

Media – August,
2006

Good news, bad news

For seven years, Myrtle Lewis of Conception Bay South believed she had cancer. Three weeks ago, her doctor told her she never had the disease — the test results were wrong. Lewis is glad to be alive, but devastated that her breasts were removed unnecessarily. She's one of the women behind a class-action suit filed in July against Eastern Health. 'Why should they get away with what's been done to me?'



Myrtle Lewis

Paul Daly/The Independent

Independent July 30/06



Within months of being diagnosed with cancer, Myrtle Lewis underwent surgery to have both of her breasts and 11 lymph nodes removed. Then came six months of chemotherapy — treatments she says stripped her of energy and deeply affected her immune system. She can no longer spend time in the sun, play sports, use conventional cleaning products or wear make-up.

In the seven years since her diagnosis, Lewis has tried to get on with life — it's

been a struggle, but she kept going, just glad to be alive. All that changed three weeks ago.

Lewis got a call from the hospital July 5. "Never in a million years" would she have guessed what she was about to hear.

Lewis had never had cancer. According to the oncologist, some pre-cancerous cells were present in her tests — but none of the treatments she went through may have been necessary. Not the radical surgery, not the harsh drug regime.

Now, sitting in the waiting room of Ches Crosbie's law office in downtown St. John's, eyes red-rimmed and hands clutching her purse, she looks like she's still in shock.

"I dealt with the cancer ... I thought, I'll

look at my scars and be glad I was alive to be with my children and my grandchildren and my family," Lewis says.

"But now, I don't know what to do, I can't work, my mind is always racing ... this took everything away from me, took all my dignity."

In October 2005, *The Independent* learned the Health Sciences Centre in St. John's had begun retesting tissue samples taken from breast cancer patients from as far back as 1997 to address possible inaccurate results.

Lewis' specimens were among the hundreds retested.

Now she has joined several other women who have signed on to take part in a class action lawsuit. The statement of claim filed

by Crosbie was served to the defendant, the Eastern Regional Integrated Health Authority July 7.

As of *The Independent's* press deadline, Crosbie had yet to receive a response.

The suit is being filed on behalf of women who had received inaccurate test results — which may have affected their diagnosis or treatment — and on behalf of breast cancer patients who have been on tenterhooks for months, wondering if their health problems were as they had been told.

The tests in question are referred to as ER (estrogen) and PR (progesterone) receptor tests. The procedures, given to men and women diagnosed with breast

See "Horrifying," page 2

JULY 30, 2006

2 • INDEPENDENTNEWS

'Horrrifying'

From page 1

cancer, determine whether a particular tumour needs hormones, such as estrogen or progesterone, to grow.

A positive result shows it does, which means the cancer may respond to hormone therapy, such as the drug Tamoxifen — taken by mouth and generally carrying fewer side effects than chemotherapy.

If the ER and PR test results are negative, the patient may be given chemotherapy.

Some of the results were reassessed in St. John's; others were sent to Mount Sinai Hospital in Ontario. The results have been trickling in over the past nine months. Patients are being contacted one by one.

"We've been looking at this for quite a while now, since the story first came out," says Crosbie. "I wanted to make sure there was a case to take; I consulted with two experts and reviewed several files of clients who contacted us.

"I wanted to make sure we got this right and didn't start making accusations without some basis."

Overall, Crosbie says the main allegation is "inadequate quality control in the testing."

He says there are three specific pools of claimants within the suit.

The first group — an estimated 1,000 people whose specimens were retested — would be looking for compensation for mental distress, whether or not the re-test results were the same as the originals.

"There's a fairly convincing argument they (officials with the Eastern Regional Integrated Health Authority) mishandled the way they informed people about this. You shouldn't have to find out about it in the newspaper," Crosbie says. "They could improve their patient relations. I think.

"Some women have been to see psychiatrists, it's been that distressing because it does impact your faith in the health-care system."

The second group — which could be between 30 and 60 people — involves patients who originally tested negative for estrogen and progesterone receptor status, but emerged positive after the re-test.

"The difference is, if you're negative they give you chemotherapy and if you're not, they (could) give you Tamoxifen which, I gather, is a lot more pleasant."

(In the case of one woman named on the statement of claim, Verna Doucette, the chemotherapy allegedly caused a flare-up of an old tuberculosis infection in her left lung. Removal of the lung has been considered. As discovered in the re-test, she could have been treated with Tamoxifen — and the lung problems perhaps avoided.)

The third group is made up of women like Lewis, who didn't have cancer — but were treated for it. "One hope is that's a very small group," says Crosbie. "I don't know how I'd react to that situation, it's rather horrifying."

Lewis can vouch for that.

Although the surgery and chemotherapy altered her life — she could no longer play sports with her sisters and daughters, no longer had the same energy or confidence — she had been secure in her decision to proceed.

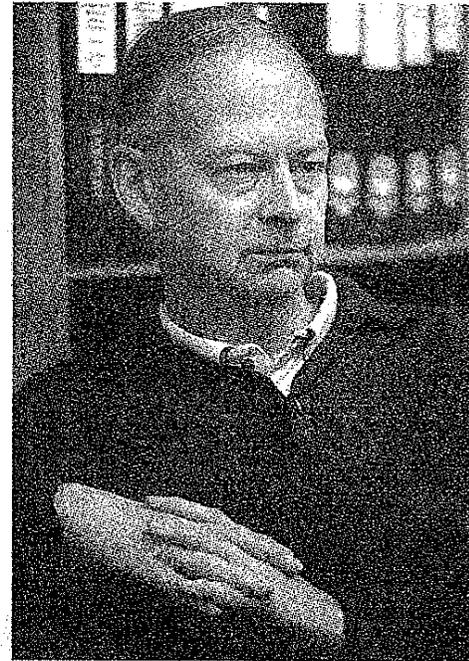
"I guess like any woman, with five children and six grandchildren and sisters and brothers, I said, well, if it's going to save my life, I should go for it.

"I dealt with it good. I looked at it like, I'm alive and so many have died."

Lewis says her follow-up visits to the doctor showed she was cancer-free — but she was never free from the fear. In her mind, every ache and pain was a recurrence of the disease that she never had.

When the news broke in *The Independent* about the retesting, Lewis started calling the hospital to see if she her file was affected.

"It was three weeks ago they called me (back)," she says. "I went in, and the oncologist said, 'We've got good news and bad news, which would



Lawyer Ches Crosbie

Paul Daly/The Independent

you like first?"

"The good news is you didn't have cancer," he said, just like that. "You had pre-cancerous cells. The bad news — you did six months of chemo, the 11 lymph nodes removed, it wasn't necessary."

The precancerous cells could likely have been removed via lumpectomy — not a double-mastectomy.

"I wouldn't go and have my two breasts off for just pre-cancerous cells," she says. "I mean that, it's a part of your body. Now I take off my clothes and I don't know if I'm a man or woman."

Lewis, still bewildered, doesn't know what to do or think. She currently works at a personal-care home, and has put in notice to leave at the end of September. "I can't do it anymore, I go into work and my mind is racing the whole time. I work with senior citizens and I love them dearly, but ..."

She says she was told she's not the only one who may have had unnecessary surgery.

Lewis is hoping for compensation ("why should they get away with what's been done to me?") — and she hopes her story may encourage other women to come forward.

Crosbie currently represents more than half a dozen women involved in the retesting.

"My clients feel there are many women out there who are upset and feel that they'd like to do something legally or they'd like to have a remedy or they'd like to know what happened," Crosbie says, pointing out every affected person has the right to choose whether or not to be involved with the legal proceedings.

Crosbie has already filed the statement of claim. The next step, he says, is to be certified as a class-action suit — which is usually contested, and may take six months or more.

Should he be successful, Crosbie says he'll then "do whatever has to be done" — examine charts, establish liability, go to trial, or reach a settlement.

"It's not going to have a quick ending," he says. "It's going to take a couple of years. But that's usual in litigation."

The retesting at the root of the lawsuit is still underway.

Susan Bonnell, a spokeswoman for Eastern Health, says "almost all" individuals impacted have been contacted.

"We're getting near the end, but we're still doing data collection so we haven't had an opportunity yet to consider our review process," she says. "All that they're able to tell me is each case is unique and every case is being dealt with individually. Some are taking longer to deal with than others."

She is aware of Crosbie's intention to launch a class-action suit, but says she's unable to comment further. The lawyer for Eastern Health is on vacation until Aug. 7 and could not be reached for comment.

"I'm not sure they (Eastern Health) were expecting it (legal action)," Bonnell says. "It's a big issue, a big case ... I don't think there's any real surprise, people always have the freedom to make that kind of decision.

"Our focus has been on addressing the issue and that's where our heads have been and our focus has been. Not on anything else."

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Product Summary:

LAWSUIT AGAINST EASTERN HEALTH: Another lawsuit has been launched against Eastern Health over the work of its pathology lab.

Tuesday, August 01, 2006 07:50AM Item # 09

CBC Radio St. John's

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CBC Radio St. John's

JEFF GILHOOLY: Another lawsuit has been launched against Eastern Health over the work of its pathology lab. Last spring CBC Radio reported that the family of a woman who died of cancer is continuing to pursue a lawsuit she initiated against the health authority. Now a St. John's lawyer has filed a class action suit against Eastern Health on behalf of a number of clients who claim the pathology lab failed them. Myrtle Lewis is one of the women named in this suit, she had been diagnosed with cancer and she joins me on the line from Conception Bay North. Good morning to you.

MYRTLE LEWIS: Good morning.

JEFF GILHOOLY: What were you told at the time of your diagnosis?

MYRTLE LEWIS: Well I was told that I had cancer in one breast and in the other one was a lump there but it was benign.

JEFF GILHOOLY: All right and what were your options for treatment at that time, what did they tell you?

MYRTLE LEWIS: Well when I went to my doctor, my surgeon she said, well she said you make up your mind she said what you're going to do she said but you'll have to have one of your breasts off anyhow right. So she said you make up your mind, then I'll tell you what I think when you come in so we talked about it, me and my husband, so I mean you look at you know here you are with five children right and six grandchildren and you wonder well if this is going to save my life well then I'll do it. So I made the decision that I was going to have two of my breasts off

because down the road they said that in three to six months I would have to have the other one anyhow so I didn't want to go through the second thing all over again right.

JEFF GILHOOLY: Not a decision that anybody wants to face for sure.

MYRTLE LEWIS: No that's for sure.

JEFF GILHOOLY: What happened after you had the surgery then?

MYRTLE LEWIS: Well after I had the surgery they send me out for to get done for chemo right, check out for chemo so when I went in to talk to them my sister was with me and he said Myrtle, he said we took a tumour out that was 1.5 centimetres, he said and you have to do six months of chemo. And so he said if the tumour would have been under 1 centimetre you wouldn't have had to do chemo so I mean I didn't have a choice but do the chemo right.

JEFF GILHOOLY: So you went ahead with those treatments, did you have radiation as well? Just chemo.

MYRTLE LEWIS: No I didn't have radiation.

JEFF GILHOOLY: Okay.

MYRTLE LEWIS: He gave me six months of chemo.

JEFF GILHOOLY: And at what point did you find that none of this was necessary?

MYRTLE LEWIS: The fifth of July I was called back, that's seven years later and they sat down when we went in, I'll never forget it. I mean it's like a tonne of bricks hit me right when he said that, the oncologist said to me, Myrtle he said we got good news and bad news, he said what do you want to hear first. I said well give me the good news first. He said Myrtle, he said you're not going to die of breast cancer he said because you didn't have cancer you only had pre-cancer cells. That's what he told me and I mean if like I said it was a hard thing to swallow so and then he explained to me then you know that the pre-cancer cells and that and that I didn't have to do the chemo, I had 11 lymphoids taken out of my arm that I didn't have to have done.

JEFF GILHOOLY: Went through all that chemotherapy.

MYRTLE LEWIS: Yeah six months of it and believe you, me it was six months of pure hell. Because I mean I go to the hospital, I get the chemo, I come home. Before

I get to the car I'd be throwing up. I'd get home, I'd be in the bed three days, couldn't get out of the bed and the time I'd get over that it was time to go back for it again. Because I had to do chemo in between right.

JEFF GILHOOLY: Myrtle I'm going to talk to your lawyer here in a second but just from your perspective, from both personally and from your family's perspective, what do you hope would happen as a result of the legal action that you're now involved in?

MYRTLE LEWIS: Well I hope this news story gets out so like there's so many, like I got eight sisters, I got two daughters, I got three daughter-in-laws right. I mean you know if this story is going to help somebody else I mean it's never going to help me, I mean there's nothing that will ever replace what I've lost. But if it's going to help somebody else, some other woman out there, I'd say to them make sure, make sure you get the second opinion before you have anything done.

JEFF GILHOOLY: Yeah okay, appreciate your time this morning. Thanks very much.

MYRTLE LEWIS: Thank you very much.

JEFF GILHOOLY: Bye now. That's Myrtle Lewis, she's suing Eastern Health for damages. Her Lawyer is Ches Crosbie, he is representing Myrtle and a number of others similar clients really and he joins us live in the studio. Good morning, thanks for coming in this morning.

CHES CROSBIE: Good morning Jeff.

JEFF GILHOOLY: What are your clients claiming here?

CHES CROSBIE: Well they feel as a whole that the system has served them poorly. As to what they might be claiming by way of financial compensation, that's something well down the road. I think the first thing to do is in a class action which is what this is, is to get yourself certified, recognized by the court as being able to aggregate individuals together in a group so as to increase the strength of what the individuals can do against a large defendant. And then to find out what went wrong and as far as we can figure right now there's a break down in the pathology department which has effected quite a number of women. First of all there's about 1,000 women which the press accounts tell us have had to have their breast cancer specimens retested at Mount Sinai in Toronto. They found out by and large about this in the newspaper last October. That shouldn't have to happen so the suit would have a class of mental distress, people who suffered mental distress in some cases quite significant enough that they've been seeking psychiatric help over that. Because it does erode your faith and something that we all want to have faith in when we're in a crisis and we feel we need it and maybe our lives depend on it,

which is the quality of our health care system. So that's something that has to be looked at. The next class of people who may be in the...being classified as positive or rather negative for hormone receptivity, their hormone status and treated in a certain way, namely the chemotherapy. But in reality they shouldn't have had chemotherapy, they should have had something called Tamoxifen or another similar drug instead of chemo and avoided all the unpleasantness that we all are fairly aware of that goes along with chemotherapy. And then there's a third group like Myrtle who actually didn't have cancer at all and yet had mutilating surgery and chemotherapy for no good reason.

JEFF GILHOOLY: This is the first I've heard of a case like Myrtle's, okay. We're familiar with the first two but let me ask you generally and you can expand on this if you want. The original concern was with the specific test called, if I've got it right, a hormone receptor test, that's a test to help determine what treatment a person with cancer should get. Does this suit now claiming additional problems with the pathology lab there. It sounds much more far reaching, can you tell us how much more far reaching this whole action now is?

CHES CROSBIE: Well far reaching I guess only in the sense that I assume, and I don't know the details because we're not privy to them yet, although I hope we will be. That in the process of doing the retesting that we've been reading about since last October for hormone receptor positive, negative status, pathology in Mount Sinai must have realized that some of these specimens weren't cancer at all. And they've probably taken their time, like it's now July, quite a bit later during the process of the testing to have it read and reread and make sure of what they're looking at before they got around to telling these people. One thing that Myrtle didn't mention is that she's been calling frequently knowing that she was in that group of people who are being retested and being told no we don't have your results back yet. And I'd say it took them this long to bite the bullet and it's to the credit of the authorities that they've actually fessed[sic] up and told people this.

JEFF GILHOOLY: In this case.

CHES CROSBIE: In this case yeah.

JEFF GILHOOLY: Other than that has Eastern Health responded to any statement of claim at this point?

CHES CROSBIE: No we issued one near the beginning of July and I think their lawyer has been on vacation, one thing and another, it's the summer. So that's not surprising but I'm sure they will eventually.

JEFF GILHOOLY: All right we appreciate your time. Thanks for coming in. We'll stay in touch.

CHES CROSBIE: Thank you.

JEFF GILHOOLY: All right. Ches Crosbie, a lawyer in St. John's, he is representing a group of women who are suing Eastern Health. They claim mistakes made by the health authority's pathology lab have harmed them.

Telegram

Aug 5/06



Breast Cancer Testing Class Action

A class action has been commenced against Eastern Regional Integrated Health Authority arising out of inaccurate pathology testing of breast cancer tissue samples dating from 1997 onwards. The class potentially includes all women who were diagnosed from 1997 onwards. If you would like to learn more or register as a member of the class, visit our website at www.chescrosbie.com or call:

Ches Crosbie Barristers
169 Water Street, 4th Floor
St. John's, NL A1C 1B1
Telephone: (709) 579-4000
Toll-free: 1-888-579-3262



Eastern Health

Eastern Health originally began a review of all ER/PR receptor tests conducted by our laboratory since 1997 when we discovered inconsistencies in a small number of results.

Our first priority was and continues to be to our patients.

More than 900 test samples were sent to Mount Sinai Laboratory. Collecting, sending, retesting and reviewing all these test samples has been an extensive process, but most tests have been reviewed and most patients have been notified. In the majority of cases the patient's treatment was confirmed appropriate.

As part of the review we have identified a small number of cases that require further follow-up. We are in the process of reviewing and addressing each of these cases individually.

Eastern Health is committed to disclosure and our clinical team members have communicated individually with all patients impacted by this review. However, patient confidentiality is an important principle in health care, not only in this province but across the country, so we do not discuss the details of individual cases publicly.

As to the statements of claim filed against the organization, every individual has the right to take whatever action they deem appropriate and we must allow the legal system to address the legal issues.

As a health care provider, we will stay focused on ensuring that our patients have every treatment opportunity that may be available to them and on addressing the systems issues that arise.

Eastern Health would like to assure the public that we take these matters seriously, that we have a team of clinical and administrative people working on this issue, and that we are dedicated to improving the system, learning from our experiences and ensuring quality care.

George Tilley
President and Chief Executive Officer
Eastern Health

This is The Current. (August 7, 2006)

Newfoundland Cancer Patient

For many Canadians, a diagnosis of cancer is just the beginning of a fraught medical journey. Sometimes surgery is involved. Sometimes painful procedures involving drugs and radiation. No matter the prognosis, many take whatever treatment they believe will buy them more precious time with loved ones.

But what if you found out that the journey had been unnecessary, that you didn't have cancer after all, and that the tests that put you on that course were faulty or just plain wrong. Well, that's the shocking news some women in Newfoundland and Labrador have recently received.

First, some background. Between 1997 and 2004, tissue samples from about a thousand breast cancer patients were tested at a pathology lab in the province's largest hospital. There were some concerns over possible inaccurate results. So the Eastern Regional Integrated Health Authority, the board that oversees the hospital, began sending thousands of samples for retesting to Mount Sinai Hospital in Toronto.

Well, the re-test results were alarming. Mount Sinai determined that between ten and twenty per cent of the original tests were inaccurate. And one of the most dramatic errors was discovered in Myrtle Lewis's file. Last month, the 59-year old from Conception Bay South was told the harrowing diagnosis she received seven years ago was, indeed, inaccurate. We heard her story.

Ches Crosbie is the St. John's lawyer who filed a class action lawsuit on behalf of Myrtle Lewis and about a half dozen other women involved in breast cancer re-testing. He represents a number of Newfoundland and Labrador women who have had their breast tissue samples re-tested by Mount Sinai Hospital in Toronto. He was in our St. John's studio.

Newfoundland Cancer – Health Authority

No one from the Eastern Regional Integrated Health Authority was available to speak to The Current this morning. Late last week, George Tilley -- the Authority's President and CEO -- issued the following statement about the situation.

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However, patient confidentiality is an important principle in health care, not only in this province but across the country, so we do not discuss the details of individual cases publicly.

As to the statements of claim filed against the organization, every individual has the right to take whatever action they deem appropriate and we must allow the legal system to address the legal issues.

As a health care provider, we will stay focused on ensuring that our patients have every treatment opportunity that may be available to them and on addressing the systems issues that arise.

Eastern Health would like to assure the public that we take these matters seriously, that we have a team of clinical and administrative people working on this issue, and that we are dedicated to improving the system, learning from our experiences and ensuring quality care.

The above statement was issued by George Tilley -- the President and CEO of the Eastern Regional Integrated Health Authority, in Newfoundland and Labrador.

Newfoundland Cancer – Overview

As shocking as a misdiagnosis can be, my next guest says we should not be all that surprised by these kinds of mistakes are made.

Dr. Philip Hebert is a bio-ethicist and the chair of the Research Ethics Board at Toronto's Sunnybrook Hospital. He joined us in our Toronto studio.

OPINION

The Charter • August 7, 2006 • Page 7

Women want blood test screening for breast cancer

Dear Editor,

This has reference to the recent coverage in the news media of a Newfoundland woman whose breast were surgically removed as a result of a misdiagnosis by Eastern Health Authority, one of a number of individual cases that were misdiagnosed by them.

This woman appeared this week on a local television station with her lawyer. She spoke about pressing her class action lawsuit against Eastern Health.

Earlier, Eastern Health confirmed that there were problems with a number of pathology results, from a testing of 1,000 women in 1997. The problem was described as more of a quality control matter, with testing the issue, as opposed to a perceived need for a second opinion for these women facing the prospect of a diag-

nosis of breast cancer.

This poor woman in question was advised seven years later that the diagnosis, which she had been given seven years earlier, was wrong. She learned that her breasts were removed without necessity, as she had only pre-cancerous cells and not cancer.

The woman cried as she spoke of the emotional devastation resulting from the surgery that removed her breasts. She spoke determinedly of her expressed intention to carry forward with the class action lawsuit against Eastern Health, with a group of other women who were also misdiagnosed.

Are women really being asked to accept that there is no need for a second opinion, even after experiencing this kind of misdiagnosis for breast cancer? I would like to point out that the misdiagnosis that resulted in this

radical treatment, i.e. removal of both breasts, would be unnecessary, if simple blood tests for breast cancer were made available to women today. A simple blood test could clearly confirm the existence of pre-cancerous cells or actual cancer cells in the breast and would have saved these women the loss of their breasts. Why will our health care system not allow women to have this second opinion?

If men are using a simple blood test for prostate cancer, why must women have to go through these kind of nightmare situations?

The second opinion could conceivably save the health care system, millions of dollars in health care and also, considerable savings from present and future law suits against Eastern Health. There is every good reason to hold the health care system fully responsible for each and

every case of breast cancer that is misdiagnosed.

Apart from the dollar savings to the health care system, there is the reality that, if breast cancer were diagnosed accurately and sooner, women would not have to suffer the loss of their breasts because of misdiagnosis by health care specialists, using what could well be ineffective and outdated digital imaging, that was originally devised by the military, as a means of surveillance in the 20th century.

The breast, that perfectly epitomizes the feminine in the world, should not be victimized in this fashion, the basis of mammography machinery devised in the 20th century. Women have had to sacrifice their sons to war for thousands of years and still, into the 21st century. Our health care system is ask-

ing today's woman, the bearer and giver of life, to sacrifice the female breast, that sustains human life from the moment of birth, — to military technology, and without recourse to a second opinion!!

This usury of women, through this misdiagnosis of breast cancer and the violence that is brought upon women's lives through the loss of their breasts, is the result of using outdated, inadequate military technology devised by the military in the 20th century, and without the second opinion that could be provided by the use of blood screening. It, and the waging of war in the world, remains scourges on the lives of women in the 21st century. Both scourges have to be stopped in the world, before it is too late for humanity.

Elaine Murray
Placentia

Independent
Oct. 20/06

Eastern Health

Taking action

Thirty-nine breast cancer patients behind class-action suit against Eastern Health; lawyer applies for certification

By **Stephanie Porter**
The Independent

At least 39 breast cancer patients from this province have signed on to try to bring a class-action lawsuit against Eastern Health. The St. John's lawyer representing the group, Ches Crosbie, filed papers asking for certification as a class action on Oct. 13.

Almost a year ago, *The Independent* reported the Health Sciences Centre in St. John's had begun retesting tissue samples taken from breast cancer

patients from as far back as 1997 to address possible inaccurate results.

The outcome of the tests — which examine hormone receptors in breast cancer cells for estrogen and progesterone — help physicians determine what course of treatment the patient should undergo.

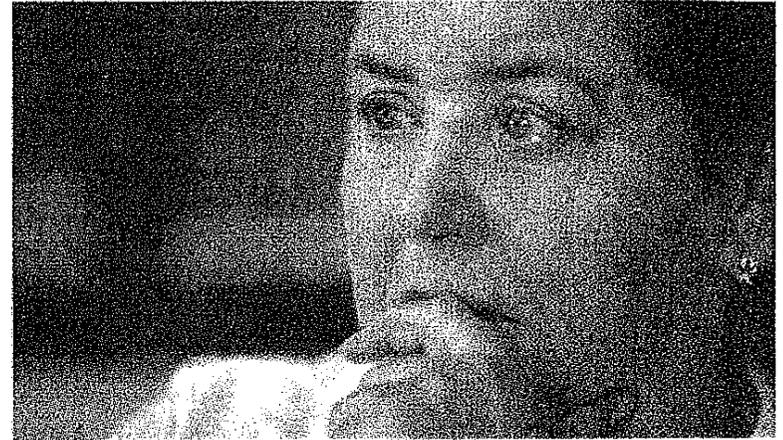
Patients have been contacted one by one by the hospital, as their results came in. Eastern Health CEO George Tilley says more than 900 specimens were sent to Mount Sinai Hospital in Toronto for retesting; the organization has not

released the total number of inaccurate results.

Crosbie says most of the "patients now living" have received the new results, if any.

"But they haven't completely finished it yet," he says. "I'm inferring that from the fact I got a call from a gentleman about 10 days ago and they had phoned him.

"His wife is deceased now these last two years and they told him they're now doing specimens of deceased patients, which would make sense, because



Myrtle Lewis, a breast cancer patient represented by Ches Crosbie. *Paul Daly/The Independent*

there's no hurry for that, it doesn't affect any therapy.

"They wanted him to speak with an oncologist and I can guess from that there's presumably a reversal in that test, otherwise why take up an oncologist's time talking to you?"

The tests in question are referred to as ER (estrogen) and PR (progesterone) receptor tests. The procedures, given to men and women diagnosed with breast cancer, determine whether a particular

See "Every individual," page 5

'Every individual has the right to take whatever action they deem appropriate'

From page 1

tumour needs hormones, such as estrogen or progesterone, to grow.

A positive result shows it does, which means the cancer may respond to hormone therapy, such as the drug Tamoxifen, taken by mouth and generally carrying less side effects than chemotherapy, which would likely be required in the face of a negative test result.

The 39 people involved in the class-action suit so far find themselves in a range of situations.

Some, whose original test results proved inaccurate, may not have received the best treatment regime for their cancer, which may have affected their outcome or subjected them to unnecessary harsh side effects.

One woman mentioned on the claim, Verna Doucette — one of the first to approach Crosbie — charges the chemotherapy caused a severe flare-up of an old tuberculosis infection in her left lung. When she got her new test results, they showed she might never have needed to take the harsh chemicals.

(An affidavit from Dr. Charles Hutton, a forensic pathologist, is included in Crosbie's application for certification as a class-action suit. In reviewing the case, he states Doucette was "a good candidate for Tamoxifen therapy" and that it can be inferred "chemotherapy had done irreparable harm" to her lungs.)

Other participants were diagnosed with cancer, who may only have had pre-cancerous cells. In one case, Myrtle Lewis had both breasts removed and underwent a considerable amount of chemotherapy — which may not have been necessary.

The class action may also represent people who did not have any change in their test results, but who suffered some mental distress as they anxiously waited for news, wondering about their cancer and treatment.

The class action also represents affected patients who are no longer living, on behalf of their families or estates.

According to another affidavit included in the certification materials, at least two other St. John's law firms represent more than two dozen other patients, who will join the class-action suit — should it be certified.

"There's still scope for the lawyers to represent individual clients in all likelihood, because the common issues won't take care of the question of quantifying damages in individual cases,"

Crosbie says. "And those are usually difficult questions in something as complex as breast cancer."

Considering most of the affected patients learned about the re-testing through the media,

Crosbie says Eastern Health still isn't communicating well with the public.

"The hospital has released no new information since about a year ago," he says. "We don't know how many specimens have been sent out, we don't know what the percentage of reversals are, the reversals from negative to positive ...

"They have a patient population out there, which is the whole population of Newfoundland — in that they do all the testing centrally — certainly everyone who might have breast cancer, and they're not telling them anything, in a general sense."

Tilley says the collection, sending, retesting and review of all test samples was an "extensive process." Currently, all results are being collated for analysis and Eastern Health is double-checking charts to make sure all affected individuals have been contacted. He expects the review of the retesting to be done by the end of November.

In regards to the potential law suits, Tilley says "every individual has the right to take whatever action they deem appropriate and we must allow the legal system to address the legal issues.

"(We) would like to assure the public that we take these matters seriously, that we have a

team of clinical and administrative people working on this issue."

Crosbie is still open to hearing from anyone interested in taking part in, or hearing more about, the possible class action.

"Thirty-nine is a fair number," says Crosbie. "I guess it shows there's a significant number of people who might be affected, which might be 800, from what they were saying a year ago.

"All the authorities who studied this question in Canada and the U.S. agree that only about 10 per cent of people who have been affected by medical negligence actually ever come forward and do anything about it in terms of taking a claim. So if you look at it from that point of view, it's a significant number of people."

A class-action suit is a long process. Both sides must file all paperwork by February 2007, at which point a date for the hearing of the certification application will be determined.

"(We) would like to assure the public that we take these matters seriously, that we have a team of clinical and administrative people working on this issue."

Eastern Health CEO

George Tilly