

SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)

BETWEEN:

GYORGY KISS

PLAINTIFF

AND:

HEALTH PEI

DEFENDANT

STATEMENT OF DEFENCE

1. The Defendant admits the allegations in paragraphs 3, 16 and 35 of the Statement of Claim.
2. The Defendant denies the allegations in paragraphs 1, 11, 12, 17, 18, 19, 20 (subparagraphs a. through f. inclusive), 21, 23, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Statement of Claim.
3. As to the whole of the Statement of Claim, the Defendant denies that the Plaintiff is entitled to the relief as claimed in paragraph 2 or any relief whatsoever from the Defendant, and except as expressly admitted herein denies each and every allegation in the Statement of Claim as if set forth and specifically plead and puts the Plaintiff to the strict proof thereof.
4. As to paragraph 4 of the Statement of Claim, the Defendant admits it is a Crown corporation established by the *Health Services Act*, RSPEI 1988, c H-1.6 and that it is a custodian of personal health information within the meaning of the *Health Information Act*, RSPEI 1988, c. H-1.41, but states that the Defendant is only vicariously liable for the acts or omissions of employees in the course of their employment, volunteers within the scope of their volunteer activities, and agents within the scope of their authority.

5. As to paragraph 5 of the Statement of Claim, the Defendant admits that the Plaintiff purchased a home in Crapaud, Prince Edward Island, but except insofar as the foregoing constitutes an admission of fact denies each and every other allegation in the paragraph.
6. As to paragraph 6 of the Statement of Claim, the Defendant admits that the Plaintiff was admitted to the Queen Elizabeth Hospital in or about April 2021 and was diagnosed with COVID-19, and that he was the first known patient so diagnosed on PEI, but except insofar as the foregoing constitute admissions of fact denies each and every other allegation in the paragraph.
7. As to paragraphs 7, 8, 9, and 10 of the Statement of Claim, the Defendant admits that the alleged posts were placed on social media by Kevin J. Arsenault, and that a nurse manager advised the Plaintiff of the existence of the posts on or about April 21, 2021, but except insofar as the foregoing constitute admissions of fact denies each and every other allegation in the paragraphs and specifically denies the content of those posts.
8. As to paragraph 13 of the Statement of Claim, the Defendant states it became aware of blog posts containing personal health information on or about April 19, 2021, which was disclosed to the Plaintiff on April 21, 2021 as soon as it was determined he was well enough to be advised, and that the Plaintiff was discharged from the hospital on or about April 23, 2021, but except insofar as the foregoing constitutes an admission of fact denies each and every other allegation in the paragraph.
9. As to paragraph 14 of the Statement of Claim, the Defendant states:
 - a. that the Privacy Officer conducted an investigation into a complaint that the Plaintiff's privacy may have been breached;
 - b. that the investigation included but was not limited to an audit of access to the hospital's electronic records system;

- c. that the investigation concluded the information in the social media post should be considered as personal health information and that there was a high risk the patient could be identified; and
- d. that the Privacy Officer's report included the phrase: "may have associated sensitivity and an increased expectation of confidentiality",

but except insofar as the foregoing constitute admissions of fact denies each and every other allegation in the paragraph.

- 10. As to paragraph 15 of the Statement of Claim, the Defendant states that the Privacy Officer's investigation found that one nurse had accessed the Plaintiff's chart on the understanding that she may have him as a patient on her next shift but was subsequently not assigned to the Plaintiff. Further, the Defendant states that the investigation did not find any connection between that nurse, the social media post, or Mr. Arsenault. The Defendant denies each and every other allegation in the paragraph.
- 11. As to paragraphs 22 and 24 of the Statement of Claim, the Defendant states that its obligations in respect of personal health information are as set out in the *Health Information Act, supra*, and denies each and every allegation in the paragraphs.
- 12. As to paragraph 34 of the Statement of Claim, the Defendant denies that the pleaded statutes entitle the Plaintiff to any relief whatsoever from the Defendant.
- 13. As to the whole of the Statement of Claim, the Defendant denies that there was any disclosure of personal health information by the Defendant, its employees, volunteers, or agents, or any breach of any statutory, contractual or common law obligation.
- 14. In the alternative, if there was a disclosure of personal health information by an employee, volunteer or agent of the Defendant, then:

- a. the employee was not acting in the course of their employment;
- b. the volunteer was not acting within the scope of their volunteer activities; or
- c. the agent was not acting within the scope of their authority,

and the Defendant therefore denies vicarious liability for those acts or omissions.

- 15. The Defendant states that at all material times it managed the access, use and disclosure of personal health information with reasonable care and in accordance with the *Heath Information Act, supra*, and any applicable common law obligations.
- 16. The Defendant states that the investigation conducted by the Privacy Officer into complaints of any alleged breach of privacy was reasonable, competent, and proportionate.
- 17. In the alternative, if the Plaintiff suffered damages and losses as alleged, which is not admitted but expressly denied, then the Plaintiff has failed to mitigate his damages.
- 18. The Defendant therefore requests that the Plaintiff's claim be dismissed with costs.

DATED this 24th day of May, 2022.



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Kiss v Health PEI

Court File No. S1-GS-29657

SUPREME COURT
OF PRINCE EDWARD ISLAND
(GENERAL SECTION)

Proceeding Commenced at
Charlottetown, Prince Edward Island

STATEMENT OF DEFENCE

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