

Court File No. CV-14-0018

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HOLLY PAPASSAY

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

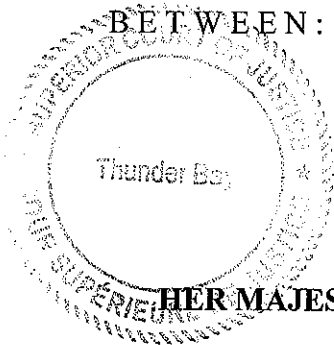
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

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.

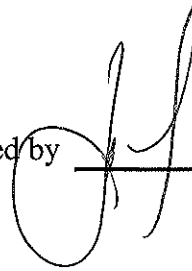
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.



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
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CLAIM

1. The plaintiff, on behalf of the Class as described herein, claims:
 - a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class;
 - b) a declaration that the defendant breached its fiduciary, statutory and common law duties to the plaintiff 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 victim;
 - 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 victim;
 - d) a declaration that the defendant is liable to the plaintiff 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 seem 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 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 victim, 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 is an individual residing in the City of Thunder Bay, in the Province of Ontario.

7. Ms. Papassay was born on September 25, 1971 in Sioux Lookout, Ontario.

8. Ms. Papassay was a Crown Ward between the ages of approximately 5 to 12. As described below, Ms. Papassay 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 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.

10. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of the following persons (the "Class" or "Class Members"):

all persons who became Crown Wards in Ontario on or after January 1, 1966
(the "Crown Ward Class")

C. HISTORY OF CROWN WARDSHIP IN ONTARIO

11. 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, or sexual abuse, or neglect.

12. 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, and 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.

13. 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.

14. This recommendation was ultimately accepted, culminating in amendments to the *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.

15. 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*.

16. 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'S EXPERIENCE AS A CROWN WARD

17. Between the ages of 6 and 7, Ms. Papassay was placed in a home in Sioux Lookout. As described below, she continued to suffer abuse and neglect while in the care of the Crown.

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

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

20. Ms. Papassay 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.

21. Between the ages of 10 and 13, Ms. Papassay was placed in a home in which there was a teenage male, several years older than her, who repeatedly spoke to her about sexual acts. On numerous occasions, he confined her to a garage while he exposed himself to her.

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

23. Ms. Papassay reported these incidents to the Crown or its agents, but no actions were taken.

24. During her Crown Wardship and upon her discharge, the Crown:

- a) failed to advise Ms. Papassay that she was entitled to seek compensation or civil damages for the criminal and tortious acts to which she was a victim;
- b) failed to collect and preserve evidence in respect of the criminal and tortious acts to which Ms. Papassay was a victim;
- c) failed to provide copies of incident reports and investigations to Ms. Papassay of the criminal and tortious acts to which she was a victim;
- d) failed to retain counsel for Ms. Papassay or to advise Ms. Papassay to retain counsel in respect of the criminal and tortious acts to which she was a victim; and
- e) failed to advise Ms. Papassay of her right to make an application for compensation to the Criminal Injuries Compensation Board or to seek damages by way of civil action.

E. VICTIMS OF CRIME LEGISLATION AND THE CRIMINAL INJURIES COMPENSATION BOARD

25. 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.

26. 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.

27. 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.

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

28. At all material times, the Crown owed duties to the plaintiff 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 to which they were victim.

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

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

31. 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.

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

33. Finally, there was direct relationship and specific interaction between Ms. Papassay and the Crown, including the Crown's review of her file, her reporting of the criminal and tortious acts to which she was a victim, and the Crown's specific knowledge of the criminal and tortious acts to which she was a victim.

G. STANDARD OF CARE

34. 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.

35. 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.

36. 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.

H. BREACH OF STANDARD

37. 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 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.

38. 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.

39. 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.

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

41. 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.

I. FIDUCIARY RELATIONSHIP BETWEEN THE CROWN & THE CLASS

42. 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.

43. 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.

44. 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.

45. 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.

46. 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 34, above.

47. 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.

J. DAMAGES SUFFERED BY THE PLAINTIFF AND THE CLASS

48. 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.

K. PUNITIVE DAMAGES

49. 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.

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

51. 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.

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

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

January 22, 2014

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HOLLY PAPASSAY
Plaintiff

and

**THE CROWN IN RIGHT OF THE
PROVINCE OF ONTARIO**
Defendants

Court File No: ~~CV-09-376927-CP00~~ ✓

CV-14-0018

**ONTARIO
SUPERIOR COURT OF JUSTICE**

STATEMENT OF CLAIM

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