

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**DANA BOWMAN, GRACE MARIE DOYLE HILLION, SUSAN LINDSAY
and TRACEY MECHEFSKE**

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

AMENDED STATEMENT OF CLAIM

PROCEEDING UNDER the *Class Proceedings Act*, 1992

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Amended this 23rd day of Oct 2019
pursuant to Rule 26.02(a)(6) of the
Rules of Civil Procedure
(Signature)
Dana Bowman
Registrar, Superior Court of Justice

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

March 28, 2019
Date March 28, 2019 Issued by "Electronically Issued"

Local Registrar

Address of court 440 Kent Street West
office: Lindsay, ON K9V 6K2

TO: Her Majesty the Queen in Right of Ontario
 ~~As Represented by Crown Law Office (Civil Law)~~
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 720 Bay Street, 8th Floor
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Counsel for the Defendant,
Her Majesty the Queen in right of Ontario

CLAIM

A. DEFINITIONS

1. The following terms used throughout this Statement of Claim have the meanings indicated:

- (a) **"Basic Income Pilot Project"** or **"BI Project"** means the Basic Income Pilot Project created and administered by the Defendant to study the potential impact of providing a basic income;
- (b) **"BI Payments"** means payments of money to the Class made pursuant to the Basic Income Pilot Project;
- (c) **"Bowman"** means Dana Bowman, one of the Plaintiffs;
- (d) **"Class"** and **"Class Members"** mean all persons who were enrolled by the Defendant in the Basic Income Pilot Project as part of the Payment Group;
- (e) **"Control Group"** means the group of individuals who were enrolled in the Basic Income Pilot Project but who did not receive BI Payments and who, for greater certainty, do not form part of the Class;
- (f) **"Defendant"** means Her Majesty the Queen in Right of Ontario;
- (g) **"Hillion"** means Grace Marie Doyle Hillion, one of the Plaintiffs;
- (h) **"Final Payment Date"** means March 25, 2019, the date BI Payments ceased;

- (i) **"Lindsay"** means Susan Lindsay, one of the Plaintiffs;
- (j) **"Mechefske"** means Tracey Mechefske, one of the Plaintiffs;
- (k) **"MCCSS"** means the Ontario Ministry of Children, Community, and Social Services established by the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20, as amended by S.O. 1993, c. 2, s. 23, 24, S.O. 1994, c. 27, s. 67, S.O. 1997, c. 25, s. 4(4), S.O. 2006, c. 19, Sched. C, s. 1 (1), S.O. 2006, c. 19, Sched. D, s. 11, S.O. 2006, c. 34, s. 35, S.O. 2006, c. 35, Sched. C, s. 69, and S.O. 2017, c. 14, Sched. 4, s. 21, and whose authority and role and particularized more fully below;
- (l) **"Minister"** means the Minister of Children, Community, and Social Services who at all times material presided over and had charge of the MCCSS and the BI Pilot;
- (m) **"ODSP"** means the Ontario Disability Support Program administered by the MCCSS;
- (n) **"OW"** means Ontario Works, a program administered by the MCCSS; and,
- (o) **"Payment Group"** means the group of individuals who were enrolled in the Basic Income Pilot Project and who were approved for the payment of BI Payments and who thereafter received BI Payments until the Final Payment Date.

B. RELIEF AND REMEDIES REQUESTED

2. The Plaintiffs claim on their own behalf and on behalf of all Class Members:
 - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class Members;
 - (b) special damages for breach of contract, breach of undertaking, negligence, breach of public law duty, and breach of s. 7 of the *Canadian Charter of Rights and Freedoms*;
 - (c) \$200 million in general damages for the Class, or such other sum as this Honourable Court deems just;
 - (d) an order, pursuant to s. 24 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 ("Class Proceedings Act") directing an aggregate assessment of damages;
 - (e) pre-judgment and post judgment interest pursuant to the *Courts of Justice Act*;
 - (f) costs of this action on a substantial indemnity basis, together with HST or other applicable taxes thereon;
 - (g) the costs of administering the plan of distribution of the recovery in this action; and,
 - (h) such further and other relief as this Honourable Court may deem just.

C. SUMMARY OF THE ACTION

3. In 2016, the Defendant decided to engage in social assistance reform in Ontario. As part of this reform, in 2017, the Defendant announced the Basic Income Pilot Project.

4. The goal of the Basic Income Pilot Project was to study whether granting regular, fixed payments to Ontarians was something that should be considered and implemented in the future.

5. To conduct this study, the Defendant needed to secure the full participation of approximately 6,000 Ontario residents made up of two groups: the Payment Group and the Control Group.

6. The Defendant, in the manner in which it designed, implemented, and administered the BI Pilot, promised, undertook and, further or in the alternative, contracted with those residents who would later be accepted by the Defendant into the Payment Group, that they would receive the payment of a fixed amount each month for a three-year period or, further or in the alternative, for a period ending when the BI Pilot ended.

7. The Class relied on these promises, undertakings, and offers and agreed to join the BI Pilot on the strength of these promises, undertakings, and offers.

8. The Class thereafter received monthly BI Payments. The BI Payments exceeded the income the Class previously received from various sources, including from work, employment, ODSP, and OW.

9. On or about July 31, 2018, the Defendant announced that it was terminating the BI Pilot early. In the month following, the Defendant further announced that the Final Payment Date would be March 25, 2019.

10. All Class Members ceased receiving BI Payments on or about the Final Payment Date.

11. The Defendant's early termination of BI Payments amounts to a breach of contract, a breach of undertaking, negligence, a public law tort, and, further or in the alternative, a breach of s. 7 of the *Canadian Charter of Rights and Freedoms*.

12. The Class has and will suffer injury and damages as a result of the cessation of BI Payments and the cessation of the Basic Income Pilot Project. Particulars of such injury and damage are outlined in Section H., below.

D. THE PARTIES

1. Dana Bowman

13. Bowman was, at all times material, a resident of Lindsay.

14. Bowman was born on August 17, 1961.

15. Bowman received ODSP benefits beginning in or around December 1997 until the Defendant approved her application for enrolment in the BI Program as part of the Payment Group. Bowman received BI Payments from December 2017 until the Final Payment Date.

16. The BI Payments Bowman received were more than the ODSP monies she had been receiving prior to January 2018, monies she would have continued to receive had the Defendant not accepted her into the Payment Group.

17. Bowman benefited significantly as a result of her enrolment in the BI Program. Particulars of such benefit included, *inter alia*:

- (a) no longer having to respond to the many inquiries made of her by officials regarding her ODSP benefits;
- (b) being able to afford proper food;
- (c) being able to afford basic clothing, including undergarments;
- (d) taking care of bills;
- (e) being able to afford to pursue her long-held career goal of enrolling in college to become a social services worker; and,
- (f) being able to afford transport so as to assist her daughter with the care of grandchildren.

18. Bowman continued to receive BI Payments until the Final Payment Date.

19. Bowman complied with all of the obligations she agreed to discharge as a recipient of BI Payments under the BI Pilot including, *inter alia*, by disclosing personal information, agreeing to complete surveys, and preparing and filing income tax documentation, and by foregoing ODSP benefits.

20. On or about July 31, 2018, or shortly thereafter, Bowman learned that the Basic Income Pilot Project was being cancelled. In October 2018, she received a letter confirming same and advising her that she would receive a final BI Payment on the Final Payment Date.

21. When Bowman learned that the BI Pilot was being cancelled and that her BI Payments would cease, she experienced a manic episode from which she has not, as of the date of this Claim, fully recovered.

2. Grace Marie Doyle Hillion

22. Hillion was, at all material times, a resident of Lindsay or, while in school, a resident of Oshawa.

23. Hillion was born on September 5, 1998.

24. The Defendant approved Hillion's application for enrolment in the BI Program as part of the Payment Group. Hillion received BI Payments from April 2018 until the Final Payment Date.

25. The BI Payments Hillion received increased her income.

26. Hillion benefited significantly as a result of her enrolment in the BI Program. Particulars of such benefit included, *inter alia*, being able to purchase suitable clothes for work and enrol in a broadcasting program at Durham College.

27. Hillion continued to receive BI Payments until the Final Payment Date.

28. Hillion complied with all of the obligations she agreed to discharge as a recipient of BI Payments under the BI Pilot including, *inter alia*, by disclosing personal information, by agreeing to complete surveys, and by preparing and filing income tax documentation.

29. On or about July 31, 2018, or shortly thereafter, Hillion learned that the Basic Income Pilot Project was being cancelled. In October 2018, she received a letter confirming same and advising her that she would receive a final BI Payment on the Final Payment Date.

30. Shortly after Hillion learned that the BI Pilot was being cancelled and that her BI Payments would cease, she experienced increased anxiety and depression, including an episode that lasted approximately two (2) weeks and that resulted in her being confined to bed during much of that time.

3. Susan Lindsay

31. Lindsay was, at all times material, a resident of Lindsay.

32. Lindsay was born on November 2, 1964.

33. Lindsay was approved for the receipt of ODSP benefits beginning in or around February or March 2018. Shortly thereafter, the Defendant approved her application for enrolment in the BI Program as part of the Payment Group.

34. The Defendant approved Lindsay's application for enrolment in the BI Program as part of the Payment Group. Lindsay received BI Payments from April 2018 until the Final Payment Date.

35. The BI Payments Lindsay received increased her income. The BI Payments Lindsay received were more than the ODSP monies she would have received had the Defendant not accepted her into the Payment Group.

36. Lindsay benefited significantly as a result of her enrolment in the BI Program. Particulars of such benefit included, *inter alia*, no longer having to respond to the many inquiries made of her by officials regarding her social assistance payments.

37. Lindsay continued to receive BI Payments until the Final Payment Date.

38. Lindsay complied with all of the obligations she agreed to discharge as a recipient of BI Payments under the BI Pilot including, *inter alia*, by disclosing personal information, agreeing to complete surveys, and preparing and filing income tax documentation, and by foregoing ODSP benefits.

39. On or about July 31, 2018, or shortly thereafter, Hillion learned that the Basic Income Pilot Project was being cancelled. In October 2018, she received a letter confirming same and advising her that she would receive a final BI Payment on the Final Payment Date.

40. The cancellation resulted in Lindsay losing her sense of self-worth and increased her fear and anxiety.

4. Tracey Mechefske

41. Mechefske was, at all times material, a resident of Lindsay.

42. Mechefske was born on March 10, 1972.

43. Mechefske was in receipt of ODSP benefits at the time the Defendant approved her application for enrolment in the BI Program as part of the Payment Group. Mechefske received BI Payments from November 2017 until the Final Payment Date.

44. The BI Payments Mechefske received were more than the ODSP monies she was receiving prior to November 2017, monies she would have continued to receive had the Defendant not accepted her into the Payment Group.

45. Mechefske benefited significantly as a result of her enrolment in the BI Program. Particulars of such benefit included, *inter alia*:

- (a) no longer having to respond to the many inquiries made of her by officials engaged to adjudicate on her ODSP benefits;

- (b) having an income so that her spouse could take a brief period off of work to undergo a surgical procedure;
- (c) being able to pay for supplies, equipment, fees, and other expenses to enable her to start or grow a business; and,
- (d) being able to afford transport so as to visit with family in Northern Ontario.

46. Mechefske continued to receive BI Payments until the Final Payment Date.

47. Mechefske complied with all of the obligations she agreed to discharge as a recipient of BI Payments under the BI Pilot including, *inter alia*, by disclosing personal information, agreeing to complete surveys and preparing and filing income tax documentation, and by foregoing ODSP benefits.

48. On or about July 31, 2018, or shortly thereafter, Mechefske learned that the Basic Income Pilot Project was being cancelled. In October 2018, she received a letter confirming same and advising her that she would receive a final BI Payment on or about the Final Payment Date.

49. When Mechefske learned that the BI Pilot was being cancelled and that her BI Payments would cease, she experienced increased anxiety and a series of panic attacks, from which she has not recovered.

5. The MCCSS, the Minister, and the Defendant

50. At all material times, the Minister and the MCCSS presided over and had responsibility for the implementation and administration of the Basic Income Pilot Project.

51. At all material times, the Minister and the MCCSS had responsibility over ODSP, OW, and other social assistance programs, including responsibilities granted to the Minister and the MCCSS under the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B and the *Ontario Works Act, 1997*, S.O. 1997, c. 25, Sched. A.

52. The Defendant, Her Majesty the Queen in Right of the Province of Ontario, is named in this Action pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, as amended to the date of this Action.

53. The Defendant was at all material times responsible for the actions of the Minister, the MCCSS and, where applicable, the agents, servants, employees, and assigns of the Defendant, the Minister, and/or the MCCSS.

6. The Class

54. The Plaintiffs bring this Action pursuant to the *Class Proceedings Act, 1992* on their own behalf and on behalf of the Class Members as defined in paragraph 1(d), above.

E. THE DEFENDANT ANNOUNCES THE CREATION OF A BASIC INCOME PILOT PROJECT

55. In its 2016 budget, the Government of Ontario announced its intention to establish a pilot project to study the value of implementing a basic income for residents of Ontario.

56. The Defendant hired Hugh Segal, a former Senator and well-known advocate for basic income in Canada, to advise the Defendant on how to implement a pilot project.

57. On or about August 31, 2016, Mr. Segal delivered a discussion paper to the Premier and the Minister containing advice and recommendations for the design and implementation of a basic income pilot project. Particulars of his advice and recommendations include, *inter alia*, that:

- (a) a pilot should replace the policing, control, and monitoring elements associated with ODSP and OW with a basic income "disbursed automatically" in order to determine the net effect of doing so on certain measurables such as poverty reduction, the reduction of stigmatization, health, work productivity, housing outcomes, educational outcomes, and net economic and community outcomes in a targeted area;
- (b) a pilot should be managed by arm's length persons or organizations;
- (c) a pilot should be overseen key groups utilizing best governance and organizational practises and models;
- (d) the pilot should be divided into three phases, being a planning phase, distribution phase, and an evaluation phase;

- (e) during the second (distribution) phase, basic income payments should be distributed for a period of at least three years, with the pilot adopting an operational duration or period to enable the payment of monies to the Payment Group over three (3) years; and,
- (f) participants should be extensively surveyed and their data collected for study in a manner that respects certain privacy norms.

58. Following further consultations, Ontario's Premier announced, on or about April 24, 2017, the commencement of the BI Pilot. More particularly, on the same day, the Premier delivered a speech in Hamilton introducing the BI Pilot as a three-year project during which the Payment Group "will receive a minimum amount of income each year – a basic income, no matter what".

59. During the Premier's speech or shortly thereafter, the Mayor of Thunder Bay, who was in attendance, asked:

Can you assure us that in this one, it's a three-year pilot, that the evaluation will be ongoing and in the event it proves what we all think it will prove, that an announcement will be made prior to the end of the three years of not only the continuation for those people who are part of the pilot, but as well as expansion?

60. In response, the Premier stated:

Some of the outcomes of job retention, retention in education, better health outcomes, those will take a little bit of time to demonstrate, if we see those ... that's why it's three years. If we could figure it out in six months, we would figure it out in six months, but it takes a bit longer than that. By the end of the three years, we will have a good idea of where it is going and be able to talk about what comes next.

61. On or about April 24, 2017, the Defendant, and more particularly the MCCSS, issued a news release describing the BI Pilot. The news release stated, *inter alia*, that:

- (a) Mr. Segal's report had been used to engage in public consultations;
- (b) the BI Pilot would be implemented in three locations, namely,
 - (i) Hamilton, Brantford, and Brant County,
 - (ii) Thunder Bay and surrounding area, and,
 - (iii) Lindsay, Ontario;
- (c) the BI Pilot is a "three-year" program, with the Defendant investing \$50 million "per year ... for each of the three years of the pilot";
- (d) the Defendant took seriously the BI Pilot, for example, in hiring a third-party research consortium and the hiring of an advisory group "to ensure the [BI Pilot] is conducted with the utmost integrity, rigour and ethical standards";
- (e) the BI Pilot "will ensure that participants" (the Payment Group) "receive" certain fixed amounts "per year", with the amounts specified; and,
- (f) a Control Group would be formed of persons who would not receive BI Payments so that a proper comparison with the Payment Group could be conducted.

62. On or about April 24, 2017, the Defendant published a webpage entitled "Ontario Basic Income Pilot" on its Ontario.ca website. The Defendant updated this webpage on at least one occasion. On the webpage, the Defendant announced, *inter alia*, that:

- (a) it regarded basic income as a "payment ... that ensures a minimum income level";

- (b) persons in the Payment Group "are receiving monthly basic income payments for up to a three-year period" and these monies "will ensure a minimum level of income", with the amounts being paid set out explicitly;
- (c) the Control Group has been established for comparison purposes, with persons who will be compensated for completing surveys but who "will not receive" BI Payments; and,
- (d) the Defendant will test how BI Payments might help people with their basic needs while improving outcomes in, for example, food security, stress and anxiety, housing stability, and labour market participation.

63. On or about May 2, 2017, the Honourable Bill Mauro, the Defendant's Minister of Municipal Affairs, speaking in the Legislature, described the Basic Income Pilot Project as something that "will be trialed for three years".

64. On or about September 20, 2017, the Honourable Peter Z. Milczyn, the Defendant's Minister of Housing and Minister responsible for "Poverty Reduction", speaking in the Legislature, described the Basic Income Pilot Project as "the three-year basic income pilot".

65. The Plaintiffs plead, and the fact is, that the Defendants repeatedly represented that the Basic Income Pilot Project would ensure that the Class would receive BI Payments for a fixed period of three years or, further or in the alternative, that the Basic Income Pilot Project would ensure that the Class would receive BI Payments for a fixed period of time coincident with a three-year period generally.

F. MATERIAL FACTS REGARDING THE IMPLEMENTATION AND ADMINISTRATION OF THE BI PILOT

66. Consistent with the Defendant's consistent and repeated announced intention that the BI Pilot would ensure the payment of BI Payments for the three-year period or periods described above, the Defendant, throughout the course of implementing and administering the BI Pilot, repeatedly represented to potentially eligible participants that, if chosen to be part of the Payment Group, those participants would be guaranteed the receipt of BI Payments over a three-year period.

67. The Plaintiffs plead, and the fact is, that the Defendant made consistent, clear representations to that effect and, further or in the alternative, that they gave consistent and clear undertakings to that effect and, further or in the alternative, that they made consistent and clear offers to that effect.

68. The Plaintiffs plead, and the fact is, that such representations, undertakings, and offers were made to the Class and that, on the strength of such representations, undertakings, and offers, the Class applied to be a part of the BI Pilot and, in the case of the Payment Group, to receive the promised BI Payments.

69. Particulars of the implementation and administration of the BI Pilot in a manner consistent with the aforesaid representations, undertakings, and offers include, *inter alia*:

- (a) statements by the MCCSS to community representatives, stakeholders, and others the MCCSS was consulting to assist implement and administer

the BI Pilot to the effect that payments to the Payment Group would take place over a three-year period;

- (b) the establishment, by Order-in-Council, on or about June 28, 2017, of a Ministers' Advisory Council to advise the MCCSS regarding the BI Pilot, which was established for a three-year period;
- (c) the establishment, by Order-in-Council, on or about June 28, 2017, of a Research and Evaluation Advisory Chair to advise the MCCSS regarding the BI Pilot, which was established for a three-year period;
- (d) the appointment of a Research and Evaluation Advisory Chair by Order-in-Council on or about June 28, 2017, for a three-year period;
- (e) the appointment of a Chair and Members to the aforesaid Ministers' Advisory Council by letter for a fixed period of time; and,
- (f) the delivery by MCCSS of Terms of Reference to the aforementioned Ministers' Advisory Council and the Research and Evaluation Advisory Chair with similar representations.

70. Employees, agents, and other representatives of the MCCSS, in 2017 and 2018, met with individuals to persuade them to apply for acceptance into the Basic Income Pilot Project.

71. During the course of these meetings, these employees, agents, and other representatives of the MCCSS represented to potentially eligible participants that, if chosen to be part of the Payment Group, those participants would be guaranteed the receipt of BI Payments over a three-year period.

72. Further, or in the alternative, during the course of these meetings, these employees, agents, and other representatives of the MCCSS used information booklets and application forms that consistently represented to potentially eligible participants that, if chosen to be part of the Payment Group, those participants would be guaranteed the receipt of BI Payments over a three-year period.

73. Further to paragraph 72, in or about May 2017, the MCCSS developed an information booklet for use by MCCSS representatives in its interactions and meetings with eligible participants. This booklet and, further or in the alternative, the application forms and materials that accompanied it or, further or in the alternative, the application forms and materials utilized during such interactions and meetings, contained the same promise, undertaking, and offer of three years of BI Payments.

74. At all times material, each Class Member signed an application form to apply for enrolment into the BI Pilot and, if chosen, to receive BI Payments as part of the Payment Group.

75. At all times material, the persons presenting the application form and the BI Pilot more generally to the Class had authority from the MCCSS to execute a contract with the Class Member for their enrolment in the BI Pilot and to provide for BI Payments to such Class Member if such Class Member was chosen to be part of the Payment Group.

76. As a result of the MCCSS's efforts, over 4,000 Class Members were enrolled into the BI Pilot as part of the Payment Group.

77. Further, as a result of the MCCSS's efforts, by April 2018, approximately 2,000 additional individuals were enrolled into the BI Pilot as part of the Control Group.

78. Consistent with the MCCSS's promises, undertakings, and offers, which are particularized above, the MCCSS or, further or in the alternative, the Defendant, sent a letter to each Class Member to advise them that they had been selected for enrolment and that they "will receive" BI Payments in the amount specified in the letter.

79. Consistent with the MCCSS's promises, undertakings, and offers, all of which are particularized above, the MCCSS or, further or in the alternative, the Defendant, paid the Class Members their promised BI Payments beginning shortly after the Class Member's accepted enrollment into the BI Pilot and continued making these payments on a regular basis.

80. In 2018, the MCCSS contracted with Veritas IRB to obtain their services as an external Research Ethics Board. The Plaintiffs plead that an external Research Ethics Board was established because the Class Members were human research subjects and, as a result, ethical standards associated with such research had to be adhered to.

81. During the course of its interactions with Veritas IRB, the MCCSS stated, in writing, that it projected May 27, 2021 as a final date of the BI Pilot, being just over three (3) years after the last Class Member was admitted into the BI Pilot.

82. The Class experienced significant benefits by virtue of being part of the BI Pilot's Payment Group. In addition to receiving consistent BI Payments that increased their income, the Class Members, *inter alia*:

- (a) did not need to report their activities as they did if enrolled in ODSP or OW;
- (b) could plan their future;
- (c) could afford more basic goods to satisfy their basic needs, including food, clothing, drugs, therapy, medical supplies, and improved housing;
- (d) enrolled in courses of study;
- (e) took steps to build or establish businesses;
- (f) undertook independent responsibility for their own finances;
- (g) made key purchases or investments to improve their life circumstances more generally; and,
- (h) could feel pride in being part of a novel, significant experiment whereby the sharing to their personal information and activities could provide them and others with hope that the delivery of social services in Ontario might thereafter be set on a very different, and perhaps more positive, footing.

83. Further to paragraph 82, the amounts paid in BI Payments were greater than the amounts the Class would have received but for their acceptance into the BI Pilot. For instance, Bowman's income increased by approximately \$13,000-\$14,000 per year as a result of her acceptance into the BI Pilot.

84. On or about July 31, 2018, the Defendant announced that it was terminating the Basic Income Pilot Program early.

85. The Defendant made this announcement primarily through a news release before writing to the Class more than two months later to advise them that the BI Pilot and the BI Payments were ending.

86. As particularized above, the cancellation of the BI Pilot had significant and negative impacts on and caused harm to the Plaintiffs.

87. The cancellation of the BI Pilot likewise had significant and negative impacts on and caused harm to the Class as a whole.

88. As of March 25, 2019 (the Final Payment Date), all BI Payments ceased.

G. CAUSES OF ACTION

1. Breach of Contract

89. By virtue of the facts pleaded above, the Defendant and Class entered into a contract for the provision of BI Payments to each Class Member for a three-year period commencing on the date each Class Member received their first payment.

90. Further, or in the alternative, the Defendant and Class entered into a contract for the provision of BI Payments to each Class Member for a three-year period associated with the operation of the BI Pilot.

91. More particularly, the Defendant offered the Class the benefit of BI Payments in exchange for their acceptance by way of signature, which acceptance was given, resulting in the formation of a contract.

92. Further, the Class accepted the offer of BI Payments by agreeing to assume a number of obligations, including agreeing to, *inter alia*,

- (a) complete surveys at a rate of pay, per survey, that was lower than the amounts given to those in the Control Group;
- (b) disclose of their tax and other financial information on an ongoing basis;
- (c) expose their personal and private lives to scrutiny through surveys;
- (d) forego ODSP and OW benefits; and,
- (e) make themselves human subjects in a major scientific experiment.

93. By virtue of the exchange of BI Payments for the assumption by the Class of the obligations set out above, consideration for the contract was exchanged between the Parties.

94. The Plaintiffs plead, and the fact is, that the Defendant breached the terms and conditions of the aforesaid contract by ceasing BI Payments early.

95. As particularized in Section H. below, the Plaintiffs and Class have suffered and will suffer damages as a result of this breach of contract.

2. Breach of Undertaking

96. By virtue of the facts pleaded above, the Defendant undertook to provide BI Payments to each Class Member for a three-year period commencing on the date the Class Member received their first payment.

97. Further, or in the alternative, the Defendant undertook to provide BI Payments to each Class Member for a three-year period associated with the operation of the BI Pilot.

98. By cancelling the BI Pilot early, the Defendant failed to fulfil its undertakings.

99. As particularized in Section H. below, the plaintiffs and Class have suffered and will suffer damages as a result of this breach of undertaking.

3. Negligence

100. At all material times, the Defendant owed a duty of care to the Class Members that was breached by its negligent conduct in administering the Basic Income Pilot Project including, notably, by cancelling BI Payments early.

101. It was foreseeable by the Defendant that ceasing the BI Payments early would cause the Class Members to suffer damages and to suffer injury due to the frustration and emotional upset associated with being told that BI Payments were ceasing prematurely.

102. The Class Members were in a relationship of proximity to the Defendant. They entered into a special relationship with the Defendant by agreeing to become human

research subjects under the BI Pilot on the strength of clear, consistent promises that certain BI Payments would be made for the fixed period and/or periods pleaded above. The Class entered into such a relationship with the assurance that the BI Pilot would be administered and monitored with all proper controls in place.

103. The Defendant communicated directly, specifically, and repeatedly with each Class Member in respect of their entitlements to BI Payments.

104. Further, all Class Members were in a position of reliance upon the Defendant and the representatives, agents and employees of the MCCSS that the Defendant and the MCCSS would administer the BI Pilot with reasonable diligence, especially as all members of the Class were persons in vulnerable positions as low income earners and as persons living with disabilities.

105. The Defendant breached its duty of care owed to the Class to pay BI Payments until the promised and agreed-upon final date of payment and to not cease payments early.

106. As particularized in Section H., below, the Plaintiffs and Class have suffered and will suffer damages as a result of the Defendant's negligence.

4. Breach of a Public Law Duty

107. By virtue of the facts pleaded above, the Defendant undertook to the Class to provide BI Payments to each Class Member for a three-year period commencing on the date the Class Member received their first payment.

108. Further, or in the alternative, the Defendant undertook to the Class to provide BI Payments to each Class Member for a three-year period associated with the operation of the BI Pilot.

109. By cancelling the BI Pilot early, the Defendant has failed to fulfil its undertaking.

110. The Defendant's conduct was unreasonable and unfair and, further or in the alternative, created a legitimate expectation to the payment of the promised and offered BI Payments. The Defendant's actions in ceasing payments failed to fulfil these legitimate expectations in a manner that was unreasonable on any standard of public law accountability. The Defendant's actions, in creating the aforesaid expectation and then cancelling payments early, were of an operational nature, amounting to promises and breaches to a limited, defined segment of the population.

111. As particularized in Section H., below, the Plaintiffs and Class have suffered and will suffer damages as a result of this breach of a public law duty to the Class.

5. Breach of Section 7 of the *Canadian Charter of Rights and Freedoms*

112. By virtue of the facts pleaded above, the Defendant violated the basic essential human needs of the Class Members and, as such, interfered with their life and security

of the person in violation of their rights under Section 7 of the *Canadian Charter of Rights and Freedoms*.

113. The BI Payments were essential to the Class Members to meet their basic daily needs. Further, the BI Payments were paid with the goal of potentially altering the Class Members' lives by supporting them as they met their basic needs.

114. The denial of BI Payments, violated the right of the Class to life, liberty and security of the person, contrary to section 7 of the *Charter*.

115. As particularized in Section H., below, the Plaintiffs and Class have suffered and will suffer damages as a result of the Defendant's breach of their rights under s. 7 of the *Canadian Charter of Rights and Freedoms*.

116. The Plaintiffs plead that the Class is entitled to damages pursuant to Section 24(1) of the *Charter*. There are no countervailing considerations that would render damages in this case inappropriate or unjust.

H. DAMAGES SUSTAINED BY THE CLASS

117. The Plaintiffs claim damages measured as the amount of BI Payments they and the Class have lost or of which they and the Class have been improperly denied.

118. Further, the Plaintiffs claim damages on account of expenses incurred and amounts paid that will have to be foregone due to the early cancellation of the Basic Income Pilot Program including, *inter alia*, amounts paid:

- (a) in tuition, for re-training, for courses, for outplacement counselling, and related expenses which cannot be recouped and for which the Class Member will not benefit because, for instance, they can no longer afford to continue the services or program;
- (b) for therapy, drugs, or medical equipment where the drugs or therapy will have to be put to an end prematurely; and,
- (c) to purchase property, equipment, vehicles, leases, and other items for use in investing in a business, venture, or re-employment, where such amounts are now lost because the re-employment or business or venture can no longer be pursued.

119. Further, the ~~p~~Plaintiffs claim general damages for inconvenience, loss of time, frustration, anxiety, mental distress, psychological injury, and emotional upset related to the early cancellation of the BI Pilot and the early cessation of the BI Payments. Without limiting the generality of the foregoing, Class Members suffered, *inter alia*:

- (a) panic attacks;

- (b) depression;
- (c) anxiety;
- (d) nervous shock;
- (e) manic episodes;
- (f) suicidal ideation;
- (g) feelings of low or no self-worth;
- (h) sleeplessness;
- (i) nightmares;
- (j) nervousness, restlessness or tension;
- (k) sensations of impending danger, panic or doom;
- (l) an increased heart rate;
- (m) heart palpitations;
- (n) hyperventilation;
- (o) sweating;
- (p) trembling;
- (q) feeling weak or tired;
- (r) trouble concentrating or thinking about anything other than their present worries and difficulty controlling worry generally;
- (s) gastrointestinal (GI) problems;
- (t) isolation;
- (u) heart attack; and,
- (v) stroke.

120. In the event damages are awarded to the Plaintiffs and the Class during a period where the recipients are in receipt of, among other things, ODSP benefits, OW benefits, or income tax credits tied to total income received, the affected recipients may see, among other things: (a) their ODSP or OW or benefits reduced or eliminated altogether, including their eligibility for health benefits and prescription medication coverage; and/or, (b) their income tax liability affected.

121. The Plaintiffs accordingly claim additional damages as compensation for any consequential losses, including the loss of any ODSP benefits, OW benefits, health benefits or prescription medication coverage, or the loss of tax advantages due to additional income tax payable.

I. RELEVANT LEGISLATION

~~420.~~ 122. The Plaintiffs plead and rely upon:

- (a) the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27;
- (b) the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20, as amended by S.O. 1993, c. 2, s. 23, 24, S.O. 1994, c. 27, s. 67, S.O. 1997, c. 25, s. 4(4), S.O. 2006, c. 19, Sched. C, s. 1 (1), S.O. 2006, c. 19, Sched. D, s. 11, S.O. 2006, c. 34, s. 35, S.O. 2006, c. 35, Sched. C, s. 69, and S.O. 2017, c. 14, Sched. 4, s. 21;
- (c) the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B, as amended to S.O. 2009, c. 33, Sched. 8, s. 4

- (d) the *Ontario Works Act*, 1997, S.O. 1997, c. 25, Sched. A, as amended to S.O. 2017, c. 14, Sched. 4, s. 24
- (e) the *Canadian Charter of Rights and Freedoms*;
- (f) the *Class Proceedings Act*, S.O. 1992, c. 6;
- (g) the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and,
- (h) the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

J. PLACE OF TRIAL

424. 123. The Plaintiffs propose that this Action be tried in Lindsay.

March 28, 2019
~~March 28, 2019 - October 21, 2019~~

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Court File No. CV-19-00000035-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
LINDSAY

AMENDED STATEMENT OF CLAIM

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