

2003 01 T

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*

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, Brenda Rideout, pre-school worker, resides at 132 Marconi Avenue, Labrador City, Newfoundland and Labrador, A2V 2V2.
2. The Defendant, Health Labrador Corporation, is the hospital board responsible for the management, control and operation of the Captain William Jackman Memorial Hospital ("CWJMH"), located at 410 Booth Avenue, Labrador City, Newfoundland and Labrador, A2B 2K1, pursuant to the *Hospitals Act*, R.S.N. 1990, ch-9, ss. 4 and 5 and the *Health Care Institutions Boards Continuation Order*, C.N.L.R. 1004/1996.

3. The Defendant operates a gynaecological clinic at CWJMH (the “Clinic”). The Plaintiff was a patient at the Clinic. She brings this action on her own behalf, and on behalf of a proposed class of similarly situated persons.

Material Facts

4. Between October 2001 and March 2003, various medical instruments used at the Clinic (the “Instruments”) were not properly sterilized. At least 333 patients at the Clinic, including the Plaintiff, were treated with the Instruments.
5. The Defendant was negligent in its failure to properly sterilize the Instruments. Its conduct fell below the appropriate standard of care.
6. The Defendant discovered in March 2003 that the Instruments had not been properly sterilized. It waited a full 8 months however, until November 2003, before it bothered to inform the Plaintiff and other class members that they had all been treated with the improperly sterilized Instruments.
7. On November 10, 2003, the Defendant issued a press release admitting that proper sterilization procedures were not followed at the Clinic.
8. Also on November 10, 2003, the Defendant sent a registered letter to the Plaintiff and to other class members, advising these persons that due to its failure to properly sterilize the

Instruments, the Plaintiff and other class members had been placed at risk of contracting the following diseases (the “Diseases”):

- (a) HIV;
- (b) Hepatitis B;
- (c) Hepatitis C;
- (d) Chlamydia; and
- (e) Gonorrhea.

9. HIV, Hepatitis B and Hepatitis C are potentially life threatening, incurable diseases. Chlamydia and Gonorrhea can lead to sterility if left untreated. All the Diseases carry the added stigma of being known as sexually transmitted diseases.
10. Also in the letter dated November 10, 2003, the Defendant further advised the Plaintiff and other class members of the need for medical testing to determine whether they had contracted the Diseases.
11. The Defendant’s press release and letter provided no explanation for the 8 month delay in advising the Plaintiff and class members of their risk of exposure to the Diseases.

The Class

12. The proposed class is defined to include the following persons:
 - (a) All persons who were patients at the gynaecological clinic at the Captain William Jackman Memorial Hospital (the “Clinic”) between October 2001 and March

2003 and who contracted HIV, Hepatitis B, Hepatitis C, Chlamydia and/or Gonorrhea (the “Diseases”) following treatment at the Clinic, or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (a) are hereinafter referred to as “Infected Patients”);

(b) All persons who contracted the Diseases from an Infected Patient, or from another Cross-Infected Person, or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (b) are hereinafter referred to as “Cross-Infected Persons”);

(c) All persons who were patients at the Clinic between October 2001 and March 2003, who

(i) did not contract the Diseases following treatment at the Clinic;

(ii) received a notice from the Health Labrador Corporation advising that they may have contracted the Diseases and advising of the need for medical testing;

(iii) attended at a hospital or medical clinic for testing for the Diseases;

or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (c) are hereinafter referred to as “Uninfected Patients”).

The Representative Plaintiff

13. The Plaintiff attended the Clinic on or about a day in November 2002 for a gynaecological exam. She was treated at the Clinic with one or more of the improperly sterilized Instruments.
14. While having supper with her family on November 9, 2003, the Plaintiff heard news on the radio of the breach of sterilization procedures at the gynaecological clinic, and realized that she might be one of the patients affected by the breach.
15. This news left her distraught, horrified and in a state of nervous shock. The Plaintiff reasonably feared for her health and the health of her family, and had nowhere to turn for information or counselling until the following day.
16. Next day, the Plaintiff received the letter of the Defendant, dated November 10, 2003, informing her that she had been treated with the improperly sterilized Instruments at the Clinic, that she may have contracted the Diseases from the Clinic, and that she required medical testing. The letter was delivered through the Plaintiff's matrimonial partner, who signed the receipt.
17. The Plaintiff's matrimonial partner was shocked and horrified by the news of potential infection of his partner (the Plaintiff), the relationship including intimate relationship of the partners has been interfered with and shaken, and the partners have each suffered loss of physical and emotional consortium.

18. The Plaintiff was not able to attend at the CWJMH lab for medical testing as directed in the Defendant's letter until November 17, 2002. She has not received her results as at date of issuance of this Statement of Claim.
19. The Plaintiff called the Defendant's information line for her results (blood and urine), and was told that the Defendant would not release the results for either test until both test results were available.
20. The Defendant conducted the medical testing clinic in such a manner as to make the identities of the infected and uninfected patients obvious to other patients, and thereby disseminating their identities throughout the small community of Labrador City and surrounding areas. In addition to causing invasion of personal privacy and making known confidential medical information, to the embarrassment of the patients, the Defendant exposed them to insulting and lewd commentary from other patients.
21. The Plaintiff states that the proper and professional way to conduct the release of the news to affected patients would have been for the Defendant to inform the patients' physicians of the breaches of infection control, to enable the patients' physicians to manage the issues arising within the confidentiality of the physician-patient relationship.

Causes of Action

22. The Defendant's conduct fell below the reasonable standard of care expected of it under the circumstances. The Defendant's conduct was negligent; it breached contractual,

statutory and fiduciary duties owed to the Plaintiff and class members and further constituted a battery and an assault on the personhood of the Plaintiff and class members.

23. The Defendant was negligent in its failure to properly sterilize the Instruments. Particulars of this negligence include:

- (a) cleaning the Instruments with detergent when it knew or ought to have known that heat sterilization in an autoclave was necessary to kill the viruses which cause the Diseases;
- (b) failing to properly train and supervise its employees in sterilization procedures, or else hiring and employing incompetent staff;
- (c) failing to conduct timely periodic reviews of sterilization procedures;
- (d) failing to recognize that its procedures for cleaning the Instruments over an 18 month period between October 2001 and March 2003 were inadequate; and
- (e) falling below the reasonable standard of care expected of it under the circumstances.

24. The Defendant's employees were negligent in using methods of sterilization which they knew or ought to have known were inadequate, for which the Defendant is vicariously liable.

25. The Defendant was further negligent in its 8 month delay in warning the Plaintiff and class members of their potential exposure to the Diseases, denying such persons a chance to seek early medical attention or take precautions to avoid spreading the diseases to others.
26. The Defendant has a contractual relationship for the provision of medical services to the Plaintiff and its patients. An implied 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 has breached this contractual duty.
27. The Defendant further stands in the position of fiduciary to the Plaintiff and class members and has a duty of utmost good faith to be open and candid with the Plaintiff and class members, and not to withhold information. The Defendant exercised a discretion in its decision not to tell the Plaintiff and class members over an 8 month period of its failure to properly sterilize the Instruments. It did so in a manner that affected the interests of the Plaintiff and Class members denying such persons knowledge of their medical conditions, the chance to seek early medical treatment and the chance to take precautions to avoid spreading the Diseases to others. The Plaintiff and other class members were peculiarly vulnerable and at the mercy of the Defendant in its exercise of discretion. The Plaintiff and other class members had no way of knowing of the Defendant's failure to follow proper sterilization procedures but for the Defendant telling them.

28. The use of the unsterilized Instruments on the Plaintiff and class members constitutes a battery. The Instruments were used to conduct examinations of the Plaintiff and other class members of a most personal nature. No consent was ever sought by the Defendant of the Plaintiff and class members to conduct such examinations with instruments which had not been properly sterilized nor would such consent ever have been given if sought.
29. In conducting the release of information to and the testing of affected patients outside the physician-patient relationship in such a manner as to invade the confidentiality of medical information and the privacy of the patients, the Defendant breached not only duties inherent in its fiduciary relationship with the affected patients and their partners, but has also committed the tort of violation of privacy against the affected patients and their partners, and the Plaintiff cites the *Privacy Act*, R.S.N.L. 1990, c. P-22, and section 35(2) of the *Hospitals Act*.
30. The Plaintiff repeats the foregoing allegations and states that the conduct of the Defendant has caused a loss of consortium to the affected patients and their partners.

Causation and Damages

31. As a result of the Defendant's breach of its obligations, the Plaintiff and class members have suffered loss. Such loss was foreseeable by the Defendant.
32. Particulars of the loss or damage suffered by Infected Patients and Cross-Infected Persons include the following:

- (a) pain, suffering, loss of quality and enjoyment of life, and loss of life expectancy;
 - (b) harm to intimate relationships arising from infection by sexually transmitted disease;
 - (c) past and future loss of income;
 - (d) loss of earning capacity and future loss of opportunity;
 - (e) past and future costs of care; and
 - (f) out-of-pocket expenses.
33. Particulars of the loss or damage suffered by class members whether infected, cross-infected, or not, include the following:
- (a) pain and suffering;
 - (b) nervous shock, stress and anxiety after being informed by the Defendant of the risk of infection and the need for medical testing;
 - (c) loss of income;
 - (d) out of pocket expenses;
 - (e) damages for battery;
 - (f) aggravated damages arising out of the Defendant's betrayal of trust and confidence in not timely informing its patients of their potential exposure to disease;
 - (g) damages for violation of privacy; and
 - (h) damages for loss of consortium.
34. The Defendant's conduct was high-handed, outrageous, reckless, deliberate, and callous. In particular, the Defendant's delay in warning the Plaintiff and class members of the risks to their health and the risks to the health of their loved ones, and the withholding of this information from the public for such a prolonged period is unconscionable, such that an award of punitive damages is merited.

Relief Sought

35. The Plaintiff claims, on her behalf, and on behalf of the Class:
- (a) an order certifying this action as a class action;
 - (b) general damages;
 - (c) special damages;
 - (d) aggravated damages;
 - (e) punitive damages;
 - (f) costs, including the fees and expenses of expert witnesses in attending at discovery and trial, and the Harmonized Sales Tax thereon;
 - (g) the costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;
 - (h) interest pursuant to the provisions of the *Judgment Interest Act*, R.S.N. 1990, c. J-2;
 - (i) such further and other relief as this Honourable Court deems just.

DATED at St. John's, in the Province of Newfoundland and Labrador this 25th day of November, 2003.

CHES CROSBIE BARRISTERS

Solicitors for the Plaintiff
Whose address for service is:
169 Water Street, 4th Floor
St. John's, NL A1C 1B1
Attention: Chesley F. Crosbie

TO: THE DEFENDANT
Health Labrador Corporation
c/o Captain William Jackman Memorial Hospital
410 Booth Avenue
Labrador City, NL A2B 2K1

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this day of
November, 2003
