

2006 01 T 2966 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

**BETWEEN**

VERNA DOUCETTE

PLAINTIFF

**AND:**

EASTERN REGIONAL INTEGRATED  
HEALTH AUTHORITY

DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE THOMPSON  
CASE MANAGEMENT JUDGE

**DEFENDANT'S REPLY TO PLAINTIFF'S NOTICE TO ADMIT**

1. As to paragraph 1 of Schedule "A", the Defendant admits that it owed duties of care to the patients included in the Class certified in this action.
2. Further as to paragraph 1 of Schedule "A", the Defendant states that the admission requested in the second part of that paragraph is not properly the subject of a Notice to Admit for the following reasons:
  - (a) It states conclusions of law or mixed law and fact. A Notice to Admit under Rule 33 is only available to obtain admissions of the truth of facts or the authenticity of documents, and not to establish propositions of law.
  - (b) It asks the Defendant to admit that it breached duties without specifying the duties alleged to have been breached. The common issues certified in this action include

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a common issue as to whether the defendant breached duties and, if so, when and how. Implicit in the definition of that common issue is an acknowledgement that it is impossible to admit a breach of duty without specifying the duty allegedly breached, the manner in which it was breached and the time in which it was breached. This is especially so when the breaches of duty alleged sound in several different legal theories, are numerous and vary with the circumstances of the individual class members.

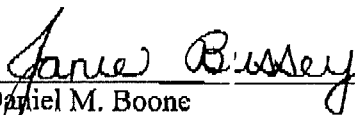
3. As to paragraph 2 of Schedule "A", the Defendant states that the admissions sought in this paragraph are too vague and therefore not capable of admission.
4. Further as to paragraph 2 of Schedule "A", the Defendant states that the admissions requested are not properly the subject of a Notice to Admit for the following reasons:
  - (a) They state conclusions of law or mixed law and fact. A Notice to Admit under Rule 33 is only available to obtain admissions of the truth of facts or the authenticity of documents, and not to establish propositions of law.
  - (b) They ask the Defendant to admit that it breached duties without specifying the duties alleged to have been breached. The common issues certified in this action include a common issue as to whether the defendant breached duties and, if so, when and how. Implicit in the definition of that common issue is an acknowledgement that it is impossible to admit a breach of duty without specifying the duty allegedly breached, the manner in which it was breached and the time in which it was breached. This is especially so when the breaches of

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duty alleged are numerous and varied with the circumstances of the individual class members.

5. As to paragraph 3 of Schedule "A", the Defendant states that the admission requested is not properly the subject of a Notice to Admit as it states a conclusion of law or mixed fact and law and therefore is outside the scope of relevant facts contemplated by a Notice to Admit pursuant to Rule 33. In the alternative, the Defendant denies that it caused compensable damage to all members of the Class.
6. As to paragraph 2 of the Notice to Admit, the Defendant states that it did not receive a copy of Schedule "B" and cannot therefore respond to same.

Dated at St. John's, in the Province of Newfoundland, this 9<sup>th</sup> day of March, 2009.

  
for Daniel M. Boone  
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**Solicitors for the Defendant**

TO: Ches Crosbie Barristers  
169 Water Street, 4<sup>th</sup> Floor  
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Solicitors for the Plaintiff  
**Attention: Chesley F. Crosbie, Q.C.**