

COURT FILE NO.:

IN THE COURT OF KING'S BENCH OF
NEW BRUNSWICK

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

DIVISION DE
CIRCONSCRIPTION JUDICIAIRE DE
MONCTON

BETWEEN:

ENTRE::

**ERIC NORBERT ROBICHAUD AND
AMANDA LEE HART**

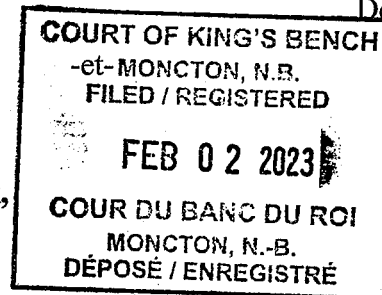
Plaintiff,

Demandeur,

-and-

**THE ATTORNEY GENERAL OF New Brunswick,
representing his Majesty the King in Right of
Canada**

Defendant



Defendeur.

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

**AVIS DE POURSUITE ACCOMPAGNE
D'UN EXPOSE DE LA DEMANDE
(FORMULE 16A)**

Court File No: _____

TO:

DESTINATAIRE:

Office of the Attorney General of
New Brunswick
Chancery Place
Room: 2078 Floor: 2
P.O. Box 6000
Fredericton, NB E3B 5H1

...(le défendeur susmentionné)...

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

PAR LE DÉPÔT DU PRÉSENT AVIS DE
POURSUIITE ACCOMPAGNÉ D'UN
EXPOSÉ DE LA DEMANDE, UNE
POURSUIITE JUDICIAIRE A ÉTÉ EN-
GAGÉE CONTRE VOUS.

If you wish to defend these proceedings, either
you or a New Brunswick lawyer acting on your
behalf must prepare your Statement of Defence

Si vous désirez présenter une défense dans
cette instance, vous-même ou un avocat du
Nouveau-Brunswick chargé de vous

in the form prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50:

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

(a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or

(a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou

(b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) if you are served anywhere else, WITHIN 60 DAYS after such service.

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

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

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

You are advised that:

Sachez que :

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) the plaintiff intends to proceed in the **English** language; and

(b) le demandeur a l'intention d'utiliser la langue. ; et

(c) your Statement of Defence must indicate the language in which you intend to proceed.

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

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

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

THIS NOTICE is signed and sealed for the
Court of ^{King's} Queen's Bench by ^{Chantal} ~~Moreau~~ Clerk of the ^{2nd}
Court at Moncton, New Brunswick, on the
day of February, 2023.

CET AVIS est signé et scellé au nom de la
Cour du Banc de la Reine par
greffier de la Cour à
....., ce 2023.

L.S. Copy
S.L. copie
Chantal Moreau
Legal Officer / Conseillère juridique

(clerk)

(greffier)

Court
Seal

Sceau de
la Cour

Court of King's Bench
Palais de Justice Moncton Law Courts
145 Assumption Blvd.
P.O. Box 5001
Moncton NB E1C 8R3

STATEMENT OF CLAIM

Proceeding under the Class Proceedings Act, R.S.N.B 2011, c.125

I. Overview

1. This action concerns the prolonged use of solitary confinement, also known as “close confinement”, in provincial correctional facilities across New Brunswick (“Provincial Institutions”).
2. The use of solitary confinement in correctional contexts is a practice with serious and well-documented negative outcomes on the psychological and physical health of human beings.
3. The use of solitary confinement for a consecutive period of over fifteen (15) days (“Prolonged Solitary Confinement”) constitutes cruel and unusual punishment and is a violation of prisoners’ constitutional rights and a breach of New Brunswick’s fiduciary duty and duty of care to prisoners incarcerated in Provincial Institutions.
4. A large portion of the prison population suffers from mental illness. Throughout New Brunswick’s correctional system’s history, those who were tasked with administrating the care of this group have treated them with prejudice, indifference and abuse. Prisoners diagnosed with serious psychological disorders (“Mentally Ill Prisoners”) have suffered severe harm as a result of being subjected to as little as 24 hour consecutive hours in solitary confinement.
5. The use of solitary confinement for Mentally Ill Prisons for a period of 24 consecutive hours constitutes cruel and unusual punishment and is a violation of prisoners’ constitutional rights and a breach of New Brunswick’s fiduciary duty and duty of care to prisoners incarcerated in Provincial Institutions.

II. Representative Plaintiffs and Class Members

6. The Plaintiff, Eric Robichaud, currently resides in Saint John, New Brunswick. He endured over 150 days of solitary confinement while housed in Provincial Institutions.
7. The Plaintiff, Amanda Hart, currently resides in Truro, Nova Scotia. She has endured over 60 days of solitary confinement while housed in Provincial Institutions.
8. Both (or one) of the Plaintiffs have been diagnosed with a serious psychological illness, which was known or ought to have been known by the Defendant during their periods of incarceration.
9. The Plaintiffs seek to certify this action as a Class Proceeding and Plead the *Class Proceedings Act*, R.S.N.B 2011, c.125, as providing the basis for such certification. The Plaintiffs, as Representative Plaintiffs, do not have any interest adverse to any of the members of the proposed Class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by them, that the Plaintiffs’ claims raise common issues, and that a

Class Proceeding would be the preferable procedure for the resolution of such common issues.

10. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of other persons who were subjected to Solitary Confinement for a consecutive period of fifteen (15) or more days ("Prolonged Solitary Confinement" during their incarceration at a Provincial Institution and/or a Class of other persons with a serious mental illness who were subjected to Solitary Confinement for a consecutive period of 24 hours during their incarceration at a Provincial Institution.

III. The Defendant

11. The Defendant is the Attorney General of New Brunswick representing His Majesty the King in Right of the Province of New Brunswick. The Defendant represents the rights of the Department of Justice Correctional Services ("Correctional Services"), which is the provincial government body that at all material times administers the system of Provincial Institutions and is deemed to include all of its contractors, sub-contractors, agents, servants, employees and appointees. Correctional Services is and was, at all material times, responsible for the maintenance, oversight, funding and management of the governmental servants and agents who operate the Provincial Institutions.
12. The Defendant operates five adult correctional facilities: Dalhousie Regional Correctional Centre, Madawaska Regional Correctional Centre, New Brunswick Women's Correctional Centre, Southeast Regional Correctional Centre, and Saint John Regional Correctional Centre. The Defendant also operates one youth correctional facility: New Brunswick Youth Centre.
13. The majority of persons housed in these facilities are on remand, while awaiting further court appearances. Most have not been found guilty of an offence.

IV. Solitary Confinement

14. When a prisoner is subjected to solitary confinement, they are removed from the general penitentiary population and held in isolation from other prisoners and staff. This segregation may be achieved in a variety of settings within a Provincial institution, including a prisoner's own cell, a specially designated segregation cell, or a "dry cell" used to monitor prisoners suspected of concealing contraband on or in their person.
15. Prisoners held in solitary confinement are restricted to a small space and denied meaningful human interaction for approximately 23 hours per day. Usually, a prisoners only human interaction while in solitary confinement is with corrections staff. Prisoners held in solitary confinement have limited access to rehabilitative programs and limited access to medical and psychiatric treatment.
16. Prisoners subjected to solitary confinement regularly suffer serious negative effects on their mental and physical health as a result, including:

- a. Anxiety,
 - b. Depression,
 - c. Anger and aggression,
 - d. Social withdrawal,
 - e. Psychosis,
 - f. Paranoia,
 - g. Hallucinations,
 - h. Confused thought processes,
 - i. Exacerbation of pre-existing psychological conditions,
 - j. Physical effects such as headaches, heart palpitations, and loss of appetite,
 - k. Disruption of sleep patterns and nightmares, and
 - l. Self-harm, suicidal ideation and suicide.
17. Section 19 of the *Corrections Act Regulations*, NB Reg 84/257 (“The Regulations”) allows for the use of Solitary Confinement where a prisoner is deemed to need protection, to protect the security of the correctional institution or safety of other inmates, where the prisoner is alleged to have breached a provision of the regulations, where a prisoner is undergoing a sentence of segregation, or where the prisoner requests to be placed in segregation.
 18. Solitary Confinement for the purposes of punishing an infraction of the rules is known as “Disciplinary Solitary Confinement”. Solitary Confinement for the purpose of protection of the prisoner or others is known as “Administrative Solitary Confinement” and may be imposed in a variety of circumstances where the prisoner subjected to confinement has done nothing wrong.
 19. Under the version of the Regulations and the Correctional Services Policy & Procedures (the “Policy”) currently in force, solitary confinement may be imposed for up to 5 consecutive days without external review. After five days, the Superintendent of the Provincial Institution must apply to the Director of Correctional Services.
 20. Administrative Solitary Confinement is used at the discretion of the Defendant. A Superintendent within a Provincial Institution must approve Administrative Solitary Confinement for any particular prisoner.
 21. Administrative Solitary Confinement also includes instances when a prisoner is subjected to solitary confinement for medical reasons.
 22. There is no absolute limit prescribed under New Brunswick legislation or regulations or policy on the total number of consecutive days for which a prisoner may be subjected to solitary confinement.
 23. In the absence of adequate institutional resources, Solitary Confinement is used as a tool to respond to prisoner mental health challenges such as self-injury and psychiatric illness, as well as problems engendered by prison overcrowding.

24. The use of Solitary Confinement amounts to a "sentence within a sentence" and constitutes a denial of natural justice and due process. In the case of prisoners held on remand, the use of solitary confinement constitutes an additional punishment in the absence of a conviction.
25. The common negative effects of Solitary Confinement also present additional barriers to prisoners to meet the behavioural requirements that may be required to achieve release from incarceration and/or Solitary Confinement itself. In particular, the effects of Solitary Confinement:
 - a. Gives rise to or exacerbates mental illness that contributes to criminal, defiant, or anti-social conduct, and interfere with treatment of safe; and
 - b. Creates and or exacerbates general behavioural challenges resulting in difficulty maintaining appropriate interactions with other inmates and correctional staff.

V. The Defendant's Fiduciary Duty and Duty of Care to Class Members

26. The Defendant had a fiduciary relationship with all Class Members. The Defendant created, planned, established, operated, financed, supervised, controlled and regulated the entire system of Provincial Institutions during the Class Period.
27. Among other things, the Defendant was solely responsible for:
 - a. The construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of all Provincial Institutions during the Class Period;
 - b. The management, operation and administration of Correctional Services during the Class Period;
 - c. The Implementation of the Act and Regulations during the Class Period;
 - d. The promotion of the health, safety and well-being of Class members during the Class Period;
 - e. Decisions, procedures, regulations promulgated, operations and actions taken by the Correctional Services, its employees, servants, officers and agents during the Class Period
 - f. In particular, the creation, design and implementation of policies regarding solitary confinement for the Class Period
 - g. The selection, control, training, supervision, and regulation of the designated operators and their employees, servants, officers and agents, and for the care, control and well-being of the Class Members confined in Provincial Institutions during the Class Period, and
 - h. The care and supervision of all Class Members within the Provincial Institutions and all activities that took place therein during the Class Period.
28. At all material times, the Class members were within the knowledge, contemplation, power or control of the Defendant and were subjected to the unilateral exercise of the Defendant's power or discretion. As prisoners incarcerated in Provincial Institutions, the Class Members relied entirely on the Defendant to ensure that the conditions of their incarceration were safe and in accordance with the recognized objectives of sentencing in Canada. The Class Members were

particularly vulnerable to the operational policies, decisions, practices, and actions of Correctional Services.

29. By virtue of the relationship between the Class members and the Defendant being one of trust, reliance and dependence, the Defendant owed a fiduciary obligation to ensure that the Class Members were treated fairly, safely, and in all other ways consistent with the obligations owed to a person under its care and control.
30. At all material times, the Defendant owed a fiduciary obligation to prisoners to act in their best interest. The Class Members relied upon the Defendant, to their detriment, to fulfill its fiduciary obligations.
31. The Defendant also owed a duty of care to the Class Members which includes, but is not limited to:
 - a. Properly and effectively supervising the Provincial Institution environment and the conduct of Correctional Services staff to ensure that prisoners would not suffer undue harm;
 - b. Using reasonable care to ensure the safety, well-being and protection and prisoners;
 - c. Setting or implementing standards of conduct for Correctional Services staff to ensure that the health and well-being of prisoners are not significantly endangered; and
 - d. Creating policies that would not cause undue suffering or that amount to cruel and unusual punishment.
32. The Defendant was negligent and failed to discharge these fiduciary duties in breach of its special responsibility to ensure the safety and well-being of the Class.

VI. The Defendant's Breaches of Its Fiduciary Duties and Duty of Care

33. Class Members were subjected to Prolonged Solitary Confinement by Correctional Services while imprisoned. Mentally Ill Prisoners were subjected to Solitary Confinement by the Defendant.
34. Through its servants, officers, employees and agents, the Defendant was in breach of its fiduciary duties to the class. Particulars of those breaches include:
 - a. Putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;
 - b. Failure to safeguard the physical and emotional needs of Class Members; and
 - c. Permitting cruel, unusual and/or excessive punishments to be perpetrated against the Class;
35. The Defendant acted in breach of its duty of care to the Class, and was systemically negligent, at its establishment, operation, regulation, financing, supervision and control of the Provincial Institutions. In particular, without limitation, The Defendant:
 - a. Failed to adequately, properly and effectively supervise prisoners and Correctional Services staff;

- b. Systemically subjected individuals to Solitary Confinement for longer than permitted the Act, the Regulations, or the Policy;
- c. Systematically subjected individuals to Solitary Confinement without proper approval or documentation;
- d. Systematically subjected individuals to Solitary Confinement for purported medical reasons without medical documentation/opinion confirming the need for confinement
- e. Used Prolonged Solitary Confinement with knowledge of its negative impacts;
- f. Failed to regularly review the status of individuals being subjected to Solitary Confinement;
- g. Failed to provide individuals subjected to Solitary Confinement with reasonable outdoor recreation time and access to showers;
- h. Failed to protect Class Members from persons or situations that would endanger or be injurious to their health or well-being;
- i. Failed to use reasonable care in ensuring the safety, well-being and protection of prisoners by insulating them from practices that would endanger or would be injurious to their health or well-being.

VII. Breach of the Charter

- 36. Section 7 of the Charter guarantees the right to “life, liberty and security of the person.” Solitary confinement is a further deprivation of the liberty of the incarcerated persona and constitutes a serious interference with the psychological integrity of prisoners: as such, it is a clear violation of the Section 7 rights of the Class Members.
- 37. Moreover, the use of Prolonged Solitary Confinement is overbroad, grossly disproportionate, and shocks the conscience, and as such is not in accordance with the principles of fundamental justice recognized by Canadian law.
- 38. Section 12 of the Charter guarantees the right to freedom from any “cruel or unusual treatment or punishment”.
- 39. The common deleterious effects of Prolonged Solitary Confinement are well-recognized, and the use of Prolonged Solitary Confinement constitutes cruel and unusual treatment and punishment.
- 40. The said infringements of ss. 7 and 12 cannot be justified pursuant to the criteria set out under s. 1 of the Charter.

VIII. Damages Suffered by Class Members

- 41. As a consequence of the negligence, breach of fiduciary duty, and breach of the Charter by the Defendant and its agents for whom the Defendant is vicariously liable, Class Members suffered loss, injury, and damages including:
 - a. Development of mental illnesses;
 - b. Exacerbation of mental illnesses;
 - c. Assault and battery;

- d. Emotional abuse;
 - e. Psychological abuse;
 - f. Impairment of mental and emotional health amounting to severe and permanent disability
 - g. Infringement on liberty rights;
 - h. Impaired ability to participate in or transition to a normal family life;
 - i. Alienation from family, spouses and children;
 - j. Impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
 - k. The need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the experience of Prolonged Solitary Confinement; and
 - l. Pain and suffering.
42. As a consequence of the negligence and breach of fiduciary duties by the Defendant and its agents for whom The Defendant is vicariously liable, the Class Members have required and will continue to require medical treatment, rehabilitation, counselling and other care. Class members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, such as a result of the Defendant's conduct, for which they claim complete indemnity, compensation and payment from the Defendant.
43. The Defendant knew, or ought to have known, that as a consequence of its mistreatment of Class Members, the Plaintiffs and Class Members would suffer significant mental, emotional, psychological, and physical harm.

IX. Relief Sought

44. The Plaintiffs seek the following relief:
- a. An Order certifying this proceeding as a Class Proceeding and appointment the Plaintiffs as the Representative Plaintiffs for the Class and any appropriate subclass thereof;
 - b. A declaration that:
 - i. Prolonged Solitary Confinement constitutes an infringement of and deprivation of the right to life, liberty and security of the person as guaranteed by Section 7 of the Canadian Charter of Human Rights and Freedoms;
 - ii. Prolonged Solitary Confinement constitutes cruel, inhumane and degrading treatment or punishment contrary to Section 12 of the Canadian Charter of Rights and Freedoms;
 - iii. In the use and operation of Prolonged Solitary Confinement during the Claim Period, the Defendant violated the Plaintiffs' rights under sections 7 and 12 of the Canadian Charter of Rights and Freedoms;
 - c. Damages or such other remedy as the Court may consider just and appropriate pursuant to Section 24 of the Canadian Charter of Rights and Freedoms;
 - d. Damages for the aforesaid negligence and breaches of fiduciary duty;
 - e. Aggravated, punitive, and/or exemplary damages;
 - f. Interest pursuant to the Judicature Act, RSNB, 1973, c. J-2;

- g. Costs; and
- h. Such further and other relief as this Honourable Court deems just.

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 1 day of February 2023.



Emma Halpern

PATH LEGAL

85 Queen Street

Dartmouth, NS B2Y 1G7

Ph: (902) 706-4607

Fax: (902) 443-6593

Solicitor for the Plaintiffs

TO: The Prothonotary
AND TO: The Defendant
Their Solicitors or Agents