
APPENDIX “A”: SHORT 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.

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

What is This Action About?

The underlying lawsuit alleges that the Provincial Health 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 wilful 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 which has been certified 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 or 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.

This class action is continuing, and there are no funds to pay to class members at this time. You do not need to submit a claim form yet.

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

Who Qualifies as a Class Member?

You are a member of the Class if you were a resident of Canada and a patient at BCWH between June 1, 2020 and June 30, 2021 and received treatments, directly or indirectly, from Cleroux.

What Can You Get?

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.

What Happens If I Do Nothing?

You lose your right to sue PHSA on your own about the claims certified by the Court. You become a class member and you are bound by the result in the class action. However, there are no funds to pay to class members at this time.

The class action has two stages. The first stage is the resolution of the common issues, as they are described above. As described below, a 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.

What If I Do Not Want to be Included in the Class Action?

You can opt out. If you opt out, you will not be able to make a claim to prove your damages for any breach of privacy following a common issues trial or to make a claim against any funds arising from any settlement reached between the parties in the Class Action. The opt-out deadline is December 30, 2023.

What Happens Next?

The next step involves gathering evidence. Thereafter, there will be a trial where the Court will decide whether PHSA is vicariously liable to the Class Members for Cleroux's alleged breach of privacy and whether punitive damages should be awarded to the class.

What if I Want to Bring my Own Claim against PHSA or Cleroux for Physical or Psychological Injuries for Claims in Negligence or Battery?

The Court declined to certify the class action on the issues of PHSA's alleged negligence, Cleroux's alleged battery and PHSA's alleged vicarious liability for Cleroux's alleged battery. The Court held that these issues are too individualized to be dealt with in a class action. If you wish to pursue such a claim, you must do so as an individual in your own action. Class counsel can help you understand your options, or you can retain another lawyer. 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.

More Information

For more information, visit the website below:

GET MORE INFORMATION BY VISITING:

www.unlicensednurseclassaction.com

Class members should monitor this website for updated information on the class action.

DO NOT CONTACT THE COURT

Legal notice authorized by the British Columbia Supreme Court