Court File No. CV-16-547155-OOCP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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 DEFENCE

1. The Defendant Crown admits that it owned, operated and managed a facility in London, Ontario which came to be known as the Child and Parent Resource Institute ("CPRI") during the class period from September 1, 1963 to July 1, 2011, and continues to operate CPRI. The Crown further admits that the Representative Plaintiff in this proceeding, James Templin, was at one time an inpatient at CPRI.

2. The Crown has no knowledge of the allegations contained in paragraph 2 of the Statement of Claim.

3. The Crown denies all other allegations contained in the Statement of Claim.

A. HISTORY OF THE CHILD AND PARENT RESOURCE INSTITUTE

4. CPRI was founded in 1960 and its first admission was in or around 1961. Although it was initially called the "Children's Psychiatric Research Institute", the facility ultimately became known as the Child and Parent Resource Institute ("CPRI").

5. From its inception, CPRI was to serve a different function and operate in a different manner than other Schedule 1 facilities.

6. CPRI was situated near the University of Western Ontario with the goal of fostering a strong partnership around, and focus on, research. In the early years of its operation, CPRI operated as an outpatient clinic and provided services to children with developmental disabilities. However, within the first ten years of its founding, CPRI began to focus on serving children and youth with mental health issues.

7. From 1960 to 1974, CPRI was designated a "hospital" under the *Children's Mental Hospitals Act,* SO 1960, c 9, as amended (the "*CMHA*"), while other Schedule 1 facilities, which served adults, operated under the *Mental Hospitals Act,* RSO. 1990 c. M.8, as amended. During such time, CPRI was operated directly as a Diagnostic Centre by the Crown under the then Department of Health.

8. This changed in 1974, when *The Developmental Services Act, 1974*, SO 1974, c 2 (the "*DSA*") was enacted. CPRI was listed as a "Schedule 1" facility under the *DSA* and responsibility for its operation was transferred to the Ministry of Community and Social Services ("MCSS"). Facilities listed in Schedule 1 of the *DSA* were operated directly by

MCSS. Facilities listed under Schedules 2 and 3 of the *DSA* were not directly operated by the Crown.

9. While the other Schedule 1 facilities remained under the jurisdiction of MCSS until their eventual closure, CPRI's operations were brought under the authority of the Ministry of Children and Youth Services ("MCYS") in 2004. CPRI continues to operate under the jurisdiction of MCYS. CPRI was de-listed as a Schedule 1 facility in 2011, when the *DSA* was repealed.

10. Since 1984, CPRI has also operated under the *Child and Family Services Act*, R.S.O. 1990, c. 11, as amended. ("*CFSA*").

11. CPRI was governed by the *CMHA* and the *CFSA* because it provided highly specialized, interdisciplinary assessment and treatment services for children and youth with mental health and developmental disabilities in both inpatient and outpatient settings. With the exception of Surrey Place Centre, another Diagnostic Centre, this was unlike the other Schedule 1 facilities operating under the *DSA*, which provided residential care to individuals with developmental disabilities. The *CFSA* also sets out the rights of children and youth receiving services, which include among other things, rights relating to communication, the right to reasonable privacy and possession of one's personal property, the right to a plan of care, the right to be informed of an internal complaints procedure and the right to be informed of and have access to the Provincial Advocate for Children and Youth.

12. In the late 1970s, the Crown implemented a provincial policy to provide community living opportunities for people with developmental disabilities and to close the residential Schedule 1 facilities. Under the policy, Schedule 1 facilities, as a long-term residential option, were no longer considered necessary or viable. CPRI (and the divested Surrey Place Centre) was not included in the closure plans and continues to operate, as it was not a facility that provided long-term residential care, but rather a diagnostic and treatment centre that worked to assist children with mental health issues to live within their communities. CPRI was a unique Schedule 1 facility and served a different purpose than the other facilities being closed.

B. DIAGNOSTIC, ASSESSMENT, AND TREATMENT SERVICES

13. CPRI was founded to provide children with mental health, behavioural and physical issues and their families with a specialized interdisciplinary program, consisting of diagnostic, assessment and treatment services and also to carry out research and provide education in the field. CPRI has provided comprehensive services over its years of operation to children and youth facing a variety of mental health, behavioural, developmental and physical challenges, both on an inpatient and outpatient basis.

14. Contrary to the Plaintiff's description of CPRI in paragraph 11 of the Statement of Claim, for most of the class period, children and youth did not have to present with a developmental disability to access services at CPRI. From at least the early 1970s onwards, a diagnosis of developmental disability was not a requirement for admission. Children and youth who were treated at CPRI often had various and multiple psychiatric

disorders without a developmental disability diagnosis. These children and youth came to CPRI for the specialized, interdisciplinary assessment and treatment services provided by CPRI to meet their complex needs.

15. Further, and contrary to the Plaintiff's assertion in paragraph 11 of the Statement of Claim, CPRI was not intended to be a facility which provided residential services similar to the other Schedule 1 facilities. Individuals have been admitted to CPRI solely for the purpose of assessment and treatment. Individuals have not been admitted to CPRI for the sole purpose of receiving residential services.

16. The vast majority of services at CPRI have been, and continue to be provided, on an outpatient basis. As such, the majority of children and youth served by CPRI remain in their homes and receive professional help from community agencies in partnership with CPRI clinicians. CPRI works with local community agencies such as schools, Children's Aid Societies, Community Living organizations, mental health agencies and other children's service providers, all with a view to providing support to children in their home environment and permitting them to remain in their home community.

17. However, if an individual child or youth required intensive treatment, they could be assessed for admission on an inpatient basis. Admission decisions were and continue to be premised on the availability of the necessary clinical expertise and treatment services at CPRI to meet the individual needs of the child or youth. If treatment services were not available, admission to CPRI was delayed until such services were available or admission was denied.

18. Many of the children or youth who were referred to CPRI for admission would first be assessed as an outpatient. The assessment usually took place at CPRI with the child's parent or caregiver present, often over the course of multiple visits. In addition, CPRI staff may have visited the child or youth and their family at home or in their community as part of the assessment process. These meetings allowed the CPRI staff to assess the child or youth's treatment needs, complete a risk assessment, determine the level of supervision that the child required and set treatment goals. Staff also considered whether or not CPRI had the assessment, diagnosis or treatment services the child or youth required. If these services were not available, admission was not granted. The assessment process also provided all children and youth and their families with the opportunity for pre-admission visits at CPRI.

19. Of the children and youth admitted to CPRI, most were admitted on a short-term basis, usually for a few weeks or months. Individuals were not admitted for permanent placement, as CPRI was an assessment and treatment facility, rather than a long-term residential living environment. Those children admitted as inpatients were admitted for a specific clinical purpose, with a discharge plan in place at the time of admission, and were discharged once the inpatient's specific treatment goals were met. Contrary to paragraph 11 of the Statement of Claim, CPRI's admission philosophy and policies have held that long-term residential services shall not be provided. Admission has been with a view to identifying and addressing the individual's specific clinical needs and then supporting the individual's return to, and life in the community.

20. All children and youth were admitted to CPRI as inpatients with the consent of their families or legal guardians. Admissions arose from referrals from families or legal guardians, doctors, other medical experts and/or community agencies, including schools. The Crown denies that it ever compelled any individual to be admitted to CPRI.

21. For most of the children and youth admitted to CPRI as inpatients, their parents or other family members remained their legal guardians throughout the duration of their admission. While for some children there were court orders prohibiting contact between the child and his/her parents, generally families or legal guardians remained actively involved in their child's treatment and experience at CPRI and indeed, received services from CPRI themselves.

22. CPRI has long recognized that the family is central to the long-term treatment and progress of their inpatients. Regular interaction with family was, and continues to be, encouraged and in most cases required during the inpatient treatment period, whether through onsite visits, phone conversations or visits home on weekends. Families were kept informed of their child's progress. A staff person who was a member of the child's interdisciplinary team was assigned to each child or youth who met with the child's family in order to review the child's progress, share clinical information and help address any family-based concerns.

23. Children and youth are not and have not been admitted for assessment and treatment to a single large, general ward at CPRI; each unit has, and continues to have, its

own population, structure, programming and function to address the needs of the children and youth receiving services on that unit.

24. When admitted for assessment and treatment, children and youth were generally provided with their own bedroom or, on occasion, a bedroom with one roommate. Since approximately the mid-1990s, there have been no shared bedrooms at CPRI.

25. Given that only a finite number of individuals could be assessed or treated at any particular time, and as the only purpose of admission was for assessment, diagnosis or treatment, CPRI has not operated above capacity.

26. Units had and continue to have their own washrooms and common areas. Children did not shower in groups or use washrooms without stalls. The washrooms and showering facilities provided children with an appropriate amount of privacy.

27. Over the decades, various forms of individualized treatment plans were created for each child prior to admission so that appropriate clinical decisions could be made regarding their placement, supervision and involvement in treatment programs and other activities.

28. Pursuant to their individual treatment plans, children received different types of care depending on their condition and needs. This care included medical, psychiatric and psychological care, as appropriate, and ongoing assessment by clinical staff.

29. Individual treatment plans were reassessed throughout the duration of a child's stay at CPRI, especially as the child's needs were identified and evolved and as their treatment goals were revisited. Each child had a primary care worker who was responsible for keeping track of the individual child's treatment goals and challenges, developing a plan with the treatment team for how to meet these goals and mapping the child's progress on a daily basis.

30. CPRI introduced protocols and practices that encouraged children to build positive relationships with staff and peers. The nature of the child's interactions depended on the child's individual treatment goals. Children admitted to CPRI were involved in a variety of educational and recreational activities, including classroom instruction, skills training, organized sports and outings in the community. Participation in such activities was tailored to meet the child's individual treatment needs and goals.

31. The programs at CPRI were structured, managed and supervised in an appropriate manner by CPRI's staff.

32. CPRI has typically maintained a high staff-to-child ratio. CPRI has employed a wide array of professional staff including, but not limited to, psychiatrists, psychologists, speech language pathologists, social workers, occupational therapists, child and youth workers and pediatricians. A team of staff is assigned to each child, tailored to meet the child's individual needs and treatment goals. The staffing ratios at CPRI have consistently allowed CPRI to provide individualized treatment services.

33. Throughout the years of CPRI's operation, the Crown has ensured that only qualified candidates were selected for employment at CPRI. Once hired, the Crown has ensured that all staff were adequately and appropriately trained.

34. To further minimize the likelihood of abuse or violence among inpatients at CPRI, the individual child's supervision requirements were assessed throughout their admission. Where a child's aggressive, self-destructive or otherwise dangerous behaviour required enhanced supervision, it was provided through various options including, but not limited to:

(a) one-on-one supervision;

(b) a crisis team composed of multiple staff members dedicated to monitoring the child's needs on a 24-hour basis; and

(c) when necessary, a living unit tailored to provide constant staff supervision.

35. Individual rights, including the right to make a complaint, have been a focus during a child's stay at CPRI.

36. In or around April of 1980, a "Bill of Rights" for children admitted to CPRI was enacted. This document was unique to CPRI and was not introduced at other Schedule 1 facilities. Prior to inpatient admission and over the course of the treatment process, children and their families were regularly advised of their rights, including their right to make a complaint and on how the complaint process worked. The provision of these frequent reminders was a mandatory procedure.

37. A HELP card procedure was implemented to allow children to raise a concern or complaint. The procedure has been in place since at least 1989. HELP cards are available in common areas. A process for addressing and resolving any complaint by any child at CPRI is triggered when a HELP card is handed to a member of the staff.

38. Over the course of decades, CPRI's approach to services has evolved, along with various management and operational changes implemented to provide the most effective and up to date evidence-based treatment programs and methodologies.

39. CPRI was first accredited by the Canadian Council of Hospital Accreditation as of October 1972 and has continued to be accredited since then. In addition to accreditation, the inpatient treatment services at CPRI are supported by processes and structures which are reviewed on an annual basis by external Ministry personnel to assess compliance with the licensing requirements applicable to licensed children's residences and foster care agencies that are operated by transfer payment agencies or private agencies. Compliance reviews have been regularly carried out at CPRI since 1990.

40. CPRI has also engaged in a number and variety of internal and external review processes to gauge performance and assist in directing organizational planning.

41. Contrary to paragraph 21 of the Statement of Claim, reports regarding the operation of CPRI were not critical of CPRI, but rather lauded CPRI and distinguished it from other Schedule 1 facilities. The reports referenced by the Plaintiff in the Statement of Claim were directed at the large long-term residential institutions for the

developmentally disabled which are now closed. For example, the 1971 Williston Report, referenced in the Statement of Claim, was directed at the operation of the larger residential Schedule 1 facilities and highlighted the different approach used at CPRI. This report says that CPRI:

(a) was "the first community-centred psychiatric hospital in Ontario especially designed for the treatment of mental retardation in children";

(b) has since its inception "played a leadership role in the services for the mentally retarded";

(c) has enjoyed international acclaim, having on two occasions received awards of the American Psychiatric Association, the latest being their "Gold Achievement Award" in 1970, in recognition of the institute's efforts;

(d) has developed an impressive research program with a highly skilled research staff;

(e) has provided a focal point for education of the general public and service development throughout southwestern Ontario;

(f) has been "a major influence in changing the community's attitudes toward the mentally retarded"; and

(g) is, without qualification, one of the greatest centres of its kind in the world.

42. Throughout its history, CPRI has received widespread praise for its service to the community, emphasis on clinical research, professional training programs and partnership with the local university network, which was unprecedented in Canada at the time. Many CPRI staff held distinguished appointments and received numerous awards and accolades at regional, provincial and national levels. Examples of CPRI's recognition include, but are not limited to, the following:

(a) Accreditation Canada has commented that CPRI "has much to celebrate" and that it "has a solid reputation in the community, and is viewed as a leader, a mentor and an innovator."

(b) The Canadian Association for Community Living identified CPRI as setting the standard, and providing a model to follow, for similar units in Canada.

(c) The Royal Commission on Health Services, 1961-1964, concluded that 15 assessment clinics, modelled after CPRI, should be put in place throughout the country.

43. From its inception, CPRI has enjoyed a strong partnership with the University of Western Ontario. CPRI was founded in London in part owing to the opportunity to collaborate with the University to become a leader in assessment, research and training in the field of children's mental health. Throughout the relevant time period, medical professionals at CPRI have often been cross-appointed at other hospitals and universities. CPRI is highly sought after for the valuable training and assessment, diagnosis and treatment of various mental health and developmental concerns.

C. DEFENCE TO ALLEGATIONS OF NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

44. The Crown's establishment, funding, operation, management, administration, supervision and control of CPRI benefited the youth and children who relied on its services, particularly having regard to the fact that, in each and every case, families were seeking highly specialized, interdisciplinary diagnostic and treatment services.

45. The Crown, her employees, agents and servants acted at all times in the best interests of these children.

46. Over the decades, the practice and approach to the care of inpatient children with behavioural, mental health, developmental and, in some instances, physical challenges

have evolved. As a result, the standard of care for the operation and management of facilities for children with mental health issues has also evolved over time. Given CPRI's relationship to the academic environment and the type of professionals it employed, it was constantly investigating leading and best practices over time. At all relevant times, the Crown, her employees, agents and servants met or exceeded the applicable standard of care for the operation and management of such facilities.

47. The Crown, her employees, agents and servants met and often surpassed the standard of care for the delivery of services to the children and youth who were admitted to CPRI, having regard to all applicable constraints, including, but not limited to, budgetary constraints. The Crown denies any breach of duty it may have owed in law.

48. The Crown breached no common law, fiduciary or statutory duty it may have owed in the establishment, funding, operation, management, administration, supervision and/or control of CPRI.

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

50. The Crown expressly denies that the funding provided to CPRI was inadequate to meet the costs of operating and maintaining its facilities and to meet the needs of the children and youth who relied on its services. CPRI's budget and operations have been

listed as a separate funding line as compared to the other Schedule 1 facilities given the unique mandate and purpose of its operations.

51. If CPRI was inadequately funded, which is not admitted but expressly denied, the Plaintiff cannot assert a claim against the Crown for inadequate funding of CPRI. Such a claim is not recognized at law.

52. Throughout their time at CPRI, children and youth received supervision, treatment, education, training and guidance in accordance with the highest standard of care and appropriate to their needs and abilities.

53. If abuse, mistreatment or neglect occurred, which the Crown expressly denies, the Crown specifically denies that such abuse or neglect resulted from any failure on the part of the Crown to meet applicable standards of care.

54. If any child or youth was abused, mistreated or neglected at CPRI, which is not admitted but expressly denied, such conduct was not carried out as part of the authorized duties of its employees, representatives or agents. If such conduct was carried out upon the Plaintiff or any other child or youth at CPRI, then such conduct was in no way authorized, condoned or permitted by the Crown nor was it carried out with the knowledge of the Crown. With respect to the allegations of abuse, mistreatment and intentional wrongdoing by staff, which are expressly denied, the Crown denies that it is in any way vicariously liable for any such alleged acts.

55. The Crown monitored and supervised the children and youth receiving CPRI inpatient services through the application of extensive policies and procedures to achieve this purpose.

56. In addition, if children suffered any form of abuse, mistreatment, assault or neglect, which is not admitted but is denied, CPRI had reporting systems in place which provided inpatients with the ability and opportunity to report such alleged abuse so that it could be investigated in a timely fashion. The Crown ensured that CPRI had in place all appropriate safeguards to ensure that abuse was prevented and that, if it did occur, it could be reported and appropriately addressed.

57. The Crown denies that it failed to adequately monitor, train or supervise its staff.

58. The Crown responded appropriately and in accordance with the standard of care to any and all reports and studies and any other information received by it concerning the management and operation of CPRI.

59. The Crown, her employees, agents and servants, placed safeguards on the children and youth admitted to CPRI only as appropriate to ensure the safety of themselves and others and to further the child's clinical progress.

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

61. The Crown is immune to any claims in tort prior to September 1, 1963 when the *Proceedings Against the Crown Act*, RSO 1990, c P.27 was enacted. No claim in tort can be asserted for any actions or events which predate the passage of this act.

62. The claims brought by the Plaintiff are statute-barred by virtue of the *Limitations Act, 2002*, SO 2002, c 24, Schedule B and predecessor legislation as applicable.

63. The Crown states that, due to the many years that have elapsed since the alleged events occurred, the documentary and evidentiary record is incomplete and cannot be reconstructed. The lengthy passage of time has also resulted in the death or unavailability of many potential witnesses and recollection difficulties for any witnesses that can still be found. Accordingly, the Crown has suffered severe prejudice in its ability to fully defend this action in that it has insufficient information or knowledge either to confirm or deny the Plaintiff's allegations. The Crown relies upon the doctrine of *laches* and states that the Plaintiff is estoppped from bringing this action as against the Crown.

64. The Crown denies that the children and youth who were admitted to CPRI suffered any loss or damages as alleged.

65. In the alternative, if these children have suffered any loss or damages, such loss or damages were as a result of acts and/or omissions not within the power or control of the Crown. Any such loss or damages resulted from pre-existing physical, emotional and/or psychological problems which were not caused or contributed to by the Crown.

66. Further, any such loss or damages were caused by matters arising subsequent to the Plaintiff's admission to CPRI and were unrelated to any conduct of the Crown.

67. If the children or youth admitted to CPRI have suffered any loss or damages as alleged or otherwise, which is not admitted but denied, such alleged loss and damages are excessive and too remote and the Plaintiff is put to the strict proof thereof.

68. The Crown specifically denies that aggregate damages are available to the class. The experience of each child admitted to CPRI was unique. Each child's experience and treatment while at CPRI, including the level of supervision of the child during his or her treatment, was individually determined and based on the individual child's needs and treatment goals. To the extent that any child or youth admitted to CPRI was harmed at CPRI, which is expressly denied, the extent to which such harm resulted in damages can only be determined on an individual basis, taking into account the child's individual treatment program he or she received while at CPRI, each individual class member's circumstances prior to and after admission to CPRI and other factors specific to each individual class member.

69. The Crown states that nothing in its conduct warrants the awarding of punitive or exemplary damages.

70. The Crown pleads and relies upon the *Negligence Act*, RSO 1990, c N.1, the *Child and Family Services Act*, R.S.O. 1990, c. 11, as amended and the *Developmental Services Act*, RSO 1990, c D.11.

71. The Crown asks that this action be dismissed with costs.

February 6, 2017

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STATEMENT OF DEFENCE

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