

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

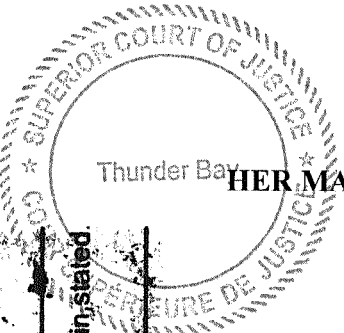
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

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.



Amended JUL 09 2015 pursuant to the order of the Honourable Justice P. P. [illegible] dated 28 May 15 in the manner therein stated

Registrar

**'ORIGINAL SIGNED BY'
Y. HINTERBRANDNER**

Date: January 22, 2014

Issued by

Local registrar

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

**TO: HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**
Crown Law Office – Civil Law
720 Bay Street
8th Floor
Toronto, ON M5G 2K1
Tel: (416) 325-8535
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CLAIM

1. The plaintiffs, on behalf of the Class as described herein, claims:
 - 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 duties to the plaintiffs through its failure to give proper consideration and to take all reasonable steps to protect and pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal or tortious acts to which Crown Wards were victims;
 - c) a declaration that the defendant was negligent in its failure to give proper consideration and to take reasonable care to protect and pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal or 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 caused by its breach of fiduciary, statutory and common law duties;
 - e) 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;
 - f) punitive damages in the amount of \$10 million or such other sum as this Honourable Court may find appropriate;
 - g) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C. 43, as amended;
 - h) costs of the action;
 - i) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
 - j) 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 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, and as a result of which, were removed from their care of their families and placed under the care of Her Majesty the Queen in Right of the Province of Ontario (the “Crown”). 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, the class members were entitled to apply for compensation from the Criminal Injuries Compensation Board and to commence proceedings for civil damages.

3. The Criminal Injuries Compensation Board was created by the Ontario Legislature and is administered by the Crown. In its role as legal guardian of Crown Wards and administrator of the Criminal Injuries Compensation Board, the Crown is 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. Contrary to its duties, the Crown systematically failed to develop and implement the appropriate policies to ensure that such claims were protected and pursued.

4. By failing to give proper consideration 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, the Crown was negligent and in breach of its fiduciary duty.

5. 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. Limitation periods have expired, evidence has disappeared, 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.

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

11. 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.

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

14. 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.

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

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

17. 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.

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 her rights to such compensation or damages.

21. The 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.

22. 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

C. HISTORY OF CROWN WARDSHIP IN ONTARIO

23. In Ontario, a child may be removed from the care of his or her parents into the care of the Crown for reasons that include physical, emotional, sexual abuse, and neglect.

24. Prior to January 1, 1966, when a child was removed from his or her 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. 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 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. 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.

27. 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. As the legal guardian of Crown Wards, the Crown is ultimately responsible for providing or causing to provide facilities, 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 all assets including the advancement of choses and causes of action.

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 Sioux 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 CAS 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 CAS 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. 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. 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. 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. 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. 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 42nd 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. 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. The Crown or its agents were aware of the abuse sustained by Toni, but no actions were taken.

44. 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. 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. Robert was subsequently placed in the care of the Crown. Robert was processed by the Toronto CAS office.

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

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

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

53. 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. 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. 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. The Crown or its agents were aware of the abuse sustained by Dale.

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

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

62. 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. During their Crown Wardship and upon their discharge, the Crown:

- a) failed to advise the plaintiffs that they were entitled to seek compensation 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 provide copies of incident reports and investigations to the plaintiffs of the criminal and tortious acts by which they were victims;
- d) 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; and
- 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.

J VICTIMS OF CRIME LEGISLATION AND THE CRIMINAL INJURIES COMPENSATION BOARD

74. Established in 1971, the Criminal Injuries Compensation Board makes awards in respect of reasonable expenses and pecuniary losses relating to any injury, pain or suffering caused by a criminal act.

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

76. At the outset of the creation of the 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.

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

77. 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 for damages sustained as a result of criminal and tortious acts by which they were victims.

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

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

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

82. 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. 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;

- 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;
- c) provide Crown Wards a program and system through which they could seek compensation and/or damages;
- 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 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;
- i) upon discharge, advise Crown Wards of pending limitation periods for claims for compensation and/or damages;
- j) make claims on behalf of the Crown Wards for compensation and/or damages;
- k) take steps to prevent the expiration of limitation periods of Crown Wards for claims for compensation and damages;
- l) upon discharge, provide copies of incident reports and investigations concerning criminal acts to Crown Wards and all other relevant documentation which could be used in an application for compensation or other such claim for damages;
- m) provide directions to Crown Wards to make claims for compensation or damages 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; and
- o) give proper consideration in respect of the steps above.

84. 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. 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. 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;
- 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;
- c) the Crown failed to provide Crown Wards with a program and system through which they could seek compensation and/or damages;
- 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;
- i) upon discharge, the Crown failed to advise Crown Wards of pending limitation periods for claims for compensation and/or damages;
- j) the Crown failed to make claims on behalf of the Crown Wards for compensation and/or damages;
- k) the Crown failed to take steps to prevent the expiration of limitation periods of Crown Wards for claims for compensation and/or damages;
- 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;
- m) the Crown failed to provide directions to Crown Wards to make claims for compensation and/or damages;

- n) the Crown failed to advise Crown Wards of their right to make an application for compensation and/or damages; and
- o) The Crown failed to give proper consideration with respect to the steps outlined above.

87. 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.

88. 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. The Crown's breach was an operational decision.

90. 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. 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. 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. 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. 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. 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 above.

96. In failing to give proper consideration and to take reasonable steps to protect the rights of the Crown Wards to seek compensation or damages, 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. 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 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; and/or
 - ii. lack of evidence;
- b) have suffered long delays in receiving compensation, which in turn delayed:
 - i. the use and enjoyment of compensation;
 - ii. the ability to receive treatment for injuries or to use the compensation or damages to better their lives;

- iii. the use 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. 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. 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. 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. The Crown was aware of the need to protect victims of crimes and torts and the rights of victims to seek compensation and damages.

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

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

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

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HOLLY PAPASSAY, et al
Plaintiffs and

**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
ONTARIO**

Defendants

Court File No: CV-14-0018

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(Proceeding commenced at Thunder Bay)

**FRESH AS AMENDED STATEMENT
OF CLAIM**

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