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Eastern Health misses court deadline

Facing a possible class-action suit over mistakes made in breast cancer testing, Eastern Health failed to meet a Dec. 15 court-ordered deadline for filing affidavits.

The suit is in regards to hundreds of breast cancer samples, dating back as far as 1997, that were sent to Mount Sinai Hospital in Toronto for retesting. The results of the test — which examines hormone receptors in breast cancer cells for estrogen and progesterone — help physicians determine the course of the treatment the patient should undergo.

As a result of the retesting, 117 patients required treatment changes.

“They were supposed to file by Dec. 15 but they didn’t,” says St. John’s lawyer Ches Crosbie, who represents those taking part in the class action. “Instead, they asked for a meeting with the case management judge on Jan. 22 and I understand they will ask for a new deadline at that point ... so that’s five weeks later, and that’s just to get a new deadline.

“We can’t proceed toward the argument for certification until that’s done.”

Crosbie says it’s “not usual to ignore” court-imposed deadlines.

Meantime, Crosbie’s firm has been reviewing randomly selected charts of some of the women taking part in the action. “Four out of five we’ve looked at had reversals from negative to positive, and the one that wasn’t reversed wasn’t retested,” he says. The sample from Myrtle Lewis was not retested because the physicians in Toronto determined she had never had invasive ductal cancer, her original diagnosis. Indeed, as Lewis found out last summer, her double mastectomy may not have been necessary.

Currently, at least 45 women have signed on to be part of the class.

Daniel Boone, the lawyer representing Eastern Health, did not return *The Independent’s* phone calls by press deadline.

— Stephanie Porter

Independent

Wait time

Ten months after patient's breast cancer test results arrived, she got the news



Lisa Morgan knew tissue samples from her breast cancer were sent to Mount Sinai Hospital in Toronto for retesting, part of Eastern Health's effort to address possible inaccuracies in hundreds of test results.

She watched media coverage of the questionable testing unroll over the past 15 months. Through the hundreds of tissue samples being retested, more than 100 patients were given new treatment regimes.

Morgan (not her real name) says she called the cancer clinic regularly, more than 30 times over the course of the year, for an update. Two weeks ago, she met with a doctor at the Health Science Centre.

She got the news: her test results had changed, and she could begin new treatment immediately.

The kicker?

"I had to ask to find out when the results came back," Morgan says. "And (the doctor's assistant) went out to find him ... eventually she came back and said 'your testing came back March 2006.'

"I said 'What?' ... then the doctor came back in, sat next to me, and said, 'I'm sorry, I'm sorry.' But 'sorry' doesn't cut it."

Morgan says she hasn't been given

any explanation for the 10 months that elapsed after the arrival of her results. And she's worried that delay may have further compromised her health.

Morgan is one of more than 900 breast cancer patients, dating back as far as 1997, whose tissue samples were sent to Ontario for retesting. The outcome of the test — which examines hormone receptors in breast cancer cells for estrogen and progesterone — help physicians determine what course of treatment the patient should undergo after surgery.

A positive result usually means the cancer may respond to hormone treatment like Tamoxifen, taken orally and generally considered to carry less side effects than chemotherapy.

A negative result means hormone therapy is not an option.

According to the final results of the retesting — released by Eastern Health last December — 117 patients have since been advised they require treatment changes.

Morgan was diagnosed with breast cancer eight years ago. She underwent a lumpectomy and six months of chemotherapy, "which made me so sick I was hospitalized twice."

Now, faced with the possibility of a new and different treatment, she says her "whole world is turned upside down."

See "Another year," page 12

'Another year' added

From page 1

More than 40 affected women, including Morgan, have signed on to bring a class action lawsuit against Eastern Health. They're represented by St. John's lawyer Ches Crosbie.

Oscar Howell, vice-president of diagnostic and medical services for Eastern Health, says he was just as surprised by Morgan's wait as she was.

"It was our understanding that all individuals impacted by the review had been contacted," Howell tells *The Independent*. "The process of notifying individual patients has involved numerous individuals, physicians and specialists, both within and outside the organization.

"Eastern Health is now rechecking the list to verify with the physicians and specialists involved that these patients have all been contacted."

Morgan is determined to receive an explanation. Somehow, she says, her file was overlooked — despite her efforts.

"How does a report go missing for 10 months? I didn't move, I'm in the same place, I have the same phone number ... I'd never received a letter, never been contacted."

Crosbie wonders if other patients out there have fallen through the cracks.

"The main point is that she would have had the protective effects of the Tamoxifen for the past eight years," says Crosbie. "Because it has very definite protective effects against the recurrence of cancer. That's the main issue.

"And now this delay has added another year to that ..."

"The moral of all this that may be of interest to people who have been tested (and not contacted) is ... don't sit back and wait for them to tell you."

Any individuals who were in the retesting group and have not heard from their physician or from Eastern Health can call the client services officer at 777-6500.

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