

Form 78.05

2004

Hfx No. 230887

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**

- 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



Sgd
A.D. MacA
J



Order Certifying the within action as a Class Proceeding pursuant to s. 4(3) and 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28

BEFORE THE HONOURABLE JUSTICE A. DAVID MACADAM IN CHAMBERS

THIS MOTION, made by the Plaintiffs for an Order for certification of the action as a class proceeding and heard on November 23, 2009, November 25, 2009 and April 12, 2010;

UPON READING the Notice of Motion dated February 6, 2009; the Plaintiff's Preliminary Certification Brief filed February 6, 2009; the Defendants' Certification Brief filed September 28, 2009; the Plaintiffs' Reply Submissions filed October 5, 2009; the Plaintiffs' Brief filed January 11, 2010; the Defendants' Submissions filed January 11, 2010; the Affidavits of Joan Marie Morrison sworn to February 5, 2009, Michael Dull sworn to February 6, 2009; Elizabeth Lee

sworn to June 18, 2009; Keith Menzies sworn to July 6, 2009; and Archibald Morrison sworn to December 8, 2009 and amended January 12, 2010;

ON HEARING Raymond F. Wagner on behalf of the Plaintiffs and Aleta C. Cromwell and Alison Campbell on behalf of the Defendants.

UPON IT APPEARING that the nature of the Plaintiffs' claims relate to the Defendants' allegedly unlawful implementation of a Single-Entry Access ("SEA") System into nursing homes and the alleged unlawful charging of health care costs by the Defendants to the Residential Class & Spousal Class.

AND UPON IT APPEARING that it is appropriate to certify the proceeding as a class proceeding in that:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of 2 or more persons;
- (c) the claims raise common issues;
- (d) a class proceeding is the preferable procedure; and
- (e) there are Representative Plaintiffs who would fairly represent the Classes, have produced a workable Litigation Plan and have no interests in conflict with the interests of other class members.

1. **THIS COURT ORDERS** that the action be and is hereby certified as a class proceeding.

2. **THIS COURT ORDERS** that the Class be split into a Residential Class and a Spousal Class and be defined as:

Residential Class:

Residents of nursing homes, or their estates if the resident has passed away, in the Province of Nova Scotia, who had 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.

Spousal Class:

Spouses of residents of nursing homes, or their estates if the spouse has passed away, in the Province of Nova Scotia, 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.

4. **THIS COURT ORDERS** that Archibald Morrison, c/o Wagners Law Firm, 1869 Upper Water Street, 3rd Floor, Pontac House, Halifax, NS B3J 1S9, be appointed as the Representative Plaintiff of the Residential Class and Elizabeth Lee and Joan Marie Morrison, c/o Wagners Law Firm, 1869 Upper Water Street, 3rd Floor, Pontac House, Halifax, NS B3J 1S9, be appointed as the Representative Plaintiffs of the Spousal Class.

5. **THIS COURT ORDERS** that the claims to be determined and the relief sought is as alleged in the Third Amended Statement of Claim dated and filed on the 19th day of November, 2010. The Plaintiffs seek monetary damages, declaratory relief and *Charter* relief.

6. **THIS COURT DECLARES** that the common issues in the action are:

1. Did the *Health Services and Insurance Act* create a statutory obligation requiring the Province of Nova Scotia to pay for any of the following services for the resident class,
 - (a) Nursing care (as defined in s. 2(1)(i) of the *Homes for Special Care Act*, R.S.N.S., 1989, c.203)?
 - (b) Personal care (as defined in s. 2(1)(k) of the *Homes for Special Care Act*, R.S.N.S., 1989, c.203)?
 - (c) Health care costs?
2. Was there statutory authority for the Single Entry Access (“SEA”) system during the Class Period? If there was no statutory authority,
 - (a) Did the Defendants deliberately proceed with the implementation of the SEA system knowing that they had no statutory authority?

- (b) Did the Defendants represent to the Resident Class that participation in the SEA system was mandatory?
 - (c) Did the Defendants act in the knowledge, or with reckless indifference, that the SEA system would cause losses to the class members?
 - (d) Were the Defendants unjustly enriched by the implementation of the SEA system?
 - (e) Did the implementation of the SEA system by the Defendants amount to equitable fraud?
3. Did the Defendants owe the Resident Class a fiduciary duty to act in the best interests of the Resident Class pursuant to s. 28B of the *Homes for Special Care Regulations*, N.S. Reg. 127/77? If there was a duty owed to the Resident Class pursuant to s. 28B of the *Homes for Special Care Regulations*, N.S. Reg. 127/77, did the Defendants breach this fiduciary duty?
 4. Can the 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?
 5. 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?
 6. Are the Defendants jointly and severally liable for the conduct set out in the Statement of Claim and for any remedies?
 7. Should the Defendants be liable to pay damages in the aggregate and, if so, what is an appropriate amount of such aggregate damages?
 8. Did the SEA system result in an unlawful division of assets for the Spousal Class? If so, can the Spousal Class recover amounts taken from them as a result of this unlawful division of assets?
 9. If there was a division of assets imposed on the Spousal Class, did this violate s. 14 of the *Social Assistance Act*, R.S.N.S., 1989, c. 432 which limits contributions by family members to \$25.00 per week?
 10. Did the Defendants violate the class members' right to liberty as guaranteed by section 7 rights under the *Canadian Charter of Rights and Freedoms*? If so, was the violation in accordance with the principles of fundamental justice?

11. Did the Defendants violate the class members' right to security of the person as guaranteed by section 7 rights under the *Canadian Charter of Rights and Freedoms*? If so, was the violation in accordance with the principles of fundamental justice?
12. Did actions of the Defendants result in the Residential Class receiving unequal treatment before the law and being discriminated against to section 15 of the *Canadian Charter of Rights and Freedoms* on the basis of age, disability, and marital status or financial status?
13. Did actions of the Defendants result in the Spousal Class receiving unequal treatment before the law and being discriminated against to section 15 of the *Canadian Charter of Rights and Freedoms* on the basis of age, disability, and marital status or financial status?
14. If section 7 or section 15 of the Charter were breached, is the breach saved by section 1 of the Charter?

7. **THIS COURT ORDERS** that the class members shall be given notice of the certification of this action as a class proceeding, in accordance with the form of the Notice of Certification, attached as Schedule "A", in the following manner:

- (a) posted by Class Counsel on its website: <http://nsnursinghomesclassaction.ca>;
- (b) direct mailed to the last known addresses of known class members as known by the Plaintiffs;
- (c) direct mailed to the last known addresses of known class members as identified by a list of potential class members provided by the Defendants;
- (d) appended to a press release circulated by wire service;
- (e) provided by Class Counsel to any person who requests it;
- (f) published on three consecutive days in the Chronicle Herald;
- (g) published on three consecutive days in the Cape Breton Post, the Vanguard, the Digby Courier and Le Courrier de la Nouvelle Ecosse; and

(h) available orally by recorded message at Class Counsel's toll-free line.

8. **THIS COURT DECLARES** that the cost of Notice to the class members will be borne by the Plaintiffs.

9. **THIS COURT DECLARES** that the Notice and its distribution satisfy the requirements of s. 22(6) of the *Class Proceedings Act*.

10. **THIS COURT ORDERS** that the Litigation Plan attached as Schedule "B" is a workable method of advancing the proceedings subject to clarification and amendment if required.

11. **THIS COURT ORDERS** that a class member may opt out of the class action by sending an Opt-out Form, attached as Schedule "C", signed by the class member, to counsel for the Plaintiffs on or before the 15th day of April, 2011.

12. **THIS COURT ORDERS** that there shall be document production on all the common issues.

13. **THIS COURT ORDERS** that the Defendants shall deliver their statements of defence within 40 days of this Order.

14. **THIS COURT ORDERS** that the costs of this motion are to be determined by the Case Management Judge

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Prothonotary

Consented as to form:



Raymond F. Wagner
Solicitor for the Plaintiffs
Wagners
1869 Upper Water Street
Halifax, NS B3J 2V2

Dale Dunlop
Solicitor for the Plaintiffs
Walker Dunlop
1485 South Park Street
Halifax, NS B3J 2S9

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

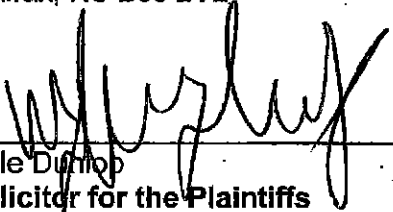
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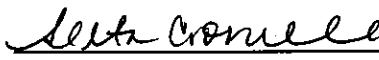
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Halifax, NS B3J 2S9



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

SCHEDULE "A"

NOTICE OF CERTIFICATION OF NOVA SCOTIA NURSING HOME CLASS ACTION

TO: *Nova Scotia Nursing Home Residents And Spouses*

Notice Of Certification:

Class members be advised of a certification of a class action lawsuit regarding alleged unlawful policy which required Nursing Home Residents, their spouses, to pay their own health care costs at any time between February 1, 2001 and January 15, 2005(Class Period).

Who is included?

Resident Class:

Residents of nursing homes who have been required to pay for their health care costs in nursing homes at anytime in the Class Period.

Spousal Class:

Spouses of residents of nursing homes who have been required to pay for or contribute to the health care costs of residents in nursing homes at anytime in the Class Period.

What is the nature of the claims?

Recovery of money paid for health care in Nursing Homes. A judgment on the common issues for both classes will bind all Class Members who do not opt out.

What options do Class Members have?

Class members may opt out of the class action by sending an "Opt-out Form," signed by the class member, to counsel for the Plaintiffs on or before the 15th day of April, 2011.

Class Representatives:

For the Spousal Class:

Joan Marie Morrison
Elizabeth Lee

For the Resident Class:

Archibald Morrison

c/o

Wagners
3rd Floor Pontac House
Historic Properies
1869 Upper Water Street
Halifax NS B3J 1S9
1-800-465-8794

Class Counsel Compensation:

The Representative Plaintiffs have entered into a Contingency Fee Agreement. Should only settlement or judgment be awarded in favor of the Class, the Plaintiffs counsel will receive 15 – 25% of the net award subject to the quantum of settlement or judgment, Court approval and success.

Where can Class Members get more information?

You may participate in the common issues trial by contacting Class Counsel.

For more information, or to access opt out forms, visit www.wagnerslawfirm.com

or contact Class Counsel at the addresses below:

Wagners
3rd Floor Pontact house
Historic Properties
1869 Upper Water Street
Halifax NS B3J 1S9
Office: 902-425-7330
Toll Free: 1-800-465-8794
Fax: 902-422-1233

Dale Dunlop
Dunlop, Walker
1485 South Park St.
P.O. Box 36057
Halifax NS B3J 1S9
902-423-8121
902-429-0621

This summary notice has been approved by the Supreme Court of Nova Scotia. Do not Contact the Court about this Certification.

**SCHEDULE “B”
PLAINTIFFS’ LITIGATION PLAN
(REVISED)**

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (“Plan”) have the meanings as particularized in the statement of claim.

CLASS COUNSEL

2. The Plaintiffs have retained Wagners Law Firm and Walker Dunlop as Class Counsel to prosecute this class action. Class Counsel have the requisite knowledge, skill, experience, personnel and financial resources to prosecute the action to resolution.

THE COMPOSITION OF THE CLASS

3. The Plaintiffs seek to represent the following class:

Residential Class:

Residents of nursing homes, or their estates if the resident has passed away, in the Province of Nova Scotia, who had 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.

Spousal Class:

Spouses of residents of nursing homes, or their estates if the spouse has passed away, in the Province of Nova Scotia, 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.

NOTICE OF CERTIFICATION OF THE ACTION AS A CLASS PROCEEDING AND THE OPT-OUT PROCEDURE

4. Notice of certification is intended to inform class members of what has happened, of the effect on their individual rights, and what steps they can take and the consequences of doing so. Notice of certification therefore generally contains the following:
 - (a) A description of the Classes that have been certified;
 - (b) A general description of the claims asserted by the Representative Plaintiffs for which the action has been certified;
 - (c) An explanation of the significance of the certification to the action for class members;
 - (d) An explanation of class members' right to "opt-out" or exclude themselves from the litigation, and the significance of doing so; and
 - (e) Contact information for Class Counsel to allow class members to appropriately direct their inquiries;

5. The Plaintiffs propose that a notice of the certification of the action be circulated to advise class members, among other things, that:
 - (a) the Court has certified the action as a class proceeding;
 - (b) the claims being advanced by the Representative Plaintiffs relate to the Defendants' implementation of an allegedly unlawful system which required Nova Scotia nursing home residents and/or their families to pay for their own health care costs during the Class Period;
 - (c) persons falling within the definition of the Classes will be bound by the determination of the common issues unless they opt out;
 - (d) a person may only opt out of the Class proceeding by sending a written election to opt out to the recipient designated by the Court before a date fixed by the Court;
 - (e) no person may opt out of the class proceeding after the date fixed by the Court;
 - (f) that further notice will be provided following judgment on the common issues; and

- (g) if the common issues are resolved in favour of the class members, claimants may be required to register, file a claim and prove additional facts in order to obtain compensation.
6. The Plaintiffs propose that the notice advising of certification, in a form approved by the Court, be disseminated to class members in the following manner:
- (a) posted by Class Counsel on its website: <http://nsnursinghomesclassaction.ca>;
 - (b) direct mailed to the last known addresses of known class members as known by the Plaintiffs;
 - (c) direct mailed to the last known addresses of known class members as identified by a list of potential class members provided by the Defendants;
 - (d) appended to a press release circulated by wire service;
 - (e) provided by Class Counsel to any person who requests it;
 - (f) published on three consecutive days in the Chronicle Herald;
 - (g) published on three consecutive days in the Cape Breton Post, the Vanguard, the Digby Courier and Le Courier de la Nouvelle Ecosse; and
 - (h) available orally by recorded message at Class Counsel's toll-free line.
7. Once the order certifying the proceeding becomes final, Class Counsel will seek a case conference before the case management judge to finalize the terms of the certification order and of the notice of certification. Input will be solicited from the Court and the Defendants.
8. The Plaintiffs may ask the Court to order that the costs of disseminating the notice in the above manner be paid by the Defendants. Alternatively, the costs will be paid by the Plaintiffs in the first instance, reserving their right to seek the recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.

9. The Plaintiffs propose that opt out notices be directed to Class Counsel, who will report to the Court and the Defendants the names and addresses of the persons who opt-out by the date fixed by the Court.

REPORTING AND COMMUNICATION

10. Current information on the status of the action is posted and will be updated regularly on Class Counsel's website at www.wagnerslawfirm.com and at www.nsnursinghomesclassaction.ca. Copies of some of the publicly filed court documents, court decisions, notices, documentation and other information relating to the action are and will be accessible from the website. Website updates will come within two weeks of a court proceeding. Court documents will be made accessible within two weeks of their receipt.
11. The website also provides direct dial contact information for a member of Class Counsel's staff who can provide further information should a class member request or require it.

LITIGATION SCHEDULE

12. After disposition of the motion for certification, absent agreement among counsel, the Plaintiffs will ask the Court to continue to monitor the litigation schedule as set out in this Litigation Plan for the remaining steps in the action.

DISCOVERY

13. The parties will attend before a case management judge within 60 days of the entry of the certification order to obtain directions as to the exchange and delivery of the Affidavit of Documents.

14. The parties will conduct any examinations for discovery following exchange of the Affidavits of Documents within a reasonable amount of time as agreed by counsel or determined by a case management judge. Examinations for Discovery would be confined to matters which are certified to be common issues. Examinations for Discovery on issues of damages shall be deferred until after a common issues trial, if required.

CASE MANAGEMENT

15. The Plaintiffs propose that there be case management conferences before a case management judge every two months, unless the parties and the court agree that such hearings are not required.

DOCUMENT MANAGEMENT

16. Class Counsel will use data management systems to organize, code and manage the documents produced by the Defendants and all relevant documents in the Plaintiffs' possession.

INTERLOCUTORY MOTIONS

17. Unless a particular application is a matter of urgency, all interlocutory applications will be heard at these regular case management hearings.
18. Any party bringing an interlocutory motion will file supporting materials 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 applicants will file a brief 5 days prior to the hearing. The respondents will file a responding brief 3 days prior to the hearing. The court will determine whether any additional oral argument is required, and advise the parties accordingly

MEDIATION

19. The Plaintiffs will participate in mediation before a mutually acceptable mediator if the Defendants are prepared to do so.

COMMON ISSUES RESOLUTION

20. The Plaintiffs propose to resolve as many of the common issues as possible before the case management judge by way of Notices to Admit, or interlocutory motions for a preliminary determination of law or fact.
21. For the common issues that remain to be resolved by trial, the Plaintiffs propose that the parties will deliver any expert reports in a time as agreed by counsel or determined by the case management judge.

TRIAL OF THE COMMON ISSUES

22. The Plaintiffs will ask the Court to hold the trial of the common issues within twelve months after the completion of the examinations for discovery and production of relevant documents.

MANNER OF PROOF AT TRIAL

23. At trial, the Plaintiffs expect to rely on the following to prove the facts underlying their causes of action:
 - (a) admissions made in the pleadings;
 - (b) admissions made in discovery or in interrogatories;
 - (c) admissions made through Request for Admissions (in accordance with rule 20.03);
 - (d) evidence from witnesses; and
 - (e) expert evidence, if any.

THE PLAINTIFFS' EXPERTS

24. The Plaintiffs may retain experts to assist at trial by providing forensic accounting and actuarial evidence relating to damages.

ISSUES TO BE RESOLVED AT THE TRIAL OF THE COMMON ISSUES

25. The Plaintiffs propose that the following common issues be resolved at the trial of the common issues:

1. Did the *Health Services and Insurance Act* create a statutory obligation requiring the Province of Nova Scotia to pay for any of the following services for the resident class,
 - (a) Nursing care (as defined in s. 2(1)(i) of the *Homes for Special Care Act*, R.S.N.S., 1989, c.203)?
 - (b) Personal care(as defined in s. 2(1)(k) of the *Homes for Special Care Act*, R.S.N.S., 1989, c.203)?
 - (c) Health care costs?
2. Was there statutory authority for the Single Entry Access ("SEA") system during the Class Period? If there was no statutory authority,
 - (a) Did the Defendants deliberately proceed with the implementation of the SEA system knowing that they had no statutory authority?
 - (b) Did the Defendants represent to the Resident Class that participation in the SEA system was mandatory?
 - (c) Did the Defendants act in the knowledge, or with reckless indifference, that the SEA system would cause losses to the class members?
 - (d) Were the Defendants unjustly enriched by the implementation of the SEA system?
 - (e) Did the implementation of the SEA system by the Defendants amount to equitable fraud?

3. Did the Defendants owe the Resident Class a fiduciary duty to act in the best interests of the Resident Class pursuant to s. 28B of the *Homes for Special Care Regulations*, N.S. Reg. 127/77? If there was a duty owed to the Resident Class pursuant to s. 28B of the *Homes for Special Care Regulations*, N.S. Reg. 127/77, did the Defendants breach this fiduciary duty?
4. Can the 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?
5. 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?
6. Are the Defendants jointly and severally liable for the conduct set out in the Statement of Claim and for any remedies?
7. Should the Defendants be liable to pay damages in the aggregate and, if so, what is an appropriate amount of such aggregate damages?
8. Did the SEA system result in an unlawful division of assets for the Spousal Class? If so, can the Spousal Class recover amounts taken from them as a result of this unlawful division of assets?
9. If there was a division of assets imposed on the Spousal Class, did this violate s. 14 of the *Social Assistance Act*, R.S.N.S., 1989, c. 432 which limits contributions by family members to \$25.00 per week?
10. Did the Defendants violate the class members' right to liberty as guaranteed by section 7 rights under the *Canadian Charter of Rights and Freedoms*? If so, was the violation in accordance with the principles of fundamental justice?
11. Did the Defendants violate the class members' right to security of the person as guaranteed by section 7 rights under the *Canadian Charter of Rights and Freedoms*? If so, was the violation in accordance with the principles of fundamental justice?
12. Did actions of the Defendants result in the Residential Class receiving unequal treatment before the law and being discriminated against to section 15 of the

Canadian Charter of Rights and Freedoms on the basis of age, disability, and marital status or financial status?

13. Did actions of the Defendants result in the Spousal Class receiving unequal treatment before the law and being discriminated against to section 15 of the *Canadian Charter of Rights and Freedoms* on the basis of age, disability, and marital status or financial status?

14. If section 7 or section 15 of the Charter were breached, is the breach saved by section 1 of the Charter?

NOTICE OF THE RESOLUTION OF THE COMMON ISSUES

26. Assuming that the common issues are resolved in favour of the Plaintiffs, the

Court will be asked:

- (a) to settle the form and content of the notice of resolution of the common issues;
- (b) to prescribe the information required from Class Members in order to make an individual claim based on the judgment on the common issues, if necessary;
- (c) to declare the facts it will be necessary for Class Members to establish to succeed in individual claims, if any; and
- (d) to set a date by which Class Members will be required to file an individual claim.

27. The Plaintiffs propose that the notice of judgment on the common issues include the following information:

- (a) A description of the Class;
- (b) A description of the common issues and the nature of the claims asserted;
- (c) The Common Issues on which the Plaintiffs were successful;
- (d) The nature of any class-wide remedies granted in the judgment on the common issues;
- (e) What steps a Class Member must take to assert a claim and what facts a Class Member must prove to succeed on such a claim;

- (f) That no person will be entitled to any compensation unless he/she/it complies with the instructions contained therein;
 - (g) How to obtain further information; and
 - (h) That their claims in relation to the matters raised in the pleadings will be deemed to have been finally adjudicated whether or not they participate in the individual stage of the proceeding.
28. The Plaintiffs will ask the Court to order that the notice of resolution of the common issues be distributed substantially in accordance with the procedure set out in paragraph 6 above.

CLAIMS PROCESS APPOINTMENTS

29. The parties will select, by agreement, one or more referees. The Court must approve the selections. If they are unable to do so, the parties may ask the Court to appoint one or more referees with such rights, powers and duties as the Court directs, to conduct hearings with respect to any individual issues that remain outstanding in order for individual Class Members to obtain relief, pursuant to *Civil Procedure Rule 11*. Those references will be conducted in accordance with the directions of the trial judge in the order appointing the referee(s).

INDIVIDUAL CLAIMS ASSESSMENTS

30. The Court will be asked to set a deadline (the “Claims Deadline”) by which class members must file their claims with a designated person or the Court. Class members will be entitled to register for the claims administration.
31. Any person who does not file a claim in accordance with the orders of the Court before the Claims Deadline will not be eligible to assert an individual claim.
32. The evidence necessary to succeed on an individual claim will substantially depend on the extent of the Plaintiffs' success on the common issues. The

process proposed for determining such claims is outlined below, subject to the input of the Defendants and the direction of the Court.

33. Class members will be required to give notice of their intention to proceed with a claim within 90 days of the final publication of notice by providing a statement of the facts (limited to those facts relating solely to the individual issues specified by the Court) on which they rely.

Claims (Under \$100,000)

34. Class members willing to cap their individual claims at \$100,000 should be required to file only affidavit evidence with a referee setting out their evidence relating to the individual issues remaining to be proven. Any Defendant who wishes may cross examine an affiant on his/her affidavit out of court should it wish to challenge the evidence. The referee will then make a report and recommendation to the Court with respect to the Class Member's claim on the basis of the affidavit and transcript evidence. The report will be provided to all parties. The Court will be asked by way of application to incorporate the report and recommendation of the referee into a judgment. There will be no right of appeal of the Court judgment.

Claims (Over \$100,000)

35. Class Members with claims in excess of \$100,000 wishing to proceed with such claims will be required to:
 - (a) Serve on the Defendants an affidavit of documents prepared in accordance with rule 15; and

- (b) Attend for an oral examination for discovery (in accordance with rule 18), or provide answers to written interrogatories (in accordance with rule 19), as any Defendant wishing to examine them may elect.
36. The referee may, in his or her discretion, make a report and recommendation as to the Class Member's entitlement, if any, based on the documentary and transcript evidence, or conduct a trial of such claims. The Court will be asked by way of application to incorporate the report and recommendation into a judgment. There will be no right of appeal of the Court judgment.

FURTHER ORDERS CONCERNING THIS PLAN

37. This Plan may be amended from time-to-time by directions given at case conferences or by further order of the Court.

EFFECT OF THIS PLAN

38. This Plan, as it may be revised by order of the Court from time to time, shall be binding on all Class Members whether or not they make a claim under the Plan.

SCHEDULE "C"

2004

Hfx No. 230887

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

**OPT OUT FORM
DEADLINE – APRIL 15, 2011**

I, (resident or spouse of resident), do not want to be included in the class action against The Attorney General of Nova Scotia et al. with respect to the charging of health care costs of residents in nursing homes for the period between February 1, 2001 and January 1, 2005 by the Defendants.

I want to opt out (be excluded from) this class action. My information is as follows:

Print Name _____	Postal Code: _____
Date of birth: _____	Telephone: _____
Address: _____	Email address: _____
City: _____	Date: _____
Province: _____	Signature: _____