

Form 4.02A

2013

Hfx. No. 422819

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

R.A. RALPH ATKINSON MARK JASON MURRAY



- AND -

CAPITAL DISTRICT HEALTH AUTHORITY, a body corporate,
carrying on business as the EAST COAST FORENSIC HOSPITAL

DEFENDANT

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

Second AMENDED NOTICE OF ACTION – Amended on this 8 day of January, 2014-2015
pursuant to Civil Procedure Rule 83.04 K.S.

TO: The Capital District Health Authority

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 Law Firm
1869 Upper Water Street
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 17th day of December, 2013.

~~Signed this 15 day of January 2014.~~

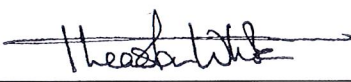
Signed this 8 day of Jan 2014 2015



Michael Dull
Solicitor for Plaintiff
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Halifax, NS B3J 1S9
Tel: 902-425-7330
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Prothonotary's certificate

I certify that this second amended notice of action, including the attached second amended statement of claim, was filed with the court on Jan 8th, 20 15



Prothonotary

Theaston White
Deputy Prothonotary

Second Amended Statement of Claim

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

OVERVIEW

1. All Canadians have a reasonable expectation of privacy with respect to their person. This privacy interest is a fundamental value that warrants protection from unreasonable strip searches.
2. Patients of the East Coast Forensic Hospital are vulnerable members of society, at the mercy of the Defendant's employees' exercise of power. On October 16, 2012 the Rehab Manager of the East Coast Forensic Hospital abused her position of power. Without reasonable and probable grounds, and in total indifference to the patients' privacy interests, she ordered that every patient of the East Coast Forensic Hospital be subjected to an invasive strip search. The order was carried out by the Defendant's employees.
3. An unreasonable, unlawful strip search amounts to tortious battery. The Plaintiff is a victim of battery. He brings this action on behalf of himself and other victims of the mass unreasonable strip search seeking redress for the resulting harms.

REPRESENTATIVE PLAINTIFFS AND CLASS

4. The Plaintiff, R.A. ~~Ralph Atkinson~~, Mark Jason Murray currently resides in ~~Barrington~~ Halifax, Nova Scotia.
5. In 2012, the Plaintiff was a patient of the East Coast Forensic Hospital. On October 16, 2012, at the command of Rehab Manager Brenda Mate, the Plaintiff and all other patients of the East Coast Forensic Hospital were unlawfully battered and assaulted by the Defendant's employees.
6. The Plaintiff seeks to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification. 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 him; 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.

7. The Plaintiff proposes to bring a Class Proceeding on behalf of himself and a Class of other patients of the East Coast Forensic Hospital who were strip searched on October 16, 2012. The proposed Class may be further defined in the Motion for Certification.

THE DEFENDANT

8. The Defendant, Capital District Health Authority, is a body corporate, incorporated under the *Health Authorities Act*, S.N.S. 2000, c. 6. The Defendant operates and manages the East Coast Forensic Hospital.
9. Brenda Mate is an employee of the Defendant. The Defendant employed Brenda Mate as a Rehab Manager of the East Coast Forensic Hospital.

THE UNLAWFUL STRIP SEARCHES

10. On the morning of October 16, 2012 the Plaintiff was quietly socializing with several other patients in a dayroom of the East Coast Forensic Hospital. This form of calm socializing was typical.
11. The Plaintiff's socializing was interrupted by nurses employed by the Defendant, who entered the dayroom and instructed all patients to proceed to the Hospital's "lockdown room". The Plaintiff and all other patients at the East Coast Forensic Hospital abided to this command.
12. While every patient at the East Coast Forensic Hospital was locked in the "lockdown room", the Defendant's employees searched the patient rooms and public areas of the Hospital for contraband. No contraband was found.
13. Although a search of the patient rooms and public areas revealed no contraband, Brenda Mate instructed employees of the East Coast Forensic Hospital to conduct strip searches of all of its patients, including the Plaintiff.

14. One-by-one class members were taken from the “lockdown room” into their bedrooms. Once in their bedrooms, the Plaintiff and every class member were ordered by the Defendant’s employees to strip naked and submit to a body search. The Defendant’s employees conducted strip searches on the Plaintiff and Class Members, which included a cavity check in every case. As part of the cavity checks, the Plaintiff and each male Class Member had their testicles touched by the Defendant’s employees.
15. Brenda Mate ordered the strip search of each patient of the East Coast Forensic Hospital on October 16, 2012. Not one of the intrusive strip searches resulted in any contraband being found.
16. As a result of the aforesaid strip searches, the Plaintiff and Class Members suffered injury, loss and damage.

Lack of Reasonable and Probable Grounds:

17. Strip searches may be lawfully conducted at the East Coast Forensic Hospital where there exist reasonable and probable grounds to search a particular patient. The Defendant’s staff are required to complete a Strip Search Report following each strip search conducted. Such forms describe the reasonable and probable grounds upon which the search was purportedly conducted. The reasonable and probable grounds cited on each of the Class Members’ Strip Search Reports are identical and read as follows:

“Reasons for search: information received from Brenda Mate (Rehab Manager) that drugs may be in Rehab and that patient safety is at risk. Manager Mate wanted all patients strip searched and the bedrooms and common areas searched. Mate also wanted the Patient lockers searched. Patient movement was placed on hold (0900 hrs) by the clinical teams until the search was concluded. The patient movement resumed at 1530 hrs.

What was the course of information relied upon to conclude a strip search was necessary in the circumstances: Direction and information came from Brenda Mate.”

18. Brenda Mate’s belief that “drugs may be in Rehab” does not amount to reasonable and probable grounds to order a class-wide strip search of every patient. Where the Defendant’s employees conducted strip searches without reasonable and probable grounds, they

committed an unlawful and illegal strip search. On October 16, 2012 the Defendant's employees, at the instruction of Brenda Mate, conducted an unlawful and illegal strip search on every patient of the East Coast Forensic Hospital.

~~Trespass to Person and Battery:~~

~~19. The Plaintiff repeats the preceding paragraphs hereof and says that the Defendant's employees' committed trespass to person, battery, and illegal search, the particulars of which are that they:~~

- ~~a) did not have reasonable and probable grounds to search the Plaintiff and Class Members;~~
- ~~b) searched the Plaintiff and Class Members in an unreasonable manner;~~
- ~~e) disproportionately interfered with the Plaintiff and Class Members' freedom of their person;~~
- ~~d) inadequately appraised themselves of the effects their application of force and invasive search would have on the Plaintiff and Class Members;~~
- ~~e) did not inquire into and appreciate any mental infirmities the Plaintiff and Class Members may have had prior to applying force to them;~~
- ~~f) did not consider alternate means of determining whether the Plaintiff and Class Members were in possession of contraband; and~~
- ~~g) such other and further torts as may appear from the evidence.~~

~~20. The trespass and battery committed by the Defendant's employees over the course of their employment caused the Plaintiff and Class Members to suffer injury, loss and damage.~~

~~Negligence:~~

~~21. The Defendant owed a duty of care to the Plaintiff and Class Members. Specifically, the Defendant had a duty not to trespass on the privacy of its patients' person without reasonable and probable grounds. The Defendant breached the standard of care, and was negligent, when it arbitrarily compelled the Plaintiff and Class Members to submit to invasive strip searches without reasonable and probable grounds.~~

~~22.~~ The Plaintiff further pleads that the Defendant was aware that Brenda Mate has ordered numerous strip searches in the absence of reasonable and probable grounds. The Defendant breached the standard of care by continuing to grant Brenda Mate the authority to order strip searches, despite knowing her history of ordering unlawful strip searches.

~~23.~~ The Plaintiff further pleads that the conduct of the Defendant constitutes negligence, by not having in place management and operations policies and procedures that would reasonably have prevented the unlawful strip searches. Alternatively, if the Defendant had in place such management and operations policies and procedures, they were not followed, constituting a breach of the duty of care.

~~24.~~ The Defendant's negligence, and that of its employees over the course of their employment, caused the Plaintiff and Class Members to suffer injury, loss and damage.

Breach of the Charter:

~~25.~~ 19. The Plaintiff repeats the preceding paragraphs hereof and says that the incident aforesaid and the injury, loss and damage resulting therefrom was caused by the Defendant's employees breach of his, and other Class Members', *Charter* rights. The Plaintiff had a reasonable expectation of privacy in respect of his person. The Defendants' employee ordered a strip search of his person, including an invasive cavity check. This search was effected without a warrant and/or reasonable and probable grounds, and was conducted in an unreasonable manner. Accordingly, the Brenda Mate and the Defendant's other employees breached the Plaintiff and Class Members' right to be free from unreasonable search and seizure pursuant to section 8 of the *Canadian Charter of Rights and Freedoms*.

~~26.~~ 20. The aforesaid Charter breach cannot be saved by section 1 of the *Canadian Charter of Rights and Freedoms*.

~~27.~~ 21. The Plaintiff and Class Members have suffered injury, loss and damage resulting from the Defendant's breach of their Charter rights.

Intrusion Upon Seclusion

22 Without lawful justification, the Defendant intentionally intruded on the seclusion of the Plaintiff and Class Members' private bodily integrity. The invasion of privacy is highly offensive. The arbitrary strip search of October 16, 2012 reasonably caused distress, humiliation or anguish.

VICARIOUS LIABILITY

~~28~~ 23. Brenda Mate ordered, and Defendant's other employees conducted, unlawful and invasive strip searches without a warrant or reasonable and probable grounds in the course of their employment.

~~29~~ 24. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the actions of Brenda Mate and its other employees who carried out her order.

RELIEF SOUGHT

~~30~~ 25. The Plaintiff repeats the foregoing paragraphs and seeks the following relief:

- (a) an Order certifying this proceeding as a Class Proceeding and appointing the Plaintiff as the Representative Plaintiff for the Class or Classes;
- (b) a declaration that the Defendant is vicariously liable for the actions of the Defendant's employee;
- (c) damages for intrusion upon seclusion ~~battery and negligence~~;
- (d) for the section 8 *Charter* breach, General Damages, Special Damages, Interest and Costs pursuant to Section 24(1) of the *Charter*;
- (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 ~~17th~~ day of ~~December 2013.~~ ~~15 day of January 2014.~~ ~~8th~~ day
of January ~~2014~~ 2015



~~Micheal~~ Michael Dull

Wagners

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