

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

FRIDAY, THE 14th

JUSTICE BELOBABA

DAY OF DECEMBER, 2018



**MARC LEROUX AS LITIGATION GUARDIAN
OF BRIANA LEROUX**

Plaintiff

- and -

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

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for certification brought by the Plaintiff was heard on October 30 and 31, 2018 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion records of the Plaintiff and the Defendant, and on hearing submission of the lawyers for the Plaintiff and the Defendant,

1. **THIS COURT ORDERS** that the Plaintiff amend the statement of claim by removing the claim for breach of fiduciary duty;
2. **THIS COURT ORDERS** that the Plaintiff amend the litigation plan by removing any references to the family law class;
3. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

4. **THIS COURT ORDERS** the “Class” is defined as:

All persons who were alive as of April 10, 2015, who are eligible for ministry-funded adult developmental services and supports and funding, have been assessed by an application entity (DSO) and placed, at any point between July 1, 2011 to December 14, 2018, on any one or more of the service registries for: (i) “residential services and supports“, (ii) “caregiver respite services and supports” under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*; and (iii) “Passport” funding under the *Ministry of Community and Social Services Act*.

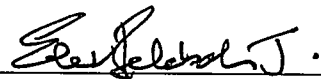
5. **THIS COURT ORDERS AND DECLARES** that the only causes of action asserted against the Defendant are negligence and breach of section 7 of the *Canadian Charter of Rights and Freedoms* (the “Charter”).

6. **THIS COURT ORDERS** that the common issues be and are hereby certified as follows:

- (1) By its operation or management of the service registries for Developmental Services, did the defendant breach a duty of care it owed to the class to protect them from actionable harm?
- (2) By its operation or management of the waitlists for Developmental Services, did the defendant breach the class members' *Charter* rights under s. 7?
 - (i) If the answer to common issue (2) is "yes", can the breach be saved by s. 1 of the *Charter*?
 - (ii) If the answer to common issue (2) is "yes", and the answer to common issue (2)(i) is "no", are the class members entitled to damages pursuant to s. 24(1) of the *Charter*?
- (3) If the answer to any of common issues (1) or (2) is "yes", does the defendant's conduct justify an award of punitive damages?

7. **THIS COURT ORDERS** that Briana Leroux be and is hereby appointed as the representative plaintiff for the Class.

8. **THIS COURT ORDERS** that Mark Leroux be and is hereby appointed as the litigation guardian of the representative plaintiff Briana Leroux.
9. **THIS COURT ORDERS** that Koskie Minsky LLP be and is hereby appointed as class counsel.
10. **THIS COURT ORDERS** that any other court action or application based on the subject matter of this action is stayed, as of the date of this Order, except for any individual court action or application in respect of an individual who has validly opted out of this proceeding.
11. **THIS COURT ORDERS** that no other court action or application may be commenced in Ontario in respect of the subject matter of this action without leave of this Court.
12. **THIS COURT ORDERS** that within ninety (90) days of the date of this Order, the parties shall consent to an order or a motion will be heard (subject to the availability of the case management judge) as to the form and manner in which Class Members shall be notified that this proceeding has been certified as a class proceeding and the manner in which Class Members may opt out.
13. **THIS COURT ORDERS** costs in the amount of \$90,000.00 (ninety thousand dollars), all-inclusive, shall be paid by the Defendant to the Plaintiff forthwith as agreed upon by the parties.



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

JAN 17 2019

DEPT. REG.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(CERTIFICATION)**

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