

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC 08 2021

S2110728

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

AARON ZACHARUK

PLAINTIFF

and

PROVINCIAL HEALTH SERVICES AUTHORITY

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF’S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. When people receive medical treatment, they rely on their care providers to ensure that only properly qualified and licensed practitioners are involved in their care. Patients are uniquely vulnerable and at risk of harm if the persons charged with overseeing their care do not appropriately screen and supervise providers. Despite those basic propositions, for a period of more than one year, patients at B.C. Women’s Hospital were subject to so-called “care” from a person holding herself out as a nurse even though she was neither licensed nor qualified as such. As a result of its negligence, the Defendant Provincial Health Services Authority permitted Brigitte Cleroux to inflict substandard and non-consensual medical care on patients in her charge, causing significant harm and a loss of trust in the medical system. Through this suit, affected persons seek to hold the Defendant accountable and to prevent a recurrence.

The Parties

2. The Plaintiff is a resident of Vancouver, British Columbia. At material times, she was a patient at BC Women’s Hospital and Health Centre and was attended by Brigitte Cleroux.

3. The Plaintiff brings this action on her own behalf and on behalf all persons in Canada who were received care from Brigitte Cleroux in British Columbia while at a medical facility operated by the Defendant (the “**Class**”, “**Class Members**” and “**Class Period**”) including a

subclass of persons who received a notification from the Provincial Health Services Authority regarding the involvement of Brigitte Cleroux in their medical care.

4. The Defendant Provincial Health Services Authority is a society constituted under the *Societies Act*, SBC 2015 c 18. The Defendant provides healthcare services to British Columbians, including at BC Women’s Hospital and Health Centre (“**BC Women’s Hospital**”). In this pleading, a reference to the Defendant includes its agents and employees.

The Regulation of Nursing in British Columbia

5. Nursing is a regulated profession in British Columbia under the *Health Professions Act*, RSBC 1996, c 183 and associated regulations. The British Columbia College of Nurses & Midwives (the “**College**”) is the designated regulator for nurses.

6. To obtain an appropriate registration, a prospective nurse must possess the necessary entry-level competencies and educational credentials mandated by the College. Prospective licensees must pass registration exams and meet all registration requirements imposed by the College.

7. The College makes available a verification procedure, including on the College website, to permit employers and others to confirm the registration status of nurses. The College also operates a registration department capable of responding to registration inquiries and verifying registrations and qualifications.

8. Health care facilities in British Columbia are only allowed to employ and deploy duly qualified and registered healthcare practitioners, including nurses, to provide patient care. It is a serious offence to purport to provide medical care while not licensed to do so, and serious harm can result.

The “Fake Nurse” – Brigitte Cleroux

9. From at least June 2020 to June 2021, a woman known as “Brigitte Cleroux” (“**Cleroux**”) worked at BC Women’s Hospital. At material times, Cleroux was assigned by the Defendant or its agents to *inter alia* the Gynecology Surgical Program at BC Women’s Hospital.

10. At material times, BC Women's Hospital employed and deployed Cleroux to provide care to patients, including the Plaintiff and Class Members, as though she was a licensed nurse.

11. At material times while working at BC Women's Hospital, Cleroux held herself out to patients, including the Plaintiff and Class Members, as a licensed nurse. In particular, Cleroux held herself out and was held out as being a licensed registered nurse.

12. At no material time was Cleroux properly licensed as a nurse in British Columbia when she purported to provide care to patients at BC Women's Hospital, including the Plaintiff and Class Members. In particular, Cleroux was not registered with the College as registered nurse or at all.

13. At material times while working at BC Women's Hospital, Cleroux was physically involved in providing medical care to patients, including the Plaintiff and Class Members, which included touching them and performing medical procedures upon them. Among other things, Cleroux administered medication to patients at BC Women's Hospital and participated in surgeries.

14. At material times while working at BC Women's Hospital, Cleroux purported to provide medical advice and direction to patients, including the Plaintiff and Class Members.

15. Patients, including the Plaintiff and Class Members, did not and could not consent to treatment by Cleroux, when she was not licensed or authorised to provide medical care, and did not disclose her status to them.

16. Cleroux provided substandard care to patients, including the Plaintiff and Class Members. It would have been and was apparent to qualified practitioners, including the Defendant's agents, that Cleroux was not providing or capable of providing the requisite level of care required of a person operating in her position.

17. As a result of the material events, Cleroux has been charged by police in British Columbia with fraud over \$5,000 and personation with the intent to gain advantage.

18. Cleroux may have attended nursing school at some point but was never certified or qualified as a nurse.

19. Cleroux had a long history of personation in the medical field. Since at least 1991, she has been repeatedly charged and convicted for crimes related to holding herself out as a qualified nurse, across Canada and the United States.

20. Cleroux's prior misconduct was publicly disclosed. In approximately 2010, the College and Association of Registered Nurses of Alberta issued an alert regarding Cleroux, warning not to hire or employ her as a nurse. That alert was covered in the news media at the time.

The Plaintiff's Experience with Cleroux

21. On or about September 30, 2020, the Plaintiff was admitted to BC Women's Hospital for abdominal surgery. Following her surgery, the Plaintiff was placed on a ward. Cleroux was assigned to her care by the Defendant's agents, in addition to other duly qualified practitioners.

22. When the Plaintiff awoke from surgery, while still in a drug-induced state, she was berated by Cleroux without cause. The Plaintiff was physically touched by Cleroux while in her compromised state.

23. Cleroux withheld water from the Plaintiff while she was in her care, causing her to suffer unnecessarily. The Plaintiff was given water eventually, but Cleroux made her feel like it was a burden to do so and questioned why she needed it.

24. The Plaintiff received substandard care at the material times. She was rushed out of the hospital, despite her fragile state. The Plaintiff attributes this to Cleroux passing her off to another nurse in order to go on break, without relaying any information about the Plaintiff's medical state, including that she had been given an opioid.

25. The Plaintiff's experience was extremely negative and continues to cause her distress.

26. The Plaintiff was not made aware of Cleroux's involvement in her medical care until about December 1, 2021, when she received a letter from the Defendant informing her. The Defendant did not provide any supports, including counselling or compensation, with its notification.

The Defendant's Negligence

27. The Defendant operates BC Women's Hospital. In that capacity, the Defendant is responsible for staffing, including hiring and deploying medical practitioners, and the supervision of staff.

28. The standard of care requires that the Defendant only hire and deploy duly qualified medical practitioners, including nurses.

29. At material times, the Defendant failed to have in place or implement appropriate policies and procedures for:

- a. screening prospective and current employees at BC Women's Hospital, including verifying their credentials and registration;
- b. failing to supervise nurses to detect and prevent substandard care to patients;
- c. notifying and supporting victims of wrongdoing when it is detected.

30. Before and while Cleroux worked at BC Women's Hospital, the Defendant failed to:

- a. detect that Cleroux was unqualified and not registered to practice as a nurse in British Columbia, despite the public disclosure of her prior personation and wrongdoing in the healthcare sector, and despite the tools made available by the College to check and confirm the registration status of nurses in British Columbia;
- b. supervise Cleroux to monitor and detect the substandard care she was providing to patients in a timely way or at all;
- c. failing to properly investigate claims of substandard care regarding Cleroux in a timely way or at all;
- d. failing to notify patients affected by Cleroux's wrongdoing in a timely way;
- e. failing to provide appropriate supports to patients affected by Cleroux's wrongdoing.

31. The Defendant was negligent in respect of Cleroux. The Defendant owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable patients and it breached that duty, causing harm.

Harm to the Plaintiff and Class Members

32. As a result of their contact with Cleroux, the Plaintiff and Class Members have suffered loss and damage because of the Defendant's negligence, including but not limited to:

- a. psychological injuries, including from receiving substandard treatment and from disclosure of the unauthorised conduct by Cleroux;
- b. personal injury from improper treatment; and
- c. out of pocket expenses.

33. The bodily integrity of the Plaintiff and Class Members has been violated as a result of the Defendant's failings, at a time when they were at their most vulnerable. Cleroux's contact with the Plaintiff and Class Members constitutes battery.

34. The Plaintiff and Class Members' injuries have and will continue to cause *inter alia* suffering, loss of enjoyment of life, and psychological distress.

Part 2: RELIEF SOUGHT

35. The Plaintiff claims, on her own behalf and on behalf of the Class Members:

- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "***Class Proceedings Act***");
- b. general damages;
- c. special damages;
- d. punitive damages;

- e. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79;
- f. a mandatory injunction requiring the Defendant to: (i) conduct a review of its hiring process with a focus on its credential verification procedure; (ii) implement an appropriate procedure or modify the existing procedure, and (iii) appointing a court-ordered outside monitor to review the implementation of that policy for a five-year period at the Defendant's expense; and
- g. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

36. The Plaintiff and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, *BPCPA*, *Class Proceedings Act*, 1985, c. C-34, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the *Supreme Court Civil Rules*, related enactments, and the Court's inherent jurisdiction.

Negligence

37. At all material times the Defendant owed the Plaintiff and other Class Members a duty of care.

38. The Defendant breached its duty of care to the Plaintiff and other Class Members, particulars of which include, *inter alia*:

- a. failing to have in place or implement a policy to screen and detect unlicensed and unqualified employees, and prevent them from providing patient care;
- b. failing to supervise Cleroux and to detect her substandard care to patients in a timely way or at all;
- c. failing to properly investigate claims of substandard care from Cleroux in a timely way or at all;

- d. failing to notify affected patients in a timely way or to provide appropriate supports.

39. As a result of the Defendant's negligence, the Plaintiff and other Class Members have suffered and continue to suffer losses and damages, including:

- a. psychological injuries;
- b. personal injury from improper treatment; and
- c. out of pocket expenses.

40. At all material times, the Defendant was in a close and proximate relationship to the Plaintiff and other Class Members. The damages and losses suffered by the Plaintiff and other Class Members are the reasonably foreseeable consequences of the Defendant's negligence.

Punitive Damages

41. The Defendant's misconduct, as described above, was oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. It violated the trust and bodily integrity of the Plaintiff and Class Members when they were at their most vulnerable. The Defendant's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

Injunction

42. Under its inherent jurisdiction, this Court has the power to impose a mandatory injunction on the terms sought, to ensure appropriate behaviour modification by the Defendant.

Limitations

43. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendant, or that a court proceeding would be an appropriate means to seek to remedy the injury until approximately November 26, 2021, when the Defendant provided direct notice to the Plaintiff and Class Members about Cleroux's involvement in their care.

44. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8 and 21(3). In addition, the Plaintiff and Class Members in British Columbia plead and rely on the *Emergency Program Act*, Ministerial Order No. M098 to suspend the running of the limitation period from March 26, 2020.

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

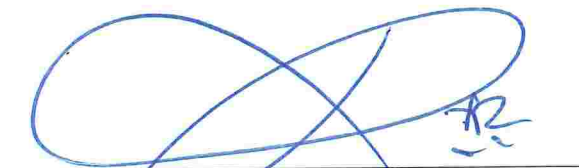
Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: December 8, 2021



Signature of lawyer for plaintiff

Anthony A Vecchio QC

Slater Vecchio LLP

and

Mathew Good

Mathew P Good Law Corp

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding unlicensed medical “care” by a fake nurse at BC Women’s Hospital.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Limitation Act, SBC 2012, c 13

Court Order Interest Act, RSBC 1996, c 79

Negligence Act, RSBC 1996, c 318