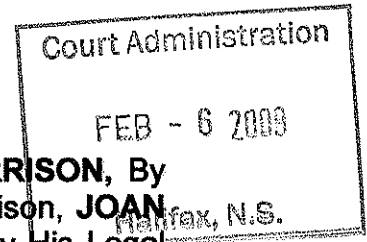


SUPREME COURT OF NOVA SCOTIA



BETWEEN

THE ESTATE OF ELMER STANISLAUS MORRISON, By
 His Executor or Representative Joan Marie Morrison, **JOAN**
MARIE MORRISON, JOHN KIN HUNG LEE, By His Legal
 Guardian Elizabeth Lee and **ELIZABETH LEE**

PLAINTIFFS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA,
 representing Her Majesty the Queen in right of the Province
 of Nova Scotia, (Department of Health), **THE MINISTER OF**
HEALTH FOR THE PROVINCE OF NOVA SCOTIA at the
 relevant time and **THE EXECUTIVE DIRECTOR OF**
CONTINUING CARE FOR THE PROVINCE OF NOVA
SCOTIA

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

Notice of Motion

To: Aleta Cromwell
 Department of Justice (NS)
 5151 Terminal Road, 4th Floor
 Halifax, NS B3J 2L6
 Solicitor for the Defendants

Motion

The Estate of Elmer Stanislaus Morrison, By His Executor or Representative Joan Marie Morrison, Joan Marie Morrison, John Kin Hung Lee, By His Legal Guardian Elizabeth Lee and Elizabeth Lee, the Plaintiffs in this proceeding, move for:

- 1) an Order certifying this proceeding as a Common Law Class Proceeding pursuant to s. 4(3) and 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28;

- 2) an Order defining the Class as:

Residents of nursing homes in the Province of Nova Scotia and their family members who have been required to pay for the health care costs of residents in nursing homes for the period between February 1, 2001 and January 1, 2005;
- 3) an Order that the within action be certified on the basis of the following common issues:
- 4) The Plaintiffs propose the following list of common issues for certification:
 - (a) Did the Defendants' failure to pay for physician services delivered in a long-term care facility during the Class Period violate the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197?
 - (b) Did the Defendants' failure to pay for nursing care as defined under s. 2(1)(i) of the *Homes for Special Care Act*, R.S.N.S., 1989, c. 203 violate the *Health Services and Insurance Act*, *supra*?
 - (c) Did the Defendants' failure to pay for personal care as defined under s. 2(1)(k) of the *Homes for Special Care Act*, *supra*, violate the *Health Services and Insurance Act*, *supra*?
 - (d) Did the Defendants' failure to pay for insured services delivered to the Plaintiffs and putative Class Members in long-term care facilities violate the requirements under s. 7 of the *Canada Health Act*, 1984, c. 6, s. 1?
 - (e) Did the Minister of Health and Executive Director of the Continuing Care Branch deliberately proceed with the implementation of the SEA system knowing that they had no statutory authority and that it was unlawful?
 - (f) Did the Defendants' failure to pay for the health care costs of the Plaintiffs and putative Class Members breach section 3 of the *Health Services and Insurance Act*, *supra*?
 - (g) Did the division of matrimonial assets imposed on the Plaintiffs and putative Class Members violate s. 14(3) of the *Social Assistance Act*, R.S.N.S., 1989, c. 432, which limits contributions by family members to \$25.00 per week?
 - (h) Did the Defendants' failure to pay for the health care costs of the putative Class Members violate rights to life, liberty and

security of the person as guaranteed by section 7 rights under the Canadian Charter of Rights and Freedoms?

- (i) Did the Defendants' failure to pay for the health care costs result in the Class Members receiving unequal treatment before the law and being discriminated against based on age and/or mental or physical disability contrary to section 15 of the Canadian Charter of Rights and Freedoms?
- (j) Did the Defendants' forceful division of matrimonial assets and forced contribution to the cost of health care and room and board discriminate against the Plaintiff and putative Class Members contrary to section 15 of the Canadian Charter of Rights and Freedoms?
- (k) If Charter rights have been breached, what are the appropriate section 24(1) remedies?
- (l) Did the Defendants owe the Class Members a fiduciary duty to act in the best interests of Class Members on the basis of provision 28B of *Homes for Special Care Regulations*, N.S. Reg. 127/77? Did the Defendants breach a duty of care owed to Class Members by preferring their own interests over the interests of the Class Members?
- (m) Did the Defendants know, should they have known, or were they reckless or willfully blind when they represented to the Plaintiffs and putative Class Members that their participation in the SEA system was mandatory?
- (n) Can actions of Class Members who have paid for their own health care costs during the Class Period be continued by the Estates of Class Members who have died prior to the trial of this action?
- (o) Can the spouses of Class Members recover amounts taken from them as a forced division of assets?
- (p) Did the Defendants receive an unjust benefit from the implementation of the SEA system, such as to warrant restitution to the Class Members on the basis of waiver of tort?
- (q) Are the Defendants jointly and severally liable for the conduct set out in the Statement of Claim and for any remedies?
- (r) Should the Defendants be liable to pay punitive damages in the aggregate and, if so, what is an appropriate amount of such aggregate damages?

- 5) an Order that The Estate of Elmer Stanislaus Morrison, By His Executor or Representative Joan Marie Morrison, Joan Marie Morrison, John Kin Hung Lee, By His Legal Guardian Elizabeth Lee and Elizabeth Lee be appointed as Representative Plaintiffs for the Class;
- 6) An Order that the Notice of Certification to the Class Members be given pursuant to the Litigation Plan attached and marked as Exhibit "A" to the affidavit of Michael Dull;
- 7) An Order that the Defendants shall be responsible for all costs associated with the Notice of Certification;
- 8) An Order that the Class Members who elect to opt-out of the class proceeding must do so in a manner and within a period of time to be fixed by the Court;
- 9) An Order for costs of this application on a full indemnity basis, including taxes; and
- 10) Such further and other relief as the Court may seem just.

Time and place

The motion is to be heard by The Honourable Justice A. David MacAdam on June 22, 23 and 24, 2009 commencing each day at 9:30a.m in the Law Courts, 1869 Upper Water Street, Halifax, Nova Scotia. The moving party has arranged for three days for the motion to be heard pursuant to the direction of the Honourable Justice A. David MacAdam. The moving party says that the motion will not require more time.

References

The moving party relies on the following legislation, Rules, or points of law:

- (a) The pleadings herein disclose a cause of action against the Defendants;
- (b) There are identifiable classes of persons who share a common interest in the common issues raised by the pleadings;
- (c) The claims of the Class Members raise common issues respecting the within litigation;
- (d) The proposed Representative Plaintiffs will adequately represent the interests of the Classes;

- (e) A class proceeding is the preferable procedure for the resolution of the common issues;
- (f) *Class Proceedings Act*, S.N.S. 2007, c. 28; and
- (g) Such further and other grounds as counsel may advise.

Evidence

The evidence in support of the motion is as follows:


1. Affidavit of Michael Dull sworn on February 6, 2009 and filed with this notice;
2. Affidavit of Joan Marie Morrison sworn on February 5, 2009 and filed with this notice; and

Possible order against you


You may file an affidavit and a brief, attend the hearing of the motion, and state your position on whether the proposed order should be made. If you do not attend, the judge may grant an order without further notice to you.

Signature

Signed this 6th day of February, 2009



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