

Form 90.09

2025

C.A. No. 540231

NOVA SCOTIA COURT OF APPEAL

Between:



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

APPELLANTS

and

ERICA SURETTE

RESPONDENT

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND
NOTICE APPEAL (INTERLOCUTORY)**

To **Erica Surette**
c/o Madellne Carter and Kate Boyle
Wagners
Historic Properties
1869 Upper Water Street
Suite PH 301, 3rd floor
Halifax, NS B3J 1S9
Tel: 902.425.7330
Fax: 902.422.1233



Appellants appeal

The Appellants apply for leave to appeal and, if granted, will appeal from the Order dated January 24, 2025 in the proceedings in the Supreme Court showing court number Hfx No. 498376 granted by The Honourable Scott C. Norton.

Order or decision appealed from

The Order was issued on January 24, 2025. It was issued at Halifax, Nova Scotia.

Grounds of appeal

The grounds of appeal are:

1. The motion judge committed a reviewable error in failing to properly assess the proposed common issues as required by subparagraph 7(1)(c) of the *Class Proceedings Act*, SNS 2007, c. 28, including disregarding the legal test to be applied to this assessment of proposed common issues.
2. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Authority for appeal

- Section 39 of the *Class Proceedings Act*,
- Sections 38 – 40 of the *Judicature Act*, RSNS 1989, c. 240, as amended; and
- Rule 90 of the Nova Scotia Civil Procedure Rules.

Order requested

The Appellants say that the Court of Appeal should allow the appeal and that the Certification Order appealed from should be reversed so to:

- (a) dismiss the Respondent's motion for certification of this action as a class proceeding; and
- (b) grant the Appellants their costs on the motion below. The Appellants also seeks an award of costs on the appeal.

Motion for date and directions

The appeal will be heard on a date to be set by a judge. The Appellants will ask a judge of the Court of Appeal to set that date and give directions on February 13, 2025 at 10:00am at The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. You have the right to be present or represented by counsel. If you are not present or represented, the judge may proceed without you.

Contact information

The Appellant designates the following address:

**Karen Bennett-Clayton, Erin McSorley, and James Pinchak
Stewart McKelvey**
Queen's Marque
600-1741 Lower Water Street
Halifax, NS B3J 0J2
Tel: 902.420.3200
Fax: 902.420.1417

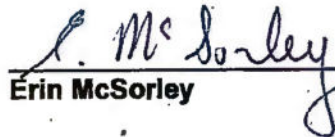
Documents delivered to this address will be considered received by the Appellants on delivery. Further contact information is available to each party through the Prothonotary.

Signature


Signed January 28, 2025



Karen Bennett-Clayton



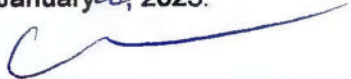
Erin McSorley



**James Pinchak
Stewart McKelvey**
Queen's Marque
600-1741 Lower Water Street
Halifax, NS B3J 0J2
Tel: 902.420.3200
Fax: 902.420.1417
Counsel for the Appellants

Registrar's Certificate

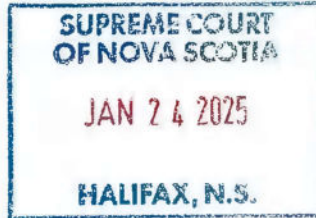
I certify that this Notice of Appeal was filed with the Court on January 28, 2025.



Caroline McInnes
Registrar

Form 78.05

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

DEFENDANTS

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

Certification Order



BEFORE THE HONOURABLE JUSTICE SCOTT NORTON IN CHAMBERS

THIS MOTION was made by the Plaintiff for an order certifying this proceeding as a class proceeding, pursuant to sections 4(3) and 7 of the *Class Proceedings Act*, SNS 2007, c 28 (the "Act");

UPON READING the Notice of Motion, the evidence filed by the parties, and the submissions of counsel:

AND UPON HEARING the submissions of the parties:

AND UPON IT APPEARING that it is appropriate to certify the proceeding as a class proceeding, in that:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by a representative party;
- (c) the claims of the Class Members raise common issues, whether or not the common issues predominate over issues affecting only individual members;
- (d) a class proceeding is the preferable procedure for the fair and efficient resolution of the dispute; and
- (e) there is a representative plaintiff who would fairly and adequately represent the interests of the class; has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying Class Members of the class proceeding, and does not have, with respect to the common issues, an interest that is in conflict with the interests of other Class Members.

NOW UPON MOTION, IT IS HEREBY ORDERED:

1. That the action is hereby certified as a class proceeding pursuant to the Act;
2. That the Class is defined as follows:

The executors or administrators of the estates of the persons deceased or family members who are entitled to bring action under the *Fatal Injuries Act*, RSNS 1989, c 163, including the spouse, common-law partner, parent or children as defined therein, of Residents of the Northwood Halifax Long-Term Care Facility who passed away due to COVID-19 or COVID-19 complications from March 15 to June 30, 2020;

3. That Erica Surette, c/o Wagners Law Firm, 1869 Upper Water Street, Suite PH301, Pontac House, Halifax, NS, B3J 1S9, is appointed as the Representative Plaintiff of the Class;

4. That the common issues in the class proceeding are:

Negligence

- (1) Did Northwood Halifax owe a duty of care to the Residents to prevent and mitigate COVID-19 outbreaks at the Facility?
 - (2) If the answer to common issue (1) is "yes", did the acts or omissions of Northwood Halifax, or their officers and/or agents, breach the applicable standard of care?
5. That the claims to be determined and the relief being sought are as per the Third Amended Statement of Claim issued on the 24th day of May, 2024;
6. That Class Members shall be given notice of the certification of this action as a class proceeding, in accordance with the form of the Notice of Certification, attached hereto as **Schedule "A"** and distributed pursuant to the Notice Plan, attached hereto as **Schedule "B"**;
7. That the costs of distributing Notice of Certification to the Class Members shall be paid for by the Plaintiff, subject to recovery at the conclusion of the action if the Plaintiff is successful;
8. That the Notice of Certification and Notice Plan satisfy the requirements of s. 22(6) of the Act;
9. That within fifteen (15) business days of Class Counsel receiving the issued Certification Order, the Defendants shall provide Class Counsel with a complete list of the names of those who passed away at Northwood Halifax between March 15 to June 30, 2020, and contact information for their designated family members, for the sole purpose of sending Notice of Certification directly to those Class Members;
10. That the Litigation Plan, attached hereto as **Schedule "C"**, is a workable method of advancing the action on behalf of the Class, subject to clarification and amendment if required now or as the action progresses;
11. That a Class Member may opt-out of the class action by sending a signed Opt-Out Form, attached hereto as **Schedule "D"**, to Class Counsel on or before the deadline stipulated in the

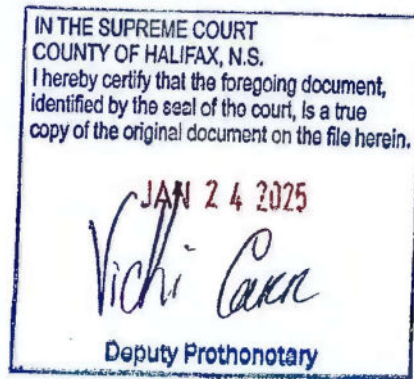
Opt-Out Form, which shall be sixty (60) calendar days after the date of distribution of Notice of Certification:

12. That within thirty (30) calendar days of the close of the Opt Out Deadline, Class Counsel will provide to the Defendants via letter the number of all those who elected to opt out of the within action:
13. That there shall be document production on all of the common issues:
14. That the Defendants shall deliver their Statements of Defence no later than forty-five (45) days following the issuance of this Order: and
15. That the costs of this motion are to be paid in the cause by the unsuccessful party to the successful party in the amount of \$2,000.

January 24 . 2025.



~~Prothonotary~~ **VICKI CARR**
Deputy Prothonotary



VICKI CARR
Deputy Prothonotary

SCHEDULE "A"

NOTICE OF CERTIFICATION NORTHWOOD HALIFAX COVID-19 DEATHS CLASS ACTION

Class Members are advised of certification of a class action arising from the deaths of Residents of the Northwood Halifax Long-Term Care Facility who passed away due to COVID-19 or COVID-19 complications from March 15 to June 30, 2020. The class action is against Northwood Halifax (a group of related companies that operate, manage, and supervise the provision of long-term care at the facility located at Northwood Terrace, Halifax, in the Province of Nova Scotia) (the "Defendants").

Who is included?

"Class Members" are the executors or administrators of the estates of the persons deceased or family members who are entitled to bring action under the *Fatal Injuries Act*, RSNS 1989, c 163, including the spouse, common-law partner, parent or children as defined therein, of Residents of the Northwood Halifax Long-Term Care Facility who passed away due to COVID-19 or COVID-19 complications from March 15 to June 30, 2020.

What is the class action about?

The lawsuit alleges negligence against Northwood Halifax. Specifically, the Plaintiff claims that the Defendants' practices, policies, and procedures, and lack thereof, caused or contributed to the spread of COVID-19 through elderly and vulnerable Residents at Northwood. The action claims that the wrongdoing of Northwood Halifax caused or contributed to the untimely deaths of Residents, and the related harms, losses, and damages to Class Members. It is alleged that the Defendants had knowledge of the dangers posed by the COVID-19 pandemic to which the Northwood Halifax Residents were uniquely vulnerable, yet they maintained the *status quo* at the cost of numerous individuals' safety and lives.

Do I have to pay anything to participate? How are the lawyers paid?

You do not have to pay anything out of pocket to participate in the class action, and you will not be liable for any legal costs of the Defendants should the trial be unsuccessful. The Representative Plaintiff has entered into a Contingency Fee Agreement with Wagners ("Class Counsel"), in which Class Counsel has agreed to act on the basis that they will not be paid any legal fees unless and until Class Members receive compensation. Class Counsel will pay for all case expenses incurred in advancing the case, and if the case is successful, Class Counsel will apply to the Court at the conclusion of the case to be reimbursed for these case expenses, in addition to legal fees. If the case is not successfully settled or tried, Class Counsel will not be paid or be reimbursed for any expenses.

What if I don't want to participate in the class action?

SCHEDULE "A"

If you are a Class Member, you do not need to do anything at this point to benefit from any eventual ruling on the common issues. A judgment on the common issues, favourable or not, will bind all Class Members who do not opt-out. If you do not want to participate in the class action, you must opt-out by sending an Opt-Out Form to Wagners to be received on or before [**Opt-Out Deadline**]. If you opt-out, you will not be entitled to share in any recovery or take the benefit of any ruling or settlement in this case.

More information:

For more information visit the following website. <https://wagners.co/current-class-actions/> telephone 1-800-465-8794 or 902-425-7330, email classaction@wagners.co, or contact us by mail at:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9

This summary notice has been approved by the Supreme Court of Nova Scotia.

Do not Contact the Court about this Certification.

SCHEDULE "B"

NOTICE PLAN

Notice of Certification of *Surette v Northwood Care Group Inc et al.* Hix No. 498376, in the form attached as **Schedule "A"** (the "Notice of Certification"), subject to approval of the Court, shall be disseminated by the following means:

1. Direct Notice:

- i. Within fifteen (15) business days of Class Counsel receiving the issued Certification Order, the Defendants shall provide Class Counsel with a complete list of the names of Residents who passed away at Northwood Halifax between March 15 to June 30, 2020, and contact information for their designated family members (the "List"), for the sole purpose of identifying Class Members entitled to receive Notice of Certification.
- ii. Within fifteen (15) business days of Class Counsel receiving the List, Class Counsel will send the Notice of Certification directly to the individuals on the List by mail and/or electronic mail (depending upon the contact information on the List; electronic mail will be the primary method, if available) and otherwise to those who have contacted Class Counsel about the action, by regular mail and/or electronic mail (electronic mail will be the primary method, where it is available).

2. Indirect Notice:

- iii. Within fifteen (15) business days of Class Counsel receiving the List, Class Counsel will indirectly notify Class Members by the following means:
 - 1) post Notice of Certification and the Opt-Out Form on its website (www.wagners.co);
 - 2) issue a press release describing the contents of the Notice of Certification and the Opt-Out Form; and
 - 3) provide the Notice of Certification and/or the Opt-Out Form to those who request it.

SCHEDULE "C"

PLAINTIFF'S LITIGATION PLAN

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the "Plan") have the meanings as particularized in the Third Amended Statement of Claim (Clean Version), as it may be further amended from time to time.

CLASS COUNSEL

2. The Plaintiff has retained Wagners ("Class Counsel") to advance this class action. Class Counsel has the requisite knowledge, skill, experience, and personnel and financial resources to advance the action to resolution. Class Counsel may, if determined to be appropriate from time to time, collaborate with other counsel in advancing the class action.

PLAN SUBJECT TO AMENDMENT

3. This plan may be amended from time to time by agreement of the parties, by directions provided at case management conferences, or by further order of the Court.

THE COMPOSITION OF THE CLASS

4. The "Class" and "Class Members" are defined in the Third Amended Statement of Claim (Clean Version), as it may be further amended from time to time, and will be subject to the final order of the Court certifying this class proceeding.

NOTICE OF CERTIFICATION AND THE OPT-OUT PROCEDURE

5. The Plaintiff proposes that notification of certification and information about the opt-out deadline and means of opting out be provided via Notice of Certification in the form set

out in **Schedule "A"** to the Certification Order. Subject to approval of the Court, Notice of Certification will be distributed to the Class in accordance with the Notice Plan set out in **Schedule "B"** to the Certification Order.

REPORTING AND COMMUNICATION

6. Class Counsel will post current information on the status of the action on its website and this will be updated regularly. Copies of notices and other information for Class Members will be accessible from the website.
7. Class Counsel will inform known Class Members about material updates in the litigation via regular mail and/or electronic mail when circumstances warrant (electronic mail will be the primary method, where available).

CASE MANAGEMENT CONFERENCES

8. The Plaintiff proposes that case management conferences before a case management judge be held as necessary and at the request of the parties, and as otherwise directed by the Court.
9. The Plaintiff proposes that a case management conference be held within forty-five (45) calendar days of the issuance of the Certification Order, the primary purpose being to seek the direction of the Court on any outstanding issues and determine the litigation schedule.
10. The Plaintiff proposes the following schedule for the remaining steps in the action:
 - (a) within forty-five (45) business days after the issuance of the Certification Order, the Defendants shall deliver their Statements of Defence;

- (b) within 6 (six) months following the delivery of the Statements of Defence, the parties will exchange their Affidavits of Documents, which shall be restricted to the certified common issues:
- (c) within four (4) months following the exchange of the Affidavits of Documents, the parties will complete their examinations for discovery of the parties (conditional on witness availability), which shall be confined to the certified common issues: and
- (d) within six (6) months after all examinations for discovery have been concluded, the parties will exchange expert reports.

11. The Act and the *Civil Procedure Rules* will apply to the scheduling of any appeals brought in the action.

DISCOVERY

12. The Plaintiff proposes that counsel for the parties shall efficiently disclose documents to one another utilizing computer database software so that, as much as reasonably practicable, documents may be produced and shared between the parties and may be made available to the Court in electronic format.
13. The Plaintiff proposes that a conference of all counsel be held following the completion of the discovery stage in order to address, *inter alia*, the potential refinement of the common issues for trial (including, if necessary, the addition or removal of common issues, upon the approval of the Court as necessary) and the schedule for the common issues trial.

MEDIATION

14. The Plaintiff will participate in mediation before a mutually acceptable mediator if the Defendants are prepared to do so, whether before the common issues trial or at other stages of the litigation.

INTERLOCUTORY MOTIONS

15. Unless a particular motion is a matter of urgency, all interlocutory motions will be heard by the case management judge.
16. The scheduling of and any directions in relation to any interlocutory motions will be addressed at the periodic case management conferences. If the need for an interlocutory motion should arise in a more time-sensitive manner, a request for dates and directions can be delivered to the case management judge as need be. Unless otherwise agreed to or directed by the case management judge, the filing deadlines for any such interlocutory motions will be governed by Rule 23 of the *Civil Procedure Rules*.

NOTICE OF DETERMINATION OF THE COMMON ISSUES

17. In the event that common issues are determined in favour of the Class, Class Counsel shall give notice of that determination ("Notice of Determination of Common Issues") to the Class in accordance with the directions of the Court in respect of the content of and means of giving the notice, pursuant to s. 23 of the Act.
18. Subject to the directions of the judge, the Plaintiff proposes that the Notice of Determination of Common Issues include the following information, to be further refined following the common issues trial:

- (a) a description of the Class;

- (b) a description of the common issues and their outcomes at trial;
- (c) that Class Members may be entitled to individual relief;
- (d) what steps a Class Member must take to assert an individual claim in accordance with the Distribution and Individual Issues Protocol described below;
- (e) that no person will be entitled to any compensation unless he/she complies with the instructions contained therein;
- (f) how to obtain further information; and
- (g) that Class Members' claims in relation to the matters raised in the pleadings will be deemed to have been finally adjudicated whether or not they participate in the claims stage of the proceeding.

19. The Plaintiff will ask the Court to order that the Notice of Determination of Common Issues be distributed substantially in accordance with the procedure outlined above for the Notice of Certification.

DETERMINATION OF INDIVIDUAL ISSUES

20. In the event that all or some of the common issues are determined in favour of the Class, the process to determine the individual issues of causation and damages will be addressed by the parties with the assistance of the Court through the case management process.

21. Pursuant to s. 30 of the Act, the Court will be asked by the Plaintiff to give directions relating to the determination of individual issues that result in the least expensive and most expeditious method of determining the individual issues, including dispensing with any procedural step that it considers unnecessary.

RESTORATIVE JUSTICE PROCESS / SHARING CIRCLES

22. The Plaintiff proposes that Approved Claimants would have the opportunity to participate in voluntary sharing circles with other Approved Claimants and facilitators to share their experiences and come together in a healing way. The information learned from the sharing circles will aim to facilitate understanding by policymakers and leaders of what happened, and the long-term care community's need.

FURTHER ORDERS CONCERNING THIS PLAN

23. This Plan may be amended from time to time by directions given at case management conferences or by further order of the Court.

EFFECT OF THIS PLAN

24. This Plan, as it may be revised by order of the Court from time to time, shall be binding on all Class Members whether or not they make a claim under the Plan.

SCHEDULE "D"

2020

Hfx. No. 498376

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ERICA SURETTE

PLAINTIFF

- AND -

NORTHWOODCARE GROUP INC. et al.

DEFENDANTS

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

OPT-OUT FORM

DEADLINE - MUST BE RECEIVED BY: [Opt-Out Deadline]

I, _____, do not want to be included in the class action against Northwoodcare Group Inc., Northwood Homecare Inc., Northwood Health Services, Northwoodcare Halifax Inc., Northwood Support Services Inc., Northwoodcare Realty Inc., 5534 Almon Street Inc., 2641 Northwood Terrace Inc., Northwood Homecare Agency, and Northwood in Touch Personal Emergency Response with respect to the Residents of Northwood Halifax who passed away due to COVID-19 or COVID-19 complications from March 15 to June 30, 2020.

I understand that if I opt-out of the class action, I will not be entitled to share in any recovery or take any benefit of any ruling in this case, but I will be free to bring my own claim if I wish. I understand that if I opt-out of the class action and wish to bring my own claim, my own claim may be subject to a limitation period. I understand this Opt-Out Form must be received by class counsel by **[Opt-Out Deadline]**.

I am a relative of the following Resident of the Northwood Halifax Long-Term Care Facility who passed away due to COVID-19 or COVID-19 related complications between March 15 and June 30, 2020: _____

My relationship to the Resident is:

Spouse (either of a man or woman who are married to each other)

Common-law partner (another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year immediately preceding the death of the individual)

Child (son, daughter, grandson, granddaughter, stepson and stepdaughter)

Parent (father, mother, grandfather, grandmother, stepfather and stepmother)

I want to opt-out (be excluded from) this class action. My information is as follows:

Name: _____

Telephone: _____

Address: _____

Email address: _____

Date: _____

City: _____

Province: _____

Signature: _____