

Form 4.02A

2012

Hfx. No. 398067

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ALICIA HEMEON and WILLA MAGEE

Court Administration

AUG 26 2013

Halifax, N.S.

PLAINTIFFS

- AND -

SOUTH WEST NOVA DISTRICT HEALTH AUTHORITY,  
a body corporate

DEFENDANT

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

Notice of Action – Amended August 26, 2013

**TO: The South West Nova District Health Authority**

**Action has been started against you**

The plaintiffs take action against you.

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

The plaintiffs claim the relief described in the attached amended statement of claim. The claim is based on the grounds stated in the 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 amended 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 plaintiffs state 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 PH301, 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 26<sup>th</sup> day of August, 2013.



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

**Prothonotary's certificate**

I certify that this amended notice of action, including the attached amended statement of claim, was filed with the court on August 26, 2013.



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**Tanya Allan**  
Deputy Prothonotary

**Amended Statement of Claim**

**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 South West Nova 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, Alicia Hemeon currently resides at 28 George Street, Shelburne, Nova Scotia.

4. The Plaintiff, Willa Magee currently resides at 109 Water Street, Shelburne, Nova Scotia.

5. The Plaintiffs and their families have long been patients of the Defendant, South West Nova District Health Authority. The Defendant 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 information concerning their family members.

6. On June 11, 2012, the Plaintiffs received correspondence from the Defendant advising that their personal information had been inappropriately accessed by one of its employees (hereinafter referred to as "the Defendant's employee").

7. The Plaintiffs suffered distress, humiliation and anguish over the breach of privacy.

8. 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 them; that the Plaintiffs' claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

9. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of other Canadian residents whose medical records were inappropriately accessed by the Defendant's employee. The proposed Class will be further defined in the Motion for Certification.

### **III. THE DEFENDANT**

10. The Defendant, South West Nova District Health Authority, is a body corporate, incorporated under the *Health Authorities Act*, S.N.S. 2000, c. 6. The Defendant was in possession of the private information contained in the medical records of the Plaintiffs and Class Members.

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

### **IV. THE BREACH OF PRIVACY**

12. The Defendant stores patient medical records electronically on a patient information system. Between April and May 2012, an investigation was conducted by the Defendant and it was learned that an employee had inappropriately accessed the private health information of the Plaintiffs and Class Members through a work computer.

13. The Defendant's employee intentionally intruded on the seclusion of the Plaintiffs' and Class Members' private medical records. The Defendant's employee did not have a medical purpose or lawful justification for accessing these private medical records. The invasion of privacy is highly offensive.

#### **V. VICARIOUS LIABILITY**

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

15. The Plaintiffs plead the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the actions of the Defendant's employee.

#### **VI. NEGLIGENCE**

16. Further, the Plaintiffs plead that the conduct of the Defendant 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**

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

#### **~~VIII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES~~**

~~18. The Plaintiffs state that the conduct of the Defendant's employee, for which the Defendant is vicariously liable, was willful, arrogant, callous, and highhanded and constituted a gross violation of the privacy rights of the Plaintiff and Class Members. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages.~~

**IX. VIII. RELIEF SOUGHT**

19. 18. The Plaintiffs repeat 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 the Defendant is vicariously liable for the actions of the Defendant's employee;
- (c) damages for the breach of privacy and negligence;
- ~~(d)~~ ~~aggravated, punitive and/or exemplary damages;~~
- ~~(e)~~ (d) interest pursuant to the *Judicature Act*;
- ~~(f)~~ (e) costs; and
- ~~(g)~~ (f) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 20<sup>th</sup> day of June, 2012.

AMENDED at Halifax, Nova Scotia this 26<sup>th</sup> day of August, 2013.



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