

2020

Court Administration

NOV 23 2020

Halifax, N.S.

Hfx. No.

SUPREME COURT OF NOVA SCOTIA

502113

Between:

CARLA MUNROE



Plaintiff

and

THE NOVA SCOTIA HEALTH AUTHORITY, a body corporate

Defendant

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

NOTICE OF ACTION

TO: The Nova Scotia Health Authority

Action has been started against you

The Plaintiff takes action against you.

The Plaintiff started the action by filing this notice with the court on the date certified by the Prothonotary.

The Plaintiff 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 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 \$150,000

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 located on 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 Plaintiff designates the following address:

Chuck Ford
Valent Legal
1741 Brunswick Street
Suite 401
Halifax, NS B3J 3X8

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

Further contact information is available from the Prothonotary.

Proposed place of trial

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

Signature

Signed this 23rd day of November, 2020



Chuck J. Ford
Valent Legal
Solicitor for the Plaintiff
Telephone: (902) 443 - 4488
Facsimile: (902) 443 - 6593
Email: chuck@valentlegal.ca

Prothonotary's certificate

I certify that this Notice of Action, including the attached Statement of Claim, was filed with the court on
~~2020.~~ November 23, 2020



Prothonotary

JESSICA HEARN
Deputy Prothonotary

STATEMENT OF CLAIM

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

I. Overview

1. In Canada, the privacy of an individual is valued as a legitimate right and interest that is afforded protection by existing law. Its value and protection emanate from both common and statutory law.
2. Hospitals are endowed the enormous responsibility of protecting the personal health information of patients, specifically in the form of medical records. Personal health information is particularly vulnerable to privacy concerns due to the nature of the information enclosed in the records.
3. The Nova Scotia Health Authority ("NSHA") is a custodian of health information under the *Protection of Health Information Act*, SNS 2010, c 41, as amended ("*PHIA*"). As such, the Nova Scotia Health Authority has a duty to protect the health information that it is entrusted with by the patients of its hospitals across Nova Scotia.
4. On several occasions, employees of the Nova Scotia Health Authority intentionally intruded upon the private and personal health information of hospital patients and staff. The proposed Class Members are victims of these highly offensive breaches of privacy. The Plaintiff brings this action on behalf of herself and the other victims of the privacy breaches to seek redress for the harms that they have incurred.

II. Representative Plaintiffs and Class

5. The Plaintiff, Carla Munroe, currently resides at 1561 Hammonds Plains Road in Bedford, Nova Scotia.
6. The Plaintiff has been a patient at a hospital falling under the authority of the Defendant, the Nova Scotia Health Authority. As such, the Defendant NSHA is in possession of her medical records. These records contain private and personal health information.
7. The information was stored on the Defendants database and was stolen, accessed and compromised on or about December 4, 2018.

8. On September 26, 2019, the Plaintiff received correspondence from the Defendant, advising that her personal health information had been inappropriately and unlawfully accessed by one of its employees.
9. The Plaintiff suffered distress, humiliation and anguish over the breach of privacy.
10. The Plaintiff seeks to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, S.N.S. 2007, c. 28, as amended ("*CPA*"), as providing the basis for such certification. The Plaintiff, as the Representative Plaintiff, does not have any interest adverse to any of the members of the proposed Class. The Plaintiff states that there is an identifiable class that would be fairly and adequately represented by her; 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.
11. The Plaintiff proposes to bring a Class Proceeding on behalf of herself and a Class of other Nova Scotian residents whose medical records were inappropriately and unlawfully accessed by the Defendant's employees. The proposed Class will be further defined in the Motion for Certification.

III. The Defendant

12. The Defendant, the Nova Scotia Health Authority, is a body corporate and the health authority for the Province. The Defendant NSHA provides health services to the entire Province, except for those health services provided by the IWK Health Centre.
13. The Defendant was at all material times in possession of Fair Warning, a software system that targets, prevents privacy breaches, and warns employees when they are at risk of accessing confidential information.
14. At all material times, the Defendant was in possession of the private health information contained in the medical records of the Plaintiff and proposed Class Members.
15. At all material times, the Defendant had a duty to protect the private health information contained in the medical records of the Plaintiff and proposed Class Members, imposed by both the *PHIA* and the common law.

16. At all material time, the Defendant knew or ought to have known that breaches were occurring, possessed the means to address said breaches, and failed to both implement those means and take other reasonable steps to mitigate against such risk.

IV. The Breaches of Privacy

17. The Defendant stores patient medical records electronically on a patient information system. The system is regularly audited. There are procedures in place to track and detect when patient records are accessed by employees.
18. The breaches occurred between 2018 and 2020 at various hospitals falling under the jurisdiction of the NSHA.
19. The information was released, accessed and/or stolen without a valid medical or hospital purpose.
20. The Defendant received information about inappropriate accessing of patient information systems through a targeted audit of employee access to electronic systems. The individuals whose information was accessed were contacted thereafter via mail correspondence.

V. Causes of Action

21. The Plaintiff pleads the following causes of action:

- a) Intrusion upon seclusion
- b) Negligence
- c) Breach of contract and warranty

A) Intrusion upon seclusion

22. The Defendant's employees intentionally intruded upon the seclusion of the respective hospitals' patients' private affairs in the form of the personal health information contained in their medical records.
23. The invasion of privacy of the Plaintiff and the proposed Class Members is highly offensive due to the inherently personal nature of the information involved in the breach.

B) Systemic Negligence

24. At all material times, the Defendant owed a duty of care to the proposed Class Members to ensure the privacy and confidentiality of their personal health information and to protect it from unauthorized disclosure to inappropriate parties.
25. The Plaintiff pleads and relies upon the *PHIA*, in particular section 3(a), section 3(f), and sections 61-70.
26. The Defendant NSHA is a custodian of personal health information under the *PHIA*. As a custodian, the Defendant NSHA has a statutory obligation to collect, use, disclose, and retain personal health information in a certain manner.
27. The employees involved in the breaches are agents of the Defendant NSHA, the custodian, in so far as they were authorized to act for or on behalf of the custodian in respect to personal health information, for the purposes of the custodian and not for their own purposes.
28. The Defendant NSHA, either directly or through its agents, employees, servants or assigns, has systemically breached their standard of care, the particulars of which are as follows but are not limited to:
 - a. By failing to implement, maintain and comply with reasonable protective practices for information in their possession;
 - b. By failing to implement Fair Warning on a system-wide basis, and failing to enforce training and compliance with the software throughout the hospitals under the Defendant's jurisdiction;
 - c. By failing to ensure that appropriate measures and safeguards were put in place to prevent the theft, loss, unauthorized access to or use, disclosure, copying or modification of information in their possession;
 - d. By failing to implement additional safeguards for electronic information;
 - e. By failing to have in place management and operations procedures that would have reasonably prevented or detected the privacy breaches in a timely fashion;

- f. By failing to ensure that employees were properly trained with respect to the utilization of Defendant's privacy systems regarding patients records;
 - g. By failing to properly monitor or supervise employees with access to patient records; and
 - h. Such other particulars of breaching the standard of care as may appear.
29. The harms suffered by the Plaintiff and proposed Class Members flow directly from the privacy breaches perpetrated by the employees of the Defendant.

C) Breach of contract and warranty

30. The Plaintiff pleads breach of express or implied terms of contract to provide medical services in a skillful manner.

VI. Vicarious Liability

31. The Defendant's employees, without valid reason, intentionally intruded on the seclusion of the Plaintiff's and Class Members' private medical records in the course of their employment.
32. The Defendant's employees did not have a valid medical purpose or lawful justification for accessing these private medical records.
33. The actions of the Defendant's employees were contrary to their duty of care established by the *PHIA* and contrary to their contractual obligations.
34. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the actions of the Defendant's employees, agents, servants or assigns.

VII. Damages

35. The Plaintiff and proposed Class Members have suffered injuries and damages that were caused by the Defendant and the Defendant's employees. The invasion of privacy is highly offensive, causing distress, humiliation and anguish.

VIII. Aggravated, Punitive, and Exemplary Damages

36. The Plaintiff submits that the conduct of the Defendant's employees, for which the Defendant is vicariously liable, herein amount to a reckless or willful disregard and gross violation of the privacy rights of the Plaintiff and proposed Class Members.
37. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages.

IX. Relief Sought

38. The Plaintiff repeats the foregoing paragraphs and seeks the following relief:
- a) An Order certifying this proceeding as a Class Proceeding and appointing the Plaintiff as the Representative Plaintiff for the Class or Classes;
 - b) A declaration that the Defendant is vicariously liable for the actions of the Defendant's employees;
 - c) General damages for pain and suffering;
 - d) Special damages, the particulars of which will be delivered;
 - e) Aggravated, punitive and/or exemplary damages;
 - f) Pre-judgment interest pursuant to the *Judicature Act*;
 - g) Costs and Disbursements, inclusive of any financing charges ; and
 - h) Such further and other relief as their Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia.

DATED at Halifax, in the Halifax Regional Municipality, Province of Nova Scotia this 23rd day of November, 2020.



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TO: The Defendant Nova Scotia Health Authority
The Office of the Prothonotary