

Form 23.03

2012

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ALICIA HEMEON and WILLA MAGEE

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 Motion

To: Carmen McCormick, Q.C.
Solicitor for the Defendant
Stewart McKelvey
1969 Upper Water Street
Suite 900
Halifax, NS B3J 2X2

Motion

Alicia Hemeon and Willa Magee, the Plaintiffs in this proceeding, move for:

- 1) an Order certifying this proceeding as a Class Proceeding pursuant to s. 4(3) and 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28 and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- 2) an Order defining the Class as:
All persons who were sent letters from the South West Regional Health Authority advising them that their personal health information had been inappropriately accessed by an employee.

- 3) an Order that the within action be certified on the basis of the following common issues:
 - a) Did an employee of the Defendant, over the course of his or her employment, intentionally, and without a valid purpose, access the medical records of the class members?
 - b) If “yes”, is the Defendant vicariously liable for intrusion upon seclusion?
 - c) Did the Defendant owe a duty of care to the class members? If so, did it breach that duty?
 - d) Can damages of class members be determined on an aggregate basis? If so, what is the appropriate amount of aggregate damages?
 - e) Should the Defendant pay punitive damages? Should punitive or aggravated damages be assessed in the aggregate? If so, in what amount should punitive or aggravated damages be paid?
- 4) an Order that the Notice of Certification to the Class Members be given pursuant to the Litigation Plan attached and marked as Schedule “B” to the Certification Order;
- 5) an Order that the Defendants shall be responsible for all costs associated with the Notice of Certification;
- 6) an Order that the Class Members who elect to opt-out of the class proceeding must do so in a manner and within a period of time to be fixed by the Court;
- 7) an Order for costs and disbursements of this motion, including taxes; and
- 8) Such further and other relief as the Court may seem just.

Time and place

The motion is to be heard by The Honourable Justice Arthur W. D. Pickup on August 26-28, 2013 commencing each day at 9:30a.m in the Law Courts, 1869 Upper Water Street, Halifax, Nova Scotia. The moving party has arranged for 3 days for the motion to be heard pursuant to the direction of the Honourable Justice Arthur W. D. Pickup. The moving party says that the motion will not require more time.

References

The moving party relies on the following legislation, Rules, or points of law:

- (a) The pleadings herein disclose a cause of action against the Defendant;
- (b) There is an identifiable class of persons who share a common interest in the common issues raised by the pleadings;
- (c) The claims of the Class Members raise common issues respecting the within litigation;
- (d) The proposed Representative Plaintiffs will adequately represent the interests of the Class;
- (e) A class proceeding is the preferable procedure for the resolution of the common issues;
- (f) *Class Proceedings Act*, S.N.S. 2007, c. 28; and
- (g) Such further and other grounds as counsel may advise.

Evidence

The evidence in support of the motion is as follows:

- 1. Affidavits of Willa McGee and Alicia Hemeon
- 2. Affidavit of Class Member(s), to be determined
- 3. Affidavit of Michael Dull

Possible order against you

You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the judge may grant an order without further notice to you.

Signature

Signed this 17th day of December, 2012



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