



Court File No. CV-14-0018CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TONI GRANN, ROBERT MITCHELL, and DALE GYSELINCK ~~and~~ LORRAINE EVANS

Plaintiffs

-and-

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**SECOND AMENDED FRESH AS AMENDED STATEMENT OF CLAIM**

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.

ELECTRONICALLY AMENDED on this 12th day of March, 2026, pursuant to the Order of the Honourable Regional Senior Justice W. D. Newton dated the 9th day of March, 2026.  
Name and Signature of Court Registrar

Date: January 22, 2014

Issued by: (Original signed by Y. Hinterbrander)

**Local Registrar**

Address of court office  
277 Camelot Street,  
Thunder Bay, ON P7B 4A3

TO: **HIS MAJESTY THE KING IN  
RIGHT OF THE PROVINCE OF  
ONTARIO**

Crown Law Office - Civil Law  
720 Bay Street  
8th Floor  
Toronto, ON MSG 2K1  
Tel: (416) 325-8535  
Fax: (416) 326-4181

## CLAIM

1. The plaintiffs, on behalf of the Class as described herein, claim:
  - a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the Class;
  - b) a declaration that the defendant breached its fiduciary, ~~statutory and common law~~, and statutory duties to the plaintiffs and the Class through its failure to give proper consideration to, and to take all reasonable steps to protect and pursue in a timely manner Crown Wards' rights to recover compensation from the Criminal Injuries Compensation Board for damages sustained as a result of criminal ~~or~~ and tortious acts to which Crown Wards were victims;
  - c) a declaration that the defendant was negligent in its failure to give proper consideration to, and to take reasonable care to protect and pursue in a timely manner Crown Wards' rights to recover compensation from the Criminal Injuries Compensation Board for damages sustained as a result of criminal ~~or~~ and tortious acts to which Crown Wards were victims;
  - d) a declaration that the defendant is liable to the plaintiffs and the Class for the damages referred to in (f) below caused by its breach of these fiduciary, statutory, and common law duties;
  - e) a declaration that the defendant was negligent in failing to take reasonable care to collect and maintain all documents and records relevant to proving harms suffered by the Crown Wards, and to ensure that such harms that occurred while the Class Members were Crown Wards were fully and accurately documented, and that those documents were maintained and provided to the Class Members when they left the Crown's care;
  - ~~e) f)~~ damages for negligence and breach of fiduciary duty in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate for the defendants' breach of fiduciary, statutory, and common law duties in failing to pursue claims for the Class from the Criminal Injuries Compensation Board in a timely manner, or at all, and for failing to collect and maintain all documents and records relevant to proving such claims;
  - ~~f) g)~~ punitive damages in the amount of \$10 million or such other sum as this Honourable Court may find appropriate;
  - ~~g) h)~~ prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
  - ~~h) i)~~ costs of the action;

⇒ j) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and

⇒ k) such further and other relief as to this Honourable Court may deem just and appropriate in all the circumstances.

## A. OVERVIEW

2. Ontario Crown Wards ~~represent~~ were an enormously vulnerable group requiring significant physical, emotional and legal protection. The Crown Ward class members were victims of criminal abuse, neglect and tortious acts as children, or were in substantial risk of such harms, and as a result of which, they were removed from the ~~ir~~ care of their families and placed under the care and guardianship of Her His Majesty the Queen King in Right of the Province of Ontario (the “Crown”) by a court order under s. 57(1)3. of the *Child and Family Services Act*, RSO 1990, c C.11, or under its predecessor, s. 25(b) and (c) the *Child Welfare Act*, 1965, c. 14, sup. 1965.

~~2.~~ 3. Some of the Crown Ward class members were also victims of criminal and tortious acts while they were under the age of 18 and in the care of the Crown. As a result of the crimes and torts committed against them prior to, and during their Crown Wardship, these class members were entitled to apply for compensation from the Criminal Injuries Compensation Board ~~and to commence proceedings for civil damages~~. It was the responsibility of the Crown to ensure that the relevant documents were created, maintained and made available to the Crown Wards to support their claims for compensation from the Criminal Injuries Compensation Board.

~~3.~~ 4. The Criminal Injuries Compensation Board was created by the Ontario Legislature and ~~is~~ was administered by the Crown. The Criminal Injuries Compensation Board was dissolved on December 31, 2021. In its role as legal guardian of Crown Wards and administrator of the Criminal Injuries Compensation Board, the Crown ~~is~~ was uniquely situated and charged to protect the legal

rights of Crown Wards, to preserve the class members' rights and to assist them in pursuing compensation from the Criminal Injuries Compensation Board ~~and civil damages for tortious acts~~ while the Crown Wards remained in the care of the Crown. Contrary to its duties, the Crown systematically failed to develop and implement the appropriate policies and directions to the Children's Aid Societies or others charged by the Crown with the day to day care of the Crown Wards to ensure that ~~such~~ claims to the Criminal Injuries Compensation Board were protected and pursued in a timely manner while the Crown Wards remained in the Crown's care.

~~4.~~ 5. By failing to give proper consideration to and to take all reasonable steps to protect and pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal and tortious acts to which they were victims from the Criminal Injuries Compensation Board in a timely manner while the Crown Wards remained in the Crown's care, the Crown was negligent and in breach of its fiduciary duty owed to the Crown Wards.

~~5.~~ 6. As a result of the Crown's systemic failure and inaction, Crown Wards in Ontario have seen their ability to seek ~~civil damages and~~ compensation from the Criminal Injuries Compensation Board evaporate. The Criminal Injuries Compensation Board has been discontinued without claims being brought in a timely manner by the Crown on behalf of most Crown Wards. Limitation periods have expired, evidence has disappeared or was never obtained or documented, and secured for the benefit of the Crown Wards to support their claims for compensation from the Criminal Injuries Compensation Board. ~~and Crown Wards~~ who were victims of criminal and tortious acts have not received compensation that would otherwise have played a vital role in their recovery and development. They have suffered pain and suffering for years of living without such compensation which ought to have been sought and paid to them as children when the crimes against them were committed. Alternatively, Ontario failed to advise the Crown Wards of their

right to bring claims to the Criminal Injuries Compensation Board at the time that the Crown Wards left Ontario's care, and to provide the Crown Wards with the relevant documentation to assist them in making such claims.

7. As a result of the Crown's systemic failure and inaction, Ontario failed to collect, create, maintain and preserve the documentation that evidenced the criminal and tortious acts to which the Crown Wards were subjected, or to provide such documentation to the Crown Wards when they left Ontario's care. The Crown's misconduct has substantially compromised the Crown Wards' ability to make claims to the Criminal Injuries Compensation Board when it was operational.

## **B. THE PARTIES**

~~6. The plaintiff, Holly Papassay, (hereinafter referred to as "Holly") is an individual residing in the City of Thunder Bay, in the Province of Ontario.~~

~~7. Holly was born on September 25, 1971 in Sioux Lookout, Ontario.~~

~~8. Holly was a Crown Ward between the ages of approximately 5 to 12. As described below, Holly suffered extensive abuse prior to and during her Crown Wardship of which the Crown was aware. The Crown failed to take any steps to protect or pursue her rights to such compensation or damages.~~

~~9.8. The plaintiff, Toni Grann, (hereinafter referred to as "Toni") is an individual residing in the City of Thunder Bay, in the Province of Ontario.~~

~~10.9. Toni was born on December 29, 1966 in Brockville, Ontario.~~

~~11.~~ 10. Toni became a Crown Ward at approximately age three. Toni suffered extensive abuse prior to and during her Crown Wardship of which the Crown was aware. The Crown failed to take any steps to protect or pursue her rights to ~~such compensation or damages~~ while she was a Crown Ward, and the Crown failed to advise her of the right to seek compensation from the Criminal Injuries Compensation Board when she aged out of care, and failed to provide her with the documentation necessary to establish her compensation claim.

~~12.~~ 11. The plaintiff, Robert Mitchell, (hereinafter referred to as “Robert”) is an individual residing in the City of St. Catherines, in the Province of Ontario.

~~13.~~ 12. Robert was born on May 28, 1961 in Toronto, Ontario.

~~14.~~ 13. Robert became a Crown Ward on October 6, 1973 when he was twelve years old. Robert suffered extensive abuse prior to and during his Crown Wardship of which the Crown was aware. The Crown failed to take any steps to protect or pursue his rights to ~~such compensation or damages~~ while he was a Crown Ward, and the Crown failed to advise him of the right to seek compensation from the Criminal Injuries Compensation Board when he aged out of care, and failed to provide him with the documentation necessary to establish his compensation claim.

~~15.~~ 14. The plaintiff, Dale Gyselinck, (hereinafter referred to as “Dale”) is an individual residing in the City of London, in the Province of Ontario.

~~16.~~ 15. Dale was born on August 2, 1961 in Kingston, Ontario.

~~17.~~ 16. Dale became a Crown Ward on July 10, 1975 when he was thirteen years old. Dale suffered extensive abuse prior to and during his Crown Wardship of which the Crown was aware. The Crown failed to take any steps to protect or pursue his rights to ~~such compensation or damages~~

while he was a Crown Ward, and the Crown failed to advise him of the right to seek compensation from the Criminal Injuries Compensation Board when he aged out of care, and failed to provide him with the documentation necessary to establish his compensation claim.

~~18. The plaintiff, Lorraine Evans, (hereinafter referred to as “Lorraine”) is an individual residing in the City of Ajax in the Province of Ontario.~~

~~19. Lorraine was born on March 19, 1963 in Kirkland Lake, Ontario.~~

~~20. Lorraine became a Crown Ward on May 16, 1968 when she was approximately five years old. Lorraine suffered severe neglect prior to and severe abuse during her Crown Wardship of which the Crown was aware. The Crown failed to take any steps to protect or pursue in a timely manner her rights to such compensation or damages.~~

~~21.~~ 17. The Crown defendant, Her Majesty the Queen in Right of the Province of Ontario (the “Crown”) is named in these proceedings pursuant to the provisions in the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, ~~and the amendments thereto~~ and the *Crown Liability and Proceedings Act*, 2019, SO 2019, c 7, Sch 17. Specifically, this claim relates to the misconduct of those Ministers of Children, Community and Social Services, and his or her predecessors who were in place during the class period, and the misconduct of the employees of the Ministry charged with fulfilling the Crown’s responsibilities as a parent of the Crown Wards for the purpose of the Crown Wards’ care, custody and control, including Crown Ward file reviews, and supervising the Children’s Aid Societies or other persons charged with the day to day care of the Crown Wards during the class period.

~~22~~ 18. The plaintiffs bring this action pursuant to the *Class Proceedings Act, 1992* on their own behalf and on behalf of the following persons (the “Class”, “Class Members” or the Crown Ward Class):

All persons who ~~became Crown Wards in Ontario on or after January 1, 1966~~ who were alive as of January 22, 2012, who became Crown Wards in Ontario at any time from the period on or after January 1, 1966 until March 30, 2017, unless they opted out of this action by March 11, 2018.

### C. HISTORY OF CROWN WARDSHIP IN ONTARIO

~~23~~ 19. In Ontario, during the class period, a child ~~may~~ could be removed from the care of his or her parents into the care and guardianship of the Crown for reasons that included physical, emotional, sexual abuse, and neglect.

~~24~~ 20. Prior to January 1, 1966, when a child was removed from ~~his or her~~ their family pursuant to the *Child Welfare Act*, the child was made a ward of the Children’s Aid Society serving the area of jurisdiction. Legal guardianship as well as the actual care and custody of the child was transferred from the child's natural parents to the local Children’s Aid Society.

~~25~~ 21. In April 1961, a Minister’s Advisory Committee on Child Welfare was commissioned to study and review the Province of Ontario's child welfare legislation and the administration of child welfare programs. The Advisory Committee, chaired by Charles J. Foster, prepared a report recommending that instead of transferring a child's care and custody from ~~his or her~~ their natural parents to a Children’s Aid Society, the Crown in right of the Province of Ontario should become the legal guardian of these children.

~~26.~~ 22. This recommendation was ultimately accepted, culminating in amendments to the *Child Welfare Act, 1965*, c. 14, sup. 1965. Pursuant to these amendments, which came into force on January 1, 1966, the Crown in Right of the Province of Ontario became the legal guardian of permanent wards, thenceforth known as Crown Wards, and assumed all the rights and responsibilities of a legal guardian of the Crown Wards for the purpose of their care, custody and control.

~~27.~~ 23. In adopting the recommendations of the Foster Report, the Ontario Legislature designated the Crown to hold the status, rights and responsibilities as a guardian of those children for whom a transfer of guardianship of the person was deemed necessary under the provisions of the *Child Welfare Act*.

~~28.~~ 24. As the legal guardian of Crown Wards, the Crown is ultimately responsible for providing or causing to provide facilities, operational policies, standards and programs appropriate for the care and custody of Crown Wards. These duties may not be delegated. The Crown has sovereign and primary responsibility for welfare services to children when parents or family have been unable to fulfill this responsibility. As legal guardians, the Crown has duties to protect the Crown Ward's wellbeing, as well as to protect and preserve all assets of the Crown Wards, including the advancement of choses and causes of action in a timely manner, including claims to the Criminal Injuries Compensation Board.

#### **D. THE PLAINTIFF HOLLY'S EXPERIENCE AS A CROWN WARD**

~~29.~~ Between the ages of 6 and 7, Holly was placed in the care of a foster parent, Mrs. Daley, in her home in Siome Lookout. As described below, Holly continued to suffer abuse and neglect while in the care of the Crown.

30. — ~~While she was a resident of this home, a teenage male secretly watched her for months while she dressed and undressed.~~

31. — ~~On one occasion, while sitting on a couch, this teenage male attempted to sexually molest her female playmate while she was forced to watch.~~

32. — ~~Holly reported these incidents to her caregivers, who were agents of the Crown. As a result, the Crown's agents and police investigated, and she was moved to another home.~~

33. — ~~Between the ages of 10 and 13, Holly was placed in a home in the "Mission" area of the Fort William First Nation Reserve in or around Thunder Bay, Ontario. Her foster parents' first names were Barney and Darlene. Thunder Bay GAS processed her at this time.~~

34. — ~~A teenage male, several years older than her resided at this home, who repeatedly spoke to her about sexual acts. On numerous occasions, he confined her to in a garage while he exposed himself to her.~~

35. — ~~In the same home, Barney and Darlene locked Holly in her room with the window nailed shut and the door locked from the outside for long periods of time. As a result of her confinement, Holly missed meals and was not permitted to use the restroom for hours at a time.~~

36. — ~~Holly reported these incidents to the Crown or its agents, but no actions were taken. Specifically, she regularly made reports of abuse to her Thunder Bay GAS case workers when she was between 6 and 14 years old. In addition, Holly reported the abuse to Sioux Lookout police when she was between the ages of 6 and 10.~~

## **E. THE PLAINTIFF TONI'S EXPERIENCE AS A CROWN WARD**

~~37.~~ 25. At the age of 3, Toni was physically abused, threatened, and neglected by her mother's partner, William Warren. In particular, Mr. Warren struck Toni on her head with a belt, causing permanent scarring.

~~38.~~ 26. As a result of this and other abuse, Toni was hospitalized for head and neck trauma. Assault-related criminal charges were laid against Mr. Warren and he was ordered to undergo a psychological assessment and/or therapy.

~~39.~~ 27. Toni was subsequently placed in the care of the Crown. The Brockville CAS processed her at this time. As detailed below, Toni continued to suffer abuse while in the care of the Crown.

~~40.~~ 28. Between the ages of three and five, Toni was placed in 5 separate homes by Brockville CAS agents. Toni's Brockville case worker was Tony Moroni ("Moroni").

~~41.~~ 29. At age five, Toni and her three year old younger sister were placed in the care of an adoptive couple who lived in Hamilton, Ontario at 376 East 42<sup>nd</sup> Street. The Hamilton CAS processed Toni at this time. Her Hamilton case worker was June Graham. Her adoptive parents' names were Victor Smith ("Victor") and Helen Smith ("Helen"). Victor began sexually molesting and abusing Toni almost as soon as she arrived in the home. He repeatedly raped, sodomized, molested her and forced her to perform sexual acts upon him, at least once per week. His assaults included:

- a) forcing Toni to perform oral sex on him;
- b) forced anal sex;
- c) forced vaginal sex;
- d) exposing Toni to pornographic materials; and

e) other events of sexual abuse.

~~42.~~ 30. Toni was told by Victor that their sexual activities together were their secret and she was not to tell anyone else about them. Toni finally fled from the home when she was ten after a particularly brutal sodomy by Victor. When she fled, she immediately attended at the CAS office in Hamilton and told staff, including Graham, that she could not return to the home.

~~43.~~ 31. The Crown or its agents were aware of the abuse sustained by Toni, but no actions were taken.

~~44.~~ 32. Victor was charged with rape and/or sexual assault, among other charges, in or around 1982 by the Hamilton Police. Victor was convicted in or around 1984 and he served a prison sentence.

#### **F. THE PLAINTIFF ROBERT'S EXPERIENCES AS A CROWN WARD**

~~45.~~ 33. Robert was regularly physically abused by his father as a child. When Robert was 12 years old, Robert's father assaulted him with a belt. His injuries were so severe that he was hospitalized at the Hospital for Sick Children in Toronto for a number of weeks.

~~46.~~ 34. Robert was subsequently placed in the care of the Crown. Robert was processed by the Toronto CAS office.

~~47.~~ 35. The Crown or its agents were aware of the abuse sustained by Robert. Crown agents took photographs of Robert's extensive injuries.

~~48.~~ 36. Between the ages of 12 and 18, Robert was placed in at least 4 foster homes and/or CAS Receiving Centres by the Crown or its agents.

~~49.~~ 37. Between the ages of approximately 13 and 17, Robert resided at the Kennedy House Group Home for boys at 344 Morningside Avenue in Toronto (“Kennedy House”).

~~50.~~ 38. While he resided at the Kennedy House, he was sexually abused by John French, a staff member. On one occasion, Mr. French pinned Robert down and forcefully sexually touched and rubbed Robert. On another occasion, Mr. French forced a number of other boys to strip naked and to bend over in sexually suggestive poses, making Robert watch. On another occasion, Mr. French drugged Robert and sexually abused him while he was unconscious.

~~51.~~ 39. Robert reported the abuse to a supervisor at the Kennedy House Group Home, Kathy Freeman.

~~52.~~ 40. The Crown or its agents were aware of the abuse sustained by Robert, but no actions were taken.

~~53.~~ 41. Robert was discharged from the Kennedy House Group Home a few weeks before his eighteenth birthday at which time his Crown Wardship ceased.

#### **G. THE PLAINTIFF DALE’S EXPERIENCES AS A CROWN WARD**

~~54.~~ 42. Dale was physically abused by his father when he was a boy, who hit him with belts and extension cords. His abuse was so severe that he has retained lasting scars.

~~55.~~ 43. As a result of his father’s abuse, Dale was placed in the care of the Crown when he was approximately 5 years old. Dale was processed by the Kingston CAS office.

~~56.~~ 44. The Crown or its agents were aware of the abuse sustained by Dale.

~~57.~~ 45. Dale lived in a number of foster homes throughout his childhood and teenage years.

~~58.~~ 46. Dale lived in a foster home in Sharbot Lake, Ontario between approximately 1972 and 1976. His foster parents were Marian and Neil Wagar. Mr. Wagar regularly physically abused Dale by punching him and hitting him with implements such as sticks.

~~59.~~ 47. Dale was subsequently placed in the Bayfield Homes Group Home in Consecon, Ontario (“Bayfield Homes”) where he lived for approximately three years. While at Bayfield Homes, he was shaken, hit across the head, and pushed into a desk where his head was gashed open. He did not receive proper care for his injuries. Much of this abuse was committed by Phil Baldwin, the owner of Bayfield Homes.

~~60.~~ 48. At one time before his teenage years, he lived in a foster home located on Queen Street in Kingston, Ontario. Dale was abused by staff members at this home, including Michael Zirchovich. Mr. Zirchovich beat Dale, and other staff members regularly sexually fondled Dale.

~~61.~~ 49. Dale reported his abuse to CAS Kingston case workers including Bill Leonard and Ray Piper, among others.

~~62.~~ 50. The Crown or its agents were aware of the abuse sustained by Dale, but no actions were taken.

#### ~~H. THE PLAINTIFF LORRAINE’S EXPERIENCES AS A CROWN WARD~~

~~63. Lorraine was severely neglected by her parents when she was 3 years old. As a result, she was placed in the care of the Crown. She became a Crown Ward on May 16, 1968 when she was five years old.~~

~~64. The Crown or its agents were aware of the neglect suffered by Lorraine.~~

~~65. She was processed by case workers of the Tamiskameng/Kirkland Lake CAS office.~~

~~66. Between the ages of five and seven, Lorraine resided with foster parents James and Mary Warren in Federal, Ontario, near Kirkland Lake, Ontario. She was repeatedly and regularly sexually abused by Mary's father, Pat Hamilton, during this time. For example, Mr. Hamilton would regularly penetrate Lorraine's vagina with his fingers and forced her to touch and kiss his penis.~~

~~67. In 1973, when she was 10 years old, CAS placed her with a foster parent, Mrs. Pelletier, in Englehart, Ontario. While living with Mrs. Pelletier, Lorraine was vaginally penetrated by Mrs. Pelletier's son-in-law.~~

~~68. Between 1975 and 1977, she resided at a farm in Charlton, Ontario under the foster care of Ross and Louise Williams. Ross Williams forced Lorraine to perform oral sex on him and penetrated her vaginally. This abuse occurred numerous times per week. She eventually fled from the Williams home as a result of this sexual abuse.~~

~~69. When Lorraine was 13, in May 1976, she was admitted to a hospital due to an ovarian rupture. She was told by her physician that her condition was the result of early and repeated sexual activity.~~

~~70. Lorraine reported her abuse to various CAS workers at the Tamiskameng/Kirkland Lake office who were assigned to her during her period of Crown Wardship. One of those case workers was named Darlene Goch.~~

~~71. The Crown or its agents were aware of the abuse sustained by Lorraine, but no actions were taken.~~

~~72. Lorraine's Crown Wardship was discharged on March 4, 1980.~~

## I. THE CROWN'S FAILURES

~~73.~~ 51. During their Crown Wardships and upon their discharge, the Crown:

- a) failed to advise the plaintiffs that they were entitled to seek compensation from the Criminal Injuries Compensation Board ~~or civil damages~~ for the criminal and tortious acts by which they were victims;
- b) failed to collect and preserve evidence in respect of the criminal and tortious acts by which the plaintiffs were victims;
- c) failed to direct and ensure that proper records were made and maintained by the Ministry and the CASs charged with the plaintiffs' day to day care that documented and evidenced the criminal and tortious acts to which the plaintiffs had been subject;
- ~~e)~~ d) failed to provide copies of incident reports and investigations, or any other relevant documents and evidence to the plaintiffs in respect of the criminal and tortious acts by which they were victims;
- ~~d)~~ e) failed to retain counsel for plaintiffs or to advise the plaintiffs to retain counsel in respect of the criminal and tortious acts by which they were victims either while they were Crown Wards or at the time that the Crown Wardship ended; and
- f) failed to seek the advice of the Office of the Children's Lawyer or its predecessor, the Official Guardian, about whether to pursue claims from the Criminal Injuries Compensation Board on behalf of the plaintiffs in respect of the criminal and tortious acts they suffered while they remained Crown Wards; and
- g) failed to bring applications to the Criminal Injuries Compensation Board in respect of the injuries that the plaintiffs suffered while the plaintiffs were Crown Wards.
- ~~e) failed to advise the plaintiffs of their rights to make applications for compensation to the Criminal Injuries Compensation Board or to seek damages by way of civil action.~~

52. The Crown also failed to do each of the actions set out in paragraph 51 for each of the Class Members.

## J. VICTIMS OF CRIME LEGISLATION AND THE CRIMINAL INJURIES COMPENSATION BOARD

~~74.~~ 53. Established in 1971, the Criminal Injuries Compensation Board ~~makes~~ made awards in respect of reasonable expenses and pecuniary losses relating to any injury, pain or suffering caused by a criminal act. It paid compensation for pain and suffering, expenses as a result of injury or death, loss of income, support of a child born as a result of sexual assault, and other costs and expenses arising from the criminal acts to which the claimant was subjected. In the most extreme cases, awards could be as high as \$25,000 for a catastrophic single crime of violence to \$35,000 for multiple crimes of violence.

~~75.~~ 54. The Criminal Injuries Compensation Board ~~may~~ compensated victims who have had sustained the following criminal acts, among others: (a) criminal negligence; (b) assault; (c) sexual assault; and (d) uttering threats.

~~76.~~ 55. At the outset of the creation of the Criminal Injuries Compensation program, the limitation period for applications for compensation was one year after the date of the injury, with discretion to extend in appropriate circumstances. This limitation period was amended to two years on December 6, 2000, and the discretion to extend the limitation period was continued. In 2016, the limitation period was removed for applications arising from the commission of a crime of sexual violence, or violence that occurred within a relationship of intimacy or dependency (such as violence committed by a person charged with the care of a Crown Ward).

56. At all times the Crown knew that there was a limitation period in place for the commencement of claims to the Criminal Injuries Compensation Board, subject to the exclusion set out above, but it did nothing to ensure that claims were filed for the plaintiffs or the Class Members on a timely basis, or at all.

57. The Crown failed to advise the plaintiffs and the Class Members of their right to bring a claim to the Criminal Injuries Compensation Board when they aged out of Crown Wardship, and the Crown failed to provide any documentation to the plaintiffs and the Class Members to establish their entitlement to compensation from the Criminal Injuries Compensation Board.

58. In April 2019, the Crown announced that it was shutting down the Criminal Injuries Compensation Board, and that the cut off date for making applications was September 30, 2019. The Crown did nothing to ensure that claims were made by or for all then existing Crown Wards who had an entitlement to compensation.

59. In failing to make claims and to advise the plaintiffs and the Class Members of their rights to make claims to the Criminal Injuries Compensation Board, the Crown breached its fiduciary duty owed to the plaintiffs and the Class Members, and was acting in a conflict of interest – favouring itself and attempting to limit its financial exposure to pay compensation to the plaintiffs and the Class.

#### **K. DUTY OF CARE OWED BY THE CROWN TO THE CLASS**

~~77.~~ 60. At all material times, the Crown owed duties to the plaintiffs and to the class members which include, but are not limited to, a duty to protect the health and well-being of Crown Wards. This non-delegable duty includes a duty to give proper consideration and to take reasonable care to protect ~~and pursue~~ Crown Wards' rights to recover compensation from the Criminal Injuries Compensation Board for damages sustained as a result of criminal and tortious acts by which they were victims.

61. The Crown owed the plaintiffs and the Class Members a duty to pursue claims on their behalf to the Criminal Injuries Compensation Board as soon as the right to obtain compensation

arose, and to advise the plaintiffs and Class Members of their right to bring a claim to the Criminal Injuries Compensation Board if no such claim had been brought by the time that the plaintiffs or Class Members aged out of care.

62. The Crown owed the plaintiffs and the Class Members a duty to collect and maintain all documents and records relevant to proving the harms that the plaintiffs and the Class Members suffered, and to ensure that any such harms that occurred while the plaintiffs and Class Members were Crown Wards were fully and accurately documented, and those documents were maintained and provided to the plaintiffs and Crown Wards when they aged out of care.

63. As a result of the breach of the Crown's duty of care, the plaintiffs and the Class have suffered damages as set out below.

~~78.~~ 64. The harm suffered by the Crown Ward Class was a reasonably foreseeable consequence of the Crown's negligent acts and omissions.

~~79.~~ 65. The Crown was the guardian of all Crown Wards, standing in *loco parentis* to Crown Wards at all material times.

~~80.~~ 66. The legislation governing the relationship between the Crown and Crown Wards grounds the duty of care owed by the Crown to the Crown Ward Class. *The Child and Family Services Act*, R.S.O. 1990, c. C.11 states that where a child is made a Crown Ward, the Crown has all of the rights and responsibilities of a parent for the purpose of the child's care, custody and control. Such duties include the protection and enforcement of the child's claims for compensation ~~and civil damages~~ in these circumstances.

~~81~~ 67. The express words of the statute itself establish a special, close, and direct relationship between the Crown and Crown Wards.

~~82~~ 68. Finally, there was a direct relationship and specific interaction between each of the plaintiffs and the Crown, including the Crown's review of their files, their reporting of the criminal and tortious acts by which they were victims, and/or the Crown's specific knowledge of the criminal and tortious acts by which they were victims.

## L. STANDARD OF CARE

~~83~~ 69. The reasonable standard of care expected in the circumstances required the Crown to:

- a) have in place management and operations policies, procedures and manuals concerning the protection of the Crown Wards' right to seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- b) follow and enforce management and operations policies, procedures and manuals concerning the protection of the Crown Wards' right to seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- c) provide Crown Wards a program and system through which they could seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- d) collect and preserve evidence in respect of criminal and tortious acts sustained by Crown Wards;
- e) ensure that there was no conflict of interest between the Ministry and its agents or the CASs when investigating complaints of criminal or tortious acts sustained by Crown Wards;
- f) advise Crown Wards to retain counsel upon becoming victims of criminal or tortious acts;
- g) retain counsel for Crown Wards upon becoming victims of criminal or tortious acts;
- h) advise the Crown Wards upon becoming victims of criminal or tortious acts that they had potential claims for compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- i) upon discharge, advise Crown Wards of pending limitation periods for claims ~~for compensation~~ to the Criminal Injuries Compensation Board ~~and/or damages~~;

- j) make claims on behalf of the Crown Wards for compensation ~~and/or damages~~ to the Criminal Injuries Compensation Board;
- k) take steps to prevent the expiration of limitation periods of Crown Wards for claims for compensation ~~and damages~~ from the Criminal Injuries Compensation Board;
- l) upon discharge, provide copies of incident reports and investigations concerning criminal acts to Crown Wards and all other relevant documentation and evidence which could be used in an application for compensation from the Criminal Injuries Compensation Board, or for other such claims for damages;
- m) provide directions to Crown Wards to make claims for compensation or damages to the Criminal Injuries Compensation Board once they reach the age of majority;
- n) advise Crown Wards of their right to make an application for compensation and/or claim for damages from the Criminal Injuries Compensation Board; and
- o) give proper consideration in respect of the steps above.

~~84.~~ 70. The Crown knew or ought to have known of its duties described herein as a result of its unique position and expertise in caring for Crown Wards.

~~85.~~ 71. Furthermore, the Crown knew or ought to have known of its duties described herein as a result of its creation and administration of the Criminal Injuries Compensation Board.

#### **M. BREACH OF STANDARD**

~~86.~~ 72. The Crown breached the standard of care, on a class-wide systematic basis, in the following respects:

- a) the Crown failed to have in place management and operations policies, procedures and manuals concerning the protection of the Crown Wards' right to seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- b) the Crown failed to follow and enforce management and operations policies, procedures and manuals concerning the protection of the Crown Wards' right to seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;

- c) the Crown failed to provide Crown Wards with a program and system through which they could seek compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- d) the Crown failed to collect and preserve evidence in respect of criminal or tortious acts sustained by Crown Wards;
- e) the Crown failed to ensure that there was no conflict of interest between the Ministry and its agents when investigating complaints of criminal or tortious acts sustained by Crown Wards;
- f) the Crown failed to advise Crown Wards to retain counsel upon becoming victims of criminal or tortious acts;
- g) the Crown failed to retain counsel for Crown Wards upon becoming victims of criminal or tortious acts;
- h) the Crown failed to advise the Crown Wards upon becoming victims of criminal or tortious acts that they had potential claims for compensation ~~and/or damages~~ from the Criminal Injuries Compensation Board;
- i) upon discharge, the Crown failed to advise Crown Wards of pending limitation periods for claims for compensation from the Criminal Injuries Compensation Board ~~and/or damages~~;
- j) the Crown failed to make claims on behalf of the Crown Wards for compensation ~~and/or damages~~ to the Criminal Injuries Compensation Board in a timely manner, or at all;
- k) the Crown failed to take steps to prevent the expiration of limitation periods of Crown Wards for claims for compensation and/or damages from the Criminal Injuries Compensation Board;
- l) upon discharge, the Crown failed to provide copies of incident reports and investigations and other relevant documentation concerning criminal acts which was committed, which could assist in applications on claims for compensation ~~and/or damages~~ to the Criminal Injuries Compensation Board, or for other claims for damages that the Crown Wards may choose to pursue;
- m) the Crown failed to provide directions to Crown Wards to make claims for compensation ~~and/or damages~~ to the Criminal Injuries Compensation Board;
- n) the Crown failed to advise Crown Wards of their right to make an application for compensation ~~and/or damages~~ to the Criminal Injuries Compensation Board; and
- o) The Crown failed to give proper consideration with respect to the steps outlined above.

~~87.~~ 73. The Crown knew, or ought to have known, that as a consequence of the above- documented failures, Crown Wards would suffer both immediate and long-term harm. Such harms included mental injuries that could have been alleviated through psychological counselling paid for from the compensation from the Criminal Injuries Compensation Board, and psychological healing from their harms being recognized and compensated, as well as the loss of compensation from the Criminal Injuries Compensation Board being paid to them on a timely basis.

~~88.~~ 74. By failing to take any of these steps, the Crown was careless, reckless, willfully blind, or was deliberately discouraging application to the Criminal Injuries Compensation Board ~~or civil actions for damages.~~

~~89.~~ 75. The Crown's breach was an operational decision.

~~90.~~ 76. In the alternative, the Crown's breach was a policy decision that was not *bona fides*, was irrational, and was an improper exercise of Crown discretion.

## **N. FIDUCIARY RELATIONSHIP BETWEEN THE CROWN & THE CLASS**

~~91.~~ 77. The Crown owed Crown Wards, as individuals in its sole care and control, a fiduciary duty which included a duty to care for and protect the Crown Wards and to not put its interests ahead of the interests of Crown Wards.

~~92.~~ 78. The Crown was the guardian of all Crown Wards, standing *in loco parentis* to Crown wards at all times. Crown Wards were persons to whom the Crown owed the highest non-delegable, fiduciary, moral, statutory and common law duties.

~~93.~~ 79. At all material times, Crown Wards were entirely and exclusively within the power and control of the Crown or its agents, and were subject to the unilateral exercise of the Crown's or its delegate's power or discretion.

~~94.~~ 80. By virtue of the relationship between the Crown Wards as children and the Crown, being one of trust, reliance and dependence, the Crown owed a fiduciary obligation to ensure that Crown Wards were treated in all ways consistent with the obligations of a party standing in *loco parentis* to an individual under his or her care or control.

~~95.~~ 81. Crown Wards were entitled to rely and did rely upon the Crown to their detriment to fulfill their fiduciary obligations, the particulars of which include, but are not limited to, those duties set out in paragraph ~~42~~ 72 above.

~~96.~~ 82. In failing to give proper consideration and to take reasonable steps to protect the rights of the Crown Wards to seek compensation ~~or damages~~ including through claims to the Criminal Injuries Compensation Board, the Crown breached its fiduciary duty by:

- a) failing in the very essence of its obligation as legal guardian to protect the legal rights of Crown Ward class;
- b) inflicting pecuniary injury on members of the Crown Ward class;
- c) deliberately or negligently failing to appropriately address compensable harm suffered by Crown Wards in order to avoid scrutiny or trouble;
- d) deliberately or negligently avoiding payment out of Ontario's consolidated revenue fund to Crown Ward class members by way of compensatory awards from the Criminal Injuries Compensation Board;
- e) deliberately or negligently placing its interest, including its financial interests, ahead of those of the Crown Ward class members; and
- f) exercising undue influence over the economic matters of Crown Wards for its own gain, constituting a betrayal of trust, loyalty and of disinterest.

## O. DAMAGES SUFFERED BY THE PLAINTIFFS AND THE CLASS

~~97.~~ 83. The Crown knew, or ought to have known, that as a consequence of its negligence and breach of fiduciary duty, that members of the Crown Ward Class:

- a) have been foreclosed or compromised in their ability to make ~~from making~~ a claim for ~~civil damages or for~~ compensation pursuant to the *Compensation for Victims of Crime Act* for reasonable expenses and pecuniary losses relating to any injury, pain and suffering as a result of:
  - i. ~~missed limitation periods~~ the failure of the Crown to make a timely claim for compensation to the Criminal Injuries Compensation Board; and/or
  - ii. lack of evidence;
- b) have suffered long delays in receiving compensation from the Criminal Injuries Compensation Board, which in turn delayed:
  - i. the use and enjoyment of that compensation;
  - ii. the ability to receive treatment for injuries or to use the compensation or damages to better their lives;
  - iii. the use of that compensation ~~or damages~~ to better their lives; and
  - iv. lost accrual of interest;
- c) have suffered emotional distress, including mental distress, anger, depression, anxiety untreated PTSD and other psychological illnesses caused while under the care of the Crown, despite being fully knowledgeable of the circumstances, assaults and injuries described herein; and
- d) have suffered further psychological illnesses and injuries for having their trust violated.

## P. PUNITIVE DAMAGES

~~98.~~ 84. The high handed and callous conduct of the Crown warrants the condemnation of this Honourable Court. The Crown conducted its affairs with wanton and callous disregard for the class members' interests and well-being. In all the circumstances, the Crown breached, and continues to breach, its fiduciary duty and duty of good faith owed to the class members.

~~99.~~ 85. The Crown, either intentionally or recklessly, breached its common law, statutory and fiduciary duties as set out herein and this conduct warrants punitive damages.

~~100.~~ 86. The Crown was clearly aware of this failure or was wilfully blind or grossly negligent in not protecting the rights of the class to seek compensation or damages such as preserving relevant evidence. The Crown was aware of the need to protect victims of crimes and torts and the rights of victims to seek compensation from the Criminal Injuries Compensation Board ~~and damages~~.

~~101.~~ 87. Notice of this action was provided to Her Majesty the Crown in Right of the Province of Ontario on June 3, 2013.

~~102.~~ 88. This action is commenced pursuant to the *Class Proceedings Act, 1992*.

~~103.~~ 89. The Plaintiffs plead and rely on the following:

- (a) *Canadian Charter of Rights and Freedoms* ss. 7, 15, 24 and 28;
- (b) *Child and Family Services Act*, RSO 1990, c.C.11 and amendments thereto, ss. 1, 3, 15, 16, 17, 23, 37, 38, 40, 61, 62, 63, 63.1, 72, 79, 81, 105, and 108. RRO. 1990, Regulation 70, RRO 1990, Regulation 71, Regulation 206/00;
- (c) *Child Welfare Act, 1965*, c.14, sup.1965 and amendments thereto, ss. 1, 6, 19, 25, 32, 33, 38, 40 and 41, RRO 1970, Regulation 86 126/73;
- (d) *Class Proceedings Act, 1992*, SO 1992, c.6 and amendments thereto;
- (e) *Compensation for Victims of Crime Act*, RSO 1990, c. C.24 and amendments thereto, ss. 1, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 21, 26, and 27;
- (f) *Courts of Justice Act*, R.S.O. 1990, c. C.43 and amendments thereto;
- (g) *Family Law Act*, R.S.O. 1990, c. F. 3 and amendments thereto, ss. 1, 31, and 61;

(h) *Negligence Act*, R.S.O. 1990, c. N.1 and amendments thereto, ss. 1-7;

~~104.~~ 90. The Plaintiffs propose that this action be tried in the City of Thunder Bay in the Province of Ontario.

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Plaintiffs  
Defendant

THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

COURT FILE NO. CV-14-00018CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT THUNDER BAY

**SECOND AMENDED FRESH AS AMENDED  
STATEMENT OF CLAIM**

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