

Form 5.07

2012

Ken No. 397761

Supreme Court of Nova Scotia

Between:

Mary Schinold and Tanya Chandler

and

Capital District Health authority and Katharine Zinck Lawrence

RECEIVED

JUN 15 2012

Court Administration Office
Kentville Justice Centre

Applicants

Respondents

Notice of Application In Court

Brought Pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28.

To: Capital District Health Authority via service upon its General Counsel, Catherine Gaulton

To: Katharine Zinck Lawrence via personal service

The applicant requests an order against you

The Applicants, on their own behalves and on behalf of each and every Class Member, apply to the Court for an order:

1. Certifying this Application as a class proceeding, pursuant to the *Class Proceedings Act*, S.N.S. 2007, c 28.
2. As against the Respondent Capital District Health Authority, an order for special and general compensatory damages, punitive damages, prejudgment interest and costs.
3. As against the Respondent Katharine Zinck Lawrence, an order for special and general compensatory damages, punitive damages, prejudgment interest and costs.
4. As against the Respondent Capital District Health Authority, an order for a declaration that that Respondent is vicariously liable for the actions of and resulting damages caused by the Respondent Katharine Zinck Lawrence to the Applicants.

The applicant started this application by filing this notice on the date certified by the prothonotary.

Grounds for the order

The applicant is applying for the order on the following grounds:

1. The Applicant, Mary Schinold, is a resident of Falmouth, Hants County, Nova Scotia.
2. The Applicant, Tanya Chandler, is a resident of Falmouth, Hants County, Nova Scotia.
3. The Applicants also bring the present proceeding on behalf of all others who have similarly suffered from the Respondents' actions (the Class Members) pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28.
4. The Respondent, Capital District Health Authority ("CDHA"), is a provider of health services in Halifax, Nova Scotia and the surrounding area, including the Windsor, Nova Scotia, area.
5. The Respondent, Katharine Zinck Lawrence ("Lawrence"), is a resident of Falmouth, Hants County, Nova Scotia who was at the times material to this proceeding, employed by CDHA.
6. The Applicants received medical services from CDHA and held the expectation that their private medical records and information would be held privately, securely and safely and they relied upon this expectation.
7. The Applicants at all times relied on the Respondents to act in the Applicants' best interest.
8. That CDHA is in a fiduciary relationship with the Applicants.
9. That Lawrence, was in a fiduciary relationship with the Applicants.
10. On January 1, 2012, Lawrence informed the Applicant, Mary Schinold that she had intentionally accessed her private medical files.
11. On January 3, 2012, CDHA informed the Applicant, Mary Schinold that her private medical records had been improperly accessed by an employee of CDHA.
12. On February 10, 2012, CDHA informed the Applicant, Tanya Chandler that her private medical records had been improperly accessed by an employee of CDHA.
13. The Applicants plead that their health records have been accessed by Lawrence on numerous occasions and over the span of several years.
14. The Applicants have subsequently learned that their health records were disclosed to third parties.
15. Lawrence has compromised the integrity of the Applicants' private medical files and information.

16. CDHA, failed in its duties to the Applicants as follows:
- (a) It failed to restrict Lawrence's access to information to which she did not need access in her employment position with CDHA;
 - (b) It failed to adequately train, educate, monitor and supervise Lawrence;
 - (c) It failed to have a system in place to prevent and/or monitor employees' access to medical files unnecessarily;
 - (d) It failed to protect the Applicants' private medical records from be accessed and disseminated to third parties;
 - (e) It failed to inform the Applicants in a timely manner that their files had been accessed.
17. The Respondent, Lawrence, failed in her duties to the Applicants by knowingly, deliberately and intentionally accessing, using and disseminating the Applicants' private medical files and information.
18. As against Lawrence, the Applicants plead and rely upon the following causes of action: breach of fiduciary duty and the torts of intrusion upon seclusion and intentional infliction of mental suffering.
19. As against CDHA, the Applicants plead and rely upon the following causes of action: breach of fiduciary duty and the tort of negligence.
20. The Applicants plead and rely upon the doctrine of vicarious liability and say that CDHA is responsible at law for the wrongful acts of Lawrence and for resulting damages of her actions.
21. The wrongs committed against the Applicants have had a detrimental effect on the Applicants' health, welfare, social, business and/or financial position.
22. The wrongs committed against the Applicants have caused the Applicants distress, annoyance, and embarrassment.

Witnesses for applicant

The applicant expects to file affidavits from the following witnesses, dealing with the following subjects:

Name of witness	Subject
Mary Schinold	All issues related to Liability and Damages
Tanya Chandler	All issues related to Liability and Damages
Each of the Class Members once identified	All issues related to Liability and Damages

Name of witness	Subject
Expert Witness (To be identified)	Liability (generally) and standard of care

Motion for date and directions

At 12:30 p.m. on July 12, 2012, the Applicants will appear before a judge by telephone conference, originating at the Law Courts, 87 Cornwallis Street, Kentville, Nova Scotia to make a motion for an order giving directions including a time and date for the hearing of it. The judge may provide directions in your absence if you or your counsel fail to attend.

Affidavit on motion for directions

The applicant files the affidavit of Robert H. Pineo, sworn on June 15, 2012, as evidence on the motion for directions. A copy of the affidavit is delivered to you with this notice.

You may participate (changed to conform to the Class Proceedings Act, supra)

You may file any affidavit for the Motion for Directions, no less than fifteen days after this Notice is delivered to you or you are otherwise notified of the Application.

You may file with the Court a Notice of Contest not less than 45 days following an Order for Certification in accordance with section 4(6) of the Class Proceedings Act, supra. Filing the Notice of Contest entitles you to notice of further steps in the Application.

Possible final order against you

The court may grant a final order on the application without further notice to you if you fail to file a notice of contest, or if you or your counsel fail to appear at the time, date, and place for the motion for directions.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary 87 Cornwallis Street, Kentville, Nova Scotia (telephone no.: (902) 679-6070).

When you file a document you must immediately deliver a copy of it to the applicant and 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 applicant designates the following address:

Patterson Law, 10 Church Street, P.O. Box 1068, Truro, NS B2N 5B9

Documents delivered to this address are considered received by the applicant on delivery.
Further contact information is available from the prothonotary.

Signature

Signed June 15, 2012

A handwritten signature in black ink, appearing to read "Robert H. Pineo". The signature is written in a cursive style with some loops and flourishes.

Signature of counsel
Robert H. Pineo as counsel for the
Applicants

Prothonotary's certificate

I certify that this notice of application was filed with the court on June 15, 2012.

Crystal M. Engelberts, Deputy
Prothonotary