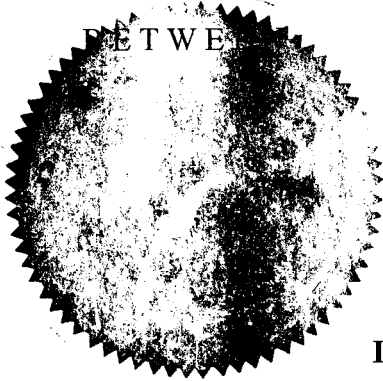


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE HORKINS

)
)

FRIDAY, THE 4TH
DAY OF MAY, 2012



ET WE

ROBERT SEED

Plaintiff

- and -

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiff for an order certifying this action as a class proceeding was heard on April 10, 2012, at Osgoode Hall, 130 Queen Street West, in Toronto, Ontario, written reasons having been reserved to this day.

ON READING the plaintiff's certification motion record, the facts of the parties and on hearing submissions of counsel for the parties,

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

2. **THIS COURT ORDERS** that the class is defined as follows:

- (a) all persons who have attended or resided at the W. Ross MacDonald School, formerly the Ontario School for the Blind ("Ross MacDonald"),

from January 1, 1951 to the present day and who were alive as of February 22, 2009 (the “Student Class”); and

- (b) all spouses, children, grandchildren, parents, grandparents, and siblings of persons who attended or resided at Ross MacDonald School from March 31, 1978 to the present day, who were alive as of February 22, 2009 (the “Family Class”).

3. **THIS COURT ORDERS** that Robert Seed be and hereby is appointed as the representative plaintiff for the class.

4. **THIS COURT ORDERS AND DECLARES** that the claims asserted on behalf of the class are negligence and breach of fiduciary duty.

5. **THIS COURT ORDERS** that the common issue be and hereby are certified as:

- (a) by its operation or management of Ross MacDonald from January 1, 1951 to the present day, did the defendant breach a fiduciary duty owed to the Student Class to protect them from actionable physical or mental harm?
- (b) by its operation or management of Ross MacDonald from September 1, 1963 to the present day, did the defendant breach a duty of care it owed to the Student Class to protect them from actionable physical or mental harm?
- (c) if the answer to either of the common issues (a) or (b) is “yes”, can the court make an aggregate assessment of damages suffered by all class members as part of the common issues trial?
- (d) are members of the Family Class entitled to recovery of their pecuniary losses resulting from injuries or damages to the members of the Student Class who attended or resided at Ross MacDonald from March 31, 1978 to the present day, pursuant to section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 and/or the equivalent legislation in other provinces?
- (e) if the answer to either of the common issues (a) or (b) is “yes”, does the defendant’s conduct justify an award of punitive damages?
- (f) if the answer to common issue (e) is “yes”, what amount of punitive damages ought to be awarded against the defendant?

6. **THIS COURT ORDERS** that within one hundred and twenty (120) days of the date of this order, the defendant shall make best efforts to send to class counsel a list of all known members of the Student Class, including their last known addresses and contact information.

7. **THIS COURT ORDERS** that within six (6) months of the date of this order, the defendant shall make 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.

8. **THIS COURT ORDERS** that within one hundred and twenty (120) days of the date of this order, the defendant shall make best efforts to send to class counsel a list of community agencies, including their contact information, that are funded by the defendant to provide services to members of the Student Class.

9. **THIS COURT ORDERS** that upon receipt, class counsel shall forthwith provide the list referenced in paragraphs 6 and 7 of this order (the “Crown’s List”) to the Canadian National Institute for the Blind (the “CNIB”). Within thirty (30) days of receiving the Crown’s List, the CNIB shall provide to Crawford Class Action Services (“Crawford”) the contact information of its clients that are named on the Crown’s List, to the extent such information appears in the CNIB’s current records. Crawford shall maintain and treat all information provided by the CNIB pursuant to this order as strictly confidential and shall use such information only for the purposes of compliance with the terms of this order.

10. **THIS COURT ORDERS** that class members shall be notified that this proceeding has been certified as a class proceeding as follows:

- (a) within thirty (30) days of receiving the contact information from CNIB as referenced in paragraph 9 of this order, Crawford shall:

- (i) distribute of a print notice in substantially the same form as the notice attached as Schedule “A” (the “Print Notice”) by regular mail and email to the persons for whom CNIB provided contact information and to any other persons who have contacted class counsel in respect of this action;
 - (ii) distribute an audio notice with the content substantially the same as Schedule “B” (the “Audio Notice”) by telephone voice-recording (a “Phone Blast”) to the persons for whom CNIB provided contact information and to any other persons who have contacted class counsel in respect of this action;
 - (iii) distribute the Print Notice by regular mail or email to the list of community agencies referenced in paragraph 8; and
- (b) within fifteen (15) days of this order, Crawford and class counsel shall
 - (i) post the Print Notice on their respective websites for this action, in readable text;
 - (ii) distribute the Print Notice as an automated response to any person sending an email to WRossMacDonaldclassaction@kmlaw.ca or to the Crawford email for this action; and
 - (iii) distribute the Audio Notice as an automated response to any person calling the toll-free telephone number for class counsel.
- (c) the plaintiff and class counsel shall make best efforts to distribute the Print Notice to any website, listserv or email list where they believe the notice will come to the attention of the class members;
- (d) class counsel shall provide the Print Notice to the Canadian Council for the Blind (CCB) and the Alliance for Equality of Blind Canadians (AEBC) and request that they post it on their websites, distribute it on any listserves they maintain or otherwise distribute it in a manner that will come to the attention of class members, such as via Phone Blast;
- (e) within forty-five (45) days of this order, the short version of the print notice in substantially the same form as the notice attached as Schedule “C” (the “Short Notice”) shall be published in a ¼ page ad in the following print publications: Brantford Expositor (two Saturdays), Hamilton Spectator (Saturday), Kitchener-Waterloo Record (Saturday), London Free Press (Saturday), Ottawa Citizen (Saturday), Ottawa LeDroit (Saturday), Ottawa Sun (Saturday), St. Catharines Standard (Saturday), The Globe and Mail (Saturday), Toronto Star (Saturday) and Toronto Sun (Sunday); and

(f) by forwarding the Print Notice to any Class Member who requests it.

11. **THIS COURT ORDERS** that the expense of notice in paragraphs 9 and 10 of this order 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.

12. **THIS COURT ORDERS** that Crawford be and hereby is appointed as the administrator to receive opt out forms from the class.

13. **THIS COURT ORDERS** that any class member may opt out of the class proceeding:

(a) by delivering a signed opt out coupon, the form of which is included as part of the Print Notice, or some other legible signed request to opt out to Crawford by April 1, 2013; or

(b) by completing an online opt out form on Crawford's website for this action, which online form must include a button to confirm the opt out.

14. **THIS COURT ORDERS** that no person may opt out a minor or a person who is mentally incapable, as defined in section 6 or 45 of the *Substitute Decisions Act* without leave of the court after notice to the Children's Lawyer and/or the Office of the Public Guardian and Trustee, as appropriate.

15. **THIS COURT ORDERS** that no class member may opt out of the class proceeding after April 1, 2013, except with leave of the court.

16. **THIS COURT ORDERS** that by April 30, 2013 Crawford shall serve on the parties and file with the court an affidavit listing all persons who have opted out of the class proceeding, if any.

17. **THIS COURT ORDERS** that the costs of the motion for certification shall be determined by further order of this court or agreement of the parties.

Justice C. Horkins

HORKINS J.

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

MAY 3 1 2012

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

A large, stylized handwritten mark, possibly a signature or initials, is written in black ink to the right of the registration information.

To Anyone Who Attended the W. Ross MacDonald School (formerly Ontario School for the Blind) 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 W. Ross MacDonald School, formerly the Ontario School for the Blind ("W. Ross MacDonald"). W. Ross MacDonald is a provincially-operated elementary and secondary school for children with visual disabilities.
- A Court has approved the lawsuit as a class action that includes anyone who was a student at W. Ross MacDonald from 1951 to the present day and certain of their family members. **If you know a former student of W. Ross MacDonald 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 OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in this lawsuit. Await the outcome. Share in possible money and benefits. Give up certain rights.</p> <p>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.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit. Get no money or benefits from it. Keep rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in that money or benefits. But, you keep any rights to sue the Province of Ontario on your own about the same legal claims in this lawsuit.</p>

- 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.
- Your options are explained in this notice. To be removed, you must act by **April 1, 2013**.

WHAT THIS NOTICE CONTAINS

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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 *Seed v. Ontario*, Court File No. CV-11-420734. The person who started this lawsuit is called the Plaintiff. 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 attended and resided at W. Ross MacDonald. The lawsuit says that students were emotionally, physically, and psychologically traumatized by their experiences at the school. 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 the claims in Court.

3. What is a class action?

In a class action one or more people called “representative plaintiffs” sue on behalf of people who have similar claims. All of these people with similar claims are called the “class” or “class members.” The court resolves the issues for all class members, except for those who remove themselves from the class.

The representative plaintiff in this case is Robert Seed. Mr. Seed attended W. Ross MacDonald for 11 years in the 1950s and 1960s.

4. Who is a member of the Class?

You are included in this lawsuit if:

- you attended or resided at W. Ross MacDonald at any time between 1951 and the present day;
- you are the parents, spouses, children or siblings of someone who attended or was in residence at W. Ross MacDonald between 1978 and the present day
- you are an estate trustee for a person who was a student or a family member of a student and that person was living on or after February 22, 2009

5. What are the Plaintiffs asking for?

Plaintiffs are asking for money or other benefits for the Class. They are also asking for attorneys’ fees and costs, plus interest.

6. 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 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 **April 1, 2013**.

7. 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.

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.

8. 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 money or 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. You cannot change your mind later and opt back into the class action.

To remove yourself, complete the Opt Out Form included with this notice or send a letter that says you want to be removed from the W. Ross MacDonald Class. Your letter must include your name, address, telephone number, and signature. The Opt Out Form or letter must be sent to W. Ross MacDonald Class Action Administrator, 3-505, 133 Weber Street North, Waterloo, Ontario, N2J 3G9, or by email at: optout@crowco.ca.

You can also get the Opt Out Form or complete the form online at www.crowco.ca.

Your opt out must be received by **April 1, 2013**.

Call 1-800-387-7222 (TTY: 1-800-387-7222) if you have any questions about how to get out of the Class.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky, LLP, of Toronto, Ontario to represent you and other Class Members as “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid?

You will not have to pay any of these fees and expenses of Class Counsel. If the Court grants their request, the fees and expenses would be deducted from any money obtained for the Class, or paid separately by the Province of Ontario.

A TRIAL

11. How and when will the Court decide who is right?

If the case is not dismissed or settled, the Plaintiff will have to prove his claims and the claims of the class at a trial. The trial would be in Toronto, Ontario. During the trial, a court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or the Province of Ontario are right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiff obtains money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website for the lawyers, www.kmlaw.ca/WRossMacDonaldClassAction, as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information about this case and opting out:

Koskie Minsky LLP (lawyers for the plaintiff and the class)

900-20 Queen Street West, Box 52

Toronto, Ontario M5H 3R3

Tel: 1.888.233.2852

Email: WRossMacDonaldclassaction@kmlaw.ca

W. Ross MacDonald Class Action Administrator

3-505, 133 Weber Street North

Waterloo, Ontario, N2J 3G9

Tel: 1-_____ (TTY: 1-_____)

Email: _____.

OPT OUT COUPON

This is **NOT** a claim form. Completing this OPT OUT COUPON will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding:

To: **W. Ross MacDonald Class Action Administrator**
3-505, 133 Weber Street North
Waterloo, Ontario, N2J 3G9

I understand that by opting out, I am confirming that I do not wish to participate in the *Seed v. Ontario* class proceeding relating to the W. Ross MacDonald School.

I understand that any individual action must be commenced within a specified limitation period or it will be legally barred.

I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Date _____

Signature of Witness
Name:

Signature of Class Member Opting Out
Name:

Print Name

Print Name

Telephone: _____

Note: To opt out, this coupon must be properly completed and received at the above-address no later than April 1, 2013.

Schedule "B"

AUDIO NOTICE

This notice is being sent to you by order of the Ontario Superior Court of Justice. It is for anyone who attended the W. Ross MacDonald School, formerly the Ontario School for the Blind, or anyone who is a family member of someone who attended that school.

There is a class action lawsuit against the Province of Ontario relating to the school. The lawsuit alleges that over the years students were emotionally, physically, and psychologically traumatized by their experiences at the school. These allegations have not yet proved.

You are automatically included in this lawsuit if:

- (a) you attended or resided at W. Ross MacDonald at any time between 1951 and the present day
- (b) you are the parent, spouse, child or sibling of someone who attended or was in residence at W. Ross MacDonald between 1978 and the present day
- (c) you are an estate trustee for a person who was a student or a family member of a student and that person was living on or after February 22, 2009

If you do not want to participate in this class action lawsuit, you must take steps to opt out by April 1, 2013.

The lawyers acting for the group are Koskie Minsky LLP.

For more information or to opt out, go to www.kmlaw.ca/wrossmacdonaldclassaction or call 1_____.

Again, for more information or to opt out, go to www.kmlaw.ca/wrossmacdonaldclassaction or call 1_____.

Schedule "C"

Legal Notice

To Anyone Who Attended the W. Ross MacDonald School
(formerly Ontario School for the Blind) or are the Family
Member of Someone Who Did

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

This notice is to advise of a lawsuit brought as a class action relating to W. Ross MacDonald School, formerly the Ontario School for the Blind ("W. Ross MacDonald"). It involves anyone who was a student at from 1951 to the present day and certain of their family members. **If you know a former student of W. Ross MacDonald who cannot read this notice please share this information with them.**

If you are within this group, you have a choice of whether to stay in the Class or not, and you must decide this now.

What is this case about?

The lawsuit says the Province of Ontario failed to properly care for and protect people who attended and resided at W. Ross MacDonald. The lawsuit says that students were emotionally, physically, and psychologically traumatized by their experiences at the school. The Province of Ontario denies these claims. The Court has not decided whether the Class or the Province of Ontario is right.

Are you included?

You are included in this lawsuit if:

- you attended or resided at W. Ross MacDonald at any time between 1951 and the present day;
- you are the parents, spouses, children or siblings of someone who attended or was in residence at W. Ross MacDonald between 1978 and the present day
- you are an estate trustee for a person who was a student or a family member of a student and that person was living on or after February 22, 2009

Who are the lawyers that represent the class?

Koskie Minsky LLP are the lawyers for the plaintiff and the class. You don't have to pay Koskie Minsky LLP for this case. Instead, the lawyers will be paid only if there is recovery of money or other benefits for the Class. If there is success, the lawyers would either receive a portion of recovery or be paid by the Province of Ontario.

What are your options?

Stay in the Class Action: You do not have to do anything To stay in the class action. 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.

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.

Get out of the Class Action: 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 any money or benefits from this lawsuit. To ask to be removed, send a letter to Class Action, W. Ross MacDonald Class Action Administrator, 3-505, 133 Weber Street North, Waterloo, Ontario, N2J 3G9 or go to www._____. The letter should say that you want to be removed from *Seed v. Ontario* class action and must include your name, address, telephone number, and signature. The deadline to opt out is **April 1, 2013**.

More information?

Go to www.kmlaw.ca/WRossMacDonaldClassAction or www.wrossclassaction.ca, call toll-free 1-____ (TTY: 1-____) or write to either:
Koskie Minsky LLP
900-20 Queen St. West, Box 52
Toronto, Ontario M5H 3R3

Schedule "C"

wrossmacdonaldclassaction@kmlaw.ca

W. Ross MacDonald Class Action Administrator, 3-505,
133 Weber Street North, Waterloo, Ontario, N2J 3G9, or
by email at: wross@crowco.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.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO**
Defendant

ROBERT SEED
Plaintiff
and

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900, Box 52
Toronto, Ontario
M5H 3R3

Kirk M. Baert LSUC#: 309420

Tel: 416-595-2117

Fax: 416-204-2889

Celeste Poltak LSUC#: 46207A

Tel: 416-595-2701

Fax: 416-204-2909

Jonathan Bida LSUC#: 54211D

Tel: 416-595-2072

Fax: 416-204-2907

Lawyers for the Plaintiff