

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
) WEDNESDAY, THE 3rd
)
JUSTICE AKBARALI)
) DAY OF APRIL
) , 2024

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

Plaintiff

- and -

**HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF ONTARIO**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF CERTIFICATION ORDER

THIS MOTION made by the Plaintiff, for an Order approving the notice of certification in this action as a class proceeding was read this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

WHEREAS this action was certified as a class proceeding by the Order of Justice Belobaba, dated December 14, 2018, restored by the Order of the Court of Appeal for Ontario, dated May 4, 2023,

AND ON BEING ADVISED that the parties consent to this Order,

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

- (1) by Class Counsel delivering a notice, in substantially the same form as the notice attached hereto as **Schedule “A”** (the “**Publication Notice**”) and

attached hereto as **Schedule “B”** (the “**Long Form Notice**”), by e-mail or regular mail, within thirty (30) days from the date of this Order to any potential class member who has contacted Class Counsel;

- (2) by Class Counsel delivering, within thirty (30) days of this Order the Publication Notice and Long Form Notice, by regular mail, along with a covering letter in a form and content agreed upon by the parties, to
 - (i) all MCCSS-funded adult developmental services agencies;
 - (ii) the Public Guardian and Trustee;
 - (iii) the Family Support Networks;
- (3) by Class Counsel placing, within thirty (30) days of the date of this order, the Publication 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;
- (4) by Class Counsel requesting the ARCH Disability Law Office to distribute the Publication Notice and Long Form Notice to its distribution list;
- (5) by Class Counsel requesting that Community Living Ontario (CLO) post the Publication Notice in its weekly newsletter and/or the CLO [website](#);
- (6) by posting the Publication Notice and Long Form Notice on Class Counsel's website;
- (7) by the Defendant posting the Publication Notice and Long Form Notice in all Ontario Disability Support Program (ODSP) Offices;
- (8) by the Defendant requesting posting notice on the Partners for Planning [website](#);
- (9) by Class Counsel forwarding the Publication Notice and Long Form Notice to any class member who requests it; and

(10) by Class Counsel establishing a toll-free 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.

2. **THIS COURT ORDERS** that the expenses of notice in paragraphs 2-4 of this Order shall be paid by the Plaintiff and the Defendant in equal portions, subject to review and readjustment by agreement or order at the termination of this proceeding.

3. **THIS COURT ORDERS** that a class member may opt out of the class proceeding by delivering a signed opt-out coupon, a copy of which is attached as **Schedule “D”**, or some other legible signed request to opt out, by 90 days after the publication date of notice (the “**Opt Out Deadline**”), to Class Counsel.

4. **THIS COURT ORDERS** that if a Class Member has delivered an opt-out coupon to Class Counsel, they may withdraw their opt-out before the Opt-Out Deadline by advising Class Counsel, in writing, that they wish to withdraw their opt-out.

5. **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.

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

JUSTICE AKBARALI

Published on: [insert date]

SCHEDULE "A"

PUBLICATION NOTICE

Were You Eligible and Assessed for Ministry of Children, Community and Social Services (formerly Ministry of Community and Social Services)-Funded Adult Developmental Services and Supports and Funding and Placed on a Service Registry between July 1, 2011 and December 14, 2018?

A lawsuit may affect you. Please read this carefully.

A class action is happening for people who were alive as of April 10, 2015 and eligible for ministry-funded adult developmental services and supports and funding, who were assessed by an application entity (DSO) and placed on these service registries between July 1, 2011 to December 14, 2018:

- (i) "residential services and supports" and ,
- (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*.

If you are a Class member, you can choose to stay in or leave the Class.

Option 1: Stay in the class action: To stay in the class action, you do not have to do anything. If money or benefits are obtained, you will be told about how to make a claim. You will be legally bound by all orders and judgments in the class action, and you will not be able to sue Ontario separately about the legal claims in this case.

Option 2: Get out of the class action: If you want to leave the class action, you must submit an opt out form by [insert opt out deadline]. Opt out forms are available here: kmlaw.ca/waitlistclassaction. You can also opt out by writing to Class Counsel at the address below and telling them that you want to be removed from this class action. Please include your name, address, telephone number and/or email address in the letter and have it post marked by [insert deadline] If you remove yourself, you cannot get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP ("Class Counsel") to represent the Class. You don't have to pay Class Counsel to participate. 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 to be paid separately by Ontario.

To contact class counsel and for more information about your rights:

- Go to kmlaw.ca/waitlistclassaction
- Email waitlistclassaction@kmlaw.ca
- Call toll-free 1-866-474-1740 (Dial 711 before number for TTY)
- Write to:
 - Developmental Services Waitlist Class Action
 - Attn: Communications Department
 - Koskie Minsky LLP
 - 20 Queen Street West, Suite 900
 - PO Box 52
 - Toronto, ON
 - M5H 3R3

SCHEDULE “B”
LONG FORM NOTICE

Published on: [insert date]

**Were You Eligible and Assessed for Ministry-Funded Adult
Developmental Services and Supports and Funding and
Placed on a Service Registry between July 1, 2011 and
December 14, 2018?**

If YES, A Class Action May Affect Your Rights.

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

You could be affected by a class action involving adult developmental services, supports, and funding.

You are a member of the Class if all of the items on the following list apply to you:

- You are eligible for Ministry of Children, Community and Social Services (formerly Ministry of Community and Social Services)-funded adult developmental services, supports and funding;
- You 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:
 - “residential services and supports” under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;
 - “caregiver respite services and supports” under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*; and
 - “Passport” funding under the *Ministry of Community and Social Services Act*.

If you know someone who you believe is a Class member who cannot read this notice, please share this information with them.

SCHEDULE “B”

LONG FORM NOTICE

The Court has not decided whether Ontario did anything wrong, and there still has to be a court case about whether Ontario did anything wrong. There is no money available to Class members now and no guarantee there will ever be any money awarded. However, if you are a Class member your rights are affected, and you have a choice to make now. This notice is to help you make that choice.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual 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 Ontario on your own about the same legal claims in this lawsuit.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit and get no 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 those. But, you keep any rights to sue Ontario on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

- Lawyers must prove the claims against Ontario at a trial or a settlement must be agreed on. If money or benefits are obtained and you have stayed in the lawsuit you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by **[90 days from publication date of notice]**

WHAT THIS NOTICE CONTAINS

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2. What is this lawsuit about?
3. Why is this a class action?
4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

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7. What happens if I do nothing?
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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 a Class member, you may have legal rights and options before the Court decides whether the claims being made against Ontario on your behalf are correct. This notice explains all of these things.

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *Leroux v. Ontario*, Court File No. CV-17-573091-00CP. The person who sued is called the Plaintiff. Ontario is the Defendant.

2. What is this lawsuit about?

In the lawsuit, the plaintiff alleges that Ontario has been negligent, and breached section 7 of the *Canadian Charter of Rights and Freedoms*, by virtue of “waitlisting” Class Members for residential services and supports, caregiver respite services and supports, and/or Passport funding. Ontario denies these claims. The Court has not decided whether the Plaintiff or Ontario is right. The lawyers for the Plaintiff will have to prove their claims in Court.

3. Why is this a class action?

In a class action, a person called the “Representative Plaintiff” (in this case, Briana Leroux and her litigation guardian Marc Leroux) sues on behalf of people who have similar claims. This group of people is called a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Class includes:

All persons who were alive as of April 10, 2015, who are eligible for ministry-funded adult developmental services and supports and funding, 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. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class. She is also asking for lawyers' 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 Ontario did anything wrong, nor have the two sides settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, there will be another notice about how Class members can ask for a share.

The class action has received financial support from the Class Proceedings Fund. There will be a levy that reduces the amount of any award or settlement funds to which Class Members may become entitled that is the sum of the amount of any financial support paid from the Fund and 10 per cent of the amount of the award or settlement funds payable to Class Members, if any.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by **[90 days from notice publication date]**.

7. What happens if I do nothing at all?

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

8. What if I don't want to be in the Lawsuit?

If you do not want to be 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 from the lawsuit. You will not be bound by any Court orders or judgements in the class action and you keep your right to sue Ontario separately as an individual regarding the issues in this case.

To remove yourself, send a letter to Class Counsel that says you want to be removed from the Class in *Leroux v. Ontario*. Include your name, address, telephone number, and signature. You can also get an Opt Out Form at kmlaw.ca/waitlistclassaction.

Whether you use a letter or an Opt Out Form, you must send your request to be removed from the class action by no later than **[90 days from notice publication date]** by email to waitlistclassaction@kmlaw.ca or by mail to:

Developmental Services Waitlist Class Action
 Attn: Communications Department
 Koskie Minsky LLP
 20 Queen Street West, Suite 900
 PO Box 52
 Toronto, Ontario M5H 3R3

Opt out forms sent by mail must be postmarked no later than **[90 days from notice publication date]**.

Call toll-free 1-866-474-1740 (Dial 711 first for TTY) 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 from Toronto to represent you and other Class Members as “Class Counsel.” You **will not be personally 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?

Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class or paid separately by the Defendant.

A TRIAL

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

If the lawsuit is not dismissed or settled, the Plaintiff will have to prove his claims at a trial that will take place in Toronto. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or Ontario is 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, there will be another notice 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, [website], as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at kmlaw.ca/waitlistclassaction, or by contacting Class Counsel:

- By calling toll free at 1-866-474-1740 (Dial 711 first for TTY)
- By email to waitlistclassaction@kmlaw.ca
- Or in writing to:

Developmental Services Waitlist Class Action
Attn: Communications Department
Koskie Minsky LLP
20 Queen Street West, Suite 900
PO Box 52
Toronto, Ontario M5H 3R3

SCHEDULE "C"

Publication	Circulation	Unit Type/Size
Globe & Mail	416,409	¼ Page
National Post	181,525	¼ Page
Toronto Star	440,442	¼ Page
Ottawa Citizen	98,204	¼ Page
The Windsor Star	54,767	¼ Page
The Hamilton Spectator	116,635	¼ Page
London Free Press	72,791	¼ Page
Kingston Whig-Standard	18,668	¼ Page
The Chronicle-Journal	17,200	¼ Page

SCHEDULE "D" - OPT OUT FORM

To: Developmental Services Waitlist Class Action
Attn: Communications Department
Koskie Minsky LLP
20 Queen Street West, Suite 900
PO Box 52
Toronto, Ontario, M5H 3R3
waitlistclassaction@kmlaw.ca

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 named below:

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

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

MARC LEROUX AS LITIGATION GUARDIAN

OF BRIANA LEROUX

Plaintiff

- and -

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I may have must be commenced within a specified limitation period or it will be legally barred. I understand that I must mail this opt-out form before **[Opt out Deadline]** or else it will not be valid.

I understand that the filing 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.

Name of Class Member: _____

Name of Guardian of Property (if applicable): _____

Telephone of Class Member
or Guardian of Property (if applicable): _____

Signature of Witness

Signature of Class Member Opting Out
or Guardian of Property (if applicable)

Name of Witness: _____

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Toronto ON M5H 3R3

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