

COURT FILE  
NUMBER KBG-RG-00614-2023  
COURT OF KING'S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE REGINA  
PLAINTIFF(S) CHANTELLE CHEEKINEW  
DEFENDANT(S) THE GOVERNMENT OF SASKATCHEWAN

FILED IN THE OFFICE OF THE  
LOCAL REGISTRAR ON THE  
31 DAY OF July 20 24

  
Deputy Local Registrar  
Judicial Centre of Regina

Brought under ~~the~~ *The Class Actions Act*, SS 2001, c. C-12.01

#### NOTICE TO DEFENDANT

1. The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to The ~~Queen's~~King's Bench Rules unless, in accordance with paragraph 2, you:
  - (a) serve a Statement of Defence on the plaintiff; and
  - (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
  - (a) 20 days if you were served in Saskatchewan;
  - (b) 30 days if you were served elsewhere in Canada or in the United States of America;
  - (c) 40 days if you were served outside Canada and the United States of America.
3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.
4. This Statement of Claim is to be served within 6 months from the date on which it is issued.
5. This Statement of Claim is issued at the above-named judicial centre on the "3rd"  
day of "March", 2023.



"Z. Dela Cruz"  
DY. Local Registrar  
Local Registrar

## FIRST AMENDED STATEMENT OF CLAIM

### PART 1: THE PARTIES

#### The Plaintiff

1. The Plaintiff, Chantelle Cheekineew, is a First Nation woman and resident of Regina, Saskatchewan. The Plaintiff was subject to Birth ~~Alert(s)~~Alerts (defined below) in 2008, 2011 and 2019 prior to the birth of her children.
2. The Plaintiff brings this action on her own behalf and on behalf of a class of individuals defined to include:

All persons who were the subject of a birth alert issued or distributed by the Ministry of Social Services ("Ministry") and/or their agents in Saskatchewan between the date that the Ministry 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 subclass of :

~~a) all Indigenous, racialized, and/or disabled Class Members ; and/or~~

~~b) Class Members who claim they were discriminated against by the Ministry and/or their agents, in relation to a Birth Alert, because of their relationship with a person who is Indigenous, racialized, and/or disabled.~~

(the "Subclass" or "Subclass Members")

3. The precise number of Class Members and their identities are well-known to the Defendant.

#### The Defendant

4. The Defendant, The Government of Saskatchewan, by the Ministry of Social Services, is named in this proceeding pursuant to *The Proceedings Against the Crown Act*, SS 2019, c P-27.01.

## PART 2: PARTICULARS OF THE CLAIM

### Background

5. Provincial and territorial child protection authorities across Canada have, for decades, operated a system known as “birth alerts”~~—or~~, “hospital alerts” or “maternity alerts” (the “Birth Alerts Scheme”). Birth Alerts are notifications issued or distributed by the Defendant and/or its agents to a hospital or physician containing personal information about the subject pregnant person (a “Birth Alert” or “Birth Alerts”)~~—Birth Alerts often require~~), requiring the hospital to contact child protection authorities when a subject pregnant ~~person’s infant is delivered~~person attends for prenatal care or delivery.
6. 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, Birth Alerts commonly result in apprehension of the newborn at birth, causing irreparable harm to parents, children and their families.
7. 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.
8. 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.

9. 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.
10. By operating and participating in the Birth Alerts Scheme in Saskatchewan, 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 Birth Alerts Scheme**

11. In Saskatchewan, Birth Alerts are ~~normally~~ issued by agents of the Defendant, typically social workers, normally 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. Birth Alerts may also be issued after the Defendant receives a report regarding a pregnant person.
12. Birth Alerts are created when the subject is pregnant, and they are typically issued or disseminated to local hospitals and physicians. The function of the Birth Alert is not protection of an existing child or the pregnant person<sup>7.1</sup>, but to enable the Defendant to monitor the pregnant person in order to further monitor or apprehend the newborn as soon as possible. The Birth Alert 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 for the recipient [for example, 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)]. Every Birth Alert communicates, at minimum, the existence of an alleged child protection concern or investigation with regard to the subject.

12-13. 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.

13-14. 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 and/or distributed solely based on the discretion of the Defendant and/or its agents. Once issued, there is no review or reconsideration process, and as a practice the pregnant person is not advised that the Birth Alert is issued.

14-15. 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 been that a majority of Birth Alerts in Saskatchewan involve Indigenous or racialized persons, or persons living with a disability, at rates wholly disproportionate to their representation in the Canadian population at large.

15-16. Once a Birth Alert is issued and noted on the pregnant person's file in any form, 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 consent and without their knowledge.

~~16-17.~~ The pregnant person's medical records and personal health information are routinely disclosed to the Defendant under the auspices of the Birth Alert, without the pregnant person's authorization, consent and knowledge.

~~17-18.~~ 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.

~~18-19.~~ On some occasions, the hospital ward is locked or the patient is otherwise obstructed from leaving, 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. In some cases, the Birth Alert specifies that the infant is to be apprehended at birth, prior to any investigation taking place. In such cases, the Birth Alert may also specify that the parent(s) may not have contact with the infant following apprehension, not even for breast-feeding.

~~19-20.~~ Newborn children are taken into care or identified as being in need of protection at a disproportionate rate from persons subject to a Birth Alert, as compared to persons who give birth without being subject to a Birth Alert. 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 has resulted in discriminatory, damaging outcomes for children and families.

~~20-21.~~ Although the apprehended 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 parent(s), the child, their family, and community. In many cases, the child is only returned to the parent(s) or familial care after legal proceedings are brought by the parent(s).

[21.22.](#) 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.

[22.23.](#) 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.

[23.24.](#) A Birth Alert can continue to impact the medical care the subject person may receive well after it has been issued as healthcare providers may 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. [Every province has now issued such a policy.](#)

### **The Birth Alerts Scheme in Saskatchewan**

[25.26.](#) Saskatchewan operated a Birth Alerts Scheme until at least February 2021, when the Ministry of Social Services announced that Birth Alerts were discontinued in the province.

[26.27.](#) The Birth Alerts Scheme was not authorised by any provincial or federal law.

[27.28.](#) The Birth Alerts Scheme in Saskatchewan was principally established, [organized](#), [implemented](#), and operated under the aegis of the Ministry of Social Services, including the Minister and [the](#) Director (*Child and Family Services Act*) (“Director”)

and with the cooperation of the Ministry of Health, *mutatis mutandis*, as those Ministries were styled during the class period.

~~28-29.~~ The legal framework for child protection in Saskatchewan is the *Child and Family Services Act*, SS 1989-90, c C-7.2, primarily Part III (child protection). The Act only applies to a “child”, not a fetus. Neither the statute nor any regulation authorizes the issuance of Birth Alerts or the disclosure of private and personal information regarding expectant parents. Saskatchewan’s statute law is silent as to the existence of “birth alerts”. In particular, the *Child and Family Services Act* does not confer any power, duty or function in respect of the Birth Alerts Scheme on the Ministry of Social Services, the Director or any other organism.

~~29. The Birth Alerts Scheme was organized and implemented by the Ministry of Social Services.~~

~~30. At all material times, the Minister, the Director, and all other employees, officers, and agents of the Ministry of Social Services were aware that their jurisdiction, as conferred by the *Child and Family Services Act*, was strictly bounded by the paramount purpose of promoting the best interests, protection, and well-being of living children – not fetuses. The necessary corollary to this fact, as known to the Minister, the Director, and all other employees, officers, and agents of the Ministry of Social Services, is that they have no lawful jurisdiction or legal standing to exercise their powers in the interests of fetuses or as against pregnant persons in respect of their pregnancies.~~

~~31. Sources of this knowledge include, but are not limited to, the following:~~

~~(a) the plain text of the *Child and Family Services Act* and predecessor legislation, which do not include fetuses or pregnant persons in the ambit of Saskatchewan’s regulatory role or the Ministry’s child protection mandate; and~~



(b) judicial interpretation of the scope of child protection powers under the *Child and Family Services Act* and analogous extra-provincial legislation, including at the Supreme Court of Canada.

32. To the extent that any government policies, guidelines or directives purported to expand the Ministry of Social Service's statutory child protection powers to include control over fetuses or pregnant persons, such policies, guidelines or directives were unlawful and were not authorized by the *Child and Family Services Act*. 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.

~~30-33.~~ In addition to the intra-provincial scheme, Saskatchewan 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 Saskatchewan. Under the Provincial/Territorial Protocol, the Defendant distributed Birth Alerts issued in other jurisdictions. ~~It is well known to the Defendant whether it continues to apply the Provincial/Territorial Protocol for non-residents of the province.~~

~~31-34.~~ In January of 2021 the Ministry of Social Services released an update on the discontinuance of Birth Alerts in the province, and stated that, moving forward, the ministry will be working with community partners to find ways to better support expecting parents, including access to prenatal care, mental health and addictions supports and interventions, in addition to housing and income supports. It is well known to the Defendant whether it continued to apply the Provincial/Territorial Protocol for non-residents of the province after February of 2021.

~~32-35.~~ Since the Defendant began issuing Birth Alerts, and despite purportedly discontinuing the practice in February of 2021, the Defendant has taken no steps

to inform the Plaintiff or Class Members that they were the subject of a Birth Alert or multiple Birth Alerts.

### **The Plaintiff's Experiences**

~~33-36.~~ In 2009, the Plaintiff gave birth to her first child at the Regina General Hospital. The Plaintiff was the subject of a Birth Alert issued during her pregnancy and her child was apprehended by the Defendant's employees following the birth.

~~34-37.~~ In 2011, the Plaintiff gave birth to her second child at the Regina General Hospital. The Plaintiff was the subject of a Birth Alert issued during her pregnancy and her child was apprehended by the Defendant's servants following the birth.

~~35-38.~~ In 2019, the Plaintiff gave birth to her third child at the Regina General Hospital. The Plaintiff was the subject of a Birth Alert issued during her pregnancy.

### **Injury to the Plaintiff and Class Members**

~~36-39.~~ As a consequence of the Defendant's establishment and operation of the Birth Alerts Scheme in Saskatchewan, 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~~rights to liberty and security of the person;

(b) breach of their *Charter* right to substantive equality in relation to their sex;

~~(b)(c)~~ with regard to the Subclass Members, breach of their *Charter* right to substantive equality in relation to their Indigenous identity, race, and/or mental or physical disability;

~~(c)(d)~~ breach of privacy;

~~(d)(e)~~ pain and suffering;

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

~~(f)~~(g) 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)~~(h) in cases where the child was apprehended, loss of a parental relationship with a newborn child, including the love and support between a parent and newborn child;

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

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

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

37.40. At all material times, the Defendant knew, ~~or ought~~was subjectively reckless to ~~have known, the fact, or was willfully blind to the fact that the Birth Alerts Scheme~~was unlawful and that continuing its unlawful Birth Alerts Scheme ~~caused~~was likely to cause the Plaintiff and the Class Members' injuries and damages.

38.41. 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~~Plaintiff and the Class Members' fundamental rights.

39.42. 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 3: CAUSES OF ACTION

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

- (a) *The Class Actions Act*, SS 2001, c C-12.01;
- (b) *Charter of Rights and Freedoms*;
- (c) *The Privacy Act*, RSS 1978, c P-24;
- (d) *The Proceedings Against the Crown Act*, 2019, SS 2019, c P-27.01;
- (e) *Child and Family Services Act*, SS 1989-90, c C-7.2;
- (f) *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24;
- (g) *The Limitations Act*, SS 2004, c L-16.1;
- (h) *Pre-judgment Interest Act*, SS 1984-85, c P-22.2; and
- (i) The Queen's/King's Bench Rules.

#### **The Birth Alerts Scheme was Unlawful/Constituted Misfeasance in Public Office**

44. The Defendant and its employees and agents were, at all material times, exercising a public function in the establishment and operation of the Birth Alerts Scheme.

41.45. Pursuant to the *Child and Family Services Act*, the Defendant has authority to act to protect the safety, well-being and best interests of any person under the age of 18 in Saskatchewan. 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.

42.46. 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 over the Plaintiff or the Class Members in respect of their pregnancies.

~~43.47.~~ The Birth Alerts Scheme stands out as a clear and deliberate misuse of the Defendant's child protection powers. As the ~~individual~~individuals ultimately responsible for ensuring that the Defendant fulfills its mandate and does not overstep its jurisdiction or authority with regard to child protection services, the Minister ~~is~~and the Director were aware, ~~or ought reasonably to be aware~~were subjectively reckless to the fact, or were willfully blind to the fact, that the Birth Alerts Scheme ~~exceeds~~exceeded the scope of the Defendant's jurisdiction and authority and ~~is~~was therefore unlawful.

~~44.48.~~ ~~The~~ In the alternative, as the individuals ultimately responsible for ensuring that the Defendant ~~knew~~fulfills its mandate and does not overstep its jurisdiction or ~~should~~authority with regard to child protection services, the Minister and the Director ought reasonably to have knownbeen aware that the Birth Alerts Scheme exceeded the scope of the Defendant's jurisdiction and authority and was therefore unlawful ~~and violated the Charter.~~

49. The Defendant's establishment and operation of the Birth Alerts Scheme ~~constitute~~constituted intentional acts in excess of the Defendant's child protection powers— or acts undertaken with reckless indifference to the limits of the Defendant's child protection powers.

45-50. Further, at all material times, the Defendant was aware, was subjectively reckless to the fact, or was willfully blind to the fact, that the Birth Alerts Scheme was likely to cause the Class Members harm. it was subjectively and objectively foreseeable to the Defendant and its agents, including the Minister and the Director, 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.

46-51. The Defendant is liable for the acts and omissions of its employees and agents.

### **The Birth Alerts Scheme Breached the Class Members' Privacy**

[47-52.](#) The Class Members imparted highly sensitive personal information about their personal affairs, including personal health information, to the Defendant and its agents in their capacity as state actors, often 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.

[48-53.](#) The Class Members' personal information included confidential information about their private affairs and personal health that 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.

[49-54.](#) 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. 2 of *The Privacy Act*.

[55. In the alternative, the Defendant is liable to the Plaintiff and Class Members for the tort of intrusion upon seclusion. The Defendant, intentionally or recklessly, invaded the Plaintiff and Class Members' private affairs by disclosing their sensitive personal information, including health information, through the unlawful Birth Alerts](#)

Scheme. A reasonable person would regard the invasion as highly offensive causing distress, humiliation, and/or anguish.

50-56. As a result of the Defendant's breaches, the Plaintiff and Class Members are entitled to statutory damages, or alternatively damages in respect of the Defendant's intrusion upon the Plaintiff and Class Members' seclusion.

### **The Birth Alerts Scheme Breached the *Charter***

51-57. 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.ss. 7 and~~ 15 *Charter* rights.

52-58. Class Members have a ~~reasonable expectation of privacy in~~ right to make basic choices regarding the information disclosed in the Birth Alerts, circumstances of their pregnancy, labour and delivery, which go to the core of what it means to enjoy individual dignity and independence. The disclosure of ~~their the Class Members'~~ personal information by the Defendant under the Birth ~~Alert~~Alerts Scheme, and the resulting impact on their private choices, interfered with their personal autonomy, dignity and independence, and therefore constitutes a violation of their right to liberty under s. 7 of the *Charter*.

53-59. Further, 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 and emotional harm.

54-60. 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~~ undergo pregnancy, labour and delivery 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.

~~55-61.~~ The infringements to Class Members' rights to liberty and security of the person under s. 7 are not in accordance with the principles of fundamental justice because the Birth Alerts Scheme was not authorized by law.

62. 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 Class Members was not in accordance with the principles of fundamental justice because:

(a) any Birth Alert issued was arbitrary and had no connection with the Ministry of Social Service's legislative purpose; and

(b) the Birth Alerts Scheme was overbroad and grossly disproportionate because it permitted the use of Birth Alerts without any limitation, oversight, or restraint. Even if the Birth Alerts Scheme had served a legitimate purpose (which is denied), any such purpose could have been achieved through less intrusive and more tightly circumscribed means.

~~56-63.~~ Through the establishment and operation of the Birth Alerts Scheme, the Defendant also targeted and discriminated against all Class Members based on their sex regarding their status as pregnant persons, and against Subclass Members based on their Indigenous status, race and/or disability ~~and/or because of their relationship with a person who is Indigenous, racialized, and/or disabled. This is an infringement of Subclass Members'.~~ These are infringements of their s. 15 right to substantive equality. The Defendant's actions created and sustained conditions of inequity for all of the ~~Subclass~~Class Members.

64. 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.

65. The discriminatory distinctions created by the Birth Alerts Scheme disadvantaged the 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.

~~57.~~ Even while acting without statutory authority in issuing birth alerts, the Defendant and its agents exercised their discretion in accordance with discriminatory assumptions and views of the Subclass Members, which imposed a distinction based on race and/or 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.

~~58-66.~~ 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.

~~59-67.~~ The Defendant's 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 and was pursued without statutory authority 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.

~~60-68.~~ 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* violations are remedied as quickly as possible.

69. The Defendant does not enjoy 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 Defendant to be overly cautious about the importance of *Charter* rights to the detriment of the purposes of the *Child and Family Services Act*.

70. 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 Defendant knew that the Birth Alerts Scheme was contrary to the *Child and Family Services Act* and predecessor legislation, *ultra vires* the Ministry's jurisdiction, infringed the *Charter*, and was unnecessary to any legitimate child protection purpose.

71. In the alternative, the Defendant was 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 *Child and Family Services Act*.

### **Injunctive Relief**

61-72. The Plaintiffs and Class Members 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 of Birth Alerts because they are unconstitutional, unlawful, and deeply harmful. Further, the Plaintiffs and Class Members 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, Postponement, and Fraudulent Concealment**

[62-73.](#) The Plaintiff and Class Members did not discover, and could not discover through the exercise of reasonable diligence, that they were the subject of a Birth Alert until they could obtain and review their hospital records in order to confirm the presence of a Birth Alert on their file.

[63-74.](#) The Defendant actively, intentionally, and fraudulently concealed from the Plaintiff and Class Members the fact that they were the subject of a Birth Alert or multiple Birth Alerts. Because this fact was, and continues to be, concealed, the Plaintiff and Class Members could not become aware that they were the subject of a Birth Alert until they are able to obtain and review their hospital records in order to confirm the presence of a Birth Alert on their file.

[64-75.](#) 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 [sequellaesequalae](#).

[65-76.](#) The Plaintiff and Class Members plead and rely on postponement under *The Limitations Act*, SS 2004, c L-16.1 and in particular ss. 5, 6, 7, 8, and 17. In the alternative, or in addition, the Plaintiff and Class Members rely on *The Limitations Act*, s. 31.

#### PART 4: RELIEF SOUGHT

~~66-77.~~ The Plaintiff seeks, on her own behalf and on behalf of the proposed Class as described herein:

- (a) an order pursuant to *The Class Actions 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 issuing, accessing, using, and ~~dissemination~~disseminating Birth Alerts:
  - (i) acted without lawful authority;
  - (ii) committed misfeasance in public office;
  - ~~(ii)~~(iii) breached the ~~privacy~~confidence of Class Members;
  - (iv) breached s. 2 of *The Privacy Act* or committed the stort of intrusion upon seclusion; and
  - ~~(iii)~~ breached the ss. 7 and 15 *Charter* rights of Class Members and Subclass Members, and that the infringements are not saved by s. 1 of the *Charter*; ~~and~~
  - ~~(iv)~~(v) ~~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;
- (i) an interim, interlocutory and/or permanent injunction:
  - (i) prohibiting the Defendant from instructing, directing, issuing, accessing, 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
  - (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;
- (h) pre-judgment and post-judgment interest;
- (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.

**DATED AT** the City of Ottawa, in the Province of Ontario, this 23 day of February, 2023

\_\_\_\_\_  
"Alisa Lombard"

Solicitors for the Plaintiff

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This claim has been amended on the 30<sup>th</sup> day of July 2024.

  
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Solicitors for the Plaintiff