

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ELLINA RABBAT and N.T.

Plaintiffs

- and -

DR. FERNAND GASTON VINCENT NADON a.k.a DR. VINCENT NADON,
VINCENT NADON MEDICINE PROFESSIONAL CORPORATION,
and UNIVERSITY OF OTTAWA, UNIVERSITY OF OTTAWA HEALTH SERVICES,
and 866520 ONTARIO LTD.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

SECOND AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE. IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$5,000.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: June 27, 2018

Issued by.....
Local Registrar

10th Floor, 393 University Avenue
Toronto, Ontario
M5G 1E6

TO: DR. FERNAND GASTON VINCENT NADON
103 Chemin Juniper
Chelsea, QC
J9B 1T3

TO: VINCENT NADON MEDICINE PROFESSIONAL CORPORATION
University of Ottawa
Health Services
300 - 100 Marie Curie Street
Ottawa, ON
K1N 6N5

TO: UNIVERSITY OF OTTAWA
Legal Services – Tabaret Hall
550 Cumberland Street, Room C302
Ottawa, ON
K1N 6N5

TO: UNIVERSITY OF OTTAWA HEALTH SERVICES
100 Marie Curie, Suite #300
Ottawa, ON
K1N 6N5

TO: 866520 ONTARIO LTD.
131 Stanley Street
Ottawa, Ontario
K1M 6N8

CLAIM

1. The plaintiffs on their own behalf and on behalf of Class members as defined below (the "Patient Class" and the "Family Law Class"), seek an Order pursuant to the *Class Proceedings Act*, 1992 (the "Act"), certifying this action as a Class proceeding and appointing Ellina Rabbat and N.T. as the representative plaintiffs for the Patient Class and Family Law Class;
2. The plaintiffs on their own behalf and on behalf of Class members as defined below (the "Patient Class" and the "Family Law Class"), also claim:

As Against Dr. Vincent Nadon and Vincent Nadon Medicine Professional Corporation (referred to collectively as "Nadon")

- (a) Damages for Ellina Rabbat, N.T. and the Patient Class in the amount of \$50,000,000 for:
 - (i) Sexual assault;
 - (ii) breach of fiduciary duty;
 - (iii) breach of confidence;
 - (iv) breach of trust;
 - (v) intrusion upon seclusion;
 - (vi) invasion of privacy;
 - (vii) public disclosure of private facts;
 - (viii) negligence;
 - (ix) breach of the *Personal Health Information Protection Act*, 2004, SO 2004, c 3, Sch A;
 - (x) breach of the *Privacy Act*, RSC 1985, c P-21;
 - (xi) and unjust enrichment.
- (b) aggravated damages in the amount of \$25,000,000 or such other amount as fixed by the court;
- (c) punitive and exemplary damages in the amount of \$25,000,000 or such other amount as fixed by the court;
- (d) special damages, including lost wages, lost earning capacity, out of pocket expenses and cost of future care suffered by Ellina Rabbat, N.T. and the Patient Class in an amount to be determined, particulars of which will be provided in advance of trial;
- (e) damages for the Family Law Class in the amount of \$10,000,000 for loss of care, guidance and companionship, and for special damages incurred by the Family Law

Class including lost wages, lost earning capacity, out of pocket expenses and cost of future care as a result of the injuries suffered by the Patient Class pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3;

- (f) a declaration that Nadon owed to the Patient Class, a duty of care, a fiduciary duty and a statutory duty of care, and that he breached these duties by:
 - (i) taking, or purporting to take, intimate photographic or video images of the Patient Class; and
 - (ii) the non-consensual sale and/or dissemination of these intimate images over the internet and elsewhere;
 - (iii) the inappropriate touching or fondling of members of the Patient Class;
 - (iv) directing members of the Patient Class to undress and dress in front of him, in the absence of a female chaperone, under the guise of a medical examination;
 - (v) failing to cover members of the Patient Class with a gown, sheet or similar item while Nadon was providing medical services;
- (g) a declaration that Nadon is liable to the Patient Class and the Family Class for damages caused or materially contributed to by the breaches of his fiduciary duty, statutory duty, and common law duty of care;
- (h) a declaration that Nadon committed the tort of sexual assault, by taking or purporting to take intimate photographic images members of the Patient Class in close physical proximity to them, and while they were in a position of vulnerability while he exercised power and authority over them;
- (i) a declaration that Nadon, by taking or purporting to take intimate photographic or video images of members of the Patient Class, breached their right to privacy and committed the torts of intrusion upon seclusion and invasion of privacy;
- (j) a declaration that Nadon, by selling and/or disseminating intimate images of members of the Patient Class, breached their right to privacy and committed the torts of intrusion upon seclusion and invasion of privacy;
- (k) a declaration that Nadon, by taking or purporting to take intimate photographic or video images, and/or by selling and/or disseminating intimate images of members of the Patient Class breached his fiduciary duty owed to the Patient Class, and breached the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18;
- (l) a declaration that Nadon has been unjustly enriched to the detriment of the Patient Class by selling their intimate photographic or video images over the internet and through other venues, without their knowledge or consent;
- (m) an order compelling Nadon to make an accounting of all profits he has obtained from selling the Patient Class' intimate photographic or video images over the internet and through other venues, and disgorgement of those profits to the Patient Class;

- (n) a permanent injunction enjoining Nadon from selling, sharing, publishing, distributing or in any way disseminating any images of the Patient Class;
- (o) an order compelling Nadon to identify any and all locations where he sold (or attempted to sell), shared, published, distributed or in any way disseminated images of the Patient Class;
- (p) a mandatory order requiring Nadon to immediately surrender to the Patient Class and/or to destroy all images of the Patient Class that remain in his possession, power, and control; and
- (q) such further and other relief as this Honourable Court may deem just;

As Against the University of Ottawa, University of Ottawa Health Services (also referred to herein as "UOHS"), and 866520 Ontario Ltd. (hereinafter referred to collectively as the "Ottawa defendants", unless otherwise specified):

- (r) a declaration that the Ottawa defendants are contractually and/or vicariously liable for all the wrongful acts and/or omissions of Nadon *vis a vis* Ellina Rabbat and N.T. and the Patient Class, and liable for all the injuries and damages suffered by them;
- (s) a declaration that the Ottawa defendants are contractually and/or vicariously liable for the injuries and damages suffered by the Family Law Class arising from the wrongful acts of Nadon *vis a vis* Ellina Rabbat and N.T. and the Patient Class;
- (t) damages in the amount of ~~\$50,000,000~~ \$265,000,000 for their negligence, breach of confidence, breach of trust, breach of fiduciary, statutory and common law duties, breach of contract, their unjust enrichment as a result of collecting fees from students and members of the Patient Class and/or the Ontario Health Insurance Plan, breach of the Personal Health Information protection Act, 2004, SO 2004 c 3 Sch A in relation to their collection, storage, transportation, and safeguarding of personal confidential information collected by the Ottawa defendants from the Patient class, and for occupier's liability in connection with their operation, management, administration, and supervision and control of the University of Ottawa Health Services at various locations, including 100 Marie Curie, 316 Rideau (2nd floor), 801 King Edward and 1 Nicholas Street and, in particular, the employment, management, training and supervision of Nadon, including their systemic failure to protect the interests of Ellina Rabbat and N.T. and the Patient Class; and their callous disregard of, indifference to, and inaction upon being warned or notified of:
 - (i) Nadon taking, or purporting to take, intimate photographic images of members of the Patient Class;
 - (ii) the non-consensual sale and/or dissemination of these intimate images;
 - (iii) the inappropriate behavior of Nadon toward the Patient Class;
- (u) aggravated damages in the amount of ~~\$25,000,000~~ \$50,000,000 or such other amount as fixed by the court for their negligence, breach of confidence, breach of

trust, breach of fiduciary duty, breach of statute, breach of contract, their unjust enrichment as a result of collecting fees from students and members of the Patient Class and/or the Ontario Health Insurance Plan, breach of the *Personal Health Information protection Act, 2004, SO 2004 c 3 Sch A* in relation to their collection, storage, transportation, and safeguarding of personal confidential information collected by the Ottawa defendants from the Patient class, and occupier's liability, including their operation of the University of Ottawa Health Services Clinic at various locations, including 100 Marie Curie, 316 Rideau (2nd floor), 801 King Edward and 1 Nicholas Street, in such a manner as to ignore the personal safety and well-being of the Patient Class while on the premises;

- (v) punitive and exemplary damages in the amount of ~~\$25,000,000~~ \$50,000,000 or as fixed by the court;
- (v.1) special damages, including lost wages, lost earning capacity, out of pocket expenses and cost of future care suffered by Ellina Rabbat, N.T. and the Patient Class in an amount to be determined, particulars of which will be provided in advance of trial;
- (v.2) damages for the Family Law Class in the amount of \$25,000,000 for loss of care, guidance and companionship, and for special damages incurred by the Family Law Class including lost wages, lost earning capacity, out of pocket expenses and cost of future care as a result of the injuries suffered by the Patient Class pursuant to s. 61 of the *Family Law Act, R.S.O. 1990, c. F.3*;
- (w) a declaration that the Ottawa defendants were negligent in the operation, management, administration, supervision and control of the University of Ottawa Health Services Clinic at various locations, including 100 Marie Curie, 316 Rideau (2nd floor), 801 King Edward and 1 Nicholas Street and, in particular, through its their negligent employment, management, training and supervision of Nadon;
- (x) a declaration that the Ottawa defendants are liable to Ellina Rabbat and N.T. and the Patient Class for their negligence in relation to the operation, management, administration, supervision and control of the University of Ottawa Health Services Clinic at various locations, including 100 Marie Curie, 316 Rideau (2nd floor), 801 King Edward and 1 Nicholas Street and, in particular, their employment, management, training and supervision of Nadon;
- (y) a declaration that the Ottawa defendants are liable to the Family Law Class for any losses or damages that they have suffered as a result of the injuries suffered by the Patient Class members arising from the wrongful acts of Nadon or the Ottawa defendants;
- (z) a declaration that the Ottawa defendants owed and breached their fiduciary, statutory and common law duties to the plaintiffs and the Patient Class, the particulars of their duties and breach of duties which are outlined from paragraph 39 to 46.32 in the Statement of Claim;
- (aa) a declaration that the Ottawa defendants are liable for the breach of their fiduciary, statutory and common law duties to the plaintiffs and the Patient Class;

As Against all Defendants:

- (bb) damages in an amount to be fixed by the Court for the costs of providing notice of certification of this action as a Class proceeding, and for administering the plan of distribution of the recovery of this action;
- (cc) such further and other damages as may be incurred by Ellina Rabbat and N.T., the Patient Class and the Family Law Class from the date hereof until the ultimate disposition of this matter, particulars of which will be provided to the defendants prior to trial;
- (dd) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues, in accordance with the plaintiffs' litigation plan or as directed by the court;
- (ee) pre-judgment and post-judgment interest compounded annually or pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (ff) costs of this action on a full indemnity basis or an amount that provides full indemnity pursuant to the *Victims' Bill of Rights* together with applicable taxes payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (gg) in the alternative, costs of this action pursuant to the Courts of Justice Act or, in the further alternative, on a substantial indemnity basis together with applicable taxes payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and such further and other relief as this Honourable Court may deem just.

The Plaintiffs and Class

- 3. Ellina Rabbat ("Ellina") and N.T. are former students of the University of Ottawa, and ~~was~~ were at all material times patients of the University of Ottawa Health Services Clinic, which currently has 4 locations: 100 Marie Curie, 316 Rideau (2nd floor), 801 King Edward and 1 Nicholas Street. Ellina and N.T. were specifically patients of Nadon. They currently resides in the City of Ottawa, in the Province of Ontario.
- 4. Ellina and N.T. bring this action pursuant to the *Class Proceedings Act, 1992* on their own behalf and on behalf of Patients of Nadon and the University of Ottawa Health Services Clinic (the "Patient Class"), defined as:
 - All patients of the University of Ottawa Health Services Clinics who were;
 - (a) Photographed, filmed and/or videotaped by Nadon in a private setting, without their consent or knowledge;
 - (b) Sexually assaulted by Nadon, including but not limited to:
 - (i) inappropriately touched or fondled by Nadon;

- (ii) directed by Nadon to undress and dress in front of him, in the absence of a female chaperone, under the guise of a medical examination;
 - (iii) directed by Nadon to remain naked or otherwise undressed for a medical examination and who were not covered with a gown, sheet or similar item while Nadon was providing medical services;
 - (iv) making inappropriate comments of a sexual nature;
5. Ellina and N.T. also brings this action pursuant to the *Class Proceedings Act*, 1992 on behalf of the Family Law Class, for the pecuniary and non-pecuniary damages they have suffered arising as a result of the injuries and losses sustained by the Patient Class Members, pursuant to the provisions of s. 61 of the *Family Law Act*, R.S.O. C. F.8, as amended, defined as:

All persons who have a derivative claim, in accordance with applicable family law legislation, arising from a family relationship with the Patient Class members;

Dr. Vincent Nadon and Vincent Nadon Medicine Professional Corporation (collectively referred to as “Nadon”)

6. Nadon, to the knowledge of the plaintiffs, is currently resident in the municipality of Chelsea, in the Province of Quebec.
7. Nadon has been licensed to practice medicine in the Province of Ontario since 1986.
8. Nadon was employed by the University of Ottawa as a physician from 1995 or earlier to 2018. Nadon practiced at one or more locations of the University of Ottawa Health Services (“UOHS”).
- 8.1 Nadon was a member of, employed by, or contracted to provide medical services, to and/or on behalf of the University of Ottawa, UOHS and/or 866520 Ontario Ltd.
9. During his time as a physician while employed by, or contracted to provide services to and/or on behalf of the University of Ottawa, UOHS and/or 866520 Ontario Ltd., Nadon regularly saw patients at one or more UOHS locations. His examinations of the Class Members often required them to dress and undress.

University of Ottawa

10. The defendant, University of Ottawa (the “University”), was incorporated under the *University of Ottawa Act*, S.O. 1965, C.137 by the Legislative Assembly of the Province of Ontario. The University provides post-secondary and post-graduate education in Ontario.
11. The University profits by way of tuition and accommodation fees paid by students, including members of the Class. Tuition and fees are paid pursuant to the terms of contracts.

12. As part of its services to its students, the University operates UOHS, where Nadon practiced as a doctor. The University and UOHS are operated under the umbrella of the same corporate entity and, as such, are indivisible at law.
13. At all materials times, the University employed and contracted with various individuals and corporations, including Nadon, to provide services at UOHS.
14. It was and is an express and/or implied term of the contracts between the University and the Patient Class that the University will safeguard the safety, security and well-being of each of its students and other individuals who attended for services at UOHS. In this respect, the plaintiff and class members plead and rely on Policy 67b - Prevention of Sexual Violence, a policy approved by the University Senate in 2016 and by the University's Board of Governors in 2016.
- 14.1 Students of the University are charged a Student Levy for the privilege of attending UOHS. This amount is collected by the University and paid to UOHS and/or 866520 Ontario Ltd.
- 14.2 On September 1, 1999, the University entered into a contract with the defendant 866520 Ontario Ltd. (the "Contract"), whereby 866520 Ontario Ltd. was contracted to manage and operate UOHS. The Contract was in force at all relevant times when Nadon was employed and/or contracted to provide medical services to and/or on behalf of the Ottawa defendants.
- 14.3 As part of the Contract, the University has various rights and responsibilities, including but not limited to the following:
 - (a) The University reserves the right of veto over the appointment of the Director of UOHS;
 - (b) The Secretary of the University receives reports from the Director of UOHS regarding UOHS, including its operations;
 - (c) The University allows 866520 Ontario Ltd. to participate in the various University committees that affect the activities of UOHS;
 - (d) The University contributes to paying physicians for any services rendered that are not covered by its students' Health Insurance Plan, including but not limited to third-party examinations, medical forms and certificates, and unpaid student accounts;
 - (e) The University receives quarterly reports prepared by 866520 Ontario Ltd., which include reports on problem areas;
 - (f) The University reserves the right of veto on the hiring and the continuity of employment of the personnel of UOHS, including physicians, on the understanding that this right will be exercised only on reasonable grounds;
 - (g) The University agrees to provide the reasonable necessities for the installation and development of UOHS;
 - (h) The University pays 866520 Ontario Ltd. and/or UOHS from the student contributions collected by the University;

- (i) From the student contributions collected by the University, the University retains an amount equivalent to the rent and a portion of the cost of the accommodation occupied by UOHS;
- (j) The Secretary of the University must approve of the use of UOHS' program fund;
- (k) The University may receive new projects submitted by 866520 Ontario Ltd.;
- (l) The University is required to grant 866520 Ontario Ltd. the right of first refusal as to the organization and administration of all UOHS' programs;
- (m) The University is required to receive new projects from 866520 Ontario Ltd. concerning UOHS;
- (n) The University pays 866520 Ontario Ltd. for the services specified in the Contract, as well as for any similar new service;
- (o) Upon reasonable notice from the University to 866520 Ontario Ltd, the University may review the books of account and accounting records of 866520 Ontario Ltd.;
- (p) The University receives annually the operating budget of UOHS from 866520 Ontario Ltd;
- (q) 866520 Ontario Ltd. must seek the University's consent before carrying out any renovation, modification or improvement or addition to premises occupied by UOHS;
- (r) The University agrees to provide the reasonable necessities for the installation and development of UOHS;
- (s) Authorized representatives of the University are permitted to access UOHS at any time suitable for inspecting the premises and activities in order to ensure that 866520 Ontario Ltd. is in compliance with the provisions of the Contract.

866520 Ontario Ltd.

- 14.4 866520 Ontario Ltd. is an Ontario Business Corporation, incorporated pursuant to the laws of the Province of Ontario. It has a registered head office in Ottawa. It occupies the premises occupied by UOHS.
- 14.5 866520 Ontario Ltd. is a management company contracted by the University to operate and manage UOHS, for remuneration, pursuant to a contract with the University dated September 1, 1999 (the "Contract").
- 14.6 866520 Ontario Ltd. is, or may have, contracted with and/or hired Nadon to provide medical services to UOHS, or placed Nadon with UOHS.
- 14.7 Since September 1, 1999, the University has collected the student contributions and paid them to 866520 Ontario Ltd. The University retains an amount of the student contributions that is equivalent to the rent and a portion of the cost of the accommodation occupied by UOHS.

14.8 As part of the Contract, 866520 Ontario Ltd. undertook to perform various responsibilities in relation to UOHS and the University, including but not limited to the following :

- (a) Offer all management and operation services for the proper functioning of UOHS;
- (b) Provide physicians for UOHS;
- (c) Provide nurses for UOHS;
- (d) Provide education, campus awareness program, participation in various programs, newsletter, and assessment of the needs of the specialized and general clientele;
- (e) Participate in the various committees of the University that affect the activities of UOHS;
- (f) Contribute to paying physicians at UOHS for services rendered to University students that are not covered by the students' Health Insurance Plan, including but not limited to third-party examinations, medical forms and certificates, and unpaid student accounts;
- (g) Prepare and submit quarterly reports to the Secretary of the University, including reports on problem areas;
- (h) Direct and supervise the staff at UOHS;
- (i) Hire all personnel necessary for the proper functioning of UOHS, including physicians;
- (j) Arrange for staff under its direction and supervision to undergo a medical examination, if and when necessary;
- (k) Take sole responsibility for the collection of physician fees;
- (l) Keep books of account and accounting records according to the standards prescribed by the auditors of the 866520 Ontario Ltd. and the University;
- (m) Make available books of accounts and accounting records for review by the University, upon receipt of reasonable notice from the University;
- (n) Purchase and inventory of supplies for UOHS;
- (o) Comply with the procedures, regulations and policies of the University;
- (p) Submit annually to the University the operating budget of UOHS;
- (q) Obtain the University's consent before carrying out any renovation, modification or improvement or addition to premises occupied by UOHS;
- (r) Obtain a professional indemnity insurance policy of at least \$5 million that includes the University as an additional insured;

- (s) Permit authorized representatives of the University to access UOHS at any time suitable for inspecting the premises and activities in order to ensure that 866520 Ontario Ltd. is in compliance with the provisions of the Contract;
- (t) To indemnify and release the University, its employees and agents from all claims and demands, lawsuits or actions, all fees, costs, damages, and disbursements, or from all claims for contribution and indemnity that could be made or intended against the University, its employees and agents by a person, corporation or entity as a result of losses, damages or injury resulting from an act or negligence of the numbered company, its employees or agents or by persons under its direction or supervision or monitoring.

University of Ottawa Health Services

- 14.9 The defendant, University of Ottawa Health Services (“UOHS”) provides services to the public, including 225,000 individuals consisting of 40,000 students of the University of Ottawa, more than 5,000 support and academic staff of the University of Ottawa and 180,000 alumni of the University of Ottawa. UOHS staff consists of over 100 full and part-time employees as well as close to 90 health care professionals, offering care in the areas of Family Medicine, Specialty Medicine, Physiotherapy, Psychiatry, and other services. Physicians include family medicine and sports medicine physicians as well as specialists in Gynecology/Obstetrics, Physiatry, Orthopaedics, Endocrinology, Internal Medicine, Pediatrics and Psychiatry.
- 14.10 In short, UOHS is marketed and promoted by the University as a health clinic open to its students, staff and alumni. It operates on University property. It uses the name “University of Ottawa”. It uses University of Ottawa trademarks and logos. In all respects, it holds itself out to the public, including the plaintiffs and class members, as a part of the University of Ottawa.
- 14.11 UOHS is contracted to provide services to the University and Saint Paul University, for remuneration. UOHS does not provide medical services to any other institution, company or corporation, other than the University and Saint Paul University. It is, or may have been, the corporate entity that contracted with and/or hired Nadon to provide medical services to the University and/or UOHS.
- 14.12 Students of the University of Ottawa are charged a Student Levy for the privilege of attending UOHS. This amount is collected by the University and paid to UOHS and/or 866520 Ontario Ltd.
- 14.13 UOHS was operated and managed by the defendant 866520 Ontario Ltd., as part of a Contract entered into between the University and 866520 Ontario Ltd. on September 1, 1999 (“the Contract”).
- 14.14 As part of the Contract, UOHS has various rights and responsibilities, including but not limited to the following:
 - (a) the Director of UOHS is obliged to report to the Secretary of the University and report to him or her the operations of the UOHS;

- (b) UOHS must relinquish to the University an amount equivalent to the rent and a portion of the cost of the accommodation occupied by UOHS, from the student contribution collected by the University;
- (c) Any surplus from the student contributions is returned to UOHS' program fund at the end of each year.
- (d) UOHS must obtain the approval of the Secretary of the University for the use of the UOHS program fund;
- (e) Permit authorized representatives of the University to access UOHS at any time suitable for inspecting the premises and activities in order to ensure that 866520 Ontario Ltd. is in compliance with the provisions of the Contract.

THE DEFENDANTS' WRONGFUL CONDUCT

The visual recording and sexual assault of patients

15. Using his authority as a physician at UOHS, for which the Ottawa defendants are in law responsible:
 - (a) Nadon directed members of the Patient Class to undress and dress in front of him, in the absence of a chaperone, under the guise of a medical examination;
 - (b) Nadon did not provide a gown, sheet or other similar item to members of the Patient Class who were naked or otherwise undressed for a medical examination by him, while Nadon was providing medical services;
 - (c) Nadon photographed, filmed and/or videotaped members of the Patient Class, without their consent or knowledge;
 - (d) Nadon made inappropriate comments to members of the Patient Class;
 - (e) Nadon inappropriately touched or fondled members of the Patient Class.
16. According to the College of Physicians and Surgeons of Ontario, on or about January 16, 2018, at a doctor's examination room at a UOHS clinic located at 316 Rideau Street in the City of Ottawa, Nadon, without lawful excuse, surreptitiously made a visual recording of an individual who was in circumstances that gave rise to a reasonable expectation of privacy when that person was in a place in which that person could reasonably be expected to be nude, to be exposing his or her genital organs or anal region or exposing her breasts or be engaged in explicit sexual activity, and thereby committed an offence under Section 162(1)(a) of the *Criminal Code*, contrary to Section 162(5) of the *Criminal Code* of Canada.
17. According to the College of Physicians and Surgeons of Ontario, Nadon, contrary to Section 271 of the *Criminal Code of Canada*, sexually assaulted at the City of Ottawa the following individuals:

- (a) AA on or about January 16, 2018;
 - (b) BB between January 1, 1999 and December 31, 2004;
 - (c) CC on or about January 13, 2015;
 - (d) DD on or about May 26, 2015;
 - (e) EE between January 1, 2000 and January 8, 2011;
 - (f) FF on or about May 10, 2013;
 - (g) GG on or about June 2, 1999;
 - (h) HH on or about September 6, 2016;
 - (i) II on or about September 5, 2012;
 - (j) JJ on or about May 31, 2017; and
 - (k) KK on or about May 16, 2017.
18. On January 18, 2018 and February 21, 2018 in the City of Ottawa, the Ottawa Police Service charged Nadon with the offences outlined in paragraphs 18 and 19 above.
19. On or about May 4, 2018 in the City of Ottawa, Ottawa Police Service charged Nadon with the following offences:
- (a) 41 counts of Voyeurism at the City of Ottawa at various times between the dates of January 20, 2010 and August 30, 2011 and on or about January 16, 2018 contrary to Sections 162(1)(a) and 162(5) of the *Criminal Code*; and
 - (b) 53 counts of Sexual Assault against 51 persons at the City of Ottawa at various times between the dates of November 15, 1990 and January 16, 2018 contrary to Section 271 of the *Criminal Code*.
- 19.1 According to the College of Physicians and Surgeons of Ontario, on December 5, 2018, Nadon was found guilty of 2 counts of voyeurism under Sections 162(1)(a) of the *Criminal Code*, contrary to section 162(5) of the *Criminal Code of Canada* and 12 counts of sexual assault contrary to section 271 and 271(1) of the *Criminal Code of Canada*. Nadon was sentenced to 8 years in jail (minus 12 months pre-trial custody), a victim surcharge of \$800, and is subject to a SOIRA (Sex Offender Information Registration Act) order for life and an order prohibiting him from possessing any weapons for ten years.

Particulars of the Plaintiff Ellina Rabbat's Encounter with Nadon

20. At all materials times when Ellina saw Nadon at UOHS, Ellina was a student of the University.
21. In 2016 or 2017, Ellina attended at a UOHS clinic for her first pap smear. She entered a doctor's examination room at the clinic for a pap smear by Nadon.

22. Nadon's conduct towards Ellina in the doctor's examination room included the following:
 - (a) He made one or more inappropriate comments to Ellina prior to her examination;
 - (b) He did not leave the room while she undressed for her examination;
 - (c) He did not offer her a gown to put on after she had undressed;
 - (d) He did not put draping over her legs before, during or after the pap smear;
 - (e) He did not leave the room while she re-dressed after the examination; and
 - (f) He did not advise her that she was permitted to have a chaperone with her in the room during her examination.
23. Nadon gave Ellina a pap smear while she wore only her bra. She was nude from the waist down in full view of Nadon, with no draping over her legs and no gown on.
24. Ellina was reluctant, embarrassed and uncomfortable prior to, during and after her examination.
25. After her examination, Ellina convinced herself that his conduct towards her was normal and appropriate. She trusted that Nadon's conduct toward her was appropriate because he was a physician.
26. In January 2018, after Nadon was charged with various offences under the *Criminal Code*, Ellina tried to file a complaint with the University of Ottawa to detail her encounter with Nadon, but was unable to do so because the various departments she attended in person kept referring her to different places. She attended at the Student Federation and the Office of the Registrar.
27. In January 2018, Ellina filed an official Complaint with the College of Physicians and Surgeons of Ontario. A representative of CPSO advised her to speak to the police.
28. In January or February 2018, Ellina gave a statement to the Ottawa Police Service regarding her encounter with Nadon.

Particulars of the Plaintiff N.T.'s Encounter with Nadon

- 28.1 At all materials times when N.T. saw Nadon as a patient at UOHS, she was a student of the University.
- 28.2 In 2009 and/or 2010, N.T. attended at a UOHS clinic for a pap smear and her first breast exam. She entered a doctor's examination room at the clinic for a pap smear and breast exam by Nadon.
- 28.3 Nadon's conduct towards N.T. in the doctor's examination room included the following:
 - (a) During her breast exam, her breasts were fully exposed;

- (b) During her breast exam, he touched her breasts inappropriately;
 - (c) Before conducting the pap smear, he asked N.T., who was fully undressed on the examination table, to open up the swab package used for the pap smear;
 - (d) He did not advise her that she was permitted to have a chaperone with her in the room during her examination; and
 - (e) He filmed N.T. prior to, during and after her examination.
- 28.4 N.T. trusted that Nadon's conduct toward her was appropriate because he was a physician.
- 28.5 On April 19, 2018, the Ottawa Police Service contacted N.T.
- 28.6 N.T. attended at the Ottawa Police Service on April 24, 2018. The Police showed her a video that was approximately 10 to 12 minutes in duration.
- 28.7 The video showed N.T. undressing herself in an examination room. She left her clothes out of view of the camera. She was completely naked. She got onto the examination table. Nadon performed an examination on N.T., the entirety of which was captured on video. At the end of the exam, Nadon moved N.T.'s clothes to the edge of the exam table so that N.T. would redress in front of where the camera was positioned.
- 28.8 The Ottawa Police Services charged Nadon with sexual assault and voyeurism in relation to N.T.
- 28.9 Ever since the Ottawa Police Services notified N.T. that Nadon had filmed her examination, N.T. has experienced the following:
- (a) She has felt significant bouts of anxiety, upset, distress and embarrassment;
 - (b) She is scared about other individuals viewing the intimate images, and the possibility of the intimate images being distributed and/or sold online or through other means for other people to see, including future employers;
 - (c) She has been reluctant to see medical professionals;
 - (d) She finds it hard to trust people;
 - (e) She constantly scans her surroundings for recording devices and for suspicious individuals following her;
 - (f) She feels paranoid about being videotaped, especially in situations where she is undressed, such as in change rooms, doctors' offices and hotel rooms.
- 28.10 N.T.'s sense of humiliation, anguish and violation is acute and is ongoing, as the she is powerless to know who has viewed and continues to view the intimate images. She is also powerless to prevent the viewing and distribution of these recordings.

The recording of the intimate images

29. Over the many years he was a physician at UOHS, Nadon amassed a substantial cache of videotapes, film and photographs (the “recordings”) as a result of his sexual misconduct towards Ellina and N.T. and the members of the Class.
30. The intimate recordings of Class Members in doctor’s examination rooms at UOHS occurred continuously for many years, until at least 2018. Throughout, Nadon pursued and facilitated the creation of the images of the Class for his personal gain and without the consent of the Class. Nadon acted with callous disregard to the fiduciary duty that he owed to the Patient Class, using their recordings as a means to satisfy his personal sexual interests and ends.
31. Upon learning of Nadon’s wrongful conduct in recording their images, the Patient Class suffered immediate emotional and psychological harm from the reasonable apprehension that their personal images may have been viewed by Nadon, distributed and sold. The sense of humiliation, anguish and violation was acute and is ongoing, as the Class is powerless to know who has viewed and continues to view the intimate images. They are also powerless to prevent the viewing and distribution of these recordings.
32. On January 18, 2018, an article published in CTV News and an article published in CBC News described Nadon's wrongful conduct while employed by the University. This article advised that Nadon had been charged with sexual assault and voyeurism alerted many members of the Class to the fact that Nadon’s conduct was inappropriate and that Nadon made intimate recordings, resulting in the harm described above.
33. As a result of his gross misconduct, Nadon is the subject of an ongoing criminal investigation by the Ottawa Police Service. As of January 2018, Nadon no longer works at UOHS.

LIABILITY OF NADON

34. As an adult, physician, and employee of the University, Nadon enjoyed a special position of power, authority, and trust vis-a-vis Ellina and N.T. and the Class, some of whom were minors when they first met Nadon. At all material times, Nadon owed Ellina and N.T. and the Class a duty of care and a fiduciary duty to act in their best interests and not abuse his dominant position in relation to them, nor exploit their vulnerabilities or dependency on him, nor betray the trust they reposed in him, nor otherwise act disloyally towards them by placing his own selfish interests ahead of theirs.
35. By directing Ellina and N.T. and the Class into undressing nude or semi-nude for examinations without providing gowns or draping, and by making intimate recordings of their examinations for his own personal gain, Nadon breached his fiduciary duty as well as the duty of care that he owed to Ellina and N.T. and the Class, causing them harm. As such, Nadon is liable to Ellina and N.T. and the Class for negligence and breach of fiduciary duty.
36. By looming in close physical proximity to Ellina and N.T. and the members of the Class after coercing them into undressing while alone with him, thus causing them to reasonably

apprehend that he was about to touch them in a sexual, non-consensual and invasive way, Nadon committed the tort of sexual assault.

37. By inappropriately touching and or fondling Ellina and N.T. and members of the Patient Class, Nadon committed the tort of sexual assault.
- 37.1 By making inappropriate comments, Nadon breached his fiduciary duty and the duty of care that he owed to Ellina and N.T. and the Class, causing them harm. As such, Nadon is liable to Ellina and N.T. and the Class for negligence and breach of fiduciary duty.
38. Ellina and N.T. and the members of the Patient Class trusted Nadon and UOHS, and approached him and UOHS so that he could examine them with the reasonable expectation that Nadon would not be recording their examinations.

LIABILITY OF THE UNIVERSITY OF OTTAWA

39. At all material times, the University of Ottawa (“the University”) owed special, elevated duty to patients of the UOHS clinics, pursuant to which it was obligated to take all reasonable steps to safeguard their welfare, safety and well-being. As such, at all material times the University owed Ellina and N.T. and the other members of the Patient Class a duty of care and a fiduciary duty to protect them from Nadon's wrongful conduct.
40. By employing Nadon and permitting him to examine patients unsupervised, the University vested Nadon with power and authority over Ellina and N.T. and the members of the Patient Class. As such, the University placed Nadon in a position that enabled him to engender the trust and compel the obedience of Ellina and N.T. and the Patient Class.
41. As the relationship between Nadon and the University was sufficiently close, and Nadon's wrongful conduct was sufficiently connected to conduct authorized by the University, the University is vicariously liable for Nadon's breach of his fiduciary duty towards Ellina and N.T. and the Patient Class, as well as for Nadon's sexual assaults and other tortious conduct. The University is also vicariously liable for Nadon's recordings, which Nadon was only able to acquire as a result of the power and authority vested in him by the University.
42. In addition, the University is directly liable to Ellina and N.T. and the Patient Class in negligence, breach of fiduciary duty, occupiers' liability and breach of contract. It was an explicit and/or implied term of their agreement to attend the University that the University would take all reasonable steps to safeguard their safety, security and well-being while attending the University.
43. The University owed the Patient Class a duty of care and a fiduciary duty to protect them from foreseeable harm and injury caused by Nadon.
44. The University had a duty to act loyally and never put its own interests ahead of the interests of the Patient Class.
45. By employing Nadon and continuing to employ Nadon when it knew, ought to have known or was wilfully blind to his wrongful acts, the University breached these duties and is therefore liable to the Class Members. Particulars of these breaches include:

- (a) failing to conduct any, or adequate, investigations into complaints that Nadon had engaged in inappropriate conduct, towards members of the Patient Class, including taking intimate images of the Patient Class;
 - (b) failing to implement any, or adequate, screening systems to determine and ensure the appropriateness of its employees, including Nadon;
 - (c) failing to adequately train, supervise, and counsel its employees, including Nadon;
 - (d) failing to implement any, or adequate, guidelines or directives about the importance of maintaining proper boundaries between doctors and patients;
 - (e) failing to investigate and monitor on an ongoing basis the suitability of its employees, including Nadon, and to take necessary or sufficient steps to detect, prevent, or stop all inappropriate conduct by Nadon towards members of the Patient Class;
 - (f) failing to implement any, or adequate, mechanisms to enable patients, including Ellina and the Patient Class, to come forward with complaints relating to the conduct of its employees, including Nadon.
46. At all material times, the University owned and/or had physical control over the facilities where Nadon practiced. As such, it was responsible for the safety and condition of the premises, including the acts of individuals permitted to use the premises, and owed an affirmative duty of care to ensure that entrants and users of the premises, including Ellina and N.T. and the Patient Class, were safe. By failing to take reasonable steps to ensure the safety and security of the University's facilities for Ellina and N.T. and the Patient Class, the University breached its duty in this regard including the *Occupiers' Liability Act*. Consequently, the University is liable to Ellina and N.T. and the Patient Class for any harms and injuries arising from Nadon's misconduct at the University's facilities.

LIABILITY OF 866520 ONTARIO LTD.

- 46.1 At all material times, 866520 Ontario Ltd. owed a special, elevated duty to patients of UOHS, pursuant to which it was obligated to take all reasonable steps to safeguard their welfare, safety and well-being. As such, at all material times 866520 Ontario Ltd. owed Ellina and N.T. and the other members of the Patient Class a duty of care and a fiduciary duty to protect them from Nadon's wrongful conduct.
- 46.2 By employing or contracting for services with Nadon and permitting him to examine patients unsupervised, 866520 Ontario Ltd. vested Nadon with power and authority over Ellina and the members of the Patient Class. As such, 866520 Ontario Ltd. placed Nadon in a position that enabled him to engender the trust and compel the obedience of Ellina and N.T. and the Patient Class.
- 46.3 As the relationship between Nadon, UOHS, and 866520 Ontario Ltd. was sufficiently close, and Nadon's wrongful conduct was sufficiently connected to conduct authorized by UOHS and 866520 Ontario Ltd., 866520 Ontario Ltd. is vicariously liable for Nadon's breach of his fiduciary duty towards Ellina and N.T. and the Patient Class, as well as for Nadon's sexual assaults and other tortious conduct. 866520 Ontario Ltd. is also vicariously

liable for Nadon's recordings, which Nadon was only able to acquire as a result of the power and authority vested in him by 866520 Ontario Ltd.

- 46.4 In addition, 866520 Ontario Ltd. is directly liable to Ellina and N.T. and the Patient Class in negligence, breach of fiduciary duty, occupiers' liability and breach of contract. It was an explicit and/or implied term of their agreement to receive medical services provided by or on behalf of UOHS and 866520 Ontario Ltd. that 866520 Ontario Ltd. would take all reasonable steps to safeguard their safety, security and well-being while attending UOHS and being provided medical services by Nadon who was contracted by 866520 Ontario Ltd. to provide such services.
- 46.5 866520 Ontario Ltd. owed the Patient Class a duty of care and a fiduciary duty to protect them from foreseeable harm and injury caused by Nadon.
- 46.6 866520 Ontario Ltd. had a duty to act loyally and never put its own interests ahead of the interests of the Patient Class.
- 46.7 By employing Nadon, or contracting with Nadon, and continuing to employ or contract with Nadon, 866520 Ontario Ltd. ought to have known or was wilfully blind to Nadon's wrongful acts. As such, 866520 Ontario Ltd. breached these duties and is therefore liable to the Class Members. Particulars of these breaches include:
- (a) failing to conduct any, or adequate, investigations into complaints that Nadon had engaged in inappropriate conduct, towards members of the Patient Class, including taking intimate images of the Patient Class;
 - (b) failing to implement any, or adequate, screening systems to determine and ensure the appropriateness of its employees, including Nadon;
 - (c) failing to adequately train, supervise, and counsel its employees, including Nadon;
 - (d) failing to implement any, or adequate, guidelines or directives about the importance of maintaining proper boundaries between doctors and patients;
 - (e) failing to investigate and monitor on an ongoing basis the suitability of its employees, including Nadon, and to take necessary or sufficient steps to detect, prevent, or stop all inappropriate conduct by Nadon towards members of the Patient Class;
 - (f) failing to implement any, or adequate, mechanisms to enable patients, including Ellina and N.T. and the Patient Class, to come forward with complaints relating to the conduct of its employees, including Nadon.
- 46.8 At all material times, 866520 Ontario Ltd. owned and/or had physical control over the facilities where Nadon practiced. As such, it was responsible for the safety and condition of the premises, including the acts of individuals permitted to use the premises, and owed an affirmative duty of care to ensure that entrants and users of the premises, including Ellina and N.T. and the Patient Class, were safe. By failing to take reasonable steps to ensure the safety and security of the patients, including Ellina and N.T. and the Patient Class, who were provided medical services by Nadon, 866520 Ontario Ltd. breached its duty in this regard including the *Occupiers' Liability Act*. Consequently, 866520 Ontario

Ltd. is liable to Ellina and N.T. and the Patient Class for any harms and injuries arising from Nadon's misconduct at UOHS' facilities.

LIABILITY OF UNIVERSITY OF OTTAWA HEALTH SERVICES

- 46.9 At all material times, the University of Ottawa Health Services ("UOHS") owed a special, elevated duty to patients of UOHS, pursuant to which it was obligated to take all reasonable steps to safeguard their welfare, safety and well-being. As such, at all material times UOHS owed Ellina and N.T. and the other members of the Patient Class a duty of care and a fiduciary duty to protect them from Nadon's wrongful conduct.
- 46.10 By employing or contracting for services with Nadon and permitting him to examine patients unsupervised, UOHS vested Nadon with power and authority over Ellina and N.T. and the members of the Patient Class. As such, UOHS placed Nadon in a position that enabled him to engender the trust and compel the obedience of Ellina and N.T. and the Patient Class.
- 46.11 As the relationship between Nadon and UOHS was sufficiently close, and Nadon's wrongful conduct was sufficiently connected to conduct authorized by UOHS, UOHS is vicariously liable for Nadon's breach of his fiduciary duty towards Ellina and N.T. and the Patient Class, as well as for Nadon's sexual assaults and other tortious conduct. UOHS is also vicariously liable for Nadon's recordings, which Nadon was only able to acquire as a result of the power and authority vested in him by UOHS.
- 46.12 In addition, UOHS is directly liable to Ellina and N.T. and the Patient Class in negligence, breach of fiduciary duty, occupiers' liability and breach of contract. It was an explicit and/or implied term of their agreement to receive medical services provided by UOHS that UOHS would take all reasonable steps to safeguard their safety, security and well-being while attending UOHS and being provided medical services by Nadon who was contracted by 866520 Ontario Ltd. and/or UOHS to provide such services.
- 46.13 UOHS owed the Patient Class a duty of care and a fiduciary duty to protect them from foreseeable harm and injury caused by Nadon.
- 46.14 UOHS had a duty to act loyally and never put its own interests ahead of the interests of the Patient Class.
- 46.15 By employing Nadon, or contracting with Nadon, and continuing to employ or contract with Nadon, UOHS ought to have known or was wilfully blind to Nadon's wrongful acts. As such, UOHS breached these duties and is therefore liable to the Class Members. Particulars of these breaches include:
- (g) failing to conduct any, or adequate, investigations into complaints that Nadon had engaged in inappropriate conduct, towards members of the Patient Class, including taking intimate images of the Patient Class;
 - (h) failing to implement any, or adequate, screening systems to determine and ensure the appropriateness of its employees, including Nadon;
 - (i) failing to adequately train, supervise, and counsel its employees, including Nadon;

- (j) failing to implement any, or adequate, guidelines or directives about the importance of maintaining proper boundaries between doctors and patients;
- (k) failing to investigate and monitor on an ongoing basis the suitability of its employees, including Nadon, and to take necessary or sufficient steps to detect, prevent, or stop all inappropriate conduct by Nadon towards members of the Patient Class;
- (l) failing to implement any, or adequate, mechanisms to enable patients, including Ellina and N.T. and the Patient Class, to come forward with complaints relating to the conduct of its employees, including Nadon.

46.16 At all material times, UOHS owned and/or had physical control over the facilities where Nadon practiced. As such, it was responsible for the safety and condition of the premises, including the acts of individuals permitted to use the premises, and owed an affirmative duty of care to ensure that entrants and users of the premises, including Ellina and N.T. and the Patient Class, were safe. By failing to take reasonable steps to ensure the safety and security of UOHS's facilities for Ellina and N.T. and the Patient Class, UOHS breached its duty in this regard including the *Occupiers' Liability Act*. Consequently, UOHS is liable to Ellina and N.T. and the Patient Class for any harms and injuries arising from Nadon's misconduct at UOHS' facilities.

DAMAGES

- 47. As a result of the defendants' wrongful conduct pleaded herein, it was reasonably foreseeable that injury and harm would be suffered by Ellina and N.T. and members of the Patient Class.
- 48. As a result of the defendants' wrongful conduct pleaded herein, Ellina and N.T. and the Patient Class have suffered and/or continue to suffer the following harm and injuries, which have caused or materially contributed to their ongoing pain, suffering and loss of enjoyment of life:
 - (a) emotional, physical and psychological harm;
 - (b) impairment of mental and emotional health and well-being;
 - (c) intense anguish, humiliation, shame and self-blame;
 - (d) chronic anxiety, as well as profound and occasionally overwhelming depression;
 - (e) suicidal ideation and other self-injuring behaviour;
 - (f) post-traumatic stress disorder or symptoms analogous to post-traumatic stress disorder;
 - (g) disorder, including panic attacks;
 - (h) profound issues with trust and authority figures, which have created difficulty in their interpersonal relationships and employment;

- (i) alcohol and substance abuse;
 - (j) difficulties engaging in intimate sexual relationships;
 - (k) difficulties with emotional regulation;
 - (l) eating disorders, and difficulties with body-image;
 - (m) recurrent nightmares, night terrors, and sleep disturbances;
 - (n) difficulties with memory, concentration, and clear thinking;
 - (o) intense flashbacks;
 - (p) a general loss of enjoyment of life; and
 - (q) such further and other harms and injuries as shall be discovered and/or particularized.
49. As a result of these harms and injuries, Ellina and N.T. and the Patient Class have required and/or will require ongoing therapy, counselling and treatment. They claim the cost of both past and future therapy, counselling and treatment, as well as any other expenses arising from the defendants' wrongful conduct.
50. As a result of the harms and injuries suffered by Ellina and N.T. and the Patient Class, the Family Law Class have suffered loss of care, guidance and companionship of Ellina and N.T. and the Patient Class. They also required and or will require ongoing therapy, counselling and treatment. They claim the cost of both past and future therapy, counselling and treatment, as well as any other out of pocket expenses and loss of income arising from the defendants' wrongful conduct.
51. As a result of the defendants' wrongful conduct, Ellina and N.T. and the Patient Class never reached their true academic or vocational potential, and/or experienced a delay of entry into the workforce and/or have further experienced a disrupted and unstable employment history. Ellina and N.T. and the Patient Class have therefore suffered economic loss in the form of lost income, lost economic opportunity, and loss of competitive advantage.
52. In caring for Ellina and N.T. and the Patient Class for the harms and injuries they have suffered, the Family Law Class have suffered and will suffer loss of income, lost economic opportunity and loss of competitive advantage.
53. The defendants are jointly and severally liable for the damages which they caused or materially contributed to in respect of the plaintiff and the Patient Class.

AGGRAVATED, EXEMPLARY AND PUNITIVE DAMAGES

54. The selfish, high-handed and callous conduct of the defendants warrants condemnation of the Court through awards of both aggravated, exemplary and punitive damages.

55. The prolonged, intrusive and exploitative nature of the mistreatment to which Ellina and N.T. and the Patient Class were subject at the hands of Nadon, who showed no regard for their bodily integrity or emotional wellbeing, represented a willful betrayal of their trust and vulnerabilities and was of such a serious nature as to justify an award of both aggravated, exemplary and punitive damages against Nadon.
56. In addition to being vicariously liable for the harm and injuries caused by Nadon, an award of aggravated, exemplary and punitive damages is justified against the University, UOHS and 866520 Ontario Ltd., in their own right, given their actual or constructive knowledge of the risk of harm and injury which Nadon presented to the plaintiff and the Patient Class, their complicity and/or willful blindness towards Nadon's ongoing wrongdoing, and their failure to prevent and/or mitigate the effects of this wrong-doing through appropriate and timely investigations, interventions, and/or support.
57. The defendants are jointly and severally liable for the aggravated, exemplary and punitive damages owed to Ellina and N.T. and the Patient Class for the prolonged and abhorrent nature of their collective actions, including their callous disregard for the personal privacy and mental health and wellbeing of the Patients, putting their own personal interests ahead of those of the Patients.

STATUTES RELIED UPON

58. The plaintiff and Class Members plead and rely upon:
 - (a) The *Occupiers' Liability Act*, RSO 1990, c O.2;
 - (b) The *Negligence Act*, R.S.O. 1990, c. N.1;
 - (c) The *Personal Health Information Protection Act*, 2004, SO 2004, c 3, Sch A;
 - (d) The *Privacy Act*, RSC 1985, c P-21;
 - (e) The *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as amended;
 - (f) The *Victims' Bill of Rights*, 1995, S.O. 1995, c. 6;
 - (g) The *Canadian Victims Bill of Rights*, S.C. 2015, c. 13;
 - (h) The *Protecting Canadians from Online Crime Act*, S.C. 2014, c. 31; and
 - (i) The *Criminal Code*, R.S.C., 1985, c. C-46.
59. The Plaintiff proposes that this action be tried in Toronto, Ontario.

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Plaintiffs

and

NADON et al.
Defendants

AMENDED THIS 26 DAY / JOUR
MODIFIÉE DE
OF / DE November 21
PUSUANT TO RULE 26.02(c)
CONFORMÉMENT À LA RÈGLE
OR ORDER RSJ MacLeod
OU A L'ORDONNANCE
DATED THIS / FAIT CE
DAY / JOUR OF / DE 20
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding under the *Class Proceedings Act, 1992*,
SO 1992, c 6, as amended

Proceeding commenced at OTTAWA

SECOND AMENDED STATEMENT OF CLAIM

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