

**COPY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20090325  
Docket: S024338  
Registry: Vancouver

Between:

**William Joseph Richard and W.H.M.**

Plaintiffs

And

**Her Majesty the Queen in Right of the Province of British Columbia**

Defendant

Before: The Honourable Madam Justice Satanove

**Oral Reasons for Ruling**

In Chambers

March 25, 2009

Counsel for the Plaintiffs:

D.A. Klein  
S.J. Tucker

Counsel for the Defendant:

D.C. Prowse, Q.C.  
D.A. Lieberman

Counsel for the Intervenor:

A. Murray

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** The defendant objects to 20 questions posed by plaintiffs' counsel at the examination for discovery of the defendant's representative. Originally the objections were raised to 200 questions, but counsel have managed to deal with 180 of them without my assistance.

[2] The questions all pertain to the vocational and life skills training of residents of Woodlands School between 1974 and 1996. The defendant concedes that the questions are in an appropriate form to be asked at an examination for discovery. The defendant's objection is grounded in relevancy and what it describes as an excessively broad scope, given the nature of the case.

[3] Specifically, the defendant submits that the common issue, as pleaded and as certified by Madam Justice Morrison, is confined to negligence in preventing intentional torts by employees, agents or other residents of Woodlands School. The defendant further submits that the only intentional torts which formed the basis for certification were physical and sexual abuse. The defendant maintains that there is no connection between the programs for residents of Woodlands and the torts of physical and sexual abuse of which the class complains.

[4] The defendant's submissions are not borne out by the wording of the pleadings, Justice Morrison's judgment on certification, or the evidence before me.

[5] Paragraph 19(e) of the amended statement of claim specifically raises the allegation that the defendant failed to provide proper and adequate education and life skill training to the Woodlands patients.

[6] Justice Morrison states in paragraph 84 of her reasons for judgment that:

The class proceeding is the preferable procedure for the fair and effective resolution of the common issues given the history of the institution, the types of allegations raised, and the special vulnerabilities of the proposed class members. (emphasis added)

[7] She lists the type of allegations to which she is referring in paragraphs 11 and 14 of her judgment and states that they consist of psychological and emotional abuse, and a claim by the plaintiff that he was deprived of proper food and nutrition. Also that he was denied access to a proper education and skill training. This latter statement of Justice Morrison clearly shows that the plaintiff had put forward his complaint about education and training right from the outset.

[8] Finally, there is evidence from the defendant's own documents and the plaintiffs' expert, Dr. Sobey, that suggests a causal connection between substandard programs and the undesirable behaviour of residents. The paper entitled "Adult Program Descriptions and Objectives" states at page 10 that:

Behaviour management is a problem prior to programming, but decreases when planned activity and structure are introduced in the daily routine.

[9] The paper entitled "A Description of the Adult Residents of Program 5 And Their Unmet Program Needs" explains at page ii, that:

Training in self-care and personal hygiene usually has a direct bearing on the kinds of programs in which they can participate.

[10] Dr. Sobey approaches the issue of systemic abuse in a broad, encompassing way which would require an examination of all aspects of the operation of Woodlands. He says that:

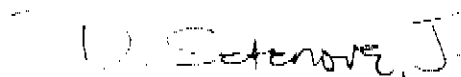
The relationship between institutional abuse and quality of care standards is extremely powerful. For example, severe overcrowding almost inevitably results in physical abuse and understaffing almost inevitably results in exploitation of forced labour of residents.

[11] He goes on to say that:

In the absence of reasonable and objectively measurable professional standards, concepts like understaffing and overcrowding become purely subjective. Professional standards are essential to determining if adequate protections are in place. Possible incidents of abuse or neglect are appropriately addressed and whether institutional policies and procedures intruded excessively on the human or civil rights of residents. As such the institution's compliance with professional standards is extremely valuable in determining to what extent the facility contributed to any abuse of residents that may have occurred.

[12] The threshold of relevancy is not high at the examination for discovery stage; ***Stewart v. Tse*** [1992] B.C.J. No. 1565 (S.C.). Rule 27(22) allows for questions about knowledge regarding any matter relating to a matter in question. In my view, and in the view of Neilson J.A. as set out in her decision at 2009 BCCA 77, the standard of relevance at this pre-trial stage is met by anything that may reveal conduct of residents and staff that sheds light on the policies and operational procedures of Woodlands that are the focus of the allegations of systemic negligence.

[13] The questions posed by the plaintiff clearly meet this standard of relevance and I order the defendant to answer them.



The Honourable Madam Justice Satanove