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HEALTH/JUSTICE

Mistakes will drive class action: lawyer

Breast cancer patients given wrong results

By ROSIE GILLINGHAM

THE TELEGRAM

Ches Crosbie believes the numbers speak for themselves. The high percentage of inaccurate results from breast cancer testing in this province could be enough to move forward a class-action lawsuit against Eastern Health, the regional healthcare authority, he said.

"This case could, quite possibly, be made on the statistics alone," said Crosbie, the lawyer representing the group of women in a suit which has been filed in Supreme Court of Newfoundland and Labrador.

"We don't need to know exactly what went wrong on one level to prove there was a breach of standard care."

Arguments in the class-action lawsuit will be heard May 23-25.

The women claimed to have been misdiagnosed during the period from 1997 to 2005.

According to Crosbie's website, the lawsuit alleges "a failure of quality control by the Eastern Regional Integrated Health Authority in the testing of breast cancer tissue specimens for estrogen and progesterone hormone receptivity."

Depending on whether the women were diagnosed as positive or negative, the treatment would either be chemotherapy or Tamoxifen.

Crosbie said of the 2,709 women diagnosed with breast cancer, 884 received negative results for their tumor being stimulated by hormones (30.4 per cent). A total of 366 were false negatives.

Of the 884 negatives, about 41 per cent were false negatives.

Overall, of the 2,709 tests completed, 16.5 per cent received incorrect results.

"When the error rate — the false-negative rate — is as high as what we're seeing, it's difficult to envision a justification being put forward," Crosbie said.

"It's difficult to see how the (authority) can explain this rate of error as consistent with due care."

Representatives of Eastern Health did not return The Telegram's phone calls Tuesday.

Crosbie said statistically, the expectations are that 25 per cent would be diagnosed as negative, with 75 per cent positive.

"But throughout this period," Crosbie said, "they had as low as under 60 per cent being positive."

Crosbie said of the 366 who received false initial results, the majority of them did not receive Tamoxifen or else received it later than they would have.

He said there is also a group of women who received chemotherapy because they were classified as being negative, which likely led them to decide to have that treatment.

"There were women who received chemotherapy and shouldn't have," said Crosbie.

"Beyond that, there will be a lot of women who were diagnosed with breast cancer throughout this period — and were talking 2,000 to 3,000 — whose faith in the system would have been badly shaken."

Crosbie said the statistics should have been checked on a monthly basis as a quality control measure, but there is no evidence it was done.

"So, what's it going to achieve? Hopefully, it will tighten up procedures at Eastern Health ... which is expected to conform to the highest standards in the country," he said. "People have to know that when they put trust in (a hospital), they're getting what they're expecting to get, what the taxpayers came to get."

Gerry Rogers of St. John's — one of the women involved in the class action — was unhappy with how Eastern Health handled the situation.

"They did not communicate with us and it was run, hide and duck for cover," she said. "They should have treated us with care and compassion. I want an apology and some kind of explanation of how this could have happened."

She believes the problems with breast cancer screening is an example of the strain on this province's health-care system.

"Hopefully, this will be a bit of a wake-up call for all of us in terms of what's happening with our health-care system," said Rogers, who said more resources are needed.

"It's falling more and more in disrepair. Doctors are doing the best they can, but unless more money is put in, it's going to continue to suffer."

Minister questions information flow

*Public confidence will be restored
in breast cancer screening process, he says*

By Terry Roberts
THE TELEGRAM

Health Minister Ross Wiseman says Eastern Health should have disclosed more information last December following a review and retesting of breast tissue samples.

Court documents reveal the error rate for hormone receptor tests conducted at the Health Sciences Centre in St. John's between 1997 and 2005 was much higher than anticipated.

More than 900 samples were retested at a Toronto hospital.

Eastern Health confirmed last year that women were given the wrong results, but it said only 117 required a change in medical treatment.

In most cases, that meant a prescription of a drug called Tamoxifen, which is thought to block the hormones that promote cancerous cell growth.

During a December briefing for the media, Eastern Health officials zeroed in on the patients who required a change in treatment.

Eastern Health withheld details about how many tests changed from negative to positive because it was facing a class action lawsuit.

Wiseman, during a scrum with reporters Tuesday afternoon, suggested the full information should have been disclosed.

"In looking at what they shared at that time, if you measure it against what we would have considered to be more open and more transparent, the other figure of (more than 300) would have been disclosed at that particular time as well," Wiseman stated.

The Liberal Opposition said the situation has shaken public confidence in Eastern Health.

Opposition Health critic Dwight Ball said he is "very disturbed and concerned" and is calling for the government to launch a thorough investigation. He believes the government and Eastern Health put the threat of litigation above the needs of patients.

"If this was a family member of mine, I would not be confident given the news I've heard today," Ball said. "The fact is there was

a class-action lawsuit here and as a result of an affidavit that was filed, we find out today these tests were wrong, 42 per cent actually."

NDP Leader Lorraine Michael also expressed concerns.

"My confidence is shaken by this," she stated.

Wiseman said there have been high-level discussions about how such a situation should be handled in the future.

But, in this case, he said full disclosure would have been more appropriate.

He added, however, that he understands why the health authority took the action it did.

"I understand and appreciate the dilemma they found themselves in trying to balance their responsibility to the patients who needed a change (in treatment) and their responsibility to protecting the interests of the organization in the event of a litigation," Wiseman said.

The faulty tests meant dozens of women did not receive critical treatment in a timely fashion, while many others started out on a treatment regime that wasn't appropriate.

Some 40-plus women are suing Eastern Health.

Wiseman said it's been a very unfortunate circumstance and many women and their families have endured a tremendous amount of stress.

He noted that Eastern Health has learned a great deal from the situation, both from the perspective of proper communications and, more importantly, in improving the quality of care it provides.

Wiseman offered assurances Tuesday that sweeping changes have been made since the testing process resumed in February.

"I think the people of the province should have confidence that we now have a real focus in ensuring that quality is complied with and there's a monitoring mechanism in place to ensure that quality exists, which didn't exist before.

"We shouldn't see a repeat of what we saw last year," Wiseman said.

If this was a family member of mine, I would not be confident given the news I've heard today.

Dwight Ball, Opposition Health critic