

Form 23.03

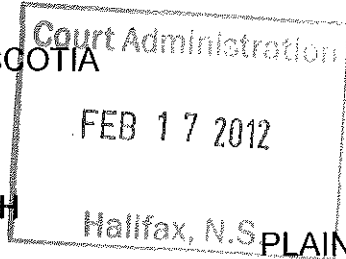
2011

Hfx. No. 343536

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

AUBREY PELLEY and DEANNA SMITH



PLAINTIFFS

- AND -

THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a  
body corporate and THE ATTORNEY GENERAL OF NOVA  
SCOTIA, representing Her Majesty the Queen in right of the  
Province of Nova Scotia

DEFENDANTS

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

**Notice of Motion**

**To:** John Kulik, Q.C.  
McInnes Cooper  
1969 Upper Water Street, 13<sup>th</sup> Floor  
Halifax, NS B3J 2V1  
Solicitor for the Defendant,  
The Nova Scotia Home for Colored Children

**And To:** Catherine Lunn  
Department of Justice (NS)  
5151 Terminal Road, 4<sup>th</sup> Floor  
Halifax, NS B3J 2L6  
Solicitor for the Defendant,  
The Attorney General of Nova Scotia

**Motion**

Aubrey Pelley and Deanna Smith, the Plaintiffs in this proceeding, move for:

- 1) an Order certifying this proceeding as a Common Law 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 or Classes;

- 2) an Order defining the Classes as:
  - a) Former residents who, as wards of the Province, were placed in the NSHCC as residents.
  - b) Former residents, who resided in the Nova Scotia Home for Colored Children but who were not wards of the Province.
- 3) an Order that the within action be certified on the basis of the following common issues:
  1. What was the legal relationship and the extent of the obligations owed by each of the Defendants to the former residents who comprise each of the 2 Classes?
  2. Did the Defendant, the Nova Scotia Home for Colored Children, owe a duty of care to the former residents who comprise each of the 2 Classes?
  3. If the answer to 2 is yes, did the Defendant, Nova Scotia Home for Colored Children, breach its duty of care?
  4. Did the Defendant, the Attorney General of Nova Scotia, owe a duty of care to the former residents who comprise each of the 2 Classes?
  5. If the answer to 4 is yes, did the Defendant, the Attorney General of Nova Scotia, breach its duty of care?
  6. Did the Defendant, the Nova Scotia Home for Colored Children, owe a fiduciary duty to the former residents who comprise each of the 2 Classes?
  7. If the answer to 6 is yes, did the Defendant, Nova Scotia Home for Colored Children, breach its fiduciary duty?
  8. Did the Defendant, the Attorney General of Nova Scotia, owe a fiduciary duty to the former residents who comprise each of the 2 Classes?
  9. If the answer to 8 is yes, did the Defendant, the Attorney General of Nova Scotia, breach its fiduciary duty?
  10. Are the Defendants, or either of them, vicariously liable for the conduct of their agents, employees and staff?

11. Does the conduct of the Defendants, or either of them, justify an award of punitive and/or aggravated damages, and if so, in what amount?
- 4) an Order that the Notice of Certification to the Class Members be given pursuant to the Litigation Plan attached and marked as Exhibit "A" to the affidavit of Michael Dull;
  - 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 of this application on a full indemnity basis, 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 LeBlanc on October 22 – 26, 2012 commencing each day at 9:30a.m in the Law Courts, 1869 Upper Water Street, Halifax, Nova Scotia. The moving party has arranged for 5 days for the motion to be heard pursuant to the direction of the Honourable Justice Arthur LeBlanc. 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 Defendants;
- (b) There are identifiable classes 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 Classes;
- (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:

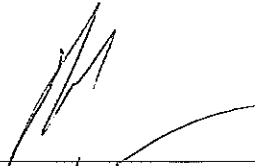
1. Affidavit of Michael Dull sworn on the 17<sup>th</sup> day of February, 2012 and filed with this notice;
2. Affidavit of Aubrey Pelley sworn on TBD and to be filed before the deadline;
3. Affidavit of Deanna Smith sworn on the 3<sup>rd</sup> day of January, 2012 and filed with this notice;
4. Affidavit of Jane Earle sworn on the 10<sup>th</sup> day of February, 2012 and filed with this notice;
5. Affidavit of Garnet Smith sworn on the 9<sup>th</sup> day of February, 2012 and filed with this notice;
6. Affidavit of Stacey Beals sworn on the 15<sup>th</sup> day of February, 2012 and filed with this notice;
7. Affidavit of Krista Borden sworn on the 13<sup>th</sup> day of February, 2012 and filed with this notice;
8. Affidavit of Tracey Dorrington-Skinner sworn on the 15<sup>th</sup> day of February, 2012 and filed with this notice;
9. Affidavit of Star-Ann Smith sworn on the 10<sup>th</sup> day of February, 2012 and filed with this notice;
10. Affidavit of Shirley Melanson sworn on the 13<sup>th</sup> day of February, 2012 and filed with this notice;
11. Affidavit of Harold Middleton sworn on the 16<sup>th</sup> day of February, 2012 and filed with this notice; and
12. Affidavit of Sandra Scarth sworn on the 16<sup>th</sup> day of February, 2012 and filed with this notice.

**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 17<sup>th</sup> day of February, 2012



---

Raymond F. Wagner  
**Wagners**  
1869 Upper Water Street  
Halifax, NS B3J 1S9  
Tel: (902) 425-7330  
Fax: (902) 422-1233  
Solicitor for the Plaintiffs