

2003 01 T 4242 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

BRENDA RIDEOUT

PLAINTIFF

AND:

HEALTH LABRADOR CORPORATION

DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

AMENDED STATEMENT OF DEFENCE

Amended pursuant to Rule 15.01 (c) by order of
Mr. Justice Russell dated the day of , 2004.

1. The Defendant admits to paragraphs 1,2 and 3 of the Amended Statement of Claim

Material Facts

2. As to paragraph 4 of the Amended Statement of Claim, the Defendant admits that between October 2001 and March 2003, some reusable instruments in the gynecology clinics at Captain William Jackman Memorial Hospital (the "Clinic") were not sterilized in accordance with the Defendant's standards. During this time, 333 patients were treated at the Clinic and had an examination or procedure that potentially put them at a minimal risk of exposure to an infection.

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3. As to paragraph 6 of the Amended Statement of Claim, the Defendant says that the Instruments were not properly sterilized in accordance with its own standards.
4. The Defendant denies paragraphs 7-10 of the Amended Statement of Claim and says that the Defendant issued a press release on 10 November 2003, notifying patients that between the period of October 2001 and March 2003, some gynecological instruments were not properly sterilized and that the associated risk of contracting an infection as result of the breach of proper practices was minimal to none. The Defendant says that it worked with Health Canada and the Provincial Department of Health to complete a comprehensive risk assessment of the situation and that letters were sent to patients via registered mail at the earliest possible time explaining the need for testing.
5. As to paragraph 10, the Defendant states that in its letter to the Plaintiff and proposed class members it said that it would be screening for possible infection.
6. No patients of the Defendant were infected as a result of use of improperly sterilized gynecological instruments, therefore the Defendant says that there are no individuals in the proposed class as stated in paragraph 12(a), "Infected Patients." The Defendant also says that there are no individuals in the proposed class as stated in paragraph 12(b), "Cross-Infected Persons."

7. As to paragraph 13 of the Amended Statement of Claim, the Defendant admits that the Plaintiff attended the Clinic for a gynecological exam during the said time period and that during the exam she was potentially exposed to reusable gynecological instruments that were not sterilized in accordance with Defendant's standards.
8. The Plaintiff was informed of the results of her blood work on November 25, 2003 and the results of her urine testing on November 28, 2003.

Causes of Action

9. The Defendant denies all allegations of negligence stated in paragraphs 22 - 25 and elsewhere in the Amended Statement of Claim.
10. In the alternative, the Defendant says that no damage was caused to the Plaintiff and proposed class members as a consequence of either the use of improperly sterilized instruments, or as a result of the manner or timing of the disclosure of the use of those instruments.
11. As to paragraph 26 of the Amended Statement of Claim, the Defendant denies that it owed a contractual duty to the Plaintiff and proposed class members.

12. In the alternative, if the Defendant did owe contractual duties to the Plaintiff and proposed class members, the Defendant denies that it breached the duties. The Defendant also denies that a major or important part of the contractual relationship was to provide the Representative Plaintiff and proposed class members with peace of mind.

13. As to paragraph 26, if the Defendant did owe a contractual duty (which is not admitted but is specifically denied) the Defendant denies that an implied contractual term of that contractual relationship is that the Defendant would employ competent and properly trained staff and that it would use properly sterilized equipment when treating the Plaintiff and class members. The Defendant also denies that another implied term of the contractual relationship was that the Defendant would promptly notify the Plaintiff and the proposed class members of the risk of contracting the Diseases that arose as a result of their exposure to the unsterilized Instruments. The Defendant further denies that another implied term of the contract was that the Defendant would preserve the privacy of the Plaintiff and the proposed class members. The Defendant denies that the parties contemplated that a breach of its contractual duties might result in mental distress suffered by the Plaintiff and proposed class members.

14. As to paragraph 27 of the Amended Statement of Claim, the Defendant admits that it owed fiduciary duties to the Plaintiff and proposed class members. However, the Defendant denies that the conduct alleged on the part of the Defendant in the Amended Statement of Claim, if proved, would constitute a breach of any fiduciary duty. Further, the Defendant denies that compensation by way of damages is an appropriate remedy for breach of fiduciary duty.
15. As to paragraph 28 of the Amended Statement of Claim, the Defendant denies that it caused a battery to the Plaintiff and proposed class members. The Plaintiff and proposed class members gave sufficient, valid and effective consent to all medical treatment; such consent was not at any time revoked or vitiated.
16. As to paragraph 29 of the Amended Statement of Claim, the Defendant denies that it conducted the release of information outside of the hospital-patient relationship. The Defendant further denies that any action of the Defendant constituted wilful conduct such as would amount to the tort of violation of privacy. The Defendant says that the use of personal information was reasonable at all times and confined to communication by private means of information which the Defendant was obliged to advise each of the proposed class members.
17. The Defendant says that they conducted the testing of the Plaintiff and proposed class members in a safe and reasonable manner with close attention to the patient's privacy as well as emotional and medical needs.


18. As to paragraph 31 of the Amended Statement of Claim, the Defendant denies that the loss of care, guidance and companionship allegedly suffered by others is compensable at the suit of the Plaintiff and the proposed class members.

Causation and Damages

19. As to paragraph 33 of the Amended Statement of Claim, the Defendant says that there are no Infected Patients or Cross-Infected Patients.
20. As to paragraph 34 of the Amended Statement of Claim, the Defendant denies that the Plaintiff or members of the proposed class suffered any physical damage or loss as a result of the unsterilized instruments or the subsequent testing as stated.
21. As to paragraph 34(b)(i), the Defendant says that neither the Representative Plaintiff nor the proposed class members have suffered nervous shock involving psychiatric illness. Furthermore, the Representative Plaintiff and the proposed class members have not alleged any facts in this regard
22. The Defendant repeats the foregoing paragraph and says that since the Representative Plaintiff has not suffered nervous shock involving psychiatric illness and has not pled facts in this regard, she is not a suitable Representative Plaintiff for this class proceeding.

23. The Defendant says that it was not foreseeable that the Plaintiff and proposed class members would suffer ~~nervous shock, stress and anxiety after being informed by the Defendant of the risk of infection and the need for medical testing.~~ Further, a claim for nervous shock requires that the Plaintiff and proposed class members must have suffered a recognizable psychiatric condition. ~~The Amended Statement of Claim does not allege any facts in this regard:~~ nervous shock involving psychiatric illness, distress, frustration, anxiety, displeasure, vexation, tension, aggravation, upset and inconvenience after being informed by the Defendant of the risk of infection and the need for medical testing.
24. The Defendant says that stress and anxiety are non-actionable and cannot result in compensation to the Plaintiff and proposed class members.
25. The Defendant denies that its conduct was high-handed, outrageous, reckless, deliberate or callous. Rather they made every effort to ensure that patients were notified and tested at the earliest possible time.
26. As to the whole of the Amended Statement of Claim, the Defendant denies that it discloses a valid cause of action on behalf of the Plaintiff and proposed class members. The Defendant therefore states that this action ought not to be certified as a class proceeding. The Defendant requests that this action be dismissed with costs to be awarded to the Defendant.

Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of
December, 2004.



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