

LONG FORM NOTICE TO CLASS MEMBERS: ST. THOMAS PSYCHIATRIC HOSPITAL FORENSIC UNIT CLASS ACTION

ST. THOMAS PSYCHIATRIC HOSPITAL FORENSIC UNIT CLASS ACTION NOTICE OF CERTIFICATION

To all persons who were patients in the Psychosocial Treatment Program or PST Program on the forensic unit at St. Thomas Psychiatric Hospital between 1976 and 1992 and their family members

Please read this notice carefully as it may affect your legal rights

This document includes references to allegations of psychological, physical and sexual assault, and the content may be distressing or triggering for some readers. You may wish to review this document in private or in the presence of a trusted person. If you find the content upsetting, consider seeking support.

On October 31, 2023, the Ontario Superior Court of Justice (the “Court”) certified a class action on behalf of individuals who were patients in the Psychosocial Treatment Program or PST Program on the forensic unit at St. Thomas Psychiatric Hospital between 1976 and 1992 (including their estates), and their family members.

The Defendant in this action is the government of Ontario, which was responsible for operating this Program.

The Court appointed Martha Banman, Ruth Atkin by her estate representative Ellen Atkin, and Louise Bark as representative plaintiffs for the Class and Ellen Atkin as the representative plaintiff for the Family Class, described below.

This class action was commenced in the Superior Court of Justice in the City of Toronto.

If you were a patient in the Psychosocial Treatment Program (referenced as unit 2C, P2C, PST or PSTU) on the forensic unit at St. Thomas Psychiatric Hospital between 1976 and 1992, you should read this notice carefully. **Ignoring this notice will affect your legal rights.**

**Action and
Alleged Claims**

St. Thomas Psychiatric Hospital, located in St. Thomas, Ontario, was a psychiatric facility operated by the government of Ontario. In this lawsuit, the Plaintiffs allege that patients detained in the Psychosocial Treatment Program or PST Program on the forensic unit of St. Thomas were subjected to an experimental, abusive and punitive patient-run Program with no medical merit. It is alleged that, as part of this Program, the patients were subjected to psychological, physical, and sexual abuse. It is alleged that this Program, which was run by the government of Ontario, caused the Class Members harm. The Court has not made any determination yet on the merits of these allegations. The Defendant, the government of Ontario, denies these allegations.

The action seeks, among other things, damages for negligence and breach of fiduciary duty, as well as damages allegedly suffered by family members of individuals who were patients in the Program.

**The
Certification
Decision**

The common issues to be resolved through this lawsuit are:

Fiduciary duty common issues

- (1) By its administration, implementation, and operation of the PST Program, did Ontario owe a fiduciary duty to the Class Members?
- (2) If the answer to No. 1 is “yes”, what was the content of that fiduciary duty?
- (3) If the answer to No. 2 is “yes”, did Ontario breach the fiduciary duty owed to some or all of the Class Members?

Negligence common issues

- (4) By its administration, implementation, and operation of the PST Program, did the Government of Ontario owe a duty of care to the Class Members?
- (5) If the answer to No. 4 is “yes”, what was the standard of care?
- (6) If the answer to No. 4 is “yes”, did Ontario breach the duty of care owed to some or all of the Class Members?

Vicarious liability common issues & breach of non-delegable duty common issues

- (7) Is Ontario vicariously liable for the tortious acts and omissions of St. Thomas patients?

(8) Did Ontario owe the Class Members a non-delegable duty to provide them with observation, care, and treatment?

(9) If the answer to No. 8 is “yes”, by facilitating or permitting the administration, implementation, and operation of the PST Program at St. Thomas, did Ontario breach the non-delegable duty or duties it owed the Class Members?

Limitation Periods

(10) Did Ontario conceal the Class Members’ cause of action such that the application of any limitation period is tolled by one or more of: (a) the common law doctrine of fraudulent concealment; or (b) section 15(4)(c) of the *Limitations Act, 2002*?

(11) Do ss. 16(1)(h), 16(1)(h.1), and/or 16(1)(h.2) of the *Limitations Act, 2002* preclude the application of any limitation period to the claims of some or all of the Class Members?

The Plaintiffs are seeking an affirmative answer to each of these questions.

Certification is a procedural step that defines the form of the litigation, allowing it to be pursued on behalf of the Class Members. The Certification Order allows the action to proceed to trial as a class action on behalf of a “Class,” or group of people, that could include you.

THIS NOTICE DOES *NOT* MEAN THAT THE COURT HAS DECIDED ON THE LIKELIHOOD OF RECOVERY ON THE PART OF ANY CLASS MEMBER, OR DETERMINED THE MERITS OF THE CLAIMS OR DEFENCES ASSERTED BY EITHER SIDE.

Are You a Class Member?

The St. Thomas Class Action includes two different classes:

- a) All persons who were patients in the Psychosocial Treatment Program (referenced as unit 2C, P2C, PST or PSTU) or its successor PST Program on the forensic unit at St. Thomas between 1976 and 1992, or their estates, (“Class Members”); and
- b) All persons including, but not limited to, spouses, children, parents, and other relatives who, on account of a personal relationship to any one or more Class Members have a derivative claim for damages under s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 or other equivalent provincial or territorial legislation (“Family Class Members”).

The Class Members are represented by the Court-appointed representative plaintiffs: Martha Banman, Ruth Atkin by her estate representative Ellen Atkin, Louise Bark and Ellen Atkin.

How can I participate in the class action?

If you were a patient in the Psychosocial Treatment Program or its successor PST Program on the forensic unit at St. Thomas Psychiatric Hospital between 1976 and 1992, you do not need to take any further action to join this class action. You are automatically included in the action and you may be entitled to compensation following a determination of your individual claim.

As a Class Member, you will not be responsible for legal costs if the class action is dismissed.

If a settlement is reached, Class Members may be entitled to share in the amount of any settlement recovered.

If the common issues set out above are determined in favour of the class at the common issues trial or a summary judgment motion, the next step will be the determination of individual class members' claims.

Class Members will be advised by way of a subsequent court approved notice if this action proceeds to the determination of individual claims. Class Members wishing to prove their individual claims and their individual damages may be entitled to compensation.

You should preserve any records you have regarding your time in the Psychosocial Treatment Program or its successor PST Program, as well as any medical records relating to therapy or treatment you received as a result of your experience at St. Thomas, for the determination of your claim. Class Counsel are available to assist with you obtaining any relevant records, and may be contacted at the coordinates below:

contact@rochongenova.com
(416) 363-1867
1-800-462-3864

IF YOU DO NOTHING AND REMAIN A CLASS MEMBER, YOU ARE NOT REQUIRED TO PAY LEGAL COSTS OR OTHER EXPENSES.

Every Class Member who does not opt out of the class action will be bound by the terms of any judgment or settlement.

How can I exclude myself from the class action?

If you are a Class Member and do not want to participate in this class action, you must take steps to "opt out" of the lawsuit by **March 29, 2025**.

By opting out, you preserve your right to commence or continue your own claim, subject to any limitation periods. If you opt out, **you will not be**

entitled to any compensation that may become available as part of the class action.

If you would like to opt out, the deadline to do so is **March 29, 2025**. To opt out, you must complete, sign and deliver an Opt Out Form, available on the website of Class Counsel, to the Administrator by **March 29, 2025**, by email or by regular mail or courier to this address:

St. Thomas Psychiatric Hospital Forensic Unit Class Action

Dewar Communications Inc.
9 Prince Arthur Avenue
Toronto, ON M5R 1B2
StThomasclassaction@dewarcom.com
T: +1-416-921-1827 ext. 229

After the **March 29, 2025**, you may no longer opt out of the class action, and will be bound by the result of any judgment, whether favourable or not, or settlement reached on behalf of the Class.

If a Class Member cannot personally make an election to opt out, the person making the election for the Class Member must provide, with the Opt Out Form, their personal information, together with a copy of the document that permits the person to act on the Class Member's or Class Member's estate's behalf.

Class counsel will bring a motion for the court's approval of the opt-outs submitted on behalf of those Class Members without capacity and Class Member estates, upon notice to the Public Guardian and Trustee.

If you require a hard copy of the Opt Out Form, you may contact the Administrator or Class Counsel at the e-mail address below before **March 29, 2025**.

**What Happens
Next?**

The class action will proceed to a common issues trial or summary judgment motion to determine the merits of the common issues certified by the Court. If the Plaintiffs are successful at the common issues trial, there will be a determination of individual issues.

If the parties reach a settlement in the future, the Court must approve it. If the action is not successful, that result will bind all Class Members. Class Members will be bound by any judgment or settlement agreement that is approved by the Court.

Regardless of the outcome, no Class Member will have to pay for any expenses or legal costs associated with the common issues trial or summary

judgment trial. The retainer agreements between the representative plaintiffs and Class Counsel provide that Class Counsel will pay for all disbursements and indemnify the representative plaintiffs for any adverse costs awards.

**How can I
receive updates
about the Class
Action?**

If you wish to receive updates about the status of the St. Thomas class action, you may contact Class Counsel at any time at the phone number or email addresses provided below. You may also contact Class Counsel and request to be added to their database of Class Members so that formal updates in relation to the progress of the action are brought to your attention via phone or email:

contact@rochongenova.com
(416) 363-1867
1-800-462-3864

**Class Counsel
and Legal Fees**

If the Plaintiffs succeed at the common issues trial, following an individual claims determination, or if a settlement is reached, Class Counsel will be seeking costs from the Defendant and/or a contingency fee payment from the judgment or settlement funds subject to court approval. The retainers between the representative plaintiffs and Class Counsel provide that Class Counsel will be paid a 30% contingency fee in relation to the class proceeding, plus applicable taxes and disbursements, subject to Court approval.

Class Members will receive further notices of any major steps in the litigation, including any proposed settlement. If the action is settled, Class Members will have an opportunity to “object” to both the settlement terms, including the dollar value of the settlement, and Class Counsel’s contingency fee if you do not think they are appropriate.

**How Do I Learn
More?**

For more information on the St. Thomas class action visit the webpage of Class Counsel at <https://www.rochongenova.com/current-class-action-cases/st-thomas-psychiatric-hospital/>

You can also learn more by contacting Class Counsel by phone. For assistance in English or French call: (416) 363-1867 or 1-800-462-3864. There is **no charge** to speak with Class Counsel to discuss the class action, have your questions answered, or to retrieve a copy of the opt out form or any related documents. Class Counsel are:

ROCHON GENOVA LLP
121 Richmond St. West
Suite 900
Toronto, ON, M5H 2K1

Joel P. Rochon
Golnaz Nayerahmadi
Sarah J. Fiddes

jrochon@rochongenova.com
gnayerahmadi@rochongenova.com
sfiddes@rochongenova.com

The publication of this notice to Class Members has been approved by the Ontario Superior Court of Justice.