

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TONI GRANN, ROBERT MITCHELL and DALE GYSELINCK

Plaintiffs

-and-

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

REPLY

1. The Plaintiffs admit the allegations contained in paragraphs 14-18 (the plaintiffs admit the wording of legislative provisions but deny the Defendant's characterization or interpretation of the scope or application of the statutes), and 33 of the Amended Statement of Defence.
2. The Plaintiffs deny all other allegations contained in the Amended Statement of Defence unless herein expressly admitted.
3. The Plaintiffs deny that the since 1978 the CASs had the sole authority to determine if a claim for compensation should be brought for the benefit of a Crown Ward. The obligation to act in the best interests of the Class Members continued to reside with the Crown, including the obligation to ensure that each Class Member obtained the compensation to which they were entitled from the CICB, in order to help them recover from the physical, and psychological harms that they suffered. The Crown failed to meet this obligation directly and through the failure of its supervisory functions over the CASs.

4. As part of the Ministry's supervisory functions over the CASs, the Ministry had and has the power to issue directives to CASs, which they are required to follow. The Minister ought to have issued directives that CASs complete claims to the CICB for Crown Wards who had suffered injuries caused by criminal conduct. His failure to do so was in breach of the fiduciary duty and duty of care owed to the Class.

5. The Plaintiffs join issue with paragraph 10 and 37 of the Amended Statement of Defence, specifically the Defendant's characterization that the *Crown Liability and Proceedings Act* ("CLPA") grants the Crown immunity from direct liability in tort unless established by vicarious liability of a Crown servant. The CLPA has not been interpreted to broadly grant the Crown immunity from direct liability in tort in all factual circumstances. Moreover, the claim is asserted not just against the government of Ontario, but is directed at the Minister of Children and Youth Services and their predecessors and employees.

6. With respect to the allegations in paragraphs 12, 39, 40 of the Amended Statement of Defence, the duties owed to the Class and the breaches by the Defendant do not relate to core policy decisions, but are operational in nature – going directly to the operation of the services that ought to have been provided to the Class while they were Crown Wards. S. 11 of the *Crown Liability and Proceedings Act, 2019* has no application to the claims asserted in this case.

7. With respect to paragraph 13, 52 - 5 of the Amended Statement of Defence, the Plaintiffs deny that they had the ability to pursue claims for compensation from the CICB on their own, including after this claim was instituted. Many of the Class suffer from mental health disabilities, including disabilities caused by the criminal injuries that they suffered either before or while in

care, which prohibited them from being able to pursue claims on their own. Moreover, the Defendant failed to advise the Class members of the right to bring the CICB claim after they had aged out of care, or at any time thereafter, thereby concealing the right to make a claim from the Class, and preferring the interests of the Crown.

8. Additionally, this claim was commenced to remedy the failures of the Defendant in not pursuing the CICB claims on behalf of the Class and so the Class had no reason to believe that they would be required to make individual claims to the CICB before it was shelved. This action preserved their right to recovery.

9. In the alternative, if some of the Class failed to mitigate their loss by bringing a claim to the CICB themselves, those Class Members are still entitled to damages for the loss of use of the CICB compensation that they would have had, had a claim been made on a timely basis, while they were Crown Wards.

10. With respect paragraph 24 of the Amended Statement of Defence, the Plaintiffs deny that the Case Information Disclosure Policy (1985) (“the Policy”) was followed by the Children’s Aid Societies (“CASs”) and puts the Defendant to the strict proof thereof. The Defendant failed to enforce the Policy and exercise proper instruction and supervisory oversight to 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 Class had been subject. This was critical to the Defendants’ obligations to protect the Plaintiffs’ and the Class Members’ claims to the CICB. These were non-delegable duties.

11. With respect to paragraphs 53-55 of the Amended Statement of Defence, the Plaintiffs deny that the long-form notice served as notice to the class members of their ability to seek compensation from the CICB. Further, the existence of class counsel and the long-form notice does not derogate from the Defendant's obligations to advise Crown Wards of their rights pursuant to the CICB (including any limitations periods or loss of rights), take steps to prevent the loss of their rights, advise them to retain counsel or retain counsel for them upon becoming victims of criminal or tortious acts, advise of potential claims or make claims on behalf of the Crown Wards to the CICB, or provide directions to Crown Wards to make a claim to the CICB, as pled at paragraph 69 of the Second Amended Fresh as Amended Statement of Claim. In particular, Crown Wards suffering from disabilities that prevent them from making a claim would not have initiated a claim even if given notice and would have been reliant on the Defendant to do so. Damages are still owed to these individuals.

12. Further, if any class members applied to the CICB after the distribution of the long-form notice and were successful, any award by the CICB would not have compensated the class members for damages due to the delay in receiving the compensation, as plead at paragraph 83(b) of the Second Amended Fresh as Amended Statement of Claim. Those damages are still owed to these individuals.

13. The Plaintiffs therefore assert that none of the allegations in the Amended Statement of Defence support the denial of their claims for compensation.

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Court File No. CV-14-0018CP

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT THUNDER BAY

REPLY

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