

2023 01G 0812 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

MICHELE SHEARS-RUMBOLT

PLAINTIFF

AND:

LABRADOR-GRENFELL REGIONAL
HEALTH AUTHORITY

FIRST DEFENDANT

AND:

EASTERN REGIONAL HEALTH AUTHORITY

SECOND DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff, Michele Shears-Rumbolt, is a resident of the Town of St. Anthony, in the Province of Newfoundland and Labrador. Her address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2. She brings this action on her own behalf and on behalf of a proposed class of similarly situated persons.
2. The First Defendant, Labrador-Grenfell Health Authority, is a corporation established under and by authority of the *Regional Health Authorities Act*, 2006 c. R-7, ss. 6 and 7 and the *Regional Health Authorities Regulations* 18/08 ss. 3(1)(a). Its address for service is Box 7000, Station "C", Happy Valley-Goose Bay, NL A0P 1C0.
3. The Second Defendant, Eastern Regional Health Authority is also a corporation established under and by authority of the *Regional Health Authorities Act*, 2006 c. R-7, ss. 6 and 7 and the *Regional Health Authorities Regulations* 18/08 ss. 3(1)(a). Its address for service is Executive Office, Level 1, Room 1345, Health Sciences Centre, Prince Phillip Drive, St. John's, Newfoundland and Labrador, A1B 3V6.
4. At all material times the Defendants were responsible for operating breast screening programs in their respective defined regions of the province. The main purpose of the

breast screening program was to detect cases of breast cancer and to improve cancer outcomes for affected patients.

5. The Plaintiff repeats paragraph 4 herein and states the First Defendant operated its breast screening program for patients living in the Labrador Grenfell-Region, including completing mammograms. The review of the resulting images is completed by Eastern Health.
6. The Plaintiff repeats paragraph 4 herein and states the Second Defendant operated its breast screening program for patients living in the Eastern Region of the province, including completing mammograms and reviewing the resulting images.

THE CLASS

7. The Plaintiff brings this action under the *Class Actions Act* SNL 2001 c. C-18.1 on her own behalf and on behalf of a class consisting of:

All natural persons in Newfoundland and Labrador who received a mammogram through Labrador-Grenfell Regional Health Authority, or Eastern Regional Health Authority since 2018.

BACKGROUND

8. The use of x-ray machines in Newfoundland and Labrador is governed under both provincial and federal legislation, including the *Radiation Emitting Devices Act*, RSC 1985, c R-1, Health Canada's Safety Codes, the *Radiation Health and Safety Act*, RSNL 1990, c R-1, and the *Radiation Health and Safety Regulations*, CNLR 1154/96.
9. Pursuant to Health Canada's Safety Code 36, Section 3.2.4, a mammography review workstation is required to have at least two monochrome monitors with a minimum spatial resolution of five megapixels. A monochrome monitor is a monitor on which text and images appear in varying tones of one colour. A monitor with spatial resolution of five megapixels will display a more detailed image than a monitor with less spatial resolution.
10. Prior to the first use of any x-ray equipment, Health Canada's Safety Code 36 requires that it undergo acceptance testing. Acceptance testing is a process to verify compliance with the performance specifications of the x-ray equipment and to verify that the equipment performance complies with federal and provincial regulations. Acceptance

testing includes ensuring the spatial resolution meets the required minimum of five megapixels.

11. Further to paragraph 10, Health Canada's Safety Code 36, Section 3.2.4 also requires display devices to undergo annual quality control testing to ensure ongoing compliance with Safety Code 36's requirements.
12. The Canadian Association of Radiologists' *Practice Guidelines and Technical Standards for Breast Imaging and Intervention* also states that two five-megapixel monitors are required for image display and interpretation by a radiologist.

MATERIAL FACTS

13. In August, 2022, the Defendants, along with the other provincial Health Authorities, disclosed they were analysing mammography results for potentially incorrect diagnoses.
14. On August 24th, 2022, the media reported the Defendants had learned some of the work stations used to review mammography results were not up to the required technical standards set out in Health Canada's Safety Codes or the Canadian Association of Radiologists guidelines.
15. On October 21st, 2022, Eastern Health released a public advisory that they, along with Labrador-Grenfell Health, had completed a review of 10,833 patients' mammography images. 38 (thirty-eight) of those patients required further assessment and were in various stages of follow-up. As of the filing of this Statement of Claim, no further updates have been provided.

THE PROPOSED REPRESENTATIVE PLAINTIFF

16. Michele Shears-Rumbolt, the proposed representative Plaintiff, was diagnosed with Stage 1 invasive ductal carcinoma in March, 2014. She underwent a right lumpectomy in April, 2014, followed by 19 rounds of radiation from June to July of 2014.
17. The Plaintiff was required to have screening mammograms every six months for the first year following her diagnosis, and once a year thereafter.
18. Between February, 2018 and February, 2022, the Plaintiff had five mammograms performed by the First Defendant and reviewed by the Second Defendant.

19. Following the news releases that the First and Second Defendants were reviewing mammogram results from 2018 onwards, the Plaintiff experienced elevated stress and anxiety. She suffered a loss of confidence in the health care services provided by the First and Second Defendants, and has opted to receive mammograms from a private clinic in the Washington, U.S.A. to ensure accurate results.
20. Although the Plaintiff is presently cancer-free, she lives with constant anxiety that her cancer may one day return. This anxiety increases when her annual screening mammogram approaches and she awaits the result. Learning that her previous three years of mammogram results may not have been accurate caused her significant emotional distress, loss of sleep, loss of appetite and loss of enjoyment of life, and increased her anxiety.
21. The Plaintiff attempted to discuss her concerns arising from the Defendant's review of mammography results with the First Defendant but to date has received no satisfactory response.

NEGLIGENCE

22. The Defendants' conduct fell below the reasonable standard of care expected of them under the circumstances. The Defendants' conduct was negligent and they breached statutory and fiduciary duties owed to the Plaintiff and class members.
23. The Defendants were negligent in their failure to use workstations that met the required technical standards. Particulars of this negligence include:
 - a. failing to properly train and supervise its employees in mammogram review procedures;
 - b. failing to conduct timely periodic reviews of mammogram screening procedures as required;
 - c. failing to recognize that its workstations used for mammogram review did not meet required standards since at least 2018; and
 - d. falling below the reasonable standard of care expected of it under the circumstances.
24. The Defendants were negligent in selecting, purchasing and/or using the incorrect monitors and equipment which they knew or ought to have known were inadequate and did not meet the required specifications outlined by Health Canada.

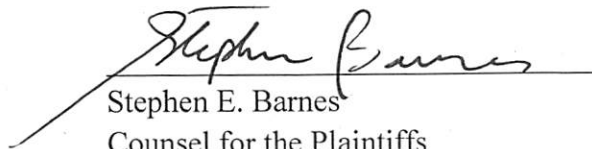
25. As a result of the Defendants' negligence and breach of their statutory and fiduciary duties, the Plaintiff and other class members suffered pecuniary and non-pecuniary losses. The Plaintiff submits that such losses were reasonably foreseeable by the Defendants.
26. Particulars of the loss or damage suffered by class members include the following:
 - a. non-pecuniary damages for pain and suffering;
 - b. non-pecuniary damages for nervous shock, mental stress, and anxiety after being informed by the Defendants:
 - i. that their previous mammograms results were under investigation; and
 - ii. that the Defendants were not using the required monitors to assess their mammogram results;
 - c. loss of income;
 - d. out of pocket expenses;
 - e. aggravated damages;
 - f. punitive and/or exemplary damages.

RELIEF SOUGHT

27. The Plaintiff repeats the foregoing paragraphs and states that as a result of the Defendants' negligence, and breach of statutory and fiduciary duties, the Plaintiff and the proposed class members have suffered losses.
28. The Plaintiff therefore seeks the following relief on her own behalf and on behalf of the Class, all to be assessed and quantified based upon evidence at trial:
 - a. damages for negligence, breach of statutory and fiduciary duties;
 - b. damages for pain and suffering, nervous shock, and loss of enjoyment of life;
 - c. an order for an aggregate money award pursuant to s. 29 of the *Class Actions Act*;
 - d. aggravated, punitive and/or exemplary damages;
 - e. special damages;
 - f. costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;
 - g. costs, including fees of expert witnesses in attending at discovery and/or trial, and HST on the same;
 - h. interest pursuant to the *Judgement Interest Act*, RSN 1990, c J-2; and
 - i. such further and other relief as this Honourable Court deems just, equitable and appropriate in all of the circumstances

29. The Plaintiffs propose that this proceeding be tried at the Judicial Centre of St. John's, Newfoundland and Labrador.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2023.



Stephen E. Barnes
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TO: The First Defendant
Labrador-Grenfell Regional Health Authority
Box 7000, Station "C"
Happy Valley-Goose Bay, NL A0P 1C0

AND TO: The Second Defendant
Eastern Regional Health Authority
Executive Office, Level 1, Room 1345
Health Sciences Centre, Prince Phillip Dr
St. John's, NL A1B 3V6

ISSUED AT St. John's, in the Province of Newfoundland and Labrador, this 8 day of February, 2023.



COURT OFFICER

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NOTICE TO DEFENDANTS

You are hereby notified that the plaintiff may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within ten days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at 309 Duckworth Street, St. John's, Newfoundland and Labrador, a defence and unless within the same time a copy of your defence is served upon the plaintiff or the plaintiff's solicitors' stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$_____ (such sum as may be allowed on taxation) for costs to the plaintiff or the plaintiff's solicitors within ten days from the service of this notice upon you, then this proceeding will be stayed.

TO: The First Defendant
Labrador-Grenfell Regional Health Authority
Box 7000, Station "C"
Happy Valley-Goose Bay, NL A0P 1C0

AND TO: The Second Defendant
Eastern Regional Health Authority
Executive Office, Level 1, Room 1345
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AFFIDAVIT OF SERVICE

I, _____ of _____, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. On _____ at _____ A.M/P.M., I served _____ with the Statement of Claim by leaving a copy with _____ at _____

2. I was able to identify the person by means of _____

SWORN TO at the City of St. John's, in the Province of Newfoundland and Labrador, this ____ day of _____, 2023, in the presence of:
