

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Morrison Estate v. Nova Scotia (Attorney General), 2008 NSSC 281

Date: 2008/10/14

Docket: S. H. No. 230887

Registry: Halifax

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/Respondents

and

The Attorney General of Nova Scotia, representing Her Majesty the Queen in right of the Province of Nova Scotia, (Department of Health), Jamie Muir, and Keith Menzies

Defendants/Applicants

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Judge: Justice A. David MacAdam

Heard: August 8, 11, 2008, in Halifax, Nova Scotia

Written

Decision: October 14, 2008

Subject: CPR 14.25(1)(a), (b) and (d) - Application to Strike - Fiduciary Duty

Summary: The plaintiffs, among a number of causes of action, allege the defendants owe them a fiduciary duty in respect of the provision of long term health care. The Province of Nova Scotia, effective 2001, created a single-tier system, no longer permitting private pay residents to contract directly with nursing homes and/or long term health care facilities.

Issue: Should the plaintiffs' claim that the defendants, or any of the them, owed, and breached, a fiduciary duty to the plaintiffs be struck?

Result: The onus on the defendants was to show, on the basis of the pleadings, the plaintiffs did not have a "rational argument" in support of their allegation. The statutes created public, rather than private, duties and did not give rise to a fiduciary duty to the plaintiffs, or others in the position of the plaintiffs.

However, by Regulation the Minister of Health, in setting the per diem rate for a nursing home and a home for the aged, was required to have "regard to the best interests of the resident." The Minister obviously had a discretion in establishing the per diem, and in view of the Regulation, in exercising that discretion was to have regard to the interest of the resident. As such, it cannot be said the plaintiffs do not have at least a "rational argument" that in setting the per diem rate the Minister owed them a fiduciary duty.

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