

**EXHIBIT B TO THE  
AFFIDAVIT OF Sandra Malcolm  
SWORN ON THE 3 DAY  
OF September, 2021**

Court File No. 14-50128

  
Allen Wymmer (Sep 7, 2021 09:46 EDT)

**COMMISSIONER ETC.**

**BETWEEN:**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**SUZANNE YOUNG, CARI-ANN YOUNG  
and TERESA DI FALCO**

Plaintiffs

- and -

**ST. JOSEPH'S HEALTHCARE HAMILTON,  
DAVID RICHARD JOHNSON SMALL, FREDERICK J. BAXTER,  
NANCY DZAJA, ANNA DUL, NICHOLAS AFAGH, CATHERINE KELL,  
BREANNA CORNELIUS, JOSIELYN STACEY, ANNA MARIE WALTERS,  
TINA JACKSON-BEEMER, MARY MENS, DIANE GARDINER,  
JOHN DOE and JANE DOE**

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM  
OF THE DEFENDANTS DAVID RICHARD JOHNSON SMALL,  
FREDERICK J. BAXTER AND NANCY DZAJA**

1. The defendants David Richard Johnson Small ("Dr. Small"), Frederick J. Baxter ("Dr. Baxter") and Nancy Dzaja ("Dr. Dzaja") (collectively, the "Defendant Physicians") admit the allegations contained in paragraphs 19, and 25 of the Amended Statement of Claim.
2. The Defendant Physicians have no knowledge of the allegations contained in paragraphs 2-5 and 9-18 of the Amended Statement of Claim.
3. The Defendant Physicians deny the remainder of the allegations contained in the Amended Statement of Claim.

4. Dr. Small at all material times was and is a duly qualified physician in Ontario practicing obstetrics and gynecology with privileges at the defendant St. Joseph's Hospital (the "Hospital").

5. Dr. Baxter at all material times was and is a duly qualified physician in Ontario practicing anesthesiology with privileges at the Hospital.

6. Dr. Dzaja at all material times was a medical resident in obstetrics and gynecology at the Hospital. She is now a duly qualified physician in Ontario practicing obstetrics and gynecology.

#### **Pre-Operative Treatment and Informed Consent**

7. The plaintiff Suzanne Young ("Ms. Young") first came under the care of Dr. Small in 1993 and periodically visited him for obstetrical and gynecological care over subsequent years.

8. Starting in late 2011 throughout 2012, Ms. Young received treatment and care from Dr. Small in relation to abnormal ovarian cysts. Fluid samples taken during an October 1, 2012 investigational procedure revealed rare atypical cells.

9. Dr. Small discussed the results with Ms. Young and reviewed with her the medical and surgical options. Ms. Young ultimately accepted Dr. Small's recommendation that she undergo an abdominal hysterectomy and bilateral salpingo oophorectomy. Dr. Small advised Ms. Young of surgical menopause, which would result from the procedure, and obtained her informed consent to proceed. The surgery was scheduled for November 26, 2012.

**Total Abdominal Hysterectomy and Bilateral Salpingo Oopherectomy**

10. On November 26, 2012, Ms. Young underwent a total abdominal hysterectomy and bilateral salpingo oophorectomy surgery (the "Surgery") at the Hospital.

11. Dr. Small was the lead surgeon and was assisted by Dr. Dzaja, a resident. General anesthesia was administered by Dr. Baxter.

12. Ms. Young underwent the Surgery without complications. The duration of the Surgery was approximately three hours.

13. The Defendant Physicians deny that Ms. Young experienced any head trauma during the Surgery.

**Post-Surgery Follow-up in Hospital**

14. Following the Surgery, Ms. Young was transferred to the Post-Anesthesia Care Unit. Ms. Young was subsequently transferred to the ward for post-operative observation.

15. Dr. Baxter had no further contact or dealings with Ms. Young.

16. On November 27, 2012, on the first postoperative day, at around 6:50 a.m., Dr. Dzaja attended Ms. Young's bedside during early morning rounds. Ms. Young did not report any headache or lump on her head at that time.

17. Later the same morning, Dr. Small assessed Ms. Young. No report of any trauma, headache or lump were made by Ms. Young at that time.



18. Later the same morning, at around 11:00 a.m., Ms. Young reported a headache and pain to the nursing staff.

19. Later the same day, at around 5:00 p.m., an on-call medical resident was called to assess the reported bump on Ms. Young's head. At that time, Ms. Young complained of headache, pain behind her eyes, blurry vision and nausea. A 3-4 centimeter mass on Ms. Young's occipital region that was pink in colour and tender to palpation was noted. Tests were performed by the resident to confirm that Ms. Young did not exhibit signs of neurologic injury.

20. Dr. Small subsequently saw Ms. Young again during her admission at the Hospital and, based on the symptoms she had reported to other medical staff, examined her occipital region. At that time, Dr. Small confirmed that Ms. Young had what appeared to be a small bruise on her head.

21. Dr. Dzaja attended Ms. Young's bedside on each subsequent day of Ms. Young's admission at the Hospital during morning rounds. On November 28, 2012, Ms. Young reported that her headache was still present but better. Ms. Young made no other reports of headache or nausea during these assessments.

22. Other than the reports of headache made to nursing staff on November 27, Ms. Young did not report any headaches to nursing staff for the rest of her admission.

23. Ms. Young's admission was extended secondary only to delayed return of bowel function. She was discharged from the Hospital on December 1, 2012.

24. Dr. Dzaja had no further contact with Ms. Young.

### **Post-Discharge Follow-Up**

25. On December 4, 2012, Ms. Young attended Dr. Small's office for her scheduled postoperative visit, at which time Ms. Young's surgery pathology was reviewed. Dr. Small noted that Ms. Young was developing a seroma in her incision, and arranged for Ms. Young to receive outpatient nursing. There was no complaint of head injury.

26. On December 12, 2012, Ms. Young was seen by Dr. Small. Ms. Young's incision site appeared to be improved but she complained of ongoing nausea and neck pain. Ms. Young also inquired about the cause of the bump on her occipital region, which by that point was no longer visible. Dr. Small advised that he had made inquiries and did not know the origin of the bump. He also updated Ms. Young's family physician of her complaints.

27. Ms. Young continued to attend Dr. Small's office for follow-up, and was seen by Dr. Small's locum between December 2012 and March 2013.

28. On February 12, 2013, Ms Young underwent an MRI.

29. On March 19, 2013, Dr. Small saw Ms. Young at his office. Dr. Small learned from Ms. Young that her MRI had returned a normal result and that she was being followed by both a neurologist and a neuro-ophthalmologist.

30. Ms. Young continued to visit Dr. Small's office for gynecologic care until November 2014.

31. Dr. Small has had no further contact or dealings with Ms. Young.

32. At all material times, the Defendant Physicians responded to the reasonable requests of Ms. Young by providing her support and medical care in accordance with the standard of care.

33. The Defendant Physicians carried out their care and treatment of Ms. Young in a careful, competent and diligent manner and at all times met the standard of care. The Defendant Physicians deny having been negligent in the manner alleged in the Amended Statement of Claim, or in any manner whatsoever.

34. The Defendant Physicians further deny that they committed any battery.

35. The Defendant Physicians deny that the Plaintiffs have suffered the damages claimed in the Amended Statement of Claim. In the alternative, even if any such damages were suffered by the Plaintiffs (which is denied), such damages were neither caused by nor materially contributed to by any actionable act or omission on the parts of the Defendant Physicians.

36. The Defendant Physicians plead that the Plaintiffs were contributorily negligent and plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

37. In any event, the damages claimed are too remote at law and the Plaintiffs have failed to properly mitigate their losses.

38. The Defendant Physicians therefore ask that this Action be dismissed with costs payable to them on a substantial indemnity scale plus applicable taxes.





### CROSSCLAIM

39. The Defendant Physicians claim against the defendants St. Joseph's Healthcare Hamilton, Catherine Kell, Breanna Cornelius, Josielyn Stacey, Anna Marie Walters, Tina Jackson-Beemer, Mary Mens, Diane Gardiner, John Doe And Jane Doe:

- (a) Contribution and indemnity for any damages for which the Defendant Physicians may be found liable to the Plaintiffs;
- (b) The costs of the main action of this crossclaim; and
- (c) Such further and other relief as this Honourable Court deems just.

40. The Defendant Physicians plead and rely upon the allegations contained in their Statement of Defence and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 in respect of this crossclaim.

June 23, 2015

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Proceeding commenced at Hamilton

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SMALL, BAXTER AND DZAJA**

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