

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KELLY CANADIAN

Plaintiff

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Defendant

NOTICE TO THE DEFENDANT(S)

1. You are hereby notified that the Plaintiff may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the *Rules of the Supreme Court of the Northwest Territories*, without further notice to you unless within twenty-five (25) days after service of the Statement of Claim on you, you cause to be filed in the office of the Clerk of the Northwest Territories Court of Justice either:

- a. A Statement of Defence, or
- b. An Appearance.

and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or Plaintiff's lawyer.

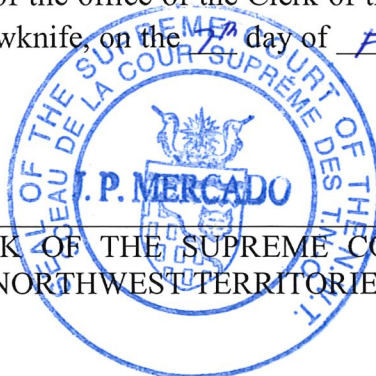
- 2. The attached Statement of Claim is to be served within twelve (12) months from the day on which it is issued.
- 3. Every Defendant should consult with his or her lawyer or refer to the *Rules of the Supreme Court of the Northwest Territories* to determine his or her rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Supreme Court of the Northwest Territories, at the City of Yellowknife, on the 27 day of February, 2019.

I hereby certify that the foregoing is a true copy of the original of which it purports to be a copy

CLERK OF THE SUPREME COURT

CLERK OF THE SUPREME COURT OF THE NORTHWEST TERRITORIES



IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KELLY CANADIAN

Plaintiff

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES,

Defendant

STATEMENT OF CLAIM

A. The Parties

1. The Plaintiff, is a member of the Chipewyan First Nation and was at all material times hereto a resident of the City of Yellowknife, Northwest Territories.
2. The Defendant, the Commissioner of the Northwest Territories, ("the Commissioner"), is appointed by the Governor in Council of the Northwest Territories pursuant to the *Northwest Territories Act SC 2014*, which is and was responsible directly, or through its agents, ministers, officers, employees, contractors and others for the administration of, *inter alia*, corrections and the safe custody and proper care of the inmates of the correctional centre, through the establishment, maintenance and management of prisons and other places of detention, within the Northwest Territories.
3. Arvin Landry, ("Landry") was at all material times hereto an employee of the Commissioner at the North Slave Correctional Centre ("NSCC") as an in-house Elder and Counsellor at the NSCC. Landry's role was to provide counselling and support to Indigenous inmates pursuant to the *Corrections Act RSNWT 1988*.
4. The Corrections Service, is a division established within the Government of the Northwest Territories pursuant to the *Corrections Act RSNWT 1988*, who is responsible for probation,

parole, aftercare and adult institutional services throughout the Northwest Territories. Such institutions including NSCC in Yellowknife, Northwest Territories.

5. Pursuant to the *Corrections Act RSNWT 1988*, the Corrections Services is the division of the Government of the Northwest Territories responsible for the provision of probation, parole aftercare and adult institutional services and reports and is responsible to the Commissioner with respect to the provision of such services.
6. All agents, officers, employees, contractors and others of the correction service, therefore report directly or indirectly to the Commissioner and the Commissioner is vicariously liable for the actions thereof.

B. The Plaintiff's Experience

7. The Plaintiff was incarcerated at the NSCC
 - a) February 3, 2016- June 30, 2016 inclusive;
 - b) August 22, 2016- October 6, 2016 inclusive; and
 - c) October 14, 2016- May 12, 2017 inclusive;

Collectively, ("the Incarceration")

8. During the incarceration, related hereto, was in the custody, care, control or supervision of the Defendant directly or vicariously.
9. While in the custody of the Commissioner, the Plaintiff was offered counselling and support to be delivered by Landry.
10. The abuse described herein occurred during the Incarceration and involved between 30 and 40 assaults.
11. Over the course of the relationship between Landry and the Plaintiff, Landry:
 - a) Established a position of trust with the Plaintiff, for the purpose of establishing a sexual relationship;
 - b) Compelled the Plaintiff to engage in coerced oral sex;
 - c) Compelled the Plaintiff to engage in acts of masturbation; and
 - d) thereby breaching his position of trust, control and authority over the Plaintiff.

12. Further, Landry attempted to conceal the activity complained of herein by:

- a) Ensuring he was alone with the Plaintiff;
- b) Choosing to engage with the Plaintiff in areas that were not monitored by security cameras;
- c) Coercing the Plaintiff not to disclose the abuse by offering to provide supportive letters related to the plaintiff's incarceration and for providing healing to the client; and
- d) Offering excuses related to Indigenous healing ceremonies to NSCC staff as to why he was alone with the Plaintiff.

13. At a time known to the Defendant, NSCC became aware of the relationship.

14. The Commissioner was at all material times responsible for the welfare of the Plaintiff and was under a common law and statutory duty to ensure the Plaintiff's health and safety was protected while he was incarcerated at the NSCC.

15. Further, the Commissioner owed the Plaintiff a non-delegable duty to protect him against sexual abuse, emotional, spiritual and physical and other abuse while he remained in custody at NSCC and is directly liable for breaching a duty of care.

16. The Plaintiff states that the Commissioner was negligent and breached the fiduciary and statutory duties owed to the Plaintiff, when failing to use reasonable care in assuring the safety and protection of the Plaintiff in delegating the responsibility of his care and protection to employees and agents, which resulted in the Plaintiff being sexually abused, the which include, but are not limited to:

- a) Failing to properly screen all personnel providing services to those incarcerated at NSCC, and in particular to the Plaintiff, to ensure their qualifications and good character;
- b) Failing to ensure proper policy, procedure, oversight and regulation were in place, to ensure the proper behaviour of Landry, and the proper protection of the Plaintiff;
- c) Subjecting the Plaintiff to care and control of Landry and allowing Landry to take actions which were designed to keep secret, the existence of the relationship of the Plaintiff, and the abuse suffered by the Plaintiff;
- d) Failing to ensure that another staff member or supervisor was present while Landry was supervising the inmate, presenting the opportunity for Landry to abuse the Plaintiff;
- e) Failing to appropriately respond to actual and/or constructive knowledge of the acts of Landry in his relationship with the Plaintiff; and

- f) Failing to have appropriate complaint and follow-up procedures for victims of sexual abuse or other misdeeds, at the hands of the Commissioner's agents, officers, employees and contractors.
17. The Plaintiff further states that the Commissioner breached its duty to the Plaintiff, and as such is jointly and vicariously liable for the acts of sexual abuse committed against the Plaintiff, by the employee Landry, the particulars which include but are not limited to:
- a) Failing to adequately, properly and effectively care for the Plaintiff
 - b) Failing to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures by corrections facilities during the Dates of Incarceration;
 - c) Failing to oversee the acts of the agents, officers, employees, contractors in a way that would protect the Plaintiff from sexual abuse;
 - d) Failing to ensure that the agents, officers, employees, contractors working at the NSCC were properly trained and had the appropriate certification to provide corrections services to the Plaintiff;
 - e) Negligence in the supervision of Landry, with respect to the exercise of duties of care at common law and equity to the Plaintiff, pursuant to relevant statutory authority, including but not limited to statutory authority regulating the delivery of correctional services to the Plaintiff, which said duties were not, at law, delegable;
 - f) Failing to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and whenever and to the extent possible, provide appropriate treatment to the Plaintiff;
 - g) Failing to properly maintain administrative records; and
 - h) Breaching duties owed to the Plaintiff, as a consequence of the fiduciary relationship between the Commissioner and the Plaintiff.

C. Damages Suffered by the Plaintiff

18. The Plaintiff claims and is entitled to the costs of future care in relation to the harms caused by the acts complained of herein. As a direct result of the sexual abuse caused by Landry, for which the Commissioner was directly and vicariously negligent, the Plaintiff has suffered acute and irreparable psychological, emotional and spiritual harm and other severe impairments, the particulars of which include, but are not limited to the following:
- a) Impairment of the opportunity to experience a normal life;
 - b) Mental distress and anguish;
 - c) Social anxiety issues;

- d) Humiliation, embarrassment and betrayal due to Landry having violated him physically, sexually, emotionally and spiritually;
- e) Recurrent flashbacks of the incident causing continuous distress;
- f) Depression;
- g) Suicidal ideation;
- h) Sleep disturbances;
- i) Physical and psychological pain and suffering;
- j) Impairment of his psychological health and well-being, including his dignity and self-esteem;
- k) Aversion and resentment towards correctional settings;
- l) Aversion and resentment towards mental/spiritual health support settings
- m) Loss of enjoyment of life;
- n) Difficulty informing and maintaining relationships with other persons at the correctional facility or through mental health supports;
- o) Lasting psychological and emotional trauma;
- p) Continuing fears and anxiety; and
- q) Inability to trust authority figures.

19. As a result of the Plaintiff's Indigenous identity, which further increased his vulnerability to be targeted in a sexual abuse by Landry, the Plaintiff claims and is entitled to aggravated, punitive and/or exemplary damages.
20. The Plaintiff claims and is entitled to the loss of future care in relation to the harms caused by the acts complained of herein.
21. The Commissioner, knowing of the abuse and failing to address or resolve it and related institutional complaints, gives rise to and he thereby claims punitive damages in such an amount so as to communicate judicial and social approbation.
22. The Plaintiff pleads and relies upon the provisions of the *Corrections Act RSNWT 1988*, the *Northwest Territories Act SC 2014* and the *Judicature Act, RSNWT 1988*; each as amended.
23. The Plaintiff proposes the trial of this matter be held at the City of Yellowknife, Northwest Territories

WHEREFORE THE PLAINTIFF CLAIMS AS AGAINST THE DEFENDANT:

- a) General damages in the amount of \$250, 000.00;
- b) Special damages in an amount to be proven at the trial of this action, but estimated to be no less than \$250, 000.00;
- c) Inclusive of:
 - i. \$50,000 for future counselling;
 - ii. \$100,000.00 future loss of income; and
 - iii. \$100,000.00 special damages.
- d) Aggravated, punitive and/or exemplary damages in the amount of \$500,000.00;
- e) Pre-judgment interest on all of the above pursuant to the *Judicature Act, RSNWT 1988*, and amendments thereto and regulations thereunder;
- f) Costs; and
- g) Such further and other relief as this Honourable Court may deem fit to grant in the circumstances.

DATED at the Hamlet of Sherwood Park, in the Province of Alberta, this 5th day of February, 2019, AND DELIVERED BY Cooper Regel, Barristers and Solicitors, PO Box 383 5105 – 50 Street Suite 205 Yellowknife NWT, X1A 2N3, Solicitors for the Plaintiff.

COOPER REGEL

Per:

Steven Cooper
Solicitor for the Plaintiff

I hereby certify that the foregoing is a true copy of the original of which it purports to be a copy

CLERK OF THE SUPREME COURT

I, Steven L. Cooper, certify that
on February 7, 2019, I received
file number S-1-CV-2019-000030

Steven Cooper

from the Clerk of the Court, by
telephone.

Service of this Statement of Claim
outside the jurisdiction of the
Northwest Territories is authorized
under Rule 47(1)(h) of the Rules of the
Supreme Court of the Northwest
Territories, as set out below:

47.(1) Service of an originating
document on a defendant out of the
jurisdiction may be effected without
order where:

(h) the action is founded on a tort
committed in the jurisdiction.

The Plaintiff's residence is:
Cooper Regel
PO Box 383 5105 – 50 Street Suite
205 Yellowknife NWT X1A2N3

The Defendant the Commissioner of
the Northwest Territories' place of
business is:
Yellowknife, Northwest Territories

Action No. S-1-CV-2019-000030

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NORTHWEST TERRITORIES

BETWEEN:

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Plaintiff

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THE COMMISSIONER OF THE
NORTHWEST TERRITORIES

Defendant

STATEMENT OF CLAIM

This Statement of Claim is issued by:

COOPER REGEL, a MEMBER OF
MASUCH LAW LLP
Barristers and Solicitors
STEVEN COOPER
Solicitor for the Plaintiff
whose address for service is:

GFY Paralegal Services
P.O. Box 1734, House 2436
Iqaluit, NU X0A 0H0

File No. SP69996

