

COURT FILE NO.: N/C/41/08

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MIRAMICHI

BETWEEN:

ALBERT JOHN GAY,

Plaintiff,

- and -

REGIONAL HEALTH AUTHORITY 7, a corporation
Incorporated under the laws of the Province
of New Brunswick

Defendant.

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

DIVISION DE

CIRCONSCRIPTION JUDICIAIRE DE
MONCTON

ENTRE:

Demandeurs,

-et-

Defendeurs.

Brought under the *Class Proceedings Act*,
S.N.B. 2006, c. C-5.15

NOTICE OF MOTION
(FORM 37A)

(FORMULE 37A)

TO: The Defendant

DESTINIAIRE:

Regional Health Authority 7
500 Water Street
Miramichi, NB E1V 3G5

The Plaintiff, Albert John Gay, will make motions before the Honourable Justice Jean-Paul Ouellette on a date to be fixed by this Honourable Court. On the day of , 200 : the Plaintiff motions will be heard pursuant to the direction of this Honourable Court for:

LEAVE TO AMEND THE STATEMENT OF CLAIM

1. An Order granting the Plaintiff leave to amend the Statement of Claim as noted in Exhibit "A" to the Affidavit of Michael Dull, sworn the 4th day of December, 2008, filed herewith. The Plaintiff relies on Rules 27.10(1) and 27.10(2)(c) in support of his motion for leave to amend.

CERTIFICATION

2. An Order certifying this action as a Class Proceeding;

CLASS AND CLASS REPRESENTATIVE

3. An Order defining the "Class" and "Class Period" as follows:

The "Class" is defined as:

- (a) Patients, including their estates, whose tissue samples including blood and fluids, underwent pathology testing reported by pathologist Rajgopal Menon, at the Defendant's hospital during the class period, and whose tissue samples the Defendant subsequently caused to be retested; and,
- (b) Persons who claim damages on account of a close family relationship with a person in paragraph (a).

The Class is restricted to residents of New Brunswick.

The "Class Period" is defined as:

January 1, 1995 to February 7, 2007, or such other dates as may be approved by the court.

4. Appointing Albert John Gay as the Representative Plaintiff of the Class.

NATURE OF THE CLAIMS

5. An Order stating the nature of the claims asserted on behalf of the Class to be negligence and breach of contract and of fiduciary duty.

RELIEF SOUGHT

6. An Order stating the relief sought by the Class members to be issues of the Defendant's liability, and damages.

COMMON ISSUES

7. An Order stating the "Common Issues" to be:
 - (a) Whether the Defendant owed a duty?
 - (b) Whether the Defendant breached that duty, and if so, when and how?

NOTICE

8. An Order approving the form and content of notice to the Class.
9. An Order specifying that the following means shall be used to notify the Class of this action and the certification of the Class ("Notice Programme"):
 - (a) The Plaintiff shall send a copy of the notice to every class member who has contacted the Plaintiff's counsel for the purpose of receiving notice;
 - (b) The Defendant shall mail a copy of the notice to any class members for whom it has a mailing address;
 - (c) Notice shall be published in newspapers as approved by the Court; and
 - (d) The Plaintiff shall publish a copy of the notice on a website maintained by the Plaintiff's counsel.
10. An Order requiring the Defendant forthwith to pay the cost of the Notice Programme.

OPT-OUTS

11. An Order specifying that class members may opt out of this Class proceeding by sending a written election by mail to the Plaintiff's solicitors before a date to be fixed by the Court.

LITIGATION PLAN

12. An Order approving the Plaintiff's proposed litigation plan for the conduct of this action as a class proceeding.

THE GROUNDS FOR THE MOTION ARE

13. The *Class Proceedings Act*, R.N.B. 2006 C-5.15;
14. The Court should certify this proceeding as a class proceeding because the statement of claim discloses a cause of action, there is an identifiable class of two or more persons, the claims of Class members raise a common issue, a class proceeding is the preferable procedure for the fair and efficient resolution of the dispute, and the proposed representative plaintiffs fairly and adequately represent the interests of the Class, and have produced a workable plan for advancing this litigation and of notifying other Class members, and do not have an interest in conflict with the interests of other Class members; and,
15. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motions:

1. The pleadings;
2. The affidavit of Michael Dull, sworn the 4th day of December 2008;
3. Such further and other evidence as counsel may advise and this Honourable Court permit.

You are advised that:

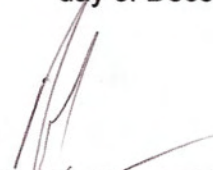
(a) You are entitled to issue documents and present evidence at the hearing in English or French or both;

(b) the Plaintiff intends to proceed in the English language; and

(c) If you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least five (5) days before the Hearing.

DATED at Halifax, in the Province of Nova Scotia, this ^{4TH} day of December, 2008.

Name of Lawyer for the Plaintiff:


Raymond F. Wagner

Name of Firm:
Business Address:

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Halifax, Nova Scotia B3J 2V2
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Email: raywagner@wagnerslawfirm.com
Counsel for the Plaintiff and
proposed members of the class

DATED at Halifax, in the Province of Nova Scotia, this ^{4TH} day of December, 2008.

Name of Lawyer for the Plaintiff:


Chesley F. Crosbie, Q.C.

Name of Firm:
Business Address:

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