

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

) Friday, THE 19

MADAM JUSTICE HORKINS

) DAY OF AUGUST, 2011

BETWEEN:

**ROSALIND BECHARD AS LITIGATION
GUARDIAN OF MARY ELLEN FOX**

Plaintiff

- and -

THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

ON READING the motion record of the Plaintiff and upon being advised of the consent of the parties,

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding.
2. **THIS COURT ORDERS AND DECLARES** that the class is defined as:
 - (a) All persons who resided at the Southwestern Regional Centre ("Southwestern") between September 1, 1963 and October 31, 2008 who were alive as of December 29, 2008 (the "Resident Class"); and
 - (b) All parents, spouses, children and siblings of persons who resided at Southwestern between March 31, 1978 and October 31, 2008, who were alive as of December 29, 2008 (the "Family Class").

3. **THIS COURT ORDERS AND DECLARES** that the common issues be and hereby are certified as:

- (a) By its operation or management of Southwestern from 1963 to 2008 did the defendant breach a duty of care they owed to the Resident Class to protect them from actionable physical or mental harm?
- (b) By its operation or management of Southwestern from 1963 to 2008, did the defendant breach a fiduciary duty owed to the Resident Class to protect them from actionable physical or mental harm?
- (c) If the answer to either of common issues (a) and (b) is "yes", can the court make an aggregate assessment of the damages as part of the common trial?
- (d) If the answer to either of common issues (a) and (b) is "yes", does the defendant's conduct justify an award of punitive damages?
- (e) If the answer to common issue (d) is "yes", what amount of punitive damages ought to be ordered and to whom?

4. **THIS COURT ORDERS AND DECLARES** that Mary Ellen Fox be and hereby is appointed as the representative plaintiff for the Class and that Koskie Minsky LLP be and hereby is appointed as class counsel ("Class Counsel").

5. **THIS COURT ORDERS AND DECLARES** that Rosalind Bechard be and hereby is appointed as the litigation guardian of the representative plaintiff.

6. **THIS COURT ORDERS AND DECLARES** that the claims asserted on behalf of the Class are negligence and breach of fiduciary duty during the period September 1, 1963 to October 31, 2008 (the "Class Period").

7. **THIS COURT ORDERS** that:

- (a) within one hundred and twenty (120) days of the date of this Order, the defendant shall make its best efforts to send to Class Counsel a list of all

known members of the Resident Class, including their last known addresses and contact information;

- (b) within six (6) months of the date of this Order, the defendant shall make its best efforts to send to Class Counsel a list of all known members of the Family Class, including their last known addresses and contact information; and
- (c) within one hundred and twenty (120) days of the date of this Order the defendant shall deliver a list of the community agencies who are funded by the defendant in providing services to members of the Resident Class.

8. **THIS COURT ORDERS** that Class Members shall be notified that this proceeding has been certified as a class proceeding as follows:

- (a) by delivering a notice, in substantially the same form as the notice attached hereto as Schedule "A" (the "Notice") and attached hereto as Schedule "B" (the "Long Form Notice"), by regular mail, within thirty (30) days after the defendant has complied with paragraphs 7(a) and 7(b) above, to the Resident Class and Family Class members whose contact information has been provided to Class Counsel by the defendant, or who have otherwise contacted Class Counsel;
- (b) by delivering the Notice and the Long Form Notice, by regular mail, along with a covering letter in a form and content agreed upon by the parties, to the community agencies who are funded by the defendant in providing services to members of the Resident Class as provided in paragraph 7(c) above, within thirty (30) days after the defendants have complied with paragraph 7(c) above;
- (c) by placing, within 30 (days) after the date of entry of this Order, the Notice in the newspapers set out in Schedule "C" attached hereto in 1/4 of a page size in the weekend edition of each paper, if possible;

- (d) by posting the Notice on Class Counsel's and the Administrator's (defined below) website;
- (e) by forwarding the Notice to any Class Member who requests it; and
- (f) by the Administrator establishing a toll-free telephone support line within Ontario, to provide assistance to Class Members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class Members;

9. **THIS COURT ORDERS** that, within 45 days following the delivery of the covering letter and notice referred to in 8(b) above, the plaintiff shall advise the defendant, and the Public Guardian and Trustee of the agencies' responses, if any.

10. **THIS COURT ORDERS** that the expense of notice in paragraphs 8(a) to (c) above shall be borne equally by the plaintiff and the defendant, subject to review and readjustment by agreement or order at the termination of this proceeding.

11. **THIS COURT ORDERS** that Crawford Class Action Services (the "Administrator") be and hereby is appointed as the Administrator to receive opt out forms from the Class.

12. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering a signed opt-out coupon, the form of which is to be agreed between the parties prior to the dissemination of the notice to the class referred to in paragraph 8 above, or some other legible signed request to opt out, within ten (10) months from the date of this order (the "Opt Out Deadline"), sent to the Administrator, at the following address:

CRAWFORD & COMPANY
3-505, 133 Weber St. N.
Waterloo, ON N2J 3G9
Attention: Southwestern Regional Centre Class Action

13. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.

14. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the court, within sixty (60) days after the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

15. **THIS COURT ORDERS** that the costs of the certification motion shall be in the amount of \$20,000.00, payable by the Defendant forthwith.

Justice C. Horvath

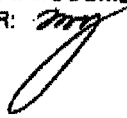
Schedule "A" – newspaper notice

Schedule "B" – Long Form Notice

Schedule "C" – list of newspapers, with estimated pricing.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 19 2011

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: 

SCHEDULE "A"

Legal Notice

If You Lived at Southwestern Regional Centre
or Are a Family Member of Someone Who Did

A Lawsuit May Affect Your Rights. Please Read this Notice
Carefully.

Who represents the class?

You could be affected by a class action lawsuit involving Southwestern Regional Centre ("Southwestern"). Southwestern was a residential facility located in Blenheim, Ontario that provided care and treatment to persons with a developmental disability from 1961 to 2008. The Province of Ontario operated Southwestern.

The Court has appointed the following law firm from Ontario to represent the Class as "Class Counsel": Koskie Minsky LLP.

You don't have to pay Class Counsel or anyone else, to participate. Instead, if they get money or benefits for the Class, they may ask for lawyers' fees and costs, which would be deducted from any money obtained, or paid separately by the Province of Ontario, and approved by the Court. You may hire your own lawyer to appear in Court for you, with leave of the court, but if you do, you have to pay that lawyer.

The Ontario Superior Court of Justice decided that this should be a class action on behalf of a "Class," or group of people, that could include you. This notice summarizes your rights and options. You have a choice of whether to stay in the Class or not, and you must decide this now. There is no money available now and no guarantee that there will be.

What are your options?

What is this case about?

Stay in the Class: To stay in the Class, you do not have to do anything. If money or benefits are obtained, you will be notified about how to ask for a share. You will be legally bound by all orders and judgments of the Court, and you will not be able to sue the Province of Ontario about the legal claims in this case.

The lawsuit says the Province of Ontario failed to properly care for and protect people who lived at Southwestern. The lawsuit says residents of Southwestern were emotionally, physically, and psychologically traumatized by their experiences at Southwestern. The Province of Ontario denies these claims. The Court has not decided whether the Class or the Province of Ontario is right. The lawyers for the Class will have to prove their claims in Court.

Staying in this Class will not impact the residence or services and supports received by class members from community based agencies which are funded by the Province of Ontario.

If you are having a difficult time dealing with these issues you can call 1-877-627-7027 (TTY: 1-877-627-7027) for assistance.

Get out of the Class: If you want to keep your rights to sue the Province of Ontario over the claims in this case you need to opt out or remove yourself. If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded. To ask to be removed, send a letter to the address below, postmarked no later than ~~XXXXXX~~ 2012, that says you want to be removed from *Bechard v. Province of Ontario*. Include your name, address, telephone number, and signature.

Are you included?

You are included in this lawsuit if:

- You lived at Southwestern at any time between September 1, 1963 and October 31, 2008, or
- You are a parent, spouse, child or sibling of someone who lived at Southwestern between March 31, 1978 and October 31, 2008; or
- You are an estate trustee of someone who lived at Southwestern between September 1, 1963 and October 31, 2008 who died after December 29, 2008.

Southwestern has been known by various names, including the Ontario Hospital School for Retarded Children at Cedar Springs and Southwestern Regional Centre.

How can I get more information?

Go to www.crawco.ca, call toll-free 1-877-627-7027 (TTY: 1-877-627-7027) or write to Southwestern Class Action, Southwestern Class Action Administrator, 3-505, 133 Weber Street North, Waterloo, Ontario, N2J 3G9, or by email at: XXXXXX@crawco.ca.

Getting information to people who cannot read.

We ask for the help of family members, caregivers and friends of former residents in getting information to former residents who have trouble reading. More information about this lawsuit is available at the website or by calling the toll-free number. Please show this notice to people who are impacted by this lawsuit or their caregivers.

SCHEDULE "B"

If You Lived at Southwestern Regional Centre or are the Family Member of Someone Who Did

A Class Action Lawsuit May Affect Your Rights.

A court authorized this notice. You are not being sued.

- You could be affected by a class action lawsuit involving Southwestern Regional Centre ("Southwestern"). Southwestern was a residential facility that provided treatment to mentally challenged and disabled people from 1961 to 2008. The Province of Ontario operated Southwestern.
- A Court has approved the lawsuit as a class action that includes both former residents of Southwestern and certain family members. **If you know a former resident of Southwestern who cannot read this notice please share this information with them.**
- The Court has not decided whether the Province of Ontario did anything wrong, and the case is currently scheduled to go to trial. There is no money available now and no guarantee there will be. However, your rights are affected, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

Stay in this lawsuit. Await the outcome. Share in possible benefits. Give up certain rights.

By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue the Province of Ontario on your own about the same legal claims in this lawsuit.

Get out of this lawsuit. Get no benefits from it. Keep rights.

If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue the Province of Ontario on your own about the same legal claims in this lawsuit.

- Lawyers must prove the claims against the Province of Ontario at a trial. If money or benefits are obtained you will be notified about how to ask for a share.

QUESTIONS? CALL TOLL-FREE 1-~~800-XXXX-XXXX~~ (TTY: 1-877-627-7027) OR VISIT
[www.~~XXXXXX~~.CA](http://www.XXXXXX.CA)

- Your options are explained in this notice. To ask to be removed, you must act by ~~XXXXXX~~, 2012

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**QUESTIONS? CALL TOLL-FREE 1-~~XXXXXX~~ (TTY: 1-877-627-7027) OR VISIT
[WWW.~~XXXXXX~~.CA](http://WWW.XXXXXX.CA)**

BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been "certified" as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against the Province of Ontario on your behalf are correct. This notice explains all of these things.

The Honourable Madame Justice Horkins, of the Ontario Superior Court of Justice, is currently overseeing this case. The case is known as *Bechard v Ontario*, Court File No. CV-10-417343-00CP. The people who sued are called the Plaintiffs. The Province of Ontario is the Defendant.

2. What is this lawsuit about?

The lawsuit says the Province of Ontario failed to properly care for and protect people who lived at Southwestern. The lawsuit says residents of Southwestern were emotionally, physically, and psychologically traumatized by their experiences at Southwestern. The Province of Ontario denies these claims. The Court has not decided whether the Plaintiff or the Province of Ontario is right. The lawyers for the Plaintiff will have to prove their claims in Court.

If you are having a difficult time dealing with these issues you can call 1-~~XXXXXXXXXX~~ (TTY: 1-877-627-7027) for assistance.

3. What is the history of Southwestern?

Southwestern Regional Centre was founded in 1961 and was located in Blenheim, Ontario. Individuals were placed in Southwestern either voluntarily by caregivers or by becoming wards of the Crown. Southwestern was intended to provide a residential program of hospital care, activity, educational program and adult training to individuals of all ages labeled mildly, moderately, severely and profoundly disabled. Southwestern closed down in October 2008.

Over the years society's views on the mentally challenged and disabled has changed and that is reflected in Southwestern's previous names: Ontario Hospital School for Retarded Children at Cedar Springs and Southwestern Regional Centre.

4. Why is this a class action?

In a class action one or more people called "representative plaintiffs" (in this case Mary Ellen Fox) sue on behalf of people who have similar claims. All of these people are a "class" or "class members." The court resolves the issues for all class members, except for those who remove themselves from the class.

QUESTIONS? CALL TOLL-FREE 1-~~XXXXXXXXXX~~ (TTY: 1-877-627-7027) OR VISIT
[www.~~XXXXXXXXXX~~.CA](http://www.XXXXXXXXXX.CA)

5. Who is a member of the Class?

The Class includes:

- Anyone who lived at Southwestern at any time between September 1, 1963 and October 31, 2008, and who were alive as of December 29, 2008; or
- Parents, spouses, children or siblings of someone who lived at Southwestern between March 31, 1978 and October 31, 2008, and who were alive as of December 29, 2008; or
- An estate trustee of someone who lived at Southwestern between September 1, 1963 and October 31, 2008 who died after December 29, 2008

6. What are the Plaintiffs asking for?

The Plaintiff is asking for money or other benefits for the Class. They are also asking for attorneys' fees and costs, plus interest.

7. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether the Province of Ontario did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for a share.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by ~~XXXXXX~~, 2012.

8. What happens if I do nothing at all?

If you do nothing you will automatically remain in the Class. You will be bound by all Court orders, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.

9. What if I don't want to be in the Class?

If you decide not to participate in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained as a result of this lawsuit. You will not be bound by any Court orders and you keep your right to sue the Province of Ontario regarding the issues in this case.

**QUESTIONS? CALL TOLL-FREE 1-~~XXXXXX~~ (TTY: 1-877-627-7027) OR VISIT
[WWW.~~XXXXXX~~.CA](http://WWW.XXXXXX.CA)**