

COPY

2023 01G **5425** CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

FRED HARNUM

FIRST PLAINTIFF

AND:

ALLISON GEORGE

SECOND PLAINTIFF

AND:

**NEWFOUNDLAND AND LABRADOR
HEALTH SERVICES**

FIRST DEFENDANT

AND:

**HIS MAJESTY THE KING IN RIGHT
OF NEWFOUNDLAND AND LABRADOR**

SECOND DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

STATEMENT OF CLAIM

THE PARTIES

1. The First Plaintiff, Fred Harnum, is a resident of the Province of Newfoundland and Labrador. His address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2. He brings this action on his own behalf and on behalf of a proposed class of similarly situated persons.
2. The Second Plaintiff, Allison George, is a resident of the Province of Newfoundland and Labrador. Her address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2. She brings this action on her own behalf and on behalf of a proposed class of similarly situated persons.
3. The First Defendant, Newfoundland and Labrador Health Services is the unified Provincial Health Authority which, at the time of this cause of action arose, was comprised of four regional health authorities (Eastern Health Authority, Western Health

Authority, Central Health Authority, and Labrador Grenfell Health Authority) and the Newfoundland and Labrador Centre for Health Information. Its address for service is Executive Office – Level 1 – Room 1345, Health Sciences Centre, Prince Phillip Drive, St. John's, NL A1B 3V6.

4. The Second Defendant. His Majesty the King in Right of Newfoundland and Labrador, was at all times material and relevant to this matter represented by the Minister of Health and Community Services, and was responsible for the overall strategic direction and priorities for the health and community services system throughout Newfoundland and Labrador, including directing, controlling and approving funding for the Province's Health Authorities and the Newfoundland and Labrador Centre for Health Information. Its address for service is P.O. Box 8700, 1st Floor, West Block, Confederation Building, St. John's, NL A1B 4J6.
5. To facilitate the provision of medical and health service in the Province of Newfoundland and Labrador, the Second Defendant has implemented by legislation a medical care plan. The First Defendant (and its predecessors) implements the plan. The Newfoundland and Labrador Medical Care Plan (MCP) is a publicly administered comprehensive plan of public medical care insurance which was introduced on April 1, 1969. MCP covers the cost of insured physician services for residents of the province of Newfoundland and Labrador who have met eligibility criteria to register as MCP beneficiaries. MCP beneficiaries are also entitled to coverage of insured medical services received in a hospital under the Hospital Insurance Plan (HIP).
6. At all times material to this matter the First Plaintiff met the eligibility criteria to register as an MCP beneficiary and was an MCP beneficiary and recipient of medical services in the Province of Newfoundland and Labrador. Sometime after the cyber attack, as detailed on both occasions hereafter, the First Plaintiff attended at a clinic for medical services on two occasions only to be told the attending clinician was not able to find or locate his medical records on the provincial record keeping system. The First Plaintiff believes the loss of this information is related to the cyber attack.

7. At all times material to this matter the Second Plaintiff met the eligibility criteria to register as an MCP beneficiary and was an MCP beneficiary and recipient of medical services in the province of Newfoundland and Labrador.

THE CLASSES

8. The Plaintiff brings this action under the *Class Actions Act* SNL 2001 c. C-18.1 on their own behalf and on behalf of two classes, namely:

Patient Class:

All persons who had their patient information accessed and/or stolen in the 2021 cyber attack, whether or not they received a direct notification letter from the Defendant, including patients of Central Health from 2006 to 2021, patients of Labrador Grenfell Health from 2013-2021, patients of Eastern Health from 2010 to 2021, any patient who had their blood work/specimens sent to Eastern Health for specialized testing from 2010-2021, and all patients who had COVID-19 testing within and across Newfoundland and Labrador between 2020 and 2021.

Employee Class:

All persons who were employed by Eastern Health at any point in time between 1993 and 2021, Central Health at any point between 1993 and 2021, and Labrador-Grenfell Health between 2013-2021, who had their personal information accessed and stolen in the 2021 cyber attack and whose remedy did not fall under a Collective Agreement entered into between a union and the First Defendant, or one of the now-amalgamated Health Authorities.

BACKGROUND

9. This is a proposed class action proceeding seeking damages for class members who had their personal data breached by hackers in the “2021 cyber attack”, which, according to the Office of the Information and Privacy Commissioner, was the largest of its kind ever experienced in this province, and one of the largest in Canadian history to date.
10. The 2021 cyber attack led to an internal review completed by the Provincial government, released in March, 2023, and an extensive, independent review conducted by the Office of

the Information and Privacy Commissioner. The Privacy Commissioner's report, released in May, 2023, made several conclusions, including:

- a. The personal health information and personal information taken in the cyber attack was highly sensitive information that deserved the highest degree of protection.
- b. A high impact ransomware attack against the province's health care information systems was foreseeable.
- c. In the circumstances, in light of the sensitivity of the information and the foreseeability and likelihood of significant harm to privacy that could result from a cyber attack, the Centre for Health Information, Eastern Health, Central Health, and Labrador-Grenfell Health did not have reasonable security arrangements in place to protect personal health information and personal information at the time of the cyber attack, contrary to section 15(1)(a) of *Personal Health Information Act* and 64(1)(a) of *Access to Information and Protection of Privacy Act, 2015*.
- d. That the Defendants failed to implement appropriate records management policies and procedures relating to the retention and destruction of personal information and personal health information prior to the cyber attack, which unnecessarily left this information vulnerable to a breach of privacy.
- e. That the Defendants did not provide timely notice or adequate information to impacted parties when they ought to have.

MATERIAL FACTS

11. On Saturday, October 30th, 2021, the Second Defendant released a public advisory alerting residents of an Information Technology (IT) systems outage that was affecting "a number of health-related online services".
12. On Monday, November 1st, 2021, at a press conference, the provincial Health Minister notified the public that the province may have been victims of a cyber attack, the nature and extent of which was still under investigation.

13. On Tuesday, November 9th, 2021, ten days after the cyber attack became known to the Defendants, the Second Defendant issued a public advisory stating that “some personal information and personal health information was accessed from the systems” in the cyber attack. The Second Defendant stated the full extent of the information taken was not known at the time, but it impacted both patients and current and former employees of Eastern Regional Health Authority and Labrador-Grenfell Regional Health Authority.
14. On Wednesday, November 10th, 2021, the Second Defendant notified the public that former and current patients and employees of Central Regional Health Authority had also been accessed by the cyber attack.
15. On Friday, November 12th, 2021, officials from the Second Defendant confirmed that not only was employee information accessed by an unauthorized party, but that employee information had been stolen. The information stolen included names, addresses, contact information, and social insurance numbers.
16. On Monday, November 15th, 2021, officials confirmed that patient information had not just been accessed in the cyber attack, but that it had been stolen. The stolen patient information included names, addresses, phone numbers, emails, dates of birth, MCP numbers, maiden names, marital status and appointment details.
17. On March 30th, 2022, media reported that since February, 25th, 2022, the Defendants had known that the cyber attack thieves had stolen more information than originally thought, including patient and employee information dating as far back as 1996.
18. This cyber attack was the largest in provincial history, and one of the largest in Canadian history.
19. The Plaintiffs submit that the cyber attack was reasonably foreseeable and the Defendants did not take appropriate steps to prevent it.
20. Since at least June, 2019, the Defendants were aware that there was a high risk that their information systems would be the target of a ransomware attack. They were aware that

the health care industry in particular was a highly targeted industry, that the number of cyber attacks was increasing, and that the methods of attack were becoming more sophisticated. Similarly, they were aware that the impact of a cyber attack on the health care system would be damaging and would result in service disruptions and data losses.

21. The Office of the Information and Privacy Commissioner's investigation into cyber attack found that a high-impact ransomware attack against the province's health care information systems was foreseeable. The investigation also concluded that, in the circumstances, in light of the sensitivity of the information and the foreseeability and likelihood of significant harm to privacy that could result from a cyber attack, the Centre, Eastern Health, Central Health, and Labrador-Grenfell Health did not have reasonable security arrangements in place to protect personal health information and personal information at the time of the cyber attack.

THE PROPOSED REPRESENTATIVE PLAINTIFFS

22. The investigation of the cyber attack by the Office of the Information and Privacy Commissioner, released on May 23, 2023, made the following findings with respect to how many people had their information stolen in the attack:
 - a. the Defendants could not provide the exact numbers of how many people were impacted;
 - b. some of those impacted received direct notice:
 - i. 66,792 people received letters because their personal health information and personal information had been taken from the Eastern Health Network Drive;
 - ii. 18,527 current employees of Eastern Health, Central Health and Labrador Grenfell Health were sent direct notification through emails, meetings, and phone calls.
 - iii. 19,787 past employees of Eastern Health, Central Health and Labrador Grenfell Health were sent letters;
 - iv. 1,025 people whose SIN information had been stolen were sent letters;

- c. The following people were victims of the attack but did not necessarily receive notice:
- i. patients of Central Health from 2006 – 2021;
 - ii. patients of Labrador Grenfell Health from 2013 – 2021;
 - iii. patients of Eastern Health from 2010 – 2021;
 - iv. all patients in Newfoundland and Labrador who had their blood work/specimens sent to Eastern Health for specialized testing from 2010 - 2021;
 - v. all patients who had COVID-19 testing in Newfoundland and Labrador up to 2021;
 - vi. an unknown number of former employees of Eastern Health from 1993 – 2006;
 - vii. an unknown number of former employees of Central Health from 1993 – 2007.
23. The Privacy Commissioner concluded that despite there being approximately 106,311 people who received direct notice, the vast majority of those impacted received no notice and the true number of those impacted is likely in the hundreds of thousands.
24. The First and Second Plaintiffs did not receive direct notice that their information had been stolen. However, upon learning of the findings of the Privacy Commissioner, both Plaintiffs fall into the enumerated categories above of victims who received no notice.
25. The Plaintiffs have experienced significant distress upon learning that their medical and personal information had been stolen due to the Defendant's negligence. They have experienced anxiety and worry that their personal details will be used inappropriately in the future by bad actors, to the Plaintiffs' detriment.
26. The First Plaintiff has dealt with the additional stress upon learning that his medical files have seemingly disappeared.

CAUSES OF ACTION

a. Systemic Negligence

27. The Defendants owed both a common-law duty, and a statutory duty, to the Plaintiffs and other Class Members to use reasonable care in the collection, storage, and retention of their personal and health information and a duty to ensure that this personal and health information was safe, kept private, and protected and that it would not be subject to unauthorized disclosure to a third party. The Defendants' duties were not delegable.
28. The legislative framework which outlines the Defendants' duties with respect to the protection of health information is outlined in the *Personal Health Information Act*, SNL 2008, c P-7.01, specifically, section 13 which states:
 13. (1) A custodian that has custody or control of personal health information shall establish and implement information policies and procedures to facilitate the implementation of, and ensure compliance with, this Act and the regulations respecting the manner of collection, storage, transfer, copying, modification, use and disposition of personal information whether within or outside the province.
 - (2) The information policies and procedures referred to in subsection (1) shall include policies and procedures to
 - (a) protect the confidentiality of personal health information that is in its custody or under its control and the privacy of the individual who is the subject of that information;
 - (b) restrict access to an individual's personal health information by an employee, agent, contractor or volunteer of the custodian or by a health care professional who has the right to treat persons at a health care facility operated by the custodian to only that information that the employee, agent, contractor, volunteer or health care professional requires to carry out the purpose for which the information was collected or will be used;
 - (c) protect the confidentiality of personal health information that will be stored or used in a jurisdiction outside the province or that is to be disclosed by the custodian to a person in another

jurisdiction and the privacy of the individual who is the subject of that information; and

(d) provide for the secure storage, retention and disposal of records to minimize the risk of unauthorized access to or disclosure of personal health information.

(3) The information policies and procedures referred to in subsection (1) shall include appropriate measures to address the risks associated with the storage of personal health information, taking into account the manner and form in which the personal health information is recorded, the location of storage and the degree of sensitivity of the personal health information to be protected.

29. In addition to the above legislation, the Defendants' duties with respect to the protection of employment information and non-health-related personal information are outlined in the broader *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c A-1.2:

Protection of personal information

64. (1) The head of a public body shall take steps that are reasonable in the circumstances to ensure that

(a) personal information in its custody or control is protected against theft, loss and unauthorized collection, access, use or disclosure;

(b) records containing personal information in its custody or control are protected against unauthorized copying or modification; and

(c) records containing personal information in its custody or control are retained, transferred and disposed of in a secure manner.

(2) For the purpose of paragraph (1)(c), "disposed of in a secure manner" in relation to the disposition of a record of personal information does not include the destruction of a record unless the record is destroyed in such a manner that the reconstruction of the record is not reasonably foreseeable in the circumstances.

30. The facts surrounding the cyber attack demonstrate that the Defendants' breached their common-law and statutory standards of care owed to the Plaintiffs and Class Members in the years leading up to the 2021 cyber attack. The Plaintiffs state these breaches were systemic in nature and include:
- a. Failure to take appropriate (or any) steps to protect the Plaintiffs' private information from a cyber attack despite knowing there was a high risk of such an attack, and that the current system did not offer adequate protection;
 - b. Failing to meet international cyber security standards;
 - c. Failing to properly encrypt sensitive information, including medical, personal and employee information, and improperly storing a large volume of unencrypted information on network drives available to anyone with network credentials;
 - d. Failing to complete regular penetration testing to ensure that mitigations were implemented, good practices were reinforced and potential vulnerabilities were identified;
 - e. Failing to implement an anti-phishing program, including malware detection, software and system patching, strong credentialling, data and hardware encryption, and user awareness and training;
 - f. Failing to employ regular and comprehensive anti-malware gateway patching, a known effective firewall against malware;
 - g. Failing to actively or adequately monitor systems for indications of compromise, and failing to take steps to respond to prior alerts.
 - h. Failing to properly develop and enforce a retention and destruction policy, resulting in information which ought to have been long since destroyed and unavailable, nonetheless being accessed and stolen.
31. The Plaintiffs state that in the days and weeks following the cyber attack, the Defendants failed to comply with their duties to notify impacted individuals, and their conduct after the breach to give required notice fell below the required standard of care and amounts in negligence.

32. The Plaintiffs repeat the preceding paragraphs and plead that despite clear evidence that the Defendants knew that personal information and personal health information was both accessed and taken by November 8th, 2021, it took almost 500 days for more information on what was taken and approximately how many individuals were actually impacted. Even still, though over 106,000 individuals received direct notification that the cyber attack impacted them personally, it is now understood that the majority of proposed Class Members impacted received no notice.
33. The Plaintiffs repeat the preceding paragraphs and plead that the Defendants have still not revealed detailed facts on what information was taken or if they have secured confidence the said information will not be used, shared or distributed by bad actors in the future.
34. Due to the delays in giving proper notice, impacted individuals had no knowledge on how to begin their own efforts to track fraudulent activity or phishing and ransomware in their own systems and accounts.

b. Tort of Breach of Confidence

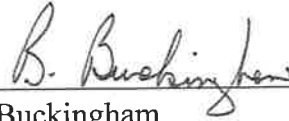
35. The Plaintiffs submit that the private and medical information which was provided to the Defendants by Class Members was confidential and was communicated to the Defendants in confidence.
36. The Plaintiffs repeat paragraph 33.
37. The Plaintiffs had the right to expect that proper protective measures would be taken by the Defendants to safeguard the information from unauthorized access. The private information provided to the Defendants was improperly (or not at all) protected, and this constitutes a misuse of the information by the Defendants, and therefore amounts to the tort of breach confidence.

RELIEF SOUGHT

38. The Plaintiffs repeat the foregoing paragraphs and state that as a result of the Defendants' negligence and breaches described above, the Plaintiffs and class members suffered damages for which they are entitled compensation.
39. The Plaintiffs therefore seek the following relief on their own behalf and on behalf of the Classes, all to be assessed and quantified based upon evidence at trial:
- a. damages for negligence;
 - b. damages for breach of confidence;
 - c. damages for pain and suffering, nervous shock, and loss of enjoyment of life;
 - 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, to be determined;
 - 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

40. 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 9th day of November, 2023.



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for

Eli Baker
Counsel for the Plaintiffs
Eli Baker Law Office
132 Ogilvie Street
Gander, NL A1V 2R2
Tel: 709-727-1537
legaleli@gmail.com

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

AND TO: The Second Defendant
His Majesty in Right of Newfoundland and Labrador
Department of Health and Community Services
PO Box 8700
1st Floor, West Block
Confederation Building
St. John's, N: A1B 4J6

ISSUED AT St. John's, in the Province of Newfoundland and Labrador, this 9 day of
Nov., 2023.

Sgd D Power

COURT
OFFICER

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

AND TO: The Second Defendant
 His Majesty in Right of Newfoundland and Labrador
 Department of Health and Community Services
 PO Box 8700
 1st Floor, West Block
 Confederation Building
 St. John's, N: A1B 4J6

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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 _____, 2023,
in the presence of:
