

Court File No.: CV-17-0578-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIRK KEEPING

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceedings 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.

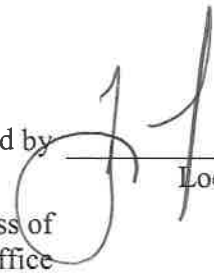
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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: December 8, 2017

Issued by



Local registrar

Address of
court office

TO: Her Majesty the Queen in Right of the Province of Ontario
Crown Law Office
720 Bay Street
8th Floor
Toronto, ON M7A 2S9

CLAIM

1. The plaintiff 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 was negligent and breached its fiduciary duty to the plaintiff and the class through the establishment, funding, operation, management, administration, supervision and control of all training schools established pursuant to *The Ontario Training Schools Act, 1931* and successor legislation, including but not limited to:
 - (i) Reception and Assessment Centre – Oakville;
 - (ii) Reception and Diagnostic Centre for Girls – Galt (Reception, Diagnostic, and Treatment Centre – Galt);
 - (iii) Ontario Training School for Girls – Lindsay (Kawartha Lakes School);
 - (iv) Trelawney House – Port Bolster;
 - (v) Reception Centre for Boys – Bowmanville (Reception Centre, Bowmanville);
 - (vi) Ontario Training School for Boys – Simcoe (Glendale School);
 - (vii) Ontario Training School for Boys, Hagersville Junior School (White Oaks Village);
 - (viii) Ontario Training School for Boys, Hagersville Senior School (Sprucedale School);
 - (ix) Ontario Training School for Boys, Bowmanville (Pine Ridge School);
 - (x) Ontario Training School for Boys, Cobourg (Brookside School);
 - (xi) Ontario Training School for Boys, Guelph (Hillcrest School);
 - (xii) Coldsprings Forestry Camp;
 - (xiii) Cecil Fraser School; and

(xiv) Project D.A.R.E.

(including all predecessor and successor names, as the case may be)

(the "Training Schools")

- (c) a declaration that the defendant is liable to the plaintiff and the class members for damages caused by its negligence and breach of fiduciary duty in relation to the establishment, funding, operation, management, supervision, and control of the Training Schools;
- (d) a declaration that the defendant is vicariously liable to the plaintiff and the class members for the physical, sexual and psychological abuse by its servants, employees, representatives and agents;
- (e) damages for negligence, breach of fiduciary duty, and vicarious liability in the amount of \$500 million, or such other sum as this Honourable Court may find appropriate;
- (f) punitive damages in the amount 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. OVERVIEW

2. The Training Schools were juvenile detention facilities that were established and operated by the defendant Her Majesty the Queen in Right of the Province of Ontario (the "Crown") between 1931 and 1984. The children who resided there were vulnerable

and powerless and due to the Crown's systemic failure, were subjected to a toxic environment in which physical, sexual, and psychological abuse was widespread.

3. The Training Schools were located in geographically isolated areas. They were overcrowded and understaffed. The staff that was in place was neither qualified nor appropriately trained. There was an absence of policies and procedures in place in respect of reporting, investigating, and preventing physical, sexual and psychological abuse. Staff discipline was practically non-existent.

4. In consequence, the Training Schools contained a toxic environment in which degrading and humiliating treatment of children in the Crown's care was the norm, physical, sexual, and psychological abuse was rampant, and residents of the Training Schools were systematically denied their dignity and basic human rights.

5. Through the Crown's systemic negligence and breach of fiduciary duty, this improper conduct continued for decades. By providing its servants, employees, representatives and agents with the opportunities to abuse their power over these children in acts directly related to the physical and psychological intimacy inherent in their roles, the Crown is also vicariously liable for the physical, sexual and psychological abuse perpetrated by its servants, employees, agents and representatives on residents of the Training Schools.

B. THE PARTIES

(i) The Plaintiff

6. The plaintiff, Kirk Keeping (hereinafter referred to as "**Kirk**") is an individual residing in the City of Thunder Bay, in the Province of Ontario.

7. Kirk was born on February 20, 1953.

8. Kirk was admitted to Ontario Training School for Boys, Bowmanville (also known as Pine Ridge School) ("**Pine Ridge**") in or about 1968 at the age of 15 years old.

9. Kirk continued to reside at Pine Ridge as a ward of the Crown, for approximately two (2) years.

(ii) The Defendant

10. The defendant, Her Majesty the Queen in right of the Province of Ontario 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.

11. At all material times, the Crown owned and was responsible for the operation, funding and supervision of the Training.

12. The Crown retained, employed and/or authorized servants, agents, representatives and employees to operate the Training Schools and gave instructions to such servants, agents, representatives and employees as to the manner in which the Training Schools were to function and operate.

13. The Training Schools were created pursuant to the *The Ontario Training Schools Act, 1931*, S.O. 1931, c. 60 successor legislation (the "Act").

14. The Training Schools were under the sole jurisdiction and control of, and were operated by, the Crown.

15. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 on his own behalf and on behalf of:

All persons who resided at any of the Training Schools between April 2, 1931 and April 2, 1984 who were alive as of December 8, 2015 (the "**Resident Class**"); and

All other persons who by reason of his or her relationship to the Resident Class have standing pursuant to s. 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, or equivalent legislation in other provinces and territories as set out in **Schedule "A"** (the "**Family Law Claimants**").

C. LEGISLATIVE HISTORY OF THE TRAINING SCHOOLS

16. In 1931, *An Act respecting Training Schools* was enacted by the Crown to establish the Training Schools. The Training Schools were purportedly established to provide boys and girls admitted therein with a mental, moral and vocational education and training with profitable employment.

17. The children admitted to the Training Schools became wards of the Crown.

18. When children were sentenced to reside at the Training Schools, the length of their sentences was indeterminate.

19. The Act permitted members of the Executive Council charged with the administration of the Training Schools to make regulations for care and control of residents of the Training Schools, including for:

- (a) the appointment of superintendents, officers, servants and employees of training schools as may be necessary;
- (b) fixing the age at which and the conditions under which boys and girls may be admitted to a training school and the period during which any boy or girl may be kept at a training school;
- (c) the conditions under which a boy or girl may leave or be discharged from a training school;
- (d) regulating the conduct, discipline, training and education of boys and girls admitted in residents to a training school; and
- (e) the management and direction of the affairs and maintenance of training schools.

20. Finally, the Act established the Ontario Training Schools Board (the "**Board**"), the members of which were appointed by the Lieutenant-Governor in Council and which was an agent of the Crown. The Board was given the responsibility to visit and inspect training schools and to investigate and ascertain the conditions of training schools and the welfare of girls and boys therein with respect to, among other things, their wardship, care, treatment, conduct and discipline.

21. In 1939, the Act was amended to require the Training Schools to be inspected by an officer of the Crown who was given free access to all parts of the Training Schools.

22. The Act was also amended to state the reasons children were admitted to the Training Schools, including any boy or girl under the age of sixteen who:

- (a) was found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms;

- (b) was found wandering and has not any home or settled place of abode or proper guardianship;
- (c) was found destitute, either being an orphan or having a surviving parent who is undergoing imprisonment;
- (d) was a habitual truant and whose parent or teacher represents that he is unable to control the boy or girl;
- (e) was by reason of the neglect, drunkenness or other vices of his parents suffered to grow up without salutary parental control and education, or in circumstances exposing him, to lead an idle and dissolute life;
- (f) has been accused or found guilty of petty crime; or
- (g) proved unmanageable or incorrigible.

23. In addition to these criteria, the Act provided the following admissions criteria:

- (a) any person under the age of sixteen (16) years that was convicted of an offence punishable by imprisonment may be sent to a Training School; and
- (b) any ward of a children's aid society, or any boy or girl whose parents or guardians consent thereto, and who was, in the opinion of the Minister, in need of training and discipline, could be admitted to a Training School.

24. Finally, discretion was granted to the Minister to make regulations concerning the Training Schools, including:

- (a) prescribing the powers and duties of the Board;
- (b) prescribing the powers and duties of superintendents, including the control which they may exercise over girls and boys;
- (c) prescribing the vocational education, training and employment to be provided and setting standards of instruction; and
- (d) regarding the management, discipline, government and control of the Training Schools and the maintenance of the buildings, premises and equipment thereof.

25. In 1960, the "incurable" criterion was removed from the Training School admissions criteria.

26. In 1965, the Training Schools admission criteria was amended to provide that a judge may order a child under sixteen years of age to be sent to a Training School where:

- (a) the parent or guardian of the child is unable to control the child or to provide for his social, emotional or educational needs;
- (b) the care of the child by any other agency would be insufficient or impracticable; and
- (c) the child needs the training and treatment available at a Training School.

27. In addition, the Act was amended to permit a child between the ages of twelve (12) and sixteen (16) to be sent to a Training School if the child contravened any statute in force in Ontario, which contravention would be punishable by imprisonment if committed by an adult.

28. The Training Schools operated under the auspices of the Ministry of Reform Institutions until 1968, the Ministry of Correctional Services from 1968 until 1977 and the Ministry of Community and Social Services from 1977 to 1984.

29. On April 2, 1984, the Act was repealed and the Training Schools era ended.

D. MISTREATMENT AND ABUSE OF THE CLASS MEMBERS

30. The environment at the Training Schools was one of fear, intimidation and brutality.

31. Every aspect of the Resident Class members' lives was dictated and controlled by the Crown. The Resident Class members' abilities to make choices or have any control over their daily lives were extremely limited or non-existent.

32. Residents who were admitted to the Training Schools were cut off from their families. Residents were not permitted to visit or communicate with their families.

33. Staff members hired by the Crown to work at the Training Schools were not qualified, nor did they receive appropriate training. At all material times staff at the Training Schools were unskilled and unsuitable for dealing with children in their care.

34. Training School staff members did not receive appropriate supervision.

35. The Training Schools facilities were not suitable or appropriate for residential facilities for troubled youth.

36. Children were committed to the Training Schools for indeterminate sentences. So-called "bad behavior", including the reporting of physical, sexual and psychological abuse, served to lengthen Resident Class members' sentences. This institutional barrier caused and contributed to the Training Schools' toxic environment.

37. The Training Schools did not have appropriate procedures for reporting or investigating physical, sexual or psychological abuse. Adequate internal safeguards were not put into place to adequately prevent physical, sexual or psychological abuse of Resident Class members or improve the conditions that led to their abuse.

38. The Crown did not act to prevent or ensure that abuse was reported which was occurring and being perpetrated upon the Resident Class members. The Crown was aware of the Resident Class members' extreme vulnerability and ought to have established appropriate policies and procedures to ensure individuals resided in an inherently safe environment. The Crown failed to do so.

39. Inappropriate, cruel and degrading punishment perpetrated on Resident Class members was a frequent and excessive feature of Training Schools discipline imposed by the staff. For example:

- (a) when staff members accused a Resident Class member of misbehaving, staff members would force other Resident Class members to physically abuse the accused, causing physical injury to the accused and psychological injury to his or her peers;
- (b) staff members themselves regularly physically assaulted Resident Class members both as punishment and for their amusement;
- (c) the blanket treatment was often applied to Resident Class members, whereby a blanket was placed over a resident and that resident was physically abused by staff members and peers;
- (d) lengthy terms in solitary confinement – the "hole" - was frequently used as a form of punishment for Resident Class members, in which Resident Class members were confined, often with their feet shackled and wrists cuffed;
- (e) Resident Class members were not permitted to go to the washroom and instead were forced to soil themselves; and
- (f) Resident Class members were forced to scrub floors with toothbrushes and sleep on the floor.

40. Finally, as detailed below, staff members frequently demanded that Resident Class members engage in sexual acts with them, often for the provision of privileges.

41. At all material times, the Crown had knowledge of its failures in establishing, funding, operating, managing, supervising, and controlling the Training Schools. The Crown failed to reasonably consider or act upon its knowledge of these problems that had been provided to it through its own commissioned reports, residents, family members of Resident Class members and its own professional staff.

42. In addition to failing to provide proper resident care, in all respects, the Crown was also aware of the abuse occurring at the Training Schools, and the conditions that led to such abuse, yet failed to take any reasonable action to prevent it from continuing or occurring.

43. As a result of the toxic environment arising from systematic breaches, all members of the Resident Class suffered damage.

E. THE PLAINTIFF'S EXPERIENCES AT THE TRAINING SCHOOLS

44. Kirk Keeping was sent to Pine Ridge at the age of fifteen (15) pursuant to court order. Kirk was not convicted of any crime before being sent to Pine Ridge.

45. At Pine Ridge, Kirk was assigned to work in the kitchen.

46. While working in the kitchen, Kirk was taken into a back room by Ms. Wiseman, an employee of the Crown who worked at Pine Ridge. Ms. Wiseman began touching Kirk. She told him he was a good looking boy. She repeated these acts of touching two times.

47. The third time Ms. Wiseman took Kirk into the back room of the kitchen, she touched Kirk's genitals and performed oral sex on him.

48. Ms. Wiseman then took Kirk into a large cooler room and had sexual intercourse with him. This was the first time that Kirk had sexual intercourse.

49. After working in the kitchen, Kirk was placed at the school's dairy farm to perform farm work. After a few weeks, Jake, a male employee of the Crown who worked at Pine Ridge, became friendly with Kirk. He gave Kirk small gifts, including tobacco, rolling papers, and matches.

50. One night, Jake called Kirk down to the farm while the cows were calving. That night, Jake performed oral sex on Kirk. He told Kirk that he would show him how girls got pregnant, and then jumped on top of Kirk on bales of hay. He then performed simulated sex on Kirk.

51. Over the next few weeks, Jake touched Kirk's genitals and performed oral sex on Kirk on many occasions. This oral sex and inappropriate touching occurred approximately ten (10) times.

52. Kirk also saw Jake sexually abusing other residents by touching their genitals.

53. In addition to the sexual abuse he sustained while at Pine Ridge, Kirk was also a victim of frequent physical abuse by staff and other residents.

54. When he misbehaved, staff members put him in a locker and hit him with running shoes. Kirk saw this treatment regularly performed on other residents.

55. Kirk never felt safe or secure while he was at Pine Ridge. He lived in a constant state of fear from physical, sexual, and psychological abuse.

56. Kirk now suffers from Post-Traumatic Stress Disorder caused by this physical, sexual, and psychological abuse. He suffers from anxiety and frequently has nightmares of the abuse he experienced at Pine Ridge. He often wakes up in the middle of the night in terror, having had dreams about the sexual and physical abuse he experienced at the training school.

57. In addition, Kirk has trouble maintaining relationships with family members and friends, and suffers from trust issues with authorities.

G. CAUSES OF ACTION

(i) Negligence

58. The Crown had sole jurisdiction over residents of the Training Schools. The Crown owed a duty of care to the plaintiff and to the Resident Class.

59. At all material times, the Crown was the legal guardian of the plaintiff and the Resident Class, who were wards of the Crown.

60. The Crown accepted control over the plaintiff and the Resident Class. The Crown operated, managed, controlled and ought to have properly supervised the Training Schools.

61. The duty of care is informed by the power imbalance between the Crown and the Resident Class, and in particular, the vulnerability of such children vis-à-vis the Crown.

The Crown had exclusive power and influence over these children who were vulnerable and dependent on the Crown for all of their needs, including their sustenance, shelter, and their developmental, educational, and recreational needs.

62. The Crown had direct contact and daily interaction with the plaintiff and the Resident Class.

63. The Crown knew or ought to have known that its servants, employees, agents and representatives were physically and sexually abusing the plaintiff and the Resident Class.

64. The reasonable standard of care expected in the circumstances required the Crown to:

- (a) have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively staff the Training Schools, including adequate levels of professional staff;
- (b) properly screen, investigate, and vet its servants, employees, agents and representatives' background and character prior to accepting them as servants, employees, agents or representatives of the Training Schools;
- (c) have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively train its servants, employees, agents and representatives;
- (d) have in place and follow appropriate standards of conduct, policies and procedures to ensure that only qualified servants, employees, agents and representatives are employed, appointed, or otherwise utilized by the Crown;
- (e) have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise its servants, employees, agents and representatives;
- (f) have in place and follow appropriate standards of conduct, policies and procedures to ensure that the Training Schools were not overcrowded;

- (g) have in place and follow appropriate standards of conduct, policies and procedures to ensure that the Training Schools' facilities were adequately maintained and in suitable condition for residential life;
- (h) have in place and follow appropriate standards of conduct, policies and procedures to ensure that its servants, employees, agents and representatives would not endanger the health or well-being of the plaintiff and the Resident Class;
- (i) have in place and follow appropriate standards of conduct, policies and procedures to prevent physical, sexual or psychological abuse and to investigate and pursue physical, sexual, and psychological abuse allegations against its servants, employees, agents and representatives with due diligence;
- (j) have in place and follow appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;
- (k) have in place and follow appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination, following incidents of physical, sexual or psychological abuse;
- (l) have in place and follow appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well-being and protection of the plaintiff and the Resident Class;
- (m) have in place and follow appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;
- (n) ensure that the standards of conduct, policies and procedures, and any changes in standards of conduct, policies and procedures were communicated and properly understood throughout the Training Schools, and in particular, to the Crown's servants, employees, agents and representatives;
- (o) ensure that the decision making process concerning the management of incidents of physical, sexual and psychological abuse is consistently applied;
- (p) ensure that the investigative processes concerning incidents of physical, sexual, and psychological abuse is consistently applied; and
- (q) have in place and follow appropriate standards of conduct, policies and procedures to communicate incidents of suspected physical, sexual and psychological abuse and criminal acts against the plaintiff and the Resident Class to the authorities.

65. The Crown breached the standard of care on a class-wide, systemic basis, in the following respects:

- (a) failing to have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively staff the Training Schools, including adequate levels of professional staff;
- (b) failing to properly screen, investigate, and vet its servants, employees, agents and representatives' background and character prior to accepting them as servants, employees, agents or representatives of the Training Schools;
- (c) failing to have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively train its servants, employees, agents and representatives;
- (d) failing to have in place and follow appropriate standards of conduct, policies and procedures to ensure that only qualified servants, employees, agents and representatives are employed, appointed, or otherwise utilized by the Crown;
- (e) failing to have in place and follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise its servants, employees, agents and representatives;
- (f) failing to have in place and follow appropriate standards of conduct, policies and procedures to ensure that the Training Schools were not overcrowded;
- (g) failing to have in place and follow appropriate standards of conduct, policies and procedures to ensure that the Training Schools facilities were adequately maintained and in suitable condition for residential life;
- (h) failing to have in place and follow appropriate standards of conduct, policies and procedures to ensure that its servants, employees, agents and representatives would not endanger the health or well-being of the plaintiff and the Resident Class;
- (i) failing to have in place and follow appropriate standards of conduct, policies and procedures to prevent physical, sexual or psychological abuse and to investigate and pursue physical, sexual, and psychological abuse allegations against its servants, employees, agents and representatives with due diligence;
- (j) failing to have in place and follow appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;

- (k) failing to have in place and follow appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination, following incidents of physical, sexual or psychological abuse;
- (l) failing to have in place and follow appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well-being and protection of the plaintiff and the Resident Class;
- (m) failing to have in place and follow appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;
- (n) failing to ensure that the standards of conduct, policies and procedures, and any changes in standards of conduct, policies and procedures were communicated and properly understood throughout the Training Schools, and in particular, to the Crown's servants, employees, agents and representatives;
- (o) failing to ensure that the decision making process concerning the management of incidents of physical, sexual and psychological abuse is consistently applied;
- (p) failing to ensure that the investigative processes concerning incidents of physical, sexual, and psychological abuse is consistently applied; and
- (q) failing to have in place and follow appropriate standards of conduct, policies and procedures to communicate incidents of suspected physical, sexual and psychological abuse and criminal acts against the plaintiff and the Resident Class to the authorities.

66. At all material times, the Crown had knowledge of these failures.

67. Appropriate internal safeguards were not put into place to adequately prevent or report abuse of the Resident Class or improve the conditions that led to abuse of Resident Class, and adequate steps were not taken to improve the quality of care or living at the Training Schools.

68. The Crown knew or ought to have known that, as a consequence of the above-documented failures, that the plaintiff and the Resident Class would suffer immediate and long-term damages.

69. These damages were not too remote as they were a direct consequence of the Crown's failures.

(ii) Breach of Fiduciary Duty

70. The Crown owed the Resident Class members, as individuals in its sole care and control, a fiduciary duty, which included a duty to care for and protect them and to not put its interests ahead of the interests of the plaintiff and the Resident Class.

71. The Crown created, planned, established, set up, initiated, operated, financed, supervised, controlled, and regulated the Training Schools.

72. All individuals who resided at the Training Schools did so as wards of the Crown, with the Crown as their guardian, and were persons to whom the Crown owed the highest non-delegable, fiduciary, moral, statutory and common law duties, which included, but were not limited to:

- (a) the duty to ensure that reasonable care was taken of the Resident Class members;
- (b) the duty to protect the Resident Class members while at the Training Schools;
- (c) the duty to protect the Resident Class members from intentional torts perpetrated on them while at the Training Schools; and
- (d) the special responsibility to ensure the safety of the Resident Class members while at the Training Schools.

73. Amongst other things, the Crown was solely responsible for:

- (a) decisions, procedures, regulations promulgated, operations and actions taken by the Crown and its servants, employees, representatives and agents;

- (b) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection, and auditing of the Training Schools;
- (c) the promotion of the health, safety and well-being of the plaintiff and the Resident Class members;
- (d) for the care and supervision of all members of the Resident Class while they resided at the Training Schools during the class period and for the supply of all the necessities of life to Resident Class members, *in loco parentis*, during the class period;
- (e) for inspection and supervision of the Training Schools and all activities that took place therein and for full and frank reporting to the Family Class Members with respect to conditions at the Training Schools and all activities that took place therein during the class period; and
- (f) for communication with and reporting to the Family Class with respect to the activities and experiences of Resident Class members while residing at the Training Schools during the Class period.

74. At all material times, the plaintiff and the Resident Class members were entirely and exclusively within the power and control of the Crown or its servants, employees, representatives or its agents, and were subject to the unilateral exercise of the Crown's or its delegate's power or discretion.

75. By virtue of the relationship between the plaintiff and the Resident Class members as children and the Crown, being one of trust, reliance and dependence, the Crown owed a fiduciary obligation to ensure that the plaintiff and the class members 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.

76. The plaintiff and the class members were entitled to rely and did rely upon the Crown to their detriment to fulfill its fiduciary obligations, the particulars of which include, but are not limited to, those duties set out in paragraph 64, above.

77. At all material times, the Crown owed a fiduciary duty to the plaintiff and the class members to act in the best interests of those individuals and to protect them from physical, sexual and psychological abuse.

78. In failing to give proper consideration and to take reasonable steps to protect the plaintiff and the class members from physical, sexual and psychological abuse, the Crown breached its fiduciary duty on a class-wide and systemic basis by failing to meet its obligations set out in paragraph 65, and by breaching the Resident Class members' trust by putting its own interests ahead of the interests of the plaintiff and the class by ignoring, remaining wilfully blind and permitting the conduct of its servants, employees, agents and representatives in order to avoid trouble, scrutiny and unwanted publicity.

79. By having knowledge of the circumstances of the abuse of Resident Class members and foresight of the consequences of such abuse, the Crown also breached its fiduciary duty by intentionally acting to the detriment of the Resident Class.

(iii) Vicarious Liability

80. The Crown is vicariously liable for the physical, sexual and psychological sexual abuse committed by its servants, employees, agents and representatives to the Resident Class members.

81. 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 servants, employees, representatives and agents.

82. The relationship between the Crown and its servants, employees, agents and representatives was close and direct. The Crown exercised or ought to have exercised control over its employees, agents and representatives including the power of assignment and supervision, the power to remove and the power to discipline them.

83. The Crown's servants, employees, agents and representatives were afforded the opportunity to abuse their power over and to physically, sexually, and psychologically abuse Resident Class members by virtue of their relationship with the Crown:

- (a) they were constantly placed in direct contact with Resident Class members;
- (b) they were provided with opportunities to physically, sexually, and psychologically abuse Resident Class members by virtue of their employment or representation of the Crown;
- (c) the physical, sexual, and psychological abuse committed by the Crown's employees, agents and representatives took place while the Resident Class members were participating in programs or activities required by the Crown;
- (d) they were permitted to be alone with the Resident Class members and supervise them in intimate activities, such as bathing and toileting;
- (e) by virtue of their roles with the Crown, its servants, employees, agents and representatives were conferred with power over Resident Class members, including power to organize, discipline, and train them; and
- (f) by virtue of their power and authority as servants, employees, agents and representatives of the Crown, they were allowed and encouraged to exercise a degree of control over the Resident Class members that was parental in nature.

84. The Crown's servants, employees, agents and representatives' physical, sexual, and psychological abuse was directly related to the friction, confrontation and psychological intimacy inherent in their roles:

- (a) the Crown was responsible for disciplining the Resident Class members;

- (b) the Crown encouraged physical and psychological intimacy between its servants, employees, agents and representatives and the Resident Class members;
- (c) the Crown's servants, employees, agents and representatives and the Resident Class members were in a parent-like and role-model relationship;
- (d) the Crown's servants, employees, agents and representatives taught the plaintiff and the Resident Class members the differences between right and wrong and they represented authority figures to them; and
- (e) this psychological intimacy encouraged the plaintiff and the Resident Class members' submission to the Crown's servants, employees, agents and representatives abuse increased their opportunity to physically, sexually, and psychologically abuse the plaintiff and the Resident Class members.

85. The Crown conferred significant power on its servants, employees, agents and representatives relative to the Resident Class members who were vulnerable to the wrongful exercise of their power, in part because:

- (a) the Resident Class members were children;
- (b) the length of the Resident Class members' detention was indeterminate;
- (c) the Crown required the exercise of power and authority for its own successful operation, and it required and encourages its servants, employees, agents and representatives to stand in a position of respect, which was required for the successful operation of the Training Schools; and
- (d) the Training Schools were located in geographically isolated areas, which enhanced the opportunity for, extent, and frequency of physical, sexual, and psychological abuse remaining unchecked for years.

86. The relationship between the Crown's servants, employees, agents and representatives and the Crown was close and direct. The connection between the Crown's servants, employees, agents and representatives and the Crown created and enhanced the risk of physical, sexual and psychological abuse.

H. DAMAGES SUFFERED BY THE CLASS

87. The Crown knew, or ought to have known, that as a consequence of its negligence, breach of fiduciary duty and vicarious liability, the plaintiff and the Resident Class members would suffer significant physical, mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and the community at large.

88. As a result the defendants' negligence, breach of fiduciary duty and vicarious liability, the Resident Class members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) physical consequences such as vaginal and anal lacerations, bleeding, and broken bones and skin;
- (b) emotional and psychological damages;
- (c) exacerbation of mental disability and deprivation of healing opportunities;
- (d) impairment of mental and emotional health and well-being;
- (e) an impaired ability to trust other persons;
- (f) an impaired ability to participate in normal family affairs and relationships;
- (g) alienation from family members;
- (h) depression, anxiety, emotional distress and mental anguish;
- (i) pain and suffering;
- (j) a loss of self-esteem and feelings of humiliation and degradation;
- (k) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (l) an impaired ability to deal with persons in positions of authority;
- (m) an impaired ability to trust other individuals or to sustain relationships;
- (n) a sense of isolation and separateness from their community;

- (o) a requirement for medical or psychological treatment and counselling;
- (p) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (q) an impaired ability to engage in spiritual communities and beliefs;
- (r) loss of friendship and companionship;
- (s) suicide attempts and suicide;
- (t) alcoholism and drug dependency;
- (u) sexual disorientation; and
- (v) loss of general enjoyment of life.

89. As a result of the injuries referred to above, the Resident Class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. The plaintiff and other Resident Class members will require future medical care and rehabilitative treatment, or have already required such services, as a result of the Crown's conduct.

90. The Family Class members are entitled to damages for loss of care, guidance and companionship as a consequence of the physical, sexual and psychological abuse suffered by the Resident Class members.

I. PUNITIVE DAMAGES

91. 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 continued to breach, their duty of care and fiduciary duty owed to the plaintiff and class members.

92. 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 and will act as a deterrent to other institutions in Canada who are responsible for the physical, developmental, and spiritual well-being and development of youth.

93. This action is commenced pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

94. Notice of this action pursuant to the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27 was provided to the Crown by letter dated July 26, 2017.

95. The trial of the action should take place in the city of Thunder Bay, in the Province of Ontario.

December 8, 2017

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SCHEDULE "A"
PROVINCIAL STATUTES: FAMILY MEMBER CLAIMS

1. ALBERTA

Tort-feasors Act, R.S.A. 2000 c. T-5

Loss of consortium through injury

2.1 (1) When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse of that married person of the society and comfort of that married person, the person who inflicted the physical harm is liable in an action for damages by the spouse or in respect of the deprivation.

2.1 (2) The right of a spouse to bring the action referred to in subsection (1) is in addition to, and independent of, any right of action that the married person has, or any action that the spouse in the name of the married person has, for injury inflicted on the married person.

2. ONTARIO

Family Law Act, R.S.O. 1990, c. F.3

Right of dependants to sue in tort

61. (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

Damages in case of injury

(2) The damages recoverable in a claim under subsection (1) may include,

(a) actual expenses reasonably incurred for the benefit of the person injured or killed;

(b) actual funeral expenses reasonably incurred;

(c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;

(d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and

(e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred.

3. QUÉBEC

Civil Code of Québec (S.Q. 1991, c. 64), Articles 454, 1457, 1607, 1609, 1614, 1615, 1616, 2926 and 2930.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Thunder Bay
Proceedings under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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