

Form 4.02A

2012

Hfx No. 390420

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

BEVERLY MOORE and MARY SCHINOLD



- AND -

CAPITAL DISTRICT HEALTH AUTHORITY, a body corporate and
KATHERINE ZINCK LAWRENCE

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

Notice of Action Amended: ^{MAY} April 12, 2014

To: The Capital District Health Authority and Katherine Zinck Lawrence

Action has been started against you

The plaintiffs takes action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule.

Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Wagners Law Firm
1869 Upper Water Street
Halifax, Nova Scotia
B3J 1S9

Patterson Law
1718 Argyle Street
Halifax, Nova Scotia
B3J 3N6

Documents delivered to this address are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed this 5th day of April, 2012.

Signed this 12th day of ~~April~~ ^{MAY}, 2014.

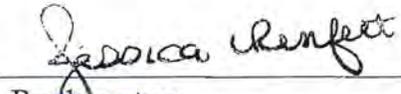

Michael Dal
RAYMOND F. WAGNER
Solicitor for Plaintiffs


b) ROBERT H. PINEO
Solicitor for Plaintiffs

MELISSA P. MacADAM
A Barrister of the Supreme
Court of Nova Scotia

Prothonotary's certificate

I certify that this ^{amended} notice of action, including the attached ^{amended} statement of claim, was filed with the court on ~~April 5, 2012.~~ ^{May 12}, 2014.


Prothonotary

JESSICA RENFERT
Deputy Prothonotary

Form 4.02A

2012

Hfx No. 390420

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

BEVERLY MOORE and MARY SCHINOLD

PLAINTIFFS

- AND -

CAPITAL DISTRICT HEALTH AUTHORITY, a body corporate and
KATHERINE ZINCK LAWRENCE

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

Notice of Action Amended: ^{MAY} April 10, 2014

To: The Capital District Health Authority and Katherine Zinck Lawrence

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule.

Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Patterson Law
1718 Argyle Street
Halifax, Nova Scotia
B3J 3N6

Documents delivered to this address are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed this day of April, 2014.

RAYMOND F. WAGNER
Solicitor for Plaintiffs

ROBERT H. PINEO
Solicitor for Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on April , 2014.

Prothonotary

Statement of Claim ^{MAY} Amended: ~~April 12~~, 2014

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c.28

I OVERVIEW

1. An individual's privacy interest is a fundamental value that warrants protection. Hospital patients have a right to the informational privacy. A patient's medical records contain information of an inherently private and personal nature.

2. For many years, an employee of the Capital District Health Authority intentionally intruded on the private medical records of hospital patients. The Plaintiff~~s~~ is ~~are~~ a ~~victims~~ of this breach of privacy. ~~She~~ They brings this action on behalf of ~~herself~~ themselves and other victims of the privacy breach seeking redress for this highly offensive invasion of privacy.

II REPRESENTATIVE PLAINTIFFS AND CLASS

3. The Plaintiff, Beverly Moore ("Ms. Moore"), currently resides at 17 Green Acres Road, Halifax, Nova Scotia.

4. The Plaintiff, Mary Schinold ("Ms. Schinold"), is a resident of Falmouth, Hants County, Nova Scotia.

~~4.5.~~ The Plaintiff~~s~~ haves long been ~~a~~ patients of the Defendant, Capital District Health Authority ("CDHA"). ~~The Defendant~~ CDHA is in possession of ~~her~~ their medical records. These records contain private information, concerning, but not limited to, ~~her~~ their personal health, ~~her~~ their employment, ~~her~~ their social insurance number, ~~her~~ their health card number,

as well as ~~her~~ their family member's ~~husband's~~ employment, social insurance number and health card number.

~~5. On February 10, 2012, the Plaintiff received correspondence from the Defendant, advising that her personal information has been inappropriately accessed by one of its employees (hereinafter referred to as "the Defendant's employee").~~

~~6. The Plaintiff suffered distress, humiliation and anguish over the breach of privacy.~~

~~7.6.~~ The Plaintiffs seeks to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification. The Plaintiffs, as the Representative Plaintiffs, does not have any interest adverse to any of the members of the proposed Class. The Plaintiffs states that there is an identifiable class that would be fairly and adequately represented by ~~her~~ them; that the Plaintiff's claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

~~8.7.~~ The Plaintiffs proposes to bring a Class Proceeding on behalf of ~~herself~~ themselves and a Class of other Canadian residents whose medical records were inappropriately accessed by the Defendant's employee, the Defendant Katherine Zinck Lawrence. The proposed Class will be further defined in the Motion for Certification.

III THE DEFENDANTS

~~9.8.~~ The Defendant, Capital District Health Authority CDHA, is a body corporate, incorporated under the Health Authorities Act, S.N.S. 2000, c. 6. ~~The Defendant~~ CDHA was in possession of the private information contained in the medical records of the Plaintiffs and Class Members.

9. At all material times, the Defendant CDHA was responsible for the protection of the private information contained in the medical records of the Plaintiffs and Class Members.

10. The Defendant, Katharine Zinck Lawrence ("Ms. Lawrence"), is a resident of Falmouth, Hants County, Nova Scotia and was at the times material to this proceeding, an employee of CDHA.

IV THE BREACH OF PRIVACY

11. The Defendant CDHA stores patient medical records electronically on a patient information system. In 2005, the Defendant CDHA instituted an audit log system, which was capable of tracking and detecting when patient records are accessed by its employees. Prior to 2005, the Defendant CDHA did not track such access.

12. The Defendant's employee Ms. Lawrence held several positions within the Capital District Health Authority CDHA since approximately 2001.

13. On October 3, 2011, the Defendant CDHA received information about possible inappropriate accessing of patient information systems. The Defendant CDHA conducted an audit which revealed that the Defendant CDHA's employee, Ms. Lawrence, over the course of her employment, had accessed the personal information of many patients without a valid medical or hospital purpose.

14. On February 10, 2012, Ms. Moore received correspondence from the Defendant, advising that her personal information has been inappropriately accessed by one of its employees.

15. Ms. Moore suffered distress, humiliation and anguish over the breach of privacy.

16. On or about January 1, 2012, Ms. Lawrence informed Ms. Schinold that she had intentionally accessed Ms. Schinold's private medical files.

17. On or about January 3, 2012, CDHA informed Ms. Schinold that her private medical records had been improperly accessed by an employee of CDHA.

18. The Plaintiffs have subsequently learned that their health information has been disclosed to third parties by Ms. Lawrence.

19. The Plaintiffs plead that their health records have been accessed by Ms. Lawrence on numerous occasions and over the span of several years without a medical purpose or lawful justification.

20. The systematic privacy breaches dated back to at least 2005. The audit could not determine whether the Defendant's employee had inappropriately accessed the medical records of patients prior to 2005.

21. The Defendant's employee Ms. Lawrence intentionally intruded on the seclusion of the Plaintiffs' and Class Members' private medical records. The Defendant's employee Ms. Lawrence did not have a medical purpose or lawful justification for accessing these private medical records.

22. The invasion of privacy is highly offensive to a reasonable person.

V VICARIOUS-LIABILITY

23. The Defendant's employee Ms. Lawrence, without valid reason, intentionally intruded on the seclusion of the Plaintiffs' and Class Members' private medical records in the course of her employment.

24. The Plaintiffs repeat the foregoing and plead and rely on the following causes of action as against Ms. Lawrence:

- (a) breach of fiduciary duty;
- (b) the tort of intrusion upon seclusion; and
- (c) the tort of intentional infliction of mental suffering.

25. The Plaintiffs plead that CDHA is in a fiduciary relationship with the Plaintiffs, and Ms. Lawrence, as an employee of CDHA, was in a fiduciary relationship with the Plaintiffs.

~~16:26.~~ The Plaintiffs pleads the doctrine of *respondeat superior* and states that the Defendant CDHA is vicariously liable for the actions of the ~~Defendant's~~ employee Ms. Lawrence.

VI NEGLIGENCE

~~17:27.~~ Further, the Plaintiffs pleads that the conduct of the ~~Defendant~~ CDHA constitutes negligence, by not having in place management and operations procedures that would reasonably have prevented or detected the privacy breaches in a timely fashion.

VII DAMAGES

28. The wrongs committed against the Plaintiffs have had a detrimental effect on the Plaintiffs' health, welfare, social, business and/or financial position.

~~18:29.~~ The Plaintiffs and Class Members have suffered injuries and damages that were caused by the ~~Defendants~~ and the Defendant's employee. The invasion of privacy is highly offensive causing distress, humiliation or anguish.

VIII AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

~~19.30.~~ The Plaintiffs states that the conduct of ~~the Defendant's employee~~ Ms. Lawrence, for which ~~the Defendant~~ CDHA is vicariously liable, was willful, arrogant, callous, and highhanded and constituted a gross violation of the privacy rights of the Plaintiffs and Class Members. The Plaintiffs respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages.

IX RELIEF SOUGHT

~~20.31.~~ The Plaintiffs repeats the foregoing paragraphs and seeks the following relief:

- (a) an Order certifying this proceeding as a Class Proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the Class or Classes;
- (b) a declaration that Ms. Lawrence committed the tort of intrusion upon seclusion as against the Plaintiffs;
- ~~(b)~~(c) a declaration that ~~the Defendant~~ CDHA is vicariously liable for the actions of ~~the~~ Ms. Lawrence ~~Defendant's employee~~;
- ~~(e)~~(d) damages for the breach of privacy and negligence;
- ~~(d)~~(e) aggravated, punitive and/or exemplary damages;
- ~~(e)~~(f) interest pursuant to the *Judicature Act*;
- ~~(f)~~(g) costs; and
- ~~(g)~~(h) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 5th day of April, 2012.

AMENDED at Halifax, Nova Scotia this ^{12th day of May} ~~12th April~~, 2014.


to RAYMOND D. WAGNER

Wagners
Counsel for the Plaintiffs
1869 Upper Water Street
Suite PH 301, Historic Properties
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: raywagner@wagners.co


to ROBERT H. PINEO

Patterson Law
Counsel for the Plaintiffs
1718 Argyle Street, 5th Floor
HALIFAX, NS B3J 3N6
Tel: 902-405-8000
Email: rpineo@pattersonlaw.ca

MELISSA P. MacADAM
A Barrister of the Supreme
Court of Nova Scotia

Statement of Claim Amended: ^{MAY} April 12, 2014

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c.28

I OVERVIEW

1. An individual's privacy interest is a fundamental value that warrants protection. Hospital patients have a right to the informational privacy. A patient's medical records contain information of an inherently private and personal nature.

2. For many years, an employee of the Capital District Health Authority intentionally intruded on the private medical records of hospital patients. The Plaintiffs are victims of this breach of privacy. They bring this action on behalf of themselves and other victims of the privacy breach seeking redress for this highly offensive invasion of privacy.

II REPRESENTATIVE PLAINTIFFS AND CLASS

3. The Plaintiff, Beverly Moore ("Ms. Moore"), currently resides at 17 Green Acres Road, Halifax, Nova Scotia.

4. The Plaintiff, Mary Schinold ("Ms. Schinold"), is a resident of Falmouth, Hants County, Nova Scotia.

5. The Plaintiffs have long been patients of the Defendant, Capital District Health Authority ("CDHA"). CDHA is in possession of their medical records. These records contain private information, concerning, but not limited to, their personal health, their employment,

their social insurance number, their health card number, as well as their family member's employment, social insurance number and health card number.

6. The Plaintiffs seek to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification. The Plaintiffs, as the 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 Plaintiff's claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

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employee of CDHA.

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22. The invasion of privacy is highly offensive to a reasonable person.

V LIABILITY

23. Ms. Lawrence, without valid reason, intentionally intruded on the seclusion of the Plaintiffs' and Class Members' private medical records in the course of her employment.

24. The Plaintiffs repeat the foregoing and plead and rely on the following causes of action as against Ms. Lawrence:

- (a) breach of fiduciary duty;
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(c) the tort of intentional infliction of mental suffering.

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26. The Plaintiffs plead the doctrine of *respondeat superior* and state that CDHA is vicariously liable for the actions of Ms. Lawrence.

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27. Further, the Plaintiffs plead that the conduct of CDHA constitutes negligence, by not having in place management and operations procedures that would reasonably have prevented or detected the privacy breaches in a timely fashion.

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 - (c) a declaration that CDHA is vicariously liable for the actions of Ms. Lawrence;
 - (d) damages for the breach of privacy and negligence;
 - (e) aggravated, punitive and/or exemplary damages;
 - (f) interest pursuant to the *Judicature Act*;
 - (g) costs; and
 - (h) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

AMENDED at Halifax, Nova Scotia this April, 2014.

RAYMOND D. WAGNER
Wagners
Counsel for the Plaintiffs
1869 Upper Water Street
Suite PH 301, Historic Properties
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: raywagner@wagners.co

ROBERT H. PINEO
Patterson Law
Counsel for the Plaintiffs
1718 Argyle Street, 5th Floor
HALIFAX, NS B3J 3N6
Tel: 902-405-8000
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