

THE ~~QUEEN'S~~ KING'S BENCH

Winnipeg Centre

BETWEEN

CAROL HARPER

Plaintiff

and

**~~HER-HIS~~ MAJESTY THE ~~QUEEN-KING~~ IN RIGHT OF THE
PROVINCE OF MANITOBA**

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C. 130

AMENDED STATEMENT OF CLAIM

FILED FEB 15 2023

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AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen/King's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date March 15, 2022 Issued L. Moody
Deputy Registrar

To: **~~HER-HIS~~ MAJESTY THE ~~QUEEN~~ KING IN RIGHT OF
THE PROVINCE OF MANITOBA**

AMENDED THIS 15 DAY
OF FEBRUARY, 2023.

V. SCHAEFFER
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA

Attorney General
Room 104 Legislative Building – 450 Broadway
Winnipeg, MB R3C 0V8

CLAIM

1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class pursuant to *The Class Proceedings Act*, C.C.S.M. c. C130 (the “CPA”);
- (b) a declaration that the Defendant, in issuing, accessing, using, and disseminating its establishment and operation of the Birth Alerts Scheme birth alerts:
 - (i) breached the privacy of Class Members;
 - (ii) acted without lawful authority;
 - (iii) breached the s. 7 *Canadian Charter of Rights and Freedoms* (“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, *Charter* 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) an interim, interlocutory and/or permanent injunction:
 - (i) prohibiting the Defendant from instructing, directing, issuing, accessing, placing authority within, using, acting upon, and disseminating birth alerts;
 - (ii) requiring the Defendant to permanently delete, expunge, and make ineffective all Birth Alerts in their possession and control; and
 - ~~(i)~~(iii) requiring the Defendant take reasonable and appropriate steps to request that the hospitals and other entities expunge Birth Alerts in their possession and control;
- (i) pre-judgment and post judgment interest pursuant to the *Court of Queen King's Bench Act, C.C.S.M. c. C280;*
- (j) the costs of this action, including HST and other taxes as applicable;
- (k) the costs of all notices and of administering the plan of distribution of the judgment in this action, together with applicable taxes; and
- (l) such further and other relief as this Honourable Court may deem just.

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 or other entities regarding pregnant persons. The alerts, which require the hospitals or entities to contact child protection authorities whenever a subject pregnant person’s goes into labour or their 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 parents, children and their families.

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 Manitoba, the Defendant has breached subject pregnant persons' fundamental constitutional rights—including their right to liberty and security of the person, ~~the right to be secure against unreasonable search and seizure~~, 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~~ His Majesty the ~~Queen~~ King in Right of the Province of Manitoba, by the ~~Minister~~ Department of Families, is named in this proceeding pursuant to the *Proceedings Against the Crown Act*, C.C.S.M. c. P140.

8. The Plaintiff, Carol Harper, is a resident of Winnipeg. The Plaintiff was subject to a birth alert prior to the birth of ~~their~~ her child in January, 2019.
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 or distributed by the Department of Families (“Department”) in Manitoba between the earliest date that the ~~Defendant~~ Department began issuing or distributing birth alerts and the date of the certification of this action as a class proceeding.

(the “Class” or “Class Members”)

Including ~~a~~ subclasses of Class Members who:

(a) are Indigenous, racialized, and/or disabled; or

(b) claim that they were discriminated against in relation to birth alert because of their relationship with a person who is Indigenous, racialized, and/or disabled; and,

~~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.

THE BIRTH ALERTS SCHEME

11. In Manitoba, birth alerts are normally 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 themselves 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 or distributed to local hospitals or other entities. 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 or other entities typically 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 or distributed. Birth alerts are issued or distributed solely based on the discretion of the Defendant and its agents. Once issued, there is no review or reconsideration process, and ~~often times~~ as a practice 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 Manitoba ~~are issued against~~ involve 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 in contemplation and noted on the Class Member's file in any form, ~~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 authorization, ~~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 or a security guard is stationed outside of the individual's hospital room, 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~~ parent(s), 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 or should otherwise be treated with suspicion.

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. A Birth Alert can continue to impact the medical care the subject person may receive well after it has been issued as healthcare providers can rely on the information in a Birth Alert as a basis to deny care or discriminate -against the subject person. This can lead to adverse health outcomes for the subject person.

24.25. 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 Manitoba

25.26. Until approximately July 1, 2020, a Birth Alerts Scheme was operated in Manitoba.

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

27.28. The Birth Alerts Scheme in Manitoba was principally established and operated under the aegis of the Department of Families, including the Director (Child and Family Services Act) (“Director”). This also included involvement of the four child and family service authorities created under the *Child and Family Services Authorities Act* (the “Authorities”) and with the cooperation of the Department of Health and Seniors Care.

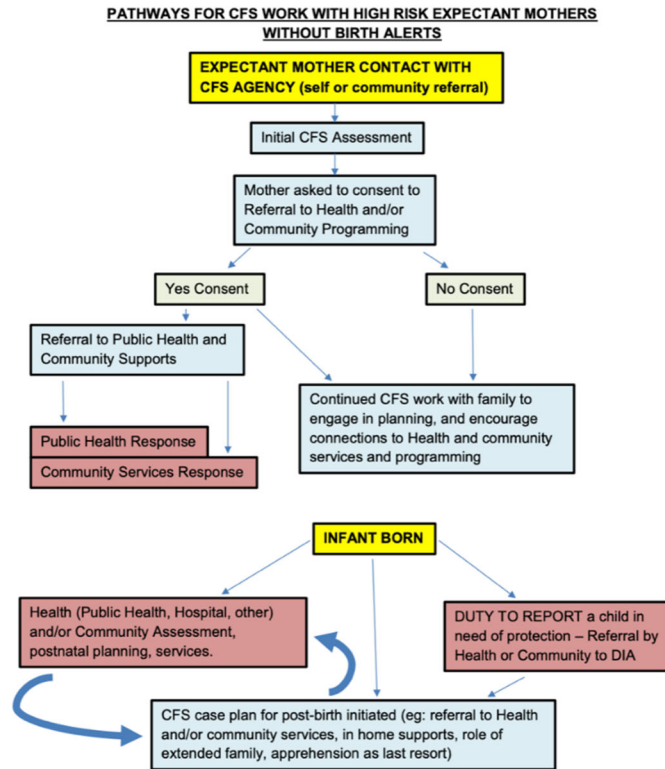
28.29. The legal framework for child protection in Manitoba is the *Child and Family Services Act*, C.C.S.M. c. C80, primarily Part III (child protection). The Act only applies to a “child”, not a fetus. Child protection in Manitoba also falls under the *Child and Family Services Authorities Act*, C.C.S.M. c. C90, which sees many powers formally held by the Director

under the *Child and Family Services Act* devolved to be under the jurisdiction of the Authorities. Neither of these statutes nor any regulation authorizes the issuance of birth alerts or the disclosure of private and personal information regarding the unborn children of expectant mothers. Manitoba's statute law is silent as to the existence of "birth alerts". In particular, the *Child and Family Services Act* and the *Child and Family Services Authorities Act* do not confer any power, duty, or function in respect of the Birth Alerts Scheme on the Department of Families, the Director, the Authorities, or any other organism.

~~29.~~30. The Birth Alerts Scheme was organized and implemented by the Department of Families and the Authorities at the level of policy and procedure, including standards for child and family services agencies and operational and practice updates, including notices and circulars.

~~30.~~31. In addition to the intra-provincial scheme, Manitoba 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 Manitoba. 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 Model, described below.

~~31.~~32. On July 1, 2020, Manitoba purports to have abandoned its Birth Alerts Scheme. The Birth Alerts Scheme was replaced with preventative and community-based supports for families (the "New Model"). The New Model is based on voluntary prenatal engagement and early intervention planning with high-risk expectant parents, including referrals to appropriate cultural, community and health supports from public health and other community programming. The New Model places limits on the types of conduct that previously characterized the Birth Alerts Scheme, including the following "pathways" for CFS work with high-risk expectant mothers:



32.33. The New Model requires agency workers to obtain the consent of expectant parents to request information or make referrals to community and health services.

33.34. Despite purported discontinuance of the Birth Alert Scheme, there remain circumstances where birth alerts may still be issued. These include:

- (a) Where the expectant parent is a minor; and,
- (b) Where the expectant parent is a child in care;

35. Since the Defendant began issuing Birth Alerts, and despite purportedly discontinuing the practice in July of 2020, the Defendant has taken no steps to inform the Plaintiff or Class Members of the presence of a Birth Alert or multiple Birth Alerts issued or distributed by the Defendant, or to remove or rescind the Birth Alert(s) that have been issued to hospitals or other entities in relation to the Plaintiffs or Class Members. Consequently, birth alerts are still present in their hospital files or otherwise, causing ongoing harm.

THE PLAINTIFF'S EXPERIENCES

34.36. Ms. Harper, an Indigenous woman, became pregnant with her second child in 2018. Her first child was born 22 years prior while she herself was a ward of the state in the foster care system.

35.37. Ms. Harper reached out for the assistance of social services during her pregnancy, and had made arrangements for the care of her child after the peripartum period. Her baby was to be placed with her aunt, which is where the baby resides now. Ms. Harper is in her baby's life and cares for her on a regular basis.

36.38. On December 20, 2021-2018 Manitoba Child Protection Branch, located at 777 Portage Avenue, in Winnipeg Manitoba, issued a "Manitoba Child Protection Birth Alert and to all Winnipeg Hospitals Manitoba Alert I.D. # 12916", document dated October 18, 2018 and expiring on March 13, 2019.

37.39. Ms. Harper gave birth on January 8, 2019 at the St-Boniface Hospital in Winnipeg, Manitoba. Due to the breech position of the baby, Ms. Harper underwent an emergency c-section.

38.40. Following the surgery, Ms. Harper learned that she was the subject of a birth alert when the authorities presented to apprehend the Ms. Harper's child. Despite indication on her file that the attending nurses, social workers and doctor were aware of the birth alert and were communicating by telephone with a Winnipeg Child and Family Services social worker with respect to Ms. Harper's personal health status, Ms. Harper was never informed under what purported authority or why the apprehension was taking place. Ms. Harper did not become aware that she was the subject of a birth alert until after her child had been apprehended she received and reviewed her hospital records in September of 2021.

39.41. Ms. Harper's daughter was apprehended on January 10, 2019. The apprehension was enforced by the Winnipeg police, with social workers and Ms. Harper's family in attendance. The police threatened to take the child forcefully if Ms. Harper did not cooperate. A video of the apprehension was broadcast on Facebook live, and remains available on YouTube.

INJURY TO THE PLAINTIFF AND CLASS MEMBERS

40.42. As a consequence of the Defendant's establishment, ~~and operation, and implementation~~ of the Birth Alerts Scheme in Manitoba, 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 *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 a 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.

41.43. 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.

42.44. 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 and Class Members' interests and well-being, and systematically, knowingly, and unjustifiably violated the Plaintiff and the Class Members' fundamental rights.

43.45. The Defendant deliberately misused its discretionary statutory child protections 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.

THE BIRTH ALERTS SCHEME WAS UNLAWFUL

44.46. Pursuant to the *Child and Family Services Act*, C.C.S.M. c C80, the Defendant has authority to act to protect the safety, well-being, and best interests of any person under the age of 18 in Manitoba. 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.

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

46.48. 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.

47.49. 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 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.

~~48.50.~~ The Defendant is liable for the acts and omissions of its servants and agents.

THE BIRTH ALERTS SCHEME BREACHED THE CLASS MEMBERS' PRIVACY

~~49.51.~~ The Class Members imparted highly sensitive personal information about their personal affairs, including personal health information, to the Defendant's agent 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.

~~50.52.~~ The Class Members' personal information ~~was included~~ 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.

~~51.53.~~ 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~~ non-consensual 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. 2 of the *Privacy Act*, C.C.S.M. c. P125.

~~52.54.~~ The Defendant's acts as set out above constituted "surveillance" on Class Members within the meaning of s. 3(a) of the *Privacy Act*, and a violation of privacy within the meaning of section 3(d) of the *Privacy Act*.

~~53.~~55. The Plaintiff and Class Members are entitled to statutory damages as a result of the Defendant's breaches of the *Privacy Act*.

THE BIRTH ALERT SCHEME BREACHED THE CHARTER

~~54.~~56. 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.

~~55.~~57. 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.

~~56.~~58. 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.

~~57.~~59. 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.

~~58.~~60. 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.

~~59-61.~~ 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.

~~60-62.~~ 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), family and child.

~~61-63.~~ 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) denounce the Defendant's violations to ensure that future *Charter* infringements are remedied as quickly as possible.

INJUNCTIVE RELIEF

~~62-64.~~ The Plaintiffs are entitled to a prohibitory interlocutory and permanent injunction against the Defendant stopping the instructing, directing, issuing, accessing, placing authority within, using, acting upon, and disseminating issuance of birth alerts because they are unconstitutional, unlawful, and deeply harmful. Further, the Plaintiffs are entitled to a prohibitory and permanent injunction against the Defendant requiring the Defendant to permanently delete and expunge all Birth Alerts in their possession and control and requiring the Defendant take reasonable and appropriate steps to request that the hospitals

expunge Birth Alerts in their possession and control. The Plaintiffs, Class Members and Subclass Members have demonstrated a strong *prima facie* case and that there is a serious question to be tried relating to their fundamental rights and freedoms; have demonstrated that irreparable harm will result if this relief is not granted; and, have shown that the balance of convenience favours granting an injunction.

DISCOVERABILITY AND POSTPONEMENT FRAUDULENT CONCEALMENT

65. The Defendant actively, intentionally and fraudulently concealed the existence of their unlawful conduct from the public including the Plaintiff and the Class Members.

~~63-66.~~ The Defendant concealed their conduct such that tThe Plaintiff and Class Members could not have first known or discovered the wrongfulness of the Defendant's conduct until the time at which they obtained their hospital records and confirmed the presence of a birth alert on their file. ~~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 Manitoba.~~

~~64. — In addition, or in the alternative, the Plaintiff and Class Members could not have 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 sequelae.~~

~~65-67.~~ The Plaintiff and Class Members plead and rely on postponement under the Limitation of Actions Act, C.C.S.M. c. L150 and in particular sections 7, 14, and 20 ~~concealed fraud under *The Limitation of Actions Act*, C.C.S.M. c. L150 and in particular section 5.~~

STATUTORY PROVISIONS

~~66-68.~~ The Plaintiff and Class Members plead and rely on, *inter alia*:

- (a) *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
- (b) *Child and Family Services Act*, C.C.S.M. c. C80;
- (c) *Child and Family Services Authorities Act*, C.C.S.M. c. C90
- (d) *Class Proceedings Act*, C.C.S.M. c. C130;
- (e) *Court of ~~Queen~~ King's Bench Act*, C.C.S.M. c. C280;
- (f) *The Limitation of Actions Act*, C.C.S.M. c. L150;
- (g) *Privacy Act.*, C.C.S.M. c. P125;
- (h) *Proceedings Against the Crown Act*, C.C.S.M. c. P140.

Date of Issue: March 15, 2022

LOMBARD LAW



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