

AMENDED THIS 18 Jan 2019 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ()

THE ORDER OF Justice Belobaba
L'ORDONNANCE DU

DATED / FAIT LE Dec. 14, 2018

Court File No. CV-17-573091-00CP

Gerri Findlay

REGISTRAR SUPERIOR COURT OF JUSTICE
GREFFIER COUR SUPÉRIEURE OF JUSTICE

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

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 plaintiffs do 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 statement of claim 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 \$100,000 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 April 10, 2017
April 10, 2017

Issued by

January, 2019

"D. Rhoden"
Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, ON

TO: **HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**
Crown Law Office – Civil Law
720 Bay Street
8th Floor
Toronto, ON M5G 2K1
Tel.: 416-325-8535
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CLAIM

1. The plaintiff, on behalf of the Class as described herein, claims:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class and any appropriate subclass thereof;
 - (b) a declaration that the defendant breached its common law duties to the plaintiff and Class and was negligent by virtue of the facts and events described herein;
 - (c) a declaration that the defendant breached its duties to the plaintiff and Class, and violated their rights, under section 7 of the *Canadian Charter of Rights and Freedoms* by virtue of the facts and events described herein;
 - ~~(d)~~ a declaration that the defendant breached its fiduciary duties to the plaintiff and Class by virtue of the facts and events described herein;
 - ~~(e)~~(d) a declaration that the defendant is liable to the plaintiff and the Class for the damages caused by its breach of fiduciary, common law, or *Charter* duties by virtue of the facts and events described herein;
 - ~~(f)~~(e) damages for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
 - ~~(g)~~(f) punitive damages of \$10 million, or such other sum as this Honourable Court may find appropriate;
 - ~~(h)~~(g) damages or such other remedy as this Honourable Court may consider just and appropriate pursuant to section 24 of the *Charter*;
 - ~~(i)~~(h) an order appointing Marc Leroux as litigation guardian of the proposed representative plaintiff, Briana Leroux;
 - ~~(j)~~(i) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
 - ~~(k)~~(j) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
 - ~~(l)~~(k) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and

(m)(l) such further and other relief as to this Honourable Court may deem just and appropriate in all the circumstances.

OVERVIEW

2. The Province of Ontario has through statute and conduct undertaken to provide adults with developmental disabilities the services, supports or direct funding, to provide for their most basic human needs and daily safety ("Developmental Services"). In performance of this undertaking, adults with developmental disabilities are assessed and approved for Developmental Services, as prescribed by statute. Despite being assessed and approved for Developmental Services, the entitlement to such services is arbitrarily denied as a result of unreasonably managed waitlists, which are maintained by regional Developmental Services Ontario offices ("DSO Waitlists").
3. The DSO Waitlists are indeterminate and administered in an ad-hoc, inconsistent and unreasonable manner, denying eligible recipients statutory benefits which are necessary for their basic daily human needs and safety. Adults may spend years on the DSO Waitlists, requiring family members or other caregivers to provide the necessary services or supports, or going without such services. This practice damages the persons directly in need of such services, as well as their family and caregivers. The DSO Waitlists interfere with the life and security of the person for class members.
4. The defendant's legislated mandate is to ensure increased fairness, uniformity and continuity in terms of assessment, eligibility and access to Developmental Services. The defendant is the architect and overseer of the system in place controlling access to Developmental Services in Ontario and the DSO Waitlists.
5. The defendant is failing in its mandate. It has long been aware of the issues associated with DSO Waitlists but has failed to act in any meaningful, reasonable or prudent manner.
6. The result of the defendant's failings is an arbitrary, inconsistent and unreasonable system of administration in respect of DSO Waitlists in Ontario. Individuals with developmental disabilities who have been approved for Developmental

Services are denied such services, which are necessary to meet their basic daily needs, safety and well-being.

THE PARTIES

7. The plaintiff is Briana Leroux, by her litigation guardian Marc Leroux. The plaintiff is a person with a developmental disability as defined in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* ("2008 *Disabilities Act*"). The plaintiff is 19 years old and resides in Timmins, Ontario.

8. The defendant, Her Majesty the Queen in right of the Province of Ontario (the "Crown") is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, and the amendments thereto.

9. At all material times, the Crown, was responsible for the design, administration and management of the assessment and approval process for Developmental Services in Ontario and the DSO Waitlists.

10. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of all other persons who are or have been assessed and approved for services under the 2008 *Disabilities Act* and subsequently placed on a DSO Waitlist for approved services at any point since July 1, 2011.

11. The proposed members of the "Class" are

~~all persons, who were alive as of April 10, 2015, who have been assessed and approved as eligible for services, supports or direct funding by a Developmental Services Ontario office, and subsequently placed on a waitlist for any or all of the approved services, supports or funding, at any point since July 1, 2011. (the "Class")~~

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.

OVERVIEW OF LEGISLATION AND FLAWED SYSTEM

12. The legislation which governs the assessment for and provision of Developmental Services in Ontario is the 2008 *Disabilities Act*.

13. The 2008 *Disabilities Act* is administered by the Ministry of Community and Social Services ("MCSS"). When passed, it was intended to modernize developmental services in Ontario and replace the outdated, 35-year-old *Developmental Services Act*. It is also intended to ensure increased fairness, uniformity and continuity in terms of eligibility, assessment and access to Developmental Services and to simplify the process for accessing Developmental Services.

14. The 2008 *Disabilities Act* provides a complete and comprehensive scheme in respect of the assessment for and provision of Developmental Services to adult individuals with developmental disabilities resident in Ontario. The Minister is prescribed powers in respect of the administration, management, supervision and direction of entities which ration Developmental Services to adult individuals with a developmental disability in Ontario.

15. Section 3 of the 2008 *Disabilities Act* includes a definition of "developmental disability", which covers someone who has:

... the prescribed significant limitations in cognitive functioning and adaptive functioning and those limitations:

- Originated before the person reached 18 years of age
- Are likely to be lifelong in nature; and
- Affect areas of major life activity, such as personal care, language skills, learning abilities, the capacity to live independently as an adult or any other prescribed activity.

16. The 2008 *Disabilities Act* contemplates six areas of Developmental Services: (1) residential services and supports; (2) activities of daily living services and supports; (3) community participation services and supports; (4) caregiver respite services and supports; (5) professional and specialized services; and (6) person-directed planning services and supports. DSO Waitlists exist for these Developmental Services.

17. Developmental Services are delivered by service agencies or through direct funding. A person who wishes to receive Developmental Services must submit an application to an application entity as designated by the Minister. Such application entities are known as regional Developmental Service Ontario offices (DSO). A regional DSO serves as a central application point for all individuals with a developmental disability resident in Ontario. The application must be made in the region the individual resides. There are approximately nine (9) DSO regions in Ontario.

18. Individuals who apply for Developmental Services are considered eligible pursuant to the 2008 *Disabilities Act* if:

- (a) he or she has a developmental disability within the meaning of section 3 of the 2008 *Disabilities Act* and provides proof of the disability;
- (b) he or she is at least 18 years of age; and
- (c) he or she resides in Ontario.

19. Once an individual is found to be eligible, the priority of the application is to be assessed in accordance with a method of assessment as prescribed in policy directives which may be made by direct appointees of the Minister.

20. Provisions of the 2008 *Disabilities Act*, which are presently not in force, address the creation and management of waitlists for Developmental Services. No in-force provisions of the 2008 *Disabilities Act* address the creation or management of DSO Waitlists for Developmental Services. The 2008 *Disabilities Act* does not provide for the creation of DSO Waitlists for approved Developmental Services.

The Minister is Prescribed Powers for the Supervision and Management of Developmental Services

21. The Minister is given power for the overarching administration, supervision and management of the assessment for and provisions of Developmental Services prescribed under the 2008 *Disabilities Act*. For the purposes of assessing for and administering Developmental Services prescribed under the 2008 *Disabilities Act* the Minister may appoint one or more Directors. Directors under the 2008 *Disabilities Act* are prescribed powers to issue policy directives to service agencies and application entities, including

Policy directives
Service agencies

7. (1) A Director may issue policy directives to service agencies with respect to the following matters:

1. Performance standards and performance measures with respect to the provision of services and supports for persons with developmental disabilities.
2. Such other matters as may be prescribed.

Application entities

(2) A Director may issue policy directives to application entities with respect to the following matters:

1. Procedures to be followed in monitoring and administering direct funding to or for the benefit of persons with developmental disabilities under section 11.
2. Procedures to be followed in performing the following functions:
 - i. determining under section 14 eligibility for services and supports and funding under this Act,
 - ii. determining the method of assessment used under subsection 17 (1) to assess the needs of a person with a developmental disability for services and supports under this Act,
 - iii. determining the qualifications and service standards of the persons who may perform the assessment under subsection 17 (1) of the needs of a person with a developmental disability.

3. Performance standards and performance measures with respect to the performance of duties of the entities under this Act.
4. Such other matters as may be prescribed.

22. The 2008 *Disabilities Act* prescribes that all application entities shall comply with quality assurance measures as they may be prescribed and further that every application entity shall report to the Minister when requested and comply with any reporting requirements as prescribed.

23. The Crown has failed to exercise its powers in a reasonable and rational manner in the administration of the system of providing Developmental Services prescribed under the 2008 *Disabilities Act* to those individuals who have been assessed as eligible for such services. In particular, the Minister has failed to administer the DSO Waitlists in a reasonable and prudent manner, directly harming the members of the class.

24. The failures, as detailed below, which apply across the members of the Class consist of:

- (a) failing to act to reduce unreasonably long waitlist times which serve as an effective denial of approved Developmental Services;
- (b) creating waitlists of indeterminate length for Developmental Services which are essential to the Class Members' basic human needs, safety and security;
- (c) failing to have a consistent and rational scheme of prioritization for Class Members on the DSO Waitlists;
- (d) failing to create a cohesive system to rationally and efficiently allocate pre-existing resources to Class Members on DSO Waitlists;
- (e) failing to provide class members with Developmental Services which class members are eligible and approved for pursuant to the 2008 *Disabilities Act*;

- (f) arbitrarily cutting off existing Developmental Services to individuals when they reach the age of 18, regardless of pre-approval for such services and their continuing developmental disability; and
- (g) returning Class Members to a DSO Waitlist when Developmental Services are discontinued.

THE PLAINTIFF'S EXPERIENCES

25. The plaintiff is a ~~19~~20 year old individual with a developmental disability who resides in Timmins Ontario. The plaintiff is non-verbal and requires support and services seven (7) days a week, twenty four (24) hours a day. The services and support for the plaintiff are necessary to fulfill her daily minimum needs for living and security.

26. Until the plaintiff's 18th birthday, which occurred on February 7th, 2016, the defendant provided to the plaintiff the necessary supports and services to permit her to function and live. The services and supports were provided by the defendant as a result of the plaintiff's developmental disability. The supports and services provided to the plaintiff until February 7th, 2016 were administered by the defendant through the Ministry of Children and Youth Services ("MCYS"). On the Plaintiff's 18th birthday all services provided by the defendant were arbitrarily and unreasonably discontinued. By virtue of the plaintiff's significant disabilities, which remained unchanged after her 18th birthday, her needs for daily living remained the same.

27. Approximately 6 months prior to the plaintiff's 18th birthday, her family began the process of applying for developmental services pursuant to the process established under the 2008 *Disabilities Act*, which is administered by the MCSS.

28. The plaintiff was assessed for her eligibility to Developmental Services throughout August and September of 2016. The Plaintiff was approved for Developmental Services by the regional Developmental Services Ontario office in Timmins, Ontario. While the plaintiff was eligible and approved, she was subsequently placed on a waitlist. The regional DSO did not, and could not, provide any estimate as to the length of wait.

29. Over 1 year later, as of the date of the issuance of this claim, the plaintiff remains on a DSO Waitlist and will remain on such a waitlist for an indeterminate time into the future.

30. In order for the daily living needs of the plaintiff to be met, as a result of her developmental disability, the plaintiff's family has been required to provide the Developmental Services she has been approved for, which would otherwise be provided pursuant to the 2008 *Disabilities Act*. The plaintiff's family been required to undertake significant personal and financial sacrifices to provide the necessary services and supports to attempt to maintain the basic minimum standards necessary for the safety and security of the plaintiff.

KNOWLEDGE OF THE CROWN

31. Administrative deficiencies resulting in unreasonable waitlists for the Class have been an identifiable and documented problem for several years. The administrative deficiencies with respect to DSO Waitlists for Developmental Services continues to this day, despite the issue repeatedly being brought to the attention of the defendant. The defendant knew or ought to have known of the administrative deficiencies in respect of the supervision management and oversight of DSO Waitlists for approved Developmental Services prescribed by the 2008 *Disabilities Act*.

32. The issue of DSO Waitlists has now been subjected to criticism in three (3) recent and separate reports, by three (3) separate independent entities.

Report of the "Select Committee on Developmental Services" (July 2014)

33. In 2013, the Ontario Legislative Assembly gave unanimous consent to appoint a Select Committee on Developmental Services ("**Select Committee**"). The Select Committee was tasked with providing a report of observations and recommendations to address a comprehensive strategy to address the needs of those with a developmental disability in Ontario.

34. In 2014, the Select Committee delivered a report ("**Report of the Select Committee**"). The Report of the Select Committee made several recommendations, while specifically addressing the issues of waitlists. It stated:

Above all, the Committee heard repeatedly that individuals and families who need developmental services and supports are in crisis. We heard that after struggling to obtain services and enduring waitlists for years, many families feel pushed to the brink of disaster. Only when they are forced into crisis are they able to access desperately needed assistance. When that happens, others are bumped further down the waitlists.

35. The Report of the Select Committee recommended, among others, that:

- (a) A new Inter-Ministerial Committee on Developmental Services ("**IMCDS**") be created with the mandate of implementing the recommendations in the report; and
- (b) The IMCDS convene immediately and as its first task eliminate all waitlists for developmental services and supports within 12 months.

36. The Select Committee stated that their recommendations were guided by five "inextricably linked principles", which included among others:

No More Waitlists

The Committee firmly believes that all people have a right to appropriate and timely supports and services throughout their lives. The provision of developmental services and support should be mandated and waitlists eliminated. The elimination of existing waitlists must be the top priority for government.

37. The Select Committee made clear that the elimination of all DSO Waitlists for developmental services and supports was the most important priority of the Select Committee.

38. While MCSS undertook to implement most of the Select Committee's recommendations, it rejected the recommendation to eliminate all DSO Waitlists.

2014 Report of the Ontario Auditor General

39. In 2014, Ontario's Auditor General reported on the results of an audit into whether the MCSS has effective mechanisms to meet the residential needs of individuals with developmental disabilities. The Auditor General highlighted, among other issues,

an inconsistency of access to – and lengthy waitlists for – residential placements in the community for those with a developmental disability. The Auditor General found that:

- a) The Ministry estimated there were 62,000 adults in Ontario with developmental disabilities in 2012, about half of whom needed residential services. Of these, 17,900 people received residential services in the 2013/14 fiscal year, 98% of them adults. Another 14,300 adults were on a wait list at year's end;
- b) From 2009/10 to 2013/14, the number of people waiting for adult residential services increased 50% while the number served increased only 1%. We calculated that it would take 22 years to place everyone who is currently waiting for a residence, assuming no one else joins the list;
- c) Eligibility and needs assessment of applicants has improved, but the Ministry still needs to complete the development of a consistent and needs-based prioritization process. People with the highest-priority needs are not usually placed first because residential services placements go to people who are the best fit for the spaces that become available, rather than to those who are assessed as having the highest priority needs;
- d) The Ministry created the Developmental Services Consolidated Information System database in 2011 for client information. However there are problems with the accuracy and completeness of the wait management information;
- e) [S]ignificant shortcomings remain in the computer system used to track people waiting for or receiving services. In addition, the Ministry has yet to complete development of a consistent prioritization process or revise its funding methods to tie funding to individuals' needs; and
- f) [T]he average time to fill a vacancy in 2013/14 in the three regions we visited ranged from 92 to 128 days.

40. The Auditor General recommended, among several recommendations, that the MCSS "develop a consistent prioritization process across the province" and "develop a consistent wait-list management process across the province".

2016 Ombudsman Report – Nowhere to Turn

41. The 2016 Ombudsman Report, entitled *Nowhere to Turn*, is a product of the Ombudsman's four (4) year investigation of more than 1,400 complaints from families of

adults with developmental disabilities who are in crisis situations (the "2016 Ombudsman Report").

42. The 2016 Ombudsman Report found that "The gap between need and availability of resources is profound and a symptom of a system in crisis."

43. The 2016 Ombudsman Report noted that there remains a fragmented, confusing, and complex assortment of hundreds of community agencies and local processes in Ontario, impossible for many individuals with developmental disabilities and their families to navigate. A central concern for the Ombudsman in 2016 was the issue of "interminable waitlist delays" and the 2016 Ombudsman Report Noted that:

The present demand for services far outstrips the supply, leaving thousands stranded on waiting lists. While steps have been taken to create more uniformity and standardization for accessing urgent resources, there is still marked inconsistency in how limited funds are prioritized and distributed.

~~G. THE CROWN'S FIDUCIARY DUTY~~

~~44. The Class consists of individuals whom have been identified as having a developmental disability and have been assessed and approved for necessary Developmental Services, pursuant to the 2008 *Disabilities Act*. The Class are individuals whom require the approved Developmental Services to have their basic daily needs met, including eating, bathing, personal hygiene, shelter and other essential services. The crown has undertaken to provide the approved Developmental Services as prescribed in the 2008 *Disabilities Act*. The Class are persons to whom the Crown owes fiduciary duties. These duties include, but are not limited to, the duty to ensure the Developmental Services for which Class Members have been approved are not arbitrarily or unreasonably denied, discontinued, delayed or otherwise withheld.~~

~~45. Class Members had a reasonable expectation that the Crown would act in their best interests with respect to the administration of approved Developmental Services through the DSO Waitlists without an unreasonable or indefinite delay by virtue of the following:~~

- (a) ~~the Crown's creation and direction of a system of assessment and approval for Developmental Services;~~
- (b) ~~the dependence of Class Members on the Crown and their complete inability to provide the essential Developmental Services independent of the Crown;~~
- (c) ~~the Crown's prior pre-existing provision of Developmental Services to the Class Members; and~~
- (d) ~~the Crown's assumption of responsibilities for assessing and providing services and supports to the Class Members.~~

46. ~~At all material times, the Class Members have been reliant on the Crown for the administration of the DSO Waitlists, which they relied on for the provision of approved Developmental Services to meet their most basic needs. By virtue of the relationship between the Class Members and the Crown, being one of trust, reliance and dependence in respect of the Class Members, the Crown owed a fiduciary duty to ensure that the Class Members are treated in a consistent manner which does not arbitrarily or unreasonably jeopardize their daily safety and wellbeing.~~

47. ~~As result of its sole jurisdiction over the administration, management and supervision of DSO Waitlists, the Crown owed a fiduciary duty to the Class Members which includes, but is not limited to, the duty to exercise its unilateral discretion properly and effectively and in the best interests of the Class Members while administering the system of DSO Waitlists.~~

~~THE CROWN BREACHED ITS FIDUCIARY DUTY TO THE CLASS~~

48. ~~The crown has administered, managed or supervised the DSO Waitlists in a manner which denies the Class Members Developmental Services which they have been approved for and are essential to meeting their daily basic living needs. The operation of the DSO Waitlists in a manner which denies the Class Members services to satisfy their basic daily living needs, for which they are approved and eligible, is degrading and~~

~~harmful to the Class Members. The Crown knew of, or is wilfully blind to, the negative impacts caused by its administration of the DSO Waitlists.~~

~~49. The Class Members were entitled to rely and did rely upon the Crown, to their detriment, to fulfill its fiduciary duty. The particulars of the Crown's breach of its fiduciary duty include, but are not limited to:~~

- ~~(a) failing to act to reduce unreasonably long waitlist times which serve as an effective denial of approved Developmental Services;~~
- ~~(b) creating waitlists of indeterminate length for Developmental Services which are essential to the Class Member's basic human needs, safety and security;~~
- ~~(c) failing to have a consistent and rational scheme of prioritization for Class Members on the DSO Waitlists;~~
- ~~(d) failing to create a cohesive system to rationally and efficiently allocate pre-existing resources to Class Members on DSO Waitlists;~~
- ~~(e) failing to provide class members with Developmental Services which class members are eligible and approved for pursuant to the 2008 Disabilities Act;~~
- ~~(f) arbitrarily cutting off existing Developmental Services to individuals when they reach the age of 18, regardless of pre-approval for such services and their continuing developmental disability;~~
- ~~(g) returning Class Members to a DSO Waitlist when Developmental Services are discontinued;~~
- ~~(h) failing to properly exercise discretion in determining an appropriate length of time for Class Members be subjected to a DSO Waitlist for approved Developmental Services;~~

- ~~(i) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the administration of DSO Waitlists;~~
- ~~(j) putting its own interests, and those of its employees, agents and other persons under its supervision, ahead of the interests of Class Members;~~
- ~~(k) failing to provide adequate financial resources to facilitate the reasonable administration of DSO Waitlists and provision of Developmental Services;~~
- ~~(l) failing to respond adequately, or at all, to multiple recommendations which were made concerning the DSO Waitlists; and~~
- ~~(m) failing to safeguard the psychological, physical and emotional needs of the Class.~~

~~50. The Class Members suffered damages as a result of the above noted breaches, the particulars of which are set out later below.~~

THE CROWN'S DUTY OF CARE

~~51.44.~~ The Crown created, administered, supervised and managed the DSO Waitlists during the class period.

~~52.45.~~ Amongst other things, the Crown was solely responsible for:

- (a) the management, operation and administration of MCSS during the class period;
- (b) the administration of the 2008 *Disabilities Act* as well as any regulations relating to the assessment for and provision of Developmental Services;
- (c) directing the criteria by which an individual may be assessed and provided Developmental Services prescribed by the 2008 *Disabilities Act*;

- (d) directing the criteria by which individuals may be prioritized for eligible Developmental Services; and
- (e) providing the necessary directions or resources to ensure the reasonable and effective operation of DSO Waitlists for Developmental Services which have been approved.

53.46. The Crown owed a common law duty to the Class Members as a result of its relationship of proximity. The harm and damages suffered by the Class Members were reasonably foreseeable as a result of the Crown's acts and omissions, constituting a breach of the common law duty.

THE CROWN'S NEGLIGENCE

54.47. The Crown breached its duty of care to Class Members in its administration, management or supervision of the DSO Waitlists.

55.48. The Crown breached its common law duties to the Class through its negligent failure to properly administer, supervise and manage DSO Waitlists for approved services.

56.49. In particular, the Crown acted negligently by:

- (a) failing to act to reduce unreasonably long waitlist times which serve as an effective denial of approved Developmental Services;
- (b) creating waitlists of indeterminate length for Developmental Services which are essential to the Class Member's basic human needs, safety and security;
- (c) failing to have a consistent and rational scheme of prioritization for Class Members on the DSO Waitlists;
- (d) failing to create a cohesive system to rationally and efficiently allocate pre-existing resources to Class Members on DSO Waitlists;

- (e) failing to provide class members with Developmental Services which class members are eligible and approved for pursuant to the 2008 Disabilities Act;
- (f) arbitrarily cutting off existing Developmental Services to individuals when they reach the age of 18, regardless of pre-approval for such services and their continuing developmental disability;
- (g) returning Class Members to a DSO Waitlist when Developmental Services are discontinued;
- (h) failing to properly exercise discretion in determining an appropriate length of time for Class Members be subjected to a DSO Waitlist for approved Developmental Services; and
- (i) failing to respond adequately, or at all, to complaints or recommendations which were made concerning the administration of DSO Waitlists.

57.50. The Class Members suffered damages as a result of the Crown's negligence, the particulars of which are set out further below.

BREACHES OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

58.51. The conditions particularized above violate the basic essential human needs of the Class Members and, as such, interferes with their life and security of the person constituting a violation of their rights under Section 7 of the *Charter of Rights and Freedoms* ("*Charter*").

59.52. The Developmental Services prescribed under the 2008 *Disabilities Act* are essential to meeting the basic daily living needs of the Class Members. The Developmental Services denied to the Class Members are prescribed by the 2008 *Disabilities Act*, and the Class Members have been approved for such services. As a result of the Class Members' developmental disabilities, the Class Members cannot provide or secure the approved Developmental Services on their own. The indeterminate and unreasonable length of DSO Waitlists is a denial of the approved Developmental

Services. The approved waitlisted Developmental Services are essential to the Class Member's ability to maintain basic hygiene, sustenance, shelter and safety.

~~60-53.~~ The Class Members' eligibility for Developmental Services, as determined through a DSO assessment process, coupled with an unreasonable and indeterminate denial of such services via DSO Waitlists, violates the right of the Class to life, liberty and security of the person, contrary to section 7.

~~61-54.~~ The Plaintiff pleads that the Class is entitled to damages pursuant to Section 24(1) of the *Charter*. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

DAMAGES SUFFERED BY THE CLASS

~~62-55.~~ The plaintiff's claim, and the claim of each Class Member, is limited to the amount of the plaintiff's or other Class Members' damages that would be apportioned to the defendant in accordance with the relative degree of fault that is attributable to the defendant's negligence. The plaintiff's claim is against the defendant for those damages that are attributable to its proportionate degree of fault, and she does not seek, on her own behalf or on behalf of the Class, any damages that are found to be attributable to the fault or negligence of any other person, or for which the defendant could claim contribution or indemnity.

~~63-56.~~ The Crown knew, or ought to have known, that as a consequence of its administration, management or supervision of the DSO Waitlists ~~in breach of its fiduciary duty,~~ in a negligent manner and in a manner that infringed upon the Class Members' *Charter* rights, the Class would suffer physical, mental, emotional, psychological and economic harm.

~~64-57.~~ As a result of the Crown's ~~breach of its fiduciary duty and its negligence,~~ the Class Members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) pain and suffering;

- (b) depression, anxiety, emotional distress and mental anguish;
- (c) development of new mental, psychological or psychiatric disorders;
- (d) impairment to their dignity and physical integrity;
- (e) denial of the basic necessities of life; or
- (f) the loss of general enjoyment of life.

65-58. The plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that Class Members were being unreasonably denied approved Developmental Services necessary to meeting their basic daily needs. Further, the Crown is strictly liable in tort for the damages enumerated herein as the Crown was aware that its administration, supervision or management of DSO Waitlists was in breach of the duties it owed to the Class Members.

PUNITIVE/AGGRAVATED DAMAGES

66-59. The high-handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Crown breached its ~~fiduciary duty and~~ duty of good faith owed to individuals who were approved for Developmental Services necessary for their most basic daily needs.

67-60. The approved Developmental Services would allow the Class Members to live with dignity. Over the class period, the plaintiff and the other Class Members were treated in a manner that could only result in significant physical and mental impacts for vulnerable individuals who all have a developmental disability. The unreasonable denial of approved Developmental Services directly harmed the dignity and wellbeing of the Class Members.

68-61. In these circumstances, the plaintiff and the other Class Members request aggravated or punitive damages.

69-62. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

70-63. The trial of the action should take place in the city of Toronto, in the Province of Ontario.

April 10, 2017

January , 2019

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Plaintiff

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

Court File No. CV-17-573091-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

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