Further Amended Pursuant to the Order of Madam Justice MacDonald, entered on June 2, 2022.
Amended Pursuant to the Order of Madam Justice MacDonald, pronounced February 16, 2022.
Originally filed September 1, 2021.

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JUN 02 2022

No. S-217852
Vancouver Registry

In the Supreme Court of British Columbia

Between

NIKIDA STEEL

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

SECOND FRESH AS AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. Provincial and territorial child protection authorities across Canada have, for decades, operated a system known as “birth alerts” or “hospital alerts” (the “Birth Alerts Scheme”). Birth alerts are notifications issued to hospitals regarding pregnant persons, which require the hospitals to contact child protection authorities whenever a subject pregnant person’s infant is delivered.

2. Birth alerts are issued based on speculative child protection concerns, often without any supporting evidence, and without regard to whether hospital staff have independently developed concerns about the parents’ ability to care for the infant safely. Nevertheless, they commonly result in apprehension of the newborn at birth, causing irreparable harm to both parents and children.

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

4. The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (The MMIWG Report) described the injustice of birth alerts used against Indigenous mothers:

> The use of birth alerts against Indigenous mothers, including mothers who were in care themselves, can be the sole basis for the apprehension of their newborn children. Birth alerts are racist and discriminatory and are a gross violation of the rights of the child, the mother, and the community.

5. Birth alerts, as a policy and practice, have no legal basis or justification. Child protection authorities have no jurisdiction to take action when there is no child in need of protection. Child protection authorities engage in a fundamental breach of the pregnant person's privacy by divulging their personal information and personal health information to third parties without the authority or consent of the pregnant person.

6. By operating the Birth Alerts Scheme in British Columbia, the Defendant has 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.

The Parties

7. The Defendant, Her Majesty the Queen in right of British Columbia, by the Minister of Children and Family Development, is named in this proceeding pursuant to the *Crown Proceeding Act*, RSBC 1996, c 89.

8. The Plaintiff, Nikida Steel (who prefers to be known as Nikida), is a resident of Vancouver, British Columbia. The Plaintiff was subject to Birth Alerts in British Columbia prior to the births of each of her children.

9. The Plaintiff brings this action on her own behalf and on behalf of a class of individuals defined to include:

> All persons who were, while pregnant, the subject of a birth alert issued in British Columbia between the date that the Defendant began issuing birth alerts and the date of the certification of this action as a class proceeding.

(the "**Class**" or "**Class Members**").

Including a subclass of:

> All Indigenous, racialized, and/or disabled Class Members.

(the "**Subclass**" or "**Subclass Members**").

10. The precise number of Class Members and their identities are well-known to the Defendant. Between January 1, 2018 and September 16, 2019, British Columbia issued 423 Birth Alerts. Of those, mothers identified as indigenous in 228 cases.

The Birth Alerts Scheme

11. In British Columbia, birth alerts are issued by agents of the Defendant, typically social workers, after a pregnant person comes into contact with a social worker. The contact may arise because the pregnant person is a child themself or has a relationship with a social worker because they were formerly in care, because the pregnant person has been in contact with another state authority which has involved child protection services, because the pregnant person has sought out assistance from a social worker, or by some other means.

12. Birth alerts are created when the subject is pregnant, and they are issued to local hospitals and physicians, as well as being circulated within the Ministry. The function of the birth alert is not protection of an existing child or the pregnant person; but to enable child protection workers to intervene to monitor or apprehend the newborn as soon as

possible – in some cases, while the pregnant person is still in labour and no child has even been born yet.

13. The birth alert document that is distributed to local hospitals contains information about the subject pregnant person (including their personal information, contact information, and the alleged child protection concerns motivating the birth alert), as well as instructions (a request for the hospital to disclose the subject's personal health information/medical records, when and how hospital staff are to contact the Defendant, and access/discharge plans following delivery (e.g. whether the baby will be apprehended immediately, or whether the parent will be monitored). There is no opportunity for hospital 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.

14. There are no defined grounds or requirements for the issuance of a birth alert, and no minimum threshold of investigation which must be conducted before a birth alert can be issued. Birth alerts are issued solely based on the discretion of the Defendant's agents. Once issued, there is no review or reconsideration process, and oftentimes the pregnant person is not advised that the birth alert is issued.

15. As a result of this arbitrary 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 British Columbia 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.

16. Once a birth alert is issued, the subject pregnant person comes under constant surveillance. The pregnant person's whereabouts, health, and social status are tracked by healthcare providers and the information collected is shared with the Defendant on an ongoing basis, without the pregnant person's properly informed consent and sometimes without even their knowledge.

17. The pregnant person's medical records and personal health information are routinely disclosed to the Defendant under the auspices of the issued birth alert, without the pregnant person's properly informed consent and sometimes without even their knowledge.

18. Upon entering the hospital 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.

19. On some occasions, the hospital ward is locked, so that the new parent cannot leave without the hospital's approval, which defers to the direction of the Defendant. Further, as soon as the child is born, the new parent may be interrogated by strangers so that their alleged "capacity" to care for the child may be assessed, with no consideration for the context in which the interrogation is taking place.

20. Newborn children are 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. In Canada, 52.2% of children in foster care are Indigenous, but account for only 7.7% of the child population. This is, in part, because of the discriminatory effects of the Birth Alerts Scheme.

21. Although the child of a parent subject to a birth alert may eventually be returned to parental care, the accompanying stress and emotional violation inflict significant trauma on the mother, the child, their family, and community. In many cases, the child is only returned to the parent after legal proceedings are brought by the parent.

22. Even if the child is not apprehended, merely being subject to a birth alert carries stigma because the subject is seen as a threat or unfit because an alert was issued. The birth alert signals to health care workers interacting with the subject pregnant person that the subject should be scrutinized and monitored for fit parenting skills.

23. Because of the existence of the Birth Alerts Scheme, some expectant parents avoid hospitals and prenatal care to avoid being subjected to 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 can lead to adverse health outcomes for both parents and children.

24. After the release of the MMIWG Report, and citing the discriminatory nature and harmful effects of birth alerts, many provinces and territories have issued policies directing that the practice of birth alerts be stopped entirely, including Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Saskatchewan, and Yukon.

The Birth Alerts Scheme in British Columbia

25. Until approximately September 2019, a Birth Alerts Scheme was operated in British Columbia.

26. The Birth Alerts Scheme was not authorised by any provincial or federal law.

27. The Birth Alerts Scheme in British Columbia was principally established and operated under the aegis of the Ministry of Children and Family Development ("**MCFD**"), including the Director (Child, Family and Community Services Act) ("**Director**"), with the cooperation of the Ministry of Health ("**MOH**"), mutatis mutandis, as those Ministries were styled during the class period.

28. The legal framework for child protection in British Columbia is the *Child, Family and Community Service Act*, RSBC 1996, c 46, primarily Part 3 (child protection). The Act only applies to a "child", not a fetus. Neither the statute nor any regulation authorises the issuance of birth alerts or the disclosure of private and personal information regarding the unborn children of expectant mothers. British Columbia's statute law is silent as to the existence of "birth alerts". In particular, the *Child, Family and Community Service Act* does not confer any power, duty or function in respect of the Birth Alerts Scheme on the MCFD, the Director or any other organism.

29. The Birth Alerts Scheme was organised and implemented at the level of MCFD procedure, including under its *Family Support Services and Agreements* policy manual and other protocols. At material times, the manual instructed social workers on dealing

with “high risk expectant parents”. The Birth Alerts Scheme in British Columbia was carried out substantially in the manner described above.

30. In addition to the intra-provincial scheme, British Columbia 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. At material times, the Defendant implemented the Provincial/Territorial Protocol as part of the Birth Alerts Scheme in British Columbia. It is well known to the Defendant whether it continues to apply the Provincial/Territorial Protocol for non-residents of the province, despite the New Protocol, described below.

31. In September 2019, British Columbia abandoned its Birth Alerts Scheme. In its place, British Columbia established the *Collaborative Practice Protocol for Providing Services for Families with Vulnerabilities* (“**New Protocol**”). That New Protocol places strict limits on the types of conduct that previously characterised the Birth Alerts Scheme. In particular, the New Protocol provides:

Guidance on Information Sharing

1. Where the client is a pregnant person without children in the home:
   - When offering or providing services, information can only be obtained and shared about a pregnant person with their written consent (s. 74(2)(e)(ii) of the CFCSA, and pursuant to FOI Regulation, s. 11).
   - With the written consent of the pregnant person, an MCFD/DAA worker can make agreements or share information with other government bodies and community agencies where necessary to integrate the planning and/or delivery of support services (s. 33.1(1)(b) of FOIPPA).
   - Only voluntary intervention and services can be provided to a pregnant person with no other children in their care.

2. Fetus:
   - Any information that MCFD/DAA receives about a fetus from any source cannot legally be considered a child protection report under the CFCSA (as there is no child).
   - MCFD/DAA cannot use s. 96 of the CFCSA to require disclosure of information with respect of a fetus (e.g., obtain information about a pregnant person in order to ensure the fetus will be safe when the baby is born).

32. At all material times, the Defendant knew or should have known that the Birth Alerts Scheme was illegal and unconstitutional.

The Plaintiff's Experience

33. Nikida was born in Surrey, British Columbia in 1979 to Lisa Jennine Shmyr (also known as Ballash), an Indigenous person. At the time of her birth, it is the Plaintiff's belief that her mother was under a Birth Alert issued in British Columbia. The particulars are well known to the Defendant.

34. Nikida is an Indigenous person.

35. During her childhood, Nikida was placed in the care of the Ministry. She was not adopted. Instead, she bounced around between 16 different foster homes and nine group homes, at which she endured physical, verbal, and sexual abuse while in care. She remained in the Ministry's care until her 19th birthday in 1998.

36. While pregnant with her first child in 1997, Nikida became the subject of a Birth Alert issued in British Columbia in approximately May or June 1997. The Birth Alert was issued by her treating physician to social workers with MCFD.

37. Neither the Defendant nor its agents informed Nikida that she was the subject of the Birth Alert. Neither the Defendant nor its agents sought Nikida's consent to share her personal information with anyone. Nikida did not receive a copy of the Birth Alert until 2021, when she requested medical records regarding her pregnancy.

38. Between the issuance of the Birth Alert and the birth of her child, MCFD ordered Nikida to leave her independent living situation and move in with the parents of her boyfriend. Her social worker threatened removal of the child (before he was born) and insisted that Nikida take mandatory parenting classes and one-to-one supervision. Nikida had done nothing wrong, was not suffering from addiction or violence in the home, and yet MCFD told Nikida that her child would be taken from her.

39. Nikida's first child was born in British Columbia on September 18, 1997, at BC Women's Hospital. As soon as she was admitted to hospital, Nikida was told there would be a referral for hospital social work. A social worker attended at her hospital room.

40. At the time of the birth, a social worker attended the hospital room. The social workers and the hospital tracked Nikida's behaviour in the hospital. Nikida felt scared and was terrified that her child would be taken away. On this occasion, as on subsequent occasions, the hospital room was a shared room. As a consequence, Nikida experienced a loss of dignity from the public state scrutiny of her parenting. Nikida felt that she continued to be surveilled during her stay in the hospital and following her discharge.

41. After birth, Nikida's first child was placed in an incubator and kept in hospital for care. Nikida chose to stay at Heather House nearby to be as close as possible to her newborn. Nikida was told she would not be allowed to hold her own child, even when it was safe to do so, until a social work consult was done.

42. When Nikida became pregnant in 2000, she again became the subject of a Birth Alert issued in British Columbia. Nikida was receiving disability assistance at that time, and upon notifying the Ministry of Social Development and Social Innovation (MSDSI) about the pregnancy to receive her natal allowance, that organism notified MCFD about the pregnancy. Following that Birth Alert, a social worker contacted Nikida and subjected her to extreme scrutiny regarding her life situation. Neither the Defendant nor its agents sought Nikida's consent to share her personal information with anyone.

43. Nikida's second child was born on November 6, 2001, at Royal Columbian Hospital. Nikida endured pre-term labour and so was admitted early to hospital. A social worker appeared upon Nikida's admission to hospital, and she was surveilled before, during and after the birth. As before, Nikida experienced stress, fear, a loss of dignity, and a violation from the Defendant's intrusion into her intimate time with her new child.

44. When Nikida became pregnant in 2001, she again became the subject of a Birth Alert issued in British Columbia. Once again, when Nikida applied for a natal allowance from MSDSI, MCFD was notified about her pregnancy. Neither the Defendant nor its agents sought Nikida's consent to share her personal information with anyone.

45. Nikida's third child was born on August 29, 2002, at BC Women's Hospital. Once again, a social worker appeared upon Nikida's admission to hospital, and she was

surveilled before, during and after the birth. As before, Nikida experienced stress, fear, a loss of dignity, and a violation from the Defendant's intrusion into her intimate time with her new child.

46. When Nikida became pregnant in 2009, she again became the subject of a Birth Alert issued in British Columbia. Neither the Defendants nor its agents informed Nikida that she was the subject of the Birth Alert. Neither the Defendants nor its agents sought Nikida's consent to share her personal information with anyone.

47. Nikida's fourth and fifth children were born on March 30, 2010, at BC Women's Hospital. Once again, a social worker appeared upon Nikida's admission to hospital, and she was surveilled before, during and after the births, including after their transfer to Burnaby General Hospital. As before, Nikida experienced stress, fear, a loss of dignity, and a violation from the Defendant's intrusion into her intimate time with her new children.

48. As a result of being subjected to these Birth Alerts, Nikida suffered, and continues to suffer serious and prolonged emotional and psychological harm, including grief, humiliation, emotional trauma, loss of dignity, and a deep sense of personal violation because her private and personal information was disclosed without her knowledge or consent. Starting from the first Birth Alert, MCFD repeatedly threatened to remove her children from her care, and eventually did that, placing them with her abusive ex-husband. Nikida had remained in that abusive relationship because she feared removal of her children by MCFD if she left it.

49. Between 1994 and 2015, Nikida was a victim of human trafficking and other criminal acts, including her removal from Canada. Nikida only became aware of the Birth Alerts Scheme, and its impact on her, following press coverage in 2021.

50. The Birth Alerts Scheme was a contributing factor to having her children being removed unjustifiably from her care. She does not have custody of her children, despite her ongoing efforts to get them back.

51. Today, Nikida works as a mobile access project support worker for the WISH Drop In Centre Society, a social work organisation in Vancouver. She is also a volunteer with

PIVOT Legal Society. Despite her traumas, and the harm inflicted on her by the Birth Alerts Scheme, she is determined to be a good parent and grandparent, to better herself and her community, and to help challenge and undo the harm caused by the Birth Alerts Scheme.

Injury To The Plaintiff And Class Members

52. As a consequence of the Defendant's establishment and operation of the Birth Alerts Scheme in British Columbia, the Plaintiff and Class Members have suffered loss and damage, including pecuniary and non-pecuniary general damages, special damages and aggravated, exemplary and punitive damages, particulars of which include:

(a) breach of their *Canadian Charter of Rights and Freedoms* ("***Charter***") right to liberty and security of the person;

(b) with regard to the Subclass Members, breach of their *Charter* right to substantive equality;

(c) breach of privacy;

(d) pain and suffering;

(e) injury to dignity, feelings and self-worth;

(f) 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;

(g) loss of a parental relationship with a newborn child, including the love and support between a parent and newborn child;

(h) loss of enjoyment of life and a loss of amenities;

(i) out-of-pocket expenses, the full particulars of which are not within the Plaintiff's knowledge at this time; and

(j) such further and other harms and injuries as shall be discovered and/or particularized.

53. At all material times, the Defendant knew, or ought to have known, that continuing its unlawful Birth Alerts Scheme caused the Plaintiff and the Class Members' injuries and damages.

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

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

PART 2: RELIEF SOUGHT

56. The Plaintiff seeks, on her own behalf and on behalf of the proposed Class as described herein:

(a) an order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff of the class;

(b) a declaration that the Defendant, in its establishment and operation of the Birth Alerts Scheme:

(i) acted without lawful authority;

(ii) breached the privacy of Class Members;

(iii) breached the s. 7 *Charter* rights of Class Members and that the infringements are not saved by s. 1 of the *Charter*; and

(iv) breached the s. 15 *Charter* rights of Subclass Members and that the infringement is not saved by s. 1 of the *Charter*;

(c) a declaration that the Defendant is liable to the Plaintiff and the Class Members for the damages caused by its breach of common law and statutory duties;

(d) a just and appropriate remedy under s. 24(1) of the *Charter*, including a monetary remedy;

(e) general and aggravated damages;

(f) special damages in an amount to be determined at trial;

(g) punitive damages in an amount to be determined at trial;

(h) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*;

(i) the costs of this action, including such taxes as applicable;

(j) the costs of all notices and of administering the plan of distribution of the judgment in this action, together with applicable taxes; and

(k) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

57. The Plaintiff and Class Members plead and rely on, *inter alia*:

(a) *Class Proceedings Act*;

(b) *Charter of Rights and Freedoms* [“***Charter***”];

(c) *Privacy Act*;

(d) *Crown Proceeding Act*, RSBC 1996, c 89;

(e) *Child, Family and Community Service Act*, RSBC 1996, c 46;

(f) *An Act respecting First Nations, Inuit and Métis children, youth and families,* SC 2019, c 24;

(g) *Limitation Act*, SBC 2012, c 13;

(h) *Court Order Interest Act*;

(i) *Supreme Court Civil Rules*.

The Birth Alerts Scheme Was Unlawful

58. Pursuant to *Child, Family and Community Service Act and the Age of Majority Act*, RSBC 1996, c 7, the Defendant has authority to act to protect the safety, well-being and best interests of any person under the age of 19 in British Columbia. Unborn children are not legal persons. The Defendant only has authority to act once a child is born and becomes a legal person possessing rights.

59. Since birth alerts are, by definition, issued prior to birth, there was never any legal basis for the Birth Alerts Scheme under the *Child, Family and Community Service Act* or at all. The Defendant has never had any legal standing to exert its child protection powers over the Plaintiff or the Class Members in respect of their pregnancies.

60. The Birth Alerts Scheme stands out as a clear and deliberate misuse of the Defendant's child protection powers. As the individual ultimately responsible for ensuring that the Defendant fulfills its mandate and does not overstep its jurisdiction, the Minister is aware, or ought reasonably to be aware, that the Birth Alerts Scheme exceeds the scope of the Defendant's authority and is therefore unlawful.

61. As set out above, the Defendant knew or should have known that the Birth Alerts Scheme was unlawful and violated the *Charter*.

62. The Defendant's establishment and operation of the Birth Alerts Scheme constitute intentional acts in excess of the Defendant's child protection powers. Further, it was subjectively and objectively foreseeable to the Defendant and its agents, including the Minister, that the establishment and operation of the unlawful Birth Alerts Scheme was likely to - and, in fact, did - injure the Plaintiff and Class Members as described herein.

63. The Defendant is liable for the acts and omissions of its servants and agents.

The Birth Alerts Scheme Breached The Class Members' Privacy

64. The Class Members imparted highly sensitive personal information about their personal affairs, including personal health information, to the Defendant's agents in their capacity as state actors, in an attempt to access government services. Thus, the Class Members' personal information was imparted in circumstances in which an obligation of confidence arose, with the reasonable expectation that it would be protected and kept confidential.

65. The Class Members' personal information was confidential information about their private affairs and personal health which was not public knowledge. By disclosing the 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 misused and made unauthorized use of the confidential information that was entrusted to it. This breach of privacy resulted in unauthorized access and disclosure of the Class Members' confidential information, which was then used to their detriment. As a result, the Defendant is liable to the Class Members for breach of confidence.

66. By the establishment and operation of the Birth Alerts Scheme, the Defendant has intentionally or, at minimum, recklessly, invaded the private affairs and concerns of Class Members. The Defendant's actions were without lawful justification. Given the sensitive nature of the personal information involved, any reasonable person would regard the Defendant's invasion as highly offensive, causing distress, humiliation or anguish. The Defendant is thereby also liable for the tort of intrusion upon seclusion.

67. By the establishment and operation of the Birth Alerts Scheme, the Defendant, willfully and without a claim of right, violated the privacy of the Class Members. The disclosure of sensitive personal information, including personal health information, to a trusted recipient like a state actor, demands a high degree of statutory privacy protection. The Defendant's nonconsensual disclosure of the Class Members' personal information during the course of operating an unlawful program beyond the scope of the Defendant's legal duties was not reasonable in the circumstances. The Defendant is therefore liable for breach of s. 1 of the *Privacy Act*.

68. The Defendant's acts as set out above constituted "surveillance" on Class Members within the meaning of s. 1(4) of the *Privacy Act*.

69. The Plaintiff and Class Members are entitled to statutory damages as a result of the Defendant's breaches of the *Privacy Act*.

The Birth Alerts Scheme Breached The Charter

70. By the establishment and operation of the Birth Alerts Scheme, the Defendant breached the Plaintiff and the Class Members' s. 7 *Charter* rights, and the Subclass Members' s. 15 *Charter* rights.

71. The Defendant's actions in establishing and operating the Birth Alerts Scheme have violated the Plaintiff and the Class Members' right to autonomy over their own bodies and pregnancies, and caused serious and profound psychological harm.

72. The imposition of birth alerts has meant that the Plaintiff and the 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 Class Members' psychological integrity is an infringement on their s. 7 right to security of the person, and is not in accordance with the principles of fundamental justice.

73. Through the operation of the Birth Alerts Scheme, the Defendant also targeted and discriminated against Subclass Members based on their race and/or disability, which is

an infringement on their s. 15 right to substantive equality. The Defendant's actions created and sustained conditions of inequity for the Class Members.

74. Even while acting without statutory authority in issuing birth alerts, the Defendant's 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. 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 similarly situated other pregnant persons.

75. The inequity of the Defendant's actions is accentuated with regard to Indigenous Subclass Members, given the duty of the Crown to act honourably in all of its dealings with Indigenous peoples.

76. The Defendant's breaches of *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 Alert Scheme had no legitimate objective and was pursued in support of an unjustifiable objective: to wit, antenatal child protection and/or protection of newborn children from the moment of birth without regard to the actual circumstances of the parent(s) and child.

77. The Plaintiff, Class Members and Subclass Members are entitled to a declaration that the Birth Alerts Scheme infringed their *Charter* rights and to a monetary remedy pursuant to section 24(1) of the *Charter* for violation of their *Charter* rights 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 Defendant to ensure that future *Charter* violations are remedied as quickly as possible.

Discoverability And Postponement

78. The Plaintiff and Class Members could not reasonably have known that

(a) they sustained injury, loss or damage as a consequence of the Defendant's misconduct; or

(b) having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages

until, at the earliest, the press coverage that accompanied the cessation of the Birth Alerts Scheme in British Columbia.

79. In addition or in the alternative, the Plaintiff and Class Members could not have a brought a claim earlier because they were not in a position to do so as a result of fear of further state action and abuse of authority preventing parent/child reunification, as well as trauma from the Birth Alerts Scheme and sequellae. In particular, the Plaintiff was a trafficked person and a victim of criminal acts, which prevented her from bringing her claim until now.

80. The Plaintiff and Class Members plead and rely on postponement under the *Limitation Act*, SBC 2012, c 13 and in particular sections 8, 18, 19, 21, 24 and 25. In the alternative, or in addition, the Plaintiff and Class Members rely on the Limitation Act, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020 to March 25, 2021.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 01/Sep/2021

Signature of lawyer the for plaintiff

Reidar Mogerman QC
Jen Winstanley
Naomi Kovak
Camp Fiorante Matthews Mogerman LLP

and

Mat Good
Mathew P Good Law Corp

Rule 7-1 (1) of the Supreme Court Civil Rules states:

> (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
>
> (a) prepare a list of documents in Form 22 that lists
>
> (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
>
> (ii) all other documents to which the party intends to refer at trial, and
>
> (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action is a proposed class proceeding against the government of British Columbia regarding its establishment and operation of a system known as "birth alerts" or "hospital alerts" (the "Birth Alerts Scheme"). Birth alerts are notifications issued to hospitals regarding pregnant persons, which require the hospitals to contact child protection authorities whenever a subject pregnant person's infant is delivered.

The action alleges that by operating the Birth Alerts Scheme in British Columbia, the defendant has breached these pregnant persons' right to liberty and security of the person and the right to equality and the right to privacy regarding intensely personal matters of medical care and childbirth.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

☐ a motor vehicle accident

☐ medical malpractice

☐ another cause

A dispute concerning:

☐ contaminated sites

☐ construction defects

☐ real property (real estate)

☐ personal property

☐ the provision of goods or services or other general commercial matters

☐ investment losses

☐ the lending of money

☐ an employment relationship

☐ a will or other issues concerning the probate of an estate

☒ a matter not listed here

THIS CLAIM INVOLVES:

☒ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☐ none of the above

☐ do not know

Enactments

1. *Class Proceedings Act,* RSBC 1996, c 50
2. *Charter of Rights and Freedoms*; and
3. *Privacy Act*, RSC, 1985, c. P-21