Form 4.02A

2016 Hfx. No. 447198

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

RICHARD ROBERT MARTELL and **MICHAEL HARRY GERALD PERRIER**

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

Notice of Action – Amended October 14, 2016

TO: **THE ATTORNEY GENERAL OF NOVA SCOTIA**
1690 Hollis Street
P.O. Box 7
Halifax, Nova Scotia B3J 2L6

Court Administration
OCT 14 2016
Halifax, N.S.

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 amended statement of claim. The claim is based on the grounds stated in the amended 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
Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

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, The Law Courts, 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 addresses:

Wagners Law Firm
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, Nova Scotia B3J 1S9
Email: classaction@wagners.co

Documents delivered to these addresses 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 13th day of January, 2016.~~

Signed this 14th day of October, 2016.

RAYMOND F. WAGNER, Q.C.
Wagners
Counsel for the Plaintiffs

Prothonotary's certificate

I certify that this amended notice of action, including the amended attached statement of claim, was filed with the court on October 14, 2016

~~Prothonotary~~

SARAH DRYSDALE
Deputy Prothonotary

Form 4.02B

Amended Statement of Claim – Amended: October 7, 2016

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

I. OVERVIEW

1. Between 1913 and 1995 many deaf and hard of hearing children living in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador, and others, attended and/or resided at one or both of two segregated primary and secondary residential education institutions in Nova Scotia: (i) the School for the Deaf located in Halifax (the "Halifax School") and (ii) the Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired in Amherst (formerly the Resource Centre for the Hearing Handicapped, and originally the Interprovincial School for the Education of the Deaf) (the "Amherst School"). The institutions are collectively referred to herein as the "Schools".

2. Pursuant to various statutes in effect at the time, the Defendant (the "Crown") was responsible for all obligations and liabilities of the Schools. The Crown financed, supervised, managed, administered and operated, or caused and permitted the operation of, the Schools. The Crown, directly and through its agents, employees and servants, exercised control over the management and administration of the Schools and over all aspects of the living and learning environments of the students. The students were dependent on the Crown for their physical and emotional well-being and education. The students had no alternative options for obtaining an education.

3. Many of the students at the Schools were subjected to systemic physical, sexual and emotional abuse by unqualified and abusive staff (teachers and "houseparents"), friends or family of staff, and by other students. This systemic abuse occurred in an environment of tolerance and indifference.

4. The Crown failed to adequately detect or respond to the prolonged systemic abuse and mistreatment of these students.

5. The Plaintiffs bring this action on behalf of themselves and all former students who attended and/or resided at one or both of the Schools ~~and suffered physical, sexual and/or emotional abuse~~ (the "Class").

II. THE SCHOOLS

The Halifax School

6. The original institution in Halifax was founded in 1856, known then as the Institution for the Deaf and Dumb. It was renamed the School for the Deaf in 1913.

7. In 1856 the Institution for the Deaf and Dumb was founded through charitable donations. In 1857 the Crown provided an annual grant of $1,200. This was increased to $2,000 in 1860 and continued for approximately twenty more years. Until 1882, the Institution for the Deaf and Dumb relied in part on these Crown funds for its operation.

8. In April 1862, the Institution for the Deaf and Dumb was incorporated pursuant to *An Act to Incorporate the Directors of the Institution for the Deaf and Dumb at Halifax*, S.N.S. 1862, c. 73. Now incorporated, the institution became eligible for annual legislative grants and special grants-in-aid from the Crown.

9. On April 19, 1884, the Province of Nova Scotia enacted legislation "to decree unconditional free board and education for her deaf children" (*An Act in Relation to the Education of Deaf or Deaf-Mute Persons*, R.S.N.S. 1884, c. 15). Pursuant to this Act, the Crown provided an "allowance" to the Board of Directors of the Institution for the Deaf and Dumb on a per pupil basis, with funds matched by each municipality in which a deaf pupil's family resided. The Provincial Secretary was an *ex officio* member of the school's Board of Directors. In 1913 a legislative amendment renamed the institution The School for the Deaf.

10. The School for the Deaf operated under that name as an elementary and secondary school for deaf students from 1913 to 1961.

The Amherst School

11. Originally known as the Interprovincial School for the Education of the Deaf, this institution opened in Amherst in September 1961 by cooperative efforts between the Crown and the Government of the Province of New Brunswick, pursuant to an agreement between the Ministers of Education of Nova Scotia and New Brunswick. The Amherst School was fully funded by the Crown and by the Government of the Province of New Brunswick. Pursuant to the *Interprovincial School for the Deaf Act*, S.N.S. 1960, c. 7, all property belonging to or held by the Halifax School (at that time closed) became vested in the Crown to be used for the purposes of the Amherst School. Pursuant to the *Interprovincial School for the Deaf Act*, all obligations and liabilities of the Halifax School, and any body created in connection with it, were assumed by the Crown.

12. Students from Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador attended the Amherst School. Like the Halifax School, the Amherst School forbade students from using sign language and finger-spelling in the classroom.

13. The *Interprovincial School for the Deaf Act* was repealed on March 1, 1975 by the *Handicapped Persons' Education Act*, S.N.S. 1974, c. 194, as am. by S.N.S. 1990, c. 29. Pursuant to the *Handicapped Persons' Education Act* the institution was renamed the Atlantic Provinces Resource Centre for the Hearing Impaired (APSEA-RCHI). Under the *Handicapped Persons' Education Act*, all obligations and liabilities of the Interprovincial School for the Deaf, and any body created in connection with it, were assumed by the Crown. In 2010 the title of the legislation was amended to the *Atlantic Provinces Special Education Authority Act*.

14. In 1990, after protests by students, parents and members of the local deaf community, the high school program permitted American Sign Language and deaf culture courses for the first time. Until that time, deaf and hard of hearing students were forbidden from using their first language – sign-language – in the classroom.

15. The Amherst School was closed in 1995.

III. THE PARTIES

The Crown

16. The Defendant, the Attorney General of Nova Scotia, representing Her Majesty the Queen in right of the Province of Nova Scotia (the "Crown") is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.N.S. 1989, c. 360.

17. All references to the Crown are deemed to include all of its contractors, subcontractors, agents, servants, employees, appointees and departments.

18. The Crown, through and with its contractors, subcontractors, agents, servants, employees, appointees and departments, was at all times material and relevant to this proceeding responsible for the supervision, administration, financing, management and operation of the Schools.

The Representative Plaintiffs and Class

Richard Martell

19. The Plaintiff, Richard Martell, currently resides in the City of Halifax, Province of Nova Scotia. Mr. Martell is and always has been deaf.

20. In or about 1966, at the age of six, ~~73,~~ Mr. Martell~~, then thirteen years old,~~ was placed in the Amherst School for one year. Because he was deaf, it was the only school he could attend; the local school would not accommodate him because of his disability. After that first year, Mr. Martell left to attend the Ardmore School in Halifax. In 1973, at the age of thirteen, Mr. Martell was again placed in the Amherst School.

21. From approximately 1973 until 1979, Mr. Martell ordinarily resided, as did most of its students, at the Amherst School. He graduated from the Academic Department of the Amherst School in 1979.

22. Upon his arrival at the Amherst School, Mr. Martell was physically and verbally abused by the first "houseparent" (a role given to adult employees at the institution who were responsible for the care of the students) he encountered. The same houseparent repeatedly struck Mr. Martell and other students with a stick. Mr. Martell experienced physical abuse at the hands of at least two other houseparents. Often sticks were used to strike Mr. Martell and other students, sometimes in the genitals.

23. One of these houseparents repeatedly sexually abused Mr. Martell. He repeatedly performed oral sex on Mr. Martell. This occurred in various locations at the Amherst School, at a camp site to which students were often taken on weekends, and at the houseparent's home. Mr. Martell was told that if he did not cooperate he would be punished, that he would tell the other houseparents Mr. Martell had stolen and scratched his car, and that Mr. Martell had tried to grab his genitals. The abuser remained at the school for several years after Mr. Martell left, and was criminally charged and sentenced over two decades later.

24. Teachers, too, repeatedly physically and verbally abused Mr. Martell. He was often struck with a stick, but other objects such as books and wood (in woodworking class) were also used.

25. While attending the Amherst School Mr. Martell witnessed indifference to and tolerance of physical and sexual abuse between students. For example, one day Mr. Martell encountered two female students on the ground being groped by male students. When he informed a houseparent and school doctor about this, he was punished, in the form of spanking and being forced to pick up rocks on the football field every day for two weeks.

26. Like the other students, Mr. Martell was forbidden from using sign language and was punished if he did, despite the fact that he could not speak.

27. He was repeatedly degraded and humiliated by staff and teachers for being deaf.

28. While at the Amherst School, Mr. Martell witnessed the repeated sexual, physical and verbal abuse of several other students.

29. Since graduation, Mr. Martell has had difficulty sustaining employment, owing to the lasting effects of his troubled experience and abuse at the Amherst School and his poor education. He was formerly self-employed as a sign language consultant. He is currently unemployed.

Michael Perrier

30. The Plaintiff, Michael Perrier, currently resides in the City of Dartmouth, Province of Nova Scotia. Mr. Perrier is and always has been hard of hearing.

31. In or about 1961, Mr. Perrier, then eight years old, was placed in the Amherst School. From approximately 1961 until 1964~~72~~ Mr. Perrier ordinarily resided at the Amherst School. During the first approximately three ~~or four~~ years of his time at the Amherst School he attended day classes in Halifax. In or about 1964 Mr. Perrier left the Amherst School and attended Saint Patrick's School and Ardmore School in Halifax, before returning to the Amherst School in approximately 1967. Mr. Perrier graduated from the vocational program at the Amherst School in 1972.

32. During the approximately ~~eleven~~ eight years that Mr. Perrier resided at the Amherst School he was repeatedly physically abused by houseparents, often by being forcefully slapped. In one example, a houseparent slapped his stomach with such force that he had blood in his urine. Mr. Perrier attended the nurses' office for care and was told by the nurse to say nothing about the abuse.

33. Mr. Perrier was also often subjected to harsh and arbitrary punishments, frequently resulting from being misunderstood and having poor communication skills. Like the other students, he was punished for using sign language.

34. He is currently self-employed. He owns and operates a home construction business. In the past he has worked as a window and door technician.

35. As a result of the systemic abuses they have suffered, the Plaintiffs have had difficulties adapting to adult life, in particular as it relates to employment and personal relationships.

36. The Crown, directly and through its agents, contractors, employees and servants, created and fostered an atmosphere of tolerance, indifference and encouragement of emotional abuse and physical and sexual assault and battery of the Plaintiffs and the Class Members, such that the repugnant practices pervaded the relationships between the dependent students and the staff, on the one hand, and among the students, on the other. The Crown, through its agents, contractors, subcontractors, employees and servants, took advantage of the Plaintiffs' and Class Members' physical vulnerabilities, notwithstanding that they were dependent on the Crown for their physical and emotional wellbeing and education at the time of the misconduct.

37. 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 the proposed 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 the Plaintiffs, that the Plaintiffs' claims raise common issues, and that a class proceeding is the preferable procedure for the resolution of such common issues.

IV. CAUSES OF ACTION

Breach of Fiduciary Duty

38. All students who attended or resided at one of the Schools were owed the highest fiduciary duty by the Crown. The Crown operated or caused to be operated the Schools. The Plaintiffs and Class Members were dependent on the Crown for their physical and emotional wellbeing and education at the time of the misconduct. The vulnerabilities of the children and youth – by virtue of age and their residence in the Schools – were compounded by their sensory impairment. It was a relationship of extreme dependence. There was a reasonable expectation that the Crown would act in the interests of their care and safety, extending to their protection from intentional torts perpetrated on them while at the Schools.

39. By virtue of:

a) The Crown's sole discretion to make decisions regarding the operation,

management and administration of the Schools;

b) The Crown's sole discretion to make decisions regarding the education and care of the Class Members while in attendance and/or residence at the Schools; and

c) The relationship between the Class Members and the Crown, being one of trust, reliance and dependence by the Class Members on the Crown at all material times,

the Crown owed the Plaintiffs and Class Members a fiduciary duty to act in their best interests and to ensure that reasonable care was taken to protect them from harm, including sexual and physical assault and battery, and to provide at a minimum basic services of care and education.

40. The Crown's role was quasi-parental. Its fiduciary duty was similar to the fiduciary duty owed by a parent or guardian to a child under his or her care and control; that is, to act loyally in the best interests of the child and not to put his or her own, or others', interests ahead of the child's interests in a manner that abuses their trust. At all material times, the Plaintiffs and Class Members placed their trust in the Crown and were entitled to rely, and did rely, to their detriment, upon the Crown to fulfill its fiduciary obligations.

41. The Crown breached its quasi-parental fiduciary duty to act loyally in the best interests of the Plaintiffs and Class Members and not to put its own or others' interests ahead of them in a manner that abused the Plaintiffs' and Class Members' trust. The breaches of its fiduciary duty include that it:

a) chose not to take a proper and good faith interest in the operation and supervision of the Schools, despite its quasi-parental, or in *loco parentis*, role in relation to the students;

b) chose not to investigate physical injuries (including of a sexual nature) sustained by students as a result of the assault and battery committed by the Crown's agents, employees and servants;

c) did not report conduct which is contrary to the Criminal Code of Canada to the appropriate law enforcement agency or any other appropriate entity upon receiving a complaint;

d) provided inadequate medical care for students;

e) did not investigate or report allegations of physical, emotional or sexual abuse;

f) responded inadequately, or chose not to respond at all, to complaints or recommendations which were made concerning the Schools, both with respect to their conditions and the treatment of students;

g) improperly and inadequately screened applicants for staff positions at the Schools, including failing to consistently conduct complete criminal background checks or reference checks;

h) hired unqualified or unsuitable staff who were not qualified to meet the needs of the students under their care and supervision;

i) chose not to properly or adequately supervise, monitor, police or assess the agents, employees, servants, and caregivers (e.g. houseparents and other staff) entrusted with the care of the Plaintiffs and Class Members;

j) improperly and inadequately supervised the environment in the Schools;

k) provided inadequate financial resources or support to properly care and provide for the Plaintiffs' and Class Members' physical, emotional and educational needs;

l) permitted unhealthy, harsh and inappropriate punishments, including assault and battery, to be perpetrated against the Plaintiffs and Class Members;

m) created, tolerated and fostered an atmosphere of fear and intimidation in which the Plaintiffs and Class Members were threatened with, and sustained, severe punishments, including physical violence;

n) subjected the Plaintiffs and Class Members to an atmosphere of tolerance of physical and sexual assaults and battery and emotional abuse;

o) chose not to investigate, evaluate or supervise (such as by visiting or obtaining reports, or alternatively by making sufficient visits or obtaining sufficient and adequately detailed reports) the nature and quality of the care and education the Plaintiffs and Class Members received while under the responsibility of the Crown; and

p) chose not to ensure adequate care was provided to the Plaintiffs and Class Members financially, emotionally, physically or otherwise, and took no or inadequate steps to correct shortcomings in and omissions from such care.

42. The Crown knew of, or was willfully blind to, the conditions at the Schools, including the persistent physical and sexual abuse, the degrading and harsh punishments inflicted on the students, and the inadequate attention and resources being devoted to the students.

43. The Crown put its own interests and those of its agents, servants, employees and others ahead of the Plaintiffs' and Class Members', and committed harmful acts that amounted to a betrayal of trust and loyalty. In order to avoid the expenditure of effort and resources, it chose not to adequately inquire into the qualifications of persons who cared for the Class Members, or to properly educate the Class Members. In order to avoid negative attention and shame brought to the Crown and its agents, servants and employees, it turned a blind eye to the physical, sexual and emotional abuse and neglect of the Plaintiffs and Class Members. It enabled the sexual gratification and violent impulses of its agents, servants and employees at the expense of the dependent Plaintiffs and Class Members.

44. The Crown knew or ought to have known of the wrongdoing suffered by the Plaintiffs and Class Members. It could foresee the consequences of the abuse and of the lack of proper care and education being provided to them. As a result of these breaches, the Plaintiffs and Class Members suffered damages, as set out in paragraphs 51-53.

Systemic Negligence

45. The Crown was responsible for the provision of education and around-the-clock care to deaf and hard of hearing students. The Plaintiffs and Class Members belong to a distinct

and identifiable segment of the population as a result of their disabilities. Their vulnerabilities as children and youth were heightened because of this.

46. The Crown owed the Plaintiffs and Class Members a duty of care with respect to their treatment and care and the conditions at the Schools. In particular, and without limitation, the Crown owed the Plaintiffs and Class Members a duty to protect them from, and to not permit to be inflicted upon them, physical and sexual battery and assault and emotional abuse.

47. The Crown knew or ought to have known of the physical, sexual and emotional abuses being perpetrated at the Schools, and the substandard care and education being provided, and yet it took no or no adequate steps to prevent, halt or eliminate these issues.

48. The Crown chose not to construct or implement management and operations procedures that would reasonably have prevented the abuses and substandard care in a timely fashion.

49. The abuses perpetrated against the Plaintiffs and Class Members and their poor treatment were foreseeable, particularly given the absence of adequate supervisory procedures and the heightened vulnerability of the Class Members.

50. Particulars of the Crown's systemic negligence include:

a) Choosing not to investigate or report physical injuries (including of a sexual nature) sustained by students as a result of the assault and battery committed by the Crown's agents, employees and servants;

b) Choosing not to provide adequate medical care for students;

c) Choosing not to investigate or report allegations of physical and sexual assault and battery, and emotional abuse;

d) Intimidating and/or punishing students to dissuade them from reporting physical, sexual and emotional abuse;

e) Choosing not to properly screen applicants for staff positions at the Schools,

including choosing not to consistently conduct complete criminal background checks or reference checks;

f) Hiring unqualified or unsuitable staff who were not qualified to meet the needs of the students under their care and supervision;

g) Choosing not to properly or adequately supervise, monitor, police or assess the agents, employees, servants, and caregivers entrusted with the care of the Plaintiffs and Class Members;

h) Choosing not to properly supervise the environment in the Schools;

i) Choosing not to provide adequate financial resources or support to properly care and provide for the Plaintiffs' and Class Members' physical, emotional and education needs;

j) Permitting unhealthy and inappropriate punishments, including assault and battery, to be perpetrated against the Plaintiffs and Class Members;

k) Creating, tolerating and fostering an atmosphere of fear and intimidation in which the Plaintiffs and Class Members were threatened with, and sustained, severe punishments, including physical and sexual assault and battery, and emotional abuse; and

l) Choosing not to investigate, evaluate or supervise (such as by visiting or obtaining reports, or alternatively by making sufficient visits or obtaining sufficient and adequately detailed reports) the nature and quality of the care and education the Plaintiffs and Class Members received while under the responsibility of the Crown.

V. DAMAGES

51. As a result of the Crown's breach of its fiduciary duties and its negligence, the Plaintiffs and Class Members have suffered and continue to suffer damages.

52. The Plaintiffs state that the Crown knew, or ought to have known, that as a consequence of its breach of fiduciary duty and negligence, it would cause the Plaintiffs and Class

Members to suffer significant damages which include but are not limited to the following:

a) emotional, physical and psychological harm;

b) an impact on their ability to sustain personal relationships with family and friends;

c) an impaired ability to sustain relationships with intimate partners;

d) an impaired ability to trust authority;

e) inadequate and substandard education, reducing their ability to find stable, remunerative employment;

f) pain and suffering; and

g) loss of general enjoyment of life.

53. Further, as a result of their injuries caused by the Crown's breach of fiduciary duty and negligence, the Plaintiffs and Class Members have required and continue to require medical treatment, rehabilitation, psychological counselling and other care.

54. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Crown is vicariously liable for the misconduct of its employees, representatives, servants and agents.

VI. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

55. The Plaintiffs state that the conduct of the Crown, its employees, representatives, servants and agents was willful, arrogant, callous, and highhanded and constituted a gross violation of the rights of the Plaintiffs and Class Members. The Plaintiffs respectfully submit that this is an appropriate case for punitive, aggravated and/or exemplary damages, to demonstrate that such willfully negligent, tortious conduct will not be ignored.

VII. RELIEF SOUGHT

56. The Plaintiffs repeat the foregoing paragraphs and seek as relief the following:

(a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;

(b) a declaration that the Crown has breached its fiduciary obligations to the Plaintiffs and Class arising from its conduct, and that of its servants, agents or employees, in the operation of the Schools;

(c) compensation and/or damages for breach of fiduciary duty and systemic negligence, including:

i) general damages, including aggravated damages for personal injuries; and

ii) special damages;

(d) aggravated, punitive and exemplary damages;

(e) interest pursuant to the *Judicature Act*;

(f) costs; and

(g) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

~~DATED at Halifax, Nova Scotia this 13th day of January, 2016.~~

AMENDED at Halifax, Nova Scotia this 14th day of October, 2016.

RAYMOND F. WAGNER, Q.C.
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