

4.05A

2020

Court Administration

JUN 04 2021

Halifax, N.S.

Hfx. No. 502811

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 DEFENCE

TO: Sunyata Choyce and Peyton Binder and the Proposed Class Members
c/o Jamie MacGillivray
MacGillivray Law
134 Provost Street
PO Box 753
New Glasgow, NS B2H 5G2

Your action is defended

The Defendant, Dr. Errol Gaum, defends your action.

The grounds for the defence are stated in the attached Statement of Defence.

Contact information

The Defendant, Dr. Errol Gaum, designates the following address:

Michael D. Brenton, Q.C.
Brenton Kean
Lawyers/Avocats
75 Prince William Street, 4th Floor
PO Box 609
Saint John, NB E2L 4A5
Telephone: (506) 633-2556
Facsimile: (506) 633-5902

Documents delivered to this address are considered received by the Defendant, Dr. Errol Gaum, on delivery.

Further contact information is available to each party from the Prothonotary.

Signed this 1st day of June, 2021.

Michael D. Brenton, Q.C.
Brenton Kean
Lawyers/Avocats
75 Prince William Street, 4th Floor
PO Box 609
Saint John, NB E2L 4A5
Telephone: (506) 633-2556
Facsimile: (506) 633-5902
Solicitors for the Defendant, Dr. Errol Gaum

Prothonotary's certificate

I certify that this Notice of Defence, including the attached Statement of Defence, was filed with the Court on the 4th day of June, 2021.

Prothonotary

AMY HARRISON
Deputy Prothonotary

Form 4.05B**STATEMENT OF DEFENCE**

1. The Defendant, Dr. Errol Gaum, admits the allegations contained in paragraph 3 of the Statement of Claim.
2. The Defendant denies the allegations contained in paragraphs 1, 5, 6, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Statement of Claim and further denies that the Plaintiffs are entitled to the relief sought in paragraph 26 of the Statement of Claim.
3. The Defendant has no knowledge of the allegations contained in paragraph 7, 8, and 9 of the Statement of Claim, but denies any improper or substandard treatment of the Plaintiff, Peyton Binder as alleged in paragraph 7.
4. With respect to paragraph 2 of the Statement of Claim, the Defendant takes no position on the proposed class being divided into subclasses for the purposes of these proceedings, but notes that an individual of the age of 21 would fall within both subclasses as defined in paragraph 2.
5. With respect to paragraph 4 of the Statement of Claim, the Defendant admits that Peyton Binder was treated by him on November 10, 2020. The Defendant admits that Peyton Binder was escorted to the appointment by her grandmother, Kelly Smith, who provided consent for the treatment received by Peyton Binder. The Defendant admits that Peyton Binder cried during treatment, which is not unusual when performing dental treatment of the nature required by Peyton Binder. Kelly Smith was advised of this and instructed the Defendant to proceed. The Defendant admits that Kelly Smith was not allowed in the operatory: such is standard procedure in Dr. Gaum's practice and Ms. Binder's parents were advised of this in writing prior to the November 10, 2020 appointment. The Defendant otherwise denies the allegations contained in paragraph 4 of the Statement of Claim.
6. With respect to paragraph 13 of the Statement of Claim, the Defendant admits the allegations contained therein. The Defendant's license to practice dentistry was temporarily suspended by the Provincial Dental Board of Nova Scotia in November, 2020 pending an investigation of a complaint(s) made against the Defendant. The Defendant has not yet had an opportunity to respond to the complaint(s) and no adjudication has occurred.
7. With respect to paragraph 14 of the Statement of Claim, the Defendant admits that his dental practice has focused on the treatment of children. Pediatric patients are referred to the Defendant by dentists throughout Nova Scotia – as was the case for Peyton Binder. The Defendant possesses a Master of Science degree from Tufts University School of Dental Medicine, in Boston, Massachusetts, and is a certified paedodontist. The Defendant has taught paedodontic dentistry at Tufts University School of Dental Medicine, Harvard Medical Dental School, Dalhousie University Dental School, and the IWK Children's Hospital (the latter until 2020). The Defendant otherwise denies the allegations contained in paragraph 14.

8. The Defendant says that all times his treatment of patients has been in accordance with professional dental treatment standards prevailing at the time the treatment was administered. All treatment was consented to by the Defendant's patients, or their parents/guardians when the patients were under the age of majority.

9. The Defendant pleads and relies upon the provisions of the *Limitation of Actions Act*, S.N.S. 2014 c.-35 and says that the claims of prospective class members over the age of 21 as of December 17, 2020 are statute barred.

10. The Defendant respectfully requests that the Plaintiffs' claim be dismissed with costs.

DATED at Saint John, New Brunswick, this 1st day of June, 2021.



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TO: The Prothonotary

AND TO: Jamie MacGillivray
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