

SUPREME COURT OF NOVA SCOTIA

Citation: Morrison Estate v. Nova Scotia (Attorney General),
2011 NSSC 479

Date: 20111222

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: October 24, December 14 & December 22, 2011 in Halifax,
Nova Scotia

**Final Written
Submissions:** November 2, 2011

Subject: *Class Proceedings Act*, class actions, health law, public law,
social assistance law, *Charter of Rights and Freedoms*

Summary: The court granted the plaintiff's motion for certification of the class of plaintiffs and causes of action as a class action, and, after an appeal, was subsequently required to determine whether the test for certification was met on each disputed claim (see 2010 NSSC 196 and 2011 NSCA 68.) Specifically, the court was required to address claims that the defendants'

policies, actions and decisions respecting access to nursing home care violated ss. 7 and 15 of the *Charter of Rights and Freedoms*.

Issue: Should the *Charter* claims be certified?

Result: There is a low threshold to establish the adequacy of pleadings. The defendants argued that the statement of claim did not make sufficiently clear which claims and remedies related to which defendants, nor as to which claimants were asserting which *Charter* claims. Even in view of the requirement for a generous reading of the pleading, a responding party is entitled to know what claims are being made against it. In this case, the claims were sufficiently particularized to allow the defendants to know the case to be met. The plaintiffs did not meet the onus of establishing a certifiable claim under section 7, having failed to plead any infringement of liberty or security of the person arising from the nursing home admissions system. The section 7 claim was therefore not certified. As to the section 15 claim, it was the plaintiffs' position that the alleged discrimination related to grounds of age and disability, not financial status, as claimed by the defendant. The plaintiffs had a certifiable claim for a potential section 15 claim in relation to healthcare costs that they were required to pay and which others who did not reside in nursing homes were not required to pay.