

ONTARIO GOVERNMENT LONG-TERM CARE HOMES COVID-19 CLASS ACTION

LONG-FORM NOTICE OF CERTIFICATION

This is a court-approved notice of the **certification** of a class action against the Ontario government for the alleged gross negligence of the Ministers of Long-Term Care who were in office during the COVID-19 pandemic, in preparing for and responding to the COVID-19 pandemic in Ontario's long-term care ("LTC") homes (the "Class Action"). The Class Action is being pursued on behalf of the residents of Ontario's LTC homes and their family members.

If you or a family member resided in or received care at an LTC home in Ontario between January 5, 2020 and May 5, 2023, you should read this entire document carefully as it may affect your rights.

A. WHAT IS THIS CASE ABOUT?

This action against the Ontario government is about the alleged gross negligence of the Ministers of Long-Term Care who were in office during the COVID-19 pandemic. In particular, the plaintiffs allege that these Ministers' preparation for and response to the pandemic in Ontario's LTC homes was grossly delayed, arbitrary and piecemeal and led to widespread outbreaks that caused thousands of infections and deaths among LTC home residents.

Specifically, the plaintiffs allege that these Ministers ignored early information and red flags about the risks of COVID-19 in Ontario's LTC homes and that, once the pandemic arrived, the infection prevention and control ("IPAC") measures they adopted were grossly delayed and inadequate, exposing thousands of LTC home residents to harm.

The plaintiffs seek to recover damages for the physical harm, suffering and death of LTC home residents and for the loss of care and companionship suffered by their family members.

B. THE CERTIFICATION DECISION – WHAT DID THE COURT DECIDE?

On December 20, 2022, the Ontario Superior Court of Justice (the "Court") **certified this lawsuit as a class action** for Ontario LTC home residents and their families. The claims of certain visitors to LTC homes (those who were infected with COVID-19 after visiting an LTC home) were **not** certified. The Class Action, as certified against the Ontario government, will be for the alleged gross negligence of the Ministers of Long-Term Care who were in office during the pandemic.

This decision was upheld by the Court of Appeal for Ontario on February 6, 2024 and Ontario's application for leave to appeal was dismissed by the Supreme Court of Canada on September 26, 2024.

As a result of the Court's decision, the Class Action will now move forward and the plaintiffs will advance the claims of **all** Class Members against the Ontario government in one proceeding. The Court also determined that the following six "Common Issues" will be decided on behalf of all Class Members:

- 1) Did the Minister of Long-Term Care ("MLTC") owe a duty of care to the members of the Classes to prevent and mitigate COVID-19 outbreaks in long-term care homes in Ontario?
- 2) If the answer to 1) is "yes", what is the nature of that duty of care?
- 3) If the answer to 1) is "yes", did the MLTC breach the duty of care the MLTC owed to all or any of the members of the Class? If so, when and how did the breach(es) occur?
- 4) If the answer to 3) is "yes", did any or all of the MLTC's breach(es) amount to gross negligence?
- 5) If the answer to 4) is "yes", did the MLTC's breach(es) of duty of care cause or contribute to the harm(s) suffered and/or losses incurred by Class Members?
- 6) Does the conduct of the MLTC warrant an award of aggravated, exemplary and/or punitive damages?

These Common issues will be decided once, on behalf of **all** Class Members, at a single "Common Issues Trial", unless you "opt out" of the Class Action, as described in **Section E** below.

To be clear, the Court has **not** yet decided these Common Issues, or the likelihood that Class Members will receive compensation, and no decision has been made about the merits of the claims or defences asserted. The Ontario government denies all liability.

C. CLASS DEFINITION: WHO IS INCLUDED?

The Court certified the Class Action on behalf of the following people (the "Class" or "Class Members"):

All persons who were resident in, or received care at, long-term care homes in Ontario from January 25, 2020 to May 5, 2023, or, where the person is deceased, the estate of that person; and

All persons who may have a derivative claim for damages under section 61 of the *Family Law Act*, R.S.O. 1990., C.F.3 based on their personal relationship to a person who was a resident of a long-term care home in Ontario from January 25, 2020 to May 5, 2023.

The Court did not certify a claim on behalf of visitors to Ontario LTC homes who contracted COVID-19 after visiting an LTC home during the pandemic. Therefore, visitors are NOT INCLUDED as Class Members and their claims and those of their family members are NOT being advanced in this proceeding.

IF YOU WERE A VISITOR to an Ontario LTC home and contracted COVID-19 during the pandemic and you wish to advance a claim against the Ontario government, you should contact a lawyer and inform yourself of your rights, including any limitation period that may apply to your claim.

If you have questions about whether you are a Class Member, please contact Class Counsel at the information listed under **Section G** of this Notice.

D. PARTICIPATION: HOW DO I PARTICIPATE AS A CLASS MEMBER?

If you are a Class Member and you want to participate in the Class Action, you are automatically included and do not need to do anything at this time.

If you participate, you will be bound by all orders of the Court, as well as the terms of any settlement or judgment, whether favourable or not, and will not be able to start your own individual action against the Ontario government related to the COVID-19 pandemic in Ontario's LTC homes.

If you do nothing and remain a Class Member, you are not required to pay legal costs or other expenses, even if the Class Action is unsuccessful at the Common Issues Trial. Similarly, if you participate in the Class Action, and it is unsuccessful, you will not be permitted to commence your own lawsuit against the Defendant regarding the subject matter of the Class Action.

If the Class Action is successful at trial or settles, you may be entitled to share in the amount of any judgment or settlement benefits as ordered or approved by the Court.

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 cost awards. If the action is successful at trial or is settled, Class Counsel will be entitled to a contingency fee in an amount approved by the Court. The retainer agreements between the Representative Plaintiffs in the Class Action and Class Counsel provide that Class Counsel will be paid a 30% contingency fee, plus applicable taxes and disbursements, subject to Court approval.

E. OPTING OUT: HOW DO I EXCLUDE MYSELF FROM THE CLASS ACTION IF I DO NOT WANT TO PARTICIPATE?

If you are a Class Member and **do not want to participate** in the Class Action and/or you wish to pursue your own individual lawsuit related to the subject matter of the Class Action, you **must formally exclude yourself by OPTING OUT.**

Opting out means that you **will not** be involved in the Class Action, you **will not** be entitled to any compensation that may become available as part of the resolution of the Class Action, either through settlement or a judgment, but you will be able to commence your own individual lawsuit (or continue any lawsuit you have already brought).

If you want to commence or continue your own lawsuit, you MUST opt out. If you do opt out, you must abide by all applicable limitation periods and should consult a lawyer.

Family members of LTC home residents **do not** have an independent right to opt out and are bound by the decision made by their related resident Class Member about whether to opt out or not.

IF YOU WANT TO OPT OUT OF THE CLASS ACTION, YOU MUST DELIVER AN OPT-OUT FORM TO THE NOTICE ADMINISTRATOR NO LATER THAN NOVEMBER 27, 2025.

If you want to opt out of the Class Action, you must deliver an Opt-Out Form to the Notice Administrator through the **online portal** at www.LTCClassActions.com **or by mail** to P.O Box 3355, London, Ontario, Canada (N6A 4K3) post-marked no later than **November 27, 2025 (the “Opt-Out Deadline”)**.

Please note that you **cannot** deliver an Opt-Out Form by email.

Opt-Out Forms are available from the Notice Administrator, RicePoint, at www.LTCClassActions.com, and on the websites of Class Counsel. You may also request an Opt-Out Form from Class Counsel by contacting them at the e-mail address or phone number listed in **Section H** below.

Please note that if you submit your Opt-Out Form through the Notice Administrator’s online portal, it will only be considered valid if you receive an e-mail confirmation from the Notice Administrator. If you do not receive an e-mail confirmation from the Notice Administrator, your Opt-Out Form was not received and is not valid.

You may also opt out by downloading and mailing an Opt-Out Form to the Notice Administrator at the address below. All such Opt-Out Forms must be postmarked by **the Opt-Out Deadline**.

F. WHAT HAPPENS NEXT?

The next significant step in the Class Action will be the discovery process, which will involve the sharing and review of documents related to the lawsuit and the examination of the Representative Plaintiffs and the Defendant’s representatives. This part of the Court process may also involve one or more motions to decide any issues that arise between the parties.

Once the discovery process is completed, the Class Action will proceed to a determination of the Common Issues. The result reached at the conclusion of the Common Issues Trial will be binding on **all** Class Members.

If the parties to the Class Action reach a settlement at any point, that result will also be legally binding on all Class Members. If the Plaintiffs achieve success in court or through a settlement, Class Members may then be entitled to compensation in accordance with the judgment or the settlement terms.

Class Members will receive notice of any major steps in the litigation, including any judgment or proposed settlement. If the action is settled, you will have an opportunity to “object” to the terms of the settlement and/or to the amount of Class Counsel’s fees if you do not think they are appropriate.

G. CLASS COUNSEL: WHO REPRESENTS ME?

The following law firms are working together as Class Counsel on the Action:

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This notice was authorized by the Ontario Superior Court of Justice. Please do not contact the Court