karis Disability Services
Formerly Christian Horizons

Leroux v. Ontario

On January 25, 2024, the Supreme Court of Canada denied leave to appeal of the Ontario Court of Appeal decision in *Leroux v. Ontario (Attorney General)*, ending a multi-year battle over whether a class action could be initiated on behalf of adults with developmental disabilities in Ontario.
The Supreme Court of Canada's decision means the May 2023 decision of the Ontario Court of Appeal decision stands, and a class action against the Province of Ontario will be permitted to proceed.

The Background – Briana's Story

Briana Leroux is an Ontario woman with a developmental disability whose family relies on financial support and social services provided by the Province to meet Briana's needs. Briana does not communicate verbally, she is reported to have the intellectual capacity of a 4-year-old, and she requires 24/7 supports. For the first 18 years of her life, Briana's family received support through the Ministry of Children and Youth Services. Once she turned 18 in February 2016, Briana's needs did not change, but Briana and her family were required to apply to a different ministry, the Ministry of Children, Community and Social Services (MCCSS), to receive ongoing support and services.
After being assessed and approved for supports and services by the MCCSS, Briana was placed on waiting lists, with no indication as to how long she would have to wait for the approved services. While waiting, her father was required to provide round-the-clock care himself.

Marc Leroux's Claim

At the heart of the *Leroux* case are claims relating to the Province's administration of approved services – and in particular, the administration of "waitlists" – known as "service registries" - for services that have been approved by Developmental Services Ontario (DSO).
Adults who are approved to receive provincially-funded services are placed on one of three "service registries" where they wait to receive: (a) residential services and supports, (b) caregiver respite services and supports or (c) Passport funding.
The Province has been criticized for its handling of waitlists in 3 key reports: (a) the 2014 report of the Legislative Assembly's Select Committee on Developmental Services, (b) the 2014 report of the Auditor General, and (c) the 2016 Ombudsman Report.

The Court Proceedings

Class Action Certified 2018

After waiting more than a year to receive approved supports and services, Briana's father applied to the Superior Court of Justice in 2017 to obtain approval (called "certification") to launch a class action on behalf of anyone placed on one of 3 waitlists for services beginning on July 1, 2011. By the time he appeared before the court in December 2018, he had been waiting more than 2 ½ years.

On December 14, 2018, Justice Belobaba granted Mr. Leroux's request and certified a class action for negligence and a breach of section 7 of the *Charter of Rights and Freedoms*. On April 6, 2020, Justice Belobaba, added another issue to the certification related the *Crown Liability and Proceedings Act, 2019*.

Appeals – 2021 to 2024

Between December 2018 and January 2024, the Province and Mr. Leroux launched multiple appeals over whether the class action should be permitted to proceed.

On March 26, 2021, a majority of the Divisional Court overturned Justice Belobaba's decision, effectively putting an end to the class action.

On May 4, 2023, at Mr. Leroux's request, the Ontario Court of Appeal overturned the Divisional Court decision, allowing the class action to be reinstated.

The Province appealed the Ontario Court of Appeal decision, and on January 25, 2024, the Supreme Court of Canada denied leave to appeal.

What does the Supreme Court of Canada decision mean?

The Supreme Court of Canada's decision means that the Ontario Court of Appeal decision stands, and that the class action can proceed. Ultimately a court will have to decide whether the Province is negligent in the utilization and administration of existing resources and whether its handling of waitlists infringes the *Charter* rights of adults with developmental disabilities in Ontario.

Mr. Leroux claims:

1. The Province is negligent in the utilization and administration of existing resources. Specifically, the Province has agreed to provide adults with disabilities the services, supports or direct funding to provide for their most basic human needs and daily safety, yet it has done so in a way that leads to unreasonably managed waitlists, which ultimately results in an arbitrary denial of services, and harm to class (action) members.
2. The Province's handling of waitlists infringes the *Charter* rights of class members. Specifically, class (action) members have been approved for services which are essential to their life and security of the person, but the unreasonable and indeterminate administration of waitlists results in mental anguish, and the development of new mental, psychological or psychiatric disorders, among other things.

What does the Leroux decision mean for Karis?

The decision means that a January 24, 2019 Request to Preserve Client Records from July 1, 2011 to present, issued by the MCCSS, remains in effect. As such, Karis must retain and keep accessible, and not destroy or modify any documents that may be relevant to the class action lawsuit.

MCCSS requires that organizations take steps to continue to retain relevant documents in their possession, control, or power relating to the matters at issue in the litigation. Relevant documents will include client records for each person receiving services and supports or funding from a service agency and records that relate to each person with a developmental disability who applied to an application entity for services and supports or funding. Relevant documents may also include client data currently in secondary client databases maintained alongside the Developmental Services Consolidated Information System (DSCIS).