
NOTICE

OFFICIAL COURT NOTICE

IF YOU ARE A CANADIAN RESIDENT AND WERE A PATIENT AT BRITISH COLUMBIA WOMEN'S HOSPITAL AND HEALTH CENTRE BETWEEN JUNE 1, 2020 AND JUNE 30, 2021 WHO RECEIVED TREATMENTS DIRECTLY OR INDIRECTLY FROM BRIGITTE CLEROUX, WHO WAS WORKING AS AN UNLICENSED NURSE, YOUR RIGHTS ARE AFFECTED BY A CLASS ACTION.

A class action has been certified by the B.C. Supreme Court in *Massie v Provincial Health Services Authority*, SCBC S 2110997. The action was certified on July 25, 2023.

The underlying lawsuit alleges that the Provincial Health Services Authority (“PHSA”), which operates BC Women’s Hospital and Health Center (“BCWH”), hired Brigitte Cleroux (“Cleroux”) to work as a registered nurse when Cleroux was not licensed or qualified to do so. The claim alleges that Cleroux’s access to confidential patient records and presence during patient treatment violated the privacy rights of patients. PHSA denies the allegations, which have not been proven, and is defending the lawsuit.

The Court held that the issue of whether Cleroux’s presence during, and involvement with, the care of patients constitutes actionable willful invasion of privacy is common to all class members. The Court certified two issues, to be heard in a common issues trial:

- Do the direct or indirect treatments provided by Cleroux constitute the Tort of Wilful Violation of Privacy pursuant to s. 1 of the Privacy Act by Cleroux and if so, is PHSA vicariously liable for the actions of Cleroux?
- Should the court award punitive damages against PHSA, and if so, in what amounts?

The class includes all residents of Canada who were patients at BCWH and who received treatments, directly or indirectly, from Cleroux from June 1, 2020 to June 30, 2021.

The Court declined to certify the action on the issues of PHSA’s alleged negligence, Cleroux’s alleged battery, PHSA’s alleged vicarious liability for Cleroux’s alleged battery, and whether class members sustained physical and psychological injury for any reason. The Court determined that these issues are too individualized to be dealt with in a class action. Individuals wishing to pursue these claims must commence their own individual lawsuit. Class counsel can help you understand your options, or you can retain another lawyer. Please note that there are strict timelines for commencing civil actions. In order to avoid any issues relating to limitation periods, you should contact a lawyer at your earliest convenience, and ahead of any potential expiration date, which class counsel believes may be as early as November 23, 2023.

This class action is continuing, and there are no funds to pay to class members at this time.

Your legal rights are affected by this case. Please read this notice carefully.

If you are still a patient at BCWH, this lawsuit will not affect your ongoing relationship with BCWH.

YOUR LEGAL RIGHTS	
If you want to be included as a class member.	Do nothing now. Further notices will be published when it is time to submit a claim. Contact class counsel to have any further notices sent directly to you. See question 17 for lawyer contact information and websites.
If you do not wish to be included as a member in this class proceeding.	You may opt out. You will be able to sue PHSA in your own action, if you wish. If you opt out, you will not be bound by any determinations made by the Court and you will not be able to participate in any further steps in the class action, including claiming against any settlement amounts or making a claim for damages following a determination by the Court at a common issues trial that Cleroux breached the class members' privacy and that PHSA should be held vicariously liable for Cleroux's breach of privacy. See questions 7-9 for more information.
If you want to bring a claim of your own for physical or psychological injury arising from PHSA's alleged negligence or Cleroux's alleged battery.	<p>You must pursue your own lawsuit as an individual. You can contact the lawyers involved in this class proceeding or hire your own lawyer.</p> <p>In order to avoid any issues relating to limitation periods, you should contact a lawyer at your earliest convenience, and ahead of any potential expiration date, which class counsel believes may be as early as November 23, 2023.</p>
If you have any questions or want more information about this class action.	Contact the lawyers. See question 17 for lawyer contact information and websites.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.

OFFICIAL COURT NOTICE

GENERAL

1. Why was this notice issued?

Under section 19 of the ***Class Proceedings Act***, the plaintiff is required to provide you with this notice, as you have a right to know about a class action lawsuit brought against PHSA. The class action may affect your legal rights. This notice explains the lawsuit, who is included, and your legal rights, including your right to exclude yourself from the Class Action by advising that you wish to opt out.

In this notice, the person who sued PHSA (Miranda Massie) is called the “plaintiff”, and PHSA is called the “defendant”.

2. What is this lawsuit about?

It is alleged that Cleroux, who is alleged to be an unlicensed nurse, while working from June 2020 to June 2021 at BCWH, operated by PHSA, was involved directly or indirectly in the provision of nursing care to approximately 1,150 patients who attended for gynecological surgical procedures.

The plaintiff alleges that Cleroux’s access to confidential patient records and presence during patient treatment violated the privacy rights of patients. The defendant denies the allegations, which have not been proven, and is defending the lawsuit.

3. Why is this lawsuit a class action?

In a class action, a person called a “representative plaintiff” sues on behalf of all the people, called “class members” or the “class”, who have a similar claim. Ms. Massie is the proposed representative plaintiff for the class. A class action allows the courts to resolve the issues for everyone affected, except for those who choose to exclude themselves (opt out) from the class.

CLASS MEMBERSHIP

4. How do I know if I am in the class?

To see if this class proceeding may affect your rights, you must first determine whether you are in the class

You are a member of the Class if you fall within the class definition:

All residents of Canada who were patients at BC Women’s Hospital and Health Centre and who received treatments directly or indirectly from Brigitte Cleroux from June 1, 2020 to June 30, 2021.

5. I am still a patient of PHSA. Will being in this Class Action affect my relationship

with PHSA?

No. Being a class member and being involved in the Class Action will not affect your relationship with PHSA. Your relationship with PHSA will continue.

6. What if I am still not sure if I am included in the class?

If you are not sure if you are included, you may contact the lawyers in charge of the action:

Murphy Battista LLP 1-888-683-9621

Slater Vecchio LLP 1-888-737-9990

OPTING OUT OF THE CLASS

If you do not wish to participate in the Class Action or if you wish to sue PHSA in your own individual action relating to any of the same issues certified in the Class Action, then you must take action to exclude yourself, which is referred to as “opting out”.

If you do not opt out of the Class Action, you will be automatically included in the Class Action and bound by the terms of any judgment or settlement in the Class Action whether favourable or not. If you wish to opt out of the Class Action, you must do so on or before **December 30, 2023**.

7. What happens if I opt out?

If you opt out:

- (a) you will not be eligible to participate in the Class Action;
- (b) you will not be bound by the outcome of the Class Action, including any judgment on the common issues for the class, whether favourable or not; and
- (c) you will be able to start or continue your own case against PHSA regarding the same issues certified in the Class Action.

8. What happens if I do NOT opt out?

If you do NOT opt out:

- (a) you will be bound by anything that happens in this lawsuit;
- (b) you will be able to claim against any settlement amounts or potentially make a claim for damages should the Court determine at the common issues trial that PHSA should be held vicariously liable for Cleroux’s breach of privacy;
- (c) you give up all your rights to sue PHSA in your own action for breach of privacy and punitive damages, as set out above, but this has no effect on any other rights you may

have to bring a claim for those issues which have not been certified in the Class Action, as described above.

If you have any questions about the legal terminology or about your options, please contact the lawyers (see question 11 below).

9. How do I opt out?

As a public health authority and in its role in operating BCWH, under the ***Freedom of Information and Protection of Privacy Act***, PHSA has an obligation to protect your privacy. Each patient is entitled to confidentiality and, in particular, is entitled not to have their private information shared with third parties without their consent. PHSA takes its responsibility to protect patient privacy seriously.

As such, if you want to opt out of the Class Action, you must do so on or before **December 30, 2023**, by sending a letter or email, signed by you, stating that you are opting out of the Class Action to:

Mail: Provincial Health Services Authority
1226 – 1333 W. Broadway
Vancouver, BC V6H 4C1

Email: ClassActionOptOut@phsa.ca

The letter or email must also include: (i) your full name, (ii) your date of birth, (iii) your current address, and (iv) a statement that you wish to opt-out of the Class Action.

As an alternative, you can also send to the above mailing address or email address a completed opt-out form, which can be found at and printed off from the following website: www.unlicensednurseclassaction.com.

PHSA will then advise the Court, in a sealed and confidential process, that you have opted out of the Class Action. Your personal information will not be shared with anyone else.

This is your only chance to opt out of the Class Action. No further right to opt out will be provided later.

GETTING A PAYMENT IF YOU REMAIN IN THE CLASS ACTION

10. If I do not opt out, how much money will I get and when?

There are no funds to pay to class members at this time. If you do nothing, you may be able to make a claim if the Class Action is settled or if the Court rules in favour of the class after the common issues trial. To be entitled to damages, you may be required to participate in an individual trial or claims process at a later date, following the common issues trial. There will be further notices once we have more information. Contact class counsel to make sure you are on the

mailing list for future notices (see question 11 below).

THE LAWYERS (CLASS COUNSEL)

11. Do I have a lawyer in this class proceeding?

Yes. The law firms of Murphy Battista LLP and Slater Vecchio LLP have been appointed as class counsel by the Court to prosecute the above common issues which have been certified. You can contact them at:

Murphy Battista LLP

Cleroux/PHSA Class Action lawsuit
2020-650 West Georgia Street
Vancouver, BC V6B 4N7
604-683-9621 or 1-888-683-9621
www.murphybattista.com

Slater Vecchio LLP

PO Box 10445 Pacific Center North
18th Floor, Dunsmuir Street
Vancouver, BC V7Y 1K4
604-629-7732 or 1-888-737-9990
www.slatervechio.com

You will not be charged any money by these lawyers if you contact them. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How and how much will the lawyers in the Class Action be paid?

Class counsel are paid a portion of any money that results from the Class Action. Class counsel will ask the Court to approve their fee. The fee, if approved by the Court, will be deducted from any money that results from the Class Action before paying class members' claims.

DOING NOTHING

13. What happens if I do nothing at all?

If you do nothing, you will be bound by anything that happens in the lawsuit. You will not be able to sue PHSA in your own action for the issues certified in this case, as set out above.

You do not need to do anything now. If you contact the lawyers listed in question 11, they will make sure any further notices are sent directly to you.

WHICH CLAIMS WERE NOT CERTIFIED

14. How does the Court's decision not to certify the issues of negligence and battery affect me?

The Court declined to certify the Class Action on the issues of the alleged negligence of PHSA, the alleged battery committed by Cleroux, the alleged vicarious liability of PHSA for Cleroux's alleged battery, and any claim for personal or psychological injury arising out of these causes of action. The Court held that these issues are too individualized to be dealt with in a class action. If you wish to pursue a claim for any of these causes of action, you will have to do so individually. Note that there are strict timelines for commencing civil actions. In order to avoid any issues relating to limitation periods, you should contact a lawyer at your earliest convenience, and ahead of any potential expiration date, which class counsel believes may be as early as November 23, 2023. For more information, you may contact class counsel as listed at question 11.

HISTORY OF THE CLASS ACTION

15. What else has happened in the Class Action?

The Class Action was started in December of 2021. It has been certified on the issue of Cleroux's alleged privacy breach and PHSA's vicarious liability for same. This means that this lawsuit can move forward to a common issues trial as a class action on this issue.

The Court has not taken any position as to the likelihood of recovery on the part of the representative plaintiff or other members of the class, or as to the merits of the claims or defenses asserted by either side. The allegations against the defendant have not been proven.

NEXT STEPS IN THE CLASS ACTION

16. How will the Class Action Proceed?

The lawsuit is continuing. The next step involves gathering evidence. Otherwise, the Class Action has two stages.

The first stage is the resolution of the common issues, as they are described above. A date for the trial of these common issues will be set shortly.

If these common issues are decided in favour of the class, at the second stage, the Court will determine what further steps class members will need to take in order to determine if they are entitled to recover any damages, and in what amount. The second step is called the individual issue stage. Depending on your claim, the individual issue stage may require a trial or something less than a trial to determine what, if any, money you are entitled to receive.

GETTING MORE INFORMATION

17. How do I get more information?

You can get copies of the claim as well as other information on the Class Action, at:

www.unlicensednurseclassaction.com

You can also contact class counsel with your questions:

Murphy Battista LLP

604-683-9621 or 1-888-683-9621

nurseclaim@murphybattista.com

www.murphybattista.com

Slater Vecchio LLP

604-629-7732 or 1-888-737-9990

info@slatervecchio.com

www.slatervecchio.com

The official court reference for this lawsuit is:

*Massie v. Provincial Health Services Authority Court File No. S2110997,
Vancouver Registry.*

Please do not contact the Court. The lawyers would be happy to answer any questions you have.

THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPREME COURT OF BRITISH COLUMBIA