

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

Plaintiffs

-and-

**HIS MAJESTY THE KING ~~HER MAJESTY THE QUEEN~~ IN RIGHT OF THE
PROVINCE OF ONTARIO**

Defendant

AMENDED STATEMENT OF DEFENCE

1. The defendant, His Majesty the King ~~Her Majesty the Queen~~ in right of the Province of Ontario (the “Crown”), admits the allegations contained in paragraph ~~19~~ 23 of the Second Amended Fresh as Amended Statement of Claim (the “Statement of Claim”).
2. The Crown has no direct knowledge of the allegations made in paragraphs ~~8~~ 9, ~~9~~ 10, ~~10~~ 11 (first sentence only), ~~11~~ 12, ~~12~~ 13, ~~13~~ 14 (first sentence only), ~~14~~ 15, ~~15~~ 16, ~~16~~ 17 (first sentence only), ~~18, 19, 20~~ (first sentence only), ~~24, 26, 27, 39~~ (first and second sentences only), ~~28, 29~~ (first four sentences), ~~40~~ (first sentence only), ~~44~~, ~~34~~ 46, ~~36~~ 48, ~~37~~, ~~49~~, ~~41~~, ~~53~~, ~~43~~ 55 (second sentence only), ~~45~~ 57, ~~46~~ 58 (first and second sentences only), ~~47~~ 59 (first sentence only), ~~and 48~~ 60 (first sentence only), ~~65, 66~~ (first sentence only), ~~67~~ (first sentence only), ~~68~~ (first sentence only) and ~~72~~ of the Statement of Claim.

3. The Crown denies all other allegations contained in the Statement of Claim to the extent not admitted herein, and specifically denies that the Plaintiffs or any class members (together, the “Class Members”) are entitled to any of the relief sought in the Statement of Claim. With respect to the allegations in paragraphs 25 ~~37~~ to 50 ~~72~~ of the Statement of Claim of specific abuse and harm which the Plaintiffs allege to have suffered, the Crown does not have specific knowledge of the events or harm alleged and, as such, for purposes of this action the Crown denies the truth of those allegations.

Overview

4. The Plaintiffs seek damages against the Crown on the basis that all Crown ward class members were victims of criminal abuse or other violent criminal ~~, neglect and tortious~~ acts as children, and that the Crown owed and breached a duty to protect and preserve their legal rights with regard to ~~and to assist them in~~ pursuing compensation from the Criminal Injuries Compensation Board (“CICB”), ~~or other civil damage claims against those who are alleged to have harmed them.~~

5. The Plaintiffs’ assertion that all Crown wards have been victims of criminal abuse or other violent criminal, ~~neglect or tortious~~ acts is not correct. Many children, including Class Members, became Crown wards due to other factors that had nothing to do with the criminal ~~violent~~ acts ~~or other tortious acts~~ of others for which compensation may have been ~~be~~ available from the CICB.

6. Throughout the class period, Crown wards were ~~have been~~ protected and cared for ~~and~~ by children’s aid societies (“CAS”) pursuant to authority delegated to them by the Crown under the applicable child protection legislation in Ontario. The Crown retained s a supervisory role over the CAS. However, the direct and primary responsibility for the protection and care of each Crown ward, including Class Members while they were in care, ~~has~~ at all material times rested with the

applicable CAS, and not the Crown. In particular, since 1978 the CAS has had the express statutory authority to determine, at their discretion, whether a proceeding to pursue compensation for a Crown ward in their care is in the best interests of the child and, if it determines that it is, the power to pursue compensation on behalf of the child.

7. The Crown pleads that the CAS properly exercised their discretion in considering whether pursuing compensation from the CICB on behalf of any ~~e-Class m-Members~~ was appropriate and in the best interests of the child, and where the CAS determined that it was, the CAS did so.

8. The Crown denies that at any material time it or any Crown servant owed any Class Member a duty to pursue compensation from the CICB ~~or through other proceedings~~ on their behalf ~~of any class members who may have been harmed by violent crime, abuse or other tortious acts,~~ or to assist them in pursuing compensation, and denies that they ~~it~~ breached any duty of care that they ~~it~~ may be found to have owed to any ~~e-Class m-Members~~. To the extent any such duty existed, it was owed by the CAS, and not the Crown or its servants. The Crown further denies that it or any Crown servant owed any ~~e-Class m-Members~~ a fiduciary duty as alleged or that it breached any such duty.

9. The Crown denies that it or any Crown servant owed any Class Member a duty of care relating to the collection, preservation or production of any documents or records relating to any Class Members, as alleged or breached any such duty. To the extent any such duty was owed to any Class Member, it was owed by the CAS, and not the Crown or any Crown servant.

10. To the extent that the Plaintiffs assert a claim in tort in this proceeding against the Crown directly, such claim is not tenable at law. The Crown is immune from liability for direct claims in tort unless such immunity is expressly lifted by statute. Section 5(1)(a) of the *Proceedings Against the Crown Act*, RSO 1992 c. P-27 (“PACA”) only lifts this immunity to permit a tort claim against

the Crown to the extent that a tort was committed by a specific Crown servant for whom the Crown is vicariously liable.

11. With respect to paragraph 17 of the Statement of Claim, the Crown denies that any Minister of the Ministry of Children, Community and Social Services (the “Ministry”), any Ministry employee or any other person for whom the Crown could be vicariously liable owed any Class Member a private duty of care, fiduciary duty or statutory duty as alleged in the Statement of Claim or that they breached any duty they may be found to have owed to any Class Member.

12. Further, the Plaintiffs’ claims against the Crown concern core policy decisions of the government, and as such are barred by core policy immunity both at common law and pursuant to section 11 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17 (the “CLPA”).

13. ~~9. The Crown further denies that any e-Class m-Members have suffered any of the losses alleged or, in the alternative, that the Crown is liable for such losses. The Crown specifically denies that any the e-Class m-Members have lost any ability to seek compensation due to the expiry of a limitation period. The Class Members at all material times had the ability to pursue any claims for compensation from the CICB they may have had, and in particular could have pursued those claims at the time this proceeding was commenced and for many years thereafter. and pleads that the class members have at all material times had, and continue to have, the ability to pursue any claims for compensation they may have before the CICB or the civil courts, and such rights have not been lost or prejudiced by any act or omission of the Crown. If any Class Member has lost the ability to seek compensation from the CICB, which is denied, such loss was not caused by any breach of duty or wrongful conduct by the Crown or any of its servants, but rather was the result~~

of their own negligence in failing to pursue their claims with the CICB when they knew or ought to have known that they had the opportunity to do so before the CICB was dissolved in 2019.

Ontario's Child Protection Legislation

14. 10. Throughout the class period, Ontario's child protection legislation defined the roles and responsibilities of the Crown and the CAS with regard to Crown wards.

15. 11. Crown ward orders first became available in Ontario through the passage of the *Child Welfare Act, 1965*, S.O. 1965, c.14 which came into force in 1966. From 1966 to 1984, Ontario's child protection legislation defined the relationship of the Crown vis-à-vis its wards as that of a "legal guardian". Starting in 1984, the term "legal guardian" was replaced with "parent". Today, subsection 111(1) 63 of the *Child, Youth and Family Services Act, 2017*, R.S.O. 2017 1990, c. 11 14, Sched. 1 ("CYFSA") continues to provide that when a child is made a Crown ward (now called a "child in extended society care"), "the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control".

16. 12. Further, since 1966, the Crown's rights and responsibilities have been delegated by statute to be exercised and performed by the CAS, who had care and custody of the Crown ward. The relevant legislative provisions are set out below:

1966 - The Child Welfare Act, 1965, S.O. 1965, c.14

32. (1) *The Crown has and shall assume all the rights and responsibilities of a legal guardian* of its wards for the purpose of their care, custody and control, and the powers, **duties and obligations of the Crown** in respect of the wards of the Crown, other than those assigned to the Director by this Act, **may be exercised and discharged by the children's aid society having care of the ward** [emphasis added].

(2) The Director may direct that a Crown ward be moved to any other children's aid society or institution designated by the Director.

(3) Every child committed permanently to the care and custody of a children's aid society under The Child Welfare Act, or any predecessor thereof, and who is in the permanent care and custody of the society immediately before this Act comes into force is a ward of the Crown in the care of such society, subject otherwise to the terms of the order making the permanent commitment.

1978 – The Child Welfare Act, 1978, S.O. 1978, c. 85

40. – (1) **The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made a ward of the Crown** for the purposes of the child's care, custody and control, and **the powers, duties and obligations of the Crown** in respect of the child other than the powers, duties and obligations assigned to a Director by this Act **shall be exercised and discharged by the society having care of the child** [emphasis added].

(2) A Director may direct that a Crown ward be transferred to the care of any other society or institution designated by the Director.

1985 - Child and Family Services Act, 1984, S.O. 1984, c. 55

59. (1) **Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the Crown has the rights and responsibilities of a parent for the purposes of the child's care, custody and control** and has the right to give or refuse consent to medical, treatment for the child where a parent's consent would otherwise be required, and **the Crown's powers, duties and obligations in respect of the child**, except those assigned to a Director by this Act or the regulations **shall be exercised and performed by the society having care of the child.**

(2) Where a child is made a society ward under paragraph 2 of subsection 53(1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

1990 – The Child and Family Services Act, R.S.O. 1990, c. C.11

63. (1) **Where a child is made a Crown ward under paragraph 3 of subsection 57 (1) or under subsection 65.2 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control** and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and **the Crown's powers, duties and obligations in respect of the child**, except those assigned to a Director by this Act or the regulations, **shall be exercised and performed by the society caring for the child.** R.S.O. 1990, c. C.11, s. 63 (1); 2006, c. 5, s. 20.

(2) Where a child is made a society ward under paragraph 2 of subsection 57(1), the society has the rights and responsibilities of a parent

for the purpose of the child's care, custody and control.

~~17.~~ ~~13.~~ Starting in 1978, the governing child protection legislation provided that the CAS with care and custody of a Crown ward had the discretion to institute and conduct proceedings on behalf of the Crown ward, when it was in the child's best interests to do so:

1978 – The Child Welfare Act, 1978, S.O. 1978, c. 85

51. Where the Official Guardian, or in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 30, the society, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interest of the child, the Official Guardian or the society, as the case may be may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child.

~~18.~~ ~~14.~~ Since 1985, the governing child protection legislation has provided that the Children's Lawyer (formerly known as the "Official Guardian") with discretion to act as a litigation guardian for any child who has suffered abuse while maintaining that the CAS with care and custody of Crown wards has the discretion to institute and conduct proceedings on behalf of the Crown ward, when it was in the child's best interests to do so:

1985 - Child and Family Services Act, 1984, S.O. 1984, c. 55

77 (1) In this section, "to suffer abuse", when used in reference to a child, means to be a child in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h).

(2) When the Official Guardian is of the opinion that a child has a case or Action or other claim because the child has suffered abuse, the Official Guardian may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

1990 - Child and Family Services Act, R.S.O. 1990, c. C.11

Recovery because of abuse

81. (1) In this section,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f), (f.1) or (h).

Recovery on child’s behalf

(2) When the Children’s Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Children’s Lawyer may, if he or she considers it to be in the child’s best interests, institute and conduct proceedings on the child’s behalf for the recovery of damages or other compensation.

Idem: society

(3) Where a child is in a society’s care and custody, subsection (2) also applies to the society with necessary modifications.

2018 - Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1

Legal claim for recovery because of abuse

138 (1) In this section,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 74 (2) (a), (c), (e), (f), (g) or (j).

Recovery on child’s behalf

(2) When the Children’s Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse and considers it to be in the child’s best interests, the Children’s Lawyer may institute and conduct proceedings on the child’s behalf for the recovery of damages or other compensation.

Society may apply

(3) Where a child is in a society’s care and custody, subsection (2) also applies to the society with necessary modifications.

~~15. By virtue of the foregoing statutory regime, throughout the class period the CAS have borne the direct responsibility for attending to the care and protection of Crown wards and assumed the role of a parent vis à vis Crown wards under their care.~~

Crown Wards and Children’s Aid Societies

~~19. 16.~~ The CAS are not-for-profit corporations that exist independently of the Crown to promote the welfare and well-being of children in Ontario and to provide protection and care services to children. Each CAS carried out their protection and care mandate within a specified geographic territory. The CAS have never been agents of the Crown and the Crown is not liable for any breaches of duty by any CAS.

~~17.—The functions of the CAS throughout the class period included:~~

- ~~(a) —investigating allegations or evidence that children who are under the age of sixteen years or are in the CAS' care or under its supervision may be in need of protection;~~
- ~~(b) —protecting, where necessary, children who are under the age of sixteen years or are in the CAS' care or under its supervision;~~
- ~~(c) —providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;~~
- ~~(d) —providing care for children assigned or committed to their care;~~
- ~~(e) —supervising children assigned to its supervision;~~
- ~~(f) —placing children for adoption;~~
- ~~(g) —keeping and maintaining records relevant to the child's care; and~~
- ~~(h) —performing any other duties given to them through legislation.~~

~~Crown Wards and Children's Aid Societies~~

~~20. 18.~~ Under Ontario's child protection legislation, at all material times the CAS had have the exclusive responsibility to take the necessary steps to attend to the care and protection of children

in their territorial jurisdictions who may have been in need of protection, including apprehending these children where necessary and bringing protection applications to the court. The Crown played s no role in a CAS child protection investigation or a CAS case management decision involving a child who was or might have been in need of protection, including any Class Members.

21. 19. Throughout the class period the Courts ~~have~~ had the power on a protection application to make an order that the child be made a ward of the Crown. Crown ward orders ~~were~~ are made when a court determined s, based on evidence presented by the CAS and any other interested parties, that the child could ~~can~~ no longer live with his or her parent(s) and that a less intrusive option that was ~~is~~ in the child's best interests is not available. The Crown ward orders directed that the child in need of protection ~~will~~ be placed in the care of the local CAS, not the Crown. Thereafter it was ~~is~~ the CAS' responsibility to provide care and protection services for the Crown ward.

22. 20. Once in care, the CAS assumed the role of parent vis-à-vis Crown wards under their care, including the Class Members. Under the legislative scheme, ~~the~~ the Crown was not responsible for providing ~~does not provide~~ care or protection services for children subject to Crown ward orders, including any Class Members, or for collecting, preserving or producing their records.

23. The functions of the CAS throughout the class period included:

- (i) investigating allegations or evidence that children who are under the age of sixteen years or are in the CAS' care or under its supervision may be in need of protection;
- (j) protecting, where necessary, children who are under the age of sixteen years or are in the CAS' care or under its supervision;

- (k) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (l) providing care for children assigned or committed to their care;
- (m) supervising children assigned to its supervision;
- (n) placing children for adoption;
- (o) keeping and maintaining records relevant to the child's care; and
- (p) performing any other duties given to them through legislation.

24. The above-noted functions contemplate that the CAS, as regulated by the *CYFSA* and its predecessor Act the *Child Family and Services Act*, RSO 1990, c C.11 ("*CFSA*"), are to comply with the Ministry's policies and best practices for the collection, storage and disclosure of records, as set out in the Case Information Disclosure Policy (1985) applicable for the period up to 2020. At all material times, CAS were required to keep and maintain records from the time of any child protection investigation or other initial involvement with a minor, until the end of the CAS' involvement with the child. Throughout the Class Period, CASs were required to have a written policy that described the purpose and types of information gathered. The records that were collected in respect of any Crown ward were at all material times the property of the applicable CAS, and it was the responsibility of the applicable CAS to secure the records against loss, fire, theft, defacement, tempering, copy or access by an unauthorized person.

25. The Crown pleads that the CAS at all material times collected, created, maintained and preserved documents in accordance with their obligations and the Class Members have not suffered any loss arising from the unavailability of any record. The Crown denies that it or any of

its servants breached any duty relating to the collection, creation, maintenance or preservation of any records, as alleged.

26. 21. Contrary to the ~~p~~-Plaintiffs' assertions, not all Crown wards are victims of criminal abuse or other violent criminal ~~tortious~~ acts that result in their removal from the care of their families. Many children become Crown wards due to other circumstances, such as the parents' or legal guardian's unwillingness or inability to adequately care for the child, and situations in which there was a *risk* of physical or sexual abuse or other forms of abuse and neglect, and not because they were victims of abuse or other violent criminal ~~tortious~~ acts.

27. 22. At all material times ~~T~~-the CAS with care of a Crown ward exercised all parental responsibilities in respect of that child, and was required to ~~must~~ meet all statutory requirements for the care and protection of the child placed in its care. Whether or not a Crown ward had received compensation from the CICB ~~or damages via a civil action~~ had no bearing on the availability of therapy, counselling, support or other help provided to that Crown ward. Whether or not a particular Crown ward received such services was a function of many factors, including perceived need, the availability of services and the individual Crown ward's willingness to participate.

28. 23. CAS' employees worked under the supervision of senior staff and under the direction of the CAS' boards of directors. They received comprehensive training, and through their direct ongoing contact with the children and their families, were ~~are~~ best positioned to assess what was ~~is~~ in each Crown ward's best interests.

29. 24. Crown wardships typically terminate at age 18 or earlier, such as when a child is adopted ~~or when the child turns 18 years old~~. However, as provided under the various versions of the CYFSA or predecessor legislation *Child and Family Services Act* in force since 1965, the CAS are

provided with authority to continue to provide some support and services to former Crown wards after they reach the age at which legal guardianship is no longer required.

The Crown's Role with Respect to Crown Wards

30. 25. Throughout the class period, the role of the Crown in relation to Crown wards, including Class Members while they were Crown wards, was ~~has been~~ limited to providing oversight and guidance to the independent CAS given responsibility for the care of Crown wards pursuant to the child protection legislation and orders of Ontario courts placing Crown wards in their care.

31. 26. As part of its supervisory duties, the Crown ~~was required to~~ performed Crown ward reviews. While the process and focus of Crown ward reviews changed over the class period, Crown ward reviews generally concerned whether each CAS was in compliance with its statutory obligations and standards and policy directives regarding the protection and care of Crown wards in their care.

32. 27. With respect to paragraph 68 82 of the Statement of Claim, the Crown's role did not extend to interviewing Crown wards, ~~or~~ reviewing specific information which would provide the Crown with particular knowledge of any allegations of criminal or tortious acts against any particular Crown ward, or collecting, preserving or producing documents or records for any Class Member. The responsibility for the care and protection of each Crown ward rested with the CAS. The Crown denies that any Crown servants had a direct or specific interaction with Class Members or knowledge of criminal or other wrongful acts as alleged, and puts the Plaintiffs to the strict proof thereof.

Claims Before the Criminal Injuries Compensation Board and Civil Claims

33. ~~28.~~ The Criminal Injuries Compensation Board (“CICB”) ~~was~~ is a statutory board created in 1971 pursuant to the *Compensation for Victims of Crime Act*, R.S.O 1990, c. C.24. The CICB’s mandate ~~was~~ is to assess potential financial compensation available to victims of violent crime committed in Ontario.

34. ~~29.~~ In 1978, the *Child Welfare Act* was amended to give the CAS the authority and discretion to institute and conduct proceedings on behalf of a child in its care where the CAS was of the opinion that the child had a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child, and the institution of proceedings to recover damages or other compensation would be in the best interests of the child. This authority included pursuing compensation from the CICB ~~or through other proceedings~~ on behalf of the Crown ward if the CAS determined, based upon its particular understanding of the circumstances and needs of the child, that such a claim would be appropriate and in the best interests of the child.

35. ~~30.~~ Over the course of the class period, the CAS in Ontario ~~have~~ properly exercised their discretion in deciding whether any Class Member Crown ward had a viable claim for compensation and whether pursuing a claim for compensation on behalf of any Class member in their care was in their best interests. The CAS ~~have~~ applied to the CICB for compensation on behalf of thousands of children in their care.

36. On or about April 11, 2019, more than 6 years after this proceeding was commenced, the Ontario government publicly announced its intention to dissolve the CICB. From that time Class Members and their legal counsel were aware that the time for pursuing any claim for compensation they might have with the CICB was limited, and that if they failed to pursue their claim before the CICB was dissolved they would be unable to pursue their claim. The CICB continued to accept

applications for compensation until September 30, 2019. On December 31, 2021, the dissolution of the CICB was completed.

Crown is immune from direct claims in tort

37. The Crown pleads that pursuant to the common law and section 5 of *PACA*, or alternatively section 8 of the *CLPA*, the Crown is immune from direct liability in tort, and that a tort claim against the Crown is only legally tenable to the extent that the tort can be proven to have been committed by an identifiable Crown servant for whom the Crown is vicariously liable. Accordingly, the Plaintiffs' direct claims in tort against the Crown are not tenable.

38. With respect to paragraph 17 of the Statement of Claim, the Crown denies that any government Minister, Ministry employee or other public official for whom the Crown is vicariously liable owed a private duty of care or fiduciary duty to any Class Member as alleged in the Statement of Claim or that they breached any duty they may be found to have owed to any Class Member.

The Plaintiffs' claim is barred by core policy immunity and s. 11 of the *CLPA*

39. The Plaintiffs' claims seek to impugn the government's policy-making role relating to consideration of which of the many needs of Crown wards should be the focus and priority for the CAS. Questions relating to whether the Crown should have directed, or considered directing, CAS to divert their limited resources from other more urgent and pressing priorities in order to investigate and potentially pursue claims for criminal injuries compensation from the CICB on behalf of Crown wards involve the weighing of social, political, economic and financial interests and considerations and accordingly concern core policy decisions of government. Such claims are not justiciable and are barred by the doctrine of core policy immunity.

40. Further, Ontario pleads that the Plaintiffs' negligence claim is barred by ss. 11(4) of the CLPA, which precludes any cause of action against the Crown or an officer, employee or agent of the Crown in respect of any negligence or failure to take reasonable care in the making of a decision in good faith respecting a "policy matter" as defined in ss. 11(5) of the CLPA, or any negligence in a purported failure to make a decision respecting a policy matter. The Plaintiffs' claim concerns the making of decisions and/or purported failures to make decisions in respect of such policy matters. The Crown and its servant at all times acted in good faith. The Crown pleads and relies on sections 11 and 31 of the CLPA.

No Breach of Duty of Care by the Crown or any Crown servant

41. ~~34.~~ In any event, ~~the~~ The Crown denies that it or any Crown servant had any statutory or other duty to pursue compensation from the CICB or to consider whether such a claim should be pursued ~~institute or conduct proceedings~~ on behalf of any Class Member ~~Crown wards~~, or to ~~protect their rights to do so~~, and in particular denies that the Crown at any material time owed the duties or was required to meet the standards of care alleged in paragraphs 51, 52, 62, 69 ~~83~~ and 72 ~~85~~ of the Statement of Claim. The Crown denies that parents or other legal guardians owe a

duty to their children to make claims for compensation to the CICB or to commence litigation on behalf of their children.

~~42. 32.~~ Further, for the majority of the class period, the CAS had the statutory authority and discretion to decide whether it would be appropriate to pursue compensation from the CICB ~~or through other proceedings~~ on behalf of a Crown ward, and where appropriate CAS would do so. Any decision on whether to seek compensation at the CICB ~~or civil damages~~ on behalf of a Crown ward was made on the basis of the CAS case worker's consideration of what was in the best interests of the individual child, the case worker's training and experience in determining whether a particular case warranted pursuing a claim for compensation at the CICB, whether there was sufficient information and documentation to support the claim for compensation at the CICB and the policies or procedures established by the particular CAS. To the extent any such duty was owed, it was owed by the CAS, and not the Crown.

~~43. 33.~~ The Crown also denies that it or any Crown servant owed a duty to any Class Member ~~the Plaintiffs or other class members~~ to collect or and preserve records or other evidence for the purposes of pursuing a claim to the CICB ~~or through other proceedings~~ on their behalf ~~of Crown wards~~. As pleaded above, at all material times, the CAS had the statutory mandate to investigate allegations and incidents of harm to children. The Crown did not conduct, and had no duty to conduct, the investigations that gave rise to the placement of children in the care of the CAS as this was the responsibility of the CAS under the governing legislation. Available evidence and information pertaining to harm suffered by children preceding and during their Crown wardships was collected by, and kept in the records of, the CAS in whose care the child was placed. To the extent any such duty was owed in respect of any Class Member, it was owed by the CAS, and not the Crown.

~~44. 34.~~ In the alternative, if the Crown or any Crown servant did owe a duty of care to any Class Members Crown wards with respect to the protection of legal rights and pursuit of claims for compensation from the CICB or the collection or preservation of records ~~or through other proceedings~~, which is not admitted but rather is expressly denied, ~~the Crown met~~ any such duty was met. Over the decades, the practice, approach and legislative framework pertaining to the enforcement of the legal rights of minors and seeking recovery from the CICB has evolved. As a result, the standard of care applicable to the enforcement of legal rights of children has evolved over time. If any the Crown servant is found to have owed a duty to any Class Member the Plaintiffs and class members in relation to the protection and pursuit of claims for compensation to the CICB ~~or through other proceedings~~, which is not admitted but is expressly denied, they ~~Crown, her employees, agents and servants~~ met or exceeded the applicable standard of care.

~~45. 35.~~ At all material times, the Crown had policies and procedures in place to lend guidance and to assist the CAS in determining whether a claim for compensation would be appropriate and, if so, in pursuing the claim before the CICB ~~or through other proceedings~~. From at least 1978 when CAS were provided with the statutory discretion to make claims to the CICB on behalf of children in their care, the Crown has provided information and direction to CAS about the availability of compensation from the CICB and information and guidance to CAS. However, the responsibility for deciding decision as to whether such claims were appropriate and what records, if any, should be collected, preserved or produced for any Class Member at all material times ~~has~~ rested with CAS, and not the Crown.

~~46.~~ With respect to paragraphs 57 and 61 of the Statement of Claim, the Crown expressly denies that it or any Crown servant owed any Class Member a private duty of care, including with respect to advising Class Members on or pursuing claims for compensation to the CICB on their behalf,

after they ceased to be Crown wards. If any such duty was owed, it was owed by any person who acted as their legal guardians or legal counsel after they ceased to be Crown wards and prior to the dissolution of the CICB in 2019, and not by the Crown or any of the Crown's servants.

No Breach of Fiduciary Duty

47. 36. The Crown denies that it or any of its servants owed a fiduciary duty to the class members as alleged in paragraphs 77 94 to 81 95 of the Statement of Claim or that it deliberately or negligently engaged in any of the wrongful conduct alleged in paragraph 82 96 of the Statement of Claim.

48. 37. To the extent the Crown or any of its servants may be found to have owed a fiduciary duty to any e-Class m-Members, which is not admitted and is expressly denied, the Crown denies that such duty extended to assuming the responsibility to pursue compensation for the e-Class m-Members, or to take particular steps to protect their ability to do so, to collect, preserve or produce records or evidence, or to take any other steps the Plaintiffs alleged they were required to take.

49. 38. Further, the Crown denies that any e-Class m-Members relied on, or reasonably relied on, the Crown or any of its servants to their detriment as alleged in paragraph 81 95 of the Statement of Claim, particularly having regard to the fact they were aware that ongoing and direct care was being provided to them by the CAS under its express delegated authority, and not the Crown.

50. 39. The Crown denies that it or any of its servants at any time put their its own interests ahead of those of any Class member the Crown wards to their detriment as alleged in paragraph 59 and elsewhere in the Statement of Claim.

Crown Wards Continued to have the Ability to Seek Compensation

~~51. 40.~~ The Crown further denies that the ability of the class members to make claims for compensation to the CICB ~~or through other proceedings~~ have been prejudiced by any act or omission of the Crown or its servants.

~~52. 41.~~ The Crown denies that any potential claims of ~~e-Class m-Members~~ to the CICB for compensation in respect of harm suffered as children ~~are were~~ statute-barred. At all material times prior to the dissolution of the CICB in 2019, any Class Members who had ~~we~~ not yet made a claim for compensation to the CICB in respect of physical or sexual abuse that they may have suffered as children could still have applied ~~can still apply~~ to the CICB for compensation. Under the *Compensation for Victims of Crime Act*, RSO 1990, c. C. 24, applications to the CICB resulting from a crime of sexual violence or violence that occurred within a relationship of intimacy or dependency could be made at any time and ~~are were~~ not to be barred by the operation of a limitation period, except in specific circumstances. Furthermore, the CICB had ~~has~~ the discretion to waive, and often ~~does~~ did waive, any limitation periods that might have otherwise applied ~~may otherwise apply~~ to a claim before it.

~~42—~~ The Crown further denies that the rights of the Plaintiffs or other class members to make civil claims to recover damages sustained as a result of torts committed prior to or during their time as Crown wards have been prejudiced by any act or omission of the Crown. In particular, the Crown denies that that any such claims are statute barred. Under the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, as amended (“*Limitations Act*”), there is no limitation period in respect of a proceeding based on a sexual assault or any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a minor. The *Limitations Act* further provides

~~that there is no limitation period in respect of a proceeding based on assault if, at the time of the assault, the person with the claim was a minor.~~

53. Class Members were aware, or ought to have been aware, of their continued ability to seek compensation from the CICB. Notice of this class proceeding was disseminated in or about November and December of 2017, in accordance with the Order of Justice Pierce dated September 12, 2017 approving the form and means of notice to class members. The long-form notice specifically stated that the class proceeding did not impact Class Members' ability to seek compensation from the CICB or from any person other than Ontario.

54. Class Members were also aware, or ought to have been aware, of the planned dissolution of the CICB and that they were required to take steps to advance applications to the CICB, if they had not already done so. The Crown's public announcement of the planned dissolution of the CICB was first made in April 2019 and class counsel were notified of this plan on or about April 25, 2019. The CICB continued to accept applications until September 2019. Accordingly, Class Members had sufficient time to apply to the CICB and to seek advice from class counsel in that regard had they wished to do so.

55. Given the foregoing, to the extent any Class Member has lost the ability to pursue a claim for compensation from the CICB, such claim was lost due to their own negligence or negligence of their guardians or legal counsel, in failing to preserve evidence and pursue their CICB claims prior to the dissolution of the CICB, and not due to any breach of duty by the Crown or any of its servants.

56. ~~43.~~ The Crown further denies that any Class Member's ability to put forward evidence necessary to advance a claim before the CICB ~~or a civil claim~~ has been prejudiced by an act or omission of the Crown. Any evidence and information required for the Plaintiffs and ~~e-Class m~~

Members to advance a claim to seek compensation at the CICB to recover damages in respect of torts committed against them prior to or during their time as Crown wards, including, but not limited to, their CAS file, is in the power, possession or control of the ~~e-Class m~~ Members.

Further Defence to Allegations of Negligence and Breach of Fiduciary and Statutory Duties

57. 44. The Crown, its ~~her~~ employees, agents and servants acted at all times in the best interests of Crown wards.

58. 45. The Crown denies any breach of duty it may have owed in law.

~~46.~~ ~~The Crown pleads that it cannot be held liable at law in respect of decisions made which are the result of policy considerations. No duty of care is owed to the Plaintiffs or other class members for policy or planning functions of the Crown that involve allocation of resources and policy choices.~~

59. 47. If the legal rights of the Plaintiffs or any ~~e-Class m~~ Members in pursuing compensation at the CICB relating to ~~torts~~ or criminal acts committed against them prior to or during their time as Crown wards have been prejudiced, which is not admitted but is strictly denied, the Crown specifically denies that such prejudice resulted from any failure on the part of the Crown or any of its servants to meet applicable standards of care or meet any other applicable duty.

60. 48. The Plaintiffs cannot assert a claim for breach of statutory duty. Such a claim is not recognized at law.

61. 49. The claims brought by the Class Members Plaintiffs as against the Crown for failure to protect and enforce their legal rights to pursue compensation at the CICB are statute-barred by virtue of the *Limitations Act* and predecessor legislation, as applicable.

Damages

62. 50. The Crown denies that any Class Members the Plaintiffs and other class members have suffered any loss or damage as alleged or that the Crown is liable for such loss or damages, and denies that any Class Member is entitled to any of the declarations sought in paragraph 1 of the Statement of Claim.

63. 51. In the alternative, if any e-Class m-Members have suffered damages, such loss or damages were the result of acts and/or admissions not within the power or control of the Crown or its servants.

64. 52. Further, any such damages were caused by matters arising subsequent to the termination of the Crown wardship of e-Class m-Members and were unrelated to any conduct of the Crown or its servants.

65. 53. If any e-Class m-Members suffered any loss or damages as alleged or otherwise, which is not admitted but denied, such alleged loss and damages are excessive and too remote to be recoverable at law, and the Plaintiffs are put to the strict proof thereof. With respect to paragraph 53 of the Statement of Claim, the Crown denies that the quantum of awards referenced therein were paid throughout the class period or that these amounts reflect the quantum awarded in most cases where an award was granted.

66. 54. If any e-Class m-Members suffered any loss or damages as alleged or otherwise, which is not admitted but denied, such the e-Class m-Members have failed to mitigate their damages unless they have fully pursued a claim or claims for compensation to the CICB or commenced civil actions in relation to torious or criminal acts committed against them in the time preceding or

during their time as Crown wards and are accordingly precluded from recovering the damages claims set out in the Statement of Claim from the Crown.

67. ~~55.~~ The Crown specifically denies that aggregate damages are available to the class. The experience of each Class Member ~~child~~ leading up to and during their time as Crown wards was unique. To the extent that any ~~e~~-Class m-Members have suffered any losses or damages as alleged, which is not admitted but is expressly denied, the extent of such damages can only be determined on an individual basis, taking into accounts considerations including, but not limited to:

- (a) the basis on which the Class Member ~~child~~ became a Crown ward and, in particular, whether ~~it~~ the individual became a Crown ward due to a tortious or criminal act;
- (b) whether the individual Class Member ~~rown ward~~ was the victim of a ~~tortious or~~ violent criminal act during his or her time as a Crown ward;
- (c) the extent of recoverable ~~losses, damages or compensation~~ at the CICB available to the Class Member ~~rown ward~~ as a result of any criminal ~~or tortious~~ act committed against the individual prior to or during their time as a Crown ward;
- (d) whether the Crown was made aware of a ~~tortious act or~~ violent criminal act suffered by the Class Member ~~rown ward~~ during the individual's time as a Crown ward;
- (e) the applicable standard of care during the time each Class Member was a Crown ward;
- (f) ~~(e)~~ whether steps were taken during or upon termination of the Class Member's time as a Crown ward to consider and/or pursue any claim for compensation at the CICB ~~or damages~~ on behalf of the Class Member;

~~(g)-(f)~~ steps taken by subsequent legal guardians or legal counsel of the Class Member including, but not limited to, adoptive parents of former Crown wards in protecting and pursuing the legal rights of their children to pursue compensation at the CICB;

~~(h)-(g)~~ the extent to which any damages or losses sustained by any individual e-Class m Members have been mitigated through ~~civil actions or~~ claims made to the CICB in respect of ~~to~~ the legal rights alleged to have been prejudiced;

~~(i)-(h)~~ the extent to which any damages or losses of any individual e-Class m Members were mitigated through the provision of care, counselling and other services provided to class members during their time as Crown wards; and

~~(j)-(i)~~ whether pursuing a claim for compensation at the CICB was in the best interests of the ~~child~~ Class Member at the time.

68. 56. The Crown states that nothing in its conduct or the conduct of any Crown servant warrants the awarding of punitive or exemplary damages.

69. 57. The Crown pleads and relies on the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, *Crown Liability and Proceedings Act, 2019*, S.O. 2019 c. 7, Sched. 17, *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, as amended, the *Child and Family Services Act*, R.S.O. 1990, c. C.11, as amended and associated Regulations enacted thereunder, the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, the *Child Welfare Act*, S.O. 1965, c. 14, as amended, and the *Compensation for Victims of Crime Act*, RSO 1990, c. C. 24, as amended.

70. 58. The Crown requests that this action be dismissed with costs payable to the Crown.

DATE: May 20, 2026 ~~September 7,~~
2017

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TONI GRANN et al.
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and

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Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at TORONTO

AMENDED STATEMENT OF DEFENCE

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