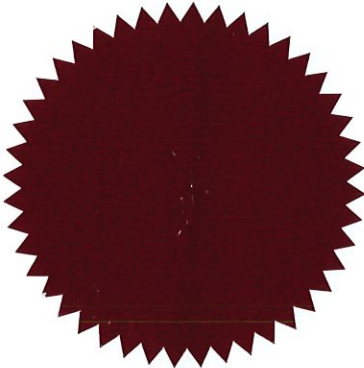


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 29TH DAY
Mr. JUSTICE M. GREGORY ELLIES) OF NOVEMBER, 2017.



SHERRY-LYNN DANIELLS

Plaintiff

- and -

MELISSA McLELLAN and
NORTH BAY REGIONAL HEALTH CENTRE

Defendants

Proceedings under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiff for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992 S.O. 1992, c. 6*, as amended, was heard this day, at the Court House, 360 Plouffe Street, North Bay, Ontario.

UPON READING the Amended Motion Record of the plaintiff dated March 8, 2016, the Motion Record of the defendant, North Bay Regional Health Centre,

dated September 21, 2015, filed, and on hearing the submissions of the lawyers for the plaintiff and the defendant, North Bay Regional Health Centre, and with the defendant, Melissa McLellan, not in attendance, although properly served with the motion material of the plaintiff and of the defendant, North Bay Regional Health Centre, and with the Confirmation of Motion dated April 13, 2017,

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992 S.O. 1992, c. 6*, as amended.

2. **THIS COURT ORDERS** that the class ("Class") is hereby defined as follows:

All patients of the North Bay Regional Health Centre whose personal health information was accessed by Melissa McLellan without their consent, while Melissa McLellan was not involved in their care.

3. **THIS COURT ORDERS** that Sherry-Lynn Daniells and Andrea Kendall are hereby appointed as the representative plaintiffs for the Class.

4. **THIS COURT ORDERS** that Larmer Stickland P.C. shall be and is hereby appointed as lawyers for the Class ("Class Counsel").

5. **THIS COURT ORDERS** that the common issues for this class proceeding are:

- (a) Did the Hospital owe a duty of care to protect the private health information of the Class members from unauthorized disclosure?
- (b) If so, was this duty breached by Melissa McLellan's access to their private health information without consent or authorization?
- (c) Did the defendants have a fiduciary duty to properly collect, store, and secure the personal health information of the Class members?
- (d) If so, was that duty breached by McLellan's access to their private health information without consent or authorization?
- (e) Did the Hospital have a contractual obligation to properly collect, store, and secure the personal health information of the Class members?
- (f) If so, did the Hospital breach that contractual obligation?
- (g) Is Melissa McLellan liable to the Class members for intrusion upon their seclusion?
- (h) If so, is the Hospital vicariously liable to the Class members for McLellan's intrusion upon their seclusion?
- (i) Are the Class members entitled to moral or symbolic damages for the intrusion upon their seclusion? If so, can an aggregate assessment be made of all or part of these damages? If so, what is the appropriate measure of said damages?
- (j) Are the Class members entitled to non-pecuniary damages? If so, can an aggregate assessment be made of all or part of these damages? If so, what is the appropriate measure of said damages?
- (k) Are the Class members entitled to pecuniary damages? If so, can an aggregate assessment be made of all or part of these damages? If so, what is the appropriate measure of said damages?
- (l) Are the Class members entitled to special damages?
- (m) Are the Class members entitled to aggravated damages for the intrusion upon their seclusion? If so, can an aggregate assessment be made of all or part of these damages? If so, what is the appropriate measure of said damages?

- (n) Are the Class members entitled to punitive damages? If so, what is the appropriate measure of these damages? How will these damages be distributed to the Class members?

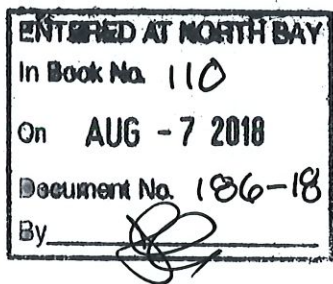
6. **THIS COURT ORDERS** that the Class members shall be given notice of the certification ("Notice") of this action as a class proceeding, in both English and French, in accordance with the form of the Notice attached as Schedule "A" to this Order, in the following manner:

- (a) By posting a copy of the Notice on Class Counsel's website: www.larmerstickland.com;
- (b) By posting a copy of the Notice on Class Counsel's Facebook and Twitter pages;
- (c) By publishing a copy of the Notice, without the attached Opt-Out Form, attached as Schedule "B" to this Order, in the North Bay Nugget, the Kirkland Lake Northern News and the Timmins Daily Press newspapers on two occasions, at least one week apart;
- (d) By the defendant, the North Bay Regional Health Centre, sending a copy of the Notice by first class prepaid letter mail to each individual Class member at their last known address as indicated in the records of said defendant; and
- (e) By Class Counsel providing a copy to any person who requests it.

7. **THIS COURT ORDERS** that any Class member may opt out of the class proceeding by no later than October 1, 2018, by delivering to Class Counsel a signed written election form, in accordance with the Opt Out Form attached to the Notice, or some other legible signed request to opt out.

8. **THIS COURT ORDERS** that no minor or mentally incapable Class member may opt out of this class proceeding without Court approval.

9. **THIS COURT ORDERS** that a copy of this Order be delivered to the defendant, Melissa McLellan, by prepaid first class mail to her last known residential address and also by way of electronic mail to her last known email address.



A handwritten signature in black ink, appearing to read "Ellies J.", written over a horizontal line.

The Honourable Justice M. Gregory Ellies

SCHEDULE "A"

NOTICE OF CERTIFICATION BREACH OF PRIVACY CLASS ACTION

Please read this notice carefully as it may affect your rights

Who is this notice for?

This notice is for all patients and former patients of the North Bay General Hospital, the Northeast Mental Health Centre and the North Bay Regional Health Centre whose personal health information was allegedly accessed and viewed by Registered Nurse, Melissa McLellan, without their consent while Nurse McLellan was not involved in their care.

This unauthorized access to personal health information is alleged to have occurred from around November of 2004 to around March of 2011 involving approximately 5,804 patients.

Some patients already received a letter from the North Bay Regional Health Centre notifying them of the breach of their privacy in September of 2011. Not all patients who had their privacy breached received this letter.

If you have never been contacted by the North Bay Regional Health Centre to be identified as a patient whose privacy has been breached and you believe that you may have had your personal health information accessed improperly by Registered Nurse, Melissa McLellan, please contact Class Counsel for more information concerning your eligibility to participate in this class action.

What is the court action about?

A court action was commenced in the Ontario Superior Court of Justice in North Bay, *Daniells v. McLellan et al.*, Court File No. CV-13-5565-CP, as a proposed class action seeking damages on behalf of all patients and former patients of the North Bay Hospitals whose privacy was breached by Melissa McLellan.

On November 29, 2017, Justice Ellies of the Ontario Superior Court of Justice certified the action as a class proceeding and appointed Sherry-Lynn Daniells and Andrea Kendall as representatives for all claimants defined as follows:

All patients and former patients of the North Bay Regional Health Centre whose personal health information was accessed by Melissa McLellan without their consent, while Melissa McLellan was not involved in their care.

If you are a Member of this Class, your rights will be affected.

How does this class action affect me?

Class Members who wish to participate in the class action need not do anything at this time. They are all automatically included in the class action.

The members of the Class who do not opt out of this class action will be bound by the terms of any judgment or settlement, whether favourable or not.

Each Class Member will be entitled to share in the amount of any monetary award or financial settlement recovered in this class action.

After there is a determination of all issues that are common to all Class Members, it may be necessary that individual Class Members participate in individual hearings to determine the amount of their damages. The Court may establish a procedure for determining an individual Class Member's damages.

What if I choose not to participate?

Class Members who do not wish to participate in the class action must opt-out.

Any Class Member that does not want to be a part of this court action and wishes to be excluded from the class action must sign a written election form stating that he or she opts out of the class action. An Opt Out Form is attached. The written election form should be sent by mail, fax or email to:

Larmer Stickland P.C.
401 – 101 Worthington Street East
North Bay ON P1B 1G5

Attention: Ms. Brianna Johns
Facsimile Number: 705-478-8100
Email address: privacybreach@larmerstickland.com

The deadline for opting-out is **October 1, 2018**. No Class Member will be permitted to opt-out after the expiry of this deadline.

No person may opt-out on behalf of a minor or mentally incapable person without permission of the Court, after notice to the Children's Lawyer or the Public Guardian Trustee, as appropriate.

If you decide to opt-out you will not be bound by the terms of any judgment or settlement. However, you will also not be eligible for any of the benefits of any settlement or judgment if the action is successful.

Who is representing us?

The Court has appointed Class Members, Sherry-Lynn Daniells and Andrea Kendall, as representative plaintiffs and has appointed the Law Firm of Larmer Stickland P.C. of North Bay, Ontario, as the lawyers for the Class.

What about legal costs?

The Representative Plaintiffs have entered into agreements with Larmer Stickland P.C. with respect to legal fees and disbursements. These agreements provide that Class Counsel will not receive payment for their work unless and until the class action is successful. These fee agreements and all fees received by Class Counsel must be approved by the Court.

If the class action is not successful, the Class Members, other than the representative plaintiffs, will not be responsible for any legal costs of the class action and will not incur any financial obligations because of this class action.

Where can I get more information?

If you want to find out more about this court action, please do not hesitate to contact the lawyers for the Class Members as follows:

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By Telephone: 705-478-8200

You may also wish to visit the class action website at:
www.larmerstickland.com/classaction

At no time should any questions be directed to the Court.

This notice has been approved by Justice Ellies of the Ontario Superior Court of Justice.

Court File No. CP-13-5565-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SHERRY-LYNN DANIELLS

Plaintiff

- and -

MELISSA McLELLAN and
NORTH BAY REGIONAL HEALTH CENTRE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

OPT OUT FORM

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that by opting out of this class proceeding, that I will be excluded from receiving any compensation arising out of any settlement or a judgment in this class proceeding concerning the privacy breach of my personal health information.

Date: _____.

Signature of Witness

Signature of Class Member

Name of Witness Printed

Name of Class Member Printed

To opt out of this class proceeding, the OPT OUT Form must be properly completed and received by Larmer Stickland P.C. no later than OCTOBER 1, 2018. Please send Form to:

LARMER STICKLAND P.C.
401-101 Worthington Street East
North Bay, Ontario
P1B 1G5

Attention: Brianna K. Johns
Facsimile: (705) 478-8100
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SCHEDULE "B"

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www.larmerstickland.com/classaction

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This notice has been approved by Justice Ellies of the Ontario Superior Court of Justice.

SHERRY-LYNN DANIELLS

and

MELISSA McLELLAN, et al.

Court File No. CV-13-5565-CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Northeast Region

PROCEEDING COMMENCED AT
North Bay, Ontario, Canada

ORDER

LARMER STICKLAND P.C.
401-101 Worthington Street East
North Bay, Ontario
P1B 1G5

Counsel: Geoffrey Larmer
LSUC No.: 35541V

Telephone: (705) 478-8200
Facsimile: (705) 478-8100

Lawyers for the Plaintiff