

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Naveah North (formerly known as Cody Cragg)

Plaintiff

AND

Her Majesty the Queen in the right of
the Province of British Columbia

Defendant

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
MR. JUSTICE N. SMITH

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22/DEC/2020

ON THE APPLICATION of Naveah North (formerly known as Cody Cragg) coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC, on August 24 – 25, 2020, and on hearing Ken McEwan, Q.C., Samantha Chang, Charles Hatt and James Sayce, counsel for the plaintiff; and Claire Hunter, Q.C., Chelsea Hermanson and Esher Madhur, counsel for the defendant; and judgment being reserved to this date;

THIS COURT ORDERS that:

1. This action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
2. The Class is defined as:

Those persons who, between April 18, 2005 and the present, were involuntarily subjected to either:

1. Separate Confinement and/or Segregation for at least fifteen consecutive days ("**Prolonged Separate Confinement and/or Segregation**"); or
2. Separate Confinement and/or Segregation when B.C. Corrections knew or ought to have known the person suffered from Mental Illness ("**Separate Confinement and/or Segregation of Mental Health Disordered Inmates**");

in a British Columbia correctional centre as defined in s. 1 of the *Correction Act*. S.B.C. 2004, c. 46 ("**BC Correctional Centre**").

"**Separate Confinement and/or Segregation**" means any placement apart from the general population pursuant to ss. 17, 18, 24 or 27(1)(d) of the *Correction Act Regulation*, B.C. Reg. 58/2005;

"**Mental Illness**" means a diagnosed condition comprising one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders:

- A. Schizophrenia (all sub-types),
 - B. Delusional disorder,
 - C. Schizophreniform disorder,
 - D. Schizoaffective disorder,
 - E. Brief psychotic disorder,
 - F. Substance-induced psychotic disorder (excluding intoxications and withdrawal),
 - G. Psychotic disorder not otherwise specified,
 - H. Major depressive disorders,
 - I. Bipolar disorder I,
 - J. Bipolar disorder II,
 - K. Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders,
 - L. Post-Traumatic Stress Disorder;
 - M. Obsessive Compulsive Disorder; or
 - N. Borderline Personality Disorder.
3. The causes of action asserted against the defendant are breach of fiduciary duty, negligence, and breaches of sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") resulting from the use of Prolonged Separate Confinement and/or Segregation and Separate Confinement and/or Segregation of Mental Health Disordered Inmates on members of the Class.
 4. The common issues be and hereby are certified as:
 - a. Fiduciary Duty:

i. Does the defendant owe the Class members a fiduciary duty to act in their best interests with respect to their care and in the management, operation and oversight of the BC Correctional Centres; and,

ii. By detaining Class members in Prolonged Separate Confinement and/or Segregation and Separate Confinement and/or Segregation of Mental Health Disordered Inmates, has the defendant breached such duty?

b. Negligence:

i. Does the defendant owe the Class members a common law duty of care in the management, operation and oversight of the BC Correctional Centres?

ii. By detaining Class members in Prolonged Separate Confinement and/or Segregation and Separate Confinement and/or Segregation of Mental Health Disordered Inmates, has the defendant breached such duty?

c. Breaches of the *Charter of Rights and Freedoms*:

i. By detaining Class members in Prolonged Separate Confinement and/or Segregation and Separate Confinement and/or Segregation of Mental Health Disordered Inmates, did the defendant breach the Class members' rights under the *Charter of Rights and Freedoms*, particularly ss. 7, 12 and 15?

ii. If the answer to (i) is "yes", are any such breaches saved by s. 1 of the *Charter*?

iii. If the answer to (i) is "yes" and (ii) is "no", are damages available to Class members under s. 24(1) of the *Charter*?

d. If the answer to any of the common issues (a)(ii), (b)(ii), or (c)(iii) is "yes", can the Court make an aggregate assessment of the damages suffered by some or all Class members?

e. If the answer to any of the common issues (a)(ii), (b)(ii), or (c)(iii) is "yes", was the defendant guilty of conduct that justifies an award of punitive damages?

f. If the answer to common issue (e) is "yes", what amount of punitive damages ought to be awarded?

5. Neveah North is hereby appointed as the representative Plaintiff for the Class members.

6. Koskie Minsky LLP and McEwan Partners LLP are hereby appointed as class counsel ("**Class Counsel**")
7. Epiq Class Action Services Canada Inc. (the "**Administrator**") be and is hereby appointed as the Administrator.
8. Class members shall be notified that this proceeding has been certified as a class proceeding as follows (the "**Notice Program**"):
 - a. by the defendant posting the Publication Notice found in **Schedule "A"** in conspicuous places in each of the correctional institution that the Province of British Columbia governs (collectively, the "**BC Institutions**"), being:
 - i. Alouette Correctional Centre for Women;
 - ii. Ford Mountain Correctional Centre;
 - iii. Fraser Regional Correctional Centre;
 - iv. Kamloops Regional Correctional Centre;
 - v. Nanaimo Correctional Centre;
 - vi. North Fraser Pretrial Centre;
 - vii. Okanagan Correctional Centre;
 - viii. Prince George Regional Correctional Centre;
 - ix. Surrey Pretrial Services Centre; and
 - x. Vancouver Island Regional Correctional Centre;
 - b. by the defendant providing a copy of the Publication Notice and Long Form Notice set out in **Schedule "B"** to every prisoner incarcerated in a BC Institution;
 - c. by the Administrator delivering the Publication Notice and Long Form Notice by email to the Class members whose contact information the defendant has identified in its own file records and provided to the Administrator;
 - d. by the defendant making best efforts to provide copies of the Publication Notice and Long Form Notice to all probation officers within British Columbia, and making best efforts to have all probation officers within British Columbia distribute the Publication Notice and Long Form Notice to each person on probation/former inmate assigned to them;
 - e. by the defendant directing that the Publication Notice be posted in all probation offices throughout British Columbia;
 - f. by the Administrator circulating the Publication Notice to community action groups who may deal with Class members, as advised by Class Counsel;
 - g. by the Administrator and Class Counsel forwarding the Publication Notice and Long Form Notice by email to any person who requests it from them;
 - h. by the defendant providing the names and e-mail addresses of any person who requests the Publication Notice and Long Form Notice from it to the Administrator for the Administrator to forward;

- i. by the Administrator making the Publication Notice available orally by recorded message at a toll-free line set up by the Administrator;
 - j. by the Administrator posting the Publication Notice and Long Form Notice on the class action website supervised by the Administrator;
 - k. by the Administrator placing the Publication Notice in ¼ of a page size in the weekend edition of each of the following newspapers:
 - i. *The Globe & Mail*, National Edition; and
 - ii. *The Vancouver Sun*;
 - l. by the Administrator issuing the Publication Notice by press release via CNW Group – Canadian Basic Network.
9. The defendant shall implement subparagraphs 8(a), (b), (d), (e) and (h) of the Notice Program by no later than May 5, 2021.
 10. The Administrator shall implement subparagraphs 8(c), (f), (i), (j), (k) and (l) of the Notice Program by no later than May 5, 2021.
 11. The Administrator and Class Counsel shall fulfill their obligation under subparagraph 8(g) until August 3, 2021.
 12. The defendant shall fulfill its obligation under subparagraph 8(h) until August 3, 2021.
 13. The defendant shall pay the costs of the Notice Program.
 14. The Administrator shall preserve all opt-out notices it receives until permitted to dispose of such information by further order of this Court or by written direction jointly signed by Class Counsel and the defendant.
 15. A Class member may opt out of the class proceeding by delivering a signed opt-out coupon, a copy of which is attached as **Schedule "C"**, or some other legible signed request to opt out, by August 3, 2021 (the "**Opt-Out Deadline**"), by delivery to the Administrator at the following address:

Email:

info@BCsolitaryconfinementclassaction.ca

Mail

Epiq Class Action Services Canada Inc.
Attention: BC Solitary Confinement Class Action Settlement
P.O. Box 507 STN B
Ottawa, ON K1P 5P6

16. If a Class member has delivered an opt-out coupon to the Administrator, they may withdraw their opt-out before the Opt-Out Deadline by advising the Administrator, in writing, that they wish to withdraw their opt-out.
17. No Class member may opt out of the class proceeding after the Opt-Out Deadline, except with leave of the Court.
18. The Administrator shall serve on the parties and file with the Court, within sixty (60) days of the expiry of the Opt-Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.
19. No other proceeding may be commenced in British Columbia in respect of the subject matter of this action without leave of this court.
20. Each party shall bear its own costs of the within motion for certification of this proceeding.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Plaintiff

J. Kenneth McEwan, Q.C. / James Sayce



Signature of lawyer for the Defendant

Claire Hunter, Q.C.

By the Court

Registrar

SCHEDULE "A"

PUBLICATION NOTICE

Were you incarcerated in a B.C. Correctional Centre between April 18, 2005 and December 22, 2020?

A lawsuit may affect you. Please read this carefully.

The B.C. Supreme Court decided that a class action on behalf of people who were inmates in Correctional Centres, from *April 18, 2005 and December 22, 2020*, who were involuntarily subjected to **Separate Confinement and/or Segregation**, for either:

1. at least 15 consecutive days, or
2. any length of time if B.C. Corrections knew or ought to have known the person suffered from Mental Illness
(the "Class").

If you meet this definition, you have a choice of whether or not to stay in the Class.

To stay in the Class, you do not have to do anything. If money or benefits are obtained, you will be notified about how to make a claim. You will be legally bound by all orders and judgments, and you will not be able to sue British Columbia about the legal claims in this case.

If you want to remove yourself from the class action, you must submit an opt out form by August 3, 2021. Opt out forms are available here:
<https://BCsolitaryconfinementclassaction.ca>.

If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP and McEwan Partners LLP ("**Class Counsel**") to represent the Class. You don't have to pay Class Counsel to participate. If they get money or benefits for the Class, they may ask for lawyers' fees and costs, which would be deducted from any money obtained or to be paid separately by British Columbia.

For more information about your rights, go to
<https://BCsolitaryconfinementclassaction.ca>, call toll-free 833-358-9422 or write to BC Solitary Confinement Class Action Settlement P.O. Box 507 STN B, Ottawa, ON K1P 5P6, or by email at: info@BCsolitaryconfinementclassaction.ca.

SCHEDULE "B"

LONG FORM NOTICE

**Were you incarcerated in a B.C. Correctional Centre
between April 18, 2005 and December 22, 2020?**

If YES, a class action may affect your rights.

A Court authorized this notice. You are not being sued.

- You could be affected by a class action involving B.C. Correctional Institutions.
- A Court has approved a lawsuit as a class action for current and former inmates of B.C. Correctional Centres who were involuntarily subjected to **Separate Confinement and/or Segregation**, for either: at least 15 consecutive days, or any length of time if B.C. Corrections knew or ought to have known the person suffered from Mental Illness. *If you know a current or former inmate who cannot read this notice please share this information with them.*

The Court has not decided whether British Columbia did anything wrong, and there still has to be a court case about whether British Columbia did anything wrong. There is no money available now and no guarantee there will ever be any money. However, your rights are affected, and you have a choice to make now. This notice is to help you make that choice.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue British Columbia on your own about the same legal claims in this lawsuit.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit and get no benefits from it. Keep individual rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you will <i>not</i> share in those. But, you keep any rights to sue British Columbia on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

Lawyers must prove the claims against British Columbia at a trial, or a settlement must be agreed to. If money or benefits are obtained, you will be notified about how to ask for your share.

Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **August 3, 2021**.

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against British Columbia on your behalf are correct. This notice explains all of these things.

A judge of the Supreme Court of British Columbia is currently overseeing this case. The case is known as *North v. British Columbia*, Court File No. S1812656. The person who sued is called the Plaintiff. British Columbia is the Defendant.

2. What is this lawsuit about?

The lawsuit says that British Columbia improperly subjected inmates to separate confinement and/or segregation. The lawsuit says that such separate confinement and/or segregation constitutes breach of fiduciary duty, systemic negligence and breaches of inmates' rights under the *Canadian Charter of Rights and Freedoms*. British Columbia denies these claims. The Court has not decided whether the Plaintiff or British Columbia is right. The lawyers for the Plaintiff will have to prove their claims in Court.

3. Why is this a class action?

In a class action, a person called the “Representative Plaintiff” (in this case, Naveah North) sued on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Class includes those persons who, between April 18, 2005 and December 22, 2020, were involuntarily subjected to either:

1. Separate Confinement and/or Segregation for at least fifteen (15) consecutive days (“**Prolonged Separate Confinement and/or Segregation**”);
or
2. Separate Confinement and/or Segregation when B.C. Corrections knew or ought to have known the person suffered from Mental Illness (“**Separate Confinement and/or Segregation of Mental Health Disordered Inmates**”);

in a B.C. correctional centre as defined in s. 1 of the *Correction Act*. S.B.C. 2004, c. 46.

“**Separate Confinement and/or Segregation**” means any placement apart from the general population pursuant to ss. 17, 18, 24 or 27(1)(d) of the *Correction Act Regulation*, B.C. Reg. 58/2005;

“**Mental Illness**” means a diagnosed condition comprising one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders:

- A. Schizophrenia (all sub-types),
- B. Delusional disorder,
- C. Schizophreniform disorder,
- D. Schizoaffective disorder,
- E. Brief psychotic disorder,
- F. Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- G. Psychotic disorder not otherwise specified,
- H. Major depressive disorders,
- I. Bipolar disorder I,
- J. Bipolar disorder II,
- K. Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders,
- L. Post-Traumatic Stress Disorder;
- M. Obsessive Compulsive Disorder; or
- N. Borderline Personality Disorder.

5. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class. She is also asking for lawyers' fees and costs, plus interest.

6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether British Columbia did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for your share.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by **August 3, 2021**.

7. What happens if I do nothing at all?

If you do nothing you will automatically remain in the lawsuit. You will be bound by all Court orders, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.

8. What if I don't want to be in the Lawsuit?

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders and you keep your right to sue British Columbia as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *North v. British Columbia*. Include your name, address, telephone number, and signature.

You can also get an **Opt Out Form** at <https://BCsolitaryconfinementclassaction.ca>. You must mail your Removal Request postmarked by **August 3, 2021** to: BC Solitary Confinement Class Action Settlement P.O. Box 507 STN B, Ottawa, ON K1P 5P6, or by email at: info@BCsolitaryconfinementclassaction.ca.

Call **833-358-9422** if you have any questions about how to get out of the Class.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto, and McEwan Partners LLP from Vancouver, to represent you and other Class Members as “**Class Counsel.**” You will not be personally charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid?

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the Defendant.

A TRIAL

11. How and when will the Court decide who is right?

If the lawsuit is not dismissed or settled, the Plaintiff will have to prove her claims at a trial that will take place in Vancouver. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or British Columbia is right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiff obtains money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, <https://BCsolitaryconfinementclassaction.ca>, as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at <https://BCsolitaryconfinementclassaction.ca>, by calling toll free at **833-358-9422**, or writing to: BC Solitary Confinement Class Action Settlement P.O. Box 507 STN B, Ottawa, ON K1P 5P6, or by email at: info@BCsolitaryconfinementclassaction.ca.

SCHEDULE "C"

To: **Epiq Class Action Services Canada Inc.**
Attention: BC Solitary Confinement Class Action Settlement
P.O. Box 507 STN B
Ottawa, ON K1P 5P6
Email: info@BCsolitaryconfinementclassaction.ca

This is **NOT** a claim form. Completing this **OPT OUT COUPON** will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

NO. S1812656
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Naveah North (formerly known as Cody Cragg)

Plaintiff

AND

Her Majesty the Queen in the right of
the Province of British Columbia

Defendant

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

I understand that by opting out of this class proceeding I am confirming that I do NOT wish to participate in this class proceeding. I do NOT wish to receive any benefit that may be obtained from the lawsuit.

I understand that I must mail this opt-out form by August 3, 2021, or else it will *not* be valid. I understand that any individual claim I may have must be commenced within a specified limitation period or else it will be legally barred. I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will **resume running against me** if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Name of Class Member
Telephone: _____

Signature of Class Member Opting Out
or Name and signature of Guardian of
Property (if applicable)
Date: _____

Name of Witness
Telephone: _____

Signature of Witness
Date: _____

NO. S1812656
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Naveah North (formerly known as Cody Cragg)

Plaintiff

AND

Her Majesty the Queen in the right of
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Defendant

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

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