

COURT FILE NO.: N/C/93/2013

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MIRAMICHI

BETWEEN:

ALTA CHRISTINE LITTLE

Plaintiff,

- and -

HORIZON HEALTH NETWORK, a corporation
incorporated under the laws of the Province
of New Brunswick

REGIONAL HEALTH AUTHORITY B,
a corporation incorporated under the laws
of the province of New Brunswick

Defendant

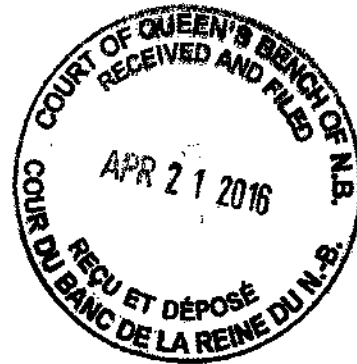
Brought under the *Class Proceedings Act*, RSNB 2011, c 125

Order for Certification

Before the Honourable Justice Jean-Paul Ouellette

THIS MOTION is made by the Plaintiff for an Order for certification of the action as a class proceeding;

UPON READING the materials filed by the Plaintiff, including the Affidavits of: Alta Christine Little, sworn the 21st day of August 2015; Dr. Lawrence F. Muscarella, sworn the 17th day of



August 2015 (as redacted), and Michael Dull, sworn the 27th day of August 2015, and on reviewing and hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND UPON IT APPEARING that the within matter was adjudicated upon by the Honourable Justice Jean-Paul Ouellette at a hearing held on February 25, 2016, which was attended by counsel for the Plaintiff (in person) and counsel for the Defendant (by teleconference);

AND UPON IT APPEARING that this Order is in accordance with His Lordship's Decision rendered February 25, 2016;

1. **THIS COURT ORDERS** that the within action is certified as a class proceeding on the conditions set out below.

CLASS AND CLASS REPRESENTATIVE

2. **THIS COURT ORDERS** that the class for the within class proceeding is defined as:

All patients of the colposcopy clinic at the Miramichi Regional Hospital, and their matrimonial and common-law partners, who received correspondence in 2013 from the Horizon Health Network advising of the risk of infection associated with the colposcopy clinic not following recommended cleaning practices on forceps used for biopsies (the "Class").

3. **THIS COURT ORDERS** that Alta Christine Little be appointed as the representative plaintiff of the Class for the within class proceeding.

COMMON ISSUES

4. **THIS COURT ORDERS** that the common issues are stated to be:
 - i. Did the Defendant breach its duty of care in tort to Class Members:

- a. In respect of its provision of medical services to Class Members between 1999 and May, 2013 at the colposcopy clinic of the Miramichi Regional Hospital (the "Clinic"); and
 - b. In respect of its subsequent notification to patients;
and, if so, when?
- ii. Did the Defendant enter into a contractual relationship with Class Members?
 - a. If so, what were the implied terms of the contract; and
 - b. If so, did the Defendant breach the implied terms of its contract with Class Members:
 - i. In respect of its provision of medical services to Class Members between 1999 and May, 2013 at the Clinic; and
 - ii. In respect of its subsequent notification to patients;
and if so, when?
- iii. Did the manner in which the Defendant communicated to Class Members that the Clinic "had not followed recommended cleaning practices on forceps used for biopsies" and that it "may have exposed some of our patients to a risk of infection" violate Class Members' privacy rights and/or constitute intentional intrusion upon seclusion of Class Members?
- iv. Did the manner in which the Defendant communicated to Class Members that the Clinic "had not followed recommended cleaning practices on forceps used for biopsies" and that it "may have exposed some of our patients to a risk of infection" breach the *Personal Health Information Privacy and Access Act*, SNB 2009, C. P-7.05 and the *Hospital Act*, SNB 1992, c. H-6.1?
- v. Did the actions of the Defendant in the cleaning and use of biopsy forceps constitute prima facie battery, in that the subsequent use of the forceps on Class Members constituted direct and offensive contact beyond what is generally accepted or expected in medical procedures?

NOTICE

5. **THIS COURT ORDERS** that the following means shall be used to notify members of the class of this action and certification of the class:
- a) That notice of certification ("Notice of Certification") to the members of the class be given pursuant to the Plaintiff's revised Litigation Plan attached as Schedule "A" to the Plaintiff's amended Notice of Motion; and
 - b) That the Defendant shall be responsible for all costs associated with distributing the Notice of Certification.

THIS COURT ORDERS that the Plaintiff's proposed form of Notice of Certification set forth in Schedule "A" to this Order is hereby approved.

OPT-OUTS

6. **THIS COURT ORDERS** that the members of the class who elect to opt-out of the class proceeding must do so in a manner and within a period of time to be fixed by the Court.

OPT-INS

7. **THIS COURT ORDERS** that members of the class who reside outside of the Province of New Brunswick may opt in to the class proceeding by doing so in a manner and within a period of time to be fixed by the Court.

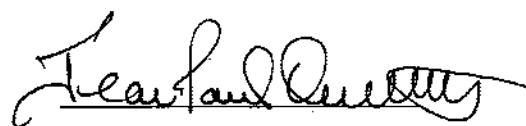
CASE MANAGEMENT SCHEDULE

8. **THIS COURT ORDERS** that a reasonable case management schedule for the efficient trial of this action on its merits is to be established.

OTHER

9. **THIS COURT ORDERS** that each party shall bear its own costs for this Motion.

DATED at Miramichi, in the Province of New Brunswick, this 18 day of April, 2016.

A handwritten signature in cursive script, appearing to read "Jean Paul Quinlan", written over a horizontal line.

SCHEDULE A

NOTICE OF CERTIFICATION OF THE MIRAMICHI COLPOSCOPY CLASS ACTION

Notice Of Certification:

Class Members are advised of certification of a class action lawsuit arising from the colposcopy clinic at the Miramichi Regional Hospital not following the recommended cleaning practices on biopsy forceps between 1999 and May 2013.

Who is included?

Class Members are all patients of the colposcopy clinic at the Miramichi Regional Hospital, and their matrimonial and common-law partners, who received correspondence in 2013 from the Horizon Health Network advising of the risk of infection associated with the colposcopy clinic not following recommended cleaning practices on forceps used for biopsies.

What is the Class Period?

1999 – May 2013 (see “Who is included?”).

What is the nature of the claims?

Compensation and/or damages for negligence, breach of contract, breach of privacy rights and battery.

Representative Plaintiff:

Alta Christine Little (Miramichi, NB)

Class Counsel Compensation:

The Representative Plaintiff has entered into a Contingency Fee Agreement. Should settlement or judgment be awarded in favor of the Class, the Class Counsel will receive a percentage of the net award, subject to Court approval.

Costs

If you are a Class Member who is not a Representative Plaintiff, you will not be liable for any legal costs of the Defendant should the trial be unsuccessful. However, if you are unsuccessful in your own individual claim, you may be liable for legal costs incurred by the Defendant in relation to that portion of the litigation. Class Members are encouraged to contact Class Counsel for further explanation of costs.

What options do Class Members have?

Class Members who reside in New Brunswick (“Resident Class Members”) can do nothing and will be part of the Class Action. The lawsuit will proceed and Resident Class Members may obtain compensation at some future date. A judgment on the common issues, whether favourable or not for the Class, will bind all Resident Class Members who do not opt-out.

Alternatively Resident Class Members may choose to be excluded from the Class and may opt-out of the class action. Those who opt out are not bound by any judgment on the common issues. To opt out, those who meet the definition above (see “Who is included?”) must send an “Opt-out Form,” signed by the Resident Class Member, to Class Counsel on or before July 1, 2016.

Class Members who reside outside of New Brunswick may opt into the proceeding by delivering a completed “Opt-In Form” to Class Counsel on or before July 1, 2016. For more information, or to access an Opt-Out or Opt-In Form, visit <http://www.wagners.co> or contact Class Counsel at the addresses below:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Office: 902-425-7330
Toll Free: 1-800-465-8794
Fax: 902-422-1233

Ches Crosbie Barristers
169 Water Street
St. John's, NL A1C 1B1
Office: 866-645-3190
Fax: 709-579-9671