

SUPREME COURT OF NOVA SCOTIA

ERICA SURETTE

PLAINTIFF

- and -

NORTHWOODCARE GROUP INC., a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HOMECARE INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HEALTH SERVICES**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOODCARE HALIFAX INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD SUPPORT SERVICES INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD REALTY INC.**, a body corporate, incorporated in the Province of Nova Scotia; **5534 ALMON STREET INC.**, a body corporate, incorporated in the Province of Nova Scotia; **2641 NORTHWOOD TERRACE INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HOMECARE AGENCY**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD IN TOUCH PERSONAL EMERGENCY RESPONSE**, a body corporate, incorporated in the Province of Nova Scotia

DEFENDANTS

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the Queen in right of the Province of Nova Scotia

INTENDED DEFENDANT

NOTICE OF INTENDED ACTION

TAKE NOTICE that the Plaintiff, Erica Surette, of Cow Bay, in the Province of Nova Scotia, intends to amend a proposed class proceeding filed in the Supreme Court of Nova Scotia bearing Hfx Court No. 498376 to add the Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia as a defendant.

WHEREAS the Plaintiff is a member of the proposed class (the “Class”, defined below) sought to be certified pursuant to section 7 of the *Class Proceedings Act*, S.N.S. 2007, c. 28;

AND WHEREAS the Plaintiff provides this Notice of Intended Action to comply with sections 17(1) and 18 of the *Proceedings Against the Crown Act*, R.S.N.S. 1989, c. 360 (the “*Proceedings Against the Crown Act*”);

AND WHEREAS the Plaintiff intends to add the Attorney General of Nova Scotia, representing Her Majesty the Queen in right of the Province of Nova Scotia (the “Province”) as a Defendant to these proceedings pursuant to the *Proceedings Against the Crown Act*;

AND WHEREAS the Plaintiff provides this Notice of Intended Action to comply with the provisions of section 3(2) of the *Class Proceedings Act*;

TAKE NOTICE that pursuant to section 17(1) of the *Proceedings Against the Crown Act*, the intended action arises from the following circumstances:

- 1) Pursuant to long-standing funding arrangements, the Province, through and with its contractors, subcontractors, agents, servants, employees, appointees, and departments, assumed responsibility for funding a significant portion of the costs incurred in the operation of the long-term care facility located at 2615 Northwood Terrace, Halifax, Nova Scotia (the “Long-Term Care Facility” or “Northwood Halifax”). As a result, the Long-Term Care Facility relied upon ongoing and sufficient Provincial funding to provide safe and effective care to hundreds of vulnerable elderly residents.
- 2) Although Northwood Halifax operates as the largest long-term care facility in Atlantic Canada, the Province began to progressively reduce funding of the Long-Term Care Facility in approximately 2016 without apparent justification and notwithstanding ongoing need. Between 2016 and 2017, Provincial funding of Northwood Halifax was reduced by nearly one million dollars, and similar reductions continued in the years that followed. As such, requests for expansion and alterations – which would have reduced shared rooms between elderly residents, expanded the common areas and increased the physical space per resident – were routinely and repeatedly denied. Similarly, in the absence of wage subsidies and adequate funding levels, staff members at Northwood Halifax often worked in multiple long-term care facilities out of economic necessity.
- 3) For several years, it was well-known that the Long-Term Care Facility was over-crowded, and that shared rooms, shared washrooms, and crowded communal spaces were too small and posed a risk to residents’ health, particularly in relation to the potential spread of infectious diseases. Despite its decision to fund the Long-Term Care Facility, and its responsibility for maintaining adequate funding levels to ensure the Long-Term Care Facility could comply with legislated requirements and promote safety of the residents at the Long-Term Care Facility, the Province rejected repeated capital funding requests to build additional private rooms for the residents of the Long-Term Care Facility for a period of three years, most recently in early 2020.
- 4) On December 3, 4, and 5, 2019, the Province, through and with its contractors, subcontractors, agents, servants, employees, appointees, and departments, carried out an inspection of the Long-Term Care Facility to assess compliance with licensing requirements mandated, supervised, and enforced by the Province. Although 14 issues were identified regarding non-compliance with licensing requirements, the Province chose to license and accredit the operation of the Long-Term Care Facility.
- 5) In late December 2019, a highly contagious disease, later named COVID-19, was identified, with the potential to cause acute respiratory distress syndrome, multi-organ failure, septic shock, and blood clots, particularly in vulnerable persons, such as the immunocompromised and the elderly. In the days and weeks that followed, public health recommendations were published to prevent the

spread of infection, including frequent hand washing, maintaining physical distance from others, quarantining, covering coughs, and wearing protective coverings such as gowns, gloves, masks, and facial protection (“Personal Protective Equipment”).

- 6) At material times, the Province, through and with its contractors, subcontractors, agents, servants, employees, appointees, and departments, was responsible for regulating, inspecting, monitoring, correcting, licensing and enforcing safety standards and regulations related to the Long-Term Care Facility, including, including, without limiting the generality of the foregoing, ensuring compliance with the *Homes for Special Care Act*, R.S.N.S. 1989, c. 203, and the regulations made thereunder; the Long-Term Care Facility Requirements issued by the Department of Health and Wellness; and related codes and regulations for the provision of long-term care to elderly persons. The Province was further responsible for maintaining adequate levels of funding to the Long-Term Care Facility to ensure the safety of its residents and facilitate adherence to relevant and required safety standards, including the provision and use of Personal Protective Equipment and necessary developments and/or alterations to prevent over-crowding within the Facility.
- 7) Licensing inspections must be carried out by Provincially appointed inspectors to ensure compliance with the governing Acts, regulations, standards, and specifications, including standards and regulations in place to prevent over-crowding, unhygienic conditions, and the potential spread of infectious diseases. The Province is further responsible for implementing, monitoring, and enforcing appropriate standards and regulations to ensure the safety of residents at long-term care facilities and nursing homes, including the Long-Term Care Facility.
- 8) Under the *Homes for Special Care Act*, if an inspector determines that a long-term care facility or a nursing home is not giving or is not capable of giving adequate care to a resident; operates an unsuitable premises for the provision of care to vulnerable persons; operates a facility that is over-crowded; does not comply with the terms, conditions or restrictions of the license; or operates a facility which contravenes governing legislation or regulations, the Province is responsible for suspending or canceling the operating license, thus preventing the continued operation of unsafe premises that could risk residents’ health and safety.
- 9) Under the *Homes for Special Care Act*, the Province is also responsible for prescribing the standards of accommodations, the standard of care, required sanitation, determining a minimum physical space requirement per resident to be provided and maintained in a facility or a nursing home and otherwise prescribing the maximum number of residents of a facility or a nursing home. The Province is also responsible for prescribing staff requirements and qualifications for a facility or a nursing home, and the required qualifications of staff in the facility.
- 10) In January 2020, the World Health Organization advised that that healthcare facilities should enhance standard infection prevention and control practices, while further advising that frequent hand-washing and social distancing would help prevent the spread of COVID-19. Shortly thereafter, a further advisement was issued that warned of the vulnerability of elderly persons to serious complications of this infectious disease. During this time, the Province was aware that outstanding licensing requirements had been identified at the Long-Term Care Facility and that physical space requirements per resident at the Long-Term Care Facility would not permit physical distancing and quarantine, but no further action was taken to ensure compliance with the relevant safety standards, no additional funding was provided to facilitate effective safety and/or prevention measures, and no action was taken to address inadequacies in existing safety requirements in response to growing concern regarding a potential global pandemic.

- 11) On January 26, 2020, the first presumptive case of COVID-19 in Canada was announced in connection with recent international travel, with additional cases reported in the days that followed. By February 28, 2020, a confirmed case of COVID-19 was identified as far east in Canada as Quebec. Despite increasingly widespread reports that COVID-19 spread through human-to-human contact and that elderly persons were at marked risk of lethal complications from the disease, the Province chose not to take action to implement or enforce safety standards regarding the number of elderly persons who could be housed in a long-term care facility or nursing home, or the permitted proximity of residents, in particular those in shared rooms.
- 12) On March 2, 2020, a pandemic plan was reportedly updated and refined at the Long-Term Care Facility. The Province did not oversee or supervise the design or implementation of this plan to ensure compliance with the *Homes for Special Care Act*, regulations, licensing and safety requirements and chose not to review existing standards for compliance with health directives issued by the World Health Organizations and other entities monitoring the spread of COVID-19.
- 13) Between March 2 and March 12, 2020, the pandemic plan enacted at the Long-Term Care Facility was updated with additional restrictions. The Province did not oversee or supervise updates to this plan to prevent the spread of COVID-19, despite its statutory mandate to regulate, inspect, monitor, correct, license and oversee the operation of the Long-Term Care Facility in a manner that ensures the safety and wellbeing of vulnerable residents. On March 12, 2020, the first reported case of COVID-19 was confirmed in Atlantic Canada, yet no further action was taken to restrict visitors from entering the Long-Term Care Facility or ensuring that staff members providing care to vulnerable residents were appropriately screened for the disease.
- 14) During this time, the Province ignored the funding requirements of the Long-Term Care Facility brought on by the COVID-19 pandemic. No action was taken to fund the acquisition of Personal Protective Equipment, which was not accounted for in the pre-pandemic Provincial funding arrangement, and no wage subsidies were provided to reduce the prevalence of staff members working across multiple long-term care facilities as a matter of economic necessity.
- 15) On March 15, 2020, the first three presumptive cases of COVID-19 in Nova Scotia were identified, two of whom lived in the Halifax area and had been living in the area for several days prior to their diagnoses.
- 16) Visitors were permitted to enter the Long-Term Care Facility until March 16, 2020. Although the Province exercised control over the licensing and safety requirements of the Long-Term Care Facility, during this time, the Province chose not to implement, oversee or supervise safety requirements in relation to visitors entering the Long-Term Care Facility during the COVID-19 pandemic. The Province provided no funding to screen visitors and staff members for signs and symptoms of illness prior to entering the Facility.
- 17) On March 22, 2020, the Province declared a State of Emergency in relation to the ongoing threat posed by COVID-19; however, the Province did not take any, or any adequate, steps to ensure compliance with health and safety standards and licensing requirements at the Long-Term Care Facility, which continued to house hundreds of residents in close quarters in a manner conducive to the spread of an infectious disease.
- 18) On March 26, 2020, staff members providing care at the Long-Term Care Facility began to wear procedural masks while caring for elderly residents. The Province did not require or otherwise respond to the World Health Organization recommendation that Personal Protective Equipment be

used in the provision of long-term care to elderly persons, nor did the Province provide the necessary resources for the procurement of such Personal Protective Equipment.

- 19) On March 31, 2020, a cohort area was established at the Long-Term Care Facility, which involved relocating some residents to alternative rooms or locations to create an isolated area for those infected with COVID-19. The Province was responsible for maintaining and supervising safety standards in relation to the housing of elderly residents at the Long-Term Care Facility but chose not to ensure that the cohort area was initiated in sufficient time to prevent or limit the spread of infection or that it complied with regulatory and/or safety standards.
- 20) On April 2, 2020, the Government of Canada announced 10,000 confirmed cases of COVID-19 within the country, with more than 1,000,000 confirmed cases worldwide.
- 21) On April 5, 2020, a staff member responsible for the care of elderly residents at the Long-Term Care Facility tested positive for COVID-19. By April 7, 2020, five elderly residents of the Long-Term Care Facility tested positive for COVID-19. The Province chose not to enforce mandatory quarantining or distancing measures.
- 22) The regulations prescribe that any resident of a nursing home who has a communicable disease shall be maintained in an isolated area and proper isolation techniques shall be observed in all aspects of the care of the resident. At the material times, the Province knew that COVID-19 is a communicable and highly contagious disease that poses a particular risk to the immunocompromised and the elderly. The Province also knew that residents at the Long-Term Care Facility shared small rooms, and continued to do so during the Pandemic, some even while infected with COVID-19. It knew that some residents could not quarantine or sufficiently physically distance as public health measures required. Yet, the Province chose not to impose restrictions or terms on the license, or cancel or suspend the license issued to the Long-Term Care Facility, or enforce compliance with the *Homes for Special Care Act* and regulations thereunder, and instead allowed the continued operation of the Long-Term Care Facility in a manner that was unsafe and which placed residents at significant and foreseeable risk of harm.
- 23) On April 13, 2020, some elderly residents of the Northwood Long-Term Care Facility were moved into a separate building in the absence of any directives or oversight from the Province regarding regulatory and/or licensing requirements for the safe transport of residents and/or the space required in each building in light of the ongoing pandemic.
- 24) Between April 18 and April 22, 2020, eight residents of the Long-Term Care Facility died from complications of COVID-19. On the same day, the Nova Scotia Government and General Employees Union, whose members were among the staff members at the Long-Term Care Facility, reported numerous concerns with the conditions of the Long-Term Care Facility, including the lack of infection control measures to protect vulnerable seniors and front line workers; the lack of appropriate Personal Protective Equipment available on-site; the lack of consistent, thorough cleaning of the units; and the clustering of both COVID-19-negative and -positive elderly persons together on some units. The Province chose not to act in response to these apparent licensing violations and continued to permit the operation of the Long-Term Care Facility.
- 25) Between April 23 and May 11, 2020, an additional 34 residents of the Northwood Long-Term Care Facility died from complications of COVID-19. During this time, the Province continued to be responsible for the creation, supervision, and enforcement of safety and licensing standards at the Long-Term Care Facility but took no further action in respect of the safety of the hundreds of elderly persons who continued to live at the Long-Term Care Facility.

- 26) On May 13, 2020, three additional deaths related to COVID-19 were reported at the Long-Term Care Facility, and it was revealed that the disease had spread to additional areas therein through a communal space for smokers which had not been restricted or otherwise regulated during the pandemic.
- 27) As of May 30, 2020, the Long-Term Care Facility had 246 confirmed cases of COVID-19 among its vulnerable elderly residents, and 99 cases among its staff members, with a corresponding death toll of 53. The Province chose not to take immediate or timely action to prevent these foreseeable consequences of the improper and unsafe operation of the Long-Term Care Facility. Choosing not to review, update, or enforce the regulations and standards in place led to the subsequent losses suffered by the Plaintiff and Class. The Province chose not to take reasonable steps to prevent, mitigate, or eliminate the potential for the lethal spread of COVID-19 through the Long-Term Care Facility.
- 28) The Province, through and with its contractors, subcontractors, agents, servants, employees, appointees and departments, chose to not take adequate measures or implement safeguards to protect the residents of the Long-Term Care Facility or minimize the harm to the Class. The Province did not ensure that the existing licensing standards applicable to the Long-Term Care Facility were adequate for the protection of residents from the spread of COVID-19 and chose not to enforce existing standards and recommendations or otherwise ensure or enforce compliance with licensing requirements.

AND FURTHER TAKE NOTICE that the Plaintiff states, pursuant to s. 3(2)(b) of the *Class Proceedings Act*, S.N.S. 2007, that as proposed representative plaintiff she intends to bring a class proceeding on behalf of herself and on behalf of the Class, defined as the executors or administrators, or family members who are entitled to bring an action under the *Fatal Injuries Act*, R.S.N.S. 1989, c. 163, including the spouse, common-law partner, parent or child as defined therein, of residents of the Northwood Long-Term Care Facility who passed away due to COVID-19 or related complications from March 15, 2020 to the date certifying the action as a class proceeding.

OPERATIONAL NEGLIGENCE

AND FURTHER TAKE NOTICE that the cause of action alleged against the Province will be operational negligence.

- 29) The Plaintiff and Class allege that the Province is liable for operational negligence.
- 30) As above described, the Province, through and with its contractors, subcontractors, agents, servants, employees, appointees and departments, is responsible for regulating, inspecting, licensing, and ensuring compliance with safety and licensing standards for the operation of long-term care facilities and nursing homes, including the Long-Term Care Facility.
- 31) At material times hereto, the Province owed the residents of the Long-Term Care Facility a duty to use due care in enforcing safety and licensing standards for the operation of long-term care facilities and nursing homes, and further owed the residents a duty to exercise its supervisory authority to ensure the safety of these elderly persons in light of a global pandemic to which they were acutely vulnerable. The Province owed the residents of the Long-Term Care Facility a duty to use due care in adequately and with sufficient frequency inspecting the Long-Term Care Facility, and to act upon known breaches of applicable legislation and regulations.

- 32) Further, the Province owed the residents of the Long-Term Care Facility a duty to refuse to re-issue a license, issue terms, conditions or restrictions of the license, or cancel or suspend a license issued under the *Homes for Special Care Act* if the Long-Term Care Facility:
- (a) is not giving or is not capable of giving adequate care to a resident, including with respect to the resident's safety and wellbeing;
 - (b) the facility has become unsuitable due to the number of residents in the facility, inadequate minimum physical space requirements per resident, inadequate standards of accommodations, and sanitation issues;
 - (c) the facility has become unsuitable due to the advent of a pandemic involving a highly communicable and lethal disease, in particular to the elderly, which would foreseeably jeopardize residents of the Long-Term Care Facility, and in particular those who are unable to obey public health measures which require physical distancing and quarantine;
 - (d) contravened or does not comply with the requirements as set out in the *Homes for Special Care Act* and regulations, or the terms, conditions or restrictions of the license, including with respect to safety, health and sanitation;
 - (e) does not maintain residents of the facility who have a communicable disease such as COVID-19 in an isolated area or employ and observe proper isolation techniques in all aspects of the care of the resident; and
 - (f) is unable to demonstrate that it has or will exercise sufficient control, either directly or indirectly, over the operations of the Long-Term Care Facility, including the care and safety of its residents, its premises, its accommodation, its equipment and its facilities.
- 33) At material times hereto, the Province had made the decision to, and had assumed responsibility for, funding a significant portion of the costs incurred in the operation of the Long-Term Care Facility. The Province thus had a duty to have a reasonable funding scheme, based on the number of residents, known accommodation space and issues, the condition of the Long-Term Care Facility and other factors implicating funding need. The Province further owed the residents of the Long-Term Care Facility a duty to maintain adequate and reasonable funding of the Long-Term Care Facility to ensure its safe operation and to refrain from sudden, arbitrary reductions in funding that posed a known risk to the health and safety of vulnerable elderly persons residing in the Facility.
- 34) The Province has breached the applicable standard of care. It is reasonably foreseeable that a failure to adhere to the standard of care could cause significant harm to the Plaintiff and Class.
- 35) Particulars of the operational negligence of the Province include, but are not limited to, the following:
- (a) the Province inadequately, incompletely, and with delay exercised its oversight regarding compliance and enforcement with applicable Acts, Regulations and standards governing the operation of long-term care facilities and nursing homes, a result of which was the continued unsafe operation of the Long-Term Care Facility;
 - (b) the Province chose to disregard to the various known licensing issues and health and safety violations and concerns at the Long-Term Care Facility, despite its oversight mandate;

- (c) the Province chose to allow known contraventions of licensing requirements to go unaddressed, even as COVID-19 developed into a global pandemic to which elderly persons were acutely vulnerable;
- (d) the Province inadequately and with insufficient frequency inspected and monitored the operation of the Long-Term Care Facility to ensure compliance with safety and licensing standards to protect the vulnerable residents therein;
- (e) the Province did not provide adequate and reasonable levels of funding under all of the circumstances to facilitate reasonable safety and/or prevention measures at the Long-Term Care Facility and breached its duty to have a reasonable funding scheme for the Long-Term Care Facility;
- (f) the Province carried out inadequate, incomplete and/or careless inspections of the Long-Term Care Facility in December 2019, through which the Long-Term Care Facility was permitted to remain operational despite licensing violations;
- (g) the Province disregarded and/or was willfully blind to the inadequacy of existing safety requirements for the operation of long-term care facility and nursing homes in the context of the COVID-19 pandemic;
- (h) the Province chose not to provide necessary resources to ensure that residents of the Long-Term Care Facility were not sharing rooms during a global pandemic that is highly contagious and spreads primary through human-to-human contact;
- (i) the Province chose not to intervene by issuing terms, conditions, restrictions, suspension or cancellation of the Long-Term Care Facility's license due to the Long-Term Care Facility's contravention of the *Homes for Special Care Act* and regulations, including with respect to safety, health and sanitation;
- (j) the Province chose not to intervene by issuing terms, conditions, restrictions, suspension or cancellation of the Long-Term Care Facility's license due to the Long-Term Care Facility's inability to maintain residents of the facility who have a communicable disease in an isolated area or employ and observe proper isolation techniques in all aspects of the care of the resident;
- (k) the Province did not take reasonable steps to prevent or reduce the incidence of staff members working in multiple long-term care facilities during a global pandemic that is highly contagious and spreads primary through human-to-human contact;
- (l) the Province exercised improper, unsafe, and careless licensing of the Long-Term Care Facility, including the continued licensing of the Long-Term Care Facility as the presence of COVID-19 was confirmed in, and spread across, Canada; and
- (m) any other such negligence as may arise from the evidence.

- 36) The Plaintiff and Class Members have suffered damages as a result of the actions and omissions of the Province and other Defendants, which fell below the applicable standard of care. The damages of the Plaintiff and Class Members are a foreseeable consequence of the Province's operational negligence, which caused or contributed to the unsafe operation of the Northwood Long-Term Care Facility, leading to the deaths of 53 residents as of May 31, 2020.

THE REMEDIES SOUGHT

The Plaintiff, on her own behalf and on behalf of the Class, apply to the Court for:

- (a) an Order certifying this action as a class proceeding and appointing her as Representative Plaintiff for the Class Members under the *Class Proceedings Act*;
- (b) pecuniary and special damages for the Plaintiff and Class;
- (c) non-pecuniary damages for the Plaintiff and Class;
- (d) the costs of administering requisite notice programs and distributing all monies received to Class Members;
- (e) recovery of health care costs incurred by the Nova Scotia Department of Health and Wellness pursuant to the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197;
- (f) pre-judgment interest and post-judgment interest, compounded, or pursuant to the *Judicature Act*, R.S.N.S. 1989, c. 240;
- (g) costs on a substantial indemnity basis, plus applicable taxes; and
- (h) such further and other relief as this Honourable Court deems just.

AND FURTHER TAKE NOTICE that this notice is given pursuant to section 18 of the *Proceedings Against the Crown Act*;

AND FURTHER TAKE NOTICE that the Plaintiff and the Class reserve the right to file separate actions in relation to this notice;

AND FURTHER TAKE NOTICE that all documentation may be forwarded to the Plaintiff at the address set out below.

DATED at Halifax, Nova Scotia this 23rd day of June , A.D., 2020.



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