

2003 01T 4242 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

**BETWEEN:**

**BRENDA RIDEOUT**

**PLAINTIFF**

**AND:**

**HEALTH LABRADOR CORPORATION**

**DEFENDANT**

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE RUSSELL,  
CASE MANAGEMENT JUDGE

**AFFIDAVIT OF PAMELA L. TAYLOR**

I, Pamela L. Taylor, solicitor, of the Town of Conception Bay South, in the Province of Newfoundland and Labrador, MAKE OATH AND SAY:

1. I am a lawyer with the law firm of Ches Crosbie Barristers, co-counsel for the Plaintiff, and as such have knowledge of the facts to which I hereinafter depose except where stated to be based on information and belief. I verily believe these facts are true.

**The Pleadings**

2. This action concerns allegations that the Defendant breached a standard of care in treating 333 women patients at its gynaecological clinic with improperly sterilized instruments between October 2001 and March 2003 and that it again breached a further duty of care in its subsequent conduct in disseminating news of its error to patients. Now shown to me and marked as Exhibits "A" and "B" is a copy of the Statement of Claim and Amended Statement of Claim respectively.

3. To date, the Defendant has not filed a Statement of Defence.

### **Class Definition**

4. The Plaintiffs propose the following class definition:
  - (a) All persons who were patients at the gynaecological clinic at the Captain William Jackman Memorial Hospital (the “Clinic”) between October 2001 and March 2003 and who contracted HIV, Hepatitis B, Hepatitis C, Chlamydia and/or Gonorrhoea (the “Diseases”) following treatment at the Clinic, or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (a) are hereinafter referred to as “Infected Patients”);
  - (b) All persons who contracted the Diseases from an Infected Patient, or from another Cross-Infected Person, or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (b) are hereinafter referred to as “Cross-Infected Persons”);
  - (c) All persons who were patients at the Clinic between October 2001 and March 2003, who
    - (i) did not contract the Diseases following treatment at the Clinic;
    - (ii) received a notice from the Health Labrador Corporation advising that they may have contracted the Diseases and advising of the need for medical testing;
    - (iii) attended at a hospital or medical clinic for testing for the Diseases;

or where such person is deceased, the personal representative of the estate of the deceased person (persons in paragraph (c) are hereinafter referred to as “Uninfected Patients”); and

- (d) The matrimonial partners of Infected Patients, Cross-Infected Persons, and Uninfected Patients (“Spouses”).

### **Common Issues**

- 5. The Plaintiffs propose the following common issues as arising from the pleadings:
  - (a) Did the Defendant breach a duty of care owed to class members:
    - (i) in respect of its provision of medical services to class members between October 2001 and March 2003; and
    - (ii) in respect of its subsequent conduct?
  - (b) Whether class members are entitled to damages under the *Privacy Act*, and if so, whether such damages may be determined on a global basis?
  - (c) Whether class members are entitled to punitive damages, and if so, whether such damages may be determined on a global basis?

### **Identifiable Class and Estimate of Class Size**

- 6. The Plaintiffs’ best information is that there are two or more persons in the proposed class, and there may be at least 333 persons in this proposed class. The source of this information is twofold. First, published news reports concerning the breach of sterilization protocols at the Defendant’s clinic. These published news reports

concerning the experiences of patients at the clinic, which on the basis of numerous discussions with members of the proposed class, I believe to be true, are attached to my affidavit as Exhibit "C".

7. Second, I personally attended an information and support group meeting which was organized and held by patients of clinic on December 2, 2003. Mr. Crosbie and I attended the meeting at the invitation of patients and met with approximately 160 class members on that date.

### **The Litigation Plan**

8. The Plaintiff has proposed a litigation plan for the conduct of this action as a class proceeding from start to finish. Now shown to me and marked as Exhibit "D" is a copy of the Plaintiff's Litigation Plan.
9. Plaintiff's counsel is led by an experienced trial lawyer. Now shown to me and marked as Exhibit "E" are excerpts from Ches Crosbie Barristers' web site.
10. Plaintiff's counsel has retained the experienced class action firm of Klein Lyons to assist with this litigation. Klein Lyons has years of experience with class actions. It successfully brought the first certified class proceeding in British Columbia in 1995 (*Harrington v. Dow Corning*). Since then, it has been involved in a wide range of class actions of both provincial and multi-provincial scope, including contaminated blood, TMJ implants, heart pacemakers, diet pills, flood damage, food poisoning, securities violations and consumer claims, and has successfully obtained compensation for its clients. Now shown to me and marked as Exhibit "F" are excerpts from Klein Lyons' web site.

### **Notice**

11. The Plaintiff has proposed a plan for giving notice to the class in the event this action is certified (the "Notice Program"). The Notice Program is described in the Plaintiff's Litigation Plan. A copy of the proposed official notice is attached as Schedule 1 to the Litigation Plan.

**The Representative Plaintiff**

12. I am not aware of any conflict of interest between the interests of the proposed representative plaintiff and the proposed class.
13. I know of no fact material to the application that has not been disclosed.

**SWORN TO** before me at the City of St. John's, in the Province of Newfoundland and Labrador, this                      day of February, 2004.

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**PAMELA L. TAYLOR**

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