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Masters' Office

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Superior Court of Ontario
Toronto Region
Masters' Chambers

Chambres des Protonotaires
Cour supérieure de Justice
Région de Toronto

DATE: September 15/14

TO: C. Poltak/J. Sayce

FAX: 416-204-2909

TO: L. Brost/J. Sydor

FAX: 416-326-4181

TO:

FAX:

TO:

FAX:

NUMBER OF PAGES INCLUDING COVER SHEET: 5

PROCEEDING(S) AT ISSUE: Seed v. Ontario

COMMENT: See attached: decision and reasons of Master Abrams dated September 12/14

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-ATTENTION-

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Endorsement

Seed v. Her Majesty the Queen in Right of the Province of Ontario

Court File No.: 11-CV-420724 420734

Motion Heard: August 12/14

In attendance: C. Poltak/J. Sayce, for plaintiff 416-204-2909 (f.)

L. Brost/J. Sydor, for defendant 416-326-4181 (f.)

Refusals/Undertakings Motions

Defendant's Refusals (Chart References)

#4: This question is ordered answered on a best efforts basis. While it is true that each type of violation might have required its own set of "reasonable steps" to be taken in response, the plaintiff is entitled to know what was envisioned/what was expected and what the term "reasonable steps" is/was understood to mean (even in general terms and even if the answer given is not exhaustive). The question is relevant for the reason stated by the plaintiff in the chart.

#8: The question is ordered answered, as follows: The defendant is to confirm that the parts of the former employees' files that have been produced include investigation, discipline and dismissal documents; and, if not, the defendant is to produce those documents as being relevant to and informing the standard of care analysis. As for the files of the current employees, the same kinds of documents as have been produced and are now ordered produced for former employees are to be produced but, in accordance with the concession made by the plaintiff and in the interest of proportionality, the current employees in respect of whom production is to be made are teachers and persons who assume primary care roles.

#9: This question need not be answered. The question is not relevant. At issue is whether the number of teachers, when looked at together with the goals, is adequate not whether the number exceeds or is less than the goals for other schools. Different schools have different goals for different reasons.

#10 and #13: The questions are relevant to standard of care and appropriateness of the class sizes. The plaintiff has indicated that he would be prepared to have the question answered on a best efforts basis with the information to be gleaned from documents submitted to institutional (including governmental) bodies in order to obtain funding. I am ordering the question answered, on this basis.

#6: The answer given needs to be supplemented. The question, as posed, seeks to elicit information as to who made decisions and on what basis. In the absence of a collective agreement (i.e. if there were times when no collective agreement was in place), who established the procedure and on what basis? Were the collective agreements always adhered to and, if not, how were the procedures established?

#9: While I agree with the defendant when it says that the deficiencies identified are really matters for follow-up questions, I also agree that, in the interest of expediency and cost-effectiveness, who these further staff members were is to be stated. The names of the staff members should be provided. Inherent in the question is a request that the identity of behaviourists other than Karen Henry be provided.

#16: A better answer is required. What needs to be disclosed is whether any more than three students resided in multiple student rooms and/or more than one student resided in single rooms. Was "3" the maximum resident number for a three-student room? Was "1" the maximum resident number for a single room?

Plaintiff's Refusals

#2-#4: These questions are to be answered by the plaintiff to the extent that he has this information/knows the answers. I agree with the defendant when it says that these questions are not tantamount to an examination of class members, without leave, as the plaintiff suggests. The defendant simply seeks those facts on which the plaintiff relies/information available to him. In addition, and in any event, I note that the plaintiff has agreed to provide will say statements no less than 5 months before trial and he is to do so.

#5-#7: The questions, as posed, seek a 'yes' or 'no' response. I am not to be taken to be opening the door to further inquiry in respect of these statements, but the defendant *is* entitled to know if the plaintiff admits to having made the statements. The narrow questions posed are to be answered.

#8-#9: If there are documents that are available to the plaintiff, they are to be produced. At issue are those documents discussed by the plaintiff in 2012. As described, they relate to key allegations in the pleadings: liability; discoverability; and (entitlement to) aggregate damages. The defendant is entitled to production of relevant documents.

#24-#29; Only questions #24-#27 and #29 need be answered as being relevant to allegations that the defendant knew of the alleged abuse and failed to respond.

#10, #12-#17, and #20-#23: These questions are now answered by the plaintiff, as follows: He can neither dispute nor admit the statements/information at issue.

#11: This question will be answered by the plaintiff, on consent.

#18-#19 and #41: These questions need not be answered as being irrelevant. Whether the plaintiff knows or doesn't know this information to be true is irrelevant to the common issues.



Failing agreement as to how/by when the questions agreed to be or ordered answered by me are to be answered and/or failing agreement as to the costs of the motions, I may be spoken to.

September 12/14