

COPY

2024 01G 5428
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

JANE DOE (S.E.B. 2413)
JOHN DOE (S.E.B. 2414)
JANE DOE (S.E.B. 2415)
JOHN DOE (S.E.B. 2416)

PLAINTIFFS

AND:

NEWFOUNDLAND AND LABRADOR
HEALTH SERVICES

DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

STATEMENT OF CLAIM

OVERVIEW

1. This is a proposed class action arising from an acknowledged privacy breach by the Defendant which occurred on or about July 4th, 2023, wherein an employee or agent of the Defendant sent by email to approximately 116 fertility treatment patients without blind copying them. As a result, each recipient of the email was provided with the names and email addresses of the other recipients.
2. On November 7th, 2024, the Plaintiffs received leave of this Court to commence this action using pseudonyms.

THE PARTIES

3. The Plaintiffs are all residents of the Province of Newfoundland and Labrador. At all times material hereto, they were patients referred to the Defendant's Newfoundland and Labrador Fertility Services, or a partner of a patient referred thereto. Their address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2. They bring this action on their own behalf and on behalf of a proposed class of similarly situated persons.
4. The Defendant is the unified Provincial Health Authority. At all times material hereto, it operated Newfoundland and Labrador Fertility Services. Its address for service is

Executive Office – Level 1 – Room 1345, Health Sciences Centre, Prince Philip Drive, St. John's, NL A1B 3V6.

THE CLASSES

5. The Plaintiffs bring this action under the *Class Actions Act* SNL 2001 c. C-18.1 on their own behalf and on behalf of two classes consisting of:

CLASS A (i.e. the “patient” subclass):

All natural persons whose email address was disclosed by the Defendant in an email sent on July 4th, 2023.

CLASS B (i.e. the “partner” subclass):

Any natural person whose email was not disclosed by the Defendant in an email sent on July 4th, 2023, but whose identity is nonetheless discoverable by virtue of their association, relationship or connection with a person who is a member of Class A.

BACKGROUND

6. The Defendant, through Newfoundland and Labrador Fertility Services (NLFS), provides provincial outpatient services for the diagnosis and treatment of fertility issues for the people of Newfoundland and Labrador. This includes out-of-province referrals to clinics who can provide treatment options which are not presently available within this Province.
7. Further to paragraph 5, the Defendant offers a subsidy to cover a portion of the costs incurred by fertility patients in their efforts to become parents. The subsidy can be applied to costs incurred for approved treatments at a Canadian Assisted Reproductive Technologies clinic, prescribed medications, and travel costs which are not already covered by a patient's private insurance.

MATERIAL FACTS

8. On or about July 4th, 2023, the Defendant, or one of its employees or agents, sent an email to a list of approximately 116 fertility patients, seeking responses to a survey about who has availed of the fertility subsidy.
9. According to a press release dated July 5th, 2023, the Defendant has admitted that the recipients of the email were inadvertently not blind copied, which allowed all recipients of the email to view the email addresses of other fertility patients.

THE PROPOSED REPRESENTATIVE PLAINTIFFS

1) **Jane Doe (S.E.B. 2413) & John Doe (S.E.B. 2414)**

10. Jane Doe (S.E.B. 2413) is in a relationship with John Doe (S.E.B. 2414). They were referred to the Newfoundland Fertility Clinic in 2021. Since that time, they have undergone a series of physical and emotional challenges associated with the struggles to conceive a child. Jane Doe (S.E.B. 2413) underwent multiple unforeseen complications in her efforts to become pregnant, requiring emergency hospitalizations, multiple surgeries, and associated mental and emotional pain and suffering.
11. Since 2021, Jane Doe (S.E.B. 2413) and John Doe (S.E.B. 2414) isolated themselves from family and friends to focus on their efforts to become parents. While Jane Doe was able to avail of counselling services throughout that time, John Doe had no such support and remained isolated and unsupported. As such, the parties were shocked when they learned that Jane Doe's email and name had been disclosed without her consent. Many of the couples friends and family have had no knowledge of their struggles to conceive.
12. The Defendant's breach of privacy caused significant emotional distress on the couple and they are distraught that their participation in fertility treatments has been broadcasted to people whom they never would have disclosed this highly personal information.
13. Both Jane Doe and John Doe have experienced psychological harm as a direct result of the Defendant's privacy breach.

2) **Jane Doe (S.E.B. 2415) & John Doe (S.E.B. 2416)**

14. Jane Doe (S.E.B. 2415) and John Doe (S.E.B. 2416) are a married couple. They have been availing of the services of Newfoundland Fertility Clinic since 2020. Through the Defendant's services, the couple has had multiple unsuccessful attempts to become pregnant, including intrauterine insemination and invitro insemination, which required traveling out of province.
15. The treatments were ultimately successful and the couple did become parents in the subsequent years.
16. While the couple attempted to conceive, they underwent significant emotional and physical stress. On at least one occasion, Jane Doe was hospitalized due to unplanned complications to her treatment which resulted in permanent nerve damage. They isolated from friends and family, including those with young children during their efforts to conceive. While

Jane Doe did reveal publicly that she was going through fertility treatments, she kept private the significant emotional toll the procedures were taking on her and John Doe.

17. The couple felt betrayed and experienced significant emotional distress upon learning that their privacy had been breached. Jane Doe was contacted by people who had seen her named on the email and as a result her privacy choices as to with whom she wanted to share this personal information with was taken from her and her husband.
18. Both Jane Doe and John Doe experienced psychological harm as a direct result of the Defendant's privacy breach.

CAUSES OF ACTION

1) **Negligence**

19. The Defendant owed the Plaintiffs and Class Members a duty of care to keep their names and involvement with the Fertility Clinic private. The Defendant's conduct to protect the Plaintiffs' privacy fell below the reasonable standard of care expected of it under the circumstances. The Defendant's conduct was negligent and it breached statutory and fiduciary duties owed to the Plaintiffs and Class Members.
20. The Defendant was negligent in failing to protect the privacy of Class Members by distributing their email addresses to third parties.
21. As a result of the Defendant's negligence, the Plaintiffs and other class members suffered pecuniary and non-pecuniary losses. The Plaintiffs submit that such losses were reasonably foreseeable by the Defendants in the circumstances.

2) **Breach of Privacy**

22. Pursuant to section 3 of the *Privacy Act*, RSNL 1990, c P-22, it is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of an individual.
23. The Plaintiffs plead that by negligently disclosing Class Members' email addresses, the Defendant committed the tort contemplated by section 3 of the *Privacy Act*, and as such, Class Members are entitled to a remedy under the *Act*, including but not necessarily limited to, an award of damages.
24. As a result of the Defendant's breach of their privacy, the Plaintiffs and Class Members have suffered damages for which they claim compensation from the Defendant.

3) **Intrusion upon seclusion**

25. The Plaintiffs state that the common law tort of intrusion upon seclusion exists in this jurisdiction in addition to any causes of action created by the *Privacy Act*. In support of this the Plaintiffs plead and rely upon the case of *Power v. Mount Pearl (City)*, 2022 NLSC 129 (CanLII).
26. The Plaintiffs state that the Defendant committed the tort of intrusion upon seclusion by distributing the email addresses of Class Members, and that the nature of the intrusion was such that it would be highly offensive to a reasonable person in the circumstances.
27. As a result of the Defendant's intrusion upon seclusion, the Plaintiffs and Class Members suffered damages for which they claim compensation from the Defendant.

4) **Aggravated Damages**

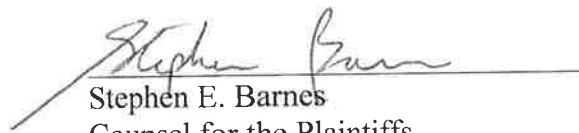
28. The Plaintiffs and all Class Members were at all material times in a protracted state of psychological vulnerability while availing of the Defendant's fertility treatment services. The Defendant knew or ought to have known that the identities of its patients proceeding through fertility treatments should be protected at all reasonable times and by use of all reasonable procedures and precautions.
29. The Defendant ought to have known that the Plaintiffs and Class Members, given their precarious mental states while undergoing fertility treatments, would be particularly vulnerable to emotional harm caused by a breach of their privacy.
30. The Defendant knew or ought to have known that patients undergoing fertility treatments often do not disclose their participation in such treatments to third parties especially, but not exclusively, stronger, given the highly personal nature of the treatment involved in efforts to conceive.
31. In light of the above, the Plaintiffs state that Class Members should be entitled to an award of aggravated damages in addition to other remedies sought.

RELIEF SOUGHT

32. The Plaintiffs repeat the foregoing paragraphs and state that as a result of the Defendant's negligence, breach of privacy and intrusion upon seclusion, the Plaintiffs and the proposed Class Members have suffered losses.

33. The Plaintiffs state that there exist common issues between Class Members and the Defendant and as such, it would be prudent and proper to proceed by way of class proceedings under the *Class Actions Act*.
34. The Plaintiffs therefore seek the following relief on their own behalf and on behalf of the subclasses, all to be assessed and quantified based upon evidence at trial:
- a. damages for negligence, breach of privacy and intrusion upon seclusion;
 - b. damages for pain and suffering, psychological stress, and loss of enjoyment of life;
 - c. an award for damages under the *Privacy Act*;
 - d. an order for an aggregate money award pursuant to s. 29 of the *Class Actions Act*;
 - e. aggravated, punitive and/or exemplary damages;
 - f. special damages;
 - g. costs of providing appropriate notice to Class Members and administering this proposed class action for their benefit;
 - h. costs, including fees of expert witnesses in attending at discovery and/or trial, and HST on the same;
 - i. interest pursuant to the *Judgement Interest Act*, RSN 1990, c J-2; and
 - j. such further and other relief as this Honourable Court deems just, equitable and appropriate in all of the circumstances
35. The Plaintiffs propose that this proceeding be tried at the Judicial Centre of St. John's, Newfoundland and Labrador.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 8 day of November, 2024.


Stephen E. Barnes
Counsel for the Plaintiffs
Bob Buckingham Law
81 Bond Street
St. John's, NL A1C 1T2
Tel: 709-739-6688
Fax: 709-739-6686
sbarnes@buckinghamlaw.ca

TO: Defendant
Newfoundland and Labrador Health Services
Executive Office – Level 1 – Room 1345
Health Sciences Centre, Prince Philip Drive
St. John's, NL A1B 3V6.

20240195428

ISSUED AT St. John's, in the Province of Newfoundland and Labrador, this 12 day of November, 2024.



Court Officer / Officier de Cour

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NOTICE TO DEFENDANTS

You are hereby notified that the plaintiff may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within ten days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at 309 Duckworth Street, St. John's, Newfoundland and Labrador, a defence and unless within the same time a copy of your defence is served upon the plaintiff or the plaintiff's solicitors' stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ _____ (such sum as may be allowed on taxation) for costs to the plaintiff or the plaintiff's solicitors within ten days from the service of this notice upon you, then this proceeding will be stayed.

TO: Defendant
Newfoundland and Labrador Health Services
Executive Office – Level 1 – Room 1345
Health Sciences Centre, Prince Philip Drive
St. John's, NL A1B 3V6.

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AFFIDAVIT OF SERVICE

I, _____ of _____, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. On _____ at _____ A.M/P.M., I served _____ with the Statement of Claim by leaving a copy with _____ at _____
2. I was able to identify the person by means of _____

SWORN TO at the City of St. John's, in the Province of Newfoundland and Labrador, this ____ day of _____, 2024, in the presence of:
