

2012 01 ~~B~~ 4305 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

BETWEEN: TAMMY RUTH TAYLOR

PLAINTIFF

AND:

EASTERN REGIONAL HEALTH AUTHORITY

DEFENDANT

STATEMENT OF CLAIM

Proceeding under the Class Action Act, SNL 2001, c.c - 18.1

I. REPRESENTATIVE PLAINTIFF AND CLASS

1. The Plaintiff, Tammy Ruth Taylor, is a resident of St. John's, Newfoundland and Labrador whose address for service is c/o Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador A1C 1T2 and whose phone number is 709 739-6688. At all material times she was a resident of Newfoundland and Labrador and a patient or recipient of personal healthcare information from the Defendant.
2. The Defendant is a corporation established under and by authority of the Regional Health Authorities Act, 2006 c. R-7, ss. 6 and 7, and the Regional Health Authorities Regulations 18/08 ss. 3(1)(c). The Defendant's address for service is Executive Office, Level 1, Room 1345, Health Sciences Centre, Prince Phillip Drive, St. John's, Newfoundland and Labrador, A1B 3V6 and whose telephone number is 709 777-1300.
3. The Plaintiff has long been a patient of the Defendant, Eastern Regional Health Authority. The Defendant is in possession of the Plaintiff's confidential, private health information records. The Plaintiff's health information records contain private information, concerning, but not limited to, her personal health, her employment, her social insurance number, her health card number, information concerning her family members, next of kin and significant other persons in her life.

4. On or about July 20, 2012, the Plaintiff received a telephone call from a representative of the Defendant advising the Plaintiff her personal health information had been accessed by one of its employees. [Hereinafter referred to as "the Defendant's employee(s)"]. The Defendant's representative asked the Plaintiff to come to the Defendant's office to discuss the breach of privacy.
5. The Plaintiff met with the Defendant's representative on July 27, 2012 at 9:00 a.m. in room 414 of the Miller Centre, Forest Road, St. John's, Newfoundland and Labrador at which time the Defendant's representative advised the Plaintiff her personal health information had been improperly accessed, without a valid reason by an Eastern Health employee(s), which included the following private, confidential, personal health related information:
 - (i) Demographic information including address, age and religion;
 - (ii) Information about visits to Eastern Health facilities including the reason for visits;
 - (iii) Medical records and other forms kept on the Plaintiff by Eastern Health.
6. The Defendant's representative advised the Plaintiff her personal information was accessed in November 2011.
7. The Plaintiff pleads that by way of a press release and public statements reviewed by the Plaintiff the Defendant has publicly stated other patients had their confidential, private medical records and personal health information accessed without valid reason by the Defendant's employee(s).
8. The Plaintiff pleads public statements by the Chief Executive Officer of Eastern Health confirm internal audits by the Defendant have revealed eleven (11) of the Defendant's employees were found to have breached personal health information of patients, and five of the Defendant's employees have been dismissed for breaching patients personal health information..
9. The Plaintiff pleads she suffered distress, humiliation, anger, upset, anguish, fear of identity theft, uncertainty as to how her personal health information has been used and confusion why her personal health information was accessed. The Plaintiff pleads the invalid access has left her with a feeling of vulnerability by and from the breach of her privacy and the intrusion upon the seclusion of her biological core personal information.

10. The Plaintiff seeks to certify this action as a Class Proceeding and pleads the Class Actions Act, SNL 2001, c. C-18.1, 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 there is an identifiable class that would be fairly and adequately represented by her; that the Plaintiff's claim raises common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.
11. The Plaintiff purposes to bring a Class Proceeding on behalf of herself and a Class of other Canadian residents whose medical records were inappropriately accessed by the Defendant's employee(s). The proposed Class will be further defined in an Application for Class Certification.
12. At all material times, the Defendant was responsible for the protection of the private information obtained in the medical records of the Plaintiff and Class Members.

II. THE BREACH OF PRIVACY / INTRUSION UPON SECLUSION

13. The Plaintiff pleads the Defendant stores patient medical records electronically on a patient information system. There is provincial legislation enacted to provide for the protection of personal health information by health authority and others. The Plaintiff pleads the Defendant has conducted a number of investigations which have revealed that employee(s), without valid reason, have accessed the private health information of the Plaintiff and the Class Members.
14. The Plaintiff pleads the Defendant's employee(s), without valid reason, intentionally intruded upon the seclusion of the Plaintiff's and Class Member's private medical records and personal health information. The Defendant's employee(s) did not have a medical purpose or any lawful justification for accessing these private medical records and personal health information. The invasion of privacy is highly offensive to the Plaintiff and the Class Members.
15. The Plaintiff repeats the preceding paragraphs and states the Defendant's employee(s) committed an intrusion upon seclusion of her common law and statutory privacy rights, and the Plaintiff suffered losses and damages.
16. The Plaintiff repeats the preceding paragraphs and pleads the Defendant's employee(s) intentionally intruded upon the Plaintiff's and Class Members privacy by, without valid reason or authority, bypassing the Defendant's

security mechanism, if one existed, or without authorization, thus accessing the Plaintiff's and Class Members' personal health information or acting in excess of the Defendant's employee(s)' privileges. The Plaintiff pleads there was an unauthorized intrusion upon her seclusion, the intrusion was objectionable to a reasonable person, the information and records intruded upon were private, and the intrusion caused the Plaintiff anguish and suffering.

17. The Plaintiff suffered losses and damages as a result of the intrusion on her seclusion and the breach of privacy.

III. NEGLIGENCE

18. The Plaintiff pleads that the conduct of the Defendant constitutes negligence, by the Defendant not having in place management and operations procedures that would reasonably have prevented or earlier detected the intrusion upon seclusion and privacy breaches of the Plaintiff's and Class Members' personal health information in a timely fashion.
19. The Plaintiff pleads the Defendant was negligent in failing to properly, or not at all, train and supervise its employees on the importance of health care privacy and confidentiality, or else hiring and/or employing incompetent staff.
20. The Plaintiff pleads the Defendant was negligence in failing to conduct timely, if any, ongoing checks, balances and/or reviews of the Defendant's electronic or other data storage systems to determine if the electronic or other data storage were being accessed by employees, or others, without valid reason.
21. The Plaintiff pleads the Defendant was negligent in failing to recognize its procedures, if any, for reviews, if any, of its electronic and other data storage systems for maintaining personal health information and/or private medical records of patients were adequate.
22. The Plaintiff pleads the Defendant was negligent in failing to ensure that its standards, if any, for maintenance of personal health information and/or confidential private records, and its review of the standards fell below the reasonable standard of care expected of the Defendant.
23. The Plaintiff pleads the Defendant's employee(s) either intentionally and/or negligently accessed the Plaintiff's and Class Members' private, confidential medical records and personal health information which the employee(s) knew, or ought to have known, were private and confidential and they thereby breached the Plaintiff's confidentiality, right to privacy and right to seclusion for which the Defendant is vicariously liable.

IV. FIDUCIARY DUTY

24. The Plaintiff pleads the Defendant was in a fiduciary relationship to the Plaintiff and Class Members and had a duty of utmost faith to be forthright, open and candid with the Plaintiff and Class members and to not withhold information from the Plaintiff and Class Members. The Plaintiff pleads that the Defendant exercised its discretion not to tell the Plaintiff and Class Members of this breach of privacy for a period of eight (8) months or more. In so doing the Defendant deprived the Plaintiff and Class Members of the knowledge that information going to the biographical core of their personal being had been accessed by a person without valid reason and in so doing denied the Plaintiff and Class Members the opportunity to take possible steps to protect themselves from the misuse of the information, or to take other self-protection and precautionary action the Plaintiff and the Class Members deemed appropriate or necessary in the circumstances. The Plaintiff and Class Members were solely subject to the Defendant's discretion as to when, if at all, the Defendant would release the information the Plaintiff and Class Members private, confidential medical records and personal health information had been accessed.
25. The Plaintiff pleads the Defendant breached its fiduciary duty to the Plaintiff and Class Members by not informing them sooner of the breach and in so doing caused the Plaintiff losses and damages.
26. The Plaintiff repeats the proceeding paragraphs and pleads the Defendant was in a fiduciary relationship to protect the private, confidential medical records and personal health information of the Plaintiff and Class Members going to the biographical core of personal information which the Plaintiff and Class Members wished to maintain and control from dissemination and which the Defendant had in its sole care, control and custody, and the Defendant breached its fiduciary duty to protect the Plaintiff's and Class Members privacy and confidentiality.

V. VICARIOUS LIABILITY

27. The Plaintiff pleads the Defendant's employee(s), without valid reason, intentionally intruded on the seclusion of the Plaintiff's and Class Members' private medical records in the course of her employment.
28. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant is vicariously liable for the actions of the Defendant's employee(s).

VI. BREACH OF CONTRACT

29. The Plaintiff pleads the Defendant was in a contractual relationship with the Plaintiff and the Class Members to provide medical services generally, to the Plaintiff and Class Members, and there was an implied term in the contractual relationship the Defendant would keep the Plaintiff's and Class Members' private, confidential medical records and personal health information from being accessed by individuals without a valid reason. Furthermore, the Plaintiff pleads there was an implied term of that contractual relationship to ensure the Defendant would employ individuals, including the employee(s) who accessed the Plaintiff's and Class Members' records without valid reason, and who were properly trained in the hospital's principles, policies, procedures, practices and operations of the Plaintiff's and Class Members' right to privacy. The Plaintiff pleads the Defendant breached its contractual duty to the Plaintiff and Class Members, and the Plaintiff suffered damages as a result of the breach of contract.

VII. STATUTORY DUTIES

(a) Privacy Act, 1981, c. 6

30. The Plaintiff pleads 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. The Plaintiff pleads the Privacy Act, 1981, c. 6, as amended. The Plaintiff pleads the Defendant has acknowledged her personal health information and that of more than 1,000 other individuals was accessed without valid reason by an employee(s) of the Defendant but, not limited to the period June 2011 to May 2012. The Plaintiff pleads that this constitutes a breach of the Privacy Act. The Plaintiff pleads the Defendant is vicariously liable for the Defendant's employees' breaches of the Privacy Act.
31. The Plaintiff further pleads the Defendant failed establish or enact sufficient, or any, safeguards to protect the Plaintiff and Class Members from its employee(s) violating the Plaintiff's and Class Members' statutory right to have privacy.
32. The Plaintiff pleads she suffered damages as a result of the Defendant's failure to prevent the violation of the Plaintiff's and Class Members privacy.

(b) Personal Health and Information Act, 2008 c. P-7.01

33. The Plaintiff generally pleads the provisions of the Personal Health and Information Act. The Plaintiff pleads the Defendant is an "authority" as defined in Section 2(1)(b) of the Personal Health and Information Act.
34. The Plaintiff pleads the Defendant is a custodial under the Personal Health and Information Act, as defined in Section 4(1)(a) of the Personal Health and Information Act.
35. The Plaintiff pleads the Defendant collected information as contemplated as in Section 5 of the Personal Health and Information Act.
36. The Plaintiff pleads the Defendant generally failed to establish adequate, or any, policies, practices or procedures to ensure its employees understood their obligations, and failed to take reasonable steps to secure the personal health information of the Plaintiff and the Class Members as set out in sections 13, 14, 15 of the Personal Health and Information Act.
37. The Plaintiff pleads the Defendant breached its statutory duty in relation to the collection, storage, transportation and safe guarding of the personal and confidential, medical records and personal health information, collected by the Defendant, from the Plaintiff and Class Members.
38. The Plaintiff pleads it was reasonably foreseeable that harm to the Plaintiff and the Class Members would result from the breach of the Defendant's statutory duty.
39. The Plaintiff pleads she and the Class Members are entitled to damages as a result of the breach of the statutory duty.

(c) Canadian Charter of Rights and Freedoms

40. The Plaintiff pleads she and the Class Members are entitled to protection of right of life, liberty and security of the person and the right not to be deprived thereof except in accordance with principles of fundamental justice as set out in Section 7 of the Canadian Charter of Rights and Freedoms.
41. The Plaintiff pleads the Defendant breached its Charter duty in relation to the collection, storage, transportation and safeguarding of personal and confidential medical information and personal health information collected by the Defendant from the Plaintiff and the Class Members.

42. The Plaintiff pleads it was reasonably foreseeable to the Defendant that harm could result to the Plaintiff and the Class Members from a breach of the Defendant's Charter duty.
43. The Plaintiff pleads for damages pursuant to s. 24(1) of the Charter of Rights and Freedoms Act for the breach of the Defendant's Charter duty.

VIII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

44. The Plaintiff states that the conduct of the Defendant's employee(s), for which the Defendant is vicariously liable, was willful, deliberate, outrageous callous, reckless, highhanded and constituted a gross violation of the privacy rights and on intrusion upon seclusion of the Plaintiff and Class Members and a breach of the Defendant's statutory duty. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages.

IX. SPECIAL DAMAGES

45. The Plaintiff pleads she has suffered loss of work and loss of income as a result of the Defendant's actions and seeks special damages.

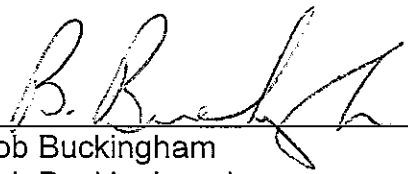
X. DAMAGES/RELIEF SOUGHT

46. The Plaintiff repeats the foregoing paragraphs and states as a result of the Defendant's negligence, its breach of contract, its breach of statutory duty, its employee(s)' negligent and/or intentional breach of the Plaintiff's and class members' right, the doctrine of vicarious liability, the Plaintiff and Class Members have suffered losses, which said losses were foreseeable to and by the Defendant.
47. 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(s);
 - (c) damages for the breach of privacy and/or intrusion upon seclusion;
 - (d) damages for the negligence;

- (e) damages for intentional breach of privacy and other rights;
- (f) damages pursuant to section 24(1) of the Charter;
- (g) damages for breach of contract;
- (h) aggravated, punitive and/or exemplary damages;
- (i) special damages, to be determined;
- (j) costs, including the fees of expert witnesses in attending at discovery and/or trial and the HST on same; and
- (k) sufficient costs of providing appropriate and sufficient notice to the Class Members of this action and for administering the proposed Class Action for the benefit of the Class Members;
- (l) interest pursuant to Judgment Interest Act, R.S.N. 1990, c. J-2; and
- (m) such further and other relief as this Honourable Court deems just, equitable and appropriate in all of the circumstances.

48. The Plaintiff proposes 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 20th day of August, 2012.



Bob Buckingham
Bob Buckingham Law
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St. John's, NL A1C 1T2
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TO: The Defendant
Eastern Regional Health Authorities
Level 1, Room 1345
Health Sciences Centre
Prince Phillip Drive
St. John's, NL A1B 3V6

ISSUED AT St. John's, in the Province of Newfoundland and Labrador this 20
day of August, 2012.

Ssd: Suzanne Stacey
Clerk of the Court

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PLAINTIFF

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EASTERN REGIONAL HEALTH AUTHORITY

DEFENDANT

NOTICE TO DEFENDANT

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff(s) are entitled to, without further notice to you unless within 10 days. After service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's a defence and unless within the same time a copy of your defence is served upon the Plaintiff(s) of the Plaintiff(s) solicitor(s) at the Plaintiff's solicitor(s) stated address(es) 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 \$ (or such sum as may be allowed on taxation) for costs to the Plaintiff(s) or the Plaintiff's solicitor(s) within days from the service of this notice upon you, then this proceeding will be stayed.

TO:

The Defendant
Eastern Regional Health Authorities
Level 1, Room 1345
Health Sciences Centre
Prince Phillip Drive
St. John's, NL A1B 3V6

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AFFIDAVIT OF SERVICE
(PERSONAL SERVICE)

I, _____, of the City of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. THAT on ____ day of August, 2012 at approximately ____ a.m./p.m. I served the Defendant with a Statement of Claim by leaving a copy with _____.
2. THAT _____ accepted the attached Statement of Claim in my presence.
3. THAT I was able to identify the person by _____ identifying himself / herself as the above _____.
4. THAT I understand it is a criminal offence to give false information in an Affidavit.

SWORN TO at the City of St. John's,
Newfoundland and Labrador, this ____
day of _____, 2012, before me:
