

SUPREME COURT OF NOVA SCOTIA

Citation: Morrison Estate v. Nova Scotia (Attorney General),
2012 NSSC 386

Date: 20121106

Docket: Hfx. 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

v.

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

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Judge: The Honourable Justice A. David MacAdam

Heard: July 20, 2012, in Halifax, Nova Scotia

Final Written Submissions: July 6, 2012

Written Decision: November 6, 2012

Subject: costs; lump sum costs; class proceedings; torts; Charter of Rights and Freedoms

Summary: In a proposed class proceeding, the plaintiffs claimed against the Attorney General, alleging various torts and breaches of legislation by officials of the Department of Health, as well as the Minister, in administering policies governing admission to nursing homes. Certification was initially granted in respect of

an allegation of breach of fiduciary duty by the Minister of Health. The Attorney General conceded that claims were valid for the torts of fraudulent misrepresentation and deceit, waiver of tort, and unjust enrichment. After an appeal, the matter was remitted for a determination of whether all of the plaintiffs' claims raised causes of action, and a further cause of action under s. 15(1) of the Charter of Rights and Freedoms was certified. The plaintiff sought costs on the certification motion.

Issue: (1) Entitlement to costs. (2) Whether costs should be awarded as a lump sum.

Result: The plaintiffs were entitled to costs. The plaintiffs sought lump sum costs, while the Attorney General submitted that costs should be awarded in accordance with Tariff C. The plaintiff argued that costs should not be reduced on a certification motion on account of divided success. The authorities relied on by the plaintiffs with respect to the special character of class proceedings were accepted as applicable in Nova Scotia. The plaintiff also requested that costs be payable forthwith, while the Attorney General argued that costs should be in the cause. The court awarded lump sum costs of \$40,000, payable forthwith, with disbursements to be determined.

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