

Court File No.: MC 043312

NEW BRUNSWICK
COURT OF QUEEN'S BENCH

BETWEEN:

**HEATHER LOCKE, on her own behalf, and as the Litigation
Administrator of the Estate of Glen Edward Wareham, Deceased,
JO-ANN MORRISON, TROY WAREHAM,
AND TAMMY LYNN WAREHAM**

Plaintiffs

-and-

**ATTORNEY GENERAL OF CANADA (IN RIGHT OF THE MINISTER OF PUBLIC
SAFETY), COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA,
DON HEAD, COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA,
LUCIE MCCLUNG, COMMISSIONER OF THE CORRECTIONAL SERVICE OF
CANADA, KEITH COULTER, DEPUTY COMMISSIONER ATLANTIC REGION,
REMI GOBEIL, DEPUTY COMMISSIONER ATLANTIC REGION, MARENA
MCLAUGHLIN, DEPUTY COMMISSIONER ATLANTIC REGION, SIMON
COAKELEY, DEPUTY COMMISSIONER ATLANTIC REGION, JOHN TURNER,
DEPUTY COMMISSIONER ATLANTIC REGION, THERESE LABLANC, DEPUTY
COMMISSIONER ATLANTIC REGION, JOHN DOE AND JANE DOE, WARDEN OF
THE DORCHESTER PENITENTIARY, SIMONNE POIRIER, WARDEN OF THE
DORCHESTER PENITENTIARY, JOHN DOE AND JANE DOE, EXECUTIVE
DIRECTOR OF THE SHEPODY HEALING CENTRE, LUC DOUCET, AND
CORRECTIONAL SERVICE EMPLOYEES JOHN DOE AND JANE DOE**

**NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED
FORM 16A**

TO: The Defendants

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

PAR LE DÉPÔT DU PRÉSENT AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50,

Si vous désirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

- (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- (c) if you are served anywhere else, WITHIN 60 DAYS after such service.

- a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou
- b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou
- c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the plaintiff intends to proceed in theENGLISH..... language; and
- (c) your Statement of Defence must indicate the language in which you intend to proceed.

- (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- (b) le demandeur a l'intention d'utiliser la langueL'ANGLAIS.....; et
- (c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of \$100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

Si, dans le délai accordé pour la signification et le depot de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par

..... *Anne M. Richard*
Clerk of the Court at .. *Moncton*
on the *20th* day of *April*, 20 *12*

.....
greffier de la Cour à
..., ce 20

A. Richard
Court Seal (clerk)



Beau
de la Cour (greffier)

Palais de Justice Moncton Law Courts
145 Assumption Blvd.
P.O. Box 5001
Moncton, NB
E1C 8R3

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STATEMENT OF CLAIM**THE PARTIES TO THE PROCEEDING**

1. Glen Edward Wareham was a 28 year old man, who was an inmate in the federal penitentiary system from November 24, 2003, until his death at the Moncton Hospital, in Moncton, New Brunswick, on April 29, 2010.
2. Heather Locke is the mother of Glen Wareham, and a resident of Sydney, Cape Breton, New Brunswick. At all times she enjoyed a close and loving relationship with her son, Glen Wareham.
3. Jo-Ann Morrison is the older sister of Glen Wareham, and a resident of Glace Bay, Cape Breton, New Brunswick. At all times she enjoyed a close and loving relationship with her brother, Glen Wareham.
4. Troy Wareham is the older brother of Glen Wareham, and a resident of Hamilton, Ontario. At all times he enjoyed a close and loving relationship with his brother, Glen Wareham.
5. Tammy Lyn Wareham is the older sister of Glen Wareham, and a resident of Hamilton, Ontario. At all times she enjoyed a close and loving relationship with her brother, Glen Wareham.
6. The defendant Attorney General of Canada is the representative of Her Majesty in Right of Canada and the Minister of Public Safety, and, by virtue of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 and the regulations thereto, is responsible for the maintenance, operation and administration of federal penitentiaries, including supervising the detention of inmates within penitentiaries, training of correctional staff, establishing standards of employee conduct and the provision of health care services within penitentiaries. By virtue of section 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Attorney General is liable in respect of any act or omission of a servant

of the Crown that would have given rise to a cause of action for liability against that servant or the servant's personal representative.

7. The defendant Commissioners of the Correctional Service of Canada, Lucie McClung, Keith Coulter, and Don Head were, at all material times, responsible for the control and management of the Correctional Service of Canada ("CSC") and all matters connected with CSC.
8. The defendant Deputy Commissioners from the Atlantic Region, Remi Gobeil, Marena McLaughlin, Simon Coakeley, John Turner, and Therese LaBlanc and John Doe or Jane Doe were, at all material times, servants of the Crown responsible for the management of CSC operations within the Atlantic region and the implementation of correctional policy. The defendants were members of the Executive Committee of CSC, and in that capacity, were aware of and directly reviewed issues arising from the imprisonment of Glen Wareham.
9. The defendants Simonne Poirier and John Doe or Jane Doe were the Wardens of the Dorchester Penitentiary during the period of Glen Wareham's incarceration at that institution, and as such were servants of the Crown at the material times. These defendants were responsible for *inter alia*, the care, custody and control of all inmates in the penitentiary, the management, organization and security of the penitentiary and the direction and work environment of staff members and health professionals.
10. The defendant Luc Doucet was the Executive Director of the Shepody Healing Centre during the period of Glen Wareham's incarceration at that institution, and as such was a servant of the Crown at the material times. This defendant was responsible for *inter alia*, the care, custody and control of all inmates in the penitentiary, the management, organization and security of the penitentiary and the direction and work environment of staff members and health professionals.

11. The defendants Correctional Services employees John Doe and Jane Doe (hereinafter collectively referred to as the "correctional staff") were at all material times employees of the CSC and as such had supervision, care, custody and control of Glen Wareham in their capacity as Correctional Officers, Supervisors, and medical staff. The wrongful actions of the correctional staff individually and/or collectively, in failing to ensure that Glen Wareham's conditions of confinement were lawful and in failing to respond to his manifest and worsening medical condition resulted in his suffering and death. The identities of these correctional staff are unknown to the plaintiffs and are within the unique knowledge of the defendants.

PLACE OF RESIDENCE OF THE PLAINTIFFS

12. Plaintiff Heather Locke's address is 38 Highland St., Sydney, Cape Breton, Nova Scotia, B1P 4H9.
13. Plaintiff Jo-Ann Morrison's address is 26 Fraser Street, Glace Bay, Cape Breton, Nova Scotia, B1A 2Z6.
14. Plaintiff Troy Wareham's address is 57 Province Street, Hamilton, Ontario, L8H 4H3.
15. Plaintiff Tammy Lynn Wareham's address is 167 Manning Ave, Hamilton Ontario O9A 3G1.

MATERIAL FACTS

16. Glen Wareham was born on May 21, 1981 in New Waterford, Nova Scotia. At the time of his death, on April 29, 2010, he was a 28 year old first-time federal inmate serving an aggregate sentence of twelve years and one month for a number of offences.
17. Due to a history of chronic self-injury, upon his admission to CSC, Glen Wareham was placed directly into the Shepody Healing Centre in Dorchester, New Brunswick. Glen Wareham's first incident of self-injury had occurred as a youth while incarcerated in the

Nova Scotia Youth Centre – Waterford. Glen Wareham’s first incident of self-injury in federal custody occurred within the first twenty four hours of his incarceration. This behaviour continued unabated until his death.

18. Glen Wareham was transferred between the Shepody Healing Centre and the Dorchester Penitentiary in New Brunswick, as well as to the Regional Treatment Centre, Pacific Institution.
19. Considered a “preventable death” by the Correctional Investigator, Howard Sapers, Glen Wareham’s treatment by CSC violated CSC’s own policy and the law. The actions and omissions of the defendants impeded Glen’s care and treatment, aggravated his self-harming behaviours, and ultimately resulted in his death.

Breaches of Law and Policy

a) Unlawful institutional transfers

20. The plaintiffs plead and rely upon section 29 of the *Corrections and Conditional Release Act*, R.S.C. 1992, c. 20 (“CCRA”); sections 11-16 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (“CCRR”); Commissioner’s Directive 843 (Prevention, Management and Response to Suicide and Self-Injuries); and Commissioner’s Directive 710-2 (Transfer of Offenders) as setting out the law and policy in respect of the transfer of inmates.
21. The plaintiffs plead that the transfers of Glen Wareham, including but not limited to the transfer from the Regional Treatment Centre – Pacific Institution back to the Atlantic Region did not meet the policy criteria for transfers.

b) Unlawful detention in maximum-security classification under almost continuous restraint

22. The plaintiffs plead and rely upon sections 28, 31-37, 69 and 70 of the *CCRA*, sections 19-23, 83 of the *CCRR*, Commissioner’s Directive 705-7 (Security Classification and Penitentiary Placement), Commissioner’s Directive 710-6 (Review of Offender’s Security

Classification), Commissioner's Directive 709 (Administrative Segregation) and Commissioner's Directive 708 (Special Handling Unit) as setting out the law and policy in respect of conditions of confinement, administrative segregation and the use of restraint for health care purposes.

23. The plaintiffs plead that the classification of Glen Wareham at maximum security (relying on over-rides between June 2007 and March 2010) was not justifiable. While Glen Wareham was a danger to himself, he was in no way a danger to others. This rating was not based on violent or disciplinary incidents.
24. Despite demonstrated successes and treatment gains made when Glen Wareham was in less restrictive environments, CSC relied upon the almost continuous use of restraints in a depriving environment, for the long term management of Glen Wareham. This included the use of Pinel-type restraints, in addition to an almost three and one-half year span of involuntary treatment and restraint of Glen Wareham.
25. This use of restraint measures was inconsistent with accepted treatment methods of self-injuries, and aggravated Glen Wareham's self-harming behaviours, in addition to frustrating his access to programming and other services.
26. Glen Wareham's self-injury was more frequent during periods of restraint and seclusion. The immediate precipitating factor to Glen Wareham's last major incident of self-injury on January 7, 2009, was frustration and disappointment over the progress made to transfer him out of the Shepody Healing Centre and into the general population.

c) Failure to provide competent and reasonable health care

27. The plaintiffs plead and rely upon sections 85-88 of the *CCRA*, Commissioner's Directive 840 (Psychological Services), Commissioner's Directive 843 (Prevention, Management and Response to Suicide and Self-Injuries), Commissioner's Directive 850 (Mental Health Services), Commissioner's Directive 800 (Health Services) and Commissioner's Directive (805) (Administration of Medication) as setting out the law and policy in respect of the defendants' obligations to provide reasonable and competent health care.

28. The plaintiffs plead that Glen Wareham's placement in an overly-restrictive and controlling environment with limited access to normal activities, programming, employment, and association aggravated his self-injurious behaviours. Alternative and more effective treatment approaches were not explored. Some promising individual counselling and treatment approaches were stopped.
29. Glen Wareham was not offered and was excluded from any meaningful intervention or communication, or individual counselling while spending lengthy periods in restraint. Further, CSC's use of restraints for health care purposes violated CSC policy.
30. The lack of a comprehensive functional analysis of Glen Wareham's self-injurious behaviour made the identification of immediate precipitating factors difficult. In the absence of this analysis, anecdotal reports became the source of information, and "manipulation" became the pre-eminent explanation.
31. Though Glen Wareham spent over six years in CSC's care, no comprehensive clinical management plan was completed and few, if any, clinical interventions were initiated to address the underlying issues of Glen Wareham's self-harming behaviour. Though numerous Board of Investigation Reports were completed concerning Glen Wareham, promising treatment options were not pursued, nor did they inform subsequent management strategies.
32. Contrary to policy, nursing staff used Glen Wareham's participation in the Methadone Maintenance program as a tool to gain compliance in other areas. Further, Methadone was used as a pain medication in violation of CSC policy.

Liability for Negligence

33. The plaintiffs state that the defendants owed a duty of care to the plaintiffs to take reasonable care for Glen Wareham's health and safety as a person in the custody of the CSC.

34. The plaintiffs state that the defendants, 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 obvious need of specialized care. The plaintiffs state that Glen Wareham's medical crisis and subsequent death arose due to the negligence and/or reckless indifference of the defendants. The plaintiffs state that the negligent and/or reckless actions and/or inactions of the defendants as plead herein each and/or collectively caused Glen Wareham's cumulative injury and death, a consequence the defendants knew or ought to have known would occur as a result of their negligence and/or reckless indifference.
35. Without restricting the generality of the foregoing, some of the particulars of the negligent conduct are, *inter alia*, as follows:
- a. The defendants were aware that Glen Wareham was residing in inhumane, and unnecessarily restrictive conditions and thus had a heightened duty to remain vigilant of his care and treatment, inclusive of any allegations of human rights violations. The defendants failed to meet this duty.
 - b. The plaintiffs plead that as a direct result of the above-described negligence, Glen Wareham's mental health status deteriorated, and he engaged in increasingly dangerous self-harming behaviours which ultimately resulted in his death, a fact that the defendants knew or ought to have known would occur.

Infliction of Mental Suffering and Psychiatric Damage

36. The conduct of the defendants, as set out above, was outrageous, flagrant and in direct contradiction to the law and policy governing CSC employees. The defendants' conduct caused Glen Wareham to experience severe mental suffering and injury.
37. Further, and/or in the alternative, the plaintiffs plead that they have suffered psychiatric damage and/or nervous shock as described in the above paragraph, and said damage and/or nervous shock was the result of the defendants' negligent conduct. The defendants knew or

ought to have known that their conduct, as described above, would cause the plaintiffs to suffer psychiatric damage and/or nervous shock.

Abuse of Public Office

38. The defendants are holders of public office, exercising public and/or statutory functions.
39. The plaintiffs repeat and rely upon the facts as set out above and state that these defendants deliberately violated the law, including in respect of inmate transfers, conditions of confinement, administrative segregation, and the provision of health care services.
40. The defendants were aware that their unlawful conduct was likely to injure the plaintiffs.
41. In the alternative, these defendants were reckless as to the fact that their conduct was unlawful and likely to injure the plaintiffs.
42. The plaintiffs plead that in violating the law as described, these defendants caused harm and losses to the plaintiffs, as described further below.

False Imprisonment

43. The plaintiffs plead and rely upon the facts and law set out above in stating that the defendants falsely imprisoned Glen Wareham.
44. As a result of the false imprisonment, damage was thereby caused to the plaintiffs, as described further below.

Breach of Fiduciary Duty

45. The plaintiffs state that the defendants owed a fiduciary duty to Glen Wareham to ensure his health and safety while he was in the custody of CSC.

46. The plaintiffs state that by virtue of being in the custody of CSC, Glen Wareham was at the mercy of the discretion of the defendants. All the defendants were, by virtue of this custodial relationship, in a position to unilaterally exercise power over Glen Wareham so as to affect his legal and/or practical interests. Thus, all of the defendants owed a fiduciary duty to attend to Glen Wareham's physical and psychological needs and to ensure his confinement was in compliance with the law.
47. For all of the reasons set out above, the plaintiffs state that the defendants breached the fiduciary duties they owed to Glen Wareham throughout his time in the federal penitentiary system, and thereby caused damage to the plaintiffs.

DAMAGES

48. As a result of the negligent and wrongful behavior of the defendants, Glen Wareham suffered extreme physical, emotional and psychological damage and ultimately a wrongful death.
49. The plaintiffs Heather Locke, Jo-Ann Morrison, Troy Wareham and Tammy Lyn Wareham plead and rely upon the relevant portions of the *Fatal Accidents Act*, RSNB c. F-7. In particular, Heather Locke, Jo-Ann Morrison, Troy Wareham and Tammy Lyn Wareham each enjoyed a close and loving relationship with Glen Wareham and have suffered the loss of Glen Wareham's guidance, care and companionship and pecuniary loss as a result of his wrongful death.
50. The plaintiffs Heather Locke, Jo-Ann Morrison, Troy Wareham and Tammy Lyn Wareham have suffered and continue to suffer physically, psychologically and emotionally as a direct result of the conduct of the defendants as plead aforesaid, some of the particulars of the damage caused to the plaintiffs being:
- a. depression;
 - b. anxiety;
 - c. nervousness and irritability;

- d. mood disorders;
- e. insomnia and sleep disturbances; and
- f. nightmares and flashbacks.

51. The damages suffered by the plaintiffs are all consequences that were reasonably foreseeable and that the defendants knew or ought to have known would result from their wrongful conduct.
52. By reason of the facts set out herein, and in particular the highhanded, shocking, contemptuous conduct of the defendants, the plaintiffs claim exemplary and/or aggravated and/or punitive damages.
53. Further and/or in the alternative, the Attorney General of Canada is liable for aggravated and/or punitive damages in respect of the manner in which servants of CSC responded to requests for information by the plaintiffs concerning the conditions of Glen Wareham's confinement and the circumstances leading to Glen Wareham's death. CSC has withheld almost all information requested apart from information that portrays CSC positively and/or casts Glen Wareham in a negative light.
54. As a result of the improper withholding of information, the plaintiffs lack, amongst other things, particulars of the identities of many individuals who were involved in the care, custody and control of Glen Wareham, and lack all knowledge of the particulars of health care services provided to Glen Wareham, if any.

PLAINTIFFS CLAIM

55. The plaintiff, the estate of Glen Wareham claims:
- a. General Damages in the amount of \$2,500,000.00 (TWO MILLION FIVE HUNDRED THOUSAND DOLLARS);
 - b. Special damages in an amount to be determined with particulars to be provided prior to trial;

- c. Punitive damages in the amount of \$2,500,000.00 (TWO MILLION FIVE HUNDRED THOUSAND DOLLARS);
 - d. Aggravated and exemplary damages in the amount of \$1,000,000 (ONE MILLION DOLLARS);
 - e. Interest pursuant to the provisions of the *Judicature Act*, RSNB 1973 c. J-2 and *Rules of Court*, NB. Reg 82-73;
 - f. Costs of this action on a solicitor-and-client basis or such other basis as this Honourable Court may determine;
 - g. Such further and other relief as this Honourable Court deems just.
56. The plaintiffs, Heather Locke, Jo-Ann Morrison, Troy Wareham and Tammy Lyn Wareham claim:
- a. General damages in the amount of \$2,000,000.00 (TWO MILLION DOLLARS);
 - b. Special damages in a sum to be disclosed before trial;
 - c. Aggravated and/or exemplary damages in the amount of \$1,000,000.00 (ONE MILLION DOLLARS);
 - d. Punitive damages in the amount of \$1,000,000.00 (ONE MILLION DOLLARS);
 - e. Damages pursuant to the *Fatal Accidents Act*, RSNB c. F-7 in the amount of \$1,000,000.00 (ONE MILLION DOLLARS);
 - f. Interest pursuant to the provisions of the *Judicature Act*, RSNB 1973 c. J-2 and *Rules of Court*, NB. Reg 82-73;
 - g. Costs of legal representation at an Inquest into the Death of Glen Wareham;
 - h. Costs of this action on a solicitor-and-client basis or such other basis as this Honourable Court may determine;
 - i. Such further and other relief as this Honourable Court deems just.

STATUTES

57. The plaintiffs plead and rely upon the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50; the *Fatal Accidents Act*, RSNB c. F-7; the *Corrections and Conditional Release*

Act, 1992, c. 20, C-44.6; Corrections and Conditional Release Regulations, SOR/92-620; the Commissioner's Directives; and the Contributory Negligence Act, RSNB 2011, c. 131 as amended.

Dated at Sydney, Nova Scotia, this 19th day of April 2012

Heather Locke

Heather Locke

38 Highland St.,
Sydney, Cape Breton,
Nova Scotia, B1P 4H9