

2019

Hfx. No.: 485391

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PAUL KELLOCK, RANDY ARENBURG, ANTHONY HAYNES
and ~~MATTHEW SMITH~~



PLAINTIFFS

-and-

THE ATTORNEY GENERAL OF NOVA SCOTIA, representing her
Majesty the Queen in right of the Province of Nova Scotia

DEFENDANT

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

SECOND AMENDED NOTICE OF ACTION

To: The Attorney General of Nova Scotia, representing her Majesty the Queen in
right of the Province 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~~ 150,000

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 located on 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:

Valent Legal

~~7401-1741 Brunswick Street~~
Halifax, NS B3J 3X8

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 this 20th day of February, 2019.~~

~~Signed this 27th day of February, 2019.~~

Signed this 14 day of July, 2020

MICHAEL DULL
VALENT LEGAL
~~7401-1741 Brunswick~~
Street
Halifax, NS B3J 3X8
Tel: 902-443-4488
Fax: 902-443-6593

Prothonotary's certificate

~~I certify that this notice of action, including the attached statement of claim, was filed with the court on this 20th day of February, 2019.~~

~~I certify that this notice of action, including the attached statement of claim, was filed with the court on this 27th day of February, 2019.~~

I certify that this notice of action, including the attached statement of claim, was filed with the court on this 21 day of July, 2020.

LIANNA WEATHERBEE
Deputy Prothonotary

Prothonotary

SECOND AMENDED STATEMENT OF CLAIM

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

OVERVIEW

1. This action concerns the sexual abuse of minors at the Nova Scotia Youth Centre (“Waterville”), located in Waterville, Nova Scotia, committed by ~~staff~~ the swim instructor of Waterville.
2. Waterville was at all material times a provincially-operated correctional facility for youths. Those youths who attended and/or were resident at Waterville were under the Crown’s exclusive control and care.
3. Since it opened in 1988, many youths incarcerated at Waterville have been subjected to various forms of sexual abuse during their attendance or residence at the facility.
4. Despite multiple independent reports by residents to authority figures at Waterville of sexual abuse and misconduct perpetrated by ~~staff~~ the swim instructor against residents, no effective action was taken to remedy the situation and ~~Waterville staff~~ the swim instructor continued to abuse youth in their care.
5. The Defendant knew, or ought to have known, about the sexual abuse perpetrated at Waterville and failed to take appropriate action to investigate and remedy that breach of its mandate to rehabilitate children under its care.

REPRESENTATIVE PLAINTIFFS AND CLASS

6. The Plaintiff, Paul Kellock, currently resides in Springhill, Nova Scotia. He resided at Waterville twice in or about 2007 to 2009, first at fifteen or sixteen years of age, and again as a seventeen year old.

7. The Plaintiff, Randy Arenburg, currently resides in Pictou, Nova Scotia. He resided at Waterville for approximately one year, at the age of 17, in or about 1996.
8. The Plaintiff, Anthony Haynes, currently resides in Hillsburn, Nova Scotia. He was placed in Waterville shortly after it opened in 1988 and continued to reside there for approximately eight months.
- ~~9. The Plaintiff, Matthew Smith, currently resides in Warkworth, Ontario. He resided at Waterville in or about 2007 and 2008, starting when he was approximately 16 years of age.~~
10. The Plaintiffs seek 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 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 them, that the Plaintiffs' claims raise common issues, and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.
11. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of all other persons who attended and/or resided at Waterville and were subjected to sexual abuse by the swim instructor during their time at the facility (the "Class" or "Class Members").

THE DEFENDANT

12. The Defendant is the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia. The Defendant represents the rights of the Department of Justice Correctional Services ("Correctional Services"), which is the provincial government body that at all material times administered the system of youth correctional institutions in

Nova Scotia, including Waterville, and is deemed to include all its contractors, sub-contractors, agents, servants, employees and appointees.

13. The Defendant is and was, at all material times, responsible for the maintenance, oversight, funding and management of the governmental servants and agents who operate the youth correctional institutions in the province, including Waterville.
14. At all times material and relevant to this proceeding, the Defendant was responsible for the care, maintenance, education, protection and supervision of the Class, including the Plaintiffs, while Class Members were in custody at Waterville.

SEXUAL ABUSE OF MINORS IN CUSTODY AT WATERVILLE

15. The Defendant has operated the Waterville facility since 1988. The Defendant has placed hundreds of youths in custody at Waterville, including each of the Plaintiffs in this Action.
16. While residing at Waterville, under the care and control of the Defendant, each of the Plaintiffs was subjected to sexual abuse, perpetrated on them ~~by staff~~ by the swim instructor of the Waterville facility (~~“the Employee”~~).
17. ~~The Employee was a swim instructor at Waterville, who~~ committed a range of abuses against male youth attending and/or resident at the facility. That abuse included, but was not limited to, improper viewing of youths while they were undressed in changing areas, unwanted touching and sexual touching, and sexual assault.
18. The Defendant knew shortly after it hired the ~~Employee~~ swim instructor that he was sexually inappropriate with male youth but failed to take appropriate steps to address this behavior.

19. The Defendant knew, or ought to have known, about the sexual abuse being perpetrated by the ~~Employee~~ swim instructor, but failed to take appropriate steps to address the abuse.
20. Instances of sexual abuse committed by the ~~Employee~~ swim instructor were reported to persons in authority at Waterville at various times. Regardless, nothing was done by way of investigation or rectification. Alternatively, if steps were taken to investigate and/or rectify the reported abuses, these steps were inadequate and ineffective at remedying the ongoing sexual abuse of youths resident at Waterville by staff of the Waterville facility.
21. The Defendant's failure to adequately detect or respond to prolonged systemic abuse amounts to systemic negligence and a breach of the fiduciary duties it owed the Plaintiffs and proposed Class.

THE DEFENDANT'S FIDUCIARY DUTY TO CLASS MEMBERS

22. At all material times, the Defendant, through its agents, servants, and employees, had a fiduciary relationship with all Class Members and owed a fiduciary obligation to incarcerated youth to act in their best interest. The Class Members relied upon the Province, to their detriment, to fulfill its fiduciary obligations.
23. At all material times, the Class Members were within the knowledge, contemplation, power or control of the Defendant and were subjected to the unilateral exercise of the Defendant's power or discretion. As youth incarcerated in a provincial correctional institution, the Class Members relied entirely on the Defendant to act *in loco parentis* and to ensure that the conditions of their incarceration were safe and in accordance with the recognized objectives of sentencing in Canada. The Class Members were particularly vulnerable to the actions of staff members and other adults present

at the Waterville facility due to their relative positions of power, trust, and control in the relationship with Class Members.

24. By virtue of the relationship between the Class members and the Defendant being one of trust, reliance and dependence, the Defendant owed a fiduciary obligation to ensure that the Class Members were protected from undue harm, including sexual abuse, and in all other ways treated consistently with the obligations owed to a person under its care and control.

THE DEFENDANT'S DUTY OF CARE TO CLASS MEMBERS

25. The Defendant, through its agents, servants, and employees, owed a duty of care to provide for the proper care, education, maintenance, protection, and supervision of Class Members while they attended or were resident at Waterville.
26. Among other things, the Defendant was solely responsible for:
 - a) The operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of all provincial correctional institutions, including Waterville, during the Class Period;
 - b) The management, operation and administration of Correctional Services during the Class Period;
 - c) The promotion of the health, safety and well-being of Class Members during the Class Period;
 - d) Decisions, procedures, regulations promulgated, operations and actions taken by Correctional Services, its employees, servants, officers and agents during the Class Period;

- e) The selection, control, training, supervision, and regulation of the designated operators and their employees, servants, officers, and agents;
- f) Setting or implementing standards of conduct for Correctional Services staff to ensure that the well-being of incarcerated youth was not significantly endangered;
- g) Properly and effectively supervising the institutional environment and the conduct of Correctional Services staff to ensure that incarcerated youth would not suffer undue harm;
- h) The care, control, supervision, and well-being of all Class Members attending or resident at Waterville and all activities that took place therein during the Class Period.

27. The Defendant was negligent and failed to discharge these fiduciary duties in breach of its special responsibility to ensure the safety and well-being of the Class.

THE DEFENDANT'S BREACHES OF ITS FIDUCIARY DUTIES AND DUTY OF CARE

28. Class members were subjected to sexual abuse by ~~Waterville staff~~, the swim instructor while attending or resident at Waterville. The Defendant failed in its duties to the Class to prevent, or alternatively, to remedy this egregious trespass against the interests and well-being of Class Members.
29. The Defendant acted in breach of its fiduciary duty and in negligent breach of its duty of care to the Class. Particulars of those breaches include, but are not limited to:
- a) Failure to appropriately supervise, monitor, police or assess the agents, employees, and servants entrusted with the care of the Class Members;

- b) Failure to appropriately screen Waterville staff for suitability to work with vulnerable youth;
- c) Failure to properly investigate, evaluate, or monitor the nature and quality of the Class Members' care while in custody of the Defendant at Waterville, or to prescribe and mandate methods for such investigation, evaluation, and monitoring;
- d) Failure to ensure that Waterville was competent to accept the care and custody of the Class Members;
- e) Placing the Class Members in Waterville in circumstances in which they were sexually abused by ~~staff~~ the swim instructor of the facility when both the Defendant and Waterville knew or ought to have known of the numerous acts of sexual abuse committed at the facility;
- f) Failure to respond, investigate, evaluate or inquire into the complaints of sexual abuse that the Defendant knew or ought to have known of, through its agents, employees and servants;
- g) Putting its own interests, financial, reputational or otherwise, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;
- h) Failure to safeguard the physical and emotional needs of Class Members;
and
- i) Subjecting the Class Members, a group composed largely of vulnerable and underprivileged children, to circumstances of care and custody repugnant to the rehabilitative mandate of youth correctional institutions in this

province and to the sanctuary, friendship, wholesome love and care, nurturing, education and security that they were entitled to expect and receive from the Defendant and its agents, employees, and servants, and overlooking and/or failing to identify such shortcomings in the provision for the Class Members' care and custody.

VICARIOUS LIABILITY

30. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendant is vicariously liable for the actions of its agents, employees, servants, and contractors.
31. Specifically, the Defendant is vicariously liable for the sexual abuse perpetrated by the ~~Employee~~ swim instructor over the course of his employment as swim instructor.

DAMAGES SUFFERED BY CLASS MEMBERS

32. The Defendant knew, or ought to have known, that as a consequence of its mistreatment of Class Members, the Plaintiffs and Class Members would suffer significant harms.
33. As a consequence of the abuse, negligence and breach of fiduciary duty by the Defendant and its agents for whom the Defendant is vicariously liable, Class Members suffered loss, injury and damages including, but not limited to, the following:
 - a) Emotional and psychological harm;
 - b) Impairment of mental and emotional health and well-being;
 - c) Development or exacerbation of mental illness;

- d) Impaired ability to participate in or transition to a normal family life;
- e) Impairment of the capacity to build healthy sexual and romantic relationships with others;
- f) Loss of self-esteem and feelings of humiliation and degradation;
- g) Addiction or substance abuse;
- h) Impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- i) The need for ongoing psychological, psychiatric and medical treatment and counselling resulting from the experience of sexual abuse; and
- j) Pain and suffering.

34. As a consequence of the negligence and breach of fiduciary duties by the Defendant and its agents for whom the Defendant is vicariously liable, the Class Members have required and will continue to require medical and psychological treatment, rehabilitation, counselling and other care, for which they claim complete indemnity, compensation, and payment from the Defendant.

RELIEF SOUGHT

35. The Plaintiffs seek the following relief:
- a) An Order certifying this proceeding as a Class Proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the Class and any appropriate subclass thereof;

- b) A declaration that the Defendant has breached its obligations and duties to the Plaintiffs and the Class;
- c) Damages for the aforesaid negligence and breaches of fiduciary duty;
- d) Aggravated, punitive, and/or exemplary damages;
- e) Interest pursuant to the *Judicature Act*, RSNS 1989, c 240;
- f) Costs; and
- g) Such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

~~DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 20th day of February, 2019.~~

~~DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 27th day of February, 2019.~~

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 14 day of July, 2020



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TO: The Prothonotary

AND TO: The Defendant