

Form 4.02A

2011

Hfx. No. 343536

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**JUNE ELWIN, HARRIET JOHNSON and DEANNA SMITH**



PLAINTIFFS

- AND -

**THE NOVA SCOTIA HOME FOR COLORED CHILDREN**, a body corporate and **THE ATTORNEY GENERAL OF NOVA SCOTIA**, representing Her Majesty the Queen in right of the Province of Nova Scotia

DEFENDANTS

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

Notice of Action – Amended November 7, 2013

**TO: THE NOVA SCOTIA HOME FOR COLORED CHILDREN**

**TO: THE ATTORNEY GENERAL OF NOVA SCOTIA**

**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 third amended statement of claim. The claim is based on the grounds stated in the third amended 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 plaintiffs 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 plaintiffs.

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  
Suite PH 301, Historic Properties  
Halifax, Nova Scotia B3J 1S9

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 7<sup>th</sup> day of February, 2011.

Amended this 8<sup>th</sup> day of April, 2011.

Amended this 21<sup>st</sup> day of February, 2013.

Amended this 7<sup>th</sup> day of November, 2013.

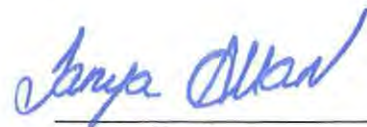


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**RAYMOND F. WAGNER, Q.C.**  
**Solicitor for Plaintiffs**

**Prothonotary's certificate**

I certify that this third amended notice of action, including the attached third amended statement of claim, was filed with the court on Nov 7, 2013



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Prothonotary  
**Tanya Allan**  
Deputy Prothonotary

**Form 4.02B**

**Third Amended Statement of Claim – Amended November 7, 2013**

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

**I. OVERVIEW**

1. Between 1921 to the present, many young African-Nova Scotia children, who were wards of the Province of Nova Scotia (“Province”), were sent to live at the Nova Scotia Home for Colored Children (“NSHCC”). Many of these children had physical, emotional and sexual abuses inflicted upon them by adult staff at the NSHCC.
2. The abuses inflicted on the children wards were systemic in nature. During all relevant years, the Defendants operated, caused to be operated, or permitted to be operated a residential facility whose residents were systemically subject to abuse and mistreatment.
3. The Province failed to adequately detect or respond to these prolonged instances of systemic abuse.
4. The Plaintiffs are former wards of the Province and former residents of the NSHCC. While residents at the NSHCC they suffered from years of physical, sexual and emotional abuse inflicted upon them by NSHCC staff, family and friends of staff and other residents.
5. The Plaintiffs bring this action based on an allegation that the Defendants breached their fiduciary duty towards them and other former residents. The Plaintiffs further plead systemic negligence, alleging that the Defendants failed to have in place management and operations procedures that would reasonably have prevented the abuse. They seek certification of this action on behalf of themselves and other similarly situated Class Members.

6. Nova Scotia has been historically and is currently plagued by a legacy of prejudice, racism and hostility towards African-Nova Scotians. Young African-Nova Scotians were marginalized. The systemic abuses inflicted upon young African-Nova Scotian residents of the NSHCC, and the resulting effects, have compounded the marginalization and have led to feelings of low self-worth. The Plaintiffs and Class Members learned at the NSHCC that their feelings of marginalization and low self-worth were facts of life. The effects of the abuse have caused the victims to have difficulties adapting and functioning as adults in society. The Plaintiffs and Class Members were taught to have little faith in systems of authority. This has led to an inability to address, as adults, the systemic abuses inflicted on them as young residents.

## **II. REPRESENTATIVE PLAINTIFFS AND CLASS**

7. The Plaintiff, June Elwin, currently resides in the City of Whitby, Province of Ontario.

8. In or about 1942, June Elwin, then two years old, was placed in the NSHCC by agents of the Province of Nova Scotia.

9. From approximately 1942 to 1953, June Elwin ordinarily resided at the NSHCC under the wardship (i.e. care and control) of the Province of Nova Scotia.

10. The Plaintiff, Harriet Johnson, currently resides in the City of Montreal, Province of Quebec.

11. In or about 1977 or 1978, Harriet Johnson, then eight or nine years old, was placed in the NSHCC by agents of the Province of Nova Scotia.

12. From approximately 1977 or 1978 to 1983, Harriet Johnson ordinarily resided at the NSHCC under the wardship (i.e. care and control) of the Province of Nova Scotia.

13. The Plaintiff, Deanna Smith, currently resides at 1625 42<sup>nd</sup> Street, Unit 301, in the City of Calgary, Province of Alberta.

14. In approximately 1976, Deanna Smith, then nine years old, was placed in the NSHCC by agents of the Province of Nova Scotia.

15. From approximately 1976 to 1979, Deanna Smith ordinarily resided at the NSHCC under the wardship of the Province of Nova Scotia.

16. The Plaintiffs, while residents at the NSHCC, suffered such physical, mental and sexual abuse that existed, inflicted upon them by the residents, agents, servants and employees of the NSHCC. As a result they suffered personal injury, loss and damages.

17. The NSHCC through its agents, employees and servants created an atmosphere of indifference, tolerance and encouragement of excessive mental, physical and sexual abuse such that the repugnant practices pervaded the NSHCC and the relationships between the residents of the NSHCC as well as between the agents, employees, servants and residents of the NSHCC.

18. As a result of the systemic abuses, the Plaintiffs have had difficulty functioning as adults in society.

19. The Plaintiffs seek to certify this action as a Class Proceeding and plead 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 the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

20. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of other residents or former residents who, as wards of

the Province, were placed in the NSHCC as residents. The proposed Class will be further defined in the Motion for Certification.

### **III. DEFENDANTS**

21. The Defendant, The Nova Scotia Home for Colored Children, is a body corporate, incorporated in 1915, S.N.S. 5 Geo. V., c. 107 and continued pursuant to *An Act to Incorporate the Nova Scotia Home for Colored Children*, 1978, 27, Elizabeth II, c. 64, and at all times material and relevant to this proceeding, operated a facility on the #7 Highway, Main Street, Dartmouth, Nova Scotia. All references to the NSHCC shall mean the Nova Scotia Home for Colored Children and shall refer to its agents, employees and servants.

22. At all material times, the Defendant NSHCC, was responsible for the conditions within the NSHCC and the treatment of the residents of the NSHCC.

23. The Defendant, The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, at all times material and relevant to this proceeding, was responsible for the care, maintenance, education, protection and supervision of the Plaintiffs and Class Members as wards in custody of the Province. All the agencies, including, but not limited to the Minister of Public Welfare and the Director of Child Welfare and departments of Government will be referred to as the Province of Nova Scotia and is deemed to include all its contractors, sub contractors, agents, servants, employees and appointees.

### **IV. THE HISTORY OF THE NSHCC**

24. In 1915 the Nova Scotia Legislative Assembly passed an *Act* to incorporate "The Nova Scotia Home for Colored Children". The legislation enabled the NSHCC to act as a children's aid society "for matters affecting the children of the colored face and to receive and keep the same under their care pursuant to the provisions of the *Children's Protection Act*, 1912".

25. On October 12, 1917 the NSHCC received its first Board of Trustees. The NSHCC officially opened on June 6, 1921, at a site close to the largest concentration of African-Nova Scotians in the province. The NSHCC continues to operate a facility on the #7 Highway, Main Street, Dartmouth, Nova Scotia.

26. Residents of the NSHCC would typically consist of neglected or orphaned children. The ages of the residents ranged from a few weeks to eighteen years old. The residents were predominantly African-Nova Scotian.

27. The NSHCC generated revenues for itself by operating a farm on the premises. The farm was on 70 acres of land and consisted of hundreds of pigs and thousands of chickens. The residents were made to work the farm. Through the labour of the residents, the NSHCC sold eggs, poultry and produce to generate tens of thousands of dollars in annual profit. The farm closed in 1966. The NSHCC had an interest in, and benefited from, the mandatory farm labour of its residents.

28. Following the closure of the farm, the NSHCC continued to generate revenues from residents through their compulsory participation in radio broadcasts, travelling choirs and an annual Christmas fundraising broadcast. The promotion of a positive public image was important to these revenue generating efforts of the NSHCC. The NSHCC had an interest in, and benefited from, the projection of a positive self-image to the community.

29. The NSHCC received some per diem funding from the Province of Nova Scotia. The amount of per diem revenues received was proportionally related to the number of residents at the NSHCC. The NSHCC had an interest in, and benefited from, maintaining a high population of residents. The NSHCC had an interest in, and benefited from, keeping residents under its roof.

30. The care provided to the residents and the conditions of the NSHCC were poor. The staff hired by the NSHCC were poorly paid and unskilled and/or unsuitable for dealing with children and the supervision levels at the NSHCC were not suitable or appropriate for a residential facility for children.



## V. FIDUCIARY RELATIONSHIP

31. All residents at the NSHCC were children. At all material times, the residents of the NSHCC were entirely within the power and control of the Defendants, and were subject to the unilateral exercise of the Defendants' power or discretion.

32. By virtue of the relationship between the children and the Defendants, being one of trust, reliance and dependence, by the children, the Defendants owed a fiduciary obligation to ensure that residents at the NSHCC were treated fairly, respectfully and in all ways consistent with the obligations of a parent or guardian to a child under his or her care and control.

33. At all material times, the Defendants owed a fiduciary obligation to NSHCC residents to act in the best interests of those residents and to protect those residents from any abuse, mental, emotional, physical, sexual or otherwise.

34. At all material times, the children who resided at the NSHCC were entitled to rely and did rely upon the Defendants to their detriment to fulfill their fiduciary obligations.

35. The NSHCC breached its fiduciary obligations to the Plaintiffs and Class Members. It placed its interests in conflict with the interests of the Plaintiffs and Class Members. It profited at the expense of the Plaintiffs and Class Members. Its staff received sexual gratification at the expense of the well-being of the Plaintiffs and Class Members. The specifics of the breach of fiduciary duty are it:

- (a) threatened the Plaintiffs and Class Members with severe punishments, including physical violence;
- (b) chose to create and foster an atmosphere of fear and intimidation;
- (c) hired unqualified or unsuitable staff and chose not to properly or adequately supervise, monitor, police or assess the agents, employees, servants, and foster parents entrusted with the care of the Plaintiffs and Class Members;

- (d) subjected the Plaintiffs and Class Members to an atmosphere of tolerance of physical, sexual and emotional assaults and treated the Plaintiffs and Class Members in a dehumanizing, degrading manner;
- (e) provided the Plaintiffs and Class Members, who were vulnerable, underprivileged and impressionable children, with an upbringing entirely repugnant to sanctuary, friendship, wholesome love and care, nurturing, education and security that they were entitled to expect and receive;
- (f) subjected the Plaintiffs and Class Members to the care of persons whose qualifications by way of formal training and practical experience to care for children were never investigated, evaluated or monitored, and whose lack of qualifications were overlooked and/or ignored;
- (g) chose not to establish or ensure adequate care was provided to the Plaintiffs and Class Members, financially, emotionally, physically or otherwise, and took no or inadequate steps to correct shortcomings in and omissions from such care;
- (h) chose not to respond, investigate, evaluate or inquire into complaints of physical, mental and sexual abuse that it knew or ought to have known of, through its agents, employees and servants;
- (i) ignored the need for, and to provide, adequate and necessary treatments (including medical, psychological and psychiatric treatments) for the Plaintiffs and Class Members and/or overlooked the need for such treatments;
- (j) chose to ignore and not appropriately investigate reports and instances of abuse inflicted by its staff, residents and relations of staff;
- (k) punished and/or intimidated children who came forward with claims of abuse;
- (l) conducted no or inadequate screening of applicants for positions for which they were hired at the NSHCC. The NSHCC hired staff and other help who were not qualified to care for or meet the needs of children. The NHSCC paid these unprofessional/ill-equipped staff exceedingly low wages;
- (m) forced residents to work to produce farm income which was either used for the benefit of NSHCC staff without payment to the children for their labour; and
- (n) forced residents to perform choral/pageantry work to produce income which was either used for the benefit of NSHCC staff without payment

to the children for their labour.

36. The Province of Nova Scotia through its agents, the Minister of Public Welfare and the Director of Child Welfare, its servants and employees, breached its fiduciary obligations to the Plaintiffs and Class Members. It placed its interests in conflict with the interests of the Plaintiffs and Class Members. It profited at the expense of the Plaintiffs and Class Members. The specifics of the breach of fiduciary duty are that it:

- (a) allowed unqualified agents, employees, servants, and foster parents entrusted with the care of the Plaintiffs and other wards to work at the care facility;
- (b) chose not to adequately or properly screen for suitability, supervise, monitor, police or assess the agents, employees, servants, and foster parents;
- (c) chose not to adequately evaluate or ignored the quality of care being provided by the NSHCC and its agents, employees and servants;
- (d) chose not to prescribe or mandate appropriate methods and standards for ongoing evaluation of the quality of care;
- (e) did not ensure that the NSHCC was competent to accept the care and custody of the Plaintiffs and other wards and chose not to ensure standards of care were maintained and followed;
- (f) despite knowledge to the contrary, did not appropriately assume the supervision of or care and custody of the Plaintiffs and other wards;
- (g) placed the Plaintiffs and other wards in a care facility that allowed an atmosphere of tolerance of physical, sexual and emotional assaults to continue;
- (h) placed the Plaintiffs and other wards in a facility where they were repeatedly assaulted by various staff members, family and friends of staff members, residents and others otherwise connected to the NSHCC when it knew or ought to have known of the numerous illicit acts of sexual and brutal physical force and violence;
- (i) placed the Plaintiffs and other wards, who were vulnerable, underprivileged and impressionable children, in an environments entirely repugnant to sanctuary, friendship, wholesome love and care, nurturing, education and security that they were entitled to expect and

receive and/or failed to identify such shortcomings in the provision for the Plaintiffs' upbringing;

- (j) subjected the Plaintiffs and other wards to the care of persons whose qualifications by way of formal training and practical experience to care for children were never investigated, evaluated or monitored, and whose lack of qualifications were overlooked and/or ignored;
- (k) chose not to monitor and to ensure adequate care for the Plaintiffs and other wards, financially, emotionally, physically or otherwise;
- (l) took no adequate and proper steps to correct shortcomings in and omissions from such care;
- (m) chose to provide less than appropriate financing to the NSHCC when compared to other homes, schools and institutions of similar kind;
- (n) discriminated against the students of the NSHCC by providing insufficient means to train, hire and supervise appropriate trained workers as was the standard in other care facilities;
- (o) failed to investigate, evaluate or monitor (such as by visiting or obtaining reports or alternatively, such as by making sufficient visits or obtaining sufficient and adequately detailed reports) the nature and quality of the care the Plaintiffs and other wards received while in the wardship of the Province;
- (p) inappropriately and inadequately responded, investigated, evaluated or inquired into complaints of physical, mental and sexual abuse that the Defendant knew or ought to have known of, through its agents, employees and servants; and
- (q) chose not to identify the need for, and to provide, adequate and necessary treatments (including medical, psychological and psychiatric treatments) for the Plaintiffs and/or overlooked the need for such treatments.

37. Further, or in the alternative, the Plaintiffs plead that the aforesaid conduct of the Defendants constitutes systemic negligence, by not having in place management and operations procedures that would reasonably have prevented the abuse in a timely fashion.

38. The Plaintiffs state that the Defendants are responsible jointly and severally, for the physical, mental and sexual abuse committed on the Plaintiffs in

that they individually knew or ought to have known of the commission of these horrific acts of betrayal to the Plaintiffs' youth and innocence.

39. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable for the actions of its or their agents, employees, servants and contractors.

40. The Plaintiffs plead the doctrine of non-delegable duty and state that the Province of Nova Scotia owed them, and Class Members, a non-delegable duty which was breached by various Children's Aid Societies and other such child protection agencies. The Province of Nova Scotia owed a duty of care in exercising its powers to all neglected children taken into custody, whether it did so by means of servants or contractors.

## **VI. DAMAGES**

41. The Plaintiffs and Class Members have suffered injuries and damages that were caused by the Defendants, their agents, employees, servants and contractors.

42. The Plaintiffs state that the Defendants knew, or ought to have known, that as a consequence of their breach of fiduciary duty and/or systemic negligence, they would suffer significant mental, emotional and psychological harm which would adversely affect their relationships with their family and community. The Defendants knew, or ought to have known that the systemic abuse inflicted would impair their ability, as an already marginalized member of the African-Nova Scotian community, to commence an action against them in a Court.

43. The Plaintiffs and Class Members state that the foregoing damages resulted from the Defendants' breach of fiduciary duty and systemic negligence.

## **VII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES**

44. The Plaintiffs state that the conduct of the Defendants, their servants, employees or agents was wilful, arrogant, callous, and highhanded and constituted a gross violation of the rights of the children who were residents of the NSHCC. The Plaintiffs respectfully submit that this is an appropriate case for punitive, aggravated and/or exemplary damages.

## **VIII. RELIEF SOUGHT**

45. The Plaintiffs repeat the foregoing paragraphs and state that the Defendants are jointly and severally liable for the following:

- (a) an Order certifying this proceeding as a Class Proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class or Classes;
- (b) a declaration that the Defendants have breached their fiduciary obligations to the Plaintiffs arising from their conduct, and that of their servants, agents or employees, in the operation of the NSHCC;
- (c) compensation and/or damages for breach of fiduciary duty and systemic negligence, including:
  - i) general damages, including aggravated damages for personal injuries;
  - ii) special damages;
- (d) aggravated, punitive and exemplary damages;
- (e) interest pursuant to the *Judicature Act*;
- (f) costs; and
- (g) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 7<sup>th</sup> day of February, 2011.

AMENDED at Halifax, Nova Scotia this 8<sup>th</sup> day of April, 2011.

SECOND AMENDED at Halifax, Nova Scotia this 21<sup>st</sup> day of February, 2013.

THIRD AMENDED at Halifax, Nova Scotia this 7<sup>th</sup> day of November, 2013.



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**RAYMOND F. WAGNER, Q.C.**

**Wagners**

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