

CANADA / JUDGMENT

Stewart v. Canada

2026 FC 512

COURT

Federal Court

DECIDED

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Date: 20260416

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Citation: 2026 FC 512

Ottawa, Ontario, April 16, 2026

PRESENT: Mr. Justice Pentney

BETWEEN:

KELSEY STEWART

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant

JUDGMENT AND REASONS

I. Introduction [1] On February 4, 2020, at around 10:15 in the morning, Mr. Kelsey Stewart, the Plaintiff in this action, was assaulted and injured by a Correctional Officer [CO] while exiting his cell at the Saskatchewan Penitentiary [Sask Pen]. He seeks damages for his injuries, and additional amounts to deter future incidents, totalling \$240,000.

[2] The Attorney General of Canada [AGC], acting on behalf of Correctional Service Canada [CSC], admitted that the use of force during this incident was not proportionate to the circumstances. The AGC accepted that some damages should be paid to Mr. Stewart as a result of the injuries he suffered but proposed a significantly lower amount, in the range of \$5,000–\$15,000.

[3] In light of the AGC's concession, there are only two issues before the Court: what happened during this incident, and what is the appropriate damage award for Mr. Stewart, considering the injuries he experienced and the circumstances in which the assault occurred?

[4] These reasons are divided into two sections. In the first part, I address Mr. Stewart directly, much as I would have had I delivered these reasons in person in the courtroom. The second part of my reasons sets out, in the sometimes dry and technical manner of the law, my findings of fact and my determination of the appropriate damage award, based on the principles set out in the jurisprudence. There is inevitably some duplication, but I do not expect this to cause a problem for any reader. At the end of the day, I believe that Mr. Stewart is owed a plainly worded explanation of my findings and reasons – as free of jargon and legal-ese as possible, because he is the one who was assaulted. That is what I have tried to do in the next section.

Part One An explanation for Mr. Stewart [5] Mr. Stewart, the following is an explanation of what I found happened to you on the morning of February 4, 2020, and my decision on how much money you should get because of your injuries and what you went through that day.

[6] As you will remember, during the trial you gave evidence, and I also heard testimony from witnesses for CSC: Deputy Warden MacGregor, as well as two COs who were there during the incident: CO Hawkes and CO Boka. You know that I did not hear any testimony from CO Anderson, the one who caused your injuries. So, I don't have his side of the story, other than the written report he filed and the other reports that talk about his explanation for what happened.

[7] The first thing you should know is that I believe your evidence on the key point – that CO Anderson pinned you against the cell door, and that he struck your head after he had you up against the cell door. You admitted that you may have made some mistakes in what you reported right after the incident. For example, you said you were put in handcuffs, but now you know that never happened. But I believe your evidence on the main part of your story.

- [8] Based on all the evidence, here is a short summary of my findings about what happened. You were asked to leave your cell by CO Anderson so that the guards could search it. You didn't want to do that, but after a short discussion with CO Anderson, you agreed to leave your cell.
- [9] You started to back out of your cell, with your hands up behind your head. As you got close to the cell door, CO Anderson reached out his hands and put them by your side, up near your armpits, to guide you out through the cell door. Once you were in the cell doorway, CO Anderson suddenly slammed you – hard – against the cell door. The guards said he did this because you started to turn, and CO Anderson wanted to keep you from doing that. CO Anderson said you “turned violently” towards him. Based on the video evidence, I don't believe that you “turned violently” or really that you turned much, if at all.
- [10] CO Anderson had no good reason to slam you against the cell door so hard. He is much bigger than you, and you had your back to him with your hands up by your head. You started to lower your hands and put them behind your back, so when he pushed you against the cell door you had no way to protect your face from hitting the bars on the door. At that point you did not look threatening in any way; you were still facing the back of your cell and the guards were behind you.
- [11] After CO Anderson pinned you against the cell door with his body, CO Hawkes grabbed your right wrist and held it in a wrist lock. There was some movement by CO Anderson pushing up against you, and it is hard to know exactly what was happening, but it is clear he was using force against your left side. He rocks back and forth, and you may have been struggling a bit, but he had you pinned against the cell door and CO Hawkes had control of your only free hand. After a short time, things calmed down, CO Anderson released you, and then you were taken out of the cell and patted down. The COs moved you to another cell while they searched your cell, and then you were returned to your cell.
- [12] Around 2 p.m. that afternoon, a nurse visited your cell to do a post-use of force interview. That was recorded. The video shows injuries to the right side of your face – a cut by your eyebrow and a cut on your right cheek, plus some scratches. The video also shows that the left side of your face by your mouth was quite swollen. You told the nurse that you had been punched on that side. The nurse later took you to the nursing station and glued the cut by your right eyebrow. The wound re-opened later and then stitches were put in to keep it closed. You were sent to an eye doctor because you said your vision was blurry. By your second appointment, your vision had returned to normal.
- [13] I know that you have said that CO Anderson punched you on the left side of your face when he had you pinned against the cell door. I have looked at the videos many times, but they do not show clearly that CO Anderson was punching you. Once you were pinned against the cell door, the videos show CO Anderson moving back and forth – kind of rocking up against you. He may have been punching you with his left hand – these would have been short punches (sometimes called “rabbit punches”) because his arm never goes back to “wind up” and

punch you. He may have been slamming against the left side of your face with his forearm. It is just not clear. But he was using some type of force against you on your left side; that much is clear from the videos.

- [14] At the end of the day, I am not able to make a specific finding that CO Anderson punched you. But that does not really matter very much, because I find that CO Anderson used some kind of additional force against the left side of your face after he had you pinned against the cell door. The video taken after the incident clearly shows that the left side of your face was noticeably swollen.
- [15] Based on all of the videos, and the testimony and written evidence, I find that the injuries on the left side of your face were caused by the additional use of force by CO Anderson after he had pinned you against the cell door. He might have punched you. Maybe he hit you with his left forearm. Whatever happened, I find that the injuries to both sides of your face were caused by an unjustified and unlawful use of force by CO Anderson.
- [16] Based on those findings, you are owed damages for the injuries you suffered including the harm caused by going through that experience. Your lawyer said you were owed a lot of money (\$240,000), partly to send a message to CSC that it needed to discipline CO Anderson and to change its approach to dealing with other COs who abuse their authority. The government admits that the use of force by CO Anderson was disproportionate considering the circumstances. But the government says you are only owed a smaller amount, in the range of \$5,000–\$15,000.
- [17] Based on the evidence, I cannot accept all of your lawyer's arguments. I cannot make a general finding that CSC needs to change its discipline approach or take other steps to prevent CO Anderson from continuing to have contact with inmates. The evidence just does not support that. What I can do is recognize that the harm you experienced was made worse because of your situation as an inmate, subject to the authority of COs. That made you vulnerable to the assault by CO Anderson. I also find that you did not provoke the attack and there appears to be no justification for such a sudden and violent action against you.
- [18] I find that the unjustified use of force supports a damage award for what the law calls a "battery" – we would usually just call it an assault. I am awarding you \$50,000 for that. I also find that the use of force violated your right to security of the person under the Canadian Charter of Rights and Freedoms [Charter]. The Charter is a very important law in Canada and breaking it is a very serious thing. That is what happened here. I am awarding you \$15,000 in damages for the breach of your Charter right.

[19] The total amount I am awarding is a lot more than the government said you should receive. Part of the reason I chose that amount is that you experienced immediate and some continuing pain and suffering as a result of the assault, and you should be compensated for that. A portion of the money is to recognize the serious way your Charter right was violated. I am also awarding you legal costs so that you can pay your lawyer for the work he did on your case.

[20] With that, I will turn to the second part of the decision, which deals with the technical legal analysis.

Part Two – Background and Legal Analysis II. Background [21] The following brief summary of the incident that gave rise to this trial is based on the cell block videos, written statements that were made in the immediate aftermath of the incident, as well as oral testimony. I explain my findings about the incident in greater detail below; at this point, a brief summary is sufficient.

[22] On February 4, 2020, Mr. Stewart was an inmate at Sask Pen, in the Medium Security wing. He occupied a cell located in the Intake Overflow Unit, an area used when the regular intake unit is at full capacity. On that day, COs were conducting routine monthly cell searches.

[23] Three COs approached Mr. Stewart's cell to conduct the search: CO Anderson, CO Hawkes and CO Boka. CO Anderson took the lead. When the COs arrived at his cell, Mr. Stewart was in bed. CO Anderson asked him to get up and to leave his cell so that it could be searched. Mr. Stewart was initially resistant, although after a brief discussion with CO Anderson, he got out of bed and got dressed.

[24] Mr. Stewart began to back out of his cell, facing the wall with his back towards the door where CO Anderson was standing. The other two COs were behind CO Anderson, in the range hallway in front of the cell. The COs all appear to be relaxed at this point; there is no indication that they perceived any imminent or immediate threat from Mr. Stewart. The evidence shows that while Mr. Stewart may have been swearing at the COs and complaining about the intrusion, he was physically cooperative.

[25] As Mr. Stewart backed closer to the cell door, CO Anderson put his hands on Mr. Stewart's sides, up near his armpits, to guide him backwards through the door. As Mr. Stewart reached the cell door, two things happened: Mr. Stewart began to lower his hands – as he had been instructed – putting them behind his back; next, CO Anderson suddenly grabbed Mr. Stewart and pushed him forcefully up against the cell door, pinning him there with his body. This action was sudden and violent. While Mr. Stewart was pinned against the door, his right hand was free (it appears his left hand was pinned between his body and the cell door). CO Hawkes immediately went around CO Anderson, grabbed Mr. Stewart's right wrist and placed it in a wrist lock.

- [26] At this point, Mr. Stewart was pinned against the cell door by CO Anderson, who is significantly bigger than Mr. Stewart. The videos show movement by CO Anderson – his body moves back and then forwards, and it appears his left arm and hand are moving, but the specific actions are not visible because of the camera angles. It is difficult to see much of Mr. Stewart at this point because he is up against the cell door and largely hidden from view by CO Anderson and CO Hawkes.
- [27] After a relatively short period of time (approximately one minute), the situation calmed down. CO Anderson backed away from Mr. Stewart and CO Hawkes released the wrist lock. Mr. Stewart is moved away from the cell door into the range hallway and turned to face CO Hawkes with his hands on his head, while CO Anderson pats him down. Mr. Stewart is then placed in an adjacent cell, while COs Anderson and Hawkes search the cell he occupied. CO Boka remained in the range hallway. After the cell search was completed, Mr. Stewart was returned to his cell without any further incidents.
- [28] This use of force incident triggered several institutional actions, in accordance with CSC policy. The three COs completed Statement/Observation Reports [SORs] (discussed in greater detail below); another CO (a supervisor) reported that he went to Mr. Stewart's cell to check on him and provided some bandages for his cuts. At approximately 2:30 in the afternoon, another CO and a CSC nurse conducted a post-use of force medical assessment, which was videotaped.
- [29] The post-use of force video (the only recording with audio) shows the extent of Mr. Stewart's initial injuries: a cut near his right eyebrow that eventually required 6 stitches; a cut on his right cheek as well as some scratches; and significant swelling on the left side of his face near his mouth. On the video, Mr. Stewart said to the nurse that he had been punched in the face, and that he wanted to speak with his lawyer. He also said he had a headache but did not report any other symptoms. The nurse told Mr. Stewart that he would be taken to the nursing station so that his cuts could be looked after. Shortly thereafter, Mr. Stewart was taken to the nursing station where the cut near his right eye was glued shut and his other cut was treated. At that point, Mr. Stewart reported that he had a headache and blurred vision.
- [30] As a result of reporting blurred vision, Mr. Stewart was referred to an ophthalmologist. He had four appointments between February 2020 and March 2021, and the doctor's report after the second visit reported that he had 20/20 vision in both eyes, which was confirmed in all of the subsequent reports.
- [31] The use of force incident was the subject of several separate reviews, including an Institutional Incident Report, a Use of Force Report, as well as a Disciplinary Investigation Report that was prepared by a Disciplinary Board of Inquiry comprised of correctional managers from a different institution. These reports are discussed in more detail below; at this point it is sufficient to note that all the reports concluded that the use of force was justified, although the Disciplinary Investigation Report was somewhat equivocal, stating that "there is insufficient information to say conclusively that Officer ANDERSON used

excessive force on inmate Stewart.” The Disciplinary Investigation Report noted a question about what caused the injuries to the left side of Mr. Stewart’s face but found no corroboration that an assault or excessive use of force occurred.

[32] Finally, Mr. Stewart’s grievance about the incident was reviewed at the national level, and the response, dated May 18, 2023, concluded that his grievance should be upheld. The Final Grievance Response found that the statements by the three COs that the use of force was justified because Mr. Stewart turned aggressively towards CO Anderson as he was leaving his cell was not supported by the video recordings, which did not show any turn. The Final Grievance Response found that the use of force occurred “[f]or an unknown reason” and there was no imminent threat to the COs or government property. Based on these findings, the Final Grievance Response concluded that the use of force “was not limited to what was necessary or proportionate, to obtain [Mr. Stewart’s] cooperation during a routine search of [his] cell, and therefore, not completed in compliance with [CSC] policies...” Mr. Stewart’s grievance was upheld.

[33] As a result of this incident, Mr. Stewart launched an action against CSC, claiming damages for the unjustified use of force and for breach of his Charter rights.

III. Issues [34] As a result of the Defendant’s concession that the use of force was greater than was justified in the circumstances, there are only two issues:

Did CO Anderson cause the injuries to the left side of Mr. Stewart’s face by punching or hitting him?

What damages are owed to Mr. Stewart as a result of the unjustified use of force?

IV. Analysis 1. The unlawful use of force incident [35] Much about the use of force incident is not disputed. Three guards approached Mr. Stewart’s cell to do a routine cell search. One of the guards, CO Anderson, took the lead. He explained to Mr. Stewart that they needed to search his cell, and when Mr. Stewart verbally resisted CO Anderson persuaded him to comply. Mr. Stewart was told to back out of his cell, and as he approached the cell door with his hands behind his head, CO Anderson moved forward and placed his hands on Mr. Stewart near his armpits, to guide him through the door.

[36] The main factual question at issue here is what happened next, and that will be the focus of my analysis of the evidence. The parties disagree on the findings available on the evidence, which in turn leads them to different positions in regard to the damages that are owed to Mr. Stewart.

[37] The following discussion will focus on the incident itself. In the next section of the decision, I review the evidence about the CSC policy and operational framework, insofar as it is pertinent to the assessment of damages.

- [38] The evidence about the incident includes the testimony of Mr. Stewart and COs Hawkes and Boka (CO Anderson did not testify), as well as the written reports of the three COs who were involved and the report of the interviews with the COs set out in the Disciplinary Investigation Report, the video recordings from the cell block cameras and the hand-held camera used during the post-use of force interview, as well as the findings made in the various reviews done by CSC.
- [39] As explained below, I find the cell block cameras and the post-use of force video to be key evidence. There are two cameras in the cell block used as the Intake Overflow Unit, one at each end of the hallway. The cameras are mounted high on the wall, facing each other, and it appears that they are continuously recording this area. The videos provide a clear picture of the range, with the cells on the one side and a railing and stairway leading to the first floor partially visible. The video is clear, but do not record the audio so it is not possible to hear what was said during the incident.
- [40] After the incident that caused the injuries to Mr. Stewart, a post-use of force interview was conducted by Correctional Manager Spence and Nurse Lacey Hegland, and this was recorded. This video was taken with a hand-held camera operated by another CO, and this video includes sound. It provides a very clear indication of the nature and extent of Mr. Stewart's injuries, as well as his initial explanation of what happened. CSC preserved the videos from the incident, and they were entered as exhibits at trial.

A. Mr. Stewart's evidence [41] Mr. Stewart testified that he was asleep when the guards first came to his cell to tell him to get up so that they could search his cell. He said that he had to get dressed before he left the cell, and as he did that the guards told him to back out of his cell, with his hands behind his back. He stated that he cooperated with the guards, but he was then pushed violently up against the cell door. According to Mr. Stewart, there were two guards holding him, and one of them was punching him on the side of his face. He said that he cut his eye because he was hit while he was being held against the cell door with his hands held behind his back.

- [42] Mr. Stewart described his injuries, including a cut over his right eye (which he originally testified required 7 stitches to close, but later accepted that it was only 6 stitches), and he said his right eye was swollen shut and his vision was blurry after the incident. He also said he had cuts inside his mouth, bruising on the right side of his face caused by the guards smashing his face against the bars of the cell door, and he experienced a headache. During his evidence in chief, Mr. Stewart did not mention the swelling on the left side of his face, but that is evident from a video taken after the incident. Mr. Stewart said he backed out of the cell exactly as the guards had asked, and he denied moving or making any threatening gestures towards the guards. He says he does not know why force was used because he was cooperating with the guards.
- [43] Mr. Stewart acknowledged that his memory has been affected by the passage of time as well as things that occurred in his life prior to the incident. He also agreed that some details included in his Statement of Claim were not accurate. This includes the claim that he had

been handcuffed to the bars of the cell and subjected to racial epithets while he was beaten by guards. At trial, Mr. Stewart's claim was that he had been injured by being pinned against the cell door, and that while he was pinned CO Anderson punched him in the face, causing the swelling on the left side of his face.

- [44] During cross-examination, Mr. Stewart acknowledged that he had initially said he did not want to get out of bed, but he then complied with the guards' request. He admitted that he could not really see what CO Anderson was doing to him after he was pinned face-first against the cell door, but he stood by his claim that CO Anderson hit him in the face while pushing him up against the cell door. That is what he felt happening at the time, even though he could not see it. He stated that he was not sure that he was punched, but the injuries to his face were caused when CO Anderson pushed him hard against the cell door and hit him in the face.

B. CO Hawkes [45] The evidence of CO Hawkes includes his testimony, the SOR he completed shortly after the incident, as well as the summary of his evidence provided during the Disciplinary Investigation.

- [46] Several key points emerge from CO Hawkes' testimony at trial. He stated that Mr. Stewart initially resisted the direction to leave his cell, but after some discussion he began to physically cooperate while still expressing verbal resistance. Basically, he said that Mr. Stewart complied with the request to get out of bed and back out of his cell, but while doing so, Mr. Stewart was swearing at the guards and complaining about the disturbance. CO Hawkes said this was a common occurrence in the prison, and he did not feel threatened by Mr. Stewart's language.
- [47] On the use of force, CO Hawkes testified that he saw Mr. Stewart turn his head towards CO Anderson, who then pushed him up against his cell door to prevent him from spinning around. Mr. Stewart's right hand was free at his side, and CO Hawkes grabbed it and put him in a wrist lock, to ensure they had Mr. Stewart under control. At that point, according to CO Hawkes, Mr. Stewart was trying to wriggle out of being pinned against the door, but he soon became compliant and was then taken out of his cell, searched and moved to an adjacent cell. CO Hawkes testified that he was concerned that Mr. Stewart would turn around and spit at the guards, although he acknowledged that this was not reflected in his SOR prepared shortly after the incident. He said he did not include this detail because, in the end, Mr. Stewart did not spit at them.
- [48] CO Hawkes agreed that during the incident he was on the right side of CO Anderson, holding Mr. Stewart's right hand in a wrist lock, and that he was therefore not able to observe what was happening on CO Anderson's left side. He insisted, however, that he would have seen any punches thrown by CO Anderson despite the fact that he was on the right side. CO Hawkes testified that he did not observe the injuries to Mr. Stewart right after the incident, although he did notice them later that day when he did a routine range walk. He stated that he did not know how the injuries to the left side of Mr. Stewart's face happened.

[49] In large part, CO Hawkes' testimony was consistent with his SOR, as well as with the summary of his interview set out in the Disciplinary Investigation Report.

C. CO Boka [50] The other CO who witnessed the incident is CO Boka. He was the least experienced of the three COs involved in the incident, having only joined CSC in 2018. He was furthest away from the cell when the incident began, behind CO Anderson and behind and somewhat to the left of CO Hawkes. He testified that he saw Mr. Stewart trying to turn around which caused CO Anderson to use physical force to pin him against the cell door. He testified that after Mr. Stewart was pinned against the door, he heard CO Anderson say, "I told you not to turn around". After CO Hawkes grabbed Mr. Stewart's right hand and put it in a wrist lock, CO Boka moved closer so that he ended up positioned in the middle behind the two other COs.

[51] In cross-examination, CO Boka stood by his assertion that he could see Mr. Stewart start to turn around before CO Anderson pushed him against the cell door. He also stated that he did not see anyone punch Mr. Stewart, noting that he would have seen it if CO Anderson had moved his arm back to throw a punch. CO Boka acknowledged that after he had moved closer and between the two other COs, he could not see what was happening on Mr. Stewart's left side, but he was adamant that no punches were thrown. He testified that he thought the injuries to Mr. Stewart's face were caused by him struggling after he was pinned against the door, but admitted that he really did not know how they happened.

[52] CO Boka's testimony was generally consistent with his SOR. I note here that the summary of his interview contained in the Disciplinary Investigation Report indicates that CO Boka stated that Mr. Stewart "attempted to spin around, causing Officer ANDERSON to use force to gain compliance." During his interview for this process, he stated that he could not see Mr. Stewart turn around when he watched the video but recalled seeing it during the incident.

D. Other evidence [53] The other evidence about the incident includes the SOR completed by CO Anderson, as well as the description of the CO interviews in the Disciplinary Investigation Report.

[54] CO Anderson completed a SOR, which describes his request to Mr. Stewart to get out of bed so that they could do a cell search, and the initial resistance followed by compliance. The most relevant portion of his SOR is the following passage:

STEWART seemed agitated but stood up out of his bed. I told him to come out so I could pat him down and move him to the next cell. STEWART backed towards me with his hands down and when he got outside the door, he turned aggressively towards me. I pushed STEWART up against his door and STEWART continued to struggle, swinging his head backwards and attempting to pull his arm away from myself and CX1 HAWKES. After a struggle STEWART complied with my orders but was speaking in a threatening manner. We held him against the cell until he agreed that he would move to Cell A2-22 without further incident. I moved STEWART to cell A2-22 without incident.

[55] The summary of CO Anderson's interview in the Disciplinary Investigation Report contains further details of his explanation of what happened:

Officer ANDERSON stated that when inmate Stewart was backing out, he had his hands under his armpits to guide him. He acknowledges it is hard to see on the video that inmate Stewart turned but stated that he could feel the pressure on his left hand and that it felt as if the inmate was turning. Officer ANDERSON stated that it happened very quickly and once inmate Stewart was pushed against the cell door, Officer ANDERSON's right hand became trapped between inmate Stewart and the cell door.

Officer ANDERSON was questioned as to why he did not just push inmate Stewart back into the cell. Officer ANDERSON stated that by pushing Stewart back into the cell gave him the opportunity to have a weapon. Officer ANDERSON also stated that the cell door was right there.

Officer ANDERSON stated that inmate Stewart was swinging his head back and forth, as they were trying to contain him. Officer ANDERSON stated that inmate Stewart had grabbed on to the bars with his left hand. Officer ANDERSON stated he attempted to jerk inmate Stewart[']s hands off the bars and indicated on video where that occurred.

Officer ANDERSON was questioned as to how inmate Stewart sustained injuries to the left side of his face. Officer ANDERSON stated the injuries on the right side were most likely from the use of force pushing Stewart into the cell door. Officer ANDERSON again mentioned inmate Stewart flailing his head around, but had no distinct answer for how the injuries in the left side occurred.

[56] This completes the summary of the evidence about the use of force incident. I turn now to the parties' submissions followed by my findings.

E. The parties' submissions [57] Mr. Stewart argues that his evidence about the incident should be preferred over that of the two COs who testified. He acknowledged that his evidence on certain details was not accurate but said that overall, his version of events was more consistent with the totality of the evidence than that of the guards.

[58] According to Mr. Stewart, there are several reasons to give less weight to the evidence of the guards. First, CO Hawkes and CO Boka both acknowledged that they were not in a position to see the left side of CO Anderson at the critical moment after Mr. Stewart had been pinned up against the cell door. Both COs testified that CO Anderson used physical force because Mr. Stewart turned towards him. Both also said that they did not witness any punches after CO Anderson had pinned Mr. Stewart against the cell door. However, Mr. Stewart points out that the COs also acknowledged that they were not in a position to observe CO Anderson's left side. According to Mr. Stewart, even if I find both COs have provided credible evidence, their testimony is not reliable because they were not able to observe the actions of CO Anderson towards Mr. Stewart.

[59] Mr. Stewart notes that CO Anderson did not testify at the trial, even though he was best placed to explain the reasons for his actions. Because of this, Mr. Stewart argues that the SOR and other evidence provided by CO Anderson should be discounted. In particular, the

statement by CO Anderson that the incident was triggered when Mr. Stewart “turned aggressively towards me” should be rejected. As expressed in Mr. Stewart’s written submissions, this statement is “perpendicular to the reality” when compared with the video evidence, and he argues that the fact that CO Anderson attempted to justify his actions by such an exaggeration should diminish the weight of all of his evidence.

- [60] In a similar vein, Mr. Stewart also questions the SORs prepared by CO Hawkes and CO Boka in the immediate aftermath of the incident, arguing that they should be discounted because they both explain the use of force by stating that Mr. Stewart turned towards CO Anderson, but that is not consistent with the recordings. Mr. Stewart states, however, that the evidence of CO Boka may explain why they all came to believe that he turned towards CO Anderson. According to CO Boka, after pinning Mr. Stewart against the cell door, CO Anderson said “I told you not to turn around.” This could explain why he and CO Hawkes both reported that Mr. Stewart had turned, even though they did not actually see the movement and it was not observable on the videos.
- [61] In summary, Mr. Stewart argues that he has consistently claimed that there was no justification for the use of force because he was cooperating with the demand that he back out of his cell. He has also been consistent in stating that in addition to the injuries he suffered when he was slammed against the cell door, he was struck on the left side of his face after being pinned against the door. Mr. Stewart acknowledges that he did not describe the blows to his left side during his testimony in chief, but he points out that he accepted the proposition of AGC counsel that the video evidence was more reliable than his memory.
- [62] In addition, Mr. Stewart says that his claim that he was punched on the left side of his head and face is consistent with the post-use of force video, where he demonstrated these punches, showing that he was hit on his left side. Mr. Stewart admits that he may not have been punched but says that in the end it does not matter whether he was hit with a closed fist, or with some other part of CO Anderson’s arm. The point is that he suffered further injuries due to the unprovoked and unjustified actions of CO Anderson, after he had pinned Mr. Stewart against the cell door.
- [63] For its part, the AGC argues that there is no reason to question the testimony of COs Hawkes and Boka. They had the best vantage points to observe what happened, they prepared SORs independently shortly after the event and their oral testimony was consistent with these written reports. Based on this, the AGC argues that the evidence does not support Mr. Stewart’s claim that CO Anderson struck him on the left side of his face and head after he was pushed up against the cell door.

- [64] The AGC challenges the position put forward by Mr. Stewart, noting that he asks the Court to find that he did not turn towards CO Anderson because that movement is not seen on the video, while at the same time asking the Court to find that the strike to the left side of his head did occur, even though that is also not seen on camera. The AGC submits that the Court should not accept the narrative of Mr. Stewart and instead should prefer the testimony of COs Hawkes and Boka.
- [65] The AGC contends that the reliability of Mr. Stewart's testimony is hindered by his memory issues, pointing to the discrepancy between his Statement of Claim as compared with the other evidence about the incident. For example, Mr. Stewart's Statement of Claim asserts that "[w]hile keeping [Mr. Stewart] handcuffed to the bars, correctional officers physically beat [him] while directing racial epithets [towards him] respecting his aboriginal ancestry". However, the video evidence makes it clear that Mr. Stewart was never restrained with handcuffs, nor was he assaulted by several guards. Moreover, the COs testified that no racial slurs were used during the incident.

F. Discussion [66] In setting out my findings on the incident, I begin by noting the significance of the government's concession that the use of force against Mr. Stewart was more than was necessary in the circumstances. While much of the attention in the evidence and the various CSC reports was devoted to whether Mr. Stewart turned towards CO Anderson, which was put forward as the justification for the use of force, the importance of this question is diminished somewhat as a result of the concession. It is no longer disputed that the use of force was not justified. This is consistent with the findings of the Final Grievance Response, which represents the considered views of CSC senior managers at the national level. In light of the concession, the more significant question arising from the evidence is whether the injuries to the left side of Mr. Stewart's face were caused by an additional use of force by CO Anderson after he had pinned Mr. Stewart against the cell door. That said, having heard the evidence I will make findings on both questions.

- [67] Overall, I find Mr. Stewart's testimony to be more reliable than that of the COs on the key points in dispute. I conclude that the evidence does not support the claim that Mr. Stewart attempted to turn or otherwise physically threaten CO Anderson as he was backing out of his cell. I also find that he was hit in the head and face while being pinned against the cell door, although, as explained below, I am unable to make a finding that he was punched by CO Anderson. I find that CO Anderson struck Mr. Stewart on the left side of his face, perhaps using his fist, or perhaps his forearm. That is the only plausible explanation for the injuries caused to the left side of Mr. Stewart's face, and it is most consistent with the video evidence.
- [68] The two COs who testified both stated that Mr. Stewart attempted to turn towards CO Anderson, which provoked the use of force. They both said that they saw it, although I note that CO Boka's evidence was somewhat equivocal: he stated in cross-examination that "[y]ou can feel...when somebody is trying to turn around" even though he was not in contact with Mr. Stewart at the time.

[69] Having examined the testimony and reports of COs Hawkes and Boka as well as the two cell block videos, I am unable to find that Mr. Stewart turned in any significant way towards CO Anderson. The videos simply do not show any turning motion at all, and Mr. Stewart denies that he did that. CO Anderson, who was the only one who had physical contact with Mr. Stewart at the relevant time and would have thus been able to feel a turning motion as it began, did not testify. Although he said this is what caused him to use physical force, I give CO Anderson's narrative little weight for several reasons. First, his SOR stated that Mr. Stewart "turned aggressively towards me", but this is not consistent with any other evidence and is flatly contradicted by the video evidence. Second, the SOR he prepared after he used physical force against Mr. Stewart is a self-serving document, meant to justify his actions. Third, as described below, during the Disciplinary Investigation process, CO Anderson provided further background which I find diminishes his credibility. CO Anderson has consistently refused to take responsibility for his actions, which weakens the force of his explanations.

[70] My finding on the question of whether Mr. Stewart turned towards CO Anderson is consistent with the CSC findings. The evidence of the COs on this point was questioned to some extent in the Disciplinary Investigation Report, which noted that the video evidence did not show Mr. Stewart turning towards CO Anderson. Moreover, the COs' narrative was flatly rejected in the Final Grievance Response, which noted the reports stated that Mr. Stewart had "aggressively turned towards the lead Officer", but went on to make the following findings:

Based on the comments provided by the Security Operations and Procedures Division, [National Headquarters], and review of the CCTV footage at the National level, it was found that this narrative is not supported by the video recordings. By the time you are observed backed up to the cell door, [your] right hand was on top of your head and, at no time were you seen to be turning towards the lead Officer. Video records show that when you reached the door, the lead Officer placed his right hand on your right arm and your hand was then lowered towards the small of your back. For an unknown reason, the lead Officer forcefully pushed you face first into the cell door. The lead Officer then appears to have maintained pressure and immobilized you against the cell door, while one of the other Officers moved in and took control of your right hand, which remained near your lower back throughout.

[71] Considering the totality of the evidence, I am unable to find that Mr. Stewart provoked the use of force by turning towards CO Anderson. With that, I turn to the crucial question of how Mr. Stewart's injuries occurred during the use of force incident.

[72] I have no difficulty in finding that the cut over Mr. Stewart's right eye and the abrasion on his right cheek were caused by the initial force of CO Anderson pushing him against the bars of the cell door. This was accepted by the witnesses and is consistent with the video evidence. Whatever triggered the use of force, there can be no doubt that CO Anderson – a significantly larger man than Mr. Stewart – used considerable force to push him against the bars of the cell door and to pin him there. At the time he was pushed by CO Anderson, Mr.

Stewart was moving his hands down towards his back and so he was in a defenceless position and unable to prevent his face and head from slamming into the bars of the door. Having considered the evidence as a whole, I find that the injuries to the right side of Mr. Stewart's face were caused by CO Anderson's actions in pushing him forcefully into the bars of the cell door.

- [73] The more difficult question concerns what happened next, more specifically what caused the swelling to the left side of Mr. Stewart's face. On this point, I find the video evidence to be the most significant support for Mr. Stewart's evidence. Mr. Stewart claimed that CO Anderson punched him in the face after pinning him against the cell door. He first made this claim during the post-use of force interview and repeated it during his testimony. I note, however, that Mr. Stewart acknowledged in cross-examination that he was not in a position to see what CO Anderson was doing, because he was pinned face-first against the cell door and CO Anderson was behind him. He also admitted that he might have been struck by another body part (e.g. CO Anderson's forearm).
- [74] CO Hawkes and CO Boka both denied that CO Anderson punched Mr. Stewart. Both of them acknowledged during cross-examination that they were not in a position to see the left side of Mr. Stewart, and they could not see what CO Anderson was doing with his left hand and arm. Once Mr. Stewart was pushed against the cell door, CO Hawkes moved immediately to CO Anderson's right side so that he could put Mr. Stewart's right hand in a wrist lock. He was closest to the two men, but unable to see the left side because his view was blocked by CO Anderson's body. It is evident on the cell block videos that CO Anderson is a large person, and he is significantly taller than CO Hawkes. Although CO Hawkes testified that he was certain that CO Anderson did not punch Mr. Stewart, and that he would have seen that if it happened, I find that his evidence on this point is not entirely persuasive, largely because of his vantage point. CO Hawkes was not in a position to observe what CO Anderson did on the left side of Mr. Stewart, and although he undoubtedly felt at least some of the movements that are visible on the videos, he was simply not able to say definitively what happened at that instant.
- [75] Similarly, CO Boka's evidence about what happened is also not entirely persuasive for two reasons. First, although he was initially positioned behind and to the left of CO Anderson, once the use of force began, he moved closer and more directly behind the two other COs. As a result of changing position, CO Boka lost his line of sight on Mr. Stewart's left side. Second, in denying that any punch was thrown, he testified that he was certain it did not occur because he did not see CO Anderson's hand reach back and move forward towards Mr. Stewart's head. That is what he expected to see if a punch was thrown: a wind-up leading to CO Anderson throwing a punch. He seemed to discount the idea that a short, sharp blow with a closed fist was also possible – an action that might be described as a “rabbit punch” rather than a full roundhouse swing.

- [76] The COs acknowledged that they did not know what caused the injuries to the left side of Mr. Stewart's face. CO Hawkes speculated that this might have happened when Mr. Stewart initially resisted being pinned against the cell door, saying that he was moving his head from side to side and trying to free himself. That is reflected in the Disciplinary Investigation Report, although the Board discounted this explanation, questioning the claim that the swelling on the left side of his face "was because of simply moving his head back and forth as [his head] should not have met any other object." The Board concluded that the "mechanism of that injury is unknown..."
- [77] I agree with the doubts expressed by the Board that the injuries to the left side of Mr. Stewart's face could have been caused by him moving his head back and forth, because there is no evidence that Mr. Stewart was intentionally slamming the left side of his face into the cell door. Short of that, it is difficult to imagine what could have caused the injuries to the left side of Mr. Stewart's face. The noticeable swelling on the left side would not have been caused by accidental contact with the cell door or CO Anderson's body, if Mr. Stewart was just swinging his head back and forth while he was pinned against the cell door.
- [78] The two videos from the cell block cameras do not show exactly what happened at the key point during the incident. From one camera angle, the body position of CO Hawkes blocks the view of CO Anderson's left side. The other camera angle is not more illuminating, since the view of Mr. Stewart is blocked because he was pinned between CO Anderson and the cell door.
- [79] A careful review of the videos confirms that Mr. Stewart was backing out of his cell door with his hands behind his head. As he gets close to the cell door CO Anderson puts his arms on Mr. Stewart up near his armpits to guide him through the opening. Suddenly, CO Anderson grabs Mr. Stewart and forcefully pushes him against the cell door, pressing his shoulder into Mr. Stewart's back to immobilize him. Mr. Stewart's right hand is down by his side at this point, because he had been told to lower his hands and put them behind his back (or perhaps because that is what he thought was expected as he backed out of the cell). The evidence is not clear as to whether a formal instruction was issued to Mr. Stewart, but it appears to be a standard practice, and nothing turns on this.
- [80] A few seconds after the initial use of force, CO Hawkes quickly went around to CO Anderson's right side and put Mr. Stewart's right hand in a wrist lock. At this point Mr. Stewart was pressed against the cell door, with the much larger CO Anderson pushing into his back, and his right hand was immobilized. There is no indication that he was able to move in any significant way but it is not possible to see much of Mr. Stewart on the videos because he is between CO Anderson and the cell door.
- [81] Almost immediately after this, the videos show CO Anderson's body moving in a rocking fashion back and forth against Mr. Stewart, while he was pinned against the cell door. It is not possible to observe what was happening on the left side of either CO Anderson or Mr. Stewart, because of the camera angle and the positioning of CO Anderson. No punch, in the

sense described by CO Boka, can be observed – CO Anderson’s hand did not come back and then accelerate forward into Mr. Stewart. Whatever movement was happening on the left side is simply not visible.

[82] According to CO Anderson, he was either trying to get his arm free after it became trapped between Mr. Stewart and the cell door, or he was trying to dislodge Mr. Stewart’s left hand from the cell bars, or perhaps both. I give CO Anderson’s evidence little weight. As I noted earlier, his statement in his SOR that Mr. Stewart turned “aggressively” towards him is flatly contradicted by the video evidence and was rejected by senior CSC management in the Final Grievance Response. Furthermore, I find that the credibility of CO Anderson’s evidence is diminished by the summary of his interview in the Disciplinary Investigation Report.

[83] That report makes it clear that the Board of CSC managers conducting the investigation had questions about the COs’ narratives concerning why the use of force occurred, and how the injuries to the left side of Mr. Stewart’s face occurred. Towards the end of the interview with CO Anderson, the Board asked CO Anderson whether he had anything to add. He indicated that he had been previously accused of assaulting an inmate, an allegation he denied. He continued:

Officer ANDERSON believes that this current investigation is a set up because of the previous allegation.... He indicated that [the other inmate] and Stewart are cousins and listed as emergency contacts. He also stated that the two inmates worked together in an escape attempt at Edmonton Institution where they were utilizing dummies. The Board has verified that they were housed together on the same range at Edmonton Institution and that there was an incident with a “dummy” in [a] cell.

... Officer ANDERSON stated that he has heard this investigation came about because of a lawsuit.

[84] I find that this weighs against CO Anderson’s credibility because the witness interview does not indicate that he accepted responsibility for his part in causing the injuries to Mr. Stewart, and because he appears to have concocted an explanation for the investigation that is not supported by the other evidence in the record. It is significant that the Warden of Sask Pen initiated the Disciplinary Investigation process, yet somehow CO Anderson blames Mr. Stewart for it. This does not lend credibility to his explanation for the incident.

[85] In the end, having examined all of the evidence, I am unable to find that CO Anderson punched Mr. Stewart after pinning him against the cell door. However, I find that CO Anderson used some sort of force to cause the injuries to the left side of Mr. Stewart’s face. The post-use of force video clearly shows significant swelling on the left side of Mr. Stewart’s face. During that interview, Mr. Stewart said he had been punched on that side while he was being held by the guards.

[86] I agree with the Board that conducted the Disciplinary Investigation that it is not plausible that the left side injuries were caused by Mr. Stewart moving his head back and forth after he was pinned. First, it is not clear that he would have been able to move his head in any

significant way after being pinned against the cell door by CO Anderson, who is much larger than Mr. Stewart. Second, no one has claimed that Mr. Stewart smashed the left side of his face against the cell door, and the only other person who could have made contact with that part of his face at that moment was CO Anderson.

[87] I find that it is not particularly important whether CO Anderson punched Mr. Stewart with his fist, or hit him in the face with his forearm; the important point is that after the two COs had gained full control of Mr. Stewart, CO Anderson used considerable additional and unjustified force against Mr. Stewart, causing him further injury to the left side of his face. I acknowledge that Mr. Stewart has consistently claimed that he was punched, but he also admitted that he really could not see what CO Anderson did because he was pinned face-first against the cell door.

[88] My conclusion, based on a consideration of the totality of the evidence and the application of common sense, is that CO Anderson caused the injuries to both sides of Mr. Stewart's face. The cuts to the right side of Mr. Stewart's face occurred when CO Anderson slammed him against the cell door. At that point Mr. Stewart had lowered his hands and they were behind him, so he was not able to protect his face when CO Anderson grabbed and pushed him against the bars of the cell door. I also find that CO Anderson used some type of additional force to cause the further injuries to the left side of Mr. Stewart's face and head. I further find that this additional use of force was unnecessary and unjustified, even more so than the initial use of force of slamming Mr. Stewart against the cell door with such force.

[89] These are my findings regarding the incident.

[90] I turn now to the second issue, the question of the quantum of damages.

V. The Damages Assessment 1. The parties' submissions [91] Mr. Stewart claims damages for his physical injuries caused by the unjustified use of force, which constituted the tort of battery, although this is not the primary basis for his damages claim. His main argument is that he should be awarded damages for the breach of his Charter rights under section 7 (security of the person) and section 12 (the right to be free from cruel and unusual treatment or punishment). He submits that the Charter damage award must be sufficiently high to achieve the purposes of deterrence and denunciation, arguing that the total amount (including compensatory damages) should be \$240,000.

[92] Mr. Stewart acknowledges that double recovery is to be avoided, and he submits that it is not necessary to attempt to set the compensatory damages with any degree of mathematical precision. Instead, he urges the Court to examine the circumstances, considering the total damage award that is appropriate to achieve compensation as well as vindication of his Charter rights and the deterrence of future Charter breaches. In support of both aspects of his damages claim, Mr. Stewart relies on the recent decision of Justice John Norris in *Richards v. Canada*, 2022 FC 1763 [Richards], discussed below, which also involved a damages claim for unjustified use of force by prison guards against an inmate. In particular, he notes that Mr. Richards was awarded \$50,000 in damages for the tort of battery, as well as

\$10,000 for the violation of his rights under sections 7 and 12 of the Charter during the use of force incident (Mr. Richards experienced other violations of his rights which are not pertinent here). Mr. Stewart says that a similar compensatory damages award should be made in his case, and that Richards supports his claim that his rights under sections 7 and 12 of the Charter were violated.

- [93] A novel aspect of his claim, as Mr. Stewart himself acknowledges, is that he says in order to achieve the deterrence purpose of Charter damages, the amount should be assessed by examining the costs CSC has avoided by failing to discipline CO Anderson for the incident. He argues that in determining an appropriate damage award to achieve the goal of deterrence of future Charter violations, the Court should consider that CSC decided not to discipline CO Anderson for his misconduct, and its labour relations scheme creates financial incentives for CSC to not take such steps unless it has overwhelming proof of wrongdoing. In light of this, Mr. Stewart seeks an award of \$190,000, in addition to the \$50,000 he claims in compensatory damages. For this, Mr. Stewart cites *Peeters v. Canada*, 1993 CanLII 3008 (FCA) [Peeters]. This argument is discussed in more detail below.
- [94] Mr. Stewart also seeks his costs if he is successful at trial.
- [95] For its part, the AGC accepts that compensatory damages should be awarded to Mr. Stewart under the tort of battery. The AGC acknowledges that it is vicariously liable for the wrongs committed by Crown servants pursuant to paragraph 3(b)(i) of the Crown Liability and Proceedings Act, RSC 1985, c C-50, specifically the unjustified use of force by CO Anderson. The AGC submits that the use of force by CO Anderson was the only aspect of the incident that was not justified; the subsequent pat down search and moving Mr. Stewart into another cell was justified.
- [96] The AGC argues that the facts of this case do not support a Charter damages award. Considering the temporary and relatively minor injuries Mr. Stewart sustained because of the unjustified use of force, the AGC proposes a damage award in the range of \$5,000 to \$15,000 in compensatory damages. In support of this position, the AGC relies on several decisions dealing with injuries caused by police use of force, as discussed below.
2. Discussion [97] In one important respect, the damages assessment in this case is simplified because of the AGC's concession that CO Anderson's use of force against Mr. Stewart was not justified. In light of that, the AGC accepts that it is vicariously liable for damages for the tort of battery, and that Mr. Stewart's right to security of the person under section 7 of the Charter was breached. The AGC submits that while compensatory damages for the battery are owed, no Charter damages should be awarded because the circumstances do not call for damages over and above the compensation for Mr. Stewart's injuries.

- [98] As explained below, I am not persuaded by the AGC's argument that no Charter damages should be awarded to Mr. Stewart, in light of its admission that his section 7 right to security of the person was breached. Nor am I persuaded by the AGC's reliance on older authorities in support of its argument on the appropriate amount of general damages. On the other hand, I cannot accept Mr. Stewart's attempt to rely on an approximation of a CO's salary as a reference point for the assessment of Charter damages.
- [99] To begin, there can be no doubt that the constituent elements of the tort of battery have been established: *Norberg v. Wynrib*, 1992 CanLII 65 (SCC). The AGC conceded that the use of force by CO Anderson was unjustified because it went further than the circumstances called for. In the discussion that follows, I will focus my analysis on the use of force incident. I agree with the AGC that the subsequent actions, including the pat-down search of Mr. Stewart and the move to the other cell while the guards searched his cell, were justified actions in the circumstances. I note that Mr. Stewart did not make any claims in relation to the subsequent conduct.
- [100] In assessing Mr. Stewart's claim for general damages for the tort of battery, I must first determine the nature and extent of the injuries he suffered and then examine the legal arguments, which present different frames of reference for the determination of the appropriate sum.
- [101] The evidence about the injuries Mr. Stewart suffered as a consequence of the unjustified use of force by CO Anderson includes Mr. Stewart's testimony, the post-use of force video, as well as the medical reports that were prepared by Sask Pen medical staff and by Dr. Khan, the ophthalmologist who treated Mr. Stewart for the vision issues he experienced in his right eye. At this juncture, it is important to note that Mr. Stewart's claim did not seek damages for any long-term consequences of the incident, since he acknowledged at the outset of the trial that things that happened in his life before then have contributed to his memory loss. As a result of his concession, his evidence and the AGC's cross-examination focused only on the short-term consequences of the unjustified use of force.
- [102] The post-use of force interview was conducted by Nurse Lacey Hegland. Her written report dated February 4, 2020 describes the injuries to Mr. Stewart's face and head that are evident from the video that was taken at that time: "Significant swelling noted to [left] side of mouth, no open areas noted inside of mouth on inspection, contusion noted to inner aspect of cheek. A 1 inch laceration noted to [right] eyebrow extending past fatty tissue, split open, no active bleeding before assessment." Her notes indicate the wound was cleaned and Dermabond was used to glue it shut.
- [103] Notes prepared by Nurse Practitioner Holly Osecki two days later, on February 6, 2020 provide a clear indication of the seriousness of Mr. Stewart's injuries:

Offender reports that 2 days ago he was assaulted and that he came to health care and his [right] upper eye laceration was glued shut. Since then the wound has reopened. [Right] eye is swollen shut, has visible laceration with blood clot to open gaping part of laceration. Laceration length

approximately 4 cm, width 1-1.5 cm gaping at middle of laceration length, and depth 0.5-1 cm. [Right] eye, able to retract swollen eye lids... subconjunctival hemorrhage to lateral eye...offender reports blurring of vision. Red reflex intact. No battle sign, no tenderness along orbital bone when palpated. Bruising [left] lower jaw.

[104] At that point, because the glue had not worked, the cut over Mr. Stewart's right eye was cleaned and he received 6 stitches. As a result of reporting blurred vision in his right eye, Mr. Stewart was referred to Dr. Khan, an ophthalmologist. He saw Dr. Khan four times, starting on February 12, 2020. The notes from these visits are technical in nature, as would be expected from a medical professional reporting to other medical professionals. I have summarized the pertinent aspects of the reports below.

[105] The report from the first appointment indicates that Mr. Stewart's vision in his right eye was impaired, leaving him with 20/40 vision in that eye (he had 20/20 vision in his left eye). A follow-up appointment was scheduled for a month later (March 13, 2020) by which time his vision had returned to normal (20/20 in both eyes). The report from the next appointment, six months later (September 18, 2020), showed that Mr. Stewart's vision continued to be normal, but he had some lingering changes in his right eye. The final report in evidence, dated March 29, 2021, essentially mirrored the third one – Mr. Stewart's vision was normal but there were some changes in his right eye.

[106] This is consistent with the evidence of Mr. Stewart. As noted above, two days after the incident he reported to the nurse practitioner that the vision in his right eye was blurry. Although Mr. Stewart testified that his vision continued to be affected, he acknowledged that Dr. Khan's reports showed that it had returned to normal after a month. There is no other evidence of any negative impact on Mr. Stewart's vision as a result of the use of force. Mr. Stewart indicated that the cuts to his face and swelling on his left cheek healed over time, and although he had a headache in the immediate aftermath of the use of force, he did not report any ongoing issues of that nature.

[107] Turning to the legal submissions, I will review the arguments put forward on general damages for the tort of battery before moving to the analysis of the arguments on Charter damages.

A. General damages for the tort of battery (i) The parties' submissions [108] Mr. Stewart argues that the unjustified use of force constituted the tort of battery and a breach of his Charter section 7 and section 12 rights. He argues for a higher damages award than the range proposed by the AGC, which he says is necessary to serve the purpose of compensation for the breach of his Charter rights. He submits that his case is comparable to the situation in Richards, which is a recent damage award from this Court involving unjustified use of force by COs against an inmate.

[109] Mr. Stewart's argument rests on two main assertions. First, he says that he was forcefully pushed head-first into the cell doors when his hands were behind his back and it was a foreseeable consequence that he would suffer injuries to his head and face. Second, he argues that the additional use of force by CO Anderson was totally unnecessary and

particularly egregious, because at that time he was pinned against the cell door and his right wrist was being held by CO Hawkes. Based on these facts, and the nature and extent of the injuries he suffered because of CO Anderson's conduct, Mr. Stewart claims that his damages for battery should fall into the same range as those awarded to Mr. Richards, namely \$50,000.

- [110] In Richards, the damages claims covered a range of alleged wrongdoing, including an unjustified use of force incident (described in more detail below), as well as the inmate's subsequent placement in administrative segregation (commonly known as solitary confinement) and his transfer to another penitentiary. These other claims have no relevance to this case, and so my discussion will focus on the analysis of the unjustified use of force incident, for which Mr. Richards claimed damages for the tort of battery, as well as damages for the violation of his rights under sections 7 and 12 of the Charter.
- [111] On September 30, 2013, Mr. Richards was an inmate in Springhill Institution [Springhill], a federal penitentiary in the Atlantic region. At that time, Springhill was under lockdown because a search was underway following a report that a bullet (not under the control of the guards) had been observed in the institution,. Mr. Richards was frustrated with the way he was being treated during the lockdown period, and he blocked his cell window and repeatedly pressed the emergency call button. Three members of the CSC Emergency Response Team [ERT] responded to the call, and as the cell door was opened one of them discharged OC spray into the cell towards Mr. Richards. A fourth ERT member then joined the group, and the four COs entered the cell to subdue Mr. Richards.
- [112] There was no video evidence of what transpired inside the cell, but the trial judge found that after he was subdued, Mr. Richards was led out of his cell partially dressed and in handcuffs and he was doubled over "in obvious physical distress" (Richards at para 87). He was quickly subjected to a pat down search and then taken to a shower facility to wash off the OC spray. Justice Norris discussed the discrepancies in the evidence, noting that key parts of the written reports and testimony of the guards was flatly contradicted by the video evidence, and in some cases the evidence of the guards had evolved over time. Justice Norris also found that although Mr. Richards may well have believed his account of events, some of his evidence was not reliable because it related to events that "occurred after he was struck three times with OC spray at close range and while he was being violently set upon by the officers" (Richards at para 119). Justice Norris explains his reasoning on this point in the following way:
- [120] OC spray causes intense discomfort. It makes it very difficult to breathe. It is intended to disorient and debilitate the person at whom it is directed. I have no doubt that the experience of suddenly being hit in the eyes and face by OC spray and then being set upon by four ERT officers was very traumatic for Mr. Richards. I find that he likely struggled with the officers as they attempted to gain control of him, a natural response in the circumstances. The officers were required to use a significant amount of force to subdue him. I accept that Mr. Richards honestly believes that he was deliberately mistreated by the

officers, that they used disproportionate and gratuitous force against him, and that they were verbally abusive as well. I also find, however, that Mr. Richards was not in a position to perceive events accurately at the time they were occurring because of the effects of the OC spray, the generally chaotic and traumatic circumstances that were prevailing at the time, and the anxiety he must have been experiencing. I find that his ability to recall these events accurately is similarly impaired.

- [113] Justice Norris found that during the use of force incident, Mr. Richards suffered “significant but temporary discomfort caused by the OC spray and the general trauma (both physical and mental) of being handled violently by the ERT officers in his cell.” This discomfort included his head and face area, as well as his genitals (at some point during the incident, OC spray was directed towards his groin area). Justice Norris also found that Mr. Richards “suffered a not insignificant physical injury... namely, an injury to his head that caused swelling (although not, fortunately, any long-term damage)” (Richards at para 129).
- [114] Justice Norris found that the elements of the tort of battery had been established, for which he awarded damages of \$50,000. In addition, Justice Norris awarded \$10,000 for the violation of Mr. Richards’ rights under sections 7 and 12 of the Charter.
- [115] Mr. Stewart argues that his situation is similar to the experience of Mr. Richards, or perhaps more serious since Mr. Stewart suffered violence directed towards his head. He claims that the damages framework established by Richards should be preferred over the approach reflected in the case-law relied upon by the AGC.
- [116] In contrast, the AGC submits that the Richards case is distinguishable on its facts and instead urges the Court to rely upon earlier decisions in which lower damages awards were made. According to the AGC, Richards is not applicable to this case because he was subjected to a greater and longer use of force than Mr. Stewart experienced. The AGC points out that according to CSC policy, the use of OC spray is categorized as a greater use of force than “physical handling”. Moreover, Mr. Richards was set upon and subdued by four COs, and the use of force on Mr. Richards was ongoing. In that case, the initial use of force by the discharge of OC spray was immediately followed by four officers entering his cell to subdue him and place him in handcuffs, followed by being stripped naked for a de-contamination shower. In contrast, Mr. Stewart was subjected to a short, single instance of unjustified use of force, which was quickly followed by de-escalation in accordance with CSC policies.
- [117] Rather than relying on Richards, the AGC urges the Court to examine earlier precedents involving Charter damages for the use of force by police officers. A brief summary of the principal cases relied upon by the AGC is set out below, for ease of reference:

Berketa v. Niagara Police Services Board, 2008 CanLII 2147 (ON SC) – the Plaintiff is a 62-year-old woman with no prior criminal involvement. A policeman entered her home without a warrant and arrested her, causing injuries to her wrists when trying to put handcuffs on her. The Plaintiff fainted during the incident due to a heart condition, and experienced anxiety afterwards. General damages were set at \$25,000 (around \$35,500 in 2025 dollars); no punitive damages were awarded.

Anderson v. Smith et al., 2000 BCSC 1194 – a policeman sprayed Mr. Anderson in the face with pepper spray while arresting him for obstruction of justice. The Court found the use of force to be justified but stated that \$2,500 in general damages (around \$4,330 in 2025 dollars) would be the appropriate amount for the short-term injury caused by the use of pepper spray. No long-term eye injury was established.

Duguay v. Bathurst (City), 2008 NBQB 183 – Mr. Duguay suffered a broken arm during an altercation with officers while being escorted to a holding cell by two members of the Bathurst City Police Force. The Court found the use of force to be proportionate, but went on to indicate that damages would have been set at \$18,000 (around \$26,000 in 2025 dollars), considering the long-term impact of the injury, balanced against the failure of Mr. Duguay to take any steps to mitigate his damages.

Klyne v. Rae, 2002 SKQB 139 – Ms. Klyne suffered a broken arm during an arrest on outstanding warrants. She had surgery to repair her fractured arm but was left with ongoing pain. The Court dismissed her claim for the tort of battery, but went on to find that damages would have been set at \$8,000 (around \$13,200 in 2025 dollars), taking into account similar cases at that time (these decisions dated from 1994 to 2000).

Crampton v. Walton, 2005 ABCA 81 – Mr. Crampton suffered bruises, a rotator-cuff injury and five cracked ribs when a police tactical unit burst into his home, forced him to the ground and put him in handcuffs. The police thought they were dealing with a dangerous person running a marijuana grow operation, but the police acted on faulty intelligence and had the wrong suspect. Mr. Crampton was awarded \$20,000 in damages (around \$31,700 in 2025 dollars).

[118] The AGC submits that these are useful precedents, mainly because they involve situations and injuries that are more grave than the facts in this case. In several of these cases the incidents occurred in the person's home, and in most of them the person suffered serious injuries with long-term consequences as a result of the use of force. In contrast, the AGC submits that Mr. Stewart did not have his home invaded, and only experienced short-term injuries.

(ii) Discussion [119] I am not persuaded that the cases cited by the AGC should be applied to set the framework for the general damages that should be awarded to Mr. Stewart for the battery he suffered. I agree with Mr. Stewart that the *Richards* decision is a more suitable frame of reference, for several reasons. First, like this case, the *Richards* decision involved the unlawful use of force by COs against a prison inmate. This context is important, given the degree of control exercised by COs over the daily lives of inmates and the resultant vulnerable situation of inmates.

- [120] Second, Richards and this case both involve claims for compensation for the tort of battery as well as a Charter damages claim, and as discussed below, I find this to be a relevant consideration given the developments in our understanding of the proper approach to assessing such damages. Finally, although each case must be assessed on its own facts, the Richards decision offers a useful point of reference, as I explain next.
- [121] As discussed previously, Mr. Richards experienced extreme discomfort from being hit with OC spray and being set upon by four officers. However, his injuries were of shorter duration than those suffered by Mr. Stewart. It bears repeating that Mr. Stewart had a wound over his right eye that was originally treated with glue by a nurse. A few days later, the medical records show his right eye was swollen shut, and the wound had re-opened. He returned to the nursing station where the cut was cleaned and 6 stitches were applied. The records show that this procedure had to be done without anesthetic for medical reasons. This was undoubtedly a very painful experience for Mr. Stewart. In addition, the video evidence and medical records confirm that he experienced significant swelling and some cuts to the inside of his left cheek, which resolved over the next week. Finally, Mr. Stewart experienced impaired vision in his right eye for a period of time after the incident, although it had returned to normal by the time of his second visit to the ophthalmologist.
- [122] In addition to his physical injuries, it is evident that Mr. Stewart was perplexed and upset by the unprovoked and violent use of force at the hands of CO Anderson. Mr. Stewart testified that he generally had a good relationship with the COs, that there was mutual respect and a “back and forth” that occurred between inmates and guards. He could not understand why CO Anderson acted in the way that he did. I have no difficulty finding that this caused Mr. Stewart some psychological distress for a period. I note here that Mr. Stewart did not lead any particular evidence on this point, nor did he claim punitive or exemplary damages. I simply find that being subjected to such an unexpected, unprovoked act of violence would have been upsetting to Mr. Stewart in the immediate aftermath of the incident. This is consistent with his statements during the post-use of force interview, and his testimony. There is no evidence of any ongoing psychological issues arising from this use of force, however.
- [123] It must be acknowledged that the assessment of compensatory damages for the tort of battery in this type of case is not a work of mathematical precision. Each case must be assessed on its own facts, and a determination made of the amount of money that will adequately compensate the individual for the injuries suffered, considering their nature and gravity in light of the overall circumstances in which they were suffered. Comparable cases can provide a useful frame of reference, but human experience demonstrates that no two cases will be exactly alike.
- [124] Based on my assessment of the evidence in this case, and the precedents discussed above, I award Mr. Stewart \$50,000 in compensatory damages for the tort of battery. He experienced significant injuries from a completely unprovoked and unjustified use of force at the hands of CO Anderson. At the time, Mr. Stewart was in a vulnerable position with his hands

against his back, and unable to protect himself when he was suddenly forcefully pushed up against the bars of the cell door. It was entirely foreseeable that this action would cause him injuries to his face, which is exactly what happened.

[125] In addition, as explained in the last section, I have found that CO Anderson then used additional force that caused further injury to the left side of Mr. Stewart's face. This use of force was more egregious than the first, because at that point Mr. Stewart was in a completely vulnerable position. The much larger CO Anderson had pinned Mr. Stewart up against the cell door, and CO Hawkes had full control of Mr. Stewart's right hand – the only hand that was free at that point.

[126] While it is true that Mr. Stewart did not claim damages for any ongoing and long-term consequences of these injuries, I cannot accept that they are properly described as being only short-term or transient in nature, given the description I have set out above.

[127] With this, I turn to the assessment of Charter damages.

VI. Charter Damages [128] Mr. Stewart claims damages for the infringement of his rights under sections 7 and 12 of the Charter. I will deal with the latter claim first.

1. The legal framework for Charter damages [129] The current framework for the assessment of Charter damages was set out in *Vancouver (City) v. Ward*, 2010 SCC 27 [Ward]. In that decision, the Supreme Court of Canada recognized that the first step is proof of a Charter breach, because that is the wrong on which the claim for damages is based.

[130] Once a Charter breach is established, damages are available as a remedy under subsection 24(1) of the Charter. The overall framework for the examination of such a claim was described in the following way in Ward at para 4:

I conclude that damages may be awarded for a Charter breach under s. 24(1) where appropriate and just. The first step in the inquiry is to establish that a Charter right has been breached. The second step is to show why damages are a just and appropriate remedy, having regard to whether they would fulfil one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches. At the third step, the state has the opportunity to demonstrate, if it can, that countervailing factors defeat the functional considerations that support a damage award and render damages inappropriate or unjust. The final step is to assess the quantum of the damages.

[131] The Court provided the following useful overview of the approach to understanding Charter damages in the following passage:

- [31] In summary, damages under s. 24(1) of the Charter are a unique public law remedy, which may serve the objectives of: (1) compensating the claimant for loss and suffering caused by the breach; (2) vindicating the right by emphasizing its importance and the gravity of the breach; and (3) deterring state agents from committing future breaches. Achieving one or more of these objects is the first requirement for “appropriate and just” damages under s. 24(1) of the Charter.
2. The section 12 claim [132] Section 12 of the Charter provides that “[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment.” Mr. Stewart submits that the excessive use of force he was subjected to was sufficiently grave to breach section 12, and he claims damages as a result of that violation.
- [133] Mr. Stewart acknowledges that the test for establishing a breach of section 12 is a “high bar” and “very properly stringent and demanding.” The impugned conduct must be more than merely disproportionate or excessive. “Rather, [i]t must be ‘so excessive as to outrage standards of decency’ and ‘abhorrent or intolerable’ to society”: *R. v. Boudreault*, 2018 SCC 58 [Boudreault] at para 45. Mr. Stewart relies on the decision in *Richards*, where the Court found that the COs’ conduct breached section 12.
- [134] I am not persuaded that CO Anderson’s conduct in this case meets the stringent test for a violation of section 12. While the use of force here was unprovoked and unjustified, it was simply not the type of behaviour that is described in *Boudreault*. As Mr. Stewart acknowledged, even if a breach of section 12 was established, it is not clear that the damage award would be increased in any meaningful way beyond any compensation ordered because of the breach of his section 7 right to security of the person. In light of this, I turn to an examination of the claim under section 7.
3. The section 7 claim A. The parties’ submissions [135] Section 7 of the Charter provides that “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The AGC concedes that the unjustified use of force in this case violated Mr. Stewart’s right to security of the person. However, the AGC argues that no Charter damages should be awarded in this case, because Mr. Stewart will receive compensatory damages in tort and double recovery should be avoided. The AGC opposes any damage award relating to vindication and deterrence.
- [136] Mr. Stewart acknowledges that double recovery is to be avoided, and he does not seek additional compensatory damages beyond the general damages awarded for the tort of battery. Instead, he focuses on the vindication and deterrence elements of the Ward framework, placing his primary focus on deterrence. I will discuss this aspect of his claim before examining whether damages to vindicate the Charter right to security of the person are justified.

- [137] Mr. Stewart's deterrence argument rests on several propositions, which can be distilled as follows: he says that CSC never disciplined CO Anderson after the unjustified use of force incident, and indeed there is evidence that CO Anderson was subsequently involved in another similar incident. Examining the collective agreement, CSC policies and the Disciplinary Investigation Report in this case, Mr. Stewart submits that CSC has hamstrung itself from taking effective action to discipline rogue COs, thus exposing inmates such as himself to unnecessary risks. He argues, therefore, that substantial damages must be awarded to seek to deter CSC from similar failures in the future.
- [138] Mr. Stewart acknowledges that in many respects the CSC policy framework governing the use of force, as well as the policies for investigating incidents when they occur, is robust and provides appropriate guidance. However, he argues that this case demonstrates significant flaws in CSC's ability to discipline officers when they do not follow these policies. In support of his argument, Mr. Stewart refers to the evidence about the steps CSC took to determine whether to discipline CO Anderson, as well as its failure to take sufficient action to implement the findings on his grievance. Mr. Stewart argues that these are systemic policy failures that a significant damages award could address.
- [139] To illustrate this point, Mr. Stewart relies on the Disciplinary Investigation Report, which reflects CSC's reluctance to make negative findings against COs. For example, the Board doubted the explanation for the injuries to the left side of Mr. Stewart's face but made no negative findings about this. Similarly, the Board described the video evidence where, after pinning Mr. Stewart to the cell door, "it appears that [CO Anderson] is using his left arm to either strike or tug on inmate Stewart's left side." Despite confirming that the video evidence was inconclusive because it did not show what was happening on the left side of CO Anderson and Mr. Stewart, the Board found CO Anderson's explanation that he was trying to get Mr. Stewart's left hand off the cell bars to be "viable." Mr. Stewart says that the extent to which the Board was inclined to favour CO Anderson's version of events is revealed in the following statement: "The Board finds it unlikely that [CO Anderson] assaulted inmate Stewart as he had ample opportunity to enter the cell where there would be no camera surveillance in order to do so."
- [140] The Board summed up its findings in the following passage:
- The Board finds that there is insufficient information to say conclusively that Officer ANDERSON used excessive force on inmate Stewart. The video review is inconclusive and although there is concern on the injuries sustained, specifically to the left side of his face, there is no corroboration that an assault or excessive force occurred.
- [141] According to Mr. Stewart, the fact that the Board believed that it could only make a negative finding if there was "conclusive" evidence demonstrates that CSC imposes an unjustifiably high standard before imposing discipline on COs for misconduct. He also notes that according to the evidence, the collective agreement between the Union of Correctional Officers and CSC contains provisions that requires CSC managers to determine whether to

remove records of disciplinary findings from a CO's personal file if there have been no further incidents for two years. According to Mr. Stewart, by agreeing to this provision, COs can escape the consequences of their misconduct after two years, and thus CSC has tied its hands, leaving inmates vulnerable to further abuse by rogue COs.

- [142] A consequence of these policy failures is that CO Anderson was not disciplined for his use of force against Mr. Stewart, and indeed he remained in a position where he could repeat the behaviour on a later date. Therefore, according to Mr. Stewart, CSC has placed itself in a position where there is a needless tension between the interests of protecting inmates and the financial interests of CSC. Mr. Stewart explains his position in his written submissions:
49. A monetary award should properly incentivize CSC to respond once misconduct is apparent. On the evidence before the Court, CO Anderson is not suited to work as a peace officer. CSC continues to employ him. A sizable award is necessary to incentivize CSC to take appropriate discipline action in this and in future comparable cases. The Constitution does not allow CSC to shift the risk of ongoing misconduct to inmates.
- [143] In order to determine the size of the damages award needed to achieve the purpose of deterrence, Mr. Stewart relies on several labour relations decisions where CSC disciplinary decisions were overturned resulting in awards of back pay to the affected employees. In *Weinstein v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 100 [Weinstein], the Federal Public Sector Labour Relations and Employment Board overturned the suspension without pay and termination of a CO who had been accused of committing various forms of misconduct, including failing to intervene to stop or prevent an assault on an inmate, orchestrating fights between inmates, and bullying and intimidating inmates.
- [144] The Board found that CSC had not established that discipline was warranted, on the evidence, including the video evidence. The Board ordered that the CO be reinstated, retroactive to the date of his initial suspension, and awarded lost wages, including any increases in pay and benefits, as well as lost overtime, and \$20,000 in general damages for the pain and suffering he had endured.
- [145] Mr. Stewart also refers to the similar decision in *Gagné v. Deputy Head (Correctional Service of Canada)*, 2020 FPSLREB 114 [Gagné], where there was a similar order for three years of back pay after reversing a Correctional Manager's termination because CSC failed to establish the allegations against him. The Board found that CSC acted in bad faith by relying on a tainted investigation process and report. The last of the labour relations cases cited by Mr. Stewart is *Ransome v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 138, where the Board overturned the termination of a CO, finding that his misconduct did not warrant such a serious penalty. In that case, however, the Board did not deal with the remedy question, leaving that for a future hearing.
- [146] In addition to these decisions, Mr. Stewart refers to the remedy awarded in *Peeters*, which also involved the unjustified use of force by COs against an inmate. The facts of that case can be summarized as follows: Mr. Peeters was an inmate at Kingston Penitentiary. After a

hostage-taking incident in which he caused bodily harm to a civilian employee of CSC, Mr. Peeters was subdued by COs, and he sustained injuries during the encounter. While Mr. Peeters was in the ambulance being transported to hospital, he was savagely beaten by three COs assigned to escort him. At trial, the judge found that the COs had used unnecessary force, and their lack of professionalism, brutality and wilful malice constituted valid grounds for an award of punitive or exemplary damages. The trial judge awarded \$3,600 in general damages and \$16,000 in punitive damages. On appeal, the only question was whether punitive damages could be awarded against the Crown, or whether such awards could only be made against the individuals involved.

[147] The Federal Court of Appeal upheld the award of punitive damages, finding that such damages could be awarded where the evidence established some degree of complicity or blameworthiness on the part of the employer. In this scenario, punitive damages serve a deterrence function. The Court of Appeal upheld the trial judge's award, based on the following reasoning (at pp. 578-579):

[A] reading of the whole of the Trial Judge's reasons for decision reveals abundant justification for an award of that amount. Indeed, the supervising warden, as I have mentioned, estimated that the principal malefactor's penalty of half a year's employment amounted to about \$14,000 (which was a saving of that amount to the CSC)—and that, be it noted, was a lesser penalty than the discharge from the Service that the warden had herself imposed. On this broader basis, therefore, the Trial Judge's assessed quantum of \$16,000 is supported.

[148] Mr. Stewart notes the background to this case, specifically that CSC had attempted to discipline the three officers involved in the assault of Mr. Peeters, terminating the employment of one of the COs and imposing financial penalties on the other two. Following grievance proceedings, the termination was reduced to a six-month suspension, and the financial penalties were reduced by half. Even though CSC took disciplinary action against the COs involved in the assault, the Federal Court of Appeal found it appropriate to award punitive damages, calculating them with reference to the amount of salary CSC had avoided paying the most culpable CO during his six-month suspension. Mr. Stewart asserts that a similar approach should be followed here.

[149] Applying these cases to the facts of this case, Mr. Stewart argues that a total award of \$240,000 is appropriate, including compensatory damages as discussed above. He submits that the deterrence element of the award should be calculated with reference to the salary of a CO, which was in the order of \$88,000 per year in 2022, plus the amount a CO would expect to earn in overtime which is paid at a rate of 1.75 times the regular salary. He says the record shows there was substantial overtime during the relevant period, which means that COs were regularly earning more than \$100,000 per year.

- [150] Mr. Stewart argues that the damages award should properly incentivize CSC to respond once misconduct is apparent. He says given the delays that are apparent in CSC disciplinary processes, any effort to discipline CO Anderson for his misconduct would reasonably be expected to take up to two years. Based on that, Mr. Stewart submits that an award of \$240,000 would represent a conservative estimate of the salary a CO would expect to earn in two years.
- [151] CSC could have reduced its liability in several ways, according to Mr. Stewart. First, it could have taken appropriate disciplinary action against CO Anderson once his misconduct became evident. Second, it could have taken steps to educate its broader workforce about the results of the national level grievance. In this case, the evidence shows that COs Hawkes and Boka were not aware of the grievance decision, and Deputy Warden MacGregor testified that he did not recall the email that was distributed indicating the outcome of the grievance. Mr. Stewart contends that CSC's failure to take reasonable steps to prevent future wrongdoing should be considered in fashioning an award for deterrence.
- [152] Based on all of this, Mr. Stewart submits that a total damages award of \$240,000 is appropriate.
- [153] The AGC opposes any award for deterrence, largely on the basis that the evidence shows that CSC took appropriate action following the incident. The AGC submits that the evidence in this case does not support this type of award.

B. Discussion [154] As noted previously, the Ward decision sets the foundation for the analysis of Charter damages. In this case, Mr. Stewart does not seek compensatory damages for the violation of his Charter rights, on the basis that such damages would duplicate the general damages he claims under the tort of battery. I will not discuss this aspect further, because I find the damages awarded for the tort of battery are sufficient to compensate Mr. Stewart for any harm done to his security of the person interest under section 7 of the Charter.

- [155] This leaves the final two elements of the Ward framework: damages for vindication of the Charter right and to deter future breaches. As described by the Supreme Court of Canada at para 25, "[t]he function of vindication recognizes that Charter rights must be maintained, and cannot be allowed to be whittled away by attrition" (emphasis in original). The Court elaborated on this element in the following passage:
- [28] Vindication, in the sense of affirming constitutional values, has also been recognized as a valid object of damages in many jurisdictions: see *Fose v. Minister of Safety and Security*, 1997 (3) SA 786 (C.C.), at para. 55, for a summary of the international jurisprudence. Vindication focuses on the harm the infringement causes society. As Didcott J. observed in *Fose*, violations of constitutionally protected rights harm not only their particular victims, but society as a whole. This is because they "impair public confidence and diminish public faith in the efficacy of the [constitutional] protection": *Fose*, at para. 82. While one may speak of vindication as underlining the seriousness of the harm done to the claimant, vindication as an object of constitutional damages focuses on the harm the Charter breach

causes to the state and to society.

[156] The “function of deterrence recognizes that damages may serve to deter future breaches by state actors” (Ward at para 25, emphasis in original). The Supreme Court of Canada offered the following guidance:

[29] Finally, deterrence of future breaches of the right has also been widely recognized as a valid object of public law damages... Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution. This purpose is similar to the criminal sentencing object of “general deterrence”, which holds that the example provided by the punishment imposed on a particular offender will dissuade potential criminals from engaging in criminal activity. When general deterrence is factored in the determination of the sentence, the offender is punished more severely, not because he or she deserves it, but because the court decides to send a message to others who may be inclined to engage in similar criminal activity... Similarly, deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future.

(citations omitted)

(i) Charter damages for deterrence [157] Considering the evidence and submissions in this case, I am not persuaded by Mr. Stewart’s argument that a substantial award is justified to deter CSC from failing to properly discipline its staff, thus putting inmates at greater risk. The evidence simply does not support such an award. On the other hand, I am persuaded that an additional award of damages is needed to vindicate the importance of security of the person, particularly in the context of COs’ interaction with inmates. I will explain my reasons for these conclusions below, starting with the arguments on deterrence.

[158] Under the Ward framework, one of the purposes of Charter damages can be to seek to “regulate government behaviour, generally, in order to achieve compliance with the Constitution.” It is important to remember that “deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future”: Ward at para 29; and see *Henry v. British Columbia (Attorney General)*, 2015 SCC 24 at para 129. This doctrine rests on the idea that government conduct will be affected by a damage award in a specific case, without any accompanying orders to achieve systemic change or to require any steps to implement the required change and to measure its impact. The damage award itself is seen as sufficient to achieve the reform that is needed.

[159] If that assumption is correct, it gives rise to the question of what types of conduct are amenable to this sort of incentive, and what principles might guide the assessment of such damages. During final arguments I asked counsel for their submissions on the question of how to assess the quantum of damages for deterrence, if any such damages were to be awarded. Mr. Stewart proposed an approximation of the amount of money CSC might have

been ordered to pay if it had attempted to discipline CO Anderson, but it is not evident why this would be seen as an effective deterrent. To put it another way, it is not clear why this amount would act as an incentive to CSC to discipline COs who commit wrongdoing, if that was the purpose to be achieved by this award.

- [160] In assessing whether this type of award is justified, it is important to focus on precisely what type of conduct by the institution is to be deterred. I note that deterrence awards have been made in some recent class actions by inmates for the injuries they suffered as a result of being placed in solitary confinement, based on the need to encourage governments to take the necessary steps to halt the practice, which has long been known to cause significant lasting damage. On the harms done by administrative segregation, see *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243. On Charter damages, see: *Brazeau v. Canada (Attorney General)*, 2020 ONCA 184; *Francis v. Ontario*, 2021 ONCA 197.
- [161] In this case, I can set questions about the appropriate purpose and quantum of Charter damages to deter future breaches aside, because I am not persuaded that the evidence supports this type of award. While I acknowledge that the record raises questions about certain aspects of CSC's implementation of its policies governing the use of force and discipline of COs, the evidence falls well short of demonstrating any need to impose an additional damage award in order to provide an incentive to CSC to prevent unjustified use of force by COs against inmates.
- [162] Mr. Stewart's argument that substantial damages are needed to deter CSC from future breaches of Charter rights fails on three grounds. First, he argues that CSC failed to discipline CO Anderson despite clear evidence of misconduct, because he says that CSC has imposed an unduly high threshold for imposing discipline and tied its hands by erasing records of misconduct after two years. I am not persuaded by this argument.
- [163] CSC did not refuse to examine whether to discipline CO Anderson following the incident. To the contrary, the warden of Sask Pen convened a Disciplinary Board of Inquiry, comprised of senior CSC officials from other institutions. The lengthy and detailed report of that Board demonstrates that it undertook a thorough investigation, involving interviews with the three COs directly involved as well as a review of the written evidence. The fact that the Board did not find that CO Anderson had breached the Code of Discipline is not an indication that CSC was not willing to discipline staff who commit wrongdoing. Similarly, the fact that a differently constituted Board might have reached a different conclusion does not cast the findings that were reached into doubt. On this, I note that the Final Grievance Response upheld Mr. Stewart's grievance, finding that CO Anderson's use of force was not proportionate in the circumstances. That result does not support a conclusion that CSC is unwilling to discipline its staff.
- [164] In a similar vein, Mr. Stewart relies on the fact that CO Anderson committed a subsequent unjustified use of force as evidence that CSC failed in its duty to ensure compliance with its Code of Discipline. I cannot agree. The record shows that CO Anderson was, indeed, found

to have breached the Code of Discipline by an unjustified use of force. The record also shows that CO Anderson was disciplined for this misconduct; he was removed from the ERT and was suspended without pay for 45 days. That does not support a conclusion that CSC is unwilling to discipline staff who commit misconduct.

- [165] As for the argument that CSC has tied its hands by negotiating a collective agreement that contains provisions that require the removal of records of misconduct after two years, I cannot agree with Mr. Stewart's characterization of the actual practice followed by CSC. According to Deputy Warden MacGregor, if a CO breaches the Code of Conduct, but does not commit further acts of misconduct in the following two-year period, the records of the first incident may be removed from the CO's file. The decision is discretionary, and it appears that this does not mean that all memory of the prior wrongdoing is erased or that a recidivist CO who commits serial wrongdoing will be excused from their misconduct as long as they space out these incidents every few years. The record falls well short of establishing any such practice.
- [166] Moreover, the record is entirely lacking as to the rationale for the provisions in the collective agreement. This is a trial of a claim against CSC relating to a specific incident. It is not the Court's role to embark on an inquiry into the labour relations context or disciplinary regime in place at CSC. The record simply does not support Mr. Stewart's claim that CSC's policies or practices regarding discipline of COs who commit misconduct are lacking.
- [167] Second, I find that the cases cited by Mr. Stewart in support of his argument on this point are all distinguishable on their facts. In *Peeters*, the Federal Court of Appeal upheld an award of punitive damages against CSC because it failed to adequately train and supervise COs. It is important to recall the facts of that case: Mr. Peeters had taken a civilian employee hostage for over three hours, cutting his ear and threatening to kill him. When he was subdued by COs, Mr. Peeters was injured. He was then stripped naked, covered with a blanket while strapped to a gurney and placed in an ambulance to be transported to hospital for treatment. Three COs escorted him in the ambulance, and during that drive one of them assaulted Mr. Peeters with a baton. The trial judge found that there was no CSC policy to ensure that COs who had been involved in an altercation with a prisoner were not assigned to escort that person in the immediate aftermath of the incident. In this case, the trial judge found that the COs were in a "very riled-up, angry state" and that CSC had failed in its duty to ensure that guards acted with lawful restraint: *Peeters v. Canada*, (1992), 54 F.T.R. 289 at paras 20, 41-48. That is the award that was upheld by the Federal Court of Appeal, based largely on the same rationale: CSC's failures were sufficient to justify a punitive damages award, to deter future misconduct by improperly trained COs who lacked adequate supervision.

- [168] Needless to say, the facts of Peeters bear little resemblance to the situation here, other than the fact that unjustified force was used by the COs involved. While Mr. Stewart claims that the CSC policy regarding the discipline of COs is lacking, I cannot accept this argument as explained below.
- [169] The labour relations decisions cited by Mr. Stewart also involve quite different factual scenarios. In those cases, CSC took disciplinary action against COs, but these decisions were reversed because they were based on faulty investigations and/or unfair grievance processes. For example, in Weinstein the Board found that CSC “acted with undue insensitivity and an absence of concern for the obligations of good faith and fair dealing throughout the process of the suspension and termination” (at para 331). This caused harm to the grievor that was entirely foreseeable.
- [170] In Gagné, the Board concluded that CSC acted in bad faith by disciplining the grievor based on a tainted investigation process and report. They allowed the grievance, and would have awarded damages because of CSC’s “egregious, high-handed, and offensive tactics”: at para 166. For a similar case, see Lyons v. Deputy Head (Correctional Service of Canada), 2022 FPSLREB 95 [Lyons].
- [171] Once again, there is no basis to find that CSC’s conduct in this case was in any way comparable to the actions which attracted negative comments in Weinstein, Gagné and Lyons. Instead, I have found that it conducted a thorough disciplinary investigation, among the other steps that were taken following the incident. The fact that Mr. Stewart does not agree with the outcome of that process, or that other processes reached different conclusions, does not indicate any basis for damages to deter future Charter breaches.
- [172] Finally, I am not persuaded that CSC’s policy framework governing the conduct of COs and the use of force reflects an ongoing or systematic failure to seek to ensure compliance with the law, including the Charter rights of inmates. Deputy Warden MacGregor, and COs Hawkes and Boka testified about Commissioner’s Directive 567-1 on the Use of Force as well as CSC’s Engagement and Intervention Model. Both documents, and the initial and ongoing training delivered to COs, emphasize that any use of force must be proportionate and reasonable in the circumstance, and that COs must employ strategies to seek to prevent use of force incidents and to de-escalate following any use of force. The CSC policy framework also includes record-keeping and reporting requirements, including the use of video recordings, preparation of SORs, and a graduated scale of follow-up investigations and reports depending on the nature of the incident.
- [173] Mr. Stewart acknowledged that being a CO is a difficult job, given the correctional context. He also accepts that CSC has adopted a robust policy framework. His critique relates to the way that policy is implemented, and he says that his experience shines a light on the shortcomings in the system.

[174] One area where I can agree with Mr. Stewart's assessment relates to CSC's process for communicating the results of a grievance where the outcome favours the inmate. This case demonstrates that the COs most directly involved in the unjustified use of force incident were not aware of the national level grievance decision, nor was Deputy Warden MacGregor. That does not reflect an effective means of ensuring that COs and institutions are aware of unjustified use of force findings, or any recommendations that might be made to prevent such misconduct in the future. That said, there is no evidence to indicate whether this was a departure from the norm, or whether there is a more systemic issue that CSC needs to address. Moreover, this trial is not the vehicle to embark on a comprehensive review of this question.

[175] For all of the reasons set out above, I am not persuaded by Mr. Stewart's argument that a substantial damages award is needed for the purpose of deterring future Charter breaches by CSC. The evidence simply does not support that conclusion.

[176] With this, I turn to the final element of Charter damages: vindication.

(ii) Charter damages to vindicate security of the person [177] The purpose of Charter damages for vindication has been described as to avoid "whittling down" the value of Charter rights and to recognize that a violation of the Charter harms the wider society, not only the individual. The idea here is that everyone who benefits from the Charter's protection has a shared interest in ensuring that officials who wield state power (and are thereby subject to the Charter) take their responsibilities seriously. A violation of the Charter wounds the community, not just the individual directly affected, because we all may be subject to similar treatment in the future. In a society where value is often associated with money, one way of recognizing the importance of encouraging respect for Charter rights is to make an award of damages to underline that we take such things seriously.

[178] This is perhaps most easily understood in a situation where a Charter violation did not give rise to any compensable harm, and where deterrence is not in issue. Declaring a Charter violation without providing any substantive remedy would seem a hollow victory, and over time might diminish the importance of Charter protections in the eyes of the public, and in the perspective of those who are subject to it.

[179] In this case, I find that Mr. Stewart should be awarded an additional amount to recognize the social importance of the right to security of the person guaranteed by section 7. The Supreme Court of Canada has recognized that granting remedies is the court's "most meaningful function under the Charter" (Canada (Attorney General) v. Power, 2024 SCC 26 at para 31). The Supreme Court has also repeatedly underlined the importance of the rights protected by section 7, in cases such as Re B.C. Motor Vehicle Act, 1985 CanLII 81 (SCC), Rodriguez v. British Columbia (Attorney General), 1993 CanLII 75 (SCC), and more recently, Canada (Attorney General) v. Bedford, 2013 SCC 72 and Carter v. Canada (Attorney General), 2015 SCC 5.

- [180] The AGC has conceded that Mr. Stewart's section 7 right to security of the person was violated by CO Anderson's unjustified use of force. In addition to the individual compensation I have awarded to Mr. Stewart, I find that a further amount to recognize society's interest in ensuring respect for this vital interest is justified in this case. In part, I find that such an award is needed in recognition of the circumstances of this case, which involved an assault on an inmate by a CO. In *Ewert v. Canada*, 2023 FC 1054 [Ewert], Justice McHaffie cited with approval the following comments of Justice Norris in *Richards*, which I echo and adopt as my own:
- [174] In *Richards*, Justice Norris underscored two aspects of the correctional context that are worthy of repetition and relevant in this case. First, he noted the significant power imbalance between inmates and correctional officers, with inmates being particularly vulnerable to abuses of authority. As a result, "[r]emedies that meaningfully vindicate Charter rights and deter future violations are thus of particular importance in the correctional context": *Richards* at para 273. Second, Justice Norris recognized the inherent challenges faced by inmates in bringing Charter claims against correctional officers before a court, such that when those claims are established, "the Court must provide a meaningful remedial response": *Richards* at para 274.
- [181] These comments apply with equal force in this case. Assessing the quantum of damages for vindication is not a scientific exercise. In some cases, such as *Ewert*, the three elements of Charter damages are combined into a single award. In *Richards*, an aggregate award of \$10,000 was made for the violations of sections 7, 9 and 12 of the Charter.
- [182] In some cases, punitive damages serve a similar vindicative purpose as Charter damages for deterrence. In other cases involving assaults by correctional officers or police, punitive damages have been awarded as follows:

Persaud v. Manitoba, 2022 MBKB 209: The plaintiff claimed he was assaulted by correctional officers while an inmate at a provincial facility. He claimed that the officers pushed his face into a concrete wall, handcuffed him and wrenched his arms up, and shoved him into a steel door. The plaintiff alleged he sustained serious shoulder injury to both shoulders which resulted in long-lasting disability and pain. The plaintiff's claim was dismissed but the Court outlined a provisional award of \$50,000 in general damages, \$15,204 in special damages for loss of income, and \$10,000 in punitive damages.

Elmardy v. Toronto Police Services Board et al., 2015 ONSC 2952 [Elmardy]: The plaintiff was stopped on the street by two police officers. He was verbally hostile towards them and did not remove his hands from his pockets when asked. The officers forced his hands out of his pockets and handcuffed him, and in doing so, one of the officers punched the plaintiff in the face twice, causing minor and non-permanent injuries. The plaintiff was also left lying on a cold deck, handcuffed, for 20-30 minutes. The Court held that the officers committed the torts of battery and false arrest and that the plaintiff's Charter rights under ss. 8, 9, 10(a) and 10(b) were violated. The plaintiff was awarded general damages of \$5,000 for pain and suffering from the battery and

\$2,000 for the arbitrary detention and false arrest. He was awarded \$1,000 for the illegal searches, \$1,000 for the ss. 10(a) and 10(b) violations, and punitive damages in the amount of \$18,000.

[183] Considering the circumstances of this case, I find that it is particularly important to set a damage award that reflects the fundamental societal interest in ensuring that officers exercising state power through the use of force do so in a reasonable and lawful manner. Based on the comparable precedents, and in particular considering the amounts awarded in Richards and Elmardy, I award Mr. Stewart damages in the amount of \$15,000 for the purpose of vindicating the right to security of the person.

VII. Conclusion [184] For the reasons set out above, I find that CO Anderson used unjustified force against Mr. Stewart by initially grabbing him and forcefully pinning him against the doors of his cell, causing injuries to the right side of Mr. Stewart's face, and then by applying additional force causing injuries to the left side of Mr. Stewart's face. The additional use of force was particularly egregious, because at that point Mr. Stewart was completely immobilized by CO Anderson and by CO Hawkes.

[185] I am awarding Mr. Stewart compensatory damages in the amount of \$50,000 for the tort of battery. I am also awarding him an additional \$15,000 for the purpose of vindicating the importance of security of the person guaranteed by section 7 of the Charter.

[186] Mr. Stewart is entitled to his costs, considering the outcome of the trial. He has claimed costs in the amount of \$9,000 plus disbursements of \$1,246. In the exercise of my discretion under Rule 400 of the Federal Court Rules (SOR/98-106), I find that these are appropriate amounts.

[187] In closing, I want to add two things. First, the preparation of these reasons has been delayed, and I apologize to the parties for the time it has taken. Second, I want to acknowledge the highly professional way both counsel conducted this trial. They presented their clients' cases forcefully but exercised good judgment in not pursuing peripheral issues. In particular, I commend counsel for Mr. Stewart the way he dealt with the late disclosure of the Final Grievance Report, and I commend counsel for the AGC for her approach to cross-examining Mr. Stewart.

JUDGMENT in T-194-22

THIS COURT'S JUDGMENT is that:

The action is allowed. The Defendant is vicariously liable for the unjustified use of force by CO Anderson against the Plaintiff, constituting the tort of battery. The Defendant is also liable for Charter damages to vindicate the right to security of the person protected by section 7 of the Charter.

The Defendant is ordered to pay the Plaintiff damages in the amount of \$65,000, comprising \$50,000 in general damages for the tort of battery, and \$15,000 in Charter damages for the purpose of vindication.

The Defendant is ordered to pay the Plaintiff's costs in the amount of \$9,000, as well as disbursements in the amount of \$1,246.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

Docket:

T-194-22

STYLE OF CAUSE:

KELSEY STEWART v HIS MAJESTY THE KING IN RIGHT OF CANADA

PLACE OF HEARING:

HELD BY VIDEOCONFERENCE

DATE OF HEARING:

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JUDGMENT AND REASONS:

pentney j.

DATED:

April 16, 2026

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