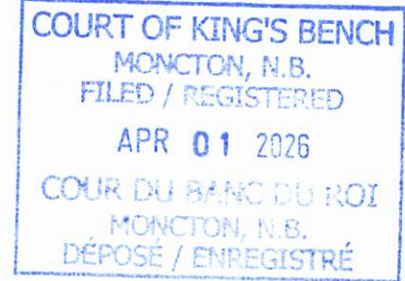


COURT FILE NO: MC-89-2023

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON



BETWEEN:

ERIC NORBERT ROBICHAUD and KENDRA VOUTT

Plaintiffs,

and

**THE PROVINCE OF NEW BRUNSWICK, representing His Majesty the King
in the Right of the Province of New Brunswick**

Defendant

ORDER

WHEREAS the Plaintiffs have filed a Notice of Motion seeking certification of the within action as a Class Proceeding pursuant to section 6(1) of the *Class Proceeding Act, SNB 2006, C C-5.15*;

AND WHEREAS the parties appeared before the court on March 31st, 2026;

AND WHEREAS the Plaintiffs provided to the court the affidavit evidence of Emma Halpern, Kendra Voutt, Mark Matheson and Eric Robichaud in support of the motion;

AND WHEREAS the defendant offered no evidence in opposition to the relief sought in the notice of motion and took no position regarding the certification request;

AND WHEREAS the court is satisfied the Plaintiffs have met the certification criteria set out in section 6(1) of the *Class Proceeding Act*;

AND WHEREAS the court is satisfied the goals of access to justice, judicial economy and behavior modification will be achieved as a result of the certification of this action as a class proceeding it is therefore ordered as follows:

1. This action is certified as a class proceeding pursuant to the *Class Proceedings Act, RSNB 2011, c. 125*;
2. The class is defined as:
 - (a) All persons who were involuntarily (without the consent of the person) subjected to a period of close confinement of 15 or more consecutive days at a provincial correctional facility in New Brunswick between February 2, 2008 and March 31st, 2026; and
 - (b) All persons who were involuntarily (without consent of the person) subjected to a period of close confinement of any length of time at a provincial correctional facility in New Brunswick between February 2, 2008 and March 31st, 2026; and
 - (1) Who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders;
 - i. Schizophrenia (all sub-types);
 - ii. Delusional Disorder;
 - iii. Schizophreniform Disorder;
 - iv. Brief psychotic Disorder;
 - v. Substance-induced psychotic disorder (excluding intoxications and withdrawals);
 - vi. Psychotic Disorder not otherwise specified;
 - vii. Major Depressive Disorder;
 - viii. Bipolar Disorder I;
 - ix. Bipolar Disorder II;
 - x. Neurocognitive Disorders and/or Delirium, Dementia and Amnestic and other Cognitive Disorders;
 - xi. Post-Traumatic Stress Disorders;
 - xii. Obsessive Compulsive Disorder; or
 - xiii. Borderline Personality Disorder; and,
 - (2) Who reported such diagnosis to the Defendant's agents before or during their close confinement.
3. The common issues trial will answer the following questions:
 - a. Fiduciary Duty
 - i. Did the defendant owe a fiduciary duty to the class members to protect them from harm caused by extended periods of segregation;

- ii. If the answer to question 1 is “yes”, did the Defendant breach its fiduciary duty? If so, how?
- b. Negligence
- i. Did the Defendant owe a duty of care to the class members to protect them from harm caused by extended periods of segregation?
 - ii. If the answer to question 3 is “yes”, did the Defendant breach its duty of care? If so, how?
- c. Breach of Charter Rights
- i. Did the Defendant breach the Prolonged Close Confinement Class members’ rights under section 7 of the *Canadian Charter of Rights and Freedoms*?
 - ii. If so, were its actions saved under section 1 of the *Charter*?
 - iii. Did the Defendants breach the Mental Disorder Class members’ rights under section 7 of the *Charter*?
 - iv. If so, were its actions saved under section 1 of the *Charter*?
 - v. Did the Defendant breach the Prolonged Close Confinement Class members’ rights under section 12 of the *Canadian Charter of Rights and Freedoms*?
 - vi. If so, were its actions saved under section 1 of the *Charter*?
 - vii. Did the Defendants breach the Mental Disorder Class members’ rights under section 12 of the *Charter*?
 - viii. If so, were its actions saved under section 1 of the *Charter*?
 - ix. If the answer to common issue c(i), c(iii), c(v) or c(vii) is “yes” and the answer to common issue c(ii), c(iv), c(vi), or c(viii) is “no”, are damages available to the Class under section 24 of the *Charter*?
- d. Aggregate Damages
- If the Defendants breached its fiduciary duty and/or duty of care and/or breached the class members *Charter* rights, can damages be assessed on an aggregate basis? If so, in what amount?

e. Punitive Damages

Are the class members entitled to an award of aggravated, exemplary, or punitive damages based on the Defendant's conduct? If so, in what amount?

4. Eric Norbert Robichaud and Kendra Voutt are appointed as the representative Plaintiffs for the class;
5. PATH Legal and Valent Legal are appointed as counsel to the class ("class counsel");
6. The claims asserted on behalf of the class are negligence, breach of fiduciary duty and breach of *Charter* rights;
7. Any other proceeding commenced in New Brunswick in respect of the subject matter are stayed;
8. No other proceeding may be commenced in New Brunswick in respect of the subject matter of this action without leave of this Court;
9. Class members shall be notified that this proceeding has been certified as a class proceeding as follows:
 - (a) Direct Mailing;
 - (b) Posting in prominent locations in Provincial Correctional Institutions;
 - (c) Email;
 - (d) Telephone;
 - (e) Internet;
 - (f) Community Organizations;
 - (g) Social Websites; and
 - (h) Newspapers.
10. Notice of Certification shall be in print and audio form as follows:
 - (a) "Print Notice" means a notice of certification and a form to be approved by the Court, which will be distributed directly to known class members and in print media including newspapers, internet websites and email.
 - (b) "Audio Notice" means a notice of certification and a form to be approved by the Court, which will be distributed by telephone or other audio media.
11. Class members may opt out of the class proceeding by delivering a signed opt out form or some other legible signed request to opt out, to class counsel post-marked within 90 days of the effective dates (the "opt out deadline");
12. No class member may opt out of the class proceeding after the opt out deadline, except with leave of the Court; and

13. Class counsel shall serve on the Defendant and file with the Court within 60 days of the opt out deadline an affidavits listing all persons who have opted out of the class proceedings, if any.
14. The Defendant, after the expiration of the opt-out period, shall deliver to the Plaintiffs an affidavit listing, to the best of its knowledge, information and belief, the number of class members, their names, their last known address and their contact.

DATED at Moncton, this 1st day of April, 2026.



Chief Justice Tracey K. DeWare
Court of King's Bench of New Brunswick