



The Telegram July 5, 2007
HEALTH/JUSTICE

Province unveils terms of reference for cancer inquiry

By ROB ANTLE
THE TELEGRAM

The provincial government has made public the terms of reference for a judicial inquiry into flawed cancer testing at Eastern Health.

Premier Danny Williams said the terms "set out the critical questions that the inquiry will attempt to answer to ensure that this situation does not happen again."

In a statement, Williams expressed confidence in Justice Margaret Cameron, the commissioner for

TERMS OF REFERENCE

Following is the text of the terms of reference for a judicial inquiry into faulty cancer testing in the province:

- "The Commission of Inquiry shall:
- "a) inquire into why the estrogen and progesterone hormone receptor tests done between 1997 and 2005 in the Newfoundland and Labrador health system resulted in a high rate of conversions when re-tested;
 - "b) inquire into why the problem with the estrogen and progesterone hormone receptor tests was not detected until 2005, whether it could have been detected at an earlier date, and whether testing protocols during that period between 1997 and 2005 were reasonable and appropriate;
 - "c) inquire into whether, once detected, the responsible authorities responded and communicated in an appropriate and timely manner to those women and men who needed re-tests and those who were being tested for the first time;
 - "d) inquire into whether, once detected, the responsible authorities communicated in an appropriate and timely manner with the general public and internally within the health system about the issues and circumstances surrounding the change in test results and the new testing procedures;
 - "e) advise whether the estrogen and progesterone hormone receptor testing systems and processes and quality assurance systems currently in place are reflective of 'best practice'; and
 - "f) make the recommendations that the commission of inquiry considers necessary and advisable relating directly to the matters of public concern referred to in paragraphs (a) to (e)."

the inquiry. He said her work "will help to restore public confidence in our health-care system."

The Opposition Liberals applauded the general scope of the terms of reference, but expressed some concerns.

Liberal justice critic Kelvin Parsons pointed toward language about examining the actions of "responsible authorities."

He said that could be interpreted to mean just Eastern Health, not the provincial Health Department and relevant ministers.

"If that's the case, we have a sham here," Parsons told *The Telegram*. "The intent from Day 1 was to find out anyone and everyone who had any involvement in this issue."

But the premier's office dismissed those concerns as "completely unfounded and without basis."

Elizabeth Matthews, a spokeswoman for the premier, said Parsons' comments "publicly and unnecessarily create anxiety and doubt in a what is already a very sensitive situation for those involved."

Meanwhile, NDP Leader Lorraine Michael said she was happy with the terms, noting they covered any concerns she had.

Michael stressed the need for an "open and transparent process that will include public hearings."

The inquiry will not deal with possible civil or criminal responsibility of any person or organization.

It will work to find out why hundreds of hormone receptor tests carried out by Eastern Health between 1997 and 2005 were wrong.

As a result of the errors, many cancer patients were denied treatments that may have improved their health.

Last year, the health authority suggested the error rate would be in the range of 10 per cent.

In reality, 40-plus per cent of the negative test results reviewed — more than 300 out of 763 — were wrong.

The true extent of the problem was revealed in court documents.

Eastern Health, on the advice of an independent legal counsel, had withheld information on the full extent of the problem. In June, Newfoundland Supreme Court certified a class-action lawsuit filed on behalf of patients against Eastern Health.

Patients' lawyer expresses concern

By ROB ANTLE
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The lawyer for cancer patients affected by faulty testing is concerned about a "false premise" in the terms of reference for an impending judicial inquiry.

Ches Crosbie refers to language noting that problems with hormone receptor tests were "not detected until 2005"

That, Crosbie says, is factually inaccurate.

He points to a June 2003 internal memo from a St. John's pathologist questioning perceived problems at the lab. The memo was obtained last month by CBC. Eastern Health downplayed its importance, saying the pathologist's concerns were addressed at the time.

But the 2003 memo "shows abundant awareness of the problem with testing," Crosbie contends.

"The important question is whether Eastern Health ought to have embarked on a retesting program at least two years earlier than it did."

Crosbie noted that he was speaking in his role as class counsel for patients affected by the faulty tests.

Last month, Newfoundland Supreme Court certified the matter as a class action.

Crosbie said he hopes the language in the terms of reference won't affect the commissioner's work. He noted that the issue could be dealt with by Justice Margaret Cameron before the inquiry begins.

"I would hope that the commissioner is not going to feel somehow bound by the implicit assumption that they only discovered the problem in 2005"

Crosbie said he may apply for standing on behalf of class members at the inquiry, and could raise the matter then.

Roughly 2,800 people — every breast-cancer patient who received a hormone receptor test from Eastern Health between 1997 and 2005 — have been identified as eligible to sign on to the class action.

There is a more serious tier of potential claims within that overall total of 2,800. Tests for some 366 patients provided false negative results.

Such data was used to determine the best course of treatment.