


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

Court File No. 14-50/28

**ONTARIO
SUPERIOR COURT OF JUSTICE**


ten Wynberle (Sep 7, 2021 09:43 EDT)

COMMISSIONER ETC.

BETWEEN:

**SUZANNE YOUNG, CARI-ANN YOUNG
and THERESA 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 CORNELIU, JOSIELYN STACEY, ANNA
MARIE WALTERS, TINA JACKSON-BEEMER, MARY MENS,
DIANE GARDINER, JOHN DOE and JANE DOE**

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM ON BEHALF OF THE
DEFENDANTS, ST. JOSEPH'S HEALTHCARE HAMILTON, CATHERINE
BELL, BREANNA CORNELIU, JOSIELYN STACEY, ANNA MARIE WALTERS,
TINA JACKSON-BEEMER, MARY MENS AND DIANE GARDINER**

1. The Defendants, St. Joseph's Healthcare Hamilton ("the hospital"), Catherine Kell, Breanna Corneliu, Josielyn Stacey, Anna Marie Walters, Tina Jackson-Beemer, Mary Mens and Diane Gardiner ("these defendants") have no knowledge or insufficient knowledge of the allegations contained in paragraphs 2, 3, 4, 6, 7, 8, 9 and 10 of the Statement of Claim, except as stated herein.

2. Except as hereinafter specifically stated, these defendants deny each and every other allegation contained in the Statement of Claim.

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3. These defendants state that the hospital is a public hospital incorporated under the authority of and operating pursuant to the *Public Hospitals Act*, R.S.O. 1990, c.P. 40, as amended, and pursuant to the Regulations enacted thereunder.
4. These defendants state that the defendants, Catherine Kell, Breanna Corneliu, Josielyn Stacey, Anna Marie Walters, Tina Jackson-Beemer, Mary Mens and Diane Gardiner, are registered nurses and possess valid certificates of competence issued by the College of Nurses. At all material times they were employed by the hospital.
5. On November 26, 2012, the plaintiff, Suzanne Young, was admitted to St. Joseph's Healthcare Hamilton with a preoperative diagnosis of bilateral ovarian cyst. She underwent a total abdominal hysterectomy and bilateral salpingo-oophorectomy performed by Dr. D. Small. The patient was noted to be stable throughout the course of the procedure and transported to the recovery in good condition.
6. On December 1, 2012, the plaintiff was discharged from hospital.
7. These defendants state that David Richard Johnson Small, Frederick J. Baxter, Nancy Dzaja, Anna Dul and Nicholas Afagh are independent medical practitioners for whom the hospital is not vicariously liable.
8. These defendants state that any treatment given by the hospital, its servants, agents or employees, including the defendant nurses, was given with reasonable skill and due care.
9. These defendants specifically deny that there was any negligence, want of care, breach of duty or contract on their behalf or behalf of any of the defendant hospital's servants, agents, or employees, and puts the plaintiff to the strictest proof thereof

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10. These defendants plead that if the plaintiff sustained damages as alleged, which are not admitted but expressly denied, then these damages were caused by or contributed to by: a pre-existing medical condition; failure to follow instructions and directions with respect to his treatment and medical condition; and/or a subsequently developed condition; and not by any negligence or breach of duty on the part these defendants.

11. These defendants deny that the plaintiff sustained the damages as alleged and, in the alternative, the same as claimed are excessive, indirect and too remote and the hospital puts the plaintiff to the strictest proof thereof.

12. These defendants state that if the plaintiff sustained any of the injuries and damages alleged in the Statement of Claim, which is denied, those injuries and damages are not attributable in whole or in part to any actionable act or omission on the part of the defendants.

13. These defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1, as amended.

14. These defendants therefore submit that the plaintiff's claim as against them be dismissed with costs.

CROSSCLAIM

15. These defendants crossclaim against their co-defendants, David Richard Johnson Small, Frederick J. Baxter, Nancy Dzaja, Anna Dul and Nicholas Afagh and rely upon the statements contained in the Statement of Defence and the allegations against the said co-defendants in the Statement of Claim.

16. These defendants therefore request:

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- (a) Contribution, indemnity and other relief over in respect of the claims of the plaintiff;
- (b) Their costs of defending the main action herein;
- (c) Their costs of this crossclaim; and
- (d) Such further and other relief as to this Honourable Court may deem just.

17. These defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1, as amended.

April 15, 2015

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SUZANNE YOUNG et al.
Plaintiffs

ST. JOSEPH'S HEALTHCARE HAMILTON et al.
Defendants

v.

Court File No. 14-50/28

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

STATEMENT OF DEFENCE AND CROSSCLAIM

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Jackson-Beemer, Mary Mens and Diane Gardiner

SUSANNE YOUNG et al
Plaintiffs

and

ST. JOSEPH'S HEALTHCARE HAMILTON et al
Defendants

Court File No. 14-50128

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**ACTION COMMENCED IN THE CITY OF
HAMILTON**

MOTION RECORD

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