

April 14, 2023

AMENDED THIS PURSUANT TO
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Toronto Superior Court of Justice / Cour supérieure de justice
☐ RULE/LA RÈGLE 26.02 ()

Court File No./N° du dossier du greffe : CV-22-00680949-00CP

☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE

Court File No. CV-22-00680949-00CP

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

_____ and _____

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO, NATIVE CHILD AND FAMILY SERVICES OF TORONTO, LINCK CHILD, YOUTH AND FAMILY SUPPORT, BRANT FAMILY AND CHILDREN'S SERVICES, BRUCE GREY CHILD & FAMILY SERVICES, CHILDREN'S AID SOCIETY OF HAMILTON, CATHOLIC CHILDREN'S AID SOCIETY OF HAMILTON, CHILDREN'S AID SOCIETY OF TORONTO, CHILDREN'S AID SOCIETY OF THE DISTRICT OF NIPISSING AND PARRY SOUND, CHILDREN'S AID SOCIETY OF ALGOMA, CHILDREN'S AID SOCIETY OF LONDON AND MIDDLESEX, CHILDREN'S AID SOCIETY OF OXFORD COUNTY, DUFFERIN CHILD & FAMILY SERVICES, DURHAM CHILDREN'S AID SOCIETY, FAMILY AND CHILDREN'S SERVICES OF FRONTENAC, LENNOX AND ADDINGTON, FAMILY AND CHILDREN'S SERVICES OF LANARK, LEEDS AND GRENVILLE, FAMILY AND CHILDREN'S SERVICES OF GUELPH AND WELLINGTON COUNTY, FAMILY AND CHILDREN'S SERVICES NIAGARA, FAMILY AND CHILDREN'S SERVICES OF RENFREW COUNTY, FAMILY & CHILDREN'S SERVICES OF ST. THOMAS AND ELGIN, FAMILY & CHILDREN'S SERVICES OF THE WATERLOO REGION, HALTON CHILDREN'S AID SOCIETY, HIGHLAND SHORES CHILDREN'S AID, HURON-PERTH CHILDREN'S AID SOCIETY, JEWISH FAMILY AND CHILD SERVICE, KAWARTHA-HALIBURTON CHILDREN'S AID SOCIETY, KENORA-RAINY RIVER DISTRICTS CHILD AND FAMILY SERVICES, NORTH EASTERN ONTARIO FAMILY AND CHILDREN'S SERVICES, PEEL CHILDREN'S AID SOCIETY, SARNIA-LAMBTON CHILDREN'S AID SOCIETY, SIMCOE MUSKOKA FAMILY CONNEXIONS, THE CHILDREN'S AID SOCIETY OF HALDIMAND AND NORFOLK, THE CHILDREN'S AID SOCIETY OF OTTAWA, THE CHILDREN'S AID SOCIETY OF THE DISTRICT OF THUNDER BAY, THE CHILDREN'S AID SOCIETY OF THE DISTRICTS OF SUDBURY AND MANITOULIN, THE CHILDREN'S AID SOCIETY OF THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, VALORIS FOR CHILDREN AND ADULTS OF PRESCOTT-RUSSELL, WINDSOR-ESSEX CHILDREN'S AID SOCIETY, YORK REGION CHILDREN'S AID SOCIETY, AKWESASNE CHILD AND FAMILY SERVICES, ANISHINAABE ABINOOJII FAMILY SERVICES, CATHOLIC CHILDREN'S AID SOCIETY OF TORONTO, DILICO ANISHINABEK FAMILY CARE, DNAAGDAWENMAG BINNOOJIIYAG CHILD & FAMILY SERVICES, KINA GBEZHGOMI CHILD & FAMILY SERVICES, KUNUWANIMANO CHILD & FAMILY SERVICES, ~~NIJIAANSINAAANIK CHILD AND FAMILY SERVICES~~, NOGDAWINDAMIN FAMILY AND COMMUNITY SERVICES, OGWADENI:DEO, PAYUKOTAYNO JAMES AND HUDSON BAY FAMILY SERVICES, TIKINAGAN CHILD AND FAMILY SERVICES and WEECHI-IT-TE-WIN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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.

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: 10 May 2022

Issued by: "e-filed"

Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO
Crown Law Office – Civil
Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto, ON M5G 2K1

AND TO: CHILDREN'S AID SOCIETIES (See **Schedule "A"**)

CLAIM

1. The plaintiffs claim, on their own behalf, and on behalf of the proposed Class Members as defined below:

- a. an order pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6 (the “CPA”), certifying this action as a class proceeding and appointing them as representative plaintiffs;
- b. declarations that:
 - (i) the defendant Children’s Aid Societies intentionally or recklessly, and without lawful justification, intruded upon the seclusion of the Birth Parent Class Members (as defined below);
 - (ii) the defendant Children’s Aid Societies breached the confidence of the Birth Parent Class Members by misusing their confidential personal information to the detriment of the Birth Parent Class Members;
 - (iii) the defendant Children’s Aid Societies breached the ss. 7 and 15 *Charter of Rights and Freedoms* (“Charter”) rights of the Birth Parent Class Members and that the infringements are not saved by s. 1 of the *Charter*;
 - (iv) the defendant Children’s Aid Societies breached the s. 15 *Charter* rights of the Subclass Members (as defined below) and that the infringements are not saved by s. 1 of the *Charter*;
 - (v) the defendant Children’s Aid Societies acted without lawful authority and committed the tort of misfeasance in public office;
 - (vi) the defendant Children’s Aid Societies conspired each with the other, and with the Children’s Aid Societies or the equivalent in other Canadian

- provinces and territories, to implement and operate the Birth Alerts Scheme
(as defined below) across Ontario;
- (vii) the defendant His Majesty the King in Right of Ontario (“HMK”) owed a duty of care to the Class Members and breached that duty;
- (viii) the defendant HMK breached the ss. 7 and 15 Charter rights of the Birth Parent Class Members and that the infringements are not saved by s. 1 of the Charter;
- (ix) the defendant HMK breached the s. 15 Charter rights of the Subclass Members and that the infringements are not saved by s. 1 of the Charter;
- (x) the defendants are jointly and severally liable to the Class Members for the damages caused by their conspiracy and their breaches of common law and statutory duties;
- c. a just and appropriate remedy under s. 24(1) of the *Charter*, including a monetary remedy on an aggregate or individual basis;
- d. general and aggravated damages on an aggregate or individual basis in the amount of \$50 million, or such other amount as determined by the Court;
- e. damages for civil conspiracy in an amount as determined by the Court;
- f. special damages in an amount to be determined at trial;
- g. punitive and exemplary damages in an amount to be determined at trial;
- h. prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1980, c. 43;
- i. the costs of all notices to the Class and of administering the plan of distribution of the recovery in this action, together with applicable taxes;

- j. costs of this action, inclusive of taxes; and
- k. such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. For decades, Ontario’s legislatively mandated children’s aid societies (the “Children’s Aid Societies”) have operated a system known as birth alerts, hospital alerts, or birth notifications (the “Birth Alerts Scheme”), whereby Children’s Aid Societies have issued official notifications to healthcare providers regarding pregnant persons (“Birth Alerts”), requiring the healthcare providers to notify the issuing Children’s Aid Society whenever the subject pregnant person attends for prenatal care or delivery.

3. Birth Alerts vary in content, but always contain confidential and sensitive personal health information about the subject pregnant person. Often, in addition to asking for notification, Birth Alerts direct healthcare providers to take other invasive action, such as providing the issuing Children’s Aid Society with additional personal health information of the subject or conducting medical tests on the subject.

4. Birth Alerts are issued based on speculative child protection concerns regarding the ~~unborn~~ fetus carried by the pregnant person, often without any supporting evidence, and are not based on information from medical staff who have developed concerns independently about the subject person’s ability to care for the infant safely after its birth. Nevertheless, the issuance of a Birth Alert commonly results in apprehension of the infant at birth, causing irreparable psychological harm to the parents and the child.

5. The speculative child protection concerns motivating the Birth Alerts Scheme are grounded in discriminatory assumptions regarding which individuals are likely to be neglectful, abusive or incapable parents. As a result, Birth Alerts are disproportionately employed against Indigenous, racialized, and/or disabled pregnant persons. The Birth Alerts Scheme is in large part a product of the state's colonialist and paternalistic attitude towards these historically disadvantaged and vulnerable communities.

6. The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (the "MMIWG Report") described Birth Alerts as "racist", "discriminatory", and "a gross violation of the rights of the child, the mother, and the community".

7. Birth Alerts, as a policy and practice, have no legal basis or justification. Children's Aid Societies have no jurisdiction to take action prior to delivery of a child – *i.e.* when there is no child in need of aid. Children's Aid Societies engage in a fundamental breach of pregnant persons' privacy by divulging the pregnant persons' personal information and personal health information to third parties without consent or any lawful authority.

8. By both practice and policy, the defendant Children's Aid Societies together conspired to operate the Birth Alerts Scheme across Ontario. They defendants breached subject pregnant persons' fundamental constitutional rights—including their right to liberty and security of the person and the right to equality—and their quasi-constitutional right to privacy regarding intensely personal matters of medical care and childbirth.

9. On July 14, 2020, Ontario's Ministry of Children, Community and Social Services (the "Ministry") issued a policy directive requiring that the practice of Birth Alerts be stopped by October 15, 2020. Implementation of this policy directive has been incomplete, and some pregnant

persons in Ontario continue to be subject to a practice of alerts/notifications by Children's Aid Societies that function as Birth Alerts.

10. The Ministry maintains control over the activities of the Children's Aid Societies, including by virtue of its ability to issue binding policy directives. By authorizing and perpetuating the systemic use of Birth Alerts, and by failing to act prior to July 14, 2020, to end the unlawful Birth Alerts Scheme, the Ministry breached its duty of care to the Class Members.

THE PARTIES

11. The plaintiff [REDACTED] ("[REDACTED]") is a resident of Toronto, Ontario. [REDACTED] was the subject of a Birth Alert prior to the birth of her third child in 2016.

12. The plaintiff [REDACTED] ("[REDACTED]") is a resident of Chatham, Ontario. [REDACTED] was the subject of two Birth Alerts prior to the birth of her children in 2019 and 2020.

13. The plaintiffs bring this action on their own behalf and on behalf of the following class of persons:

All persons who were, while pregnant, the subject of a Birth Alert issued in Ontario, and who were 18 years of age or older at the time that the Birth Alert was issued (the "Birth Parent Class" or "Birth Parent Class Members"); and

All dependents of members of the Birth Parent Class, as defined by s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 (the "Family Class" or "Family Class Members").

Including a subclass of:

All Indigenous, racialized, and/or disabled Birth Parent Class Members (the "Subclass" or "Subclass Members").

14. The Ministry, through and with its agents, servants and employees, was at all material times responsible for the authorization, management, and control of the Birth Alerts Scheme.

15. The defendant HMK is the legal entity liable for torts committed by the Ministry.

16. The defendant Children's Aid Societies are legislatively mandated children's aid societies, pursuant to ss. 34 or 70(2)(c) of the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14 (the "CYFSA") and equivalent provisions of predecessor legislation. They are located throughout Ontario, as set out in **Schedule "A"**.

FACTS

The Birth Alerts Scheme

17. Birth Alerts in Ontario are issued by Children's Aid Societies to local hospitals, clinics or healthcare providers where a pregnant person might attend for prenatal care or delivery, and to healthcare providers who may be providing prenatal care to a pregnant person. They are issued by a Children's Aid Society after it has come into contact with a pregnant person, but prior to the birth of the child.

18. The initial contact with a subject pregnant person can arise in numerous ways: because the subject was formerly in state care and therefore has a pre-existing relationship with a social worker, because the subject has been in contact with another state authority which then involved a Children's Aid Society, because the subject sought out assistance from a social worker, or by some other means.

19. Because Birth Alerts are issued prior to an infant's birth, the function of a Birth Alert is not for protection of a living child, but to enable the Children's Aid Society to intervene as soon as possible – in many cases, well before the child is born.

20. The structure and contents of the Birth Alert document vary as between each Children's Aid Society, but each Birth Alert contains, at minimum, the personal information and personal health information of the subject pregnant person, including:

- a. their name;
- b. their date of birth;
- c. their contact information;
- d. the fact of their pregnancy;
- e. the anticipated due date of the unborn child; and
- f. the existence of an alleged child protection concern or investigation with regard to the subject.

21. Often, Birth Alert documents contain considerably more information, including:

- a. the personal and medical history of the subject pregnant person;
- b. the personal information and personal health information of the unborn child's other parent and other family members; and
- c. particulars of the alleged child protection concerns motivating the Birth Alert.

22. Each Birth Alert document also contains instructions for the recipient hospital(s), clinic(s) or healthcare provider. At a minimum, the Birth Alert requires the hospital, clinic or healthcare provider to notify the issuing Children's Aid Society that the subject has attended for prenatal care or delivery. Other potential instructions may include a request for the hospital, clinic or healthcare provider to:

- a. conduct testing on the subject pregnant person;
- b. conduct testing on the infant;

- c. provide the Children's Aid Society with copies of the subject pregnant person's medical records;
- d. provide the Children's Aid Society with the subject pregnant person's personal health information, such as particulars of the delivery and post-delivery parent/child interactions and access; and/or
- e. follow a particular access and/or discharge plan, including preventing the subject pregnant person from leaving the premises following medical discharge and/or facilitating immediate apprehension of the infant.

23. Birth Alerts are issued by every Children's Aid Society in Ontario, and can be transferred between jurisdictions within Ontario. Further, because Ontario is a signatory to the Provincial/Territorial Protocol (as defined below), a Birth Alert issued in Ontario can also follow a subject pregnant person out of the province, to anywhere in Canada.

24. Birth Alerts are issued unilaterally by the Children's Aid Societies without any input or feedback from the subject pregnant persons. The issuance and existence of the Birth Alert are not disclosed to the subject pregnant person as a matter of course. In many cases, the issuance and existence of the Birth Alert is never confirmed to the subject pregnant person.

25. Birth Alerts are also issued without any input or feedback from the subject pregnant person's healthcare providers. There is no opportunity for the subject's primary care physician or obstetrician, or for the delivering medical staff to provide their opinion on the pregnant person's ability to care for an infant safely, or to provide feedback on the appropriateness of the issuance of a Birth Alert.

26. For the duration of the Birth Alerts Scheme, Birth Alerts have been issued based solely on the discretion of each individual Children's Aid Society and its employees or agents.

27. Despite the discretionary nature of Birth Alerts and the significant consequences arising from them, persons who are subjected to Birth Alerts have no ability to challenge or seek review or reconsideration of the issuance of the Birth Alert, even if they were informed of the existence of the Birth Alert, which they often are not.

28. As a result of this completely arbitrary and discretionary process, the speculative "child protection concerns" leading to the issuance of a Birth Alert are, in many cases, motivated by discriminatory and harmful stereotypes about the parenting capabilities of persons of certain backgrounds. The inevitable result of this process has, therefore, been that most Birth Alerts in Ontario are issued against Indigenous or racialized persons, or persons living with a mental or physical disability, at rates wholly disproportionate to their representation in the Canadian population at large.

29. Once a Birth Alert is issued, the subject pregnant person essentially comes under constant surveillance. The subject's whereabouts, health, and social status are tracked by healthcare providers and the information collected is shared with the Children's Aid Society on an ongoing basis, without the subject's informed consent and sometimes without even their knowledge.

30. The subject pregnant person's medical records and personal health information are routinely disclosed to the issuing Children's Aid Society under the direction of the Birth Alert, without the subject's informed consent and sometimes without even their knowledge.

31. Upon entering a healthcare facility to give birth, a pregnant person subject to a Birth Alert is subjected to intense surveillance, even while enduring the effects of labour and childbirth, including the effects of any medications administered.

32. In some circumstances, the subject pregnant person is compelled to undergo invasive testing, and to allow their infant to undergo invasive testing, also under the direction of the issued Birth Alert.

33. On some occasions, the subject pregnant person is not permitted to leave the hospital or clinic premises without the approval of the issuing Children's Aid Society. Further, as soon as the infant is born, the new parent(s) are often be interrogated by social workers so that their alleged "capacity" to care for the child may be assessed, with no consideration for the context. Often, these investigations result in apprehension of the infant. In certain cases, the Birth Alert specifies that the infant is to be apprehended at birth, with no investigation whatsoever.

34. Each year, hundreds of infants in Ontario are apprehended from their parent(s) and taken into care. In 2020, for example, 442 infant children were apprehended from their parent(s) within the first week of their lives. Many more are identified as being in need of state protection. Infants are apprehended from their parent(s) and taken into care, or identified as being in need of protection, at a disproportionate rate from persons under a Birth Alert, as compared to persons who give birth without being subject to a Birth Alert.

35. Because Birth Alerts are disproportionately deployed against Indigenous or racialized persons, or persons living with a mental or physical disability, and because Birth Alerts disproportionately result in state apprehension or intervention, the Birth Alerts Scheme (and its equivalents in other provinces and territories) has resulted in discriminatory, damaging outcomes

for children and families. For example, 52.2% of Canadian children in foster care are Indigenous, despite only 7.7% of Canadian children being Indigenous. This is, in significant part, because of the discriminatory effects of the Birth Alerts Scheme.

36. Although an apprehended child of a parent subject to a Birth Alert may eventually be returned to parental care, the stress and emotional trauma inflicted by the apprehension cause significant, prolonged injury to the birthing parent, the child, their family, and their community.

37. For Indigenous subjects of Birth Alerts, the violence which arises as a result of a Birth Alert forms part of a larger pattern of state-inflicted violence against Indigenous children, parents, families, and communities. The trauma inflicted by a Birth Alert therefore contributes to, and exacerbates, the effects of pre-existing intergenerational traumas.

38. Often, children apprehended following the issuance of Birth Alerts are only returned to their parents and families after legal proceedings are brought.

39. Even if the child is not apprehended, the unlawful interference of the Children's Aid Society also causes significant, prolonged injury to the birthing parent, the child, their family, and their community.

40. Merely being subject to a Birth Alert carries stigma because the subject is depicted as a threat to their child or an unfit parent because an alert was issued. The Birth Alert signals to healthcare workers interacting with the subject pregnant person that the subject is deemed likely to be an unfit parent, and should be subject to heightened scrutiny and monitoring.

41. Because of the existence of the Birth Alerts Scheme, some expectant parents avoid prenatal care and medical care generally to avoid being subjected to the effects of a Birth Alert, and to

escape the loss of freedom, the accompanying surveillance and intrusion, and to protect their unborn children from unjustified apprehension. This leads to adverse health outcomes for both parents and children.

Birth Alerts in Ontario

42. Ontario exercises control over the activities of the Children's Aid Societies via s. 42 of the *CYFSA* (and equivalent provisions of predecessor legislation), which provides that legislatively mandated children's aid societies must comply with any directives that the Minister of Children, Community and Social Services (the "Minister") may issue with respect to the performance of child protection functions.

43. At all material times, the Minister and her predecessors purported to authorized the use of Birth Alerts through internal policies, and were responsible for the management and control of the Birth Alerts Scheme.

44. The defendant Children's Aid Societies act collectively through an unofficial agreement to co-operate, as well as through their official membership and participation in the Ontario Association of Children's Aid Societies ("OACAS"). Both officially through OACAS, and informally by agreement to co-operate, the defendant Children's Aid Societies work together to implement and operate the Birth Alerts Scheme province-wide. This includes sharing the private personal health information of class members between different Children's Aid Societies so that Birth Alerts might be issued in more than one jurisdiction.

45. The defendant Children's Aid Societies together, through OACAS, author and update the Ontario Child Welfare Eligibility Spectrum (the "Eligibility Spectrum"), which first formed part

of the Ministry's Risk Assessment Model for Child Protection in Ontario in October 1997, and is now adopted by reference into the Ministry's mandatory Ontario Child Protection Standards Guidelines. The Eligibility Spectrum explicitly permits requests for prenatal "service" where a caregiver has a "problem" which may affect an "unborn child" (currently at Section 10K), and also permits "alerts" (i.e., Birth Alerts) to be shared between Children's Aid Societies regarding an "actual or possible family with protection concerns" (currently at Section 10C).

46. The defendant Children's Aid Societies have also agreed, through OACAS, to be governed collectively by an Interagency Protocol which similarly permits the issuance of Birth Alerts as a part of "prenatal service", as well as the transference of issued Birth Alerts between provincial jurisdictions.

47. Ontario is a signatory to the *Provincial/Territorial Protocol: On Children, Youth and Families Moving Between Provinces and Territories* ("Provincial/Territorial Protocol"). Article 7.2.1(f) of the Provincial/Territorial Protocol makes provision for the issuance of "child protection alerts" and the implementation of Birth Alerts in respect of "high-risk pregnant persons" in the jurisdiction.

48. The defendants implemented the Provincial/Territorial Protocol as part of the Birth Alerts Scheme in Ontario.

49. The use of the Ontario Child Protection Standards and any substantially similar standards promulgated via Ministry directives, including the relevant provisions of the Provincial/Territorial Protocol, by the Children's Aid Societies, was mandated by the Minister pursuant to directives made under s. 42 of the CYFSA (and equivalent directive-making powers conferred on the relevant minister by predecessor legislation). These Ministry directives, however, were unlawful because

the Ministry could not lawfully authorize anything contrary to the *CYFSA*. Particularly, s. 42(4) of the *CYFSA* provides that directives under s. 42 cannot conflict with provisions of any applicable act or rule of any applicable law. These Ministry directives also could not be *ultra vires* the *CYFSA*.

50. In particular, Ministry directives could not expand the statutory child protection powers of the Children's Aid Societies to include control over fetuses or pregnant persons. Such directives were unlawful and were not authorized by the *CYFSA*. Child protection legislation does not extend to fetuses or pregnant persons, as fetuses are not legal persons with rights or interests over which the Ministry has authority.

51. The provisions of the Eligibility Spectrum and any substantially similar standards promulgated via Ministry directives regarding provision of prenatal "service" and related issuance of "alerts" in respect of an unborn child were thus contrary to and *ultra vires* the *CYFSA*, and their incorporation into the Child Protection Standards was not a lawful authorization for the Birth Alerts Scheme.

52. After the release of the MMIWG Report, and ~~even~~ acknowledging the discriminatory nature and harmful effects of Birth Alerts, Ontario (through the Ministry) issued Policy Directive CW 005-20 on July 14, 2020 (the "Policy Directive"), requiring that the practice of Birth Alerts be stopped by October 15, 2020.

53. At the time of the issuance of the Policy Directive, the Minister issued a press release acknowledging that the practice of Birth Alerts disproportionately affects racialized and marginalized parents and families, and that expectant parents can be deterred from seeking prenatal care or parenting supports while pregnant due to fears of having a Birth Alert issued.

54. In its own press release issued on July 14, 2020, OACAS, through its CEO, acknowledged that, “in most cases, birth alerts cause harm” and that “they have negative impacts and unintended consequences for marginalized children and families, and in particular First Nations, Inuit, and Métis people, Black African Canadians, low income and transient populations, and those affected by substance use and mental health.”

55. Despite the issuance of the Policy Directive, pregnant persons in Thunder Bay, Ontario continue to be subject to notifications/alerts sent by local Children’s Aid Societies to hospitals and healthcare providers – Birth Alerts in substance, if not in name.

██████████’s experience with Birth Alerts

56. ██████████ is a First Nation women, and a member of the proposed Birth Parent Class and the Subclass.

57. ██████████’s first two children were apprehended by Native Child and Family Services Toronto (“NCFST”) on the grounds that her young age and personal history as a survivor of domestic violence purportedly affected her capacity to parent safely.

58. In 2016, ██████████ was subject to a Birth Alert issued by NCFST while pregnant with her third child. NCFST sent the Birth Alert to Toronto-area healthcare providers, including ██████████’s midwifery clinic at the time, without ██████████’s knowledge or consent.

59. The Birth Alert document contained ██████████’s name, date of birth, contact information, and the anticipated due date of her unborn child. It also indicated that medical tests were to be performed on the infant immediately upon birth but provided no stated grounds for the issuance of a Birth Alert.

60. Once [REDACTED]'s midwife informed her that she was the subject of a Birth Alert, [REDACTED] became terrified to seek further prenatal care, since she knew that the fact of the Birth Alert would taint all of her relations with medical providers and could lead to the apprehension of her child into the child welfare system.

61. After [REDACTED]'s child was born in October 2016, [REDACTED] submitted to invasive psychological counselling and assessment, as well as invasive examinations of her infant child, by NCFST workers. She also sought numerous letters of support from treatment providers to convince NCFST not to apprehend her third child. Ultimately, [REDACTED] was successful in resisting apprehension, despite the enormous trauma she endured, including the colonial, racist and illegal nature of the Birth Alert.

62. [REDACTED] sustained a gross violation of her dignity as a result of being the subject of a Birth Alert. Her pregnancy and the birth of her third child were both tainted by fear and trauma as a result of the Birth Alert, and the ensuing knowledge that she was under surveillance from NCFST and that her child was at risk of being apprehended.

63. [REDACTED] has suffered, and continues to suffer, serious and prolonged emotional and psychological harm, including grief, humiliation, emotional trauma, and a deep sense of personal violation because her private and personal information was disclosed without her knowledge or consent, resulting in the risk of her child being removed from her care.

64. As a result of the Birth Alert, [REDACTED] suffers from serious and prolonged anxiety. She has difficulty trusting others with care of her child, stemming from her overwhelming fear of her child potentially being apprehended. This fear and anxiety have made it difficult for [REDACTED] to be physically separated from her child, which has impacted her life significantly. For example, she

was enrolled at the First Nations Technical Institute in 2020, but she stopped attending school due to her overwhelming fear of being separated from her child.

██████'s experience with Birth Alerts

65. ██████ is a member of the proposed Birth Parent Class. She first came into contact with Chatham-Kent Children's Services ("Chatham CAS", now known as Linck Child, Youth and Family Support) in December 2018. Shortly after she reported to the police that she was assaulted by her then-partner while pregnant, ██████ received a letter from Chatham CAS asking her to contact them.

66. When ██████ contacted Chatham CAS, she was informed that an investigation was being commenced as a result of evidence that her unborn child might be in need of protection. ██████ co-operated fully with Chatham CAS's investigation, although she was never advised that she was under no legal obligation to do so, or that the Chatham CAS had no jurisdiction to investigate in respect of an unborn child.

67. During its investigation, Chatham CAS made no findings that ██████ was incapable of raising a child safely. Nonetheless, it proceeded to issue a Birth Alert to Chatham-area hospitals/clinics on the purely speculative grounds that ██████ might reconcile with her violent former partner, or that she might relapse into substance abuse. The Birth Alert document contained detailed personal information and personal health information for ██████, including particulars of the domestic violence that she endured.

68. ██████ was not aware that she was the subject of a Birth Alert until after she gave birth to her first child in January 2019 at Chatham-Kent Public General Hospital ("Chatham Hospital"). A

Chatham CAS worker attended the hospital while [REDACTED] was in recovery from a Caesarian section, and still under the effects of anesthesia and pain medication. The social worker advised that Chatham CAS was concerned about [REDACTED]'s ability to keep her infant safe because of the potential for domestic violence in her home.

69. Following the infant's discharge from hospital, a Chatham CAS social worker visited [REDACTED] and the infant regularly at [REDACTED] home for the stated purpose of assessing the child's safety, and particularly to observe whether the child's father, the perpetrator of domestic violence against [REDACTED], was present at the home.

70. Shortly thereafter, Chatham CAS apprehended [REDACTED]'s child based on their social workers' unsubstantiated perception that the child was unsafe as a result of potential domestic violence.

71. In 2020, Chatham CAS issued a Birth Alert to Chatham Hospital related to [REDACTED]'s second pregnancy. This second Birth Alert document contained [REDACTED]'s personal information and personal health information, but provided no stated grounds whatsoever for the issuance of a Birth Alert.

72. [REDACTED] was not aware of the issuance of this second Birth Alert until she attended Chatham Hospital in the early stages of labour, when a hospital nurse disclosed to [REDACTED] that CAS had requested bloodwork to test for drug intake, pursuant to the Birth Alert. CAS requested that the drug testing be completed before proceeding with delivery, even though the testing was not medically necessary, and [REDACTED] was already in labour and was in a significant amount of pain.

73. [REDACTED]'s second child was born in July 2020. Three days after the birth, Chatham CAS served [REDACTED] at the hospital with a warrant for her child's apprehension. The stated ground for the

apprehension was again that [REDACTED] lacked the ability to keep her infant safe because of the potential for domestic violence in her home.

74. Following ~~Since~~ their apprehension, [REDACTED] has only saw ~~seen~~ her children via Chatham-CAS-supervised access visits. Following ~~Since~~ the advent of the COVID-19 pandemic, there were ~~have been~~ prolonged periods of time when [REDACTED] could only visit with her infant and toddler by videoconference. She has now regained full custody of both of her children.

75. Chatham CAS never informed [REDACTED] while she was pregnant that she had become the subject of an issued Birth Alert, nor did it ever obtain [REDACTED]'s consent to share her personal information with Chatham Hospital or any other third party.

76. [REDACTED]'s pre-existing depression and post-traumatic stress disorder were significantly exacerbated as a result of being subjected to two Birth Alerts. She also developed clinical anxiety and nightmares relating to the Birth Alerts and apprehension of her children.

77. [REDACTED] has suffered, and continues to suffer, serious and prolonged emotional and psychological harm, including grief, humiliation, emotional trauma, and a deep sense of personal violation because her private and personal information was disclosed without her knowledge or consent, resulting in her children being removed from her care.

78. [REDACTED] has suffered a significant loss of self-esteem, a loss of purpose in life, and a loss of the opportunity to parent her children, from the time of their birth and ongoing.

79. The negative mental health effects that [REDACTED] has experienced as a result of being subjected to two Birth Alerts have been, and continue to be, so severe that they require significant and ongoing treatment via medication.

CAUSES OF ACTION

The Birth Alerts Scheme was unlawful

80. The legal framework for child protection in Ontario is the *CYFSA* and its predecessor legislation. The legislated authority of children's aid societies extends only to children, and does not encompass pregnant persons. Accordingly, neither the *CYFSA* nor its predecessor legislation (nor any regulations thereunder) provide authority for the Birth Alerts Scheme specifically, nor for the disclosure generally of the private and personal information of pregnant persons.

81. Pursuant to the *CYFSA* and predecessor legislation, the Children's Aid Societies have authority to act to protect the safety, well-being and best interests of any person under the age of 18 in Ontario. Fetuses ~~Unborn children~~ are not legal persons. The Children's Aid Societies only have authority to act once a child is born and becomes a legal person possessing rights.

82. Since Birth Alerts are, by definition, issued prior to birth, there was never any legal basis for the Birth Alerts Scheme under the *CYFSA* or at all. The Children's Aid Societies have never had any legal standing to exert their child protection powers over the Birth Parent Class Members in respect of their pregnancies.

83. In her press release accompanying the issuance of the Policy Directive, the Minister acknowledged that the Birth Alerts Scheme was never required under provincial legislation.

84. As pled above, the Ministry (and its predecessor ministries with authority over the Children's Aid Societies) authorized the Birth Alerts Scheme by mandating the use of the Ontario Child Protection Standards, including the Eligibility Spectrum, or equivalent prior standards. These purported authorizations were issued pursuant to directives made under s. 42 of the *CYFSA*

(or equivalent directive-making powers conferred on the relevant ministry by predecessor legislation).

85. These Ministry directives were contrary to, and *ultra vires*, the *CYFSA* and its predecessor legislation. The purported authorization they provided was unlawful, which Ontario and the Children's Aid Societies knew or ought to have known. Both Ontario and the Children's Aid Societies were aware that the Children's Aid Societies' jurisdiction as conferred by the *CYFSA* and its predecessor legislation is bounded by the "paramount purpose" of promoting the best interests of, protection and well-being of living children - not fetuses. The necessary corollary to this foundational fact, as long established by Canadian courts, and known to Ontario and the Children's Aid Societies, is that the Children's Aid Societies have no jurisdiction or legal standing to exercise their powers in the interests of fetuses or as against pregnant persons in respect of their pregnancies.

86. Each defendant Children's Aid Society is, and was, aware that the Birth Alerts Scheme exceeded the scope of its jurisdiction. The operation of the Birth Alerts Scheme therefore constituted deliberately unlawful conduct in the exercise of the defendant Children's Aid Societies' child protection powers.

87. Further, it was subjectively foreseeable to the defendant Children's Aid Societies that the operation of the unlawful Birth Alerts Scheme was likely to—and, in fact, did—injure the Class Members as described herein. As such, the defendant Children's Aid Societies are each liable for the tort of misfeasance in public office.

The Birth Alerts Scheme breached the Birth Parent Class Members' privacy

88. The Birth Parent Class Members imparted highly sensitive personal information about their personal affairs, including personal health information, to the defendant Children's Aid Societies, employees and agents in their capacity as state actors. Thus, the Birth Parent Class Members' personal information was imparted in circumstances in which an obligation of confidence arose, and the plaintiffs and the Class Members had a reasonable expectation that their personal information would be protected and kept confidential.

89. The Birth Parent Class Members' personal information was confidential information about their private affairs and personal health which was not public knowledge. By disclosing the Birth Parent Class Members' confidential personal information via the establishment and operation of the Birth Alerts Scheme, in the absence of any legal authority to do so, the defendant Children's Aid Societies misused and made unauthorized use of the confidential information that was entrusted to them.

90. This breach of privacy resulted in unauthorized access to, and disclosure of, the Birth Parent Class Members' confidential information, which was then used to their detriment. In particular, the Birth Parent Class Members' confidential information was used to depict them as being unfit parents, and to subject them to unlawful interference with their lives and healthcare choices. As a result, the defendant Children's Aid Societies are liable to the Birth Parent Class Members for breach of confidence.

91. By the operation of the Birth Alerts Scheme, the defendant Children's Aid Societies have intentionally or, at minimum, recklessly, invaded the private affairs and concerns of the Birth Parent Class Members. The defendant Children's Aid Societies' actions were without lawful

justification. Given the sensitive nature of the personal information involved, any reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish. The defendant Children's Aid Societies are thereby also liable for the tort of intrusion upon seclusion.

The Birth Alerts Scheme breached the *Charter*

92. A Children's Aid Society's authority is conferred by statute, and the defendant Children's Aid Societies' actions are therefore subject to *Charter* scrutiny. Where there are breaches of the *Charter* committed by the defendant Children's Aid Societies, they may be held liable.

93. By the operation of the Birth Alerts Scheme, the Children's Aid Societies breached the Birth Parent Class Members' s. 7 *Charter* rights and s. 15 *Charter* rights in relation to their sex, and the Subclass Members' s. 15 *Charter* rights in relation to their race and/or mental or physical disability.

94. Ontario purported to authorize the Birth Alerts Scheme through its adoption of the OACAS Eligibility Spectrum into the mandatory Ontario Child Protection Standards, promulgated under the authority conferred by s. 42 of the *CYFSA* and predecessor legislation. This purported authorization breached the Birth Parent Class Members' ss. 7 and 15 *Charter* rights in relation to their sex and Subclass Members' s. 15 *Charter* rights in relation to their race and/or mental or physical disability.

Breach of s. 7 Charter rights

95. The Birth Alerts Scheme constituted a serious deprivation of liberty to the Birth Parent Class Members.

96. The defendant Children's Aid Societies' actions in operating the Birth Alerts Scheme have violated the Birth Parent Class Members' right to autonomy over their own bodies and pregnancies, and caused them serious and profound psychological harm. This breach of the Birth Parent Class Members' right to bodily autonomy was purportedly authorized by Ontario. Therefore, all of the defendants violated the Birth Parent Class Members' s. 7 Charter rights to liberty and security of the person.

97. The imposition of Birth Alerts has meant that the Birth Parent Class Members have had their parental rights and fitness questioned unlawfully, and that they have lost their ability to foster strong relationships with their children without state interference, causing devastating long-term impacts. This serious interference with the Birth Parent Class Members' psychological integrity, by the defendants, is an infringement on ~~their~~ the Birth Parent Class Members' s. 7 Charter right to security of the person.

98. The Birth Alerts Scheme was not authorized by law and therefore was not in accordance with the principles of fundamental justice.

99. In the alternative, if the Birth Alerts Scheme was authorized by law, the resulting deprivation of liberty and security of the person suffered by the Birth Parent Class Members was not in accordance with the principles of fundamental justice:

- a. any Birth Alert issued pursuant to the Birth Alerts Scheme was arbitrary and had no connection with the legislative purpose of the CYFSA; and
- b. the Birth Alerts Scheme was overbroad and grossly disproportionate. The Birth Alerts Scheme permitted the use of Birth Alerts without any limitation, oversight, or restraint. Even if the Birth Alerts Scheme had served a legitimate purpose (which

it did not), any such hypothetical purpose could have been achieved through less intrusive and more tightly circumscribed means. This is confirmed by Ontario's decision to mandate the end of the Birth Alerts Scheme and its acknowledgement of the harm caused by the Birth Alerts Scheme.

Breach of s. 15 Charter rights

100. Through ~~the~~ Ontario's purported authorization of the Birth Alerts Scheme and the Children's Aid Societies' operation of the Birth Alerts Scheme, the defendants ~~Children's Aid Societies~~ also targeted and discriminated against Birth Parent Class Members based on their sex regarding their status as pregnant persons and against Subclass Members based on their race and/or disability, which ~~is an~~ are infringements on their s. 15 *Charter* right to substantive equality.

101. This breach of the Birth Class Members' and Subclass Members' right to substantive equality was purportedly authorized by Ontario's adoption of the Eligibility Spectrum into the mandatory Ontario Child Protection Standards. The defendants' ~~Children's Aid Societies'~~ actions created and maintained conditions of inequity for the Class Members.

102. Even while acting without statutory authority in issuing Birth Alerts, the defendant Children's Aid Societies' agents exercised their discretion in accordance with discriminatory assumptions and views of the Subclass Members, which imposed a distinction based on race and/or mental or physical disability, which are grounds protected by s. 15 of the *Charter*. By creating a distinction based on protected grounds, the Birth Alerts Scheme directly and indirectly targeted vulnerable pregnant persons, with the result of perpetuating, reinforcing, or exacerbating damage and disadvantage to these persons disproportionately compared to non-pregnant persons and similarly situated other pregnant persons.

103. The discriminatory distinctions created by the Birth Alerts Scheme disadvantaged the Birth Parent Class Members and perpetuated the well-recognized and entrenched prejudice faced by pregnant persons by subjecting them to impermissibly broad interference in their lives and bodily integrity due to their pregnancy.

104. The inequity of the defendants' ~~Children's Aid Societies'~~ actions is accentuated with regard to Indigenous members of the Subclass, given the duty of the Crown to act honourably in all of its dealings with Indigenous peoples and the stated purposes of the CYFSA regarding the protection of Indigenous children, families, and communities.

Breaches not saved by s. 1

105. The defendants' ~~Children's Aid Societies'~~ breaches of the *Charter* are not saved by s. 1. The infringements described above are neither prescribed by law nor are they demonstrably justified in a free and democratic society. The Birth Alerts Scheme had no legitimate objective, ran counter to the purposes of the CYFSA and predecessor legislation, and was pursued without statutory authority.

106. The CYFSA contains commitments by Ontario in its preamble:

- a. to respect families' diversity and the "principle of inclusion, consistent with the Human Rights Code and the [Charter]";
- b. to address systemic racism and the barriers it creates for children and families; and
- c. for "awareness of systemic biases and racism and the need to address these barriers"
to "inform the delivery of all services for children and families".

All of these commitments were violated by the Birth Alerts Scheme.

107. The enumerated purposes of the *CYFSA*, as set out in s. 1(2), which the defendants violated by the Birth Alerts Scheme include recognizing that:

- a. the least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered; and,
- b. appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

Particularly, the Birth Alerts Scheme shared information before a child was born, and did not apply the least disruptive course of action once the infant was born.

108. The Birth Parent Class Members are entitled to a declaration that the Birth Alerts Scheme infringed their *Charter* rights and to a monetary remedy pursuant to s. 24(1) of the *Charter*, in order to:

- a. compensate them for their pain and suffering;
- b. compensate them for their loss of dignity and reputation;
- c. vindicate their fundamental rights;
- d. deter systemic violations of a similar nature; and
- e. encourage the defendants ~~Children's Aid Societies~~ to ensure that future *Charter* violations are remedied as quickly as possible.

109. Neither Ontario nor the Children's Aid Societies enjoys immunity from *Charter* damages in these circumstances based on good governance considerations or based on any other countervailing considerations that could outweigh the importance of compensation, vindication, and deterrence. An award of *Charter* damages would not undermine good governance or the rule

of law, have a chilling effect on the legislatures' rightful role, deter effective enforcement of the law, or otherwise cause the defendants to be overly cautious about the importance of *Charter* rights to the detriment of the purposes of the *CYFSA*.

110. In the alternative, if legitimate good governance concerns exist, which is denied, the impugned conduct meets the threshold of gravity sufficient to overcome those concerns. The nature of the conduct under the Birth Alerts Scheme was clearly wrong, unnecessary, illegal, harmful and inherently humiliating, degrading and discriminatory. The defendants knew that the Birth Alerts Scheme was contrary to the *CYFSA* and predecessor legislation, *ultra vires* the CAS's jurisdiction, infringed the *Charter*, and was unnecessary to any legitimate child protection purpose.

111. Sources of this knowledge include, but are not limited to, the following:

- a. the plain text of the *CYFSA* and predecessor legislation, which do not include fetuses or pregnant persons in the ambit of Ontario's regulatory role or the Children's Aid Societies' child protection mandate; and
- b. judicial interpretation of the scope of child protection powers under the *CYFSA* and analogous extra-provincial legislation, in Ontario and at the Supreme Court of Canada.

112. In the alternative, the defendants were reckless or willfully blind to the lack of legal authorization for the Birth Alerts Scheme, its unconstitutionality, and its lack of necessity for the purposes of the *CYFSA*.

The Birth Alerts Scheme was a Conspiracy

113. The defendant Children's Aid Societies acted in concert, by agreement and with a common design or intention, to implement and operate the Birth Alerts Scheme province-wide and across the country. As described above, they acted together through the official activities of OACAS, such as authoring the Eligibility Spectrum and the Interagency Protocol, and informally through collective agreement to issue and give effect to Birth Alerts in Ontario.

114. The activities of the defendant Children's Aid Societies were unlawful, in breach of their jurisdiction as conferred by the *CYFSA* and predecessor legislation, in breach of the Birth Parent Class Members' constitutional rights, and constituted the torts of misfeasance in public office, intrusion upon seclusion, and breach of confidence.

115. By agreeing and conspiring to carry out the overt actions described above, the defendant Children's Aid Societies entered into an unlawful and tortious conspiracy to use unlawful means directed towards the Birth Parent Class Members. Given the circumstances of how Birth Alerts operated, the defendant Children's Aid Societies should have known that injury was likely to result from their activities, which it did.

The Ministry breached its duty of care with regard to the Birth Alerts Scheme

116. Due to the relationship of proximity between them, the Ministry owed a common law duty of care to the Birth Parent Class Members to act reasonably in its management and control of the defendant Children's Aid Societies.

117. At all material times, the Ministry, via the Minister, had legislative authority to take action to direct that the defendant Children's Aid Societies cease any unlawful conduct, including ending

the Birth Alerts Scheme. The Birth Parent Class Members reasonably relied on the Ministry to use its legislative authority to ensure that the defendant Children's Aid Societies acted within the bounds of the law.

118. Instead, the Minister authorized and perpetuated the use of Birth Alerts through internal policies, including by signing the Provincial/Territorial Protocol which explicitly calls for the usage of Birth Alerts.

119. Despite its knowledge that the Birth Alerts Scheme was unlawful, and its knowledge that its failure to act exposed the Class Members to substantial ongoing harm from the Birth Alerts Scheme, the Ministry made the operational decision to continue to authorize the use of Birth Alerts.

120. Particulars of the Ministry's mistreatment of the Birth Parent Class Members include the following:

- a. failure to take a responsible and good faith interest in the operation and administration of the defendant Children's Aid Societies;
- b. failure to implement appropriate policies, practices, procedures or safeguards to ensure that the defendant Children's Aid Societies did not act unlawfully;
- c. failure to develop, maintain and enforce policies to prevent the use of Birth Alerts prior to June 15, 2020; and
- d. failure to respond adequately, or in a timely fashion, to complaints, recommendations or reports that were made with regard to the Birth Alerts Scheme.

121. The Ministry and its servants and agents, including the Minister, knew or ought to have known that the Birth Alerts Scheme was, and is, unlawful, and that a failure to act to bring an end to the Birth Alerts Scheme prior to the issuance of the Policy Directive was in breach of its duty

of care. Permitting the Birth Alerts Scheme to operate constitutes an operational decision by the Ministry rather than a core policy decision, and HMK is therefore not immune from suit in negligence.

DAMAGES

122. As a consequence of the defendants' establishment and operation of the Birth Alerts Scheme in Ontario, the Class Members have suffered losses and damages, including pecuniary and non-pecuniary general damages, special damages and aggravated, exemplary and punitive damages, the particulars of which include:

- a. with regard to the Birth Parent Class Members:
 - (i) breach of their *Charter* rights to liberty and security of the person and substantive equality;
 - (ii) breach of privacy;
 - (iii) pain and suffering;
 - (iv) injury to dignity, feelings and self-worth;
 - (v) serious and prolonged emotional and psychological harm and distress and impairment of mental and emotional health and well-being, and a corresponding need for psychological, psychiatric and medical treatment;
 - (vi) loss of a parental relationship with a newborn child, including the love and support between a parent and newborn child;
 - (vii) loss of enjoyment of life and a loss of amenities;
 - (viii) loss of consortium; and
 - (ix) out-of-pocket expenses, the full particulars of which are not within the plaintiffs' knowledge at this time;

- b. with regard to the Subclass Members, breach of their *Charter* right to substantive equality;
- c. with regard to the Family Class Members, loss of care, guidance and companionship as a result of the injuries to their related Birth Parent Class Members; and
- d. such further and other harms and injuries as shall be discovered and/or particularized.

123. At all material times, the defendants knew, or ought to have known, that continuing their unlawful Birth Alerts Scheme caused the Class Members' injuries and damages.

124. The malicious, oppressive and high-handed conduct of the defendants departed to a marked degree from ordinary standards of decent behaviour, and warrants the condemnation of the Court. As particularized herein, the defendants conducted their affairs with wanton and callous disregard for the Class Members' interests and well-being, and systematically, knowingly, and unjustifiably violated the Class Members' fundamental rights.

125. The defendants deliberately misused their discretionary statutory child protection powers to implement a system which is inconsistent with basic legal principles. The defendants' behaviour justifies an award of punitive or exemplary damages for the purposes of denunciation and deterrence.

APPLICABLE LEGISLATION

126. The plaintiffs plead and rely on, *inter alia*, the following:

- a. the *CPA*;

- b. the *Charter*;
- c. the *CYFSA*;
- d. the *Child and Family Services Act*, R.S.O. 1990, c. C.11;
- e. the *Child Welfare Act*, R.S.O. 1980, c. 66;
- f. the *Child Welfare Act*, R.S.O. 1970, c. 64;
- g. the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sch. 17;
- h. the *Family Law Act*, R.S.O. 1990, c. F.3; and
- i. the *Courts of Justice Act*, R.S.O. 1980, c. 43.

May 10, 2022

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~~et al. -and- HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO~~ Court File No.: CV-22-00680949-00CP

ONTARIO et al.

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED FRESH AS AMENDED STATEMENT OF
CLAIM**

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