

Form 4.02A
2011

Hfx. No. 35 7533

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

TAMARAH ADAMS and ALWYN KURTS

- AND -

DR. PAUL S. HINGLEY and THE ATTORNEY GENERAL OF
NOVA SCOTIA; representing Her Majesty the Queen in right of the
Province of Nova Scotia

DEFENDANTS



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

TO: DR. PAUL S. HINGLEY

TO: THE ATTORNEY GENERAL OF NOVA SCOTIA

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim 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 \$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 plaintiffs state 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 plaintiffs designate the following address:

Wagners Law Firm
1869 Upper Water Street
Halifax, Nova Scotia
B3J 1S9

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

Further contact information is available from the prothonotary.

Proposed place of trial

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

Signature

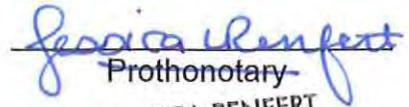
Signed OCTOBER 18, 2011



RAYMOND F. WAGNER
Solicitor for Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on October 18, 2011.



Prothonotary-
JESSICA RENFERT
Deputy Prothonotary

Form 4.02B

Statement of Claim

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

I. OVERVIEW

1. In 1985 the Province of Nova Scotia (“the Province”) made the decision to take over and assume responsibility for the privately-run Nova Scotia School for Girls located in, Truro, Nova Scotia. It converted the institution into a provincially funded and operated co-educational facility for children in need of residential care. The facility was renamed as the Nova Scotia Residential Centre (“NSRC”). Many young children who were wards of the Province were sent to live at the NSRC. Many of these young children suffered from past histories of abuse or neglect. They were emotionally vulnerable.
2. The Province hired psychiatrist, Dr. Paul S. Hingley, to regularly visit the young vulnerable children under its care at the NSRC. Dr. Hingley began treating children at the NSRC in approximately 1984. He continued his treatment sessions with the children at the NSRC until approximately 1994.
3. During his decade at the NSRC, Dr. Hingley had countless emotionally vulnerable children assigned to his care. During parts of his treatment sessions with the children at the NSRC, he treated them by touching their bodies in a sexually inappropriate manner. His treatments consisted of sexually explicit conversations which had the result of degrading his patient’s self-worth.

4. The young children under Dr. Hingley's care were in a vulnerable state. Doctors hold a position of knowledge and trust. Dr. Hingley's treatment of these young emotionally disturbed children fell below the standard of care expected of a reasonably competent psychiatrist.

5. During all relevant years, the Province operated, caused to be operated, or permitted to be operated a residential facility whose residents were systemically subjected to the negligence by Dr. Hingley. The Province failed to adequately detect or respond to these prolonged instances of Dr. Hingley's negligence.

6. The Plaintiffs are former wards of the Province and former residents at the NSRC. Staff at the NSRC regularly sent them for private sessions with Dr. Hingley. During these sessions they were repeatedly subjected to the negligence of Dr. Hingley. The negligence continued for years.

7. The Plaintiffs bring this action based on an allegation that Dr. Hingley was negligent in his psychiatric treatment of them. The Defendants breached their fiduciary duties towards them and other former residents. The Plaintiffs further plead systemic negligence, alleging that the Province failed to have in place management and operations procedures that would reasonably have prevented the negligent treatment. They seek certification of this action on behalf of themselves and other similarly situated class members.

II. THE REPRESENTATIVE PLAINTIFFS

8. The Plaintiff, **Tamarah Adams**, was born on January 17, 1977 and currently resides at 384 Portland Street, in Dartmouth, Nova Scotia.

9. Tamarah Adams became a ward of the Province in approximately 1989. She remained under the care, control and custody of the Province until approximately 1996.

10. In approximately 1990, the Province sent Tamarah Adams to reside at the NSRC. Tamarah Adams ordinarily resided at the NSRC, under the wardship (ie: care and control) of the Province of Nova Scotia, for approximately four years.

11. The Plaintiff, **Alwyn Kurts**, was born on April 15, 1972 and currently resides at 60 Gaston Road, Dartmouth, Nova Scotia.

12. Alwyn Kurts became a ward of the Province in approximately 1987. She remained under the care, control and custody of the Province until approximately 1993.

13. In approximately 1987, the Province sent Alwyn Kurts to reside at the NSRC. She ordinarily resided at the NSRC, under the wardship (ie: care and control) of the Province of Nova Scotia, for approximately two years.

III. CLASS CERTIFICATION:

14. The Plaintiffs seeks to certify this action as a Class Proceeding and plead the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification. The Plaintiffs, as the Representative Plaintiffs, do not have any interest adverse to any of the members of the proposed class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

15. The Plaintiffs propose to bring a class proceeding on behalf of themselves and a class of other Canadian residents who, as wards of the province, were placed in the NSRC as residents and victims of negligent treatment by Dr. Hingley. The proposed class will be further defined in the Motion for Certification.

IV. THE DEFENDANTS

16. The Defendant, **Dr. Paul S. Hingley**, resides in Kentville, Nova Scotia. Dr. Hingley completed a residency in psychiatry in 1983. He was hired by the Province to visit with children at the NSRC (then known as the "Nova Scotia School for Girls") in and around this time. In 1985 Dr. Hingley received his fellowship from the Royal College of Physicians and Surgeons.

17. In or around 1985 Dr. Hingley was retained, hired or employed by the Province to regularly visit with children at the NSRC until 1994 when he opened a private practice in Truro, Nova Scotia. In approximately 1997 several patients from his private practice approached the College of Physicians and Surgeons with complaints that Dr. Hingley treated them in a negligent manner; that the treatments were overtly sexual.

18. In 1998 the Hearing Committee of the College of Physicians and Surgeons found Dr. Hingley guilty of professional misconduct. Dr. Hingley had his license to practice medicine revoked in May 1999.

19. Dr. Hingley has a duty to the Plaintiffs and other class members. The Plaintiffs allege as against Dr. Hingley's treatment of them fell below the knowledge, competence and skill of a similarly qualified psychiatrist.

20. The Defendant, **The Attorney General of Nova Scotia** representing Her Majesty the Queen in Right of the Province of Nova Scotia, at all times material and relevant to this proceeding, was responsible for the care, maintenance, education, protection and supervision of the Plaintiffs and Class Members as wards in custody of the Province. All the agencies, including, but not limited to the Minister of Public Welfare and the Director of Child Welfare and departments of Government will be referred to as the Province of Nova Scotia and is deemed to include all its contractors, sub contractors, agents, servants, employees and appointees.

21. At all material times, the Province, was responsible for the conditions within the NSRC and the treatment of the residents of the NSRC. The Province was responsible for hiring and supervising Dr. Hingley.

22. The Plaintiffs allege as against the Province:

- a) Negligence and a breach of duty of care owed to the Plaintiffs;
- b) Breach of fiduciary duty owed to the Plaintiffs; and
- c) Vicarious liability.

V. THE HISTORY OF THE NSRC:

23. On September 1, 1914 the Protestant Churches of the Maritime Provinces established the Maritime Home for Girls. Its purpose was to provide a home and training school for girls from Nova Scotia, New Brunswick and Prince Edward Island who were homeless or who were being reared in abusive surroundings.

24. In the mid-1960s, the Protestant Churches encountered difficulties in financing the institution. The Province took over responsibility for it on April 1, 1967. It then became known as the Nova Scotia School for Girls.

25. The enactment of the *Young Offenders Act* in 1984 caused the Government of New Brunswick to develop its own facilities. The population of the Nova Scotia School for Girls subsequently decreased. In February 1985, the Province made a decision to convert the school into a provincially funded co-educational facility for wards of the Province and/or victims of child neglect or abuse. The facility was renamed the Nova Scotia Residential Centre. The Province continued to operate the NSRC until the institution closed in June 1997.

VI. THE NEGLIGENT TREATMENT BY DR. HINGLEY:

26. During the entirety of their years as residents at the NSRC, the Plaintiffs were required to attend regular treatments with Dr. Hingley. Dr. Hingley did not have an office at the NSRC. The treatment sessions took place in a meeting room on the NSRC premises. The visits were private. Dr. Hingley did not regularly treat the male residents.

27. As part of his treatment, Dr. Hingley would touch the Plaintiffs' bodies. He coupled this sexual touching with overt and highly sexualized and degrading comments. This psychiatric treatment of Dr. Hingley fell below the knowledge, competence and skill of a similarly qualified psychiatrist.

28. As a result of such negligent treatment by Dr. Hingley, the Plaintiffs suffered personal injury, including severe psychological injury, physical harm, loss and damages.

VII. THE NEGLIGENCE OF THE PROVINCE:

29. As a result of the treatments received, the Plaintiffs felt afraid, confused, dirty and ashamed. NSRC staff made it clear to the Plaintiffs that the visits with Dr. Hingley were not optional. The Plaintiffs were informed that any time Dr. Hingley wished to see them, they had to comply. On occasions when the Plaintiffs refused to attend, they were punished by NSRC staff. They would have their meals withheld and be locked in isolation until such time that they agreed to meet with Dr. Hingley.

30. The Province of Nova Scotia was negligent in the care, maintenance, protection and treatment provided to the Plaintiffs and Class Members and thereby breached its duty of care. The Province was negligent in its hiring and supervision of Dr. Hingley in that it:

- a) facilitated and allowed the negligent treatment of Dr. Hingley;
- b) chose not to remove Dr. Hingley from the NSRC even though it knew or ought to have known he had tendencies toward the negligent treatment of his patients;
- c) did not conduct appropriate reference checks with respect to Dr. Hingley or, if it conducted a reference check, it inadequately and improperly did so in accordance with accepted and/or reasonable personnel procedure;
- d) did not provide proper, adequate or effective monitoring, initially or on an ongoing basis of Dr. Hingley to ensure that he was suitable and fit to act as a psychiatrist of the NSRC being in the presence of and having professional relationships with children such as the Plaintiffs;
- e) improperly and inadequately trained staff and/or declined to place a system which might detect and respond to negligent treatment by an employee, servant, contractor or agent such as Dr. Hingley;
- f) improperly and inadequately supervised Dr. Hingley such that he would not be able to commit negligent treatment upon children such as the Plaintiffs;

h) knew or ought to have known that placing Dr. Hingley in a position of trust and authority would facilitate his capacity to be negligent and without that position and authority the negligence could not have been committed against the Plaintiffs;

i) knew or ought to have known that Dr. Hingley inflicted the abuse during the course of his employment; and

j) knew or ought to have known of Dr. Hingley's actions involving the Plaintiffs and other children.

VIII. THE FIDUCIARY RELATIONSHIPS:

31. All residents at the NSRC were children. At all material times, the residents of the NSRC were entirely within the power and control of the Defendants, and were subject to the unilateral exercise of the Defendants' power or discretion.

32. By virtue of the relationship between the children and the Defendants, being one of trust, reliance and dependence, by the children, the Defendants owed a fiduciary obligation to ensure that residents at the NSRC were treated fairly, respectfully and in all ways consistent with the obligations of a parent or guardian to a child under his or her care and control. By virtue of the Plaintiffs' vulnerabilities as children and the power and control of the Defendants, the Defendants were to provide a place of sanctity, nurture and trust.

33. At all material times, the Defendant Province owed a fiduciary obligation to NSRC residents to act in the best interests of those residents and to protect those residents from any negligent and harmful psychiatric treatment.

34. At all material times, the children who resided at the NSRC were entitled to rely and did rely upon the Defendants to their detriment to fulfill their fiduciary obligations.

35. The Province of Nova Scotia through its agents, the Minister of Public Welfare and the Director of Child Welfare, its servants and employees, breached its fiduciary obligations to the Plaintiffs and Class Members. It placed its interests in conflict with

the interests of the Plaintiffs and Class Members. It profited at the expense of the Plaintiffs and Class Members. The specifics of the breach of fiduciary duty are that it:

- (a) chose not to qualify or cause to be qualified or to screen for suitability or to supervise, monitor, police or assess the agents, employees, servants, and foster parents entrusted with the care of the Plaintiffs and other wards;
- (b) chose not to evaluate the work being done by the NSRC or prescribing and mandating methods for such evaluation;
- (c) inadequately and improperly supervised the NSRC and its professional staff and thereby failed to ensure the staff were competent in the care and treatment of the Plaintiffs and Class Members;
- (d) forced the Plaintiffs and Class Members to attend regular private visits with a psychiatrist who was not competent to treat emotionally vulnerable children, thereby placing them at risk of negligent treatment, when it knew or ought to have known that the psychiatrist was incompetent;
- (e) placed the Plaintiffs and Class Members, who were vulnerable, underprivileged and impressionable children, in an environments entirely repugnant to sanctuary, friendship, wholesome love and care, nurturing, education and security that they were entitled to expect and receive and/or failed to identify such shortcomings in the provision for the Plaintiff's treatment and care;
- (f) subjected the Plaintiffs and Class Members to the care of persons whose qualifications by way of formal training and practical experience to care for children were never investigated, evaluated or monitored, and whose lack of qualifications were overlooked and/or ignored;
- (g) inadequately investigated, evaluated or monitored (such as by visiting or obtaining reports or alternatively, such as by making sufficient visits or obtaining sufficient and adequately detailed reports) the nature and quality of the treatment care the Plaintiffs and Class Members received while in the wardship of the Province;
- (h) ignored complaints of physical, mental and sexual abuse that the Province knew or ought to have known of, through its agents, employees and servants; and

IX. DAMAGES

36. The Plaintiffs and Class Members have suffered injuries and damages that were caused by the Defendants, their servants, and agents.

37. The Plaintiffs state that the Defendant Hingley knew, or ought to have known, that as a consequence of his breach of the standard of care and negligent treatment, his child patients would suffer significant mental, emotional and psychological harm. The Plaintiffs state that the Defendant Province knew, or ought to have known, that as a consequence of its breaches of fiduciary duty, and negligence, young children under its care and supervision would suffer significant mental, emotional and psychological harm.

38. The Defendants knew, or ought to have known that the negligent treatment inflicted upon the Plaintiffs and Class Members would impair their ability, as young victims of psychiatric manipulation, to commence an action against them in a Court.

X. VICARIOUS LIABILITY

39. The Plaintiffs plead the doctrine of *respondeat superior* and states that the Province is vicariously liable for the actions of its or their agents, employees servants and contractors. The Plaintiffs state that the Province is vicariously liable for the negligent conduct of Dr. Hingley, whereby Dr. Hingley, acting in the course of his employment as an agent, contractor or employee of the Province, when he negligently treated the Plaintiffs and Class Members.

XI. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

40. The negligent treatment by Dr. Hingley of the Plaintiffs and Class Members was done with the knowledge, or ought to have been done with the knowledge, that it would cause them to suffer humiliation, indignity, sexual, emotional and mental distress and injury. Further, Dr. Hingley's treatment was done with the knowledge, or ought to have been done with the knowledge, that the Plaintiffs' emotional and physical anguish

would increase. The negligent treatment was with wanton, careless and willful disregard of the consequences to the Plaintiffs.

41. The Plaintiffs state that the conduct of the Defendant Province, their servants, employees or agents was wilful, arrogant, callous, and highhanded and constituted a gross violation of the rights of the children who were residents of the NSRC. The Plaintiffs respectfully submit that this is an appropriate case for punitive, aggravated and/or exemplary damages.

XII. RELIEF SOUGHT

42. The Plaintiffs repeat the foregoing paragraphs and state that the Defendants are jointly and severally liable for the following:

- (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- (b) a declaration that the Defendant Province has breached its fiduciary obligations to the Plaintiffs arising from their conduct, and that of their servants, agents or employees;
- (c) compensation and/or damages for the breach of fiduciary duty and negligence, including:
 - i) general damages, including aggravated damages for personal injuries;
 - ii) special damages;
- (d) aggravated, punitive and exemplary damages;
- (e) interest pursuant to the *Judicature Act*;
- (f) costs; and

(g) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 18th day of October, 2011.



RAYMOND F. WAGNER
Wagners
Counsel for the Plaintiffs
1869 Upper Water Street
3rd Floor Pontac House
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: raywagner@wagners.co