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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.

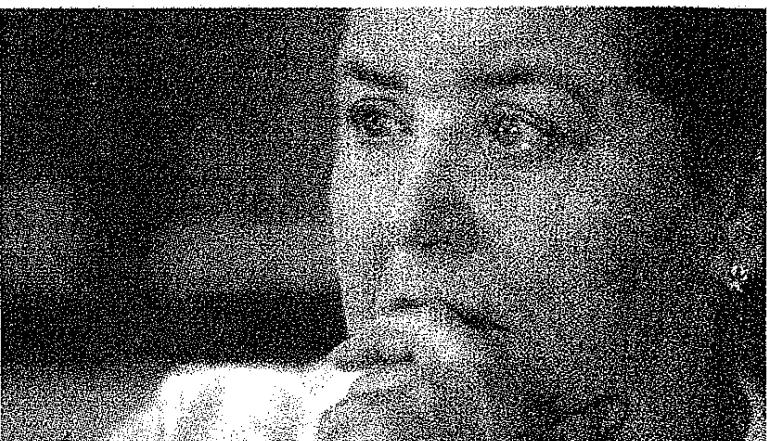
Patients have been contacted one by one by the hospital, as their results came in. Eastern Health CEO George Tilley says more than 900 specimens were sent to Mount Sinai Hospital in Toronto for retesting; the organization has not

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

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

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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 contacts. 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.

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