

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001159-215

(Class Action)  
SUPERIOR COURT

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ARIEH PERECOWICZ, [REDACTED]  
[REDACTED]

Applicant

-vs-

HER MAJESTY THE QUEEN, as  
represented by the ATTORNEY GENERAL  
OF CANADA, having a domicile at Complex  
Guy-Favreau, Quebec Regional Office,  
Department of Justice, East Tower, 9<sup>th</sup> Floor,  
200 Rene-Levesque Boulevard West, district  
of Montreal, province of Quebec, H2Z 1X4

Defendant

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS  
FOLLOWS:**

**I. GENERAL PRESENTATION**

1. The Applicant wishes to institute a class action on behalf of the following class:

**Class:**

All seniors who did not receive the Guaranteed Income Supplement  
(GIS) as of July 1, 2021.

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

2. This class action seeks to obtain damages due to the unfair, irrational and

arbitrary decision by Service Canada and the Canada Revenue Agency that caused a group of Canadian senior citizens to lose their Guaranteed Income Supplement (hereinafter “GIS”);

3. The GIS is a monthly payment for seniors who meet certain criteria listed below, as it appears from **Exhibit P-1**:
  - they are 65 or older;
  - they live in Canada;
  - they get the Old Age Security (OAS) pension;
  - their income is below \$18,984 if they are single, widowed, or divorced
  - their income plus the income of their spouse/common-law partner is below:
    - \$25,104 if their spouse/common-law partner receives the full OAS pension;
    - \$45,504 if their spouse/common-law partner does not receive an OAS pension;
    - \$45,504 if their spouse/common-law partner receives the Allowance.
4. The GIS is based on income and is available to low-income Old Age Security pensioners. The maximum monthly payment is \$936.00 and it is not taxable (Exhibit P-1);
5. Many senior citizens depend on the GIS to live and these monthly payments provide a vulnerable population of Canada’s society with financial security and peace of mind;
6. On August 11, 2021, the Canadian Press published an article titled “*Receipt of seniors’ guaranteed income supplement hinged partly on what agency handled their CERB*”, which included the following, as it appears from **Exhibit P-2**:

An internal government document is shining a light on how low-income seniors were abruptly cut off from monthly federal payments **based on which bureaucratic body handled their emergency benefits last year**.

A departmental directive from Service Canada, obtained by The Canadian Press, elaborates on how the Canada Emergency Response Benefit was in fact **two programs portrayed as one** for simplicity of communication, though they had different criteria.

One stream - processed by the Canada Revenue Agency - was for recipients whose income was considered uninsurable, such as self-employed Canadians, while the other stream - delivered by Service Canada - was for those with insurable earnings. The former meant relief benefits would be deducted from low-income seniors' guaranteed income supplement (GIS), while the latter did not.

Pandemic benefits for those in the second camp “**can be excluded from**

**their income amount when applying for GIS,”** the directive states.

7. In a letter sent to Seniors Minister Deb Schulte on August 9, 2021, one MP pointed out that “*Despite meeting the eligibility requirements, these **seniors have been arbitrarily penalized** based on the stream these funds came through*” (Exhibit P-2);
8. In a July 29, 2021 letter to Minister Schulte, National Revenue Minister Diane Lebouthillier and Employment Minister Carla Qualtrough, another MP emphasized the “*costly ramifications of forcing low-income seniors into greater poverty*” (Exhibit P-2);
9. Indeed, an August 5, 2021 article published in the Canadian Press titled “*Seniors cut off from income supplement after receiving emergency benefits*” highlights the serious financial and emotional consequences caused by the Defendant’s negligence and misconduct, including the possibility of seniors being evicted from their homes and being completely shocked when receiving their notices in July of 2021, Applicant communicating the article as **Exhibit P-3**;

## **II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (s. 575 C.C.P.):**

### **A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT**

10. In July of 2021, the Applicant received a letter from Service Canada informing him of the following, as it appears from **Exhibit P-4**:

Service Canada has determined that you are no longer entitled to the **Guaranteed Income Supplement** for the period of July 2021 to June 2022. Beginning in July 2021, you will receive only the basic Old Age Security Pension. The amount of your benefit is: \$626.49
11. Receipt of this letter caused the Applicant, who is 77 years old, to become extremely stressed and anxious as to his future and whether he would be able to afford the basic necessities of life;
12. From July 2020 to June 2021, the Applicant received \$1,317.16 per month, which includes the GIS and the OAS (the GIS portion was \$690.67 per month);
13. The Applicant received his last GIS payment on or around June 27, 2021;
14. Upon receipt of the notice from Service Canada (Exhibit P-4), he immediately contacted them and tried to plead with them to no avail. Service Canada did not inform him of the dual-stream system and that other senior citizens were entitled to keep receiving the GIS based, essentially, on the luck of the draw;
15. Due to the unfair, irrational and arbitrary dual-stream system implemented by the Defendant’s agents, the Applicant was arbitrarily penalized and did not receive a

GIS payment for July 2021 and, according to the letter he received from Service Canada (Exhibit P-4), will not receive any GIS payments until 2022 (and likely until 2023);

16. The dual-stream system created and implemented by the Defendant's agents constitutes a fault under Quebec's rules of extracontractual liability (art. 1457 and 1463 C.C.Q.) because the decision to maintain or remove the GIS (and to therefore arbitrarily penalize some senior citizens) depends on which stream or department handled a senior citizen's file;
17. On August 5, 2021, the Applicant read the Canadian Press article (Exhibit P-3), but it was only upon reading the August 11, 2021 article (Exhibit P-2) that he learnt about the dual-stream system and realized that the arbitrary conduct of the Defendant's agents constitutes a civil fault giving rise to the damages claimed herein;
18. The Applicant believes that further evidentiary support for his allegations will come to light after a reasonable opportunity for discovery;
19. As of the present date, the Applicant hereby claims damages in the amount of \$690.67, subject to adjustment;
20. He also claims moral damages in the amount of \$500.00, subject to adjustment, for the stress, anxiety and fear of the unknown that the conduct of the Defendant's agents has caused him since July 2021 and which are ongoing. The Applicant reserves his right to increase for future damages if the situation is not corrected now;
21. The Applicant's damages are a direct and proximate result of the conduct of the Defendant's agents;
22. As a result of the foregoing, the Applicant and Class Members are justified in claiming damages pursuant to article 1457 and 1463 C.C.Q.;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

23. The claims of every Class Member are founded on very similar facts to the Applicant's claim against the Defendant;
24. Every Class Member received a letter from Service Canada informing them that they were no longer entitled to the GIS for the period of July 2021 to June 2022, and this decision was based on an irrational dual-stream system implemented by the Defendant's agents that arbitrarily penalized certain senior citizens, but not others;
25. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;

26. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
- a) Did the Defendant's agents create and implement an unfair, irrational and arbitrary dual-stream system whereby some senior citizens lost their GIS, while others did not?
  - b) Does the conduct of the Defendant's agent constitute a fault under articles 1457 and 1463 C.C.Q.?
  - c) Are the Class Members entitled to compensatory damages and, if so, in what amount?
  - d) Are the Class Members entitled to moral damages and, if so, in what amount?

### **C) THE COMPOSITION OF THE CLASS**

27. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
28. The size of the Class is conservatively estimated to include hundreds of thousands of members;
29. The Canadian Press article (Exhibit P-2) mentions:
- While the dual-stream complication did not come to light until this week, opposition legislators say **they've been flooded with calls from Canadians aged 65 and up who suddenly saw their monthly budget tossed out the window** amid drastic dips in government supports due to the pandemic benefits they relied on last year.
30. The names and addresses of all the Class Members are not known to the Applicant, however, are in the possession of the Defendant;
31. Class Members are very numerous and are dispersed across the province and country;
32. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
33. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

34. The Applicant requests that he be appointed the status of representative plaintiff for the following reasons:
  - a) He is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
  - b) He is competent, in that it has the potential to be the mandatory of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) His interests are not antagonistic to those of other Class Members;
35. The Applicant has been actively following the developments of this situation since receiving the Service Canada letter in July 2021 (Exhibit P-4), including contacting Service Canada, the media and his attorney, and this for his benefit and for the benefit of all senior citizens similarly situated;
36. As for identifying other Class Members, the Applicant is aware of other senior citizens who are in the same situation as him;
37. The Applicant has read the present application;
38. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of the Class;

**III. DAMAGES**

39. In light of the foregoing, the following damages may be claimed against the Defendant:
  - a) compensatory damages, in an amount to be determined, on account of the aggregate of the GIS not paid to Class Members for the month of July 2021;
  - b) moral damages in the amount of \$500.00 per Class Members for the stress and fear caused by the fault of the Defendant's agents;
  - c) the Applicant reserves the right to increase the amounts listed in a) and b) above if the situation is not rectified now.

**IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

40. The action that the Applicant wishes to institute on behalf of the Class Members is an action in extracontractual liability and for damages;

41. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** the Plaintiff's action against the Defendant on behalf of all the Class Members;

**CONDEMN** the Defendant to pay the Representative Plaintiff and Class Members compensatory damages for the aggregate of the amounts of the Guaranteed Income Supplement since July 2021 and until the situation is fixed;

**CONDEMN** the Defendant to pay the Representative Plaintiff and Class Members moral damages of \$500.00 each, subject to adjustment;

**ORDER** the collective recovery of all damages owed to the Class Members;

**CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

## **V. JURISDICTION**

42. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because he resides in this district and the Defendant has a domicile in this district.

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating application in damages;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

#### **Class:**

All seniors who did not receive the Guaranteed Income Supplement (GIS) as of July 1, 2021.

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendant’s agents create and implement an unfair, irrational and arbitrary dual-stream system whereby some senior citizens lost their GIS, while others did not?
- b) Does the conduct of the Defendant’s agent constitute a fault under articles 1457 and 1463 C.C.Q.?
- c) Are the Class Members entitled to compensatory damages and, if so, in what amount?
- d) Are the Class Members entitled to moral damages and, if so, in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

1. **GRANT** the Plaintiff’s action against the Defendant on behalf of all the Class Members;
2. **CONDEMN** the Defendant to pay the Representative Plaintiff and Class Members compensatory damages for the aggregate of the amounts of the Guaranteed Income Supplement since July 2021 and until the situation is fixed;
3. **CONDEMN** the Defendant to pay the Representative Plaintiff and Class Members moral damages of \$500.00 each, subject to adjustment;
4. **ORDER** the collective recovery of all damages owed to the Class Members;
5. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;
6. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
7. **CONDEMN** the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of



management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein by way of a letter sent by the Defendant to each Class Member, to their last known address, with the subject line "Notice of a Class Action".

**THE WHOLE** with costs including publication fees.

Montreal, August 11, 2021

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran

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Counsel for Applicant

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

**Exhibit P-1:** Extract of the Government of Canada's webpage titled "Guaranteed Income Supplement: Overview";

**Exhibit P-2:** Copy of August 11, 2021 Canadian Press article titled: "*Receipt of seniors' guaranteed income supplement hinged partly on what agency handled their CERB*";

**Exhibit P-3:** Copy of August 5, 2021 Canadian Press article titled "*Seniors cut off from income supplement after receiving emergency benefits*";

**Exhibit P-4:** Copy of July 2021 letter sent by Service Canada to the Applicant.

These exhibits are available on request.

## Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, August 11, 2021

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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Counsel for Applicant

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

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**TO: HER MAJESTY THE QUEEN**, as represented by the  
ATTORNEY GENERAL OF CANADA  
Complex Guy-Favreau, Quebec Regional Office  
Department of Justice, East Tower, 9<sup>th</sup> Floor  
200 Rene-Levesque Boulevard West  
Montréal, Québec, H2Z 1X4

**Defendant**

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

Please do govern yourself accordingly.

Montreal, August 11, 2021

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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Counsel for Applicant

500-06-001159-215

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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ARIEH PERECOWICZ

Applicant

v.

HER MAJESTY THE QUEEN

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

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**COPY**

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N/D : JZ-232

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