

Form 4.02A

2011

Hfx. No.

343536

SUPREME COURT OF NOVA SCOTIA



BETWEEN:

AUBREY PELLE and **DEANNA SMITH**

PLAINTIFFS

- AND -

THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a body
corporate

DEFENDANT

NOTICE OF ACTION

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

TO: THE NOVA SCOTIA HOME FOR COLORED CHILDREN

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 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
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

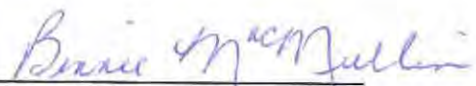
Signed this *7th* day of February, 2011.



RAYMOND F. WAGNER
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 *February 7*, 2011.



Prothonotary

BONNIE MACMULLIN
Deputy Prothonotary

Form 4.02B

Statement of Claim

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, 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 Defendant operated, caused to be operated, or permitted to be operated a residential facility whose residents were systemically subject to abuse and mistreatment.

3. 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.

4. The Plaintiffs bring this action based on an allegation that the Defendant breached its fiduciary duty towards them and other former residents. The Plaintiffs further plead systemic negligence, alleging that the Defendant 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.

5. 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

6. The Plaintiff, Aubrey Pelley, currently resides at 87 Jameson Avenue, Apt. #206 in the City of Toronto, Province of Ontario.

7. In or about 1948, Aubrey Pelley, then 10 years old, was placed in the NSHCC by agents of the Province of Nova Scotia.

8. From approximately 1948 to 1954, Aubrey Pelley ordinarily resided at the NSHCC under the wardship (i.e. care and control) of the Province of Nova Scotia.

9. The Plaintiff, Deanna Smith, currently resides at 1625 42nd Street, Unit 301, in the City of Calgary, Province of Alberta.

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

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

12. 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.

13. 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.

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

15. 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.

16. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of other Canadian 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. DEFENDANT

17. 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.

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

IV. THE HISTORY OF THE NSHCC

19. 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 coloured face and to receive and keep the same under their care pursuant to the provisions of the *Children’s Protection Act, 1912*”.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

26. 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 Defendant, and were subject to the unilateral exercise of the Defendant's power or discretion.

27. By virtue of the relationship between the children and the Defendant, being one of trust, reliance and dependence, by the children, the Defendant 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.

28. At all material times, the Defendant 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.

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

obligations.

30. 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 Plaintiff 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.

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

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

VI. DAMAGES

33. The Plaintiffs and Class Members have suffered injuries and damages that were caused by the Defendant, its agents, employees, servants and contractors.

34. The Plaintiffs state that the Defendant knew, or ought to have known, that as a consequence of its 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 Defendant 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.

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

VII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

36. The Plaintiffs state that the conduct of the Defendant, its 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

37. The Plaintiffs repeat the foregoing paragraphs and states that the Defendant is 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 Defendant has breached its fiduciary obligations to the Plaintiffs arising from its conduct, and that of its 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 7th day of February, 2011.



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