

Form 4.02A

2024



Hfx. No.

5 3 3 1 3 4

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SHARLENE PETERS

PLAINTIFF

- AND -

NOVA SCOTIA HEALTH, a body corporate

DEFENDANT

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

Notice of Action

TO: Nova Scotia Health

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 plaintiff 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 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, 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 plaintiff designates the following address:

Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, Nova Scotia
B3J 1S9

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 7th day of May, 2024.

Handwritten signature in cursive script, appearing to read 'Maddy Carter' and 'Kate Boyle'.

Maddy Carter
Kate Boyle

Solicitors for the Plaintiff

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on May 7, 2024.

Handwritten signature in cursive script, appearing to read 'Morgan Reid'.

~~Prothonotary~~

Morgan Reid
Deputy Prothonotary

Statement of Claim

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

I. OVERVIEW

1. A patient's medical records contain personal health information of an inherently private and sensitive nature. Patients have a right of privacy in their personal health information. In a hospital setting, patients reasonably expect that their personal health information will only be accessed by an employee when there is a valid reason for it.
2. For a period of five months, between May and September of 2023, a clerical employee (the "Employee") of the Defendant at St. Martha's Regional Hospital (the "Hospital"), in the town of Antigonish, inappropriately accessed, without a valid reason, the health information of approximately 2,690 patients who received care at the Hospital. The Plaintiff is a victim of this Employee's serial breaches of patients' privacy.
3. The Defendant stores patient medical records electronically on an electronic health record system. The electronic health records include demographic information, including but not limited to the patient's name, civic address, email address, and phone number; information relevant to a patient's hospital registration, including but not limited to Medical Service Insurance card number, date of birth, emergency contact or next of kin, primary medical care provider, and the reason(s) for the hospital visit; and clinical information relating to a patient's hospital visit.
4. The Defendant conducted an audit of patient electronic health records in the fall of 2023. Based upon the audit results, the Defendant conducted an investigation which revealed that the Employee had serially inappropriately accessed the electronic health records of approximately 2,690 patients between May 2023 to September 2023.

II. REPRESENTATIVE PLAINTIFF AND CLASS

5. The Plaintiff, Sharlene Peters, who resides in Antigonish, Nova Scotia, received medical care at the Hospital on August 12 and 16, 2023.
6. The Plaintiff received a letter from the Defendant dated April 23, 2024, advising her of the breach of her personal information. The letter specified the dates of the hospital visits for which the corresponding health records were inappropriately accessed by the Employee and identified the applicable hospital department. It was explained in the letter that the inappropriately accessed information, seen by the Employee, included information about the reason for the visit.
7. Similar letters were, or are in the process of being, sent by the Defendant to all 2,690 patients whose health records were inappropriately accessed by the Employee between May and September 2023.
8. The Plaintiff seeks to certify this action as a class proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28, on behalf of herself and all other Canadian residents who have been or will be notified by the Defendant that their electronic health records were inappropriately accessed by the Employee (the “Class”).
9. The Plaintiff is seeking aggregate damages for the intrusion upon seclusion committed by the Employee, for which the Defendant is vicariously liable, and compensatory damages for the harms caused to Class Members as a result of the Defendant’s negligence, as further described below.
10. 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.

III. THE DEFENDANT

11. The Defendant, Nova Scotia Health, is a body corporate, incorporated under the *Health Authorities Act*, S.N.S. 2014, c. 32, as amended. The Defendant was at all material times responsible for the operation, supervision, and management of the Hospital. The Defendant is a designated custodian of personal health information within the meaning of s. 3(f)(iv) of the *Personal Health Information Act*, S.N.S. 2010, c. 41 (“*PHIA*”), and its employees are “agents” within the meaning of s. 3(aaa) of *PHIA*.
12. At its 10 hospitals and over 130 other units, the Defendant operates up to 500 electronic clinical software applications and over 20 diagnostic imaging applications, along with associated digital storage, retrieval and viewing systems. Together, these components comprise the Defendant’s electronic information systems.

IV. VICARIOUS LIABILITY FOR INTRUSION UPON SECLUSION

13. The Defendant stores patient medical records electronically on its electronic information systems, including records generated at the Hospital. The Defendant conducted an audit of these patient electronic health records in the fall of 2023. Following the audit results, the Defendant conducted an investigation which revealed that the Employee had serially inappropriately accessed the health information of the Plaintiff and Class Members, totaling 2,690 patients.
14. The Employee intentionally intruded upon the seclusion of the Plaintiff and Class Members by inappropriately accessing, without any valid justification or purpose, the personal health information of Class Members. Health information is of the most sensitive, private, and intimate nature. The Defendant had been trusted to safeguard that information. The intrusion by the Employee is highly offensive to a reasonable person.
15. The intrusion has caused Class Members emotional harm, including distress, humiliation and anguish. They have been violated by the unauthorized access of their personal health information. They have been humiliated. The anguish caused by the intrusion extends to concerns about other harms that might arise from the Employee acting based on the information, or disclosing the information to others in their community or beyond. There

is worry or anguish about why they were targeted, and who else the information may have been shared with. The breached personal health information could be used by the Employee to cause damage to employment, reputation, and relationships. This is particularly a valid, reasonable concern in the relatively small community in which the conduct occurred.

16. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the Employee's intrusions upon the seclusion of the Class Members.
17. The Employee's conduct was committed in the course of, and was connected with, the performance of her clerical role for her employer, the Defendant. There is a significant connection between the risk of a breach of health information created by the Defendant, and the wrongful conduct of the Employee. Hospital patients, including the Plaintiff and Class Members, are entirely vulnerable to a hospital employee inappropriately accessing their highly sensitive and personal health information.

V. AGGREGATE DAMAGES FOR INTRUSION UPON SECLUSION

18. The Plaintiff seeks aggregate damages for the Employee's intrusion upon the Class Members' seclusion, for which the Defendant is vicariously liable.
19. The award of damages for the harms caused by the Employee's intrusion upon the Class Members' seclusion is appropriate to be assessed in the aggregate, pursuant to section 32(1) of the *Class Proceedings Act*, S.N.S. 2007, c. 28.

VI. NEGLIGENCE

20. The Defendant was negligent in its failure to prevent the serial privacy breaches by the Employee, foreseeably causing harm to Class Members, and in its response to this egregious violation of privacy, foreseeably causing further harm to Class Members.

A. Negligence in Preventing Serial Breaches

21. The Defendant could reasonably have prevented the serial breaches by the Employee, and/or could reasonably have detected and stopped the thousands of privacy breaches earlier, thereby containing the number of people impacted.

22. The Plaintiff states that the Defendant, as informed by its role as a custodian of health information under the *PHIA*, owed the Class Members a duty of care to keep their health information secure and confidential, and accessed by the Employee only when there existed a valid purpose. The Plaintiff states that the Defendant's conduct breached the standard of care in the context of prevention of these privacy breaches, causing harm to Class Members that is reasonably foreseeable.
23. The particulars of the breach of standard of care in the context of prevention of the privacy breaches include:
 - i. Failing to have in place reasonable privacy breach prevention plans;
 - ii. Failing to reasonably comply with privacy breach prevention plans, including a failure to comply with audits at specified frequencies as outlined in the NSH Auditing Policy and NSH Annual Audit Plan;
 - iii. Failing to appropriately and reasonably assign electronic information systems access privileges to the Employee;
 - iv. Failing to appropriately and reasonably update electronic information systems access privileges when the Employee changed roles;
 - v. Creating a workplace culture that allowed the Employee to believe they were using their access for benign reasons;
 - vi. Failing to reasonably train the Employee, when onboarding, to distinguish between what the Employee technically had access to and what they were in fact authorized to access; and
 - vii. Failing to hold the Employee to the requirement in the NSH Privacy Policy of the annual completion of a privacy training module and signing of the confidentiality pledge.

24. The Plaintiff states that the Defendant was negligent in preventing the Employee's serial privacy breaches, thereby foreseeably causing harm to the Class, as such harm is further particularized below.

B. Negligence in Responding to Privacy Breaches

25. The notices sent by the Defendant to Class Members informing them of the privacy breaches were unreasonably delayed. Additionally, the Defendant's response failed to respect Class Members' rights to be reasonably informed about the circumstances of the breaches, and thereby compromised Class Members' abilities to take steps to mitigate potential harms arising from the breaches.

26. The particulars of the breach of standard of care in the context of responding to the breaches include:

- i. Failing to notify Class Members of the breaches at the first reasonable opportunity, taking into account the circumstances, contrary to s. 69 of the *PHIA*;
- ii. Obscuring the nature and severity of the breaches by failing to name the Employee in the notice letters. Information about the identity of the Employee would have given Class Members important information to enable them to mitigate any potential malicious intentions; and
- iii. Choosing not to clearly identify in the notice if the Class Member was looked up and/or targeted by name by the Employee.

27. The harms caused to Class Members by the Defendant's negligence include serious and prolonged psychological injuries, including anxiety and depression. It is reasonably foreseeable that these harms could be caused by the negligent conduct of the Defendant, due to the intimate nature of the information in question, and the potential for this intimate information to be shared in the close-knit community to the detriment of the affected Class Members.

28. The Plaintiff seeks an individual assessment of compensatory damages for the harms caused by the negligence of the Defendant outlined above.

VII. RELIEF SOUGHT

29. The Plaintiff repeats the foregoing paragraphs and seek the following relief:
- i. an Order certifying this proceeding as a class proceeding and appointing the Plaintiff as the Representative Plaintiff for the Class;
 - ii. aggregate damages for the harms caused by the Employee's intrusion upon seclusion of Class Members, for which the Defendant is vicariously liable;
 - iii. individual damages for the harms caused by the Defendant's negligence;
 - iv. interest pursuant to the *Judicature Act*, R.S.N.S. 1989, c. 240;
 - v. costs; and
 - vi. 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 May, 2024.



Maddy Carter
Kate Boyle
Wagners
Counsel for the Plaintiff
1869 Upper Water Street
Suite PH 301, Historic Properties
Halifax, NS B3J 1S9
Tel: 902-425-7330
Email: mcarter@wagners.co
kboyle@wagners.co