IN THE SUPREME COURT OF NOVA SCOTIA
I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.
Dated the 31 day of January A.D., 2019
Deputy Prothonotary AMANDA HAWBOLDT
Deputy Prothonotary

Form 78.05

2016

Hfx. No. 447198

SUPREME COURT OF NOVA SCOTIA

SUPREME COURT OF NOVA SCOTIA
JAN 31 2019
HALIFAX, N.S.

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 and **ATLANTIC PROVINCES SPECIAL EDUCATION AUTHORITY**

DEFENDANTS

SUPREME COURT NOVA SCOTIA • FORIS ARMA DOMICILIUM •
Sgd: PJD, J.

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

Consent Order for Certification

BEFORE THE HONOURABLE JUSTICE PATRICK DUNCAN IN CHAMBERS

THIS MOTION was made by the Plaintiffs, on the consent of the Defendants, for an order certifying this proceeding as a class proceeding pursuant to sections 4(3) and 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28 (the "Act");

UPON READING the Amended Notice of Motion, the evidence filed by the parties and the written submissions on behalf of the parties;

AND UPON HEARING submissions on behalf of the parties;

AND UPON IT APPEARING that it is appropriate to certify the proceeding as a class proceeding, in that:

(a) the pleadings disclose a cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims raise common issues;

(d) a class proceeding is the preferable procedure; and

(e) there are representative plaintiffs who would fairly represent the Class, have produced a workable litigation plan and have no interests in conflict with the interests of other Class Members;

NOW UPON MOTION, IT IS HEREBY ORDERED:

1. That the action is hereby certified as a class proceeding pursuant to sections 4(3) and 7 of the Act;

2. That the Class is divided into Subclasses as follows:

> **Subclass A:** All former students who, between 1913 and November 1, 1951, attended and/or resided at the School for the Deaf, located in Halifax (the "Halifax School");
>
> **Subclass B**: All former students who, between November 1, 1951 and 1974, attended and/or resided at one or both of: (i) the Halifax School; and (ii) the Interprovincial School for the Education of the Deaf; and
>
> **Subclass C**: All former students who, between 1974 and 1995, attended and/or resided at the Interprovincial School for the Education of the Deaf (subsequently named the Atlantic Provinces Resource Centre for the Hearing Handicapped, and in 1989 renamed the Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired).

3. That Richard Robert Martell and Michael Harry Gerald Perrier, c/o Wagners Law Firm, 1869 Upper Water Street, Suite PH301, Pontac House, Halifax, NS, B3J 1S9, are appointed as the representative plaintiffs of the Class;

4. That the common issues in the class proceeding are:

SUBCLASS A

Breach of Fiduciary Duty

(1) In its operation, supervision and/or management of the Halifax School, did the Crown owe a fiduciary duty to Subclass A?
(2) If the answer to common issue 1 is "yes", by its operation, supervision and/ or management of the Halifax School, and/or by reason of the conditions of the Halifax School or the Crown's treatment of Subclass A, did the Crown breach a fiduciary duty owed to Subclass A?

Declaratory Relief

(3) If the answer to common issue 2 is "yes", is declaratory relief available to Subclass A?

SUBCLASS B

Negligence

(4) Did the officers and/or agents of the Crown owe a duty of care to Subclass B not to cause or permit beyond *de minimis* physical harm (including, without limitation, of a sexual nature) or mental harm to them?
(5) If the answer to common issue 4 is "yes", what was the applicable standard of care?
(6) If the answer to common issue 4 is "yes", did the acts or omissions of the Crown's officers and/or agents breach the applicable standard of care, and if so, how?
(7) If the answer to common issues 4 is "yes", is the Crown vicariously liable to Subclass B for the negligence of its officers and/or agents?

Breach of Fiduciary Duty

(8) In its operation, supervision and/or management of the Halifax School and/or the Interprovincial School for the Education of the Deaf, did the Crown owe a fiduciary duty to Subclass B?
(9) If the answer to common issue 8 is "yes", by its operation, supervision and/ or management of the Halifax School and/or the Interprovincial School for the Education of the Deaf, and/or by reason of the conditions of the Halifax School and/or the Interprovincial School for the Education of the Deaf or the Crown's treatment of Subclass B, did the Crown breach a fiduciary duty owed to Subclass B?

Aggregate and Punitive Damages

(10) If the answer to common issue 7 and/or 9 is "yes", can the court make an aggregate assessment of damages suffered by all members of Subclass B?

(11) If the answer to common issue 7 and/or 9 is "yes", does the Crown's conduct justify an award of punitive damages?

SUBCLASS C

Negligence

(12) Did the officers and/or agents of the Defendants owe a duty of care to Subclass C not to cause or permit beyond *de minimis* physical harm (including, without limitation, of a sexual nature) or mental harm to them?
(13) If the answer to common issue 12 is "yes", what was the applicable standard of care?
(14) If the answer to common issue 12 is "yes", did the acts or omissions of the Defendants' officers and/or agents breach the applicable standard of care, and if so, how?
(15) If the answer to common issues 14 is "yes", are the Defendants vicariously liable to Subclass C for the negligence of their officers and/or agents?

Breach of Fiduciary Duty

(16) In their operation, supervision and/or management of the Amherst School, did the Defendants owe a fiduciary duty to Subclass C?
(17) If the answer to common issue 16 is "yes", by their operation, supervision and/ or management of the Amherst School, and/or by reason of the conditions of the Amherst School or the Defendants' treatment of Subclass C, did the Defendants breach a fiduciary duty owed to Subclass C?

Aggregate and Punitive Damages

(18) If the answer to common issue 15 and/or 17 is "yes", can the court make an aggregate assessment of damages suffered by all members of Subclass C?
(19) If the answer to common issue 15 and/or 17 is "yes", does the Defendants' conduct justify an award of punitive damages?

5. That the claims to be determined and the relief being sought are as per the Third Amended Statement of Claim filed on the 31 55 * day of *, 201*;

6. That Class Members shall be given notice of the certification of this action as a class proceeding, in accordance with the form of the Notice of Certification, attached hereto as Schedule "A", in the manner set out in the Plaintiffs' Litigation Plan, attached hereto as Schedule "B";

7. That the Notice of Certification and its distribution satisfy the requirements of s. 22(6) of the Act;

8. That the Litigation Plan, attached hereto as Schedule "B", is a workable method of advancing the proceedings, subject to clarification and amendment if required now or as the proceedings progress;

9. That a Class Member may opt out of the class action by sending an Opt Out Form, attached hereto as Schedule "C", signed by the Class Member, to Wagners on or before the deadline stipulated in the Opt Out Form;

10. That there shall be document production on all the common issues; and

11. That the Defendants shall deliver their statements of defence no later than seventy-five (75) days following the issuance of this Order.

January 31, 2019.

Prothonotary
AMANDA HAWBOLDT
Deputy Prothonotary

Consented to by:

For: M. Carter (Maddy Carter)
Raymond F. Wagner, Q.C.
Solicitor for the Plaintiffs
Wagners
1869 Upper Water Street
Halifax, NS B3J 2V2

Agnes MacNeil / Catherine Lunn
Solicitors for The Attorney General of Nova Scotia
Department of Justice (NS)
1690 Hollis Street
Halifax, NS B3J 2L6

Selina Bath
Solicitor for APSEA
Wickwire Holm
300-1801 Hollis Street
Halifax, NS B3J 2X6

4811-2186-0697, v. 6

SCHEDULE "A"

NOTICE OF CERTIFICATION OF THE NOVA SCOTIA SCHOOLS FOR THE DEAF CLASS ACTION

To: All former students who attended and/or resided at an education institution for the Deaf or Hard of Hearing in Nova Scotia ("Class Members")

Notice of Certification:

Class Members be advised of certification of a class action on behalf of all former students who attended and/or resided at one or both of (i) the **School for the Deaf**, located in **Halifax, Nova Scotia**; and (ii) the **Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired**, formerly called the **Resource Centre for the Hearing Handicapped** and the **Interprovincial School for the Education of the Deaf**, located in **Amherst, Nova Scotia**. Both facilities are now closed.

Who is included?

"Class Members" are former students who attended and/or resided at one or both of the above-named schools.

If you are a Class Member you do not need to do anything at this point to get the benefit of any ruling on the common issues.

What is the nature of the class action?

The class action alleges that the Attorney General of Nova Scotia and APSEA (Atlantic Province Special Education Authority) are liable to the Class Members for physical, sexual and/or mental harm experienced by Class Members as a result of their experiences at the schools. **A judgment on the common issues will bind all Class Members who do not opt out.**

Class counsel compensation:

Class counsel has agreed to act on the basis that they will not be paid any legal fees unless and until the class action is either settled or successfully tried to judgment and the Class Members are entitled to recover damages.

The Representative Plaintiffs have entered into a Contingency Fee Agreement with class counsel. Class counsel will apply to the court at the conclusion of the case to have their legal fees approved. Class counsel will pay for all case expenses incurred in prosecuting the case and if the case is successful, class counsel will apply to the court to be reimbursed for these case expenses. If the case is not successfully settled or tried, class counsel will not be paid or be reimbursed for any expenses.

Where can Class Members get more information?

For more free information, or to access opt out forms, visit:

http://www.wagners.co/current-class-actions

or contact class counsel at the address below:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Phone (local): 902-425-7330
Toll Free: 1-800-465-8794
Fax: 902-422-1233
Email: classaction@wagners.co

A video containing an explanation by a sign language interpreter is available on the above website, and can also be provided to you electronically upon request.

If you do not want to participate, you must opt out on or before the deadline stipulated in the opt out form. If you opt out you will not be entitled to share in any recovery or take the benefit of any ruling in this case.

Representative Plaintiffs:

Richard Robert Martell
Michael Gerald Harry Perrier
c/o Wagners (address provided above)

This summary notice has been approved by the Supreme Court of Nova Scotia.

Do not Contact the Court about this Certification.

SCHEDULE "B"
PLAINTIFFS' LITIGATION PLAN

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the "Plan") have the meanings as particularized in the Third Amended Statement of Claim, as it may be further amended from time to time.

CLASS COUNSEL

2. The Plaintiffs have retained Wagners as class counsel ("Class Counsel") to prosecute this class action. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to prosecute the action to resolution.

THE COMPOSITION OF THE CLASS

3. The "Class" and "Class Members" are defined according to Subclasses as follows:

> **Subclass A:** All former students who, between 1913 and November 1, 1951, attended and/or resided at the School for the Deaf, located in Halifax (the "Halifax School");
>
> **Subclass B**: All former students who, between November 1, 1951 and 1974, attended and/or resided at one or both of: (i) the Halifax School; and (ii) the Interprovincial School for the Education of the Deaf; and
>
> **Subclass C**: All former students who, between 1974 and 1995, attended and/or resided at the Interprovincial School for the Education of the Deaf (subsequently named the Atlantic Provinces Resource Centre for the Hearing Handicapped, and in 1989 renamed the Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired).

NOTICE OF CERTIFICATION AND THE OPT-OUT PROCEDURE

4. The Plaintiffs propose that notification of certification, the opt-out date and means of opting out ("Notice of Certification"), in the form of notice appended as Schedule "A" to

the Consent Order for Certification, be approved by the Court and advertised to the Class by the following means:

a) Notice of Certification will be sent by registered mail and/or electronic mail to each of the known Class Members for whom mailing addresses and/or electronic mail addresses are known by Class Counsel;

b) an interpretation and explanation of the contents of Notice of Certification shall be contained in a video blog created by Class Counsel with the assistance of an interpreter (the "Video Blog"), which shall be sent via electronic mail directly to known Class Members and posted on social media sites such as Facebook;

c) Notice of Certification will be sent (by electronic means or otherwise) to the Society of Deaf and Hard of Hearing Nova Scotians, the Deafness Advocacy Association of Nova Scotia, and similar organizations serving the deaf and hard of hearing populations throughout each province and territory in Canada, to be posted on the organizations' websites, bulletin boards, and/or distributed to individuals as determined by the organizations or as requested by Class Members, and in addition the Video Blog shall be distributed to said organizations;

d) Notice of Certification and the Video Blog will be posted at www.wagners.co; and

e) Notice of Certification and the Video Blog will be provided by Class Counsel to any person who requests them.

5. The Plaintiffs propose that the opt-out date be set ninety (90) days after the issuance of the Consent Order for Certification, or as otherwise agreed by counsel and approved by the Court (or, in the absence of any agreement of counsel, as directed by the Court).

6. The Plaintiffs will ask the Court to order that the costs of disseminating the Notice of Certification in the above manner be paid by the Defendants. The costs of creating the Video Blog shall be paid by Class Counsel.

REPORTING AND COMMUNICATION

7. Current information on the status of the action is posted and will be updated regularly on Class Counsel's website at www.wagners.co. Copies of some of the publicly filed court

documents, court decisions, notices, documentation and other information relating to the action are and will be accessible from the website.

8. Class Counsel proposes to host regular information sessions with a sign language interpreter(s) to provide updates and explanations to Class Members, with webcasts of such information sessions made available to Class Members where possible.

CASE MANAGEMENT CONFERENCES

9. The Plaintiffs propose that there be regular case management conferences before a case management judge every three (3) months, unless the parties and the Court agree that such conferences are not required.

10. The Plaintiffs propose that a case management conference be held within forty-five (45) days of the issuance of the Order certifying the action, the primary purpose being to seek the direction of the Court on any outstanding issues and determine the litigation schedule.

11. The Plaintiffs propose the following schedule for the remaining steps in the action:

(a) Within ~~forty-five (45)~~ seventy-five (75) days from the date the Consent Order for Certification has been issued by the Court, the Defendants shall deliver their Statements of Defence;

(b) Within six (6) months following the delivery of the Statements of Defence and/or Reply, the parties will exchange their Affidavits of Documents;

(c) Within six (6) months following the exchange of the Affidavits of Documents, the parties will complete their examinations for discovery, which shall be confined to the certified common issues; and

(d) Within six (6) months after all examinations for discovery have been concluded, the parties will exchange expert reports.

12. The Civil Procedure Rules will apply to the scheduling of any appeals brought in the action.

DISCOVERY

13. The Plaintiffs anticipate that the documentary production may be voluminous and propose that counsel for the parties should meet following certification to discuss ways to efficiently disclose documents to one another utilizing computer database software so that, as much as possible, documents may be produced and shared between the parties and be made available to the Court in electronic format.

14. The Plaintiffs propose that a conference of all counsel be held following the completion of the discovery stage in order to address, *inter alia*, refinement of the common issues for trial (including, if necessary, the addition or removal of common issues), the schedule for the filing of expert reports, and the schedule for the common issues trial.

MEDIATION

15. The Plaintiffs will participate in mediation before a mutually acceptable mediator if the Defendants are prepared to do so.

INTERLOCUTORY MOTIONS

16. Unless a particular motion is a matter of urgency, all interlocutory motions will be heard by the Case Management Judge (the Honourable Justice Peter Rosinski).

17. The scheduling of and any directions in relation to any interlocutory motions will be addressed at the periodic case management conferences. If the need for an interlocutory

motion should arise in a more time-sensitive manner, a request for dates and directions can be delivered to the Case Management Judge as need be. Unless otherwise agreed to or directed by the Case Management Judge, the filing deadlines for any such interlocutory motions will be governed by Rule 23 of the Civil Procedure Rules.

COMMON ISSUES RESOLUTION

18. The Plaintiffs propose to resolve as many of the common issues as possible before the case management judge by way of Notices to Admit, or interlocutory motions for a preliminary determination of law or fact.

MANNER OF PROOF AT TRIAL

19. At trial, the Plaintiffs expect to rely on the following to prove the facts underlying their causes of action:

    (a) admissions made in the pleadings;
    (b) admissions made in discovery or in interrogatories;
    (c) admissions made through Request for Admissions (in accordance with rule 20.03);
    (d) evidence from witnesses; and
    (e) expert evidence.

NOTICE OF RESOLUTION OF THE COMMON ISSUES

20. Assuming that the common issues are resolved in favour of the Plaintiffs, the Court will be asked:

    (a) to settle the form and content of the notice of resolution of the common issues (the "Notice of Resolution");

    (b) to prescribe the information required from Class Members in order to make an individual claim based on the judgment on the common issues, if necessary;

(c) to declare the facts Class Members must establish to succeed in individual claims, if any; and

(d) to set a date by which Class Members will be required to file an individual claim.

21. The Plaintiffs propose that the Notice of Resolution include the following information:

(a) A description of the Classes;

(b) A description of the common issues and the nature of the claims asserted;

(c) The common issues on which the Plaintiffs were successful;

(d) The nature of any class-wide remedies granted in the judgment on the common issues;

(e) What steps a Class Member must take to assert a claim and what facts a Class Member must prove to succeed on such a claim;

(f) That no person will be entitled to any compensation unless he/she complies with the instructions contained therein;

(g) How to obtain further information; and

(h) That their claims in relation to the matters raised in the pleadings will be deemed to have been finally adjudicated whether or not they participate in the individual stage of the proceeding.

22. The Plaintiffs will ask the Court to order that the Notice of Resolution be distributed substantially in accordance with the procedure outlined above for the Notice of Certification.

ADJUDICATION OF REMAINING / INDIVIDUAL ISSUES

23. If the common issues are resolved in favour of the Plaintiffs, the Plaintiffs propose the following process for the resolution of the remaining issues: (i) subsequent to resolution of the common liability issues and determination of the availability of aggregate and punitive damages, the quantum of aggregate damages will be determined; (ii) subsequently, individual causation and damages will be assessed pursuant to the below individual claims procedure; and (iii) subsequently, the quantum of punitive damages will be determined.

Individual Claims Procedure

24. The Plaintiffs propose the following process for the resolution of the individual claims following resolution of the common issues trial.

25. The parties will select, by agreement, one or more referees or evaluators. The Court must approve the selections. If the parties are unable to agree, the parties may ask the Court to appoint one or more referees or evaluators with such rights, powers and duties as the Court directs, to conduct hearings with respect to any individual issues that remain outstanding in order for individual Class Members to obtain relief, pursuant to Civil Procedure Rule 11. Those references will be conducted in accordance with the directions of the trial judge in the order approving the referees/evaluators.

26. The Court will be asked to set a deadline (the "Claims Deadline") by which Class Members must file their claims with a designated person or the Court.

27. The evidence necessary to succeed on an individual claim will substantially depend on the extent of the Plaintiffs' success with respect to the common issues. The process proposed for determining such claims is outlined below. Pursuant to section 30 of the *Class Proceedings Act*, S.N.S. 2007, c. 28, the Court will be asked to give directions relating to the individual claims assessments that result in the least expensive and most expeditious method of determining the individual issues, including dispensing with any procedural step that it considers unnecessary.

28. Class Members will be required to give notice of their intention to proceed with a claim within one hundred and twenty (120) days of the final publication of Notice of Resolution

by providing a statement of the facts (limited to those facts relating solely to the individual issues specified by the Court) on which they rely.

Claims (Under $100,000) – Simplified Procedure

29. Class Members willing to cap the value of his/her individual claim at $100,000 should be required to file only affidavit evidence with a referee/evaluator, setting out their evidence relating to the individual issues remaining to be proven. If the Defendants wish, they may cross examine an affiant on his/her affidavit out of court, provided that the appropriate services of a sign language interpreter are made available, should it wish to challenge the evidence. The referee/evaluator will then make a report and recommendation to the Court with respect to the Class Member's claim on the basis of the affidavit and transcript evidence. The report will be provided to all parties. The Court will be asked by way of application to incorporate the report and recommendation of the referee/evaluator into a judgment. There will be no right of appeal of the Court judgment.

Claims (Over $100,000)

30. Class Members submitting claims in excess of $100,000 will be required to:

(a) Serve on the Defendants an affidavit of documents prepared in accordance with Rule 15; and

(b) Attend for an oral examination for discovery (in accordance with rule 18), with the services of a sign language interpreter made available, if the Defendants require.

31. The referee/evaluator may, in his or her discretion, make a report and recommendation as to the Class Member's entitlement, if any, based on the documentary and transcript evidence, or conduct a trial of such claims. The Court will be asked by way of

application to incorporate the report and recommendation into a judgment. There will be no right of appeal of the Court judgment.

FURTHER ORDERS CONCERNING TIIIS PLAN

32. This Plan may be amended from time to time by directions given at case management conferences or by further order of the Court.

EFFECT OF THIS PLAN

33. This Plan, as it may be revised by order of the Court from time to time, shall be binding on all Class Members whether or not they make a claim under the Plan.

SCHEDULE "C"

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, and **ATLANTIC PROVINCES SPECIAL EDUCATION AUTHORITY**

DEFENDANTS

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

OPT OUT FORM
DEADLINE – _____

I, _____, do not want to be included in the class action against the above-named Defendants with respect to physical, sexual and mental harm suffered by former students of: (i) the School for the Deaf, located in Halifax, Nova Scotia; and/or (ii) the Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired, located in Amherst, Nova Scotia (formerly called the Interprovincial School for the Education of the Deaf, and the Resource Centre for the Hearing Handicapped).

I understand that if I opt out of the class action, I will not be entitled to share in any recovery or take any benefit of any ruling in this case, but I will be free to bring my own claim if I wish. I understand that if I opt out of the class action and wish to bring my own claim, my own claim may be subject to a limitation period. I understand this Opt Out Form must be received by class counsel by _____.

My information is as follows:

Print Name of Class Member:	_____	Telephone:	_____
Address:	_____	Email address:	_____
	_____	Date:	_____
City:	_____	Signature:	_____

Province: _____ _____