

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JUSTIN McGIVERN-ROBERSON, an infant by his Guardian Ad Litem LYNNE  
McGIVERN and the said LYNNE McGIVERN

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**NOTICE OF MOTION**

TO: THE DEFENDANT  
AND TO: ITS SOLICITORS

**TAKE NOTICE** that an application will be made by the Plaintiff to Mr. Justice Cullen in Chambers, at the Courthouse, 800 Smithe Street, Vancouver, B.C. on Monday, the 6<sup>th</sup> day of November, 2006, at 10.00 am or so soon thereafter as counsel may be heard for Orders that:

1. This action be certified a class proceeding pursuant to the *Class Proceedings Act.*, R.S.B.C. 1996, c.50;
2. The Class be defined as follows:

**“all students for whom, while resident in the Province of British Columbia, the Defendant has failed to provide proper testing and remedial education for their dyslexic condition.”**

3. The within proceeding be certified as a class proceeding on the basis of the following common issues:
  1. Is the defendant in breach of its obligations as set out in the School Act RSBC 1996, c. 412 by either failing or refusing to provide adequate and proper testing

of students while resident within the Province of British Columbia for the determination of their learning disability, **dyslexia**?

2. Is the Defendant in breach of its obligations as set out in the School Act by failing or refusing to provide proper, effective and recognized remedial education as required by students while resident within the Province of British Columbia because of their **dyslexic** condition?
3. By virtue of the Defendant's failure to comply with the provisions of the School Act, as set out in questions 1 and 2, is the Defendant in breach of its obligations under the Canadian Charter of Rights and Freedoms to treat students who are resident in the Province of British Columbia and who are suffering from the condition of **dyslexia** equally with all other individuals before and under the law and who are entitled to be afforded equal protection and equal benefit of the law without discrimination?
4. If the answer to common issues number 1, 2 or 3 is "yes", is the Defendant guilty of conduct that justifies an award of punitive damages?
5. If the answer to any one or more of common issue number 4 is "yes", what amount of punitive damages is to be awarded?

4. Lynne McGivern be appointed as the Representative Plaintiff for the Class;
5. That a resident class member may opt out of this proceeding by notifying Poyner Baxter LLP in a time and manner directed by the Court.
6. Such further or other orders as this Honourable Court may deem just.

#### **THE GROUNDS FOR THE MOTION ARE:**

1. The pleadings herein disclose a cause of action against the Defendant;
2. There is an identifiable Class which will be represented by the proposed Representative Plaintiff, Lynne McGivern;
3. The claims of the Class Members raise common issues respecting them within the litigation;
4. A class proceeding is the preferable procedure for resolution of the common issues;
5. The proposed Representative Plaintiff, Lynne McGivern,
  - (a) Will fairly and adequately represent the interests of the Class;
  - (b) Has a plan which sets-out a workable method of advancing the proceeding on behalf of the Class, including the notification of Class Members; and

- (c) Does not have an interest in conflict with the interests of other Class Members;

The Applicant will rely on:

1. The *Class Proceedings Act*, R.S.B.C. 1996, c.50;
2. The Rules of Court, B.C. Reg. 221/90 as amended;
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be referred to at the hearing of the motion:

1. The pleadings herein;
2. The Affidavit of Kenneth J. Baxter, sworn the 20th day March, 2006;
3. The Affidavit of Lynne McGivern, sworn the 20th day of March, 2006;
4. The Affidavit of Dr. Linda Siegel, sworn the 20th day of March, 2006;
5. The Affidavit of Louise Brazeau-Ward sworn the 20<sup>th</sup> day of March, 2006;
6. The Submissions and Brief of Authorities of the Plaintiff;
7. The Pleadings and proceedings filed herein; and
8. Such further and other evidence and material as counsel may advise and this Honourable Court may permit;

Dated: March 21st, 2006

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Solicitor for the Plaintiff

THIS MATTER IS OF A CONTENTIOUS NATURE AND WILL TAKE APPROXIMATELY 5 to 6 DAYS