

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.

**INTERLOCUTORY APPLICATION FOR CLASS CERTIFICATION**

(Inter Partes)

THE PLAINTIFF will make a motion to Mr. Justice Russell, on a date to be fixed by the Court.

PROPOSED METHOD OF HEARING:

The application is to be heard orally.

THE APPLICATION IS FOR:

**CERTIFICATION**

1. An Order certifying this action as a Class proceeding;

**CLASS AND CLASS REPRESENTATIVE**

2. An Order describing as a “Class”:

- (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 and common law partners of Infected Patients, Cross-Infected Persons and Uninfected Patients (“Spouses”).

3. An Order appointing Brenda Rideout as the representative plaintiff of the Class;

### **NATURE OF THE CLAIMS**

4. An Order stating the nature of the claims asserted on behalf of the Class to be negligence, breach of contract, breach of fiduciary duty, privacy, loss of guidance, care and companionship, loss of consortium, and battery.

### **RELIEF SOUGHT**

5. An Order stating the relief sought by the Class members to be:

(a) all issues of the defendant’s liability; and

(b) damages.

### **COMMON ISSUES**

6. An Order stating the “Common Issues” to be:

(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?

## **NOTICE**

- 7. An Order approving the form and content of notice to the Class.
- 8. An Order specifying that the following means shall be used to notify the Class of this action and the certification of the Class (“Notice Programme”):
  - (a) the Defendant shall provide the Plaintiff with the mailing list used to send its letter of November 10, 2003 (the “Mailing List”);
  - (b) the Plaintiff shall mail notice to each person on the Mailing List;
  - (c) Notice shall also be published in *The Aurora*, posted on a class action web site maintained by the plaintiff’s solicitors and forwarded by the Plaintiff’s solicitors to anyone who requests it.
- 9. An Order requiring the Defendant forthwith to pay the cost of the Notice Programme.

## **OPT-OUTS AND OPT-INS**

- 10. An Order specifying that class members may opt out of this Class proceeding by sending a written election by mail to the Plaintiff’s solicitors before a date to be fixed by the Court, or, in the case of class members residing outside of the province of Newfoundland

and Labrador, that such persons may opt into this Class proceeding by sending a written election by mail to the Plaintiff's solicitors before a date to be fixed by the Court.

## **LITIGATION PLAN**

11. An Order approving the Plaintiff's proposed litigation plan for the conduct of this action as a class proceeding;

## **THE GROUNDS FOR THE MOTION ARE:**

1. The *Class Actions Act*;
2. The court should certify this proceeding as a class proceeding because the statement of claim discloses a cause of action, there is an identifiable class of two or more persons, there are Common Issues raised in the pleadings, a class proceeding is the preferable procedure, and the proposed representative plaintiff fairly and adequately represents the interests of the Class, has produced a workable plan for advancing this litigation and notifying other class members, and does not have an interest in conflict with the interests of other Class members;
3. Rule 7.04(2)(b) of the *Rules of the Supreme Court*;
4. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The pleadings;
2. The affidavits of Brenda Rideout and Pamela L. Taylor;

3. such further and other evidence as counsel may advise and this Honourable Court permit.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of February, 2004.

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**CHES CROSBIE BARRISTERS**

Solicitors for the Plaintiff  
169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
*Attention: Chesley F. Crosbie*

**TO: STEWART MCKELVEY STIRLING SCALES**

Solicitors for the Defendant  
Cabot Place, 100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5X4  
*Attention: Daniel M. Boone*

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of February, 2004.

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