9350
Email: cshefman@oktlaw.com |
ccarlson@oktlaw.com

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TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiffs' 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 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

Date: Feb 8/2023

Issued by L. Moody
Deputy Registrar

Address of Deputy Registrar
court office Main Floor
408 York Ave, Winnipeg MB
R3C 0P9

TO: THE GOVERNMENT OF MANITOBA
Manitoba Justice, Civil Legal Services
730-405 Broadway
Winnipeg, MB R3C 3L6

TO: ROBERT JEFFREY MORDEN

TO: JOHN DOE, JANE DOE and other PERSONS UNKNOWN

CLAIM

1. The plaintiffs claim jointly and severally from the Defendants:
 - (a) Damages pursuant to *The Fatal Accidents Act* CCSM c F50 (“*FAA*”) for the death of William Walter Ahmo (“William”) as follows:
 - (i) Non-pecuniary damages for the loss of care and companionship that the deceased William, had he lived, might reasonably have been expected to provide to his son, Emory Ahmo, and to relatives of the deceased including his mother, Darlene Ahmo, and his siblings, Josh Ahmo and Dara Ahmo;
 - (ii) Special damages, including medical costs, burial and funeral costs, and such other special damages as may be proved at the trial of this action;
 - (iii) Special damages as are proportionate to the pecuniary loss resulting from the death of William, and concomitant loss of income;
 - (iv) Equitable compensation in an amount to be determined at trial for breach of the Defendants’ fiduciary duty;
 - (b) Punitive and/or aggravated damages reflecting the callous, heavy-handed, and racist treatment of William by the Defendants collectively, or any of them individually, in amounts to be determined at trial; and, or in the alternative, a declaration that the Defendants collectively, or any of them individually, acted callously, in a heavy-handed, and racist manner in causing William’s death;
 - (c) Prejudgment and Post Judgment Interest;
 - (d) An award sufficient to satisfy any obligation to pay Goods and Services Tax (GST) on any amounts awarded, pursuant to the *Excise Tax Act*, R.S.C. 1985, c.E-5, and amendments thereto;

- (e) Costs on a solicitor and own client basis; and
- (f) Such further and other relief as counsel may advise, and this Honourable Court deems just.

2. The damages claimed by the Plaintiff pursuant to the *FAA* arise from the Defendants' wrongful acts, misfeasance in public office, neglect, negligence, breach of duty of care, breach of fiduciary duty, failure to provide the necessities of life to, and assault and battery of William.

The Parties

3. The Plaintiff Darlene Ahmo resides in the City of Winnipeg, in the Province of Manitoba. She is the mother and applicant to be the administrator of the estate of William Walter Ahmo, late of the City of Winnipeg, in the Province of Manitoba.

4. William was born on December 11, 1975, and died while in the custody of the Defendant on February 14, 2021. William was Anishinaabe, and a member of Sagkeeng First Nation.

5. William is survived by his son Emory Ahmo, his brother Josh Ahmo, and his sister Dara Ahmo. William did not have a spouse or common-law partner.

6. Darlene has applied to be appointed as administrator of William's estate by way of grant of administration issued by the Court of King's Bench, Winnipeg Centre.

7. Darlene brings this action as the Administrator of William's Estate under and by virtue of the *FAA* for his benefit as parent of the deceased and for the benefit of the following persons, all of whom are residents of the City of Winnipeg, in the Province of Manitoba, listed in relation to William:

- (a) his son, EMORY WILLIAM WALTER AHMO, born May 18, 2000;
- (b) His sister, DARA MARGARET LOUISE AHMO, born November 18, 1983;

(c) his brother, JOSH AHMO, born September 10, 1992.

Manitoba

8. The Defendant, the Government of Manitoba, was at all material times the owner, and occupier of the lands and premises located at 6030 Portage Avenue, Headingly, Manitoba.

9. The Defendant Manitoba was at all material times the owner and occupier of Headingly, within the meaning of *The Occupiers Liability Act*, CCSM c O8 and amendments thereto (“OLA”). The Plaintiffs plead and rely upon the OLA.

10. Manitoba owns, occupies and operates Headingly through the Corrections Division of Manitoba Justice (“Manitoba Corrections”). Correctional Officers and other employees of Headingly (collectively “Headingly Employees”) are agents and employees of Manitoba. Manitoba is liable by its own actions, as well as vicariously by the actions of its agents, employees and officers. Unless otherwise indicated, references in this Claim to “Manitoba” include Manitoba and the Government of Manitoba, as well as their agents, employees and officers.

The Correctional Officer Defendants

11. The Defendant Robert Jeffrey Morden (“Morden”) is a Correctional Officer employed by Manitoba. Morden was the leader of the SIR Team which caused William’s death. Morden has been charged with criminal negligence causing death, and failing to provide necessities of life, in relation to his role in causing William’s death. At the time of filing this claim, Morden has pleaded not guilty to that charge, and is awaiting trial.

12. John Doe, Jane Doe and other Persons Unknown are the Correctional Officers (who, with Morden, are described herein as the “CO Defendants”), whose identities are not known or accessible to the Plaintiff, who participated in the attack on William which led to his death. The identities of these Defendants are known only to the Defendants (including Manitoba and Morden).

13. The CO Defendants each individually were negligent, engaged in misfeasance in public office, committed assault and battery against William, failed to provide William with the necessities of life, and breached their fiduciary duty to William.

Particulars

14. Full particulars of William's death and the events that led to it are known only to the Defendants. The Plaintiffs set out in this claim the facts known to them at the time of the filing of this claim.

15. While an inmate at Headingly, William was entirely dependent on Manitoba and, while in contact with them, the CO Defendants, for the necessities of life.

16. As jailer, Manitoba and the CO Defendants have broad scope for the exercise of discretion and power to affect the legal and practical interests of prisoners in its custody. Manitoba and the CO Defendants have near absolute discretion as to inmates' housing, clothing, medical care, movement, activity, and more. Subject only to the Court's authority to free an inmate, Manitoba and the CO Defendants can, in nearly any way, affect nearly every legal and practical interests of the prisoners in its custody.

17. Because of the complete loss of autonomy associated with being an inmate in a correctional institution, inmates (such as William at the relevant time) are particularly vulnerable to, or at the mercy of, the jailer (Manitoba and the CO Defendants).

18. Unlike a person who is not in custody, William had no ability to leave a situation in which he was threatened with physical harm, or to seek alternative dispute resolution opportunities. William was entirely reliant on Manitoba and the CO Defendants exercising their discretion and power in a manner which prioritized inmates' (including William's) safety and well-being, forsaking that of others. Manitoba and the CO Defendants failed to do so.

19. On February 7, 2021, while William was an inmate at Headingly, a correctional officer, while on regular rounds of the unit in which William was housed, approached William's cell.

20. The correctional officer doing rounds asked William and his cellmate whether they “want to hear a racist joke” and without waiting for an answer, he said: “How do you get an aboriginal mad? Hide his CERB cheque under his work boot.”

21. The correctional officer’s ‘joke’ trafficked in racist caricatures and stereotypes of Indigenous people as being lazy, poor, unemployed, and relying on government handouts.

22. Shortly thereafter, William’s cell and those nearby were opened for the group of inmates of which he was a part to have recreational time in the common area of the cell block.

23. Upon being allowed into the common area, William went to the inmates’ side of the glass-walled office occupied by the correctional officers. William hit the wall with his hand, and yelled loudly to the correctional officers in the office and elsewhere within earshot that he was “sick and tired” of the racist way in which the correctional officers treated the inmates, and similarly sick and tired of being treated like “animals” by the correctional officers.

24. The correctional officers did not respond to William, or apologize for their behaviour.

25. After being ignored by the correctional officers, William expressed his frustration by continuing to loudly yell at the correctional officers. He eventually began detaching furniture from the floor and walls, and throwing the furniture around the unit.

26. The correctional officers then called for all inmates to return to their cells.

27. William did not return to his cell. He continued to yell at the correctional officers (who were behind the wall) about the racist treatment that the inmates experienced from guards in general, including but not limited to the racist ‘joke’ made earlier.

28. After the other inmates returned to their cells, William was the only person remaining in the common area.

29. Some of the correctional officers opened a door and used chemical weapons, such as pepper spray, directed at William's body and face whenever William moved close to that door.

30. A correctional officer supervisor came to the unit and asked to speak to William through the door. William and the supervisor had a brief conversation.

31. During and after that conversation, members of the SIRT (the CO Defendants) began arriving behind the wall, and gathered in a large group. They were wearing armour and other riot gear, and carrying a variety of weapons, including batons, guns, sensory deprivation weapons such as 'flash bang grenades', and pellet weapons.

32. Some CO Defendants shot William with projectile weapons through a gunport in the wall or door.

33. The CO Defendants forced entry into the unit common area, deployed multiple flashbang grenades and/or other sensory deprivation weapons in William's direction and shot William with projectile weapons.

34. Approximately twelve CO Defendants, all of whom were equipped with protective armour, weapons, and other riot control gear, reached William and surrounded him.

35. The CO Defendants beat William using their batons, knees, hands, and feet, forcing him to the ground. William was completely surrounded and did not leave the ground after he was pinned and swarmed by the CO Defendants.

36. The CO Defendants did not stop their attack until after they caused William to lose consciousness.

37. After he was made unconscious by the CO Defendants, William was carried out of the unit into the hallway connecting H and G Units where first aid was administered.

38. William was taken to the Health Sciences Centre. He died seven days later, on February 14, 2021, without having regained consciousness.

The Defendants were negligent

39. Manitoba and the CO Defendants had a duty to take reasonable care for the health and safety of their inmate, William. This duty required them to, among other things, take reasonable care for the health and safety of William and to take such other reasonable steps as may have been necessary and prudent in the circumstances to reduce the risk of injury and death.

40. The risk of death or grievous bodily harm to William as a result of the CO Defendants' actions was the reasonably foreseeable consequence of, among other things:

- (a) the CO Defendants':
 - (i) use of force and/or weapons against William;
 - (ii) exercises of discretion in implementing Manitoba's policies concerning use of force against inmates and subduing inmates;
 - (iii) failure to follow Manitoba's policies concerning use of force against inmates and subduing inmates;
- (b) Manitoba's:
 - (i) failure to properly train the CO Defendants in the use of force;
 - (ii) failure to design and implement adequate policies, training and/or supervision to ensure the proportionate use of force;
 - (iii) failure to design and implement adequate policies, training and/or supervision concerning the use of force against inmates generally;
 - (iv) inadequate supervision of the CO Defendants;
- (c) the use of certain weapons by the CO Defendants, including but not limited to chemical weapons, projectile weapons and riot control explosive

weapons, all carry a reasonably foreseeable risk that they will cause harm to the target of those weapons.

41. In the alternative that the use of force by the Defendants against William was justified, Manitoba authorized, and the CO Defendants used, excessive force in the circumstances, and in so doing acted negligently and in a manner inconsistent with the standard of care which they owed to William.

42. In this alternative, William could have, if necessary, been subdued by less violent means, and by means which it was reasonably foreseeable were less likely to result in his death.

43. The CO Defendants' conduct failed to meet the standard of a reasonable person in the circumstances. Manitoba is vicariously liable for the negligent conduct of the CO Defendants.

44. Manitoba's conduct, by its officers, agents and employees, failed to meet the standard of a reasonable person in the circumstances.

45. William's death was determined by the Chief Medical Examiner of Manitoba to be a homicide.

46. But for the Defendants' actions and the extreme levels of violence with which the CO Defendants attacked William, William would not have died.

47. William's conduct did not contribute to his injury at all, or in the alternative, beyond a *de minimis* contribution.

The Defendants breached their duties to William under the *OLA*

48. As owner/occupier of the Headingly building and property, and operator of Headingly, Manitoba had a duty under the *OLA* to inmates lodged therein, including William, to take such care as in the circumstances was reasonable, to ensure that said persons were reasonably safe on the premises.

49. Manitoba failed to take such care, including but not limited to:

- (a) ensuring the availability of non-violent and non-lethal incident control tools and techniques;
- (b) failing to ensure that staff, including but not limited to the CO Defendants, were properly trained in the use of available equipment to avoid physical harm and death, and in effective non-violent dispute resolution and de-escalation techniques;
- (c) allowing and condoning, or in the alternative not taking sufficient steps to avoid and prevent, the proliferation of racist attitudes, policies and behaviours in its facility;
- (d) failing to address the systemic racism which characterizes Manitoba's corrections system, and which has led to approximately 80% of inmates in Manitoba's corrections system being Indigenous persons;

and as a result, the premises were not safe given the purpose to which the premises were put.

50. Manitoba exercised immediate supervision and control over William's entry onto, and time within, the premises.

51. Manitoba is liable for the harm caused to William by third parties on the premises as described in this Claim.

The Defendants breached their fiduciary duty to William

52. Upon William's incarceration, he was deprived entirely of his personal autonomy. Manitoba (and from time to time the CO Defendants) had such control over William that it stood in the position of a fiduciary, and owed him concomitant duties to act in his best interests. The fiduciary duty owed by Manitoba and the CO Defendants to William included, but was not limited to:

- (a) A duty to care for his safety, health and well-being, including by ensuring he was kept in safe, secure and humane conditions;

- (b) A duty to protect and not harm William's health; and
- (c) A duty to provide William with the necessities of life.

53. There exists (and in this case, existed) a relationship of utmost vulnerability and reliance between Manitoba and the CO Defendants, and inmates such as William.

54. By virtue of section 2(1)(b) of *The Correctional Services Act* CCSM c C230, which requires Manitoba to provide for "the safe, secure and humane accommodation of persons who are in lawful custody", Manitoba impliedly undertook to act in the best interests of the said persons in lawful custody – such as William.

55. Further and, or in the alternative, Manitoba and the CO Defendants impliedly undertook in the course of their operation of correctional facilities and serving as jailers, to act in the best interests of the inmates of those facilities, forsaking the interests of others who are not inmates in those facilities, particularly with respect to the health and safety of the said inmate-beneficiaries.

56. While William was an inmate at Headingly, Manitoba and the CO Defendants exercised their discretion and power in a manner which directly caused his death. In doing so, Manitoba and the CO Defendants breached their fiduciary duty to William. Manitoba is vicariously liable for the CO Defendants' breaches of their fiduciary duty to William.

57. Manitoba did not care for William's safety, health and well being, it failed to protect him from harm, and it failed to provide him with the necessities of life. As such, Manitoba breached its fiduciary duties to William.

58. In the alternative to the preceding pleading that both Manitoba and the CO Defendants owed William a fiduciary duty, the Plaintiffs plead that the CO Defendants owed William a fiduciary duty, which they breached, and plead that Manitoba is vicariously liable for the breach of a fiduciary duty by its employees.

59. The CO Defendants stood in the position of a fiduciary to William from the time that they entered William's presence until such time as William was removed from Headingly by paramedics. During that time, William was entirely at the mercy of the CO

Defendants, had no personal autonomy or ability to remove himself from the power and control of the CO Defendants, and relied on the CO Defendants to keep him safe, and alive.

60. The CO Defendants did not care for William's safety, health, well being or life, they failed to protect him from harm, failed to provide him with the necessities of life, and caused him grievous physical injury. As such, the CO Defendants breached their fiduciary duties, and/or in the alternative, duties of care to William.

The CO Defendants committed assault and battery against William

61. The CO Defendants each intentionally threatened, and then made direct physical contact with William. William did not consent to their contact, and no reasonable person would have thought he had consented.

62. The contact made by the CO Defendants with William was beyond generally acceptable standards of conduct for Correctional Officers and/or Peace Officers, was unnecessary, and would offend the dignity of a reasonable person.

63. In the alternative that the CO Defendants' physical contact with William was necessary for the performance of their duties (which the Plaintiffs do not admit), the type and intensity of physical contact actually used by the CO Defendants was unnecessary and excessive.

64. The CO Defendants' battery of William resulted in William's death.

65. Manitoba is vicariously liable for the assault and battery committed by the CO Defendants.

The conduct pleaded herein is a consequence of systemic racism

66. William's identity as an Indigenous person in general, and an Anishinaabe person in particular, is a relevant factor in the events leading to his death.

67. Manitoba has created, or in the alternative, has permitted to exist, an environment at Headingly suffused with systemic and direct racism against Indigenous people.

68. This systemic racism impacted the manner in which William's health, safety and security was regarded or disregarded, and it was a contributing factor to Manitoba's and the CO Defendants' decision to physically attack William in the manner they did, with the level of weaponry and aggression that was used, and the lack of care that was taken to avoid causing William serious injury and death.

69. In committing each of the causes of action set out in this claim, Manitoba's and the CO Defendants' actions, omissions, exercises of discretion, and operationalizations of policy were tainted by racism.

70. Manitoba's creation and perpetuation of this racist environment, and, or in the alternative, Manitoba's failure to prevent or remedy the racist environment, led and/or contributed to William's death.

71. The perpetuation of and failure to remedy the racism in the corrections system is morally reprehensible conduct which must be condemned and not condoned, and ought to lead to an award of punitive damages and, or in the alternative, a declaration.

The Plaintiff's Loss

72. Prior to his death, William was 45 years of age. He was otherwise a generally healthy person who had an average life expectancy. He provided fatherly mentorship to his son Emory, and care and companionship to his mother and siblings.

73. William had a reputation in the community as a mentor and role model for young Indigenous men in Winnipeg. He had become familiar over his life with the cultural and relational skills needed to survive while incarcerated and unhoused, and was known to mentor young men who were incarcerated and unhoused.

74. Prior to his death, William had a history of occasional employment.

75. Had William lived, he would reasonably have been expected to earn income in an amount to be proven at trial.

76. In consequence of the Defendant's breaches and failures, the Plaintiffs have lost William's care, guidance and companionship. In addition, the Plaintiffs have lost the pecuniary contribution William made to the household and his family.

77. The Plaintiffs therefore claim as aforesaid.

Dated this 8th day of February, 2023

OLTHUIS KLEER TOWNSHEND LLP

250 University Avenue, 8th Floor
Toronto, ON M5H 3E5

Tel: 416.981.9330

Fax: 416.981.9350

Email: cshefman@oktlaw.com,
ccarlson@oktlaw.com

Corey Shefman and Chanel Carlson

Lawyers for the Plaintiff