

2020



Hfx No.
5 0 2 8 1 1

Supreme Court of Nova Scotia

Between:

Sunyata Choyce and Ryan Binder as litigation guardian of Peyton Binder

Plaintiffs

and

Dr. Errol Gaum

Defendant

Proceeding under the Class Proceedings Act, SNS 2007, c 28

NOTICE OF ACTION

To: The Defendant
Errol Gaum
Bedford, Nova Scotia

Action has been started against you
The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$150,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary at 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7 (telephone # 902-424-4900).

When you file a document, you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

MacGillivray Law
5777 West Street
Halifax, Nova Scotia

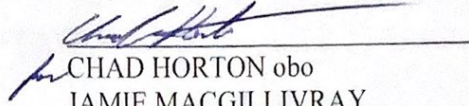
Documents delivered to this address are considered received by the plaintiffs on delivery. Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed December 17, 2020.



for CHAD HORTON obo

JAMIE MACGILLIVRAY

MacGillivray Law

5777 West Street

Halifax, Nova Scotia

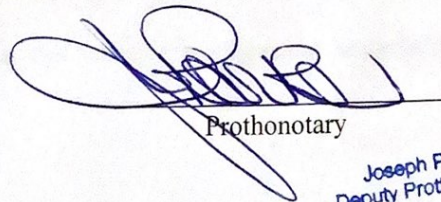
1-888-434-0398

Solicitor for the Plaintiffs

and the Proposed Class Members

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on December 17, 2020.



Prothonotary

Joseph Parks
Deputy Prothonotary

STATEMENT OF CLAIM

I. CLASS PROCEEDING OVERVIEW

1. This claim is being brought under the *Class Proceedings Act*, SNS, c. 28, s. 1. This is an action simultaneously for both (1) assault and battery due to a lack of informed consent and (2) negligence. For five decades, Dr. Errol Gaum used substandard and aberrant methods of behavior management for young children who were patients of his pediatric dentistry practice. These methods caused physical and significant psychological injury to several hundred young children. These children, many of whom are now adults, seek the condemnation of the Court as against the behavior management techniques employed by the Defendant.

II. PROFFERED REPRESENTATIVE PLAINTIFFS, CLASS, AND SUBCLASSES

2. This claim is brought through two class representatives, one for each proffered subclass. The first proposed subclass is for Plaintiffs who are under the age of 22 at the time of filing this Statement of Claim. The second proposed subclass is for class members who are over the age of 21 at the time of filing this Statement of Claim.

II (A) SUBCLASS REPRESENTATIVE: PLAINTIFFS UNDER AGE 22 ("Under 22 Subclass")

3. The Plaintiff, Peyton Binder ("Peyton"), lives with her family in Glace Bay, Cape Breton, Nova Scotia. Peyton is six years old as of the time of filing of this action. Peyton is represented by her Litigation Guardian and father, Ryan Binder.

4. On November 10, 2020 at 11:15 AM, Peyton attended the Defendant's clinic in Bedford, Nova Scotia, to have two cavities filled. Peyton was escorted to the appointment by her grandmother, Kelly Smith ("Grandmother"). Her Grandmother attempted to enter the treatment area with Peyton. She was told that she had to remain in the waiting room while Peyton was with the Defendant. Soon after, Peyton's Grandmother began hearing Peyton screaming and crying.

5. During Peyton's treatment, the Defendant placed his hand over her mouth and pinched her nose at the same time. When Peyton cried for her Grandmother, the Defendant said "shut up" and "your grandmother is no longer here". The Defendant extracted two of Peyton's teeth without the consent of her guardians.

6. After Peyton finished her appointment, Peyton's Grandmother asked to speak to Dr. Gaum but was told she could not see him. On the drive home to Glace Bay, Peyton was pale and highly distraught. She repeatedly told her Grandmother "he hurt me".

7. Since the above-mentioned incident, Peyton has cried daily, mumbles, and is intimidated by strangers. Peyton will not leave her father's side without extreme protest and repeats "please protect me" and "don't let me get hurt again".

II (B) SUBCLASS REPRESENTATIVE: PLAINTIFFS OVER AGE 21 ("Over 21 Subclass")

8. The Plaintiff Sunyata Choyce ("Ms. Choyce") is 41 years old at the time of the filing of this claim. Ms. Choyce lives in Lawrencetown, Nova Scotia.

9. Ms. Choyce was treated by the Defendant on multiple occasions between 1982 and 1984.

10. During treatment with the Defendant, Ms. Choyce was intimidated, threatened, and inflicted with unnecessary pain. The Defendant would routinely tell his assistant to hold Ms. Choyce down. The assistant would grab Ms. Choyce's arm and shoulder and restrain her. At other times, the Defendant himself would hold her down leaning on her and pinning her with his body. Ms. Choyce would call out for help and, on these occasions, the Defendant would lean straight over her face and tell her that if she cried out again, he would inflict more pain and do more injections. The Defendant would also perform dental work on Ms. Choyce's teeth before the numbing was activated.

11. The Defendant repeatedly told Ms. Choyce to “shut up” and that he would hurt her more if she kept crying. The Defendant routinely made intimidating and cruel comments, while at the same time leaning in close and grabbing Ms. Choyce’s face. The sides of Ms. Choyce’s lips would be ripped from her mouth being pried open too far. Ms. Choyce’s mother could hear her daughter screaming during the treatments, but she was not allowed to attend in the treatment room. Ms. Choyce suffers from anxiety today due to the actions of the Defendant.

II (C) CLASS MEMBERS

12. Behavior management techniques are those methodologies employed by dental practitioners to gain the cooperation of children during treatment. The Defendant’s behavior management techniques were manifest with aberrant, cruel, and traumatizing methodologies which he utilized habitually (“Behavior Management Techniques”). Peyton and Ms. Choyce (“the Plaintiffs”) bring this claim on their own and on behalf of others who have suffered as a result of the Defendant’s tortious and negligent conduct (“Class Members”).

III. THE DEFENDANT

13. The Defendant, at all times material, was a dentist licensed to practice dentistry in Nova Scotia. The Defendant had a dental practice at the Professional Centre on Spring Garden Road in Halifax, at the Mic Mac Mall in Dartmouth, and at Granville Road in Bedford. The Defendant has practiced dentistry in Nova Scotia for approximately 50 years. The Defendant is currently under suspension for incidents related to this class action claim.

IV. BEHAVIOUR MANAGEMENT TECHNIQUES

14. The Defendant's dental practice was focused on treating young children. During his procedures, the Defendant habitually used aberrant, cruel, traumatizing, and substandard methodologies to gain control of his child patients. These Behaviour Management Techniques were harmful, offensive, and caused physical and significant psychological trauma to the Plaintiffs and the Class Members.

15. The Behaviour Management Techniques used by the Defendant on the Plaintiffs and the Class Members included the following:

- i. slapping in the face;
- ii. pinching noses while simultaneously covering their mouths with his hand;
- iii. covering mouths with a towel;
- iv. restraining arms and legs with leather straps;
- v. applying his body weight to restrain them;
- vi. holding faces forcefully to the point of leaving bruises;
- vii. holding heads back with extreme force;
- viii. using his fingers to apply pressure to pressure points;
- ix. making verbal threats that he would inflict more pain;
- x. frequently saying "shut up";
- xi. threatening to use the needle incorrectly;
- xii. telling them that their mother or father is gone from the building;
- xiii. threatening to remove another tooth if they continue crying;
- xiv. intentionally inflicting pain to force cooperation;

- xv. pinching arms;
- xvi. resting the needle against their tongue in a threatening manner;
- xvii. pushing the needle onto the roof of the mouth;
- xviii. poking the needle into their hand if they were trying to block the needle;
- xix. unnecessary and nonconsensual removal of teeth;
- xx. initiating procedures before sedation or freezing becomes effective;
- xxi. refusing to allow parents and guardians into the treatment area.

V. FAILURE TO DISCLOSE

16. The Plaintiffs, Class Members, and their guardians did not provide consent for the Defendant to use the Behavior Management Techniques he employed. The Behavior Management Techniques used by the Defendant on the Plaintiffs and Class Members vitiated any consent provided by the Plaintiffs or Class Members or their guardian.

17. The Defendant did not disclose the nature of the Behavior Management Techniques to the Plaintiffs, the Class Members, or their guardian. Since the Plaintiffs, the Class Members, and their guardians did not have this information, they were unable to provide informed consent.

18. The Plaintiffs, the Class Members, and their guardians would not have agreed to the Behavior Management Techniques if the nature and risk of physical and significant psychological injury was disclosed to them in advance. A reasonable person in the place of the Plaintiffs, the Class Members, or the guardians would not have agreed to the

Defendant's Behaviour Management Techniques had they been informed of their nature in advance.

VI. LACK OF INFORMED CONSENT: ASSAULT AND BATTERY

19. The Behavior Management Techniques used by the Defendant created the apprehension of imminent and offensive contact by the Defendant against the Plaintiffs and Class Members. The treatments used by the Defendant did cause harmful or offensive contact by the Defendant on the persons of the Plaintiffs and the Class Members. Due to the lack of informed consent for the Behavior Management Techniques, the Defendant committed malpractice in the form of assault and battery against the Plaintiffs and the Class Members.

20. To the extent that the Plaintiffs, the Class Members, or their guardians did implicitly or explicitly consent to the Behavior Management Techniques, the consent is legally ineffective given the disparity in the relative power of the Defendant over them in the circumstances and the insufficient information provided to the Plaintiffs, the Class Members, or their guardians.

VII. PROFESSIONAL NEGLIGENCE

21. The Defendant had a doctor-patient relationship with the Plaintiffs and the Class Members. The Defendant breached his duty of care to the Plaintiffs and the Class Members. The particulars of the Defendant's breach are as follows:

- (a) he failed to meet his fiduciary duty where he did not treat the interests of the Plaintiffs and the Class Members as if they were his own;
- (b) he failed to conduct his practice in accordance with the conduct of a prudent and diligent dentist;
- (c) he failed to bring to his treatment a reasonable degree of skill and knowledge and to exercise a degree of care;
- (d) he failed to exercise a degree of care and skill which could reasonably be expected of a normal, prudent dentist of his experience, specialization, and standing.

22. These breaches result from the Behavior Management Techniques used by the Defendant which are unapproved within his field, aberrant and cruel.

23. The Defendant knew or ought to have known that the use of his Behavior Management Techniques exposed the Plaintiffs and the Class Members to risks of physical injury and serious psychological harm.

VIII. STATUTE OF LIMITATIONS

24. Ms. Choyce and the Class Members over the age of 21 at the time of the filing of this claim plead and rely on of the *Limitation of Actions Act, SNS 2014, c. 35* including Section 11(b)(ii). The claim of assault and battery stems from the lack of informed consent to the treatment methods employed by the Defendant on the Plaintiffs and the Class Members.

25. The Plaintiffs and Class Members were dependent emotionally and physically on the Defendant during treatment and therefore the two year limit does not apply to their claims.

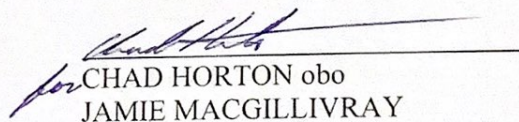
IX. RELIEF SOUGHT

26. The Plaintiffs and the Class Members claim:

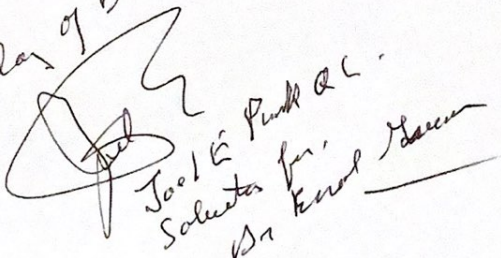
- i. an Order under section 7(1) of the *Class Proceedings Act, SNS 2007, c.28* certifying this proceeding as a class proceeding and appointing the Plaintiffs as the representative plaintiffs for each of their respective subclasses, or such arrangement of class or subclasses as the Court approves;
- ii. a declaration stating that the claims of Ms. Choyce, and any Class Members over the age of 21, are not barred by the *Limitation of Actions Act, SNS 2014, c.35*;
- iii. general damages for physical and psychological injury causing pain and suffering;
- iv. aggravated and punitive damages given that the treatment methodologies used by the Defendant were so sub-standard and outrageous as to be opposed to community standards and therefore require condemnation by the Court;
- v. costs and disbursements on a substantial indemnity basis.

Signature

Signed December 17, 2020.


for CHAD HORTON obo
JAMIE MACGILLIVRAY
MacGillivray Law
5777 West Street
Halifax, Nova Scotia
1-888-434-0398
**Solicitor for the Plaintiffs
and the Proposed Class Members**

I hereby
accept service
on behalf of
Ms. Ernest
this 17 day of December
2020


Joel E. Pank Q.C.
Solicitor for
Ms. Ernest