

MAR 15 2022

Halifax, N.S.

Form 4.02A

2020

Hfx No. 498376

SUPREME COURT OF NOVA SCOTIA

Between:

ERICA SURETTE

Plaintiff

-and-

NORTHWOODCARE GROUP INC., a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HOMECARE INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HEALTH SERVICES**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOODCARE HALIFAX INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD SUPPORT SERVICES INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD REALTY INC.**, a body corporate, incorporated in the Province of Nova Scotia; **5534 ALMON STREET INC.**, a body corporate, incorporated in the Province of Nova Scotia; **2641 NORTHWOOD TERRACE INC.**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD HOMECARE AGENCY**, a body corporate, incorporated in the Province of Nova Scotia; **NORTHWOOD IN TOUCH PERSONAL EMERGENCY RESPONSE**, a body corporate, incorporated in the Province of Nova Scotia; **THE ATTORNEY GENERAL OF NOVA SCOTIA**, representing Her Majesty the Queen in right of the Province of Nova Scotia

Defendants

Proceeding under the Class Proceedings Act, S.N.S 2007, c. 28

AMENDED NOTICE OF ACTION – Amended March 15, 2022

TO: **NORTHWOODCARE GROUP INC.**
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: **NORTHWOOD HOMECARE INC.**
130 Eileen Stubbs Avenue, Suite 19 North
Dartmouth, Nova Scotia B3B 2C4

AND TO: **NORTHWOOD HEALTH SERVICES**
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: NORTHWOODCARE HALIFAX INC.
2615 Northwood Terrace
Halifax, Nova Scotia B3K 3S5

AND TO: NORTHWOOD SUPPORT SERVICES INC.
2615 Northwood Terrace
Halifax, Nova Scotia B3K 3S5

AND TO: NORTHWOOD REALTY INC.
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: 5534 ALMON STREET INC.
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: 2641 NORTHWOOD TERRACE INC.
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: NORTHWOOD HOMECARE AGENCY
130 Eileen Stubbs Avenue, Suite 1 South
Dartmouth, Nova Scotia B3B 2C4

AND TO: NORTHWOOD IN TOUCH PERSONAL EMERGENCY RESPONSE
2615 Northwood Terrace
Halifax, Nova Scotia B3K 3S5

AND TO: THE ATTORNEY GENERAL OF NOVA SCOTIA
1600 Hollis Street
P.O. Box 7
Halifax, Nova Scotia B3J 2L6

Action has been started against you
The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$150,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiff designates the following address:

Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, NS B3J 1S9

Documents delivered to this address are considered received by the plaintiff on delivery.

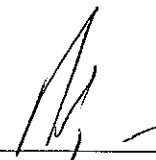
Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed _____, 2020March 15, 2022.



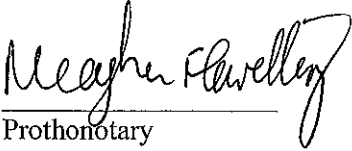
Raymond F. Wagner, Q.C.
Counsel for the Plaintiff

Prothonotary's certificate

I certify that this amended notice of action, including the attached amended statement of claim, was filed with the court on

_____, 2020, 2022.

March 15


Prothonotary

MEAGHEN FLEWELLING
Deputy Prothonotary

Form 4.02B

AMENDED STATEMENT OF CLAIM – Amended March 15, 2022

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. DEFINITIONS

1. The capitalized terms used in the Amended Statement of Claim have the meanings and refer to the definitions indicated below:
 - (a) “Class” and “Class Members” means the executor or administrator of the estate of the person deceased or family members who are entitled to bring an action under the *Fatal Injuries Act*, R.S.N.S. 1989, c. 163, including the spouse, common-law partner, parent or child as defined therein, of Residents of the Northwood Halifax Long-Term Care Facility who passed away due to COVID-19 or COVID-19 related complications from March 15, 2020 to the date certifying this action as a class proceeding to June 30, 2020.
 - (b) “COVID-19” means an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which was identified in Wuhan, China in December 2019 and has since spread globally, resulting in a world-wide pandemic, and to which elderly persons are particularly vulnerable;
 - (c) “Long-Term Care Facility” or the “Facility” means the facility operated, supervised, and managed by Northwood Halifax, located at Northwood Terrace, Halifax, in the Province of Nova Scotia, which is used for, *inter alia*, the long-term care and lodging of elderly residents;
 - (d) “Northwood Halifax” means the joint enterprise among the Defendants, Northwoodcare Group Inc., Northwood Homecare Inc., Northwood Health Services, Northwoodcare Halifax Inc., Northwood Support Services Inc., Northwood Realty Inc., 5534 Almon Street Inc., 2641 Northwood Terrace Inc., Northwood Homecare Agency, and Northwood In Touch Personal Emergency Response, to operate, manage, and supervise the provision of long-term care and lodging for elderly persons at the Long-Term Care Facility;
 - (e) “Nova Scotia Government and General Employees Union” means the largest union in the Province of Nova Scotia, whose members work in the civil service, centres of education,

universities, hospitals, liquor stores, correctional facilities, municipalities, and other organizations across the Province of Nova Scotia, including at the Long-Term Care Facility owned and operated by Northwood Halifax;

(f) “Personal Protective Equipment” or “PPE” consists of gowns, gloves, masks, facial protection (i.e., masks and eye protection, face shields or masks with visor attachment) or respirators that can be used to provide a barrier to help prevent potential exposure to infectious disease;

(g) “Province” means the Provincial government of Nova Scotia, with its contractors, subcontractors, agents, servants, employees, appointees, and departments.

~~(g)~~(h) “Residents” means all persons living in the Northwood Halifax Long-Term Care Facility, located at Northwood Terrace, Halifax, in the Province of Nova Scotia, at the material times.

~~(h)~~(i) “World Health Organization” means the specialized agency of the United Nations responsible for international public health, monitoring public health risks, coordinating responses to health emergencies, and promoting human health and well-being.

II. SUMMARY OF THE CLAIM

2. Northwood Halifax operates as the largest long-term care facility in Atlantic Canada. The Long-Term Care Facility is a private, not-for-profit organization, running on public money and with Provincial regulation, oversight and supervision. Pursuant to long-standing funding arrangements, the Province assumed responsibility for funding a significant portion of the costs incurred in the operation of Northwood Halifax. As a result, the Long-Term Care Facility relied upon ongoing and sufficient Provincial funding to provide safe and effective care to hundreds of vulnerable elderly residents.
3. Notwithstanding ongoing need, in 2015-16, the Province began a series of cuts and freezes to long-term care budgets that detrimentally impacted infrastructure and jeopardized staffing in the Facility. Between 2016 and 2017, Provincial funding of Northwood Halifax was reduced by nearly one million dollars, and similar reductions continued in the years that followed.
4. In 2016, well aware that its double- and triple-occupancy rooms, shared washrooms and outdated physical infrastructure did not conform to infection control best practices and left residents vulnerable to infectious disease, Northwood Halifax commissioned engineering studies that showed the Facility

could be expanded to allow for new rooms that would permit single occupancy. Northwood asked the Province for \$12.5 million for the expansion in 2017, 2018 and 2019, which were repeatedly and routinely rejected. Inadequate funding levels for staffing also meant that staff members at the Facility often worked in multiple long-term care facilities out of economic necessity.

5. The Province's longstanding systemic failures to properly regulate, oversee and fund long-term care homes meant the system was primed for, and particularly vulnerable to, the rapid spread of a disease like COVID-19.

2.6. In late 2019, a localized group of individuals began seeking medical care for a viral infection causing fever and respiratory distress, but which was distinct from influenza and other known viruses. Within days, presumptive cases of this novel virus grew exponentially, as warnings became increasingly serious and specific: COVID-19, a highly contagious infectious disease caused by acute respiratory illness, posed a global threat of contagion, with potentially lethal effects for elderly persons and the immunocompromised.

3.7. By January 2020, the World Health Organization declared that COVID-19 was a Public Health Emergency of International Concern. News from Canada and abroad focused on the spread of this infectious disease, with a particular emphasis on the vulnerability of the elderly. It was widely reported that although young, healthy people had a high probability of surviving COVID-19, elderly and immunocompromised persons were at risk of serious complications and death should they contract this highly contagious virus. COVID-19 spreads primarily through human-to-human contact with those infected and, less commonly, by touching surfaces that have been infected.

4.8. As global alarm continued to grow over COVID-19, Northwood Halifax continued to operate a crowded Long-Term Care Facility in a manner involving close contact between approximately 600 Residents and 400 staff-members, which would ultimately facilitate the spread of infection, including COVID-19. In early 2020, ~~Northwood Halifax~~ the Defendants knew that a global pandemic existed in respect of a novel virus that was spread through close contact and which posed an existential threat to elderly persons. Yet, ~~Northwood Halifax~~ the Defendants continued to manage and operate the Long-Term Care Facility without adequately preparing for and providing means of physical distancing – and, in numerous cases, with Residents continuing to share their rooms with other Residents.

9. The Province – responsible for managing the public health response to the pandemic – took decisive and reactionary steps to prepare for COVID-19 in Nova Scotia's hospitals, cancelling surgeries and

discharging patients, providing intensive care staff updated training in infection prevention and control, stockpiling Personal Protective Equipment, and offering COVID tests to individuals screened for risk of exposure. Though the Province was also responsible for making rules for how to manage long-term care generally, and in reaction to a pandemic, these same precautions were not taken in the Facility, though it housed those most vulnerable.

5.10. By February 2020, public health recommendations were ubiquitous, with a clear and simple message: the only reliable means of preventing the spread of COVID-19 was to maintain and enforce physical distancing, along with quarantining for those who may be infected. Despite the vulnerability of Residents, Northwood Halifax continued to operate the Long-Term Care Facility in a manner ideal for the spread of an infectious disease; Residents shared rooms, dining areas, soap, personal care items, and a communal ice machine for drinking water. Staff entered, exited, and travelled through the Facility without appropriate screening, precautions and adequate Personal Protective Equipment or measures designed to reduce the infection and its spread.

6.11. On March 11, 2020, the World Health Organization announced at a media briefing its assessment that COVID-19 can be characterized as a pandemic, given the alarming levels of spread and severity.

7.12. While Northwood Halifax eventually implemented some control measures in March 2020, they were ineffective, inadequate, and too late.

8.13. On April 5, 2020, a staff member caring for Residents at the Long-Term Care Facility tested positive for COVID-19 and within days it had spread through the Facility, its staff members, and its Residents. Throughout April of 2020, Northwood Halifax announced Residents' deaths on an almost daily basis, with the death count at 53 as of May 30, 2020, with 10 active Resident cases, and 4 active staff cases ongoing.

9.14. The threat of COVID-19 to Residents and staff was clear and so too were the steps necessary to prevent its spread. ~~Northwood Halifax~~ The Defendants knew, or ought to have known, that elderly residents should not be housed in a Long-Term Care Facility with hundreds of other elderly residents and staff members, all in close proximity with one another, and without appropriate and effective physical distancing and quarantining measures in place. ~~Northwood Halifax~~ The Defendants knew, or ought to have known, that restrictions regarding visitors, shipments, staff and access to multiple areas of the Facility, along with the provision of Personal Protective Equipment, were necessary to keep its staff and Residents safe. Though other provinces had mandated that staff work only at one facility, the Province and Northwood Halifax permitted staff to work in multiple facilities. Despite mounting

evidence of a serious threat, ~~Northwood Halifax~~ the Defendants did not act; and, when they did act, it was futile, inadequate, and ultimately too late to prevent death and serious illness.

~~10.~~ 15. As a result of their inaction and inadequate response to the COVID-19 pandemic, ~~Northwood Halifax~~ the Defendants breached ~~its~~ their legal obligations to the Residents. Accordingly, the Plaintiff alleges on behalf of herself and the Class Members that the practices, policies, and procedures at the Long-Term Care Facility, and the lack thereof, were negligent and caused the viral spread of COVID-19 through its Residents and staff, thus causing harms, losses, and death to their family members.

16. The Plaintiff alleges that the Province chose to not take adequate measures or implement safeguards to protect the residents of Northwood Halifax or minimize the harm to the Class. The Province did not ensure that the existing licensing standards applicable to the Long-Term Care Facility were adequate for the protection of Residents from the spread of COVID-19 and chose not to enforce existing standards and recommendations or otherwise ensure or enforce compliance with licensing requirements. In its mandate over the pandemic health response, the Province took steps to ready Nova Scotia hospitals by clearing beds, training staff, increasing PPE, and conducting COVID testing, while making the risky decision that the Facility did not require these same precautions and resources.

17. The Plaintiff and Class Members state that they are thereby owed damages from ~~Northwood Halifax~~ the Defendants as a result of ~~its~~ their negligent and reckless conduct, through which the Defendants risked the lives and safety of Residents and staff. ~~Northwood Halifax~~ The Defendants had full knowledge of the dangers and health risks posed by a COVID-19 pandemic to which ~~its~~ the Northwood Halifax Residents were uniquely vulnerable; yet, they made the conscious decision to maintain the *status quo* at the cost of numerous individuals' safety and their lives.

III. THE PARTIES

A. The Plaintiff

~~11.~~ 18. The Plaintiff, Erica Surette, of 1124 Cow Bay Road, Cow Bay, in the Province of Nova Scotia, is the only daughter of the deceased, Patricia West.

~~12.~~ 19. Patricia West was born on March 31, 1954 and was 63 years old when she moved into 4 Manor at the Long-Term Care Facility. Approximately one month earlier, Ms. West had been admitted to the Dartmouth General Hospital after her only daughter, Ms. Surette, found her in a state of distress in her former residence. Ms. West was diagnosed with early onset dementia and Type II Diabetes shortly thereafter and remained in Hospital for several weeks awaiting suitable accommodations at the Long-

Term Care Facility. Ms. West was admitted to the Facility for partial care, where she would receive the level of treatment and supervision she required while maintaining a large degree of her independence.

~~13.~~20. Ms. West moved into the Long-Term Care Facility in late November 2017. Shortly after arrival, she and Ms. Surette, who had accompanied her, were informed that Ms. West would be placed in a shared room at the Facility. Ms. Surette expressed concern that her mother would have a challenging time adjusting to a roommate, but representatives of Northwood Halifax indicated that they never really know when private rooms are going to come up for resident occupancy.

~~14.~~21. Ms. West remained in a shared room at 4 Manor in the Long-Term Care Facility for several months. In or about March 2018, she was relocated to a smaller room that required her to share a washroom with a neighbouring resident and a communal shower area with several other residents.

~~15.~~22. On or about November 6, 2019, Ms. West was moved into a single room in 8 Manor at the Long-Term Care Facility, where, for the first time since her arrival, she was able to live with privacy and a space of her own. At or around this time, Ms. West began to report neglect from staff, including a directive that she wash herself in a sink when caregivers could not assist her with a daily shower. When Ms. Surette inquired with Northwood Halifax about this directive, she was informed that showers could not be guaranteed, given their practice of having a single caregiver providing care to the 14 residents of 8 Manor.

~~16.~~23. In the months that followed, Ms. West began to require increasing assistance with showering and personal hygiene, as symptoms of her early onset dementia became more pronounced.

~~17.~~24. On or about February 18, 2020, a meeting was called between Ms. Surette and representatives of Northwood Halifax, where a prospective relocation was discussed to ensure that Ms. West would receive an appropriate level of care relative to her evolving condition.

~~18.~~25. On or about March 13, 2020, Ms. Surette visited her mother, not knowing that this would be the last time they would spend time together.

~~19.~~26. On or about March 20, 2020, days after COVID-19 had been declared a global pandemic by the World Health Organization, Ms. Surette was informed that her mother would be relocated to the centre building imminently, and that Ms. West would be removed from her room and placed in a new area of the Facility in a shared room within days.

~~20-27.~~ On or about March 23, 2020, Ms. Surette wrote to Northwood Halifax to raise serious concerns about the timing of such a move, amidst a pandemic to which her mother was acutely vulnerable. She was advised that, while Northwood Halifax “completely understand[s]” the risks, they “will have to take it day by day.” Within three days, in the midst of the pandemic, Ms. West was relocated to a new area of the Facility and placed in a shared room with a new roommate.

~~24-28.~~ On or about March 27, 2020, Ms. Surette picked up many of her mother’s personal effects from the Long-Term Care Facility, as they would not fit into her shared room.

~~22-29.~~ In the days that followed, Ms. West experienced significant distress in relation to her shared room at the Long-Term Care Facility, and she often phoned her daughter to express concern regarding rodents in her room, sudden verbal outbursts from her roommate, and the fact that she was losing her appetite.

~~23-30.~~ On or about April 3, 2020, Ms. Surette contacted Northwood Halifax to inquire how long her mother would remain in a shared room. She did not receive a response from Northwood Halifax.

~~24-31.~~ On or about April 4, 2020, Ms. Surette received correspondence on behalf of Northwood Halifax, in which they stated that “[t]he safest and most comfortable place for your loved one to be cared for is in Northwood.” It was further noted that “[w]e are prepared to care for any of our residents who become sick with COVID-19” and that efforts would be taken to prevent the spread of infection. Despite these assurances, and Ms. Surette’s concerns of her mother moving to a shared room, Ms. West had been moved to a shared room during the COVID-19 pandemic in which physical distancing was virtually impossible.

~~25-32.~~ Ms. Surette was informed by her mother a few days later that her roommate had been moved out of the shared room. Northwood Halifax provided no explanation.

~~26-33.~~ On or about April 10, 2020, Ms. Surette spoke with her mother via telephone, at which time Ms. West advised that she felt very sick and was no longer eating or sleeping. After hearing significant changes to her mother’s voice in a telephone conversation on or about the following day, Ms. Surette called Northwood Halifax and was informed that, just after moving to her new room, Ms. West had tested negative for COVID-19. A second test was arranged for April 11 or 12, 2020, but no results were communicated to Ms. Surette.

~~27-34.~~ On or about April 12, 2020, Ms. Surette called the Facility for an update on the test results and was informed that the absence of an update must be good news.

~~28-35.~~ On or about April 13, 2020, Ms. Surette again called the Facility for an update and was advised that her mother had tested positive for COVID-19 and would be moved to a floor reserved for COVID-19 patients. The nurse with whom she spoke expressed surprise that no one had provided the positive results of this test to Ms. Surette.

~~29-36.~~ On or about the same date, Ms. Surette was advised that Northwood Halifax did not have vacancy in the area they had reserved for Residents who had tested positive for COVID-19, so her mother would remain in her room, despite her positive test.

~~30-37.~~ On or about April 14, 2020, Ms. Surette spoke with her mother over the telephone for the last time. During this phone call, Ms. West told her daughter that she had become very sick and, due to her respiratory symptoms, she could only speak briefly.

~~31-38.~~ On or about April 16, 2020, Ms. Surette was contacted by Northwood Halifax and advised that her mother's oxygen levels were concerningly low. She was asked about her mother's wishes in relation to resuscitative or end-of-life care. Ms. West was transferred to the Queen Elizabeth II Health Sciences Centre shortly thereafter, where she was placed on a ventilator. At or around this time, Ms. Surette was informed that her mother's short-term prognosis was very poor.

~~32-39.~~ On or about April 19, 2020, Ms. West's ventilator was removed. Although Ms. Surette attended the Intensive Care Unit to see her mother for a final time, she was not able to enter the room due to precautions in place at the Hospital to prevent the spread of COVID-19.

~~33-40.~~ On or about April 22, 2020, Ms. West passed away from complications related to COVID-19.

~~34-41.~~ As a proximate and foreseeable result of ~~Northwood Halifax's~~ the Defendants' wrongful acts and omissions in failing to ensure the safety of and physical distance between ~~their~~ vulnerable, elderly residents and allowing COVID-19 to spread through ~~their~~ the Long-Term Care Facility, Ms. Surette has suffered mental anguish and severe emotional distress, along with loss of care, companionship, and guidance, as a result of her mother's untimely death. Ms. Surette has also suffered pecuniary damages relating to expenses incurred as a result of her mother's death from complications of COVID-19.

~~35-42.~~ The Plaintiff, Ms. Surette, seeks to certify this action as a class proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28, on her own behalf and on behalf of the Class, comprised of the executors or administrators of the estates of the persons deceased, or family members who are entitled to bring an action under the *Fatal Injuries Act*, R.S.N.S. 1989, c. 163, including the spouse, common-law partner, parent or child as defined therein, of Residents of the Northwood Halifax Long-Term Care

Facility who passed away due to COVID-19 or COVID-19 related complications from March 15, 2020 to the date certifying this action as a class proceeding to June 30, 2020.

~~36-43.~~ The Plaintiff, as the proposed representative plaintiff, has no adverse interest to those of the proposed Class. The Plaintiff states that she would fairly and adequately represent the interests of this identifiable Class, that her claims raise common issues, and that a class proceeding is the preferable procedure for the resolution of such common claims.

B. The Defendants

a. Northwood Halifax

~~37-44.~~ The Defendant, Northwoodcare Group Inc., is a corporation incorporated pursuant to the Nova Scotia *Companies Act*, R.S.N.S. 1989, c. 81, as a company limited by guarantee, with a registered office at 130 Eileen Stubbs Avenue, Suite 1 South, Dartmouth, Nova Scotia, B3B 2C4. Northwoodcare Group Inc. is the parent company to seven subsidiaries, including the Defendants, Northwoodcare Halifax Inc., Northwood Support Services Inc., Northwood Homecare Inc., Northwood Realty Inc., 5534 Almon Street Inc., and 2641 Northwood Terrace Inc.

~~38-45.~~ The Defendants, Northwoodcare Halifax Inc. and Northwood Support Services Inc. are subsidiaries of the Defendant, Northwoodcare Group Inc., and are corporations incorporated pursuant to the Nova Scotia *Companies Act*, R.S.N.S. 1989, c. 81, as companies limited by guarantee, with registered offices at 2615 Northwood Terrace, Halifax, Nova Scotia, B3K 3S5.

~~39-46.~~ The Defendant, Northwood Homecare Inc., is a subsidiary of the Defendant, Northwoodcare Group Inc., and is a corporation incorporated pursuant to the Nova Scotia *Companies Act*, R.S.N.S. 1989, c. 81, as a company limited by guarantee, with a registered office at 130 Eileen Stubbs Avenue, Suite 19 North, Dartmouth, Nova Scotia, B3B 2C4.

~~40-47.~~ The Defendants, Northwood Realty Inc., 5534 Almon Street Inc., and 2641 Northwood Terrace Inc., are subsidiaries of the Defendant, Northwoodcare Group Inc., and are corporations incorporated pursuant to the Nova Scotia *Companies Act*, R.S.N.S. 1989, c. 81, as companies limited by guarantee, with registered offices at 130 Eileen Stubbs Avenue, Suite 1 South, Dartmouth, Nova Scotia, B3B 2C4.

~~41-48.~~ The Defendant, Northwood Health Services, is registered as a Partnership/Business Name with the Nova Scotia Registry of Joint Stock Companies, and was registered by the Defendant, Northwood Support Services Inc., with a registered office at 130 Eileen Stubbs Avenue, Suite 1 South, Dartmouth, Nova

Scotia, B3B 2C4. Northwood Health Services is listed with the Nova Scotia Registry of Joint Stock Companies as providing “temporary healthcare staffing.”

~~42-49.~~ The Defendant, Northwood Homecare Agency, is registered as a Partnership/Business Name with the Nova Scotia Registry of Joint Stock Companies, and was registered by the Defendant, Northwood Support Services Inc., with a registered office at 130 Eileen Stubbs Avenue, Suite 1 South, Dartmouth, Nova Scotia, B3B 2C4. Northwood Homecare Agency is listed with the Nova Scotia Registry of Joint Stock Companies as providing “homecare.”

~~43-50.~~ The Defendant, Northwood in Touch Personal Emergency Response, is registered as a Partnership/Business Name with the Nova Scotia Registry of Joint Stock Companies, and was registered by the Defendant, Northwood Support Services Inc., with a registered office at 130 Eileen Stubbs Avenue, Suite 1 South, Dartmouth, Nova Scotia, B3B 2C4.

~~44-51.~~ The Defendants, Northwoodcare Group Inc., Northwood Homecare Inc., Northwood Health Services, Northwoodcare Halifax Inc., Northwood Support Services Inc., Northwood Realty Inc., 5534 Almon Street Inc., 2641 Northwood Terrace Inc., Northwood Homecare Agency, and Northwood in Touch Personal Emergency Response, are collectively responsible for the operation, administration, management, and supervision of the Northwood Halifax Long-Term Care Facility located at Northwood Terrace, Halifax, Nova Scotia, and are referred to collectively as “Northwood Halifax.”

~~45-52.~~ References to Northwood Halifax are deemed to include all other predecessors, affiliates, subsidiaries, and parent companies. Northwood Halifax is wholly responsible for all the acts and omissions of any predecessor, subsidiary, or parent company, having acquired, authorized, supervised, or assumed the obligations of any such company. The business of Northwood Halifax, including business operated between and in connection with its subsidiaries, affiliates, and parent companies, is inextricably interwoven, and each corporate Defendant is the agent of the others for the purposes of providing long-term care at the Facility located at Northwood Terrace in Halifax, Nova Scotia.

~~46-53.~~ The Plaintiff states that Northwood Halifax and all of its subsidiaries, affiliates, and parent companies are responsible, jointly and severally, for the loss and damages suffered by the Plaintiff and Class Members. Northwood Halifax, and the constituent corporate Defendants encompassed therein, are each jointly and severally liable for the actions and omissions of, and the damages allocable to, all members of their respective corporate families, including predecessors, affiliates, subsidiaries and parent companies. The tortious and otherwise actionable conduct alleged in this claim by each corporate Defendant was authorized, ordered, and performed by each corporate Defendant’s officers, directors,

agents, employees, and/or representatives while engaged in the management, direction, control, or transaction of its unified business affairs.

47- 54. The Plaintiff pleads that, by virtue of the impugned conduct described herein, each of the Defendants is vicariously liable for the acts and omissions of the others for the following reasons:

- (a) each corporate Defendant was the agent of the other corporate Defendants;
- (b) each corporate Defendant's business was operated in an interconnected manner with the businesses of the other corporate Defendants;
- (c) each corporate Defendant intended that the business of Northwood Halifax would be operated, managed, and used to provide long-term care services as a singular, cohesive organization;
- (d) each corporate Defendant operated in unison to operate, manage, and derive benefit from the operation of the Long-Term Care Facility; and
- (e) the corporate Defendants are all related, associated, and/or affiliated.

b. The Province

55. At all material times, the Province, through and with its contractors, subcontractors, agents, servants, employees, appointees, and departments, was responsible for regulating, inspecting, monitoring, correcting, licensing and enforcing safety standards and regulations related to the Long-Term Care Facility, including, without limiting the generality of the foregoing, ensuring compliance with: the Homes for Special Care Act, R.S.N.S. 1989, c. 203, the regulations made thereunder (the "Regulations"); the Long-Term Care Facility Requirements issued by the Department of Health and Wellness; and related codes and regulations for the provision of long-term care to elderly persons.

56. The Province was further responsible for maintaining adequate levels of funding to the Long-Term Care Facility to ensure the safety of its residents and facilitate adherence to relevant and required safety standards, including the provision and use of PPE in response to the Pandemic and necessary alterations to prevent over-crowding within the Facility.

57. Licensing inspections must be carried out by Provincially-appointed inspectors to ensure compliance with the governing Acts, Regulations, standards, and specifications, including standards in place to

prevent over-crowding, unhygienic conditions, and the potential spread of infectious diseases. The Province is further responsible for implementing, monitoring, and enforcing appropriate standards and regulations to ensure the safety of residents at long-term care facilities and nursing homes.

58. Under the *Homes for Special Care Act*, if an inspector determines that a long-term care facility or a nursing home is not giving or is not capable of giving adequate care to a resident; operates unsuitable premises for the provision of care to vulnerable persons; operates a facility that is over-crowded; does not comply with the terms, conditions or restrictions of the license; or operates a facility which contravenes the Act or Regulations, the Province is responsible for suspending or canceling the operating license, thus preventing the continued operation of unsafe premises that could risk residents' health and safety.

59. Under the *Homes for Special Care Act*, the Province is also responsible for prescribing the standards of accommodations, the standard of care, required sanitation, determining a minimum physical space requirement per resident to be provided and maintained in a facility or a nursing home and otherwise prescribing the maximum number of residents of a facility or a nursing home. The Province is also responsible for prescribing staff requirements and qualifications for a facility or a nursing home, and the required qualifications of staff in the facility.

60. The Province was responsible for managing the public health response to the pandemic and chose to make preparations for COVID-19 in Nova Scotia's hospitals while ignoring provision of necessary support for long-term care facilities, including the Facility.

IV. NORTHWOOD HALIFAX AND THE SPREAD OF COVID-19

~~48.~~ 61. Northwood Halifax, including its predecessor organizations and affiliates, has been providing long-term care to elderly persons in Nova Scotia since approximately 1962, and has been operating the large-scale Long-Term Care Facility at Northwood Terrace in Halifax since the late 1970s. Since the earliest iteration of Northwood Halifax, called the Halifax Senior Citizens' Housing Corporation, it has been incorporated as a series of companies limited by guarantee, which permits it to operate as a business, despite its not-for-profit status. Northwood Halifax currently has approximately 600 live-in Residents and 400 part- and full-time staff members, with present-day annual revenue of approximately \$80,000,000.00 between its subsidiaries and affiliates.

~~49.~~ 62. The Long-Term Care Facility in which Northwood Halifax provides long-term care and lodging to elderly residents has not appreciably changed since its construction. Residents live in a crowded 10-

storey building with several shared spaces and little privacy. Many Residents share a single room, each of which is located in one of several long, windowless corridors, which require Residents to seek out common areas for access to natural light and other necessary services. This design has been described, as early as 2003, as an ideal environment for acquisition and spread of infection: susceptible residents who share sources of air, food, water, and health care in a crowded institutional setting.

~~50-63.~~ Northwood Halifax has long struggled to maintain adequate levels of staffing to care for Residents, which was exacerbated by reductions to government funding that began in 2015. It has since been common for staffing shortfalls to contravene Provincial regulations, which require at least one Licensed Practical Nurse on-site for every 30 Residents, with at least one Registered Nurse on-site at all times to care for the Residents, as needed.

64. For several years, it was well-known that the Long-Term Care Facility was over-crowded, and that shared rooms, shared washrooms, and crowded communal spaces were too small and posed a risk to residents' health, particularly in relation to the potential spread of infectious diseases. Despite its decision to fund the Long-Term Care Facility, and its responsibility for maintaining adequate funding levels to ensure the Long-Term Care Facility could comply with legislated requirements and promote safety of the residents at the Long-Term Care Facility, the Province rejected repeated capital funding requests to build additional private rooms for the residents of the Long-Term Care Facility for a period of three years, most recently in early 2020.

~~51- 65.~~ In or about February 2019, Northwood Halifax underwent several on-site evaluations in furtherance of an accreditation process through Accreditation Canada's "Qmentum" program, run by a not-for-profit organization that sets standards for quality and safety in health care and accredits health organizations in Canada and around the world. Upon completion of the evaluation process, several concerns were identified in relation to a shortage of space, old infrastructure, the need to remind staff to wash their hands, and a potential risk for infection regarding the known practice of Residents and staff removing ice from a communal ice machine with their bare hands. These results were delivered to the Defendants, in writing, on or about March 11, 2019.

~~52- 66.~~ On or about December 3, 4, and 5, 2019, the Province carried out an inspection was conducted by the Nova Scotia Department of Health and Wellness the Long-Term Care Facility to assess Northwood Halifax's compliance with licensure requirements—that are mandated, supervised, and enforced by the Province. Although 14 issues were identified regarding non-compliance with licensing requirements, the Province chose to license and accredit the operation of the Long-Term Care Facility.

67. At or shortly after this time, Northwood Halifax was provided with 14 enumerated requirements resulting from the licensing inspection, including a mandate that Northwood Halifax initiate processes to evaluate staff members' competence and the requirement that Northwood Halifax comply with the Acts and regulations, and any orders or directions of an appropriate authority, respecting sanitary requirements. It was further noted that Northwood Halifax must begin to ensure if bars of soap and other personal care items are used in resident rooms, they are designated for the use of one resident and are not shared.
- ~~53.~~ 68. In or about December 2019, COVID-19 was identified as a highly contagious infectious disease, with the potential to cause acute respiratory distress syndrome, multi-organ failure, septic shock, and blood clots, particularly in vulnerable persons, such as the immunocompromised and the elderly. In the days and weeks that followed, recommendations were published to prevent the spread of infection, including frequent hand washing, maintaining physical distance from others, quarantining, covering coughs, and wearing protective coverings, including Personal Protective Equipment.
- ~~54.~~ 69. On or about January 11, 2020, the first death caused by COVID-19 was reported, including the fact that the deceased was in his sixties and had pre-existing medical conditions. Shortly thereafter, the first travel-related case of COVID-19 was confirmed in Washington, USA, with several more reported, across numerous countries, in the days that followed. By January 23, 2020, the World Health Organization reported 581 confirmed cases globally, with evidence that COVID-19 is transmitted through human-to-human contact and assessed a high level of risk in respect of the disease on a global level.
- ~~55.~~ 70. On or about January 25, 2020, the World Health Organization advised that health care facilities should enhance standard infection prevention and control practices, while further advising that frequent hand-washing and social distancing would help prevent the spread of COVID-19.
- ~~56.~~ 71. On or about January 26, 2020, the first presumptive case of COVID-19 in Canada was announced in Toronto, Ontario in connection with recent international travel, and was widely reported in Nova Scotia. Shortly thereafter, a second case was confirmed, in connection with, and likely transmitted from, the first. Before the end of the month, further cases of COVID-19 were confirmed and reported in British Columbia and London, Ontario.
- ~~57.~~ 72. As concern grew in Canada about this highly contagious disease, and additional cases were reported across Ontario and British Columbia, the World Health Organization issued a warning, on or about February 25, 2020, stating that the disease can be fatal and older people are more vulnerable. A few days

later, on or about February 28, 2020, the presence of COVID-19 was reported as far east in Canada as Quebec. During this time, the Province was aware that outstanding licensing requirements had been identified at the Long-Term Care Facility and that physical space requirements per resident at the Facility would not permit physical distancing and quarantine. Yet, the Province took no further action to ensure compliance with the relevant safety standards, provided no additional funding to facilitate effective safety and/or prevention measures, and took no action to address inadequacies in existing safety requirements in response to growing concern regarding a pending global pandemic.

73. Despite increasingly widespread reports that COVID-19 spread through human-to-human contact and that elderly persons were at marked risk of lethal complications, the Province chose not to implement or enforce safety standards regarding the number of elderly persons who were housed in a long-term care facility or nursing home or the permitted proximity of residents.

~~58.~~ 74. On or about March 2, 2020, Northwood Halifax reportedly updated and refined a pandemic plan in response to the risk posed by COVID-19. An internal memorandum released at or shortly after this time indicated that Northwood Halifax was aware of the risks associated with coming to work while experiencing active respiratory symptoms especially given the COVID-19 virus because it ~~is~~was new and there ~~is~~was neither vaccine nor medical treatment available to support at-risk groups such as the elderly. It was further noted that, while staff members who reported symptoms would be restricted from work, their absence would be unpaid and they would have to apply for Employment Insurance Sick Benefits or use accumulated sick benefits for wage replacement.

75. The Province did not oversee or supervise the design or implementation of this plan to ensure compliance with the *Homes for Special Care Act*, Regulations, licensing and safety requirements, and it chose not to update existing standards for compliance with health directives issued by the World Health Organizations and other entities monitoring the spread of COVID-19.

~~59.~~ 76. On or about March 4, 2020, a short communication was issued by Northwood Halifax, directed to staff members, Residents, and their visitors, stating that Northwood Halifax has a pandemic plan and is working with Public Health on steps to prepare. No specific steps for preventing the spread of COVID-19 within the Long-Term Care Facility were communicated, and there was no plan expressed in relation to its shared rooms and communal spaces or the potential risk for the spread of infection therein.

~~60.~~ 77. Northwood Halifax did not take any further documented steps to prevent the spread of COVID-19 through its Long-Term Care Facility until, on or about March 10, 2020, Northwood Halifax announced that visitors and volunteers would be restricted from entering the premises, but only if they had travelled

internationally in the preceding two weeks. It was well-known at and before this time that up to 72 confirmed cases of COVID-19 existed in Canada, and that COVID-19 could spread through contact with anyone infected, even those who are asymptomatic, but no further restrictions or precautions in relation to visitors or staff members were implemented at this time.

~~64.~~ 78. On or about March 11, 2020, the World Health Organization declared COVID-19 a pandemic and reiterated that older people are at a higher risk of getting severe COVID-19 disease. On or about the following day, the first case of COVID-19 was confirmed in Atlantic Canada.

~~62.~~ 79. Northwood Halifax did not implement its purported pandemic plan until approximately March 12, 2020, at which time the following steps were implemented:

- a. Residents who traveled outside of Canada, or who visited people who have traveled outside of Canada, were required to quarantine for 14 days;
- b. staff members who traveled outside of Canada were required to undergo screening by telephone;
- c. daily monitoring for symptoms of colds and fevers for all Residents, with daily reporting to Infection Control to monitor for data collection and monitoring trends;
- d. daily monitoring of the inventory of masks, gowns, and shields, to be allocated by Infection Control if respiratory symptoms are identified;
- e. staff members were expected to complete education sessions on the proper use of Personal Protective Equipment and review their hand hygiene techniques; and
- f. increased environmental disinfection would be required for frequently touched areas, and staff members were advised to disinfect common workstations and shared work spaces frequently.

80. The Province did not adequately supervise updates to this plan to prevent the spread of COVID-19, despite its statutory mandate to regulate, inspect, monitor, correct, license and oversee the operation of the Long-Term Care Facility in a manner that ensures the safety and wellbeing of vulnerable residents.

81. On March 12, 2020, the first reported case of COVID-19 was confirmed in Atlantic Canada, yet no further action was taken to restrict visitors from entering the Long-Term Care Facility or ensure that staff members providing care to vulnerable Residents were appropriately screened for the disease or had necessary PPE. No further steps were taken to prevent the spread of COVID-19 at this time, and Residents continued to share small rooms, receive outside visitors, and rely upon the use of shared

common areas throughout the Long-Term Care Facility. On or about the same date, a geriatrician in Nova Scotia publicly commented on the seriousness of the disease for elderly persons.

82. During this time, the Province ignored the funding requirements of the Long-Term Care Facility brought on by the COVID-19 pandemic. No action was taken to fund the acquisition of PPE, which was not accounted for in the pre-pandemic Provincial funding arrangement, and no wage subsidies were provided to reduce the prevalence of staff members working across multiple long-term care facilities as a matter of economic necessity.

~~64.~~ 83. On or about March 13, 2020, Northwood Halifax announced that each of its approximately 600 Residents could continue to have two visitors each at the Long-Term Care Facility, without restrictions on visit frequency or confinement to any circumscribed areas. On or about the same date, the Province of Quebec declared a State of Health Emergency, and a National Emergency was declared in the United States.

~~65.~~ 84. On or about March 15, 2020, the first three presumptive cases of COVID-19 in Nova Scotia were identified, two of whom lived in the Halifax area and had been living in the area for several days prior to their diagnoses.

~~66.~~ 85. Northwood Halifax did not further restrict visitors from outside its facility until approximately March 16, 2020.

~~67.~~ 86. On or about the same date, the Province of Prince Edward Island declared a Public Health Emergency, and two additional presumptive cases of COVID-19 were diagnosed in the Halifax area; this time, by individuals who had not traveled outside of the country. On or about March 18, 2020, the presence of COVID-19 was confirmed in Nova Scotia.

87. Beginning on March 17, the Province held almost-daily calls with unions representing health care workers across the Province. On the calls, the unions implored the Province to provide PPE for long term care, home care and acute care staff, which went repeatedly ignored until it was too late.

88. Although the Province exercised control over the licensing and safety requirements of the Long-Term Care Facility, during this time, the Province chose not to implement, oversee, or supervise safety requirements in relation to visitors entering the Long-Term Care Facility during the COVID-19 pandemic.

~~68.~~ 89. Within one week, Public Health Emergencies were declared in the Provinces of Ontario, Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, and New Brunswick, along with the Territories of Nunavut and the Yukon. On or about March 22, 2020, the Province of Nova Scotia declared a State of Emergency in relation to the ongoing threat posed by COVID-19; however, the Province did not take any, or any adequate, steps to ensure compliance with health and safety standards and licensing requirements at the Long-Term Care Facility, which continued to house hundreds of residents in close quarters in a manner conducive to the spread of infectious disease.

~~69.~~ 90. Despite the State of Emergency in Nova Scotia, and a \$30,000,000.00 Federal advertising campaign informing Canadians of the need to physically distance to prevent the spread of COVID-19, Northwood Halifax continued to keep at risk elderly persons in shared rooms and did not limit or otherwise preclude the frequent use of communal spaces in the Long-Term Care Facility.

~~70.~~ 91. On or about March 25, 2020, the Government of Canada announced mandatory self-quarantine for travelers, regardless of whether they manifested any symptoms. In the same Federal announcement, it was emphasized that individuals displaying symptoms of COVID-19 may not isolate in a place where they will be in contact with vulnerable people, such as seniors.

~~71.~~ 92. It was not until approximately March 26, 2020 that Northwood Halifax implemented the World Health Organization recommendation that staff are to wear a procedural mask. Even then, this measure was only in place when entering a room where a Resident is suspected to have, or is confirmed to have, COVID-19. Staff members who had recently traveled outside of Nova Scotia remained eligible to attend work without noticeable symptoms, despite the well-publicized fact that COVID-19 can be spread by individuals who have not yet, or will not, manifest symptoms. The Province did not require or otherwise respond to the World Health Organization recommendation that PPE be used in the provision of long-term care to elderly persons, nor did the Province provide the necessary resources for the procurement of such PPE.

~~72.~~ 93. On or about March 27, 2020, more than one month after the World Health Organization reported that COVID-19 could be spread by touching infected objects and surfaces, Northwood Halifax began restricting deliveries to Residents at the Long-Term Care Facility. Approximately two days later, Northwood Halifax took its first steps to restrict staff members' movement between various sites in which elderly residents were otherwise isolated from those in other areas.

~~73.~~ 94. On or about March 30, 2020, Northwood Halifax created an "Emergency Management Office" without releasing specifics regarding mandates or anticipated actions to prevent the spread of COVID-19

through its Long-Term Care Facility. A “cohort area” was established on or about the following day, which involved temporarily relocating some Residents to alternative rooms/locations to create a cohort area prepared to care for Residents who become infected with COVID-19. Though responsible for maintaining and supervising safety standards in relation to the housing of elderly residents at the Long-Term Care Facility, the Province chose not to ensure that the cohort area was initiated in sufficient time to prevent or limit the spread of infection or that it complied with regulatory and/or safety standards.

~~74.~~ 95. On or about April 2, 2020, the Government of Canada announced 10,000 confirmed cases of COVID-19 within the country, with more than 1,000,000 confirmed cases worldwide. Between approximately March 31, 2020 and April 5, 2020, Northwood Halifax took no further steps to protect its Residents against the spread of a potentially lethal infectious disease in its crowded Long-Term Care Facility.

~~75.~~ 96. On or about April 5, 2020, a Northwood Halifax staff member responsible for the care of Residents tested positive for COVID-19. Contact testing was initiated and for the first time Northwood Halifax implemented a Personal Protective Equipment protocol for long-term care employees. While masks were provided to Northwood Halifax employees on or about the following day, no steps were taken to prevent the spread of COVID-19 between Residents and staff members who had already been exposed to the disease.

~~76.~~ 97. On or about April 7, 2020, Northwood Halifax announced that five Residents had tested positive for COVID-19. Despite the potential for devastating consequences from an infectious disease already confirmed within the Long-Term Care Facility, Northwood Halifax did not impose self-isolation requirements for home-care workers in close contact with confirmed cases of COVID-19 until approximately two days later. The Province also chose not to enforce mandatory quarantining or distancing measures at the Long-Term Care Facility.

98. The Regulations prescribe that any resident of a nursing home who has a communicable disease shall be maintained in an isolated area and proper isolation techniques shall be observed in all aspects of the care of the resident. At the material times, the Province knew that COVID-19 is a communicable and highly contagious disease that poses a particular risk to the immunocompromised and the elderly. The Province also knew that Residents at the Long-Term Care Facility shared small rooms, and continued to do so during the Pandemic, some even while infected with COVID-19. The Province knew that some Residents could not quarantine or sufficiently physically distance as public health measures required. Yet, the Province chose not to impose restrictions or terms on the license issued to the Long-Term Care Facility, enforce compliance with the *Homes for Special Care Act* and Regulations, provide

preventative support to the Facility, and instead allowed the continued operation of the Long-Term Care Facility in a manner that was unsafe and which placed Residents at significant and foreseeable risk of harm.

~~77.~~ 99. On or about April 9, 2020, the Government of Canada announced 20,000 confirmed cases of COVID-19 within the country, a figure which had doubled over the preceding week.

100. Around this time, as the outbreak exceeded their capacity to respond, Northwood Halifax appealed to the Province for more assistance. The Province, within its role of COVID containment planning for the Facility, began to assess whether there was space to cohort Residents post-illness.

~~78.~~ 101. On or about April 13, 2020, Northwood Halifax separated some Residents into a separate building; however, the respective buildings continued to hold hundreds of elderly persons without restrictions on shared rooms and/or communal spaces. On or about the same date, it was widely reported that at least half of all COVID-19 related deaths in Canada were linked to long-term care facilities, such as the Long-Term Care Facility operated by Northwood Halifax, with the warning that these deaths will continue to increase, even as the epidemic growth rate slows down.

~~79.~~ 102. Northwood Halifax did not install a thermal camera or otherwise test its own Residents and staff members until approximately April 14, 2020.

~~80.~~ 103. On or about April 16, 2020, a news report cited factors such as communal living spaces as particular vulnerabilities rendering the impact of COVID-19 on long-term care facilities for elderly persons as far more severe. Northwood Halifax took no further steps to prevent or contain the spread of COVID-19 through its Long-Term Care Facility at this time.

104. On or about April 17, 2020, the Province attempted to urgently find registered nurses to work at the Facility, as its former efforts of redeployment by VON, RC, Northwood Home Care employees, NSHA and retirees had not sufficiently addressed the staffing gaps.

~~81.~~ 105. On or about April 18, 2020, Northwood Halifax reported that three Residents of their Long-Term Care Facility had died from complications of COVID-19.

106. That same date, emails by Provincial employees indicate recognition of the “need to escalate the level of care that is required” at the Facility, and transfer staff specially trained in COVID-19 from the Health Authority to the Facility. The Province thereafter issued a directive ordering nurses from the COVID

unit at the Halifax Infirmary to report to the Facility for work. There remained significant disorganization, improper training of staff, limited PPE and no clarity on who was supplying it.

82. 107. On or about April 19, 2020, Northwood Halifax reported that two more Residents of their Long-Term Care Facility had died from complications of COVID-19. On or about the following day, Northwood Halifax initiated, for the first time, its “emergency plan” in relation to the infectious disease within the Long-Term Care Facility, including plans to move recovered patients off-site and the implementation of further on-site testing for COVID-19.

83. 108. On or about April 21, 2020, Northwood Halifax reported that another Resident of their Long-Term Care Facility had died from complications of COVID-19.

109. That day, an email by an official in the Province’s Department of Health and Wellness questioned whether the Province had taken the right approach, noting: “we are requesting a subsequent discussion about the provincial response plan to LTC. Essentially we are looking to revalidate our planning assumptions and response plans.”

84. 110. On or about April 22, 2020, Northwood Halifax reported that another two Residents of their Long-Term Care Facility had died from complications of COVID-19. On or about the same date, the Nova Scotia Government and General Employees Union (“NSGEU”), whose members ~~were among the staff members~~ had been directed via Ministerial Order to report to work at the Long-Term Care Facility, reported the following concerns with the conditions managed and overseen by Northwood Halifax in relation to the spread of COVID-19:

- a. lack of infection control measures to protect vulnerable seniors and front line workers;
- b. lack of appropriate Personal Protective Equipment available on-site;
- c. lack of consistent, thorough cleaning of the units;
- d. clustering of both COVID-19-negative and -positive elderly persons together on some units;
- e. lack of patient armbands to identify which patients require medications;
- f. lack of “clean rooms” (defined as spaces that are not accessible to Residents, where staff can safely don Personal Protective Equipment without risk of contamination); and
- g. lack of garbage receptacles to properly dispose of contaminated Personal Protective Equipment, resulting in the further contamination of “clean” areas.

These concerns regarding sanitation, working conditions and infection control were sent to the Province. The Province did not immediately respond, and instead chastised the NSGEU for sharing their concerns publicly.

111. This same date, Northwood Halifax finally announced it would be testing all residents, including those who were asymptomatic, even though the Centers for Disease Control and other public health entities were warning about asymptomatic cases as early as March 18, 2020, and the need for universal testing.

~~85-~~112. On or about the same date, an NSGEU member described the conditions at the Long-Term Care Facility as “horrible” and noted that there is little wonder why the virus has run rampant through the facility, given the lack of Personal Protective Equipment and basic infection control protocols in place. No further action was taken by Northwood Halifax to prevent or contain the spread of COVID-19 through their Long-Term Care Facility at this time. The Province chose not to act in response to these apparent licensing violations and continued to permit the operation of the Long-Term Care Facility.

~~86-~~113. Between approximately April 23 and April 29, 2020, Northwood Halifax reported that another 14 Residents of their Long-Term Care Facility had died from complications of COVID-19.

~~87-~~114. On or about May 1, 2020, Northwood Halifax reported that another Resident of their Long-Term Care Facility had died from complications of COVID-19. On or about the same date, Northwood Halifax reportedly sent four Residents to an off-site recovery unit, which held approximately 16 total Residents.

~~88-~~115. Between approximately May 2 and May 11, 2020, Northwood Halifax reported the deaths of another 19 Residents of their Long-Term Care Facility from complications of COVID-19. At or about this time, one elderly Resident who had tested negative for COVID-19 packed her belongings and left the facility in an effort to avoid becoming infected with the disease.

~~89-~~116. On or about May 12, 2020, family members of a deceased Resident of Northwood Halifax reported that pleas to be moved from the Facility had been ignored in the days leading up to the deceased’s diagnosis of COVID-19 and that staff members were slow to respond to calls for help, given the sickness all around the Long-Term Care Facility.

~~90-~~117. On or about May 13, 2020, three more deaths were reported at the Long-Term Care Facility, bringing the total number of Residents’ deaths from COVID-19 to 48. On or about the same date, it was reported that COVID-19 had spread to additional areas of Northwood Halifax through a communal space for smokers which had not been restricted or otherwise regulated during the pandemic.

91. 118. On or about the same date, the Chief Executive Officer of Northwood Halifax conceded that it possibly would have been helpful to have implemented masks even sooner. It was reported at or about this time that Northwood Halifax had hired a public relations firm.

92. 119. As of May 30, 2020, Northwood Halifax ~~has had~~ confirmed 246 cases of COVID-19 among its vulnerable elderly Residents, and 99 cases among its staff members, with a death toll of 53. In total, as of that same date, **Northwood Halifax** has had 345 confirmed cases of COVID-19 and has 14 active cases between Residents and staff members.

V. CAUSES OF ACTION

The Defendants' NORTHWOOD HALIFAX

A. Legal Duties

93. 120. At material times hereto, ~~the Defendants~~ Northwood Halifax owed legal duties to the Residents, including, *inter alia*, duties to:

- a. provide care and lodging at the Long-Term Care Facility in a manner that protected Residents' health, safety, and well-being, with particular regard to their vulnerabilities as elderly persons;
- b. take reasonable preparatory steps for infectious diseases that are known to pose a threat to elderly persons living in a crowded facility;
- c. implement policies, practices, and procedures to prevent and contain the spread of COVID-19 amongst Residents and staff members at the Long-Term Care Facility;
- d. carry out appropriate, thorough, and diligent testing, screening, and research in relation to an infectious disease with the potential to spread through the Long-Term Care Facility with lethal consequences;
- e. promote and/or require the use of Personal Protective Equipment and physical distancing measures to prevent and/or contain the spread of COVID-19 within the Long-Term Care Facility;
- f. take reasonable steps to remain informed and updated on increasing health risks of COVID-19, particularly as they relate to elderly persons;

- g. provide adequate and timely warnings of the dangers posed by COVID-19 to Residents of the Long-Term Care Facility and their families, as well as the staff members who care for them;
- h. take reasonable steps to care for and treat Residents who develop COVID-19 and/or complications therefrom; and
- i. implement policies and procedures to cohort and isolate Residents and staff members in the Long-Term Care Facility to prevent a large-scale outbreak of COVID-19.

94. 121. ~~The Defendants~~ Northwood Halifax breached the duties enumerated above, as set out in the following paragraphs.

B. Operational Negligence

95. 122. At the material times, ~~the Defendants~~ Northwood Halifax owed a duty of care to Residents to take reasonable care, and implement reasonable practices, policies and procedures, to prevent the spread of COVID-19 within the Long-Term Care Facility that houses the Residents, who are vulnerable and elderly. ~~The Defendants~~ Northwood Halifax breached the requisite standard of care by acting negligently, and/or failing to act at all, in the face of a global pandemic, spread through human-to-human contact, with potentially lethal complications for elderly persons. Such negligence includes, but is not limited to, the following:

- a. ~~the Defendants~~ Northwood Halifax chose not to exercise reasonable care in implementing practices, procedures, and/or policies to prevent and/or control the spread of COVID-19 in the Long-Term Care Facility;
- b. ~~the Defendants~~ Northwood Halifax did not take all reasonable and necessary steps to mitigate and/or control the risks posed by the design of their Long-Term Care Facility, including its shared private and communal spaces and its crowded nature;
- c. ~~the Defendants~~ Northwood Halifax did not require, enforce or facilitate adequate physical distancing or quarantine measures in a timely manner, or at all;
- d. ~~the Defendants~~ Northwood Halifax chose not to restrict visitors, shipments, or dangerous person-to-person contact, including the known shared use of personal care items and an ice machine, in a timely and adequate manner, or at all;

- e. ~~the Defendants~~Northwood Halifax did not adequately limit or otherwise control staff members' and Residents' travel between different areas of the Long-Term Care Facility, in a timely and adequate manner;
- f. ~~the Defendants~~Northwood Halifax chose not to administer sufficient COVID-19 testing in the Facility;
- f.g. Northwood Halifax chose to operate a Long-Term Care Facility with hundreds of elderly residents in a single building despite advance warning of the COVID-19 pandemic, and chose not to seek alternative or additional accommodations for Residents, required to ensure physical distancing;
- g.h. ~~the Defendants~~Northwood Halifax did not implement timely and appropriate use of Personal Protective Equipment and/or screening and testing measures for staff members and Residents;
- h.i. ~~the Defendants~~Northwood Halifax chose not to implement public health guidelines and/or recommendations in a timely or sufficient manner, or at all; and
- i.j. such further and other particulars as may be provided prior to the trial of this action.

96. 123. There existed other means of providing housing and care to the Residents of the Long-Term Care Facility which were safer and would have prevented the spread of COVID-19 and the harms, losses, and death that resulted. For instance, Northwood Halifax eventually had access to an off-site recovery unit, which could have been utilized to effect physical distancing and protect Residents at greater risk of infection before it was too late.

97. 124. The negligence of ~~the Defendants~~Northwood Halifax in the operation, control and management of the Long-Term Care Facility created a substantial likelihood of harm and death for the Residents that was foreseeable. The Plaintiff states that, as result of the negligence of ~~the Defendants~~Northwood Halifax, the Plaintiff and Class have suffered damages. The harm and damages of the Plaintiff and Class arising from the untimely death of the Residents – their beloved family members – were caused by the negligent acts and omissions of ~~the Defendants~~Northwood Halifax.

98. 125. Health and Infectious Disease experts predict further waves of COVID-19 infections are inevitable. ~~The Defendants~~Northwood Halifax's negligent acts and omissions and disregard for the

protection, health and safety of Residents must not be repeated by other long-term care facilities, or by Northwood Halifax, or condoned.

C. Breach of Contract

99. 126. At the material times, Northwood Halifax held itself out to Residents and their families as a leader in community care, who would provide “quality care and services for residents,” including “skilled care and professional supervision.” When Residents and their families chose Northwood Halifax to provide long-term care at the Long-Term Care Facility, they entered into a contract with ~~the Defendants~~ Northwood Halifax to provide safe, appropriate, and reasonably diligent long-term care, in keeping with the vulnerabilities of their elderly residents.

100. 127. The Plaintiff states that ~~the Defendants~~ Northwood Halifax warranted and continued to warrant to Residents, the Plaintiff and Class Members that the Long-Term Care Facility was a reasonably safe site in which to receive and provide long-term care. ~~The Defendants~~ Northwood Halifax breached these warranties to the Residents by operating, managing, and supervising the Long-Term Care Facility in a manner which was negligent, demonstrably unsafe, not aligned with public health guidelines and susceptible to the spread of COVID-19 amongst its staff and Residents.

101. 128. In addition, the Plaintiff states that ~~the Defendants~~ Northwood Halifax breached an implied contractual term that Northwood Halifax would exercise reasonable care, skill, and diligence in designing practices, policies, and procedures to prevent and control the spread of infectious disease within their Long-Term Care Facility, particularly given advance warning of a highly infectious disease which posed a marked threat to its vulnerable Residents. As a result of these breaches, the Plaintiff and Class Members have suffered damages, as set out below.

The Province

A. Legal Duties

129. The Province created and oversees the long-term care system and controls the operation of long-term care homes in Nova Scotia. It is responsible for funding, regulating, licensing and inspection of such homes, including the Facility.

130. Long-term care homes are governed by the *Homes for Special Care Act* and Regulations, the Long-Term Care Facility Requirements, and related codes and regulations for the provision of long-term care to elderly persons, which provide a comprehensive scheme in respect of the operation and

licensing of nursing homes and residential care facilities, including by setting standards of care and outlining the inspection, compliance and enforcement regime.

131. Under the legislative regime, a long-term care home cannot be operated without a license issued by the Province, and the Province may restrict issuance of, cancel or suspend licencing for non-compliance.

132. Through its conduct and through statute, the Province has undertaken to regulate and oversee long-term care homes, including the Facility. The *Homes for Special Care Act* and Regulations define a relationship of proximity between the Province and Residents. The Province is effectively responsible to ensure that Residents are given adequate care, and that the Facility is suitable for provision of such care.

133. Residents in long-term care are in a sufficient proximate relationship to the Province because in regulating, overseeing and licensing long-term care homes, the Province creates an obligation towards Residents, and risks their health and safety if the long-term care home is not in compliance with the *Homes for Special Care Act*, Regulations, and related codes – all which are intended to ensure the homes' safe operation for the benefit of residents. The Province can also readily foresee a risk to Residents if long-term care homes are not in compliance. Residents of long-term care facilities can expect that such facilities be reasonably maintained and that there was a reasonably foreseeable risk that harm might befall Residents if they were not.

134. The Province had a plan to regulate, inspect, monitor, correct, license and oversee long-term care facilities. The Province also had a plan for the implementation of the pandemic response with respect to its health care mandate, including operational responses in hospitals and the lack thereof in long-term care facilities.

135. The Province was aware of the vulnerability of Residents and made statements and representations assuring that Residents would be safe and cared for. These statements included, but are not limited to:

- a. “strongly encouraging Nova Scotians that the best place for their loved one is to remain in the long-term care facility that they are currently in” (April 6, 2020, Statement by the Premier)

b. when asked about moving Residents proactively, the Chief Medical Officer of Health stated that the Facility housed "frail, elderly people" (Statement by the Chief Medical Officer of Health);

c. "We have this window of opportunity to learn from our Canadian neighbours and internationally and do things better" (March 22, 2020, Media Briefing, Statement by the Chief Medical Officer of Health);

d. Acknowledging that the situation at the Facility "is concerning" and that residents were "vulnerable" (April 13, 2020, Statement by the Chief Medical Officer of Health).

136. At material times hereto, the Province owed legal duties to the Residents of the Long-Term Care Facility, including, *inter alia*, duties to:

a. use due care in enforcing safety and licensing standards for the reasonably safe operation of long-term care facilities and nursing homes;

b. use due care in its regulation and oversight of long-term care facilities;

c. exercise its supervisory authority to ensure the safety of the residents of the Long-Term Care Facility in light of a global pandemic to which they were acutely vulnerable;

d. use due care in adequately and with sufficient frequency inspecting the Long-Term Care Facility;

e. use due care in its Pandemic response and operationalize such response in a reasonable manner; and

f. act upon known breaches of applicable legislation and regulations.

137. Further, the Province owed the Residents of the Long-Term Care Facility a duty to refuse to re-issue a license, issue terms, conditions or restrictions of the license, or cancel or suspend a license issued under the *Homes for Special Care Act* if the long-term care facility:

a. was not giving or was not capable of giving adequate care to a resident, including with respect to the resident's safety and wellbeing;

- b. has become unsuitable due to the number of residents in the facility, inadequate minimum physical space requirements per resident, inadequate standards of accommodations, and sanitation issues;
- c. has become unsuitable due to the advent of a pandemic involving a highly communicable and lethal disease, in particular to the elderly, which would foreseeably jeopardize residents, and in particular those who are unable to obey public health measures which require physical distancing and quarantine;
- d. contravened or does not comply with the requirements as set out in the *Homes for Special Care Act* and Regulations, or the terms, conditions or restrictions of the license, including with respect to safety, health and sanitation;
- e. does not maintain residents of the facility who have a communicable disease such as COVID-19 in an isolated area or employ and observe proper isolation techniques in all aspects of the care of the resident; and
- f. is unable to demonstrate that it has or will exercise sufficient control, either directly or indirectly, over the operations of the Long-Term Care Facility, including the care and safety of its residents, its premises, its accommodation, its equipment and its facilities.

138. The Province owed a common law duty of care to the Residents as a result of its relationship of proximity, defined by the *Homes for Special Care Act* and Regulations and in its statements and representations. The harm and damages suffered by the Class Members were reasonably foreseeable as a result of the Province's acts and omissions, constituting a breach of the duties enumerated above.

B. Operational Negligence

139. The Province breached its duty of care to Residents through its negligent regulation, oversight and control of the Facility.

140. At material times hereto, the Province had made the decision to, and had assumed responsibility for, funding a significant portion of the costs incurred in the operation of the Long-Term Care Facility. The Province thus had a duty to have a reasonable funding scheme, based on the number of residents, known accommodation space and issues, the condition of the Long-Term Care Facility and other factors indicating need. The Province further owed the residents of the Long-Term Care

Facility a duty to maintain adequate and reasonable funding of the Long-Term Care Facility to ensure its safe operation and to refrain from sudden, arbitrary reductions in funding that posed a known risk to the health and safety of vulnerable elderly persons residing in the Facility.

141. It is reasonably foreseeable that a failure to adhere to the standard of care could cause significant harm to the Residents, Plaintiff and Class.

142. Particulars of the operational negligence of the Province include, but are not limited to, the following:

- a. the Province inadequately, incompletely, and with delay exercised its oversight regarding compliance and enforcement with applicable Acts, Regulations and standards governing the operation of long-term care facilities and nursing homes, a result of which was the continued unsafe operation of the Long-Term Care Facility;
- b. the Province chose to disregard the various known licensing issues and health and safety violations and concerns at the Long-Term Care Facility, despite its oversight mandate;
- c. the Province chose to allow known contraventions of licensing requirements to go unaddressed, even as COVID-19 developed into a global pandemic to which elderly persons were acutely vulnerable;
- d. the Province inadequately and with insufficient frequency inspected and monitored the operation of the Long-Term Care Facility to ensure compliance with safety and licensing standards to protect the vulnerable residents therein;
- e. the Province did not provide adequate and reasonable levels of funding under all of the circumstances to facilitate reasonable safety and/or prevention measures at the Long-Term Care Facility and it breached its duty to have a reasonable funding scheme for the Long-Term Care Facility;
- f. the Province chose not to address the longstanding crisis of understaffing of long-term care facilities, leaving the Facility particularly vulnerable to staffing shortages during COVID-19;

- g. the Province carried out inadequate, incomplete and/or careless inspections of the Long-Term Care Facility in December 2019, through which the Long-Term Care Facility was permitted to remain operational despite licensing violations;
- h. the Province disregarded and/or was willfully blind to the inadequacy of existing safety requirements for the operation of long-term care facilities and nursing homes in the context of the COVID-19 pandemic;
- i. the Province chose not to provide necessary resources to ensure that residents of the Long-Term Care Facility were not sharing rooms during a global pandemic that is highly contagious and spreads primary through human-to-human contact;
- j. the Province chose not to provide the Facility with sufficient PPE supplies for staff in a timely manner, and did not ensure directives regarding PPE were proactive and clear;
- k. the Province admitted to delaying mandating the use of masks based on a concern about supply, contributing to the spread of the virus;
- l. the Province chose not to intervene by issuing terms, conditions, restrictions, suspension or cancellation of the Long-Term Care Facility's license due to the Facility's contravention of the *Homes for Special Care Act* and Regulations, including with respect to safety, health and sanitation;
- m. the Province chose not to intervene by issuing terms, conditions, restrictions, suspension or cancellation of the Long-Term Care Facility's license due to the Facility's inability to isolate Residents, thereby permitting Residents infected with COVID-19 to intermingle with Residents not infected with COVID-19;
- n. the Province did not take reasonable steps to prevent or reduce the incidence of staff members working in multiple long-term care facilities during a global pandemic that is highly contagious and spreads primary through human-to-human contact;
- o. the Province did not provide adequate health care to Residents;

p. the Province exercised improper, unsafe, and careless licensing of the Long-Term Care Facility, including the continued licensing of the Long-Term Care Facility as the presence of COVID-19 was confirmed in, and spread across, Canada; and

q. any other such negligence as may arise from the evidence.

143. The Province's negligence does not arise from regulatory decisions, legislative acts or decisions respecting policy. Rather, the operational negligence of the Province arises from its regulation, oversight, control and funding of the Long-Term Care Facility, which created a substantial likelihood of harm and death for the Residents that was foreseeable. The Plaintiff states that, as result of the Province's operational negligence, the Plaintiff and Class have suffered damages which were caused by the negligent acts and omissions of the Province.

VI. DAMAGES

~~102.~~ 144. The Plaintiff pleads the *Fatal Injuries Act*, R.S.N.S. 1989, c. 163 and the *Survival of Actions Act*, R.S.N.S. 1989, c. 453.

~~103.~~ 145. As a result of the Defendants' Northwood Halifax's tortious conduct and breach of the express and/or implied contractual terms to operate the Long-Term Care Facility in a safe and appropriate manner, the Plaintiff and Class Members have suffered harm, losses, and damages, including, but not limited to, damages for mental anguish and severe emotional distress; loss of care, companionship and guidance; and special damages and expenses, including out-of-pocket expenses reasonably incurred for the benefit of the deceased Residents, and funeral and related expenses incurred as a result of Residents' deaths from COVID-19 at the Long-Term Care Facility.

146. The Plaintiff and Class Members have also suffered harm, losses, and damages as a result of the actions and omissions of the Province, which fell below the applicable standard of care. The damages of the Plaintiff and Class Members are a foreseeable consequence of the Province's operational negligence, which caused or contributed to the unsafe operation of the Northwood Long-Term Care Facility.

~~104.~~ 147. The Defendants' conduct described herein caused the Plaintiff and Class to suffer damages, including, but not limited to:

- a. expenses reasonably incurred for the benefit of the deceased Resident who passed away due to COVID-19 or related complications;
- b. travel expenses incurred while Residents who eventually passed away due to COVID-19 or related complications were infected with COVID-19 and/or to attend and arrange for memorial services and associated end-of-life arrangements;
- c. loss of income while traveling and/or arranging for care and/or end-of-life arrangements for Residents who passed away due to COVID-19 or related complications; and
- d. compensation for loss of support, guidance, care, and companionship.

~~105.~~ 148. As a result, the Plaintiff and Class Members have suffered loss and damage in an amount not yet known but to be determined.

VII. RELIEF SOUGHT BY THE PLAINTIFF

~~106.~~ 149. The Plaintiff claims, on her own behalf, and on behalf of the proposed Class:

- a. an Order certifying this action as a class proceeding and appointing her as Representative Plaintiff for the Class Members under the *Class Proceedings Act*;
- b. pecuniary and special damages for the Plaintiff and Class;
- c. non-pecuniary damages for the Plaintiff and Class;
- d. the costs of administering requisite notice programs and distributing all monies received to Class Members;
- e. recovery of health care costs incurred by the Nova Scotia Department of Health and Wellness pursuant to the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197;
- f. pre-judgment interest and post-judgment interest, compounded, or pursuant to the *Judicature Act*, R.S.N.S. 1989, c. 240;
- g. costs on a substantial indemnity basis, plus applicable taxes; and
- h. such further and other relief as this Honourable Court deems just.

VIII. STATUTES RELIED UPON


~~107.~~ 150. The Plaintiff relies upon the following statutes and regulations:

- a. *Class Proceedings Act*, S.N.S. 2007, c. 28;
- b. *Fatal Injuries Act*, R.S.N.S. 1989, c. 163;
- c. *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197;
- d. *Judicature Act*, R.S.N.S. 1989, c. 240; and
- e. *Survival of Actions Act*, R.S.N.S. 1989, c. 453.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this ~~1st~~ day of June, 2020.

Amended at Halifax, Nova Scotia this 15th day of March, 2022.



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