

CANADA / JUDGMENT

Lill v. Canada

2024 FC 1785

COURT

Federal Court

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Lill v. Canada

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Citation: 2024 FC 1785

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 8, 2024

PRESENT: Madam Justice Gagné

Docket: T-266-21

BETWEEN:

CHRISTOPHER LILL

Applicant

and

HIS MAJESTY THE KING

Respondent

Docket: T-1961-21

AND BETWEEN:

CHRISTOPHER LILL

Applicant

and

HIS MAJESTY THE KING

Respondent

JUDGMENT AND REASONS

- [1] With rights come responsibilities. In a way, they are two sides of the same coin. When people understand this duality, society is better off.
- [2] Christopher Lill is an inmate who has been serving a life sentence since November 2007 and who claims to be Indigenous, of Mohawk descent. He did not grow up immersed in his culture, but he has diligently and earnestly engaged with it since his incarceration.
- [3] He claims to be well versed in the Corrections and Conditional Release Act, SC 1992, c 20 (CCRA), the Corrections and Conditional Release Regulations, SOR/92-620 (CCRR), enacted under the CCRA, and the various Commissioner's Directives (CDs) from Correctional Service Canada (CSC) made under sections 97 and 98 of the CCRA, which provide a framework for carrying out its purposes and provisions. Indeed, he is quick to take legal action against prison authorities and the federal Crown if he believes that his rights have been breached or that a Commissioner's Directive has not been followed to the letter.
- [4] He has even said that it is fun for him.
- [5] Since 2018, Mr. Lill has been the subject of several security reclassifications and involuntary emergency transfers, the reasons for which are not at issue before me.
- [6] What is at issue is the manner in which Mr. Lill's personal property, including his traditional Indigenous medicine, was transferred twice from one penal institution to another.
- [7] In T-266-21, Mr. Lill seeks \$100,000 in moral damages and \$50,000 in punitive damages, plus interest and costs, in connection with events that occurred during his transfer from Archambault Institution (Archambault) and the Federal Training Centre (FTC-600) in June and July 2020. He claims that while transferring his personal property, CSC (i) lost his

ceremonial ashes related to his grandmother's death; (ii) stole and consulted his legal documentation in connection with a previous litigation; and incidentally (iii) failed to be attentive and offer support in connection with his grandmother's death.

- [8] In T-1961-21, Mr. Lill seeks \$125,000 in moral damages, \$100,000 in punitive damages, and a letter of apology from the respondent in connection with events that occurred during his emergency transfer from FTC-600 to Cowansville Institution on January 12, 2021. This time, he claims that CSC (i) wrecked, vandalized and broke his spiritual shield and some of his feathers; (ii) maliciously manipulated his spiritual objects; (iii) stole and seized three envelopes containing legal documents; and (iv) lost several other personal items.

I. Issues [9] As part of the special management of these two cases joined for investigation and hearing, the parties have agreed on the issues of fact and law to be determined by the Court. I have rephrased them based on the evidence presented by both sides and the structure of the arguments raised by the parties.

A. Did CSC officers fail to be attentive to the applicant during the difficult time he experienced following the death of his grandmother?

B. Did CSC officers commit an extracontractual fault or breach a Canadian Charter right in manipulating Mr. Lill's traditional Indigenous medicine, including his ceremonial ashes?

C. Did CSC officers search, manipulate, seize or steal any legal documentation or diskettes belonging to Mr. Lill?

D. Did CSC officers steal or misplace any of Mr. Lill's personal property, such as office supplies and a TENS machine?

E. If there was a fault or a breach of a Charter right, is Mr. Lill entitled to moral and punitive damages, and if so, how much?

II. Analysis [10] Before undertaking the analysis of the evidence in relation to the issues to be decided, the Court must address two whole branches of the evidence that were accepted under reserve of objection by the Crown. In both cases, the evidence relates to retaliation that Mr. Lill claims he suffered at the hands of two groups of CSC employees.

- [11] First, Mr. Lill claims that, during his time at Archambault Minimum, he suffered reprisals in a situation involving the facts addressed in the decision of Justice Peter Pamel, then of this Court, in *Lill v Canada*, 2022 FC 580 (Liability Decision) and *Lill v Canada*, 2022 FC 781 (Costs Decision) (collectively, the Pamel Judgments), namely an increase in his security classification from medium to maximum and an involuntary transfer from La Macaza to Port-Cartier in 2011. Justice Pamel awarded \$6,804 in damages to Mr. Lill out of his claim for \$456,000 and ordered him to pay \$15,000 in costs. The Pamel Judgments are currently the subject of an appeal filed by Mr. Lill in A-109-22.

- [12] When Mr. Lill arrived at Archambault Minimum in 2018, Stéphane Lalande—whom he holds responsible for his illegal transfer to Port-Cartier in 2011—was the warden of the institution. Mr. Lill says that Stéphane Lalande and Correctional Manager Hugo Bazinet pressured him extensively in retaliation for his lawsuit against CSC in connection with the events of 2011.
- [13] Mr. Lill argues that this evidence is relevant as it explains his state of mind immediately before and at the time of his transfer to FTC-600. At trial, the Court made a ruling, refusing any evidence that went beyond a simple description of the situation that would help contextualize Mr. Lill's allegations that he received no psychological support at the time of his grandmother's death. The Court cited the fact that the cause of the transfer to FTC-600 is not at issue in this case to justify its decision.
- [14] Second, a week before the start of the trial, counsel for the defendant brought a motion to have four names removed from Mr. Lill's witness list: Geneviève Thibault, Marie-Ève Charest, Diane Allard and Martine Boisvert. The Crown argued that their evidence was irrelevant to the debate and that the allegations of harassment and retaliation by those CSC employees had been addressed and dismissed by Justice Sébastien Grammond in *Lill v Canada (Attorney General)*, 2024 FC 664 (Grammond Judgment).
- [15] The Court granted the Crown's motion and removed the names of those four witnesses from the list. Mr. Lill filed a notice of appeal and requested a postponement of the trial in T-1961-21.
- [16] In an effort to keep these cases from being derailed, the Court called the parties to a case management conference and presented them with several options, including a compromise on both sides to have testimony be given by only one of those witnesses, to be chosen by Mr. Lill. It was eventually agreed that Diane Allard and Geneviève Thibault would testify, under reserve of objection by the Crown as to relevance.
- [17] Since those two witnesses enlightened the Court on several elements relevant to its analysis, the objection is dismissed and the evidence is admitted. We will come back to these elements in the analysis of the issue concerning the manipulation of Mr. Lill's legal documentation.
- A. Did CSC officers fail to be attentive to the applicant during the difficult time he experienced following the death of his grandmother? [18] On May 5, 2020, Mr. Lill received a call from his mother informing him that his grandmother was dying.
- [19] It should be noted that Mr. Lill's grandmother was a very important person in his life. He had a very difficult childhood; he was abused by his father, lived in foster homes and received a number of youth protection services. He grew up far removed from any emotion other than anger and aggression.
- [20] He was therefore very close with his grandmother, with whom he had spent his summers. He saw her as a mother, a friend, and a confidante.

- [21] Mr. Lill informed his parole officer, Karl Mooney, of the news and asked him to make sure he was left alone, by which he meant having the managers with whom he clashed stay away from him. He acknowledged that he was prone to aggression and that his grandmother's health issues made him even more aggressive as well as vulnerable.
- [22] From May 5 to 10, Mr. Lill performed traditional ceremonies to help him get through his ordeal, and he kept the ceremonial ashes. The goal was to be able to complete what his tradition calls a "pass-over", i.e. dispose of the deceased's belongings one year after their death to complete the grieving process. Since he had nothing that had belonged to his grandmother, the ceremonial ashes would have been used for this purpose.
- [23] On May 10, Mr. Lill was informed of his grandmother's death. It was a shock to him, and he says he cried for the first time in 20 years.
- [24] Since his parole officer, Karl Mooney, was not on site, Mr. Lill informed Correctional Officer François Desparois of his grandmother's death. According to Mr. Lill, Mr. Desparois was very aloof when he received the information and did not offer him the opportunity to meet with an Elder or a psychologist.
- [25] According to Mr. Desparois's testimony, he suggested that Mr. Lill ask for a temporary absence for compassionate reasons, and he believes that it would have been possible to make an exception despite COVID. Mr. Lill reportedly replied that he would pray. Mr. Desparois did not offer him the opportunity to speak to an Elder, as he did not believe that Mr. Lill was involved in Indigenous activities at that time, he was not participating in a Pathways Initiative and he was not housed in Indigenous accommodations. He recorded the death of Mr. Lill's grandmother in the report he produces every 45 days on the inmates under his watch.
- [26] It is essential here to remember the context into which the world had been plunged in May 2020. The COVID-19 pandemic had been raging for two months, and the world was in lockdown and no one really knew for how long.
- [27] All outings and visits were suspended, only essential employees were working in the institutions while the rest worked from home, and services to inmates were inevitably reduced.
- [28] Véronique Landry, Indigenous Liaison Officer at Archambault Minimum from 2018 to late 2020, explained that before the pandemic, Indigenous inmates benefitted from culturally specific activities five days a week and the presence of an Elder four days a week. During the pandemic, meals were taken individually, and Elders were available only by phone (some could be on site two days a week, but the one at Archambault Minimum did not visit the institution because of her fragile health). Ms. Landry arranged phone meetings between inmates and the Elder upon request.

- [29] Ms. Landry said that she gave Mr. Lill Indigenous medicine for his ceremonies. She reminded him that she was available if he wanted to talk and that she could arrange more structured meetings for him if he submitted a request. On cross-examination by Mr. Lill, she confirmed that he was offered help but refused it.
- [30] Ms. Landry also explained that Mr. Lill submitted a request to her, asking to work with her instead of in the kitchen—he was scared of the COVID virus—and that she forwarded that request to the manager who assigns jobs to the inmates. Mr. Lill also told her that he was interested in transferring to the Waseskun Healing Centre, so Ms. Landry put him in touch with one of its counsellors. His application for transfer to Waseskun was rejected after he arrived at FTC-600.
- [31] That said, Mr. Mooney returned to work at the institution on May 15. Mr. Lill testified that he asked Mr. Mooney to set up a phone meeting with an Indigenous Elder. Mr. Mooney testified that he suggested that Mr. Lill see a psychologist, but Mr. Lill denied needing therapy. Mr. Mooney added that, before the pandemic, he had offered Mr. Lill an escorted temporary absence for compassionate reasons so that he could visit his dying grandmother. Mr. Lill had declined the offer on the advice of his family. Since his grandmother suffered from advanced Alzheimer's, it was best to remember her in happier times.
- [32] Mr. Mooney has been a parole officer since 2009. He explained the services offered to all inmates in the event of bereavement: escorted temporary absences, chaplaincy services, Indigenous Elder services, psychologist services, etc. All staff who work directly and indirectly with inmates are authorized to request a referral for an inmate to see a psychologist.
- [33] Nancy Chouinard, a CSC psychologist since 1998, explained that there are two ways for an inmate to receive psychological services: the inmate can make a request—forms for this purpose are available at the institution—or a worker can issue a referral. Unless it is an emergency, an appointment is set for within 15 days.
- [34] Unlike the services offered by Indigenous Elders, which were significantly reduced during the pandemic, psychological services were maintained.
- [35] It was not until June 28, 2020, following his emergency transfer from Archambault Minimum to Archambault Medium on June 25, 2020, that Mr. Lill submitted a request to meet with a psychologist. On June 30, 2020, Mr. Mooney submitted a request for referral to the same effect to the chief of mental health at the institution. The psychologist, Alexandre Chatigny, received the request that same day (Exhibit P-18).
- [36] Mr. Lill was seen on July 8, 2020, within the normal 15-day timeframe for this type of appointment. In an email sent to Mr. Mooney on the same day, Mr. Chatigny confirmed that the meeting had taken place and added that Mr. Lill [translation] “appears to be more irritable due to the temporary placement in medical isolation, particularly because it calls up traumatic events”. Mr. Chatigny confirmed that Mr. Lill wanted to receive bereavement

support in connection with his grandmother's death and that he would submit a request following his transfer.

- [37] Mr. Lill also confirmed that his involuntary emergency transfer from Archambault Minimum to Archambault Medium had reminded him of the illegal transfer he experienced in 2011, initiated by the same warden, Stéphane Lalande, which was the subject of the Pamel Judgments. This new transfer therefore put him in a fragile mental state.
- [38] On July 10, 2020, Mr. Chatigny wrote to the mental health department at FTC-600 to inform them of Mr. Lill's transfer to their institution, as follows:

[translation]

I wish to inform you that inmate Christopher Lill will be transferred to your institution (site 600) today. During his brief stay at Archambault Medium, he met with a psychologist once, by request. His PO had also issued a referral for him to receive support to help him grieve for his grandmother. He will no doubt submit a similar request to you when he arrives. He wants to approach the death of this significant person differently, given that, until now, he has tended not to ascribe any importance to the traumatic events and deaths in his life.

- [39] On the same day, Mr. Lill was transferred to FTC-600. As requested by Mr. Chatigny, an appointment was set for Mr. Lill with psychologist Nancy Chouinard for July 21—again, within the normal 15-day timeframe.
- [40] Much of the interview focused on Mr. Lill's frustration with his involuntary transfer and what he considered to be irresponsible decisions made by CSC in connection with COVID. He spoke only briefly of the death of his grandmother, who was a significant person for him and with whom he was very close. Ms. Chouinard's clinical note stated that Mr. Lill [translation] "says he is not overwhelmed by the loss of his grandmother. He explains that he is instead focused on his current goals. At the same time, he speaks about his application for judicial review for next year and his desire to move forward". In her assessment of Mr. Lill's mental state, Ms. Chouinard noted in particular that he [translation] "himself denies any current psychological distress" (Exhibit D-11).
- [41] Since she was leaving for a few weeks, Ms. Chouinard offered to see Mr. Lill again in August. Ultimately, she saw him again on September 2, 2020. In that meeting, Mr. Lill talked about his adjustment to FTC-600, a lawsuit he had against CSC, and how he found that time was dragging during the pandemic. Regarding the death of his grandmother, he confirmed that he was finding it difficult to grieve during the pandemic, since escorted temporary absences for compassionate reasons had been suspended. In her clinical notes, Ms. Chouinard stated that Mr. Lill [translation] "doesn't talk about her much except when we ask him questions". Since he quickly changed the subject, Ms. Chouinard suggested that he write a letter to his grandmother to help him work through his grief. Finally, she left it in Mr. Lill's hands to set up any future meetings if he felt the need. Mr. Lill did not follow up.

- [42] I therefore conclude from the evidence submitted that there is no basis for Mr. Lill's allegation that CSC staff failed to be attentive to him. As soon as he expressed the need, he was given access to two psychologists, as often as he wanted. Looking back on the pandemic, it could even be said that Mr. Lill had better access to psychological support than the general public did.
- [43] The Court sympathizes with Mr. Lill, as it does with anyone who experienced the end of life and death of a loved one during the COVID-19 pandemic. Hospital visits were kept to a minimum, and funerals were almost nonexistent.
- [44] Mr. Lill does not really identify the remedy he seeks in connection with these allegations, and in any case the Court rejects them as unfounded.
- (1) The law [45] Mr. Lill argues that by manipulating his Indigenous medicine without his permission during his two involuntary transfers, CSC committed an extracontractual fault against him, contravened section 75 of the CCRA, and breached his rights under sections 2(a), 2(b), 7, 8, 12, 15(1), 24(1) and 25 of the Canadian Charter of Rights and Freedoms (Canadian Charter) and sections 1, 3, 4, 5, 6, 9, 9.1 and 10 of the Charter of human rights and freedoms, CQLR c C-12 (Quebec Charter).
- [46] To obtain damages under Quebec civil law, a claimant must show fault, injury, and a causal link between that fault and the injury (article 1457 of the Civil Code of Québec, CQLR c CCQ-1991 [CCQ]).
- [47] Section 75 of the CCRA provides as follows:

Religion

Religion

75 An inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

75 Dans les limites raisonnables fixées par règlement pour assurer la sécurité de quiconque ou du pénitencier, tout détenu doit avoir la possibilité de pratiquer librement sa religion et d'exprimer sa spiritualité.

- [48] The spiritual life of inmates is governed by the CCRR:

Religion and Spirituality

Religion et vie spirituelle

100 (1) Every inmate shall be entitled to express the inmate's religion or spirituality in accordance with section 75 of the Act to the extent that the expression of the inmate's religion or spirituality does not

100 (1) Tout détenu a droit de pratiquer sa religion ou sa vie spirituelle conformément à l'article 75 de la Loi, dans la mesure où cette pratique ou cette vie spirituelle :

- (a) jeopardize the security of the penitentiary or the safety of any person; or
 - a) ne compromet pas la sécurité du pénitencier ou de quiconque;
 - (b) involve contraband.
 - b) ne comporte pas d'objets interdits.
- (2) Sections 98 and 99 apply in respect of any assembly of inmates held for the purpose of expressing a religion or spirituality.
- (2) Les articles 98 et 99 s'appliquent à toute réunion de détenus ayant pour objet la pratique de la religion ou de vie spirituelle.

101 The Service shall ensure that, where practicable, the necessities that are not contraband and that are reasonably required by an inmate for the inmate's religion or spirituality are made available to the inmate, including

101 Dans la mesure du possible, le Service doit veiller à ce que soit mis à la disposition du détenu, exception faite des objets interdits, ce qui est raisonnablement nécessaire pour sa religion ou sa vie spirituelle, y compris :

- (a) interfaith chaplaincy services;
- a) un service d'aumônerie interconfessionnel;
- (b) facilities for the expression of the religion or spirituality;
- b) des locaux pour la pratique religieuse ou la vie spirituelle;
- (c) a special diet as required by the inmate's religious or spiritual tenets; and
- c) le régime alimentaire particulier imposé par la religion ou la vie spirituelle du détenu;
- (d) the necessities related to special religious or spiritual rites of the inmate.
- d) ce qui est nécessaire pour les rites religieux ou spirituels particuliers du détenu.

[49] To comply with this provision, CSC provides Indigenous inmates with the materials they need for traditional ceremonies: abalone shells, feathers, sage, sweetgrass, cedar, etc.

[50] In *Ewert v Canada*, 2023 FC 1054, this Court recognized that, in certain circumstances, the search of an inmate's Indigenous medicine could infringe on sections 2(a) and 8 of the Canadian Charter and that such an infringement could not be demonstrably justified in a free and democratic society under section 1 of the Canadian Charter.

[51] CD-702, titled “Indigenous Offenders”, provides for a range of culturally specific services to the Indigenous offender population and the roles of the Elder/Spiritual Advisor and Indigenous Liaison Officer:

8. The Elder/Spiritual Advisor will:

- a. provide counselling, teachings and ceremonial services
- b. provide advice to the Institutional Head when required regarding ceremonies, ceremonial objects, traditional medicines or sacred grounds within the institution
- c. as a member of the Case Management Team, participate in case conferences as required

9. The Indigenous Liaison Officer will:

- a. document Elder/Spiritual Advisor Reviews (if required by the Elder/Spiritual Advisor) and share them with the offender
- b. take a supportive role with respect to cultural awareness and a liaison role with respect to general services to offenders and staff
- c. as a member of the Case Management Team, provide the team with information regarding the offender’s participation in a healing path
- d. liaise with Indigenous organizations or communities, when required, for assistance in maintaining supplies of traditional medicines required by the Elder/Spiritual Advisor

[52] CD-566-12, titled “Personal Property of Offenders”, provides for the removal and transfer of an inmate’s personal property:

- 65. When the inmate is unable to pack his/her personal property or when the inmate is to be absent temporarily, the cell will be immediately secured. The date and time at which the cell was secured and subsequently opened will be duly noted in the Unit Log Book. Where the cell cannot be secured as a result of shared accommodation, a secure area will be assigned to protect personal property.
- 66. Where the packing is not done by the inmate, two staff members will pack and, without delay, list all effects on the form Offender Personal Property – Cell Property Removal (CSC/SCC 2053) contained in the OMSR-OPP. The effects will be checked against the Offender Personal Property system and the hobby craft permit, and discrepancies noted. Both staff members will sign the list and forward a copy to the inmate as soon as possible.
- 67. When commercial shipping is required, the sending institution or parole office will retain copies of the invoices and packing slips. Commercial shipping will be paid by the sending institution. The receiving institution will ensure that the property delivered corresponds to records and will notify the sending institution of any loss or damage to inmates’ personal effects. The sending institution will file a claim to the commercial shipping company for the damage or loss of shipped effects.

- [53] Item 29 of CD-566-12 provides that the combined value of allowable items (in cell and in storage) as set out in the National List of Offender Personal Property will not exceed \$1,500.
- [54] If a personal item is lost or damaged, CD-234 provides instructions on how to file a claim and sets up a claims program. Its purpose is to “fairly and expeditiously resolv[e] . . . claims for damage to, or loss of, effects belonging to inmates” (emphasis added).
- [55] Upon arriving at an institution, offenders sign an Inmate Personal Property (Conditions and Liabilities) form accepting responsibility for the personal property they are allowed to keep in the institution and releasing CSC from any liability for damage to or loss or theft of the inmate’s personal property, unless the inmate can prove fault or negligence on the part of a CSC employee. Clause g) of that form reads as follows:

I hereby agree:

...

- g) That personal property found in my possession, cell, cell locker, work location or hobby shop, which could be declared as contraband by a disciplinary court shall be subject to confiscation and I to possible disciplinary action.

(Emphasis added.)

- [56] With respect to searches of Indigenous and other sacred objects, CD-566-9, titled “Searching of Cells/Rooms, Vehicles and Other Areas”, provides as follows:
15. Required security examination of Indigenous medicine bundles, or any other religious and spiritual articles or other sacred objects will be accomplished by having the owner manipulate them for visual inspection by the examining officer. In the owner’s absence, an Elder, an Elder’s representative (who is not an inmate) or a Chaplain or representative of a religious group will inspect or manipulate the contents for inspection.
- [57] That said, the Crown acknowledges that there were a number of breaches of the relevant CDs, mainly due to the pandemic situation, but denies that these breaches constitute extracontractual faults or violations of a Charter right.
- [58] Indeed, there is an important distinction to be made between non-compliance with a CD and a fault for which CSC may be liable. The Quebec Court of Appeal had this to say on the subject of CDs:

[translation]

[34] It should be noted that Commissioner's Directives are not binding. Although they are adopted and authorized under the CCRA, they are administrative in nature. They do not create a right for inmates and, in any event, they could not limit the exercise of the duties and functions of the Correctional Service in the enforcement of the CCRA and Regulations in the prison setting. They are intended as guidelines to assist Correctional Service employees in the performance of their duties.

(Jackson c Dulac, 2021 QCCA 1536)

[59] The evidence adduced by the two parties helps establish a timeline of events relating to Mr. Lill's two involuntary emergency transfers and what happened to his Indigenous medicine during those transfers.

[60] Mr. Lill also voices numerous complaints against CSC, many of which are based on a misinterpretation of the letter and spirit of the CDs and applicable legislation. The Court will address only the faults for which Mr. Lill claims damages.

(2) The evidence – Transfer from Archambault to FTC-600 [61] In testimony, Mr. Lill indicated that he was informed in advance by a CSC employee that preparations were being made for his involuntary emergency transfer to a medium-security facility. This gave him the chance to return to his cell and put his personal effects in order ahead of the transfer. He said that he put his two boxes of legal documents on his bed. The boxes were closed, and Mr. Lill had marked them [TRANSLATION] "Confidential PRIVILEGED CORRESPONDENTS CD-085, Annex A, paragraph 19 – Legal Documents, LEGAL COUNSEL CLIENT Confidential".

[62] With regard to his Indigenous medicine and other cultural objects, the applicant states that everything was on his desk. The evidence is not entirely clear on this point, but the Court understands that the supplies required for purification ceremonies (abalone shells, sage, sweetgrass, cedar and feathers) were in two containers: a wooden case about 18 inches long, 4 inches wide and 3 inches deep, and a red velvet case of the same width and depth but about 10 inches long. The wooden case has a lid but no fastener to hold it in place, while the velvet case does not appear to have a cover.

[63] Needless to say, Mr. Lill's dreamcatcher and shield could not be stored in the cases. The Court accordingly concludes that they were simply placed on the desk in his cell.

[64] The applicant's testimony is partially contradicted by an email from his counsel to the CSC, dated July 6, 2020 (Exhibit P-4), in which she wrote the following:

[translation]

Madam:

In anticipation of Mr. Lill's transfer from Archambault Institution Medium to FTC-600, he has informed me that his legal papers concerning the ongoing proceeding are scattered throughout his cell. Clearly, his placement was not planned and we have been working on the case remotely for weeks. Concerned that your staff might manipulate, damage or remove important

information, Mr. Lill is asking permission to go to his cell to pack everything up himself, under the supervision of staff members. As this is a lateral transfer, there is no security level issue or contraindication.

[65] Counsel made no mention of Indigenous medicine or other cultural objects.

[66] On the same day, a manager replied to counsel that Mr. Lill's cell would be emptied in accordance with the CDs and established procedures, but that movements between institutions were limited to prevent the spread of COVID-19. According to Patricia Tranchemontagne's testimony, inmates were required to undergo preventive medical isolation every time they moved from one institution to another, something that was avoided as much as possible.

[67] Following the emergency transfer from Archambault Minimum to Archambault Medium (where Mr. Lill remained for only 15 days), his personal effects were removed from his cell on July 7 for transfer to FTC-600.

[68] David Brodeur, Correctional Officer II, placed all of Mr. Lill's personal property in a moving bin. The Crown concedes that since Mr. Brodeur was not accompanied by another staff member, CD-566-12 was not respected. Mr. Brodeur completed the Inmate Personal Property (Cell Property Removal) form and ticked off the items in the bin from a list provided to him.

[69] Mr. Brodeur's evidence is that there were no Elders or Indigenous Liaison Officers on site on July 7, 2020. He therefore asked an Indigenous inmate to manipulate the Indigenous medicine and other cultural objects. The Crown acknowledges that this approach does not comply with CD-566-12.

[70] Mr. Brodeur brought everything to the personal property department, and officer François Desparois searched the belongings to make sure that they did not contain contraband and that all of the items were on Mr. Lill's personal property list. For the search of the Indigenous medicine, Mr. Desparois called on the Indigenous Liaison Officer, Véronique Landry (Ms. Landry's testimony is that the Elder was working remotely at the time). She manipulated the cases, allowed Mr. Desparois to make a visual inspection, and placed everything in a moving box. Since there were three abalone shells in Mr. Lill's possession and these items are provided by CSC, she removed one to give it to another Indigenous inmate who did not have one. Finally, she drew up a list of Mr. Lill's spiritual effects (Exhibit P-21).

[71] Mr. Lill states that his ceremonial ashes were stored in brown paper (of the kind found in public washrooms) and placed in an abalone shell, which was covered with a red cloth and stored in one of his Indigenous medicine cases. The ashes were no longer there when he received his belongings.

- [72] None of the witnesses recall seeing brown paper containing ashes, but they all say that they threw nothing away.
- [73] In addition, four unlabelled diskettes were removed from Mr. Lill's belongings because they were not on his personal property list. Since the sociocultural department is responsible for providing this equipment, the four diskettes were sent to them to verify that Mr. Lill was indeed authorized to have them in his possession.
- [74] Once the search was completed, the boxes were sealed.
- [75] Mr. Lill was transferred to FTC-600 on July 10. Unusually, Ms. Tranchemontagne asked Mr. Desparois to bring Mr. Lill's belongings from Archambault to FTC-600 himself to avoid the usual delays. Mr. Lill had asked to have access to his legal documentation as soon as possible and, since he was known to be a querulous inmate, the idea was to avoid any future problems. Mr. Desparois states that in his entire career at CSC, only once has he been required to deliver an inmate's personal property himself.
- [76] At the time, Manon Dignard and Patrick Landry were assigned to the personal property department, and they opened the boxes to verify their contents.
- [77] On July 17, Mr. Lill was called to the personal property department of FTC-600 to retrieve some of his belongings. Mr. Lill had asked to be present and to be able to take pictures when his boxes were opened, something that Ms. Dignard says is unusual. Mr. Lill was given his legal documents and a few personal belongings, but since Ms. Dignard was leaving on vacation, he would be given the rest when she returned.
- [78] According to Mr. Lill, his boxes of legal documents had been searched, and the envelopes containing his legal documents were with other documents that were not legal documents.
- [79] On July 27, Mr. Lill, who had asked to be present when the boxes were opened, went back to the personal property department. He also asked to take pictures of the contents of the boxes.
- [80] Manon Dignard and Patrick Landry were assigned to this department and proceeded to open the boxes. They were aware that Mr. Lill was a querulous inmate who often brought motions and proceedings, so they went along with his requests. They took pictures of the contents of the boxes as instructed by Mr. Lill and allowed Mr. Lill to take a few pictures himself.
- [81] Mr. Lill first noticed that his Indigenous medicine cases, his dreamcatcher and his shield were in a box with other personal belongings (e.g., cassettes, a binder, etc.). He opened his wooden case containing his Indigenous medicine himself; according to him, it was [translation] "wrecked", his ceremonial ashes had disappeared, and his feathers were damaged.

- [82] For their part, Ms. Dignard and Mr. Landry state that they did not notice anything anomalous inside the boxes and that they did not see anything that had been [translation] “wrecked”.
- [83] Mr. Landry followed up with Ms. Tranchemontagne, who confirmed that no one had seen Mr. Lill’s ceremonial ashes.
- (3) The Evidence – Transfer from FTC-600 to Cowansville [84] On January 12, 2021, Mr. Lill again underwent an involuntarily emergency transfer from FTC-600 Minimum to the medium-security Cowansville Institution. His cell was secured the same day and emptied on January 14, 2021, at the request of manager Christiane Dubord. Pierre Roy and Stéphanie Colfort, two correctional officers, took care of the removal. They confirm that they emptied only Mr. Lill’s cell and not the common areas of the condo that Mr. Lill shared with other inmates.
- [85] Since there was no Elder or Indigenous Liaison Officer on site, they placed the two cases and other cultural items in the boxes themselves. They did not search anything.
- [86] Again, the removal form was filled out and Mr. Lill’s belongings were taken to the personal property department.
- [87] Manon Dignard received the boxes and searched them with her colleague, Patrick Landry. She did not search the Indigenous medicine cases identified by a red cloth and does not recall whether an Elder was on site to do it. She manipulated the container but not the contents. They placed everything in boxes and sealed them.
- [88] Jean-Philippe Gauthier and Marc Chapdeleine were posted to the personal property department at the Cowansville Institution when the boxes arrived. They also received a request from Mr. Lill, who asked to be present when his boxes were opened. Again, photos were taken.
- [89] Again, Mr. Lill says that his envelopes of legal documents were with other personal effects, that his Indigenous medicine was misplaced in the cases, and that his cultural objects were in boxes with non-spiritual items.
- [90] Mr. Lill’s office supplies were missing (stapler, ruler, eraser, etc.), and Mr. Gauthier followed up with FTC-600 to locate them.
- [91] The office supplies were later found in a drawer of his dresser at Archambault Minimum by an former fellow inmate of Mr. Lill’s. He handed them in to the personal property department and they were returned to Mr. Lill in Cowansville, except for the items that are prohibited in a medium-security facility (scissors and compass). It seems clear that when Mr. Lill’s cell was emptied at Archambault Minimum, a drawer was overlooked.

B. Did CSC officers commit an extracontractual fault or breach a Canadian Charter right in manipulating Mr. Lill's traditional Indigenous medicine, including his ceremonial ashes? [92] It is not possible to determine what happened to Mr. Lill's ceremonial ashes based on the evidence. One thing is certain: if they were in his cell at Archambault Minimum when he left, they have disappeared.

[93] Mr. Lill holds CSC accountable for this. He is adamant that he did not have to tell anyone that he had the ashes in his possession and that he did not have to ask that special care be taken with them. He asserts his rights and assumes no responsibility.

[94] However, the Court believes that Mr. Lill must bear at least some of the responsibility for the loss of his ceremonial ashes. He could have placed the ashes—which are volatile by nature—in an airtight container or in a closed bag, rather than in a sheet of brown paper. He could well have informed institutional authorities of the importance of these ashes to him and asked that special care be taken with them. If he was in fact given the chance to put his belongings in order before leaving Archambault Minimum, contrary to what his counsel stated in her email of July 6, 2020 (Exhibit P-21), then he had the opportunity to safeguard his ceremonial ashes. He had bags, leather and jars for hobby crafts at his disposal. He did nothing of the sort.

[95] There was certainly a breach of CD-566-12, as the Crown admits, since Mr. Lill's cell was emptied not by two CSC employees, but by Mr. Brodeur and an Indigenous inmate. They simply inventoried the belongings and placed everything in a moving bin.

[96] However, the Court does not consider this a fault likely to engage the CSC's extracontractual liability. It was the beginning of the pandemic and no vaccine was yet available. Prisons were operating with reduced staff and subject to significant restrictions to prevent an outbreak of the virus within their walls.

[97] This case also differs significantly from Ewert.

[98] First, the events that gave rise to Ewert took place in 2019, before the pandemic.

[99] Furthermore, in Ewert, CSC had seized and searched Mr. Ewert's medicine bundle in his absence, even though he was at the institution. Mr. Ewert's Indigenous medicine had been enclosed in his red medicine bundle, which helped identify what its owner considered to be Indigenous medicine.

[100] In this case, only Indigenous people manipulated the contents of Mr. Lill's two cases, while CSC staff manipulated the cases themselves to place them in the moving boxes. Again, DC-566-9 was not followed. However, there were no Elders present in the institution and Mr. Lill's personal property had to be transferred.

[101] On both transfers, Mr. Lill took photographs as his boxes were opened. While he claims that his Indigenous medicine was [translation] "wrecked", none of the photos show any wreckage. Some photos show the inside of his two cases, and they appear to be in the state

in which he describes keeping them: red cloth, abalone shell, sweetgrass and eagle feather. He claims that his feathers were broken, yet there are no damaged feathers in the photos. He claims that his shield was damaged, but the photo showing his shield—held by an officer as Mr. Lill took the photo—is deceptive (Exhibit CL-26, page 5). The shield looks like a dreamcatcher except that the centre consists of a round piece of leather tied with leather strings. In the photo, the shield is held sideways rather than in the way that it is meant to be hung. The only visible anomaly is the fact that the leather portion is off-centre. It is impossible to know if anything is actually broken or if the shield would be properly centred when placed in the correct position.

- [102] Kathleen Angus, Regional Administrator of Indigenous Initiatives at CSC, from the Mohawk Nation of Kaneshatka, began by explaining how devastating COVID was for Indigenous services in institutions. Elders—who, by definition, are somewhat older people—no longer went to institutions, while Indigenous Liaison Officers had very little contact with inmates. Contrary to what Mr. Lill tried to get Ms. Angus to say, she confirmed that the Indigenous Liaison Officer can take the place of the Elder in the latter's absence. She described dreamcatchers and shields more as crafts than Indigenous medicine. On cross-examination, she admitted that when such an object is given by an Elder, the recipient may give it any meaning they want. However, Mr. Lill remained silent on the origin of his cultural objects.
- [103] Mr. Lill criticizes CSC for packing his Indigenous medicine and other cultural objects in boxes containing non-cultural objects. Neither Kathleen Angus nor the liaison officer, Véronique Landry, see this practice as contraindicated.
- [104] Mr. Lill also criticizes Ms. Landry for removing one of the three abalone shells from his Indigenous medicine cases. Ms. Landry explained that the medicine is provided to Indigenous inmates by CSC and that inmates are generally given only one abalone shell, so she took one to make it available to another inmate. Mr. Lill tried to press her on cross-examination to say that if an Elder gave it to him, it might be sacred, but he said nothing about where the three abalone shells in his cases came from.
- [105] The Court finds that the actions alleged against CSC did not infringe Mr. Lill's "freedom of conscience and religion", nor did they interfere with Mr. Lill's ability to act in accordance with his religious beliefs in a manner that was more than trivial or insubstantial (*Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 32, citing *Syndicat Northcrest v Amselem*, 2004 SCC 47 and *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6).
- [106] The Court is also of the view that CSC did not contravene section 75 of the CCRA by preventing Mr. Lill from freely and openly participating in, and expressing, religion or spirituality.

C. Did CSC officers search, manipulate, seize or steal any legal documentation or diskettes belonging to Mr. Lill? [107] Mr. Lill is of the opinion that his writing on a box indicating that its contents are privileged and covered by CD-085 means that it cannot be searched. He criticizes CSC for removing the envelopes from his two boxes that he had identified this way and placing them in moving boxes.

[108] He also claims that three envelopes containing legal documents and some diskettes were stolen from him in retaliation for a complaint he made against CSC and the managers of FTC-600, Diane Allard and Geneviève Thibault, who terminated his escorted temporary absences for family responsibilities.

[109] First, all the CSC employees who manipulated Mr. Lill's legal documentation are unanimous: they must open document boxes to ensure that they do not contain contraband or unauthorized items. When they search an envelope, they do not empty its contents but turn it upside down and shake it to make sure that there is nothing but documents inside. They did not read or discard any legal documentation belonging to Mr. Lill.

[110] Moreover, Mr. Lill remains rather vague about the contents of the envelopes he claims have disappeared.

[111] With respect to the alleged retaliation, Ms. Allard and Ms. Thibault provided very convincing testimony on the issue of Mr. Lill's escorted temporary absences. They were not terminated by Ms. Thibault, then warden of FTC-600; rather, they were not renewed. Ms. Allard and Ms. Thibault did not ask for the cancellation of a hearing before the Parole Board of Canada (PBC) to which Mr. Lill was entitled; instead, they decided not to approve the renewal of Mr. Lill's escorted temporary absences. Since Mr. Lill is still ineligible for parole or day parole, this decision is made by the warden of the institution and not by the PBC.

[112] Ms. Allard and Ms. Thibault are adamant that they did not manipulate, consult or steal Mr. Lill's legal documentation. And they did not ask anyone to do it, either.

[113] As for the four missing diskettes, Mr. Lill indicates that they were not labelled and that their contents had to be checked to know that they belonged to him. He argues that he did not have to label them or include them on his personal property list. However, Mr. Desparois explains that he removed four diskettes from Mr. Lill's belongings because they were not labelled and the number of diskettes in Mr. Lill's possession exceeded the allowable number. He sent them to the sociocultural department, since it is responsible for providing this type of equipment to the inmates. Following the verification, four diskettes were given to Mr. Lill. Mr. Lill asserts that only two of the four diskettes given to him belong to him and the other two belong to another inmate. While it is true that the contents need to be verified to identify the diskettes' owner, it is also true that Mr. Lill could have labelled them and put them on his personal property list. Labels on the diskettes would have made it easier to give the right ones back to Mr. Lill. Here, again, he refuses to take responsibility for his own property.

[114] The Court therefore concludes that Mr. Lill has not demonstrated that CSC employees stole or consulted his legal documentation in retaliation against him.

D. Did CSC officers steal or misplace any of Mr. Lill's personal property, such as office supplies and a TENS machine? [115] As noted above, Mr. Lill recovered all of his office supplies except for what is not permitted in a medium-security facility.

[116] What was missing after the transfer from FTC-600 to Cowansville was a TENS machine, which he values at \$250, two Druide dictionaries valued at \$89.17, and crafting beads valued at \$74.92.

[117] However, it appears that when Pierre Roy emptied Mr. Lill's cell at FTC-600, the TENS machine was not there (see Exhibit CL-22). Moreover, the value that Mr. Lill gave it on his personal property list is \$1 (as a reminder, the combined value of the personal property that inmates are allowed to keep at the institution must not exceed \$1,500). The only things left are the Druide dictionaries, which CSC employees took steps to locate, and the hobby craft materials that are provided free of charge by CSC when a request is made to the Indigenous Liaison Officer. Mr. Lill did not make a claim following the procedure set out in CD-234 with the purpose of "fairly and expeditiously resolving . . . claims for damage to, or loss of, effects belonging to inmates", but instead chose to commence these actions, claim the amount of \$375,000, and proceed with a six-day trial in this Court.

[118] As the Supreme Court stated in *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27 at paragraph 9, "psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness".

E. If there was a fault or a breach of a Charter right, is Mr. Lill entitled to moral and punitive damages, and if so, how much? [119] Given its finding that there was no fault on CSC's part and that no Canadian Charter or Quebec Charter right was breached, this Court does not need to consider damages. However, a few comments are in order.

[120] In light of the factual matrix of these two cases, the total amount claimed by Mr. Lill is grossly exaggerated.

[121] Mr. Lill seeks moral and punitive damages in the amount of \$375,000. When examined for discovery about the breakdown of his damages, he objected and refused to answer. His evidence before this Court remains relatively vague in this regard.

[122] He simply repeats that he has suffered immeasurable damage. He has presented no such evidence.

[123] When he met with psychologist Nancy Chouinard on September 2, 2020, there was no mention of what happened to his personal property when he was transferred from Archambault Medium to FTC-600. Mr. Lill had the option of continuing to meet with Ms. Chouinard but chose not to.

[124] Again, he asserts rights but refuses to accept his share of the responsibility.

III. Conclusion [125] At the hearing, the Court recommended that Mr. Lill learn to pick his battles. This advice is reiterated. It is one thing to know the law, but it is quite another to truly grasp both its letter and spirit.

[126] The Court is of the view that Mr. Lill has failed to demonstrate any fault likely to engage CSC's and its servants' liability in the two involuntary transfers imposed on him. He has also failed to demonstrate any damage whatsoever that goes beyond mere inconvenience or temporary irritant. His actions are therefore dismissed.

[127] If the parties cannot agree on costs, they may make written submissions, not exceeding five (5) pages, within fourteen (14) days from the date of this decision. Reply submissions, not exceeding two (2) pages, may subsequently be submitted within seven (7) days.

JUDGMENT in T-266-21 and T-1961-21

THE COURT'S JUDGMENT is as follows:

1.The applicant's actions in T-266-21 and T-1961-21 are dismissed.

2.If the parties cannot agree on costs, they may make written submissions, not exceeding five (5) pages, within fourteen (14) days from the date of this decision. Reply submissions, not exceeding two (2) pages, may subsequently be submitted within seven (7) days.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-266-21

STYLE OF CAUSE:

CHRISTOPHER LILL v HIS MAJESTY THE KING

AND DOCKET:

T-1961-21

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GAGNÉ J

DATED:

NOVEMBER 8, 2024

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