

PLAINTIFFS' LITIGATION PLAN

NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

1. The Court should settle the form and content for notification of the certification of the action as a class proceeding (the "Notice Programme") and set an opt out/opt in date which should be three (3) months after the date of the order certifying the action. The notice should be generally in accordance with the form attached hereto as Schedule 1 (the "Notice of Certification").
2. The Notice of Certification should be:
 - (a) forwarded to any person who requests it;
 - (b) posted on Class counsel's web site;
 - (c) published in *The Aurora*; and,
 - (d) mailed to each of the class members who received a letter dated November 10, 2003 from the Defendant.
3. The Defendant shall provide to Plaintiff's counsel the mailing list it used to send its November 10, 2003 letter so that Plaintiffs may provide notice by mail as set out in paragraph 2(d).
4. From time to time, Plaintiffs' counsel will post frequently asked questions and answers and other documentation relating to the class action on the class action web site for the information of Class members at www.chescrosbie.com.

5. Once the deadline for opt outs/ opt ins has expired, Class Counsel shall provide the Court and the Defendant with a list of the names of those persons who have opted in or out of this proceeding.

NON-RESIDENT CLASS MEMBERS

6. The Plaintiffs understand that there may be a number of non-residents of this province, principally from Quebec, who were patients at the Clinic and who may be class members. The Plaintiffs propose to provide notice of class certification to such non-resident persons as detailed above following certification of this action. If any of these non-resident class members then choose to opt-in to the certified class, the Plaintiffs propose to seek formal appointment by the court of one of these class members to serve as a representative plaintiff to represent this non-resident subclass. If no such non-resident persons choose to opt-in to the proceeding by the deadline for opting in, then the creation of a non-resident subclass and the appointment of a representative plaintiff for this non-resident subclass is unnecessary as no persons will have opted into this subclass.

LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES

PRODUCTION OF DOCUMENTS

7. The Plaintiffs will ask the Court to fix a date for the delivery of Lists of Documents.

EXAMINATIONS FOR DISCOVERY

8. The Plaintiffs will ask the Court to fix dates for examination for discovery.

EXCHANGE OF EXPERT OPINIONS/CASE MANAGEMENT

9. The Plaintiffs will ask the Court to fix a date for the delivery of expert reports.

CASE MANAGEMENT CONFERENCES/ INTERLOCUTORY APPLICATIONS

10. There will be a case management conference before the appointed judge every three months, unless the parties and the court agree that such hearings are not required.
11. Unless a particular application is a matter of urgency, all interlocutory motions will be heard at these regular case management hearings.
12. Any party bringing an interlocutory application will file supporting material at least 14 days prior to the case management conference. The respondents will file any responding affidavit material 7 days prior to the conference. The moving party will file its factum 5 days prior to the conference. The responding party will file its factum 3 days prior to the hearing. The court will determine whether any additional oral argument is required, and advise the parties accordingly.

ASSUMING THE COMMON ISSUES ARE DETERMINED IN FAVOUR OF THE CLASS MEMBERS, THE FOLLOWING SHOULD TAKE PLACE**NOTICE OF RESOLUTION OF COMMON ISSUES**

13. The Court should settle the particulars of a Notice Programme giving Class members notice of resolution of the common issues.

VALUATION AND DISTRIBUTION OF DAMAGES

14. Assuming that all common issues are resolved in favour of the plaintiffs, the Court should establish three methods for assessing and distributing damages for the Class members, as follows:

- (a) personal injury claims;
- (b) breach of privacy claims; and
- (c) punitive damages.

PERSONAL INJURY CLAIMS

15. If any or all of the common issues are resolved in favour of the class and judgment is pronounced for the Plaintiffs, the Plaintiffs propose that a case management hearing be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining issues. Potential methods include aggregate damage calculations pursuant to section 27 to 34 of the *Class Actions Act*, mini-trials, mediation, arbitration or other means approved by the Court.
16. While the ultimate number of class members who wish to assert personal injury claims, and the extent of those claims is presently unknown, it is anticipated that personal injury claims of class members can likely be meaningfully divided into two groups. First, those class members who wish to assert serious personal injury claims that exceed the financial jurisdiction of small claims court, and second, those class members who wish to assert more modest personal injury claims that fall within the financial jurisdiction of small claims court.
17. For those class members who wish to assert serious personal injury claims exceeding the financial jurisdiction of small claims court, it appears that the most appropriate means of assessing these individual damages will be by means of individual mini-trials. Such individual mini-trials trials may proceed just like any other civil lawsuit, providing the parties with all of the usual procedural and substantive rights, with the exception that the

common issues in the proceeding will already have been resolved in favour of the Plaintiffs.

18. For those class members who wish to assert more modest personal injury claims, within the financial jurisdiction of small claims court, it is proposed that individualized damage hearings be held for these claims, but that procedural and substantive rules applicable to them be the same rules used in small claims court, with the exception that the common issues in this proceeding will already have been resolved in favour of the Plaintiffs.

PRIVACY CLAIMS

19. Section 3(1) of the *Privacy Act*, R.S.N.L. c. P-22, provides that a violation of privacy is “actionable without proof of damage”. The Plaintiffs therefore propose that the entitlement and quantum of these damages can be determined without individualized proof. Such statutory damages can be determined as an aggregate amount for the class as a whole or as a fixed amount per class member. The common issues trial court may hear a representative sampling of the experiences of class members whose privacy rights were breached before making such a damages award but individualized damages trials on this issue are not foreseen to be required.

PUNITIVE DAMAGES

20. It is proposed that the issue of the entitlement and quantum of any punitive damage award be decided for the class as a whole. If punitive damages are awarded these damages should be shared equally by class members with the court making an order for the distribution of these damages to class members.

RULE 7A.07

21. Rule 7A.07 of the *Rules of the Supreme Court* specifies the content of the litigation plan as follows:

(a) statement of issues of fact and law involved in this proceeding:

the details of the claims made are contained in the Statement of Claim;

(b) statement of any legal difficulties or complications the proceeding may encounter:

the proceedings may be a hard fought, as are many class actions across Canada;

(c) statement of the methods of discovery and of obtaining other information relevant to the proceeding:

see para 5 to 8 of the Litigation Plan;

(d) statement of the potential difficulties and complications in resolving individual claims once common issues have been decided:

certain damages may require individual assessment, see para 13 to 17 of the Litigation Plan;

(e) the method of notifying members of the class or sub-class of the proceeding:

see para 1 to 5 of the Litigation Plan;

- (f) how funds that may result from the proceeding will be able to be distributed:

see para 13 to 17 of the Litigation Plan;

- (g) a statement of the proposed timing of the various stages of the proceeding:

the action will proceed in accordance with a timetable set pursuant to this Honourable Court's on-going case management, see para 9 to 11 of the Litigation Plan; and

- (h) a proposal as to how any counterclaims and third party proceedings are to be dealt with:

the plaintiffs are not aware of any counterclaims or third party proceedings.

REVIEW OF THE PLAN

22. This Plan may be reconsidered and revised as necessary, under the continuing case management authority of this Honourable Court.