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Nursing Homes Litigation

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Information Bulletin No. 2

For the benefit of former or current residents of Revera, Extendicare and Leisureworld/Sienna Nursing Homes across Canada, and their families.

I. The Nursing Home Action Coalition

This Bulletin is produced by the law firm of Oakley & Oakley, on behalf of the Nursing Home Action Coalition.



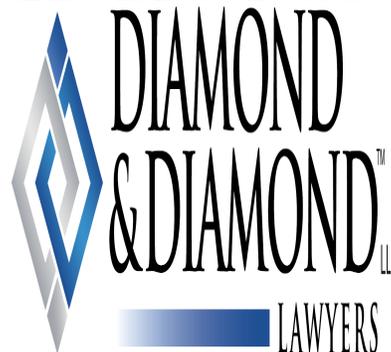
In February of 2018, Amani Oakley, a senior medical malpractice lawyer at Oakley & Oakley, contacted lawyers from

two other law firms – Diamond & Diamond and Howie Sacks Henry – to assist with three class actions which she had launched or intended to launch, against the giant Revera, Extendicare and Leisureworld/ Sienna Nursing Home chains.

Since the cases had been announced, hundreds of people have called to report nursing home abuse and poor care, including repeated falls, fractures, bruising, infections, bed sores, and assaults. More lawyers were needed to handle all the cases.

We are stronger together, and working as a legal team, we are able to pool expertise and

resources, to better serve the clients who have contacted us.



For More Information, Call (905) 943-4946 or 1-877-506-NHAC



II. SEPTEMBER 22, 2018: Information and Education Session

The Nursing Home Action Coalition is hosting an Information and Education Session on Saturday September 22nd, at the Hilton Hotel in Markham (Hwy 7 and Warden).

The Information and Education Session will be free for all nursing home residents and family members who have contacted us about the Revera, Extencicare and Leisureworld class actions, or those who would like to be a part of the law suits involving these homes.

We will provide breakfast and lunch for everyone, free of charge, along with interesting speakers presenting on nursing home issues.

This is also an opportunity to meet your legal team and get some of your questions answered.

We are also working with media outlets to get the word out about the nursing home lawsuits, and we expect some media representatives will be there on September 22nd. W-Five will be there to get a drone

shot of all the residents and family members who attend, to emphasize the number of people who are affected by poor nursing home care, so it's important to have a strong turn-out.

Please RSVP as soon as possible so we can ensure that we have sufficient catering and space booked for all the folks we're expecting. Call Oakley & Oakley at (905) 943-4946, or email maindesk@oakleylegal.com, to confirm attendance and let us know how many people in your family will be attending.

Alternatively, you can confirm your attendance online at the Nursing Home Action Coalition website, www.nursinghomeabuse.ca at

Don't wait to register since there may be a limit to the number of people we can accommodate. We have had a very very positive reaction from the folks who know about this already, so we are expecting an excellent turn-out!

III. Class Action versus Mass Tort

For those of you who received our initial Bulletin from Oakley & Oakley, the discussion regarding the conversion of the nursing home cases from a class action to a mass tort, will be familiar to you.

However, because we do anticipate converting the class actions to mass torts, it is important for you to understand what this means and how it will affect each person who

wishes to pursue litigation against one of the nursing home chains.

When a Class Action is filed, there is a requirement at some point, to ask the court to "certify the class". This means that we would request a court to approve the type of people and incidents which would be included in the Class Action.

However, it may well be that a court determines that there is not enough in common between the cases, to permit the Class Action to proceed as a class. This is because the nursing home chain (the defendant) is likely to argue that each resident had a different set of circumstances, different injuries, and/or the negligence claimed is very different between different people.

This is not of concern to us. If the court is of the view that the Class Action is not the appropriate way to proceed, we will be proceeding with dozens of individual cases as a group. This is called a mass tort, and still permits us to obtain great leverage and efficiencies for everyone and efficiencies for the courts, which would otherwise have to rule on each case individually.

We are close to converting the Revera class action to a mass tort. We are in talks to do the same with the Leisureworld/Sienna but at a later date. These discussions have not yet started with the Extencicare class action, but it is not illogical to assume we will eventually follow the same path.

There are pros and cons to proceeding as a Class Action versus a mass tort, and we will

address this in significant detail at the September 22nd Information Session, so be sure to attend for that discussion. However, one key effect of discontinuing the class action is that the time limit to start litigation will no longer be suspended. Therefore, if you have not yet indicated to us that you want to initiate litigation and signed a retainer, you need to do this right away.

Additionally, if you know of others who may be affected but who haven't yet contacted us, please ensure that you let them know that it is important for them to contact us as soon as possible.

Whether we proceed as a class action or as a group of individual lawsuits will not significantly affect the outcome.

Each case will be evaluated based on a process set out in greater detail below.

The Court has been asked to appoint a single judge to manage all these cases. This judge (Justice Perell for the Leisureworld and Revera cases), will have the advantage of knowing the FULL background and facts of the cases. As a result, the cases should proceed more efficiently through the system.

Additionally, instead of each resident or family having to face off against the Goliath Revera, Extencicare or Leisureworld Nursing Home chains, the judge will be familiar with the fact that there are significant similarities between the complaints and poor care reported by nursing home residents.

This will help to even the playing field in an area of law where the residents and families are usually at a significant disadvantage, both in terms of resources, but also because the Nursing Homes will usually argue that the residents had pre-existing conditions (obviously!) and thus, they would undoubtedly argue that it wasn't the care which caused the resident's injuries or death, but the pre-existing health problems.

Moreover, as Amani has explained both to the media covering these issues, and to those of you to whom she has spoken, Canadian courts award very little in nursing home cases, thus making them very risky, and often not "economically viable" to pursue in court.

Medical malpractice cases generally require an investment of at least \$100,000 to get to the court room steps, and another \$100,000 or more to run a full trial. (This money is NOT for legal fees. It is for out-of-pocket expenses like obtaining records, and obtaining the mandatory expert reports.)

If the outcome, even in a successful nursing home case, is in the range of \$55,000, and the risk of losing is significant (given that virtually all nursing home residents have pre-existing conditions – most of them quite serious), then the risk is often not a reasonable one for either the resident/family or the lawyer to take on.

While proceeding as a Class Action or a Mass Tort, will not change what each individual case is worth, as assessed by a court, it does

provide economies of scale because we are proceeding with a number of actions together, rather than one by one.

The risk of losing is also lessened by the fact that the judge hearing the cases will get to hear from a number of people who have all suffered in a similar way, so the Nursing Home argument that the cause of the injuries/death is the pre-existing condition of the resident, will lose some of its effectiveness.

IV. The Process

There are a number of ways to contact us and to ensure that your case is included in our group of nursing home cases, if you haven't already done so.

The easiest is to contact us using the Nursing Home Action Coalition hotline at 1-877-506-NHAC (6422), or online: www.Nursinghomeabuse.ca There, a summary of your situation will be gathered, and passed on to the team of lawyers.

Once we have completed calling everyone back and filling out individual Intake Forms, we will examine all potential cases from among those complaints made to our office. Generally speaking each complaint proceeds as follows:

Information Gathering – Detailed information is gathered by email, letter or a telephone interview and a case summary is prepared.

Case Review – The case summary is reviewed by the firm and a decision is made as to whether or

not the individual case warrants pursuing. A case may be rejected at this stage because it does not appear that there was poor care or because the poor care did not result in significant damages or impact to the patient.

Retainer – The resident/family is contacted and we will explain our recommendation as to whether to proceed or not. For those we recommend to proceed, and who wish to do so, we will arrange a meeting to sign a Retainer to retain us.

Investigation – For those residents/families who retain us, we will obtain full medical/nursing home records, other records as needed for the specifics of each case. We then review the records and obtain records from other doctors as necessary. A detailed summary of the case is prepared and is sent to one of our expert physicians for an opinion.

Litigation – Where our experts indicate that the care was substandard, we will attempt to resolve the case with the lawyers for Revera, Leisureworld or Extendicare, if that appears to be a reasonable option. Where we are unsuccessful, and if required by the Class Action judge, we will file a formal lawsuit and proceed to court.

Medical malpractice claims are typically defended vigorously with the result that it often takes several years to resolve a case. Given the magnitude of the harm caused by Revera, Leisureworld and Extendicare, we are hopeful that we will be able to bring closure to

the victims as soon as possible, but realistically, we recommend that you prepare for a lengthy battle.

V. Limitation Periods

Quite unfortunately, many people who have called us are “out of time” to start a legal action.

In Ontario, the time to start a medical malpractice action is within 2 years from when the negligence complained of, was known, or ought to have been known.

(If you are calling us from another province, we will investigate to determine which limitation period applies.)

That means that a person has two years to sue from when they became aware of the negligence, or when the court determines they ought to have known about it. To be safe, this means starting a lawsuit within two years of the problem or incident complained of, but there are a whole lot of exceptions and ways to interpret the two year period. For example, if you have surgery and suffer complications, a judge may agree that you wouldn't have known of the complications or that that they were the result of negligence, as soon as you come out of surgery. In a circumstance like that, the court may not expect you to know you had the basis for a legal claim, until you learned of the details of the complications.

This is not a straight-forward analysis, and we highly recommend that you contact the

Nursing Home Action Coalition if you are not sure if your circumstances are within time. There may be ways to look at a set of facts to argue that the time has not expired. You need a knowledgeable lawyer to provide an opinion on this issue.

However, in Ontario, another piece of legislation, the *Trustee Act*, has a devastating effect on limitation periods. It requires a claim for a person who has passed away to be filed within two years of the death – no exceptions. Even if you didn't know about the negligence for more than two years after the person's death, the *Trustee Act* bars you from starting any litigation after that time. Several politicians have attempted to change this legislation over the years, but it remains an unfair barrier for families of those who have passed away.

Many of the people who have called our office about negligence and abuse in nursing homes, will not be able to proceed with litigation because of the *Trustee Act*.

However, the filing of these Class Actions effectively stopped the time running for the calculation of limitation periods. Once the judge discontinues the Class Actions, the suspension of time will be discontinued. That's why it is critical for everyone who is contemplating litigation, to contact us and provide us with the necessary information to begin to assess whether you may have a case against Leisureworld, Extendicare or Revera. Even if you're not sure, this is the time to contact us and have that discussion. Once the Class Actions

are discontinued, it will be too late to choose to participate.

VI. Maintaining Contact

If you feel you have received this **Bulletin** in error, or you do not wish to receive a copy, please call our office at (905) 943-4946 and we will promptly remove your name from our distribution list.

If you know of other residents or families who might benefit from receiving these **Bulletins**, please feel free to pass them on, or provide them with our contact information, so that we can include them on our mailing list.