

Court File No: FC-20-21

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIERE INSTANCE

JUDICIAL DISTRICT OF FREDERICTON

CIRCONSCRIPTION JUDICIAIRE DE ...

BETWEEN:

ENTRE:

MORGAN JEAN WILCOX,

Plaintiff,

Demandeur.

- and -

**DR. MANOJ BHARGAVA and
UNIVERSITY OF NEW BRUNSWICK,**

Defendants.

Defendeur.



**NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED
(FORM 16A)**

**AVIS DE POURSUITE ACCOMPAGNE
D'UN EXPOSE DE LA DEMANDE
(FORMULE 16A)**

TO:

DESTINATAIRE:

Dr. Manoj Bhargava
33 Kingswood Drive
Fredericton, NB E3B 6Z8

...(le défendeur susmentionné)...

University of New Brunswick
Sir Howard Douglas Hall, Room 4
P.O. Box 4400
Fredericton, NB E3B 5A3

LEGAL PROCEEDINGS HAVE BEEN
COMMENCED AGAINST YOU BY FILING
THIS NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED.

PAR LE DÉPÔT DU PRÉSENT AVIS DE
POURSUIE ACCOMPAGNÉ D'UN
EXPOSÉ DE LA DEMANDE, UNE
POURSUIE JUDICIAIRE A ÉTÉ EN-
GAGÉE CONTRE VOUS.

If you wish to defend these proceedings, either
you or a New Brunswick lawyer acting on your
behalf must prepare your Statement of Defence
in the form prescribed by the Rules of Court

Si vous désirez présenter une défense dans
cette instance, vous-même ou un avocat du
Nouveau-Brunswick chargé de vous
représenter devrez rédiger un exposé de votre

and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50:

défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

(a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or

(a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou

(b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) if you are served anywhere else, WITHIN 60 DAYS after such service.

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que :

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) the plaintiff intends to proceed in the **English** language; and

(b) le demandeur a l'intention d'utiliser la langue. ; et

(c) your Statement of Defence must indicate the language in which you intend to proceed.

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of \$100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Andrea Hull, Clerk of the Court at 427 Queen Street, at the City of Fredericton, the County of York, in the Province of New Brunswick, on the 12th day of April , 2021.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par, greffier de la Cour à, ce 20

Court Seal

A Hull
Andrea J. Hull



Seau de la Cour

Justice Building
427 Queen Street
Fredericton NB E3B 5H1

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, R.S.N.B. 2011, c. 125

I. Overview

1. This action concerns the systemic failures of the Defendant UNB resulting in widespread sexual assaults taking place within the university health care setting, by an employee of the Defendant UNB, against a particularly vulnerable group of students.
2. The proposed Class Members include students who sought psychiatric care through the UNB Student Health Centre, and who were scheduled appointments with the Defendant Physician, and who allege to have been inappropriately touched over the course of treatment or sexually assaulted over the course of such treatments.
3. The Defendant UNB, breached both its duty of care to the students and its contractual duty by failing to safeguard the safety, security, and well-being of the students while they attended the Defendant UNB and sought health care through the Defendant UNB's services.
4. The Plaintiff and proposed Class Members have suffered serious physical and psychological damages, out-of-pocket expenses, and loss of income due to the Defendant UNB and the Defendant Physician's breach of their duty of care and contractual duties.

II. Representative Plaintiff and Class Members

5. The Plaintiff, Morgan Jean Wilcox (the "Plaintiff"), is a resident the City of Fredericton, in the County of York, in the Province of New Brunswick at all material times, and currently located in the City of St. John's, in the Province of Newfoundland. At all material times, the Plaintiff was a student at the Defendant UNB and, within that capacity, was a patient of Dr. Manoj Bhargava ("the Defendant Physician").
6. The Plaintiff seeks to certify this action as a Class Proceeding and pleads the *Class Proceedings Act*, R.S.N.B 2011, c. 125, as providing the basis for such certification.
7. The Plaintiff, as Representative Plaintiff, states the following:
 - a. The Plaintiff does not have any interest adverse to any of the other members of the Proposed Class Members;
 - b. The Plaintiff states that there is an identifiable class that would fairly and adequately be represented by her;
 - c. The Plaintiff's claim raises common issues, and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

8. The Plaintiff proposes to bring a Class Proceeding on behalf of herself and a Class of all other persons who were students of the Defendant UNB and, in that who allege to have been subjected to sexual assault by the Defendant Physician. The proposed Class will be further defined in the Motion for Certification.

III. The Defendant Physician

9. The Defendant, Dr. Manoj Bhargava, (the “Defendant Physician”) is a resident of the City of Fredericton, in the County of York, in the Province of New Brunswick, and at all material times was a practicing psychiatrist licensed by the Province of New Brunswick and employed by the Defendant UNB to perform psychiatric services at the University of New Brunswick Student Health Centre (the “UNB Student Health Centre”).

IV. The Defendant UNB

10. The Defendant, the University of New Brunswick, (the “Defendant UNB”) is a corporation under Chapter 63 of 22 Victoria, 1859 and continued by Chapter 12 of the Acts of New Brunswick, known as the *University of New Brunswick Act*, under the laws of the Province of New Brunswick, and at all material times operated a student health centre and employed the Defendant Physician.
11. The Defendant UNB, at all times material and relevant to this proceeding, was responsible for the management, oversight, operations, training and supervision of all its agencies, including the University of New Brunswick Student Health Centre (“UNB Health Clinic”), and are deemed to include all its contractors, sub-contractors, agents, servants, employees and appointees.
12. The UNB Student Health Centre is an office practice whereby office staff and physicians are standing employees. Physicians do not maintain their own independent business and are not hired for a discrete, limited purpose. They work wholly within the campus environment. The Defendant UNB retains physicians and controls the details of their work, including the on-site office location, office tools and supplies, operating hours, scheduling, and patient access to physician services.
13. The Defendant UNB is and was, at all material times, responsible for the oversight and management of the university servants, agents and employees.
14. Relevant to the specific allegations herein, the Defendant UNB retained the Defendant Physician as a contractor, agent, servant and/or employee. Specifically, the Defendant UNB retained the Defendant Physician to attend to UNB students seeking psychiatric and psychological care.

15. The Defendant UNB retained the Defendant Physician to work in the capacity of a psychiatrist at the UNB Student Health Centre, under the direction and supervision of the Defendant UNB.
16. At all times material and relevant to this proceeding, the Defendant UNB owed a duty of care to the Proposed Class Members, including the Plaintiff, while they were students of the Defendant UNB. The relationship between the Defendant UNB and the Proposed Class Members was sufficiently close so that carelessness causing the harms and damage was within the reasonable contemplation of the Defendant UNB.
17. At all material times, the Defendant UNB knew, or ought to have known, of the widespread sexual assaults perpetrated by the Defendant Physician on students, and did not take appropriate steps to ensure that the Plaintiff and the Proposed Class Members would not be subjected to such conduct. Alternatively, the Defendant UNB failed to take prompt and adequate measures to investigate and remedy such conduct.
18. At all material times, the Defendant UNB possessed the means to address the sexual abuse perpetrated by the Defendant Physician and failed to both implement those means and take other reasonable steps to mitigate against such risk.

V. The Allegations

19. The Plaintiff alleges that she was subjected to sexual assault and misconduct perpetrated by the Defendant Physician. These instances of sexual assault and misconduct occurred during appointments with the Defendant Physician for psychiatric treatment, arranged through and taking place at the UNB Student Health Centre.
20. The Plaintiff alleges that during these appointments, she was prescribed medication, which the Defendant Physician purported to affect her blood pressure. He frequently and repeatedly took her heart rate and blood pressure over the course of the appointments. The Plaintiff alleges the Defendant Physician requested she wear loose clothing, or remove articles of underwear and clothing, so that her heart rate and blood pressure could be obtained.
21. The Plaintiff alleges that the Defendant Physician obtained her heart rate and blood pressure often times by non-consensual sexual contact.
22. Using his position as an employee of the UNB Student Health Centre, the Defendant Physician similarly sexually assaulted all other members of the Proposed Class.
23. The Defendant UNB knew, or ought to have known, after hiring the Defendant Physician, that he was sexually inappropriate with his student patients, but failed to take appropriate steps to address this behaviour.

24. Instances of sexual abuse committed by the Defendant Physician was reported to the Defendant UNB at various times verbally and by other means.
25. The Plaintiff submits that the Defendant UNB took no steps to investigate or rectify the reports of sexual abuse. Alternatively, if steps were taken to investigate and/or rectify the reported sexual abuses, these steps were inadequate and ineffective at remedying the ongoing sexual assault of student patients at the UNB Student Health Centre by the Defendant Physician.

VI. Causes of Action

26. The Plaintiff pleads the following causes of action:
 - a. Torts of sexual assault, assault and battery;
 - b. Negligence;
 - c. Breach of Contract; and
 - d. Vicarious Liability for the torts of assault and battery.

i. Medical Negligence/Sexual Assault:

27. The Plaintiff states that the Defendant Physician owed her and class members a duty of care and that he breached this duty of care. The Plaintiff states that the Defendant Physician's negligence caused resulted in injuries, harms and losses being suffered by the class.
28. The Plaintiff further states that the Defendant Physician was generally negligent in the care he provided to the Plaintiff such that his care fell below the standard of care of a psychiatrist. In particular, he was negligent in that he:
 - a. provided improper medical care;
 - b. touched his patients' breasts over the course of obtaining their heart rates and/or blood pressure;
 - c. failed to use reasonable care to ensure the safety and well-being of the Plaintiff;
 - d. failed to uphold the requisite qualifications or character required to practice as a psychiatrist; and
 - e. failed to abide by enforced policies, procedures, codes of conduct, guidelines and/or ethical obligations of the College of Physicians and Surgeons.

29. In the alternative, the Plaintiff states that the Defendant Physician subjected each class member to sexual assaults during appointments scheduled by the Defendant UNB and taking place at his office at the UNB Student Health Centre.

ii. UNB's Negligence

30. The Proposed Class Members were subjected to sexual assault by the Defendant Physician, while in his position of authority as a psychiatrist for the UNB Student Health Centre. At all material times, the Defendant UNB owed a duty of care to the Plaintiff and the proposed Class Members to ensure their safety, security and well-being.
31. The Defendant UNB, either directly or through its agents, employees, servants or assigns, has breached the standard of care, the particulars of which are as follows but are not limited to:
- a. Failing to use reasonable care to ensure the safety and well-being of the Plaintiff and Proposed Class Members;
 - b. Failing to appropriately supervise, monitor, police, or assess the UNB staff entrusted with the health care of the Proposed Class Members so as to minimize the risk of the Plaintiff and other Proposed Class Members being subjected to sexual abuse;
 - c. Failing to qualify or cause to be qualified or to screen for suitability the UNB Student Health Centre physician employees entrusted with the health care of a vulnerable student population;
 - d. Hiring and retaining an employee physician who did not uphold the requisite qualifications or character required to practice with such a vulnerable population;
 - e. Failing to provide adequate, or any, training and educational programs to the Defendant UNB staff regarding the increased vulnerability of a student population and the dangerous and harmful effects of sexual assault;
 - f. Failing to properly investigate, evaluate, or monitor the nature and quality of the health care provision taking place on-campus and facilitated through the Defendant UNB, or failing to prescribe and mandate methods for such investigation, evaluation, and monitoring;
 - g. Failing to establish, or alternatively, failing to enforce adequate policies, procedures, codes of conduct, guidelines, and management and operations to minimize the risk of the Plaintiff and other Proposed Class Members being subjected to sexual abuse;
 - h. Placing the Proposed Class Members at UNB Student Health Centre in circumstances in which they were sexually abused by an employee physician when the Defendant UNB knew or ought to have known of the numerous acts of sexual abuse committed at the UNB Student Health Centre; and
 - i. Failing to respond, investigate, evaluate or inquire into the complaints of sexual abuse that the Defendant UNB knew or ought to have known of, through its agents, employees, and servants.
32. The harm suffered by the Plaintiff and the Proposed Class Members flow directly from the acts and/or omissions of the Defendant UNB.

iii. Breach of Contract

33. The Plaintiff submits that it was an express or implied term, or both, of the student contracts with the Defendant UNB and the UNB Student Health Centre, that the Defendant UNB would

take all reasonable steps to safeguard the safety, security, and well-being of the students while attending the Defendant UNB, and that the Defendant UNB breached this contractual duty.

iv. Vicarious Liability for the Tort of Assault

34. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendant UNB is vicariously liable for the actions of its agents, employees, servants, and contractors.
35. Specifically, the Defendant UNB is vicariously liable for the sexual assaults perpetrated by Dr. Bhargava over the course of his employment as UNB Student Health Centre as a psychiatrist.

VI. Damages

36. The Defendants knew, or ought to have known, that as a consequence of their mistreatment of Class Members, the Plaintiff and Proposed Class Members would suffer significant harms.
37. As a consequence of the negligence and breach of contract of the Defendant UNB, and its agents and employees for whom the Defendant UNB is vicariously liable, the Proposed Class Members suffered loss, injury and damages, including, but not limited to, the following:
- a. Assault and battery;
 - b. Emotional and psychological harm;
 - c. Impairment of mental and emotional health and well-being;
 - d. Development or exacerbation of mental illness;
 - e. Impaired capacity to build healthy sexual and romantic relationships with others;
 - f. Loss of self-esteem and feelings of humiliation and degradation;
 - g. Addiction or substance abuse;
 - h. Impairment of the capacity to function in the work place and permanent impairment in the capacity to earn income;
 - i. The need for ongoing psychological, psychiatric and medical treatment and counselling resulting from the experience of sexual abuse; and
 - j. Pain and suffering.
38. As a consequence of the negligence and breach of contract by the Defendant UNB, and its agents and employees for whom the Defendant UNB is vicariously liable, the Proposed Class Members have required and will continue to require medical and psychological treatment, rehabilitation, counselling and other care, for which they claim complete indemnity, compensation and payment from the Defendant UNB.

VII. Aggravated, Punitive, and Exemplary Damages

39. The Plaintiff submits that the conduct of the Defendant UNB's employees, for which the Defendant UNB is vicariously liable, herein amounts to reckless or willful disregard and gross violation of the rights of the Plaintiff and Proposed Class Members.

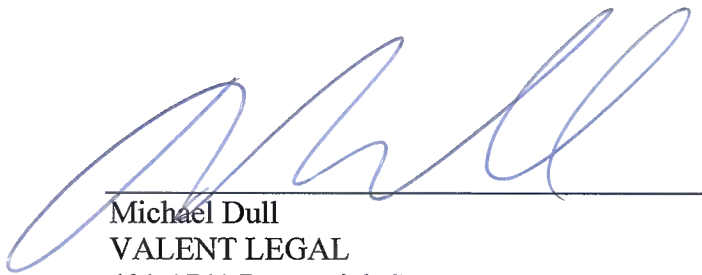
40. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated, or exemplary damages, or all.

VIII. Relief Sought

41. The Plaintiff repeats the foregoing paragraphs and seeks the following relief:
- a. An Order certifying this proceeding as a Class Proceeding and appointing the Plaintiff as the Representative Plaintiff for the Class or Classes;
 - b. A declaration that the Defendant UNB is vicariously liable for the actions of the Defendant UNB's agents and employees;
 - c. General damages for pain and suffering;
 - d. Special damages, the particulars of which will be delivered;
 - e. Aggravated, punitive and/or exemplary damages;
 - f. Pre-judgement interest pursuant to the *Judicature Act*, RSNB 1973, c J-2;
 - g. Costs and Disbursements, inclusive of any financing charges; and
 - h. Such further and other relief as this Honourable Court deems just.
42. The Plaintiff pleads and relies on the *Judicature Act*, supra, in particular Section 45, the *Tortfeasors Act*, RSNB 2011, c.231, the *Class Proceedings Act*, supra, *Limitation of Actions Act*, SNB 2009, c L-8.5, specifically Section 14.1, and all amendments and regulations hereunder.
43. The Plaintiff intends to proceed in the English language.

DATED at the City of Halifax, in the County of Halifax, in the Province of New Brunswick, this ____ day of April, 2021.

DATED at the City of Fredericton, in the County of York, in the Province of New Brunswick this 12th day of April, 2021.



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