

Court File No. *Cv. 15-54325900CP*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:



**YVONNE MARCHAND**

Plaintiff

- and -

**THE HOSPITAL FOR SICK CHILDREN, GIDEON KOREN, and JOEY GARERI**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 22, 2015

Issued by 

Local registrar

Address of court office <sup>393</sup> 361 University Ave. <sup>1019</sup> floor  
Toronto, ON  
M5G 1R3 1E6

**TO: THE HOSPITAL FOR SICK CHILDREN**  
555 University Avenue  
Toronto, Ontario, Canada  
M5G 1X8

**AND TO: GIDEON KOREN**  
555 University Avenue  
Toronto, Ontario, Canada  
M5G 1X8

**AND TO: JOEY GARERI**  
555 University Avenue  
Toronto, Ontario, Canada  
M5G 1X8

1. The plaintiff, on her own behalf and on behalf of the class members, claims:
  - (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff of the class;
  - (b) a declaration that The Hospital for Sick Children (“SickKids”) is liable in damages to the class members for negligence;
  - (c) a declaration that SickKids is vicariously liable for the acts and omissions of its officers, directors and employees;
  - (d) punitive damages in an amount that this court finds appropriate at the trial of the common issues;
  - (e) an order directing as may be necessary to determine issues not determined in the trial of the common issues;
  - (f) prejudgment interest and postjudgment interest, pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O 1990, c. C43, as amended (“CJA”);
  - (g) costs of this action on a full indemnity basis, or in an amount that provides substantial indemnity, plus pursuant to s. 26(9) of the CPA, the costs of notices and of administering the plan of distribution of the recovery in this action; and,
  - (h) such further and other relief as to this Honourable Court seems just.
  
2. The plaintiff, Yvonne Marchand, resides in Scarborough, Ontario. The plaintiff lost custody of her daughter as a result of a false-positive test result for alcohol abuse conducted by the defendants.
  
3. SickKids is a hospital located in Toronto, Ontario.
  
4. Motherisk Drug Testing Laboratory (“Motherisk”) was a department of SickKids. At all relevant times, it was owned, staffed, operated, and overseen by SickKids. The Motherisk laboratory was part of the Motherisk programing that at all relevant times, was conducted under the auspices of SickKids. For its laboratory work, Motherisk’s main customers were Ontario

child protection agencies seeking to determine if a parent or caregiver had used drugs or alcohol. The child protection agencies expected that Motherisk was providing adequate and reliable expert opinions to them to use in making decisions involving issues of child protection.

5. The defendant, Gideon Koren, is a physician and clinical toxicologist. He was the founder and laboratory director of Motherisk at all relevant times.

6. The defendant, Joey Gareri, was the laboratory manager of Motherisk at all relevant times.

7. Collectively SickKids, Koren and Gareri will be referred to as the “defendants.”

8. The analytical methods and interpretations of Motherisk were inadequate, unreliable, and did not meet internationally recognized forensic standards.

9. The plaintiff was involved in a custody dispute with the father of her daughter. The father made false allegations of alcohol abuse against the plaintiff. As a result, the Catholic Children’s Aid Society Toronto (the “Children’s Aid Society”) investigated and they retained the defendants to conduct the hair test analysis for alcohol abuse. The defendants conducted a hair test analysis and a false-positive result was obtained.

10. Knowing that she was not abusing alcohol, the plaintiff commissioned an independent test from an accredited laboratory which retested her hair for determining consumption of alcohol (the “Independent Test”). The Independent Test concluded that she was negative for alcohol abuse.

11. The Children's Aid Society presented the defendants' analysis at the custody trial. The laboratory manager rather than the author of the Independent Test attended in court to give evidence on behalf of the plaintiff. The judge refused to admit the Independent Test as evidence because the author was not present in court. As a result, the false-positive result obtained from the defendants was relied upon used to strip custody of her daughter away from the plaintiff.

12. The plaintiff pleads that the defendants owed a duty, which was breached and were negligent and liable to the plaintiff and the class for the acts and omissions of its officers, directors and employees as a result of the tests being inadequate and unreliable for use in child protection proceedings; for not operating in a manner that met internationally recognized forensic standards; and for failing to properly supervise those responsible.

13. The plaintiff pleads that by virtue of the defendants' negligence, the defendants are liable in damages to them and to the class members and their family members.

14. The family law class members are entitled to damages pursuant to section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended (the "*FLA*"). The damages for the family class members, without limitation, are pecuniary losses including loss of guidance, care and companionship reasonably expected to be received from their family member if the misconduct of the defendants had not occurred.

15. The plaintiff pleads and relies on the *CJA*, the *CPA*, the *FLA*, and the common law.

16. The Attorney General for Ontario will be added as a defendant after the 60 day notice is given under section 7(1) of the *Proceedings Against the Crown Act*.

December 22, 2015

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Lawyers for the Plaintiff

Yvonne Marchand  
Plaintiff and  
The Hospital For Sick Children, et al  
Defendants

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

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