

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE E.M. MORGAN

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WEDNESDAY, THE
21st DAY OF MAY, 2025

B E T W E E N :

G.G. and W.W.

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 OF 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 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, ~~NIJAANSINAANIK 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*

**ORDER
(CERTIFICATION)**

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, appointing them as representative plaintiffs, and approving the litigation plan, was heard on April 2, 3, and 4, 2025, at Osgoode Hall courthouse, 130 Queen Street West, Toronto, Ontario.

ON READING the Motion Record of the Plaintiffs, the Reply Motion Record of the Plaintiffs, the Supplementary Motion Record of the Plaintiffs, the Responding Motion Records of the Defendants, and the factums filed by all parties,

AND ON HEARING the submissions of counsel for the Plaintiffs and Defendants,

1. **THIS COURT ORDERS** that this proceeding is certified as a class proceeding as against the Defendant His Majesty the King in Right of the Province of Ontario (“Ontario”) on behalf of the following classes of persons:

All persons who were, while pregnant, the subject of a Birth Alert issued in Ontario on or after May 10, 2007, 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”);

All dependents 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”); and

A Subclass of all Indigenous, racialized, and/or disabled Birth Parent Class Members

(collectively, the “Class” or “Class Members”).

2. **THIS COURT ORDERS** that G.G. and W.W. are appointed as the representative plaintiffs of the Class and that Sotos LLP and Goldblatt Partners LLP are appointed as counsel for the Class.

3. **THIS COURT ORDERS** that the motion for certification is dismissed as against the remaining Defendants (the “CAS Defendants”).

4. **THIS COURT ORDERS** that the Plaintiffs are granted leave to discontinue their action against the CAS Defendants, without costs, and to commence new proposed class actions against each of the CAS Defendants, provided that a proposed representative plaintiff with a claim against the particular CAS is named for any such action.

5. **THIS COURT ORDERS** that the evidence contained in the certification motion record before this Court may be used in any motion for certification brought in any such proceeding against any of the CAS Defendants.

6. **THIS COURT DECLARES** that the following claims are asserted against Ontario on behalf of the Birth Parent Class: negligence and breach of sections 7 and 15 of the *Charter of Rights and Freedoms* (“*Charter*”).

7. **THIS COURT DECLARES** that the following claims are asserted against Ontario on behalf of the Family Class: the statutory dependents’ claim pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F. 3.

8. **THIS COURT DECLARES** that the relief sought by the Class is declaratory relief, general and aggravated damages, and *Charter* damages.

9. **THIS COURT ORDERS** that the certified common issues are those set out in Appendix "A" attached hereto.

10. **THIS COURT ORDERS** that Notice shall be given to Class Members at the time and in the form and manner to be directed by further order of the Court.

11. **THIS COURT ORDERS** that Class Members may opt out of this class proceeding by following the opt-out process to be directed by further order of the Court.

12. **THIS COURT ORDERS** that the parties may make written submissions on costs, with the Plaintiffs to deliver their submission within 20 days of the date of this Order, the CAS Defendants to deliver their submission within 10 days of receiving the Plaintiffs' submissions, and Ontario to deliver its submissions within 10 days of receiving the CAS Defendants' submissions.



Morgan J.

Appendix "A"

Certified Common Issues

Definitions

"Birth Alert" means a notification issued by a Children's Aid Society and/or their agent(s) to one or more healthcare providers containing personal information about a Birth Parent Class Member, including a request that a Children's Aid Society and/or its agent(s) be notified by the recipient if the Birth Parent Class Member presented for prenatal care or delivery;

"Crown" means the defendant His Majesty the King in Right of Ontario

Factual background

1. How and when did Birth Alerts operate in Ontario?
2. Were Birth Alerts authorized by statute?

Negligence

3. Did the Crown owe a duty of care to the Birth Parent Class Members in relation to Birth Alerts?
4. If the answer to #3 is yes, when did that duty arise, did the standard of care change over the applicable time, and if so, how did it change?
5. If the answer to #3 is yes, did the Crown breach the standard of care it owed to the Birth Parent Class Members, and if so during what period of time?

Breach of the Charter

6. Did Ontario's actions:
 - a. breach the Birth Parent Class Members' rights under s. 7 of the *Charter*?;
 - b. breach the Birth Parent Class Members' rights under s. 15 of the *Charter* with respect to discrimination based on sex?
7. If the answer to any part of #6 is yes, are any such breaches saved by s. 1 of the *Charter*?
8. If any breach of the *Charter* is not saved by s. 1, are Birth Parent Class Members entitled to damages under s. 1 of the *Charter*?
9. If the answer to #8 is yes, can the Court make an aggregate assessment of such *Charter* damages in whole or in part, and if so, in what amount?

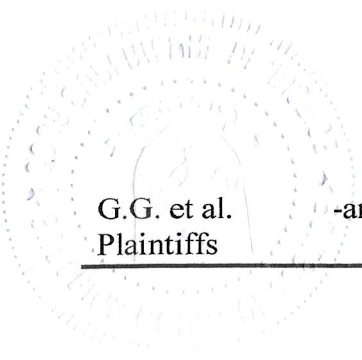
Damages

10. Are the Class Members entitled to aggravated damages?

- a. If yes, can an aggregate assessment be made for some or all of the aggravated damages that the Class Members, or any subset thereof, have suffered, and if so, in what amount?

11. Does Ontario's conduct warrant an award of punitive damages?

- a. If yes, in what amount?



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-and-

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Defendants

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(CERTIFICATION)**

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