



Court File No.: 20-83233 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
MR. JUSTICE C. MACLEOD**

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**THE 7th DAY OF
DECEMBER , 2021**

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*

CERTIFICATION ORDER

THIS MOTION, made by the Plaintiffs for certification of this action as a class proceeding, fixing the opt out date, and approving the form, content and method of dissemination of the notice of certification was heard this day at the Court House, 161 Elgin Street, Ottawa, Ontario.

ON READING the Affidavits Candace Mak, Ellina Rabbat, N.T., K.R., E.M., A.M.C., A.C., C.G. and C.E.G., and on hearing the submissions of the lawyer(s) for the parties;

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992*, as amended.

2. **THIS COURT ORDERS** that the classes are defined as:

(A) The **Patient Class** is defined as all patients of the University of Ottawa Health Services (“UOHS”) clinics who were:

(a) Photographed, filmed and/or videotaped by Dr. Nadon in a private setting, without their consent or knowledge;

(b) Sexually assaulted by Dr. Nadon, including but not limited to:

(i) Inappropriately touched by Dr. Nadon;

(ii) Directed by Dr. 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 Dr. Nadon to remain naked or otherwise undressed for a medical examination and who were not covered with a gown, sheet or similar item while Dr. Nadon was providing medical services; and

(iv) Making inappropriate comments of a sexual nature.

(B) The **Family Law Class** is 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.

3. **THIS COURT ORDERS** that Ellina Rabbat and N.T. are appointed as representative plaintiffs.

4. **THIS COURT ORDERS** that Flaherty McCarthy LLP is appointed as Class Counsel.

5. **THIS COURT ORDERS** that the causes of action are as follows:
- (a) Negligence
 - (b) Breach of fiduciary duty and trust
 - (c) Breach of confidence
 - (d) Intrusion upon seclusion
 - (e) Breach of the *Occupiers' Liability Act*
 - (f) Unjust enrichment
 - (g) Breach of contract
 - (h) Breach of *the Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A;

6. **THIS COURT ORDERS** that the following common issues are certified:

Common Facts

- 1. What was the employment or contractual relationship, if any, as between Nadon¹ and the Ottawa Defendants² between January 1990 and January 2018?
- 2. What was the contractual relationship(s), if any, as between the Ottawa Defendants between January 1990 and January 2018?
- 3. Was the surreptitious video recording of members of the Patient Class by Nadon and/or the sexual assault of members of the Patient Class by Nadon between January 1990 and January 2018 unauthorized acts in the context of Nadon's provision of medical services at the health clinics³?
- 4. Should vicarious liability be imposed upon the Ottawa Defendants for the harm caused by Nadon to the members of the Patient Class.

¹ *Nadon* means Dr. Fernand Gaston Vincent Nadon aka Dr. Vincent Nadon and Vincent Nadon Medicine Professional Corporation;

² *Ottawa Defendants* means University of Ottawa, University of Ottawa Health Services, and 866520 Ontario Ltd.;

³ *Health Clinics* means the University of Ottawa Health Services clinics located at 316 Rideau Street and/or 100 Marie-Curie Private;

Negligence

5. Did Nadon owe a duty of care to the members of the Patient Class?
6. If the answer to (5) is yes, what is the applicable standard of care owed by Nadon to the Patient Class?
7. Did Nadon breach his duty of care to the Patient Class?
8. But for the breach of the duty owed by Nadon to the Patient Class, would the members of the Patient Class have suffered harm?
9. Did the Ottawa Defendants owe a duty of care to the members of the Patient Class?
10. If the answer to (9) is yes, what is the applicable standard of care owed by the Ottawa Defendants to the members of the Patient Class?
11. Did the Ottawa Defendants breach their duty of care to the members of the Patient Class?
12. But for the breach of the duty owed by the Ottawa Defendants to the Patient Class, would the members of the Patient Class have suffered harm?

Breach of Fiduciary Duty and Breach of Trust

13. Did Nadon owe the members of the Patient Class a fiduciary duty?
14. If the answer to (13) is yes, did Nadon breach his fiduciary duty and trust owed to members of the Patient Class?
15. If the answer to (14) is yes, did the members of the Patient Class suffer harm?
16. Was Nadon a trustee of the Patient Class in relation to his position as a medical doctor treating members of the Patient Class in the Health Clinics?
17. If the answer to (16) is yes, did Nadon breach the trust of the members of the Patient Class?
18. If the answer to (17) is yes, did the members of the Patient Class suffer harm?
19. Did the Ottawa Defendants owe a fiduciary duty to the members of the Patient Class?

20. If the answer to (19) is yes, did the Ottawa Defendants breach their fiduciary duty owed to members of the Patient Class?
21. If the answer to (20) is yes, did the members of the Patient Class suffer harm?
22. Were the Ottawa Defendants a trustee of the Patient Class in relation to their ownership and operation of the Health Clinics, and their employment or contractual relationship with Nadon as a medical doctor treating members of the Patient Class in the Health Clinics?
23. If the answer to (22) is yes, did the Ottawa Defendants breach the trust of the members of the Patient Class?
24. If the answer to (23) is yes, did the members of the Patient Class suffer harm?

Breach of Confidence

25. Were the videos that were surreptitiously recorded by Nadon, showing members of the Patient Class in a state of undress, confidential?
26. If the answer to (25) is yes, did the circumstances in which Nadon surreptitiously recorded the members of the Patient Class give rise to an obligation of confidence?
27. If the answer to (26) is yes, did the members of the Patient Class suffer harm as a result of Nadon's breach of confidence?
28. Did the Ottawa Defendants, in relation to their ownership and operation of the Health Clinics, and their employment or contractual relationship with Nadon as a medical doctor treating members of the Patient Class in the Health Clinics, owe members of the Patient Class a duty of confidence?
29. If the answer to (28) is yes, did the Ottawa Defendants breach the confidence of the members of the Patient Class?
30. If the answer to (29) is yes, did the members of the Patient Class suffer harm?

Intrusion Upon Seclusion

31. Did Nadon intentionally abuse his position of power or trust over the members of the Patient Class, to surreptitiously record the members of the Patient Class while in a state of undress and/or to sexually assault members of the Patient Class?

32. If the answer to (31) is yes, did Nadon invade, without lawful justification, the private affairs or concerns of the members of the Patient Class?
33. If the answer to (32) is yes, would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?
34. If the answer to (33) is yes, is Nadon liable for the tort of Intrusion Upon Seclusion?

Occupiers' Liability Act

35. Were Nadon and/or the Ottawa Defendants the occupiers of the Health Clinics?
36. If the answer to (35) is yes, did Nadon and/or the Ottawa Defendants owe a duty as an occupier pursuant to *Occupiers' Liability Act*, RSO 1990, c O.2 to take reasonable care to ensure the safety of the Patient Class members while on the premises?
37. If the answer to (36) is yes, did Nadon and/or the Ottawa Defendants breach their statutory duty as an occupier? If yes, what acts or omissions caused the members of the Patient Class to suffer harm?

Unjust Enrichment

38. Was Nadon unjustly enriched as a result of collecting fees from students, members of the Patient Class, the Ontario Health Insurance Plan (OHIP) and compensation paid to him by the Ottawa Defendants, in relation to those medical appointments during which Nadon surreptitiously recorded and/or sexually assaulted members of the Patient Class?
39. If the answer to (38) is yes, did the Patient Class suffer a corresponding deprivation?
40. If the answer to (39) is yes, is there a juristic reason for Nadon to have been enriched?
41. Were the Ottawa Defendants unjustly enriched as a result of collecting fees from students, members of the Patient Class, or from the Ontario Health Insurance Plan (OHIP), in relation to those medical appointments during which Nadon surreptitiously recorded and/or sexually assaulted members of the Patient Class?
42. If the answer to (41) is yes, did the Patient Class suffer a corresponding deprivation?

43. If the answer to (42) is yes, is there a juristic reason for the Ottawa Defendants to have been enriched?

Breach of Contract

44. Did members of the Patient Class consent or agree to be medically treated by Nadon and the Ottawa Defendants at the Health Clinics?
45. Did Nadon and the Ottawa Defendants consent or agree to medically treat members of the Patient Class at the Health Clinics, on the understanding that Nadon and the Ottawa Defendants would receive consideration for providing this medical treatment?
46. Was it an express and/or implied term of the consent or agreement as between Nadon, the Ottawa Defendants and members of the Patient Class, that Nadon and the Ottawa Defendants would take all reasonable steps to safeguard the safety, security and well-being of the members of the Patient Class while attending the Health Clinic?
47. If the answers to (44), (45) and (46) are yes, did Nadon and the Ottawa Defendants breach this agreement in relation to those medical appointments during which Nadon surreptitiously recorded and/or sexually assaulted members of the Patient Class?

Breach of the Personal Health Information Protection Act, 2004, SO 2004, c 3, Sch A.

48. Did Nadon and/or the Ottawa Defendants have a statutory duty pursuant to the *Personal Health Information Protection Act* in relation to the collection, storage, transportation and safeguarding of personal and confidential information collected by the Defendants from the Patient Class?
49. If the answer to (48) is yes, did Nadon and/or the Ottawa Defendants breach that statutory duty?
50. If the answer to (49) is yes, was it reasonably foreseeable that harm to the Patient Class would result from the breach of the statutory duty?
51. In addition, or in the alternative, if Nadon and/or the Ottawa Defendants breached a statutory duty pursuant to the *Personal Health Information Protection Act*, is the Patient Class entitled to damages pursuant to section 65(1) of the *Personal Health Information Protection Act*?

Family Law Act Damages

52. Are either Nadon or the Ottawa Defendants liable to the Family Law Class for any damages they have incurred pursuant to s. 61 of the *Family Law Act*, RSO 1990, c. F.3?

Aggregate Assessment of Damages

53. If Nadon and/or the Ottawa Defendants are liable on a class-wide basis, can damages sustained by members of the Patient Class and/or the Family Class be assessed, in whole or in part, on an aggregate basis?
- (a) If the answer is yes, what is the quantum of aggregate damages owed to those class members?
- (b) If the answer is yes, what is the appropriate method or procedure for distributing the aggregate damages award to those class members?

Punitive, Exemplary and/or Aggravated Damages

54. Does the conduct of either Nadon or the Ottawa Defendants justify an award of punitive, exemplary and/or aggravated damages?
- (a) If the answer is yes, can those damages be assessed on a class wide basis, and if so, in what amount?
- (b) If the answer is yes, what is the appropriate method or procedure for distributing the aggregate damages award to those class members?

Administration

55. Should the Defendants, or either of them, pay the costs of providing notice of certification and the opt-out procedure to all or part of the Class?
56. Should the Defendants, or either of them, pay the costs of administering and distributing any recovery to all or part of the Class?

Interest

57. Should the Defendants, or either of them, be ordered to pay pre-judgment interest to all or part of the Class?
58. If so, how should the pre-judgment interest be calculated?

7. **THIS COURT ORDERS** that the relief sought by the class is as claimed in the Second Amended Statement of Claim, including non-pecuniary and pecuniary damages, special and punitive, aggravated and exemplary damages, payment of subrogated claims of Provincial Health Insurers, costs and interest;

8. **THIS COURT ORDERS** that Class Members may opt out of this class proceeding by delivering a written request to opt out to the Notice Administrator, which must be postmarked, if sent by mail, or received, if sent by fax, e-mail or courier, on or before **April 30, 2022** at 11:59 pm EST. Opt out forms received after this date will not be accepted or valid. The notice of opt out must contain:

1. The name of this proceeding (*Rabbat v Nadon*, or similar identifying words);
2. Your full name, email address, mailing address, and telephone number;
3. Your signature or the signature of your legal agent, acting with your instructions;
4. A brief statement that you understand you will be excluded from any judgment (including an approved settlement), if any; and
5. A brief statement as to whether you intend to begin a separate individual lawsuit against Dr. Nadon and/or any of the Ottawa Defendants;

9. **THIS COURT ORDERS** that Ricepoint is appointed as the Notice Administrator for the purposes of disseminating the notice of certification in accordance with the Notice Plan attached hereto as **Appendix 1**;

10. **THIS COURT ORDERS** that the long form and short form Notice of Certification (together, the "Notice of Certification") are hereby approved substantially in the form attached hereto as **Appendix 2**, and shall be translated into French by Plaintiff's Counsel or the Notice Administrator;

11. **THIS COURT ORDERS** that the notice plan for the Notice of Certification (the "Notice Plan") is hereby approved substantially in the form attached hereto as **Appendix**

1 and that the Notice of Certification shall be disseminated in accordance with the Notice Plan;

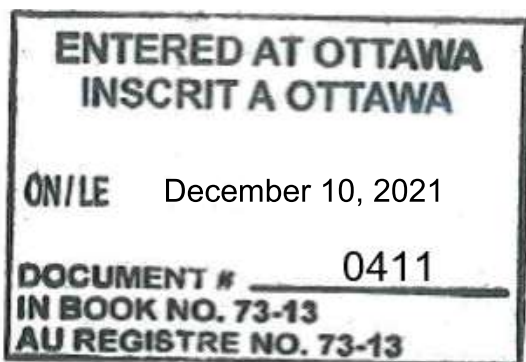
12. **THIS COURT ORDERS** that the cost of disseminating the Notice of Certification shall be paid by the Plaintiff without prejudice to their ability to seek reimbursement should the class succeed at the common issues trial;

13. **THIS COURT ORDERS** that within 30 days of the end of the Opt Out Period, the Notice Administrator will report to the court and to the Parties the names of all individuals who have validly opted out of this class proceeding;

14. **THIS COURT ORDERS** that this order is binding upon each member of the Class who does not validly opt out from this action on or prior to the Opt Out Deadline in accordance with paragraph 8 of this order;

15. **THIS COURT DECLARES** that this order is made without prejudice to the right of either the Plaintiff or Defendants to move to amend the common issues or seek directions from the case management judge with respect to the conduct and timelines for the proceeding;

16. **THIS COURT ORDERS** that there are no costs of this motion.



C. MacLeod R59

C. MacLeod J.

RABBAT et al.
Plaintiffs

and

NADON et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

Proceeding commenced at OTTAWA

ORDER

FLAHERTY MCCARTHY LLP
95 Wellington Street West
Suite 1000, 10th Floor
Toronto, ON M5J 2N7
Tel: 416-368-0231

SEAN BROWN (sbrown@fmlaw.ca)
LSO No. 42202W

CANDACE MAK (cmak@fmlaw.ca)
LSO No. 60199L

CHRISTOPHER LUPIS (clupis@fmlaw.ca)
LSO No. 79074V

Lawyers for the Plaintiffs and Putative Class Members