

Court File No.

CW-16-547155 00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JAMES TEMPLIN

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 plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$100,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date February 22, 2016

Issued by



Local registrar

Address of court office 393 University Avenue
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Toronto, ON

TO: **HER MAJESTY THE QUEEN IN RIGHT
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CLAIM

1. The plaintiff, on behalf of the Class as described herein, claim:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class and any appropriate subclass thereof;
 - (b) a declaration that the defendant breached its fiduciary, statutory and common law duties to the plaintiff and the class through the establishment, funding, operation, management, administration, supervision and control of the Child and Parent Resource Institute (“CPRI”) at London, Ontario.
 - (c) a declaration that the defendant was negligent in the establishment, funding, operation, management, administration, supervision and control of CPRI;
 - (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 and for its negligence in relation to the establishment, funding, operation, management, administration, supervision and control of CPRI;
 - (e) damages for negligence and breach of fiduciary duty of \$100 million, or such other sum as this Honourable Court may find appropriate;
 - (f) punitive damages of \$100 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 on a substantial indemnity basis or in an amount that provides full indemnity;
 - (i) pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, 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. THE PARTIES

2. The plaintiff, James Templin, is an individual residing in the City of Barrie, in the Province of Ontario. James was born on May 14, 1966. He was admitted to CPRI in 1982 at the age of 16 years old and resided there until he left in 1983.

3. The defendant, Her Majesty the Queen in right of the Province of Ontario (the "Crown") is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, and the amendments thereto.

4. At all material times, the Crown, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of CPRI as residential facility for the care and control of persons with mental or developmental disabilities and other persons in need of psychiatric care. CPRI was a Schedule 1 facility pursuant to the *Developmental Services Act*, R.S.O. 1990, c. D.11 or predecessor Acts.

5. CPRI was located as a Schedule 1 facility in London, Ontario. It was under the sole jurisdiction and control of, and was operated by, the Crown. The Crown retained and authorized servants, agents, representatives and employees to operate CPRI and gave instructions to such servants, agents, representatives and employees as to the manner in which the facility was to function and operate.

6. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of all other persons who resided at CPRI.

7. The proposed members of the "Class" are

all persons, who were alive as of February 22, 2014, who resided at CPRI during the period from September 1, 1963, until July 1, 2011. ("the class period")

B. HISTORY OF CPRI

8. CPRI was a "Schedule 1" facility. The Schedule 1 facilities operated in Ontario at various times during the 20th century. Over this time, the Schedule 1 facilities, including CPRI, housed thousands of individuals labelled mildly, moderately and severely developmentally challenged and delayed. The Class, as people with disabilities, is a particularly vulnerable population within society.

9. Individuals were placed in Schedule 1 facilities either by family members or their principal caregivers, who voluntarily placed them to receive medical or personal care; or by becoming wards of the Crown, having been legally remanded into the care of the Province as wards of the Crown. Individuals were placed in Schedule 1 facilities, such as CPRI, as a result of their mental or developmental disabilities.

10. In February of 1960, CPRI opened for out-patient treatment. CPRI opened its first ward for in-patient treatment on February 1, 1961. It was initially called the "Children's Psychiatric Research Institute".

11. Like all Schedule 1 facilities, CPRI was intended to provide residential programs of hospital care, activity, educational programs, and training for persons with developmental disabilities. CPRI provided residential services to such persons until the age of 18 years old.

12. All Schedule 1 facilities, such as CPRI, operated under the auspices of the Department of Health and the Ministry of Health until 1974, when they were transferred to the Ministry of Community and Social Services. At all times the Defendant operated all Schedule 1 facilities with common policies and procedures.

13. In 1974, the *Developmental Services Act, 1974*, S.O. 1974, c. 2, was enacted, which gave the Ministry of Community and Social Services legislative responsibility for all government and board-operated institutions for people with developmental disabilities – the Schedule 1 facilities.

14. As a facility listed on Schedule 1 to the *Developmental Services Act, 1974*, CPRI was staffed, operated, and funded by the Province of Ontario.
15. The various Schedule 1 facilities ceased operating at various times.
16. In March of 2004, CPRI transitioned from the authority of the Ministry of Community and Social Services to the authority of the Ministry of Children and Youth Services ("MCYS").
17. CPRI was officially delisted as a Schedule 1 facility on July 1, 2011 pursuant to O. Reg 170/11.
18. CPRI, now called the "Child and Parent Resource Institute" as of 1992, remains open to this day. It still receives 100% of its funding from the MCYS.
19. Like with all Schedule 1 facilities, every aspect of the residents' lives at CPRI was dictated, controlled and provided for by the Crown. Individuals at the CPRI had virtually no control over any aspect of their lives. The opportunities to make choices or provide any input into their daily lives were extremely limited if not non-existent. The vulnerability of these individuals as a result of their placement in the institution was further compounded by virtue of their being disabled.
20. Throughout the tenure of the Schedule 1 facilities, including that of CPRI, numerous specific recommendations had been made directly to the Crown to identify, halt, report and eliminate abuse of residents, the conditions that led to the abuse of residents and to provide an appropriate level of care to the facilities' residents.
21. Reports and studies were issued during this time regarding the operation of CPRI, highlighting but not limited to the fact that:
 - (a) wards combined persons of different ages and varied abilities;
 - (b) living conditions tended to be dull, monotonous and impersonal;
 - (c) the residents had few private possessions, and seldom was there place to store them;

- (d) any degree of personal attention or privacy was simply not possible;
- (e) many wards were unnecessarily locked;
- (f) the institutions forced residents to function far below their developmental possibilities, inhibiting rehabilitation;
- (g) there was no ombudsman to permit the investigation of resident abuse;
- (h) staff training was ineffective to address abuse of residents; and
- (i) abuse regularly went unreported;

22. However, notwithstanding these and other recommendations, over a period of some years, no adequate internal safeguards were put into place to adequately prevent or report abuse of the Schedule 1 facilities' residents, improve the conditions that led to abuse of said residents, and no adequate steps were taken to improve the quality of care or living at the Schedule 1 facilities, including CPRI. In the alternative, even if the Crown adopted some of the recommendations, those measures were inadequate and failed to meet the standard of care which was or should have been applicable in the circumstances.

23. Most notably, the Crown did not act to prevent or report the known abuse which was occurring and being perpetrated upon at CPRI. As the Crown knew that the residents were not always in a position to complain, report, or be listened to, it would have been reasonable for the Crown to establish appropriate institutional means of quality assurance to ensure individuals resided in an inherently safe environment.

C. THE PLAINTIFF'S EXPERIENCES AT CPRI

24. The plaintiff was placed into CPRI as a full-time resident from 1982-1983.

25. During his residence at CPRI, the plaintiff was repeatedly and continuously mentally and emotionally abused by staff. He was told that he was "worthless" and would "never amount to anything". The abuse commenced upon the plaintiff's admission to CPRI and continued during his whole duration of residence.

26. The plaintiff witnessed the repeated and continuous physical abuse and punishment of residents by CPRI staff and other residents. The plaintiff was also informed of and recalls the sexual abuse of residents by CPRI staff and other residents.

27. The plaintiff feared for his safety at CPRI. All residents, including the plaintiff, suffered from a lack of safety and well-being at CPRI. The staff failed to intervene or remained willfully blind to potential incidents of abuse. No efforts were taken to protect residents from abuse. Witnessed and suspected abuse was not reported, be it institutionally or to the police. CPRI failed to screen or train staff sufficiently to protect against abuse of residents, or if such screening and training was engaged, the staff ignored said training without consequence.

28. The plaintiff, like all residents, suffered from a lack of opportunity to complain or voice concern at CPRI. The plaintiff was prevented from calling family members and from contacting the outside world. Healthcare staff did not ask questions or inquire into incidents of suspected abuse. There was no procedure or protections in place for residents to report abuse or to be protected or represented in internal investigation of reported abuse. The plaintiff, like other residents, was afraid to report injuries and abuse out of fear of assault or repercussions by staff.

29. The plaintiff, like all residents, suffered from virtually no privacy at CPRI. He was housed in a dorm-like setting with many other residents. The showers were open and accessible.

30. The plaintiff suffered from a lack of opportunity for work or enhancing future life skills at CPRI.

31. Due to his experiences at CPRI, the plaintiff suffers from a difficulty in trusting other people to this day. The plaintiff suffers with chronic panic and anxiety disorders, as well as post-traumatic stress disorder. The plaintiff fears rejection if people discover what occurred to him at CPRI.

D. KNOWLEDGE OF THE CROWN

32. The Crown failed to reasonably consider or act upon the knowledge or recommendations it had been provided with by its own commissioned reports, residents, family members of residents, and its own professional staff. Further, in addition to failing to provide proper resident care, in all respects, the Crown was also aware of the abuse occurring at the Schedule 1 facilities, including at CPRI, and the conditions that led to such abuse, yet failed to take any reasonable action to prevent it from continuing or occurring.

33. The funding provided by the Crown was inadequate to meet the costs of operating and maintaining CPRI and, in particular, to meet the needs of the individuals who resided there. As a result, the care provided to the Class members and the conditions at CPRI were poor and the conditions at CPRI were not suitable or appropriate for residential facilities.

E. MISTREATMENT OF RESIDENTS AND CONDITIONS OF CPRI

34. The persons who were admitted into CPRI were typically children or young adults. They could reside at CPRI until the age of 18 years old. In many cases, they were forced to reside at CPRI by representatives of the Crown.

35. In addition to the incidents of abuse and negligent management or operation of CPRI, as described above, other examples of improper conduct on behalf of the Crown include, but are not limited to, the following:

- (a) residents were not provided with proper amenities, such as clothing and bedding;
- (b) residents were often not bathed or cleaned;
- (c) there was intermittent or inadequate or no attempt to supervise or program residents' activities;
- (d) admissions procedures contained no opportunity for pre-admission visits and communications between residents and family members were made difficult if not impossible;
- (e) total lack of personal attention or privacy given the institutional structure and facilities;
- (f) younger residents were abused by older residents whom they were forced to reside with;
- (g) residents claims of abuse were ignored and not investigated;
- (h) wards and rooms were unnecessarily locked, creating a prison-like environment; and
- (i) insufficient hygiene accommodations were provided in lavatories and related areas.

F. DUTIES OWED BY THE CROWN TO THE CLASS

36. In breach of its duty of care and fiduciary obligations, the Crown operated or caused to be operated CPRI whose residents, including the plaintiff and proposed members of the Class, were systemically subject to abuse, mistreatment and poor living conditions, amongst other things, caused or permitted by the Crown.

37. As a result of its sole jurisdiction over the operation of CPRI, at all material times, the Crown owed duties to the plaintiff and to members of the proposed Class which include, but are not limited to:

- (a) adequately, properly and effectively supervising the environment of CPRI and the conduct of its employees to ensure the residents would not suffer harm;
- (b) ensuring that physical, emotional and sexual abuse would not occur;
- (c) protecting residents of CPRI from any person or thing which would endanger or be injurious to the health and well-being of any resident;
- (d) using reasonable care to ensure the safety, well-being and protection of residents of CPRI;
- (e) providing a safe environment, and in particular, one free from physical, sexual, and psychological assault or harm;
- (f) setting or implementing standards of conduct for its employees and residents of CPRI to ensure that no employee or resident would endanger the health or well-being of any resident or person;
- (g) providing residents a program and system through which abuse would be recognized and reported;
- (h) educating residents and employees in the use of a system through which abuse would be recognized and reported;
- (i) pursuing and investigating complaints of physical, sexual, or psychological abuse with due diligence;
- (j) taking any and all reasonable steps to prevent and end physical, sexual, or psychological abuse upon learning of a complaint;
- (k) taking any and all reasonable steps to ensure that individuals coming into direct contact with residents of CPRI were not in danger of abuse from other residents or employees;
- (l) reporting conduct which is allegedly contrary to the *Criminal Code of Canada* to the appropriate law enforcement agency upon learning the particulars of such a complaint; and
- (m) providing proper and reasonable treatment for residents upon learning that a resident was abused.

G. FIDUCIARY RELATIONSHIP BETWEEN THE CROWN AND THE CLASS

38. Furthermore, the Crown owed residents of CPRI, as individuals in its sole care and control, a fiduciary duty which included a duty to care for and protect the residents and act in their best interests at all material times.

39. The Crown had a fiduciary relationship with the residents of CPRI. The Crown created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated CPRI during the class period.

40. All individuals who resided at CPRI were children under the complete care and control of the Crown to whom the Crown owed the highest non-delegable, fiduciary, moral, statutory, and common law duties, which included, but was not limited to, the duty to ensure that reasonable care was taken of the residents of CPRI; the duty to protect residents while at CPRI; the duty to protect the resident Class from intentional torts perpetrated on them while at CPRI; liability if these non-delegable and fiduciary duties were performed negligently or tortuously; and, the special responsibility to ensure the safety of the Class while at CPRI.

41. Amongst other things, the Crown was solely responsible:

- (a) for the administration of the Ministry of Health, the Ministry of Community and Social Services, the MCYS and the *Developmental Services Act*, R.S.O. 1990, c. D. 11, as amended, and its predecessor statutes, as well as any other statutes relating to disabled persons, and all Regulations promulgated under these Acts and their predecessors during the class period;
- (b) for the promotion of the health, safety and well-being of Class members during the class period;
- (c) for the management, operation and administration of the Ministry of Health, the Ministry of Community and Social Services, the MCYS, and their predecessor Ministries and Departments during the class period;
- (d) for decisions, procedures, regulations promulgated, operations and actions taken by the Ministry of Health, the Ministry of Community and Social Services, the MCYS, their employees,

servants, officers and agents and their predecessors during the class period;

- (e) for the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of CPRI during the class period;
- (f) for the care and supervision of all members of the Class while they resided at CPRI during the class period and for the supply of all the necessities of life to Class members, *in loco parentis*, during the class period; and
- (g) for inspection and supervision of CPRI and all activities that took place therein during the class period and for full and frank reporting to family members and other caregiver with respect to conditions at CPRI and all activities that took place therein during the class period.

42. By virtue of its quasi-parental, or in *loco parentis*, responsibility for the safety, care and control of residents, the Crown is vicariously liable for the harms perpetrated upon residents by the Crown's employees, representatives and agents.

43. At all material times, the Class members who resided at the CPRI were entirely and exclusively within the power and control of the Crown and were subject to the unilateral exercise of the Crown's power or discretion. By virtue of the relationship between the resident with mental or developmental disabilities and the Crown, being one of trust, reliance and dependence, by the residents, the Crown owed a fiduciary obligation to ensure that the residents of CPRI were treated respectfully, fairly, safely and in all ways consistent with the obligations of a party standing *in loco parentis* to an individual under his or her care or control.

44. At all material times, the Crown owed a fiduciary duty to the residents at CPRI to act in the best interests of those individuals and to protect them from any abuse, including but not limited to, mental, emotional, physical, sexual or otherwise.

45. The individuals who resided at CPRI 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:

- (a) the Crown failed to report injuries sustained by residents of CPRI;
- (b) the Crown failed to provide adequate medical care for residents;
- (c) the Crown failed to report allegations of sexual abuse and, moreover, often punished those residents who came forward with such claims;
- (d) the Crown failed to properly screen applicants for positions for which they were hired at CPRI;
- (e) the Crown hired caregivers and others to work at CPRI who were not qualified to reach or to meet the needs of the individuals under their care and supervision;
- (f) the Crown failed to properly supervise the administration and activities of CPRI;
- (g) the Crown failed to provide adequate financial resources or support to properly maintain CPRI or to care and provide for its residents;
- (h) the Crown failed to respond adequately, or at all, to complaints or recommendations which were made concerning CPRI, both with respect to its condition and the treatment of residents;
- (i) the Crown created, permitted and fostered an atmosphere of fear and intimidation;
- (j) the Crown failed to safeguard the physical and emotional needs of the Class;
- (k) the Crown permitted unhealthy and inappropriate punishments to be perpetrated against the Class; and
- (l) the Crown permitted an atmosphere that threatened the Class with severe physical punishments, including violence.

46. The residents of the Facilities had a reasonable expectation that the Crown would act in their best interests with respect to their care and the existence and operation of CPRI by virtue of the following:

- (a) the historic duties of the Crown to individuals deemed developmentally challenged;

- (b) the unilateral assumption of responsibility for the care of the class members and similarly situated persons by the Crown;
- (c) the involvement of the Crown in the initial establishment of CPRI;
- (d) the long standing dependence of CPRI's residents on the Crown;
- (e) the nature and severity of the mental disabilities experienced by CPRI's residents;
- (f) the fact that the environment of CPRI was itself further disabling to these individuals, physically, emotionally and psychologically;
- (g) the vulnerability of residents of CPRI as a result of their disabilities; and
- (h) the involuntary nature of the relationship between residents of CPRI and the Crown.

47. The Crown knew, or ought to have known, that as a consequence of its operation, care and control of CPRI, that residents of CPRI would suffer both immediate and long-term mental, emotional, psychological and physical harm.

H. DAMAGES SUFFERED BY THE CLASS

48. The Crown knew, or ought to have known, that as a consequence of its negligent operation of CPRI and mistreatment of the Class, that those individuals would suffer significant mental, emotional, psychological and spiritual harm, which would adversely affect their relationships with their families and the community at large.

49. Members of the Class were physically, mentally, emotionally and spiritually traumatized by their experiences arising from their residence at CPRI. As a result of the negligence and breach of fiduciary duty of the Crown and its failure to provide proper and adequate care or supervision, the Class members suffered and continue to suffer damages, which include, but are not limited to the following:

- (a) emotional, physical, sexual, and psychological abuse;

- (b) exacerbation of mental disability and deprivation of healing opportunities;
- (c) impairment of mental and emotional health and well-being;
- (d) an impaired ability to trust other persons;
- (e) a further impaired ability to participate in normal family affairs and relationships;
- (f) alienation from family members;
- (g) depression, anxiety, emotional distress and mental anguish;
- (h) pain and suffering;
- (i) a loss of self-esteem and feelings of humiliation and degradation;
- (j) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (k) an impaired ability to deal with persons in positions of authority;
- (l) an impaired ability to trust other individuals or to sustain relationships;
- (m) a sense of isolation and separateness from their community;
- (n) a requirement for medical or psychological treatment and counselling;
- (o) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (p) loss of friendship and companionship;
- (q) sexual disorientation; and
- (r) the loss of general enjoyment of life.

50. At all materials times, the Crown has known, or ought to have known, that ongoing delay in failing to rectify the institutional failures would continue to aggravate and contribute to the Class members' injuries and damages.

51. As a result of the injuries referred to above, the Class members have required and will continue to require further medical treatment, rehabilitation, counselling and other

care. The plaintiff and other Class members, or many of them, will require future medical care and rehabilitative treatment, or have already required such services, as a result of the Crown's conduct for which they claim complete indemnity, compensation and payment from the Crown for such services.

52. The plaintiff pleads that the Crown is strictly liable in tort for the damages set out above as the Crown was aware that residents of CPRI were being physically, sexually, emotionally and psychologically abused but permitted the abuse to occur. Further, the Crown is strictly liable in tort for the damages enumerated herein as the Crown was aware that its operation, management and control of CPRI was in breach of all mental health industry standards and in breach of the duties it owed to the Class members.

I. PUNITIVE DAMAGES

53. 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, safety 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 plaintiff and Class members.

54. Over a long period of time, the plaintiff and the Class members were treated in a manner that could only result in aggravated and increased mental stress and anxiety for vulnerable persons already suffering from some degree of mental disability. The anxiety, depression and sub-standard conditions to which the plaintiff and Class members were exposed has grossly violated their rights and severely altered the paths of their lives.

55. In these circumstances, the plaintiff and the Class request punitive damages to demonstrate to other institutions that such wilfully irresponsible and tortious behaviour will not be tolerated. Such will act as a deterrent to other institutions in Canada that are in the position of acting as care-givers to likewise vulnerable populations of individuals with disabilities. These individuals, by virtue of both disability and of social and institutional structures, are among the most vulnerable in Canadian society.

56. Notice of this action was provided to Her Majesty the Queen in Right of the Province of Ontario on December 22, 2015.

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

58. The trial of the action should take place in the city of Toronto, in the Province of Ontario.

February 22, 2016

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THE PROVINCE OF ONTARIO

Plaintiff

Defendant

Court File No.

CO-16-5471SS *20CP*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

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SERVICE OF A COPY
ADMITTED THIS 22 DAY OF Feb 2016
Crown Law Office (Civil Law)
MINISTRY OF THE ATTORNEY GENERAL
FOR ONTARIO
Per: *[Signature]* 21:30 pm
720 BAY STREET
TORONTO, ONTARIO M7A 2S9