

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

KATHERINE GANDY and EMILY WALKER

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF DEFENCE AND CROSSCLAIM  
OF THE CAS AGENCIES TO THE AMENDED FRESH AS AMENDED  
STATEMENT OF CLAIM**

1. Except as hereinafter expressly admitted, the defendants set out in **Schedule A** (collectively the “CAS Agencies” or the “Agencies”) deny all of the allegations contained in the Amended Fresh as Amended Statement of Claim (the “Statement of Claim”) and put the Plaintiffs to the strict proof thereof.

2. The location and areas of operation, as well as dates on when each of the CAS Agencies began offering child protection services, are set out in **Schedule A**.

**Background and Governing Legislation**

3. The CAS Agencies are child welfare agencies in Ontario, operating pursuant to the provisions of the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 (the “CYFSA”) and its predecessor legislation including the *Child and Family Services Act*, R.S.O. 1990, c. C.11 and *The Child and Family Services Act, 1984*, S.O. 1984. c.55 (collectively, the “Child Welfare Legislation”).

4. The primary purpose of the Child Welfare Legislation is to promote the best interests, protection and well-being of children.

5. While the Child Welfare Legislation provides for additional purposes related to the family unit as a whole, these secondary purposes are only considered so long as they are consistent with the best interests, protection and well being of children.

6. In particular, the *CYFSA* contemplates that help given to families should support the autonomy and integrity of the family unit, however, where this is consistent with the best interests, protection and well being of children. Moreover, the *CYFSA* specifically contemplates that such services will not always be provided on consent.

7. The *CYFSA* provides that sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families, subject however to the best interests, protection and well being of children.

8. The Child Welfare Legislation permits and permitted the CAS Agencies to provide services where they were aware of a child who “may be in need of protection” at birth.

9. The CAS Agencies have no duties or obligations to parents or other family members of children under their jurisdiction. Any such obligations would interfere with the paramount and overarching purpose of the legislative scheme, which is the best interests, protection and well being of children.

### **Use of Birth Alerts**

10. From time to time, some or all of the CAS Agencies issued birth alerts. The use of birth alerts, as well as child protection standards more generally, evolved over time.

11. The practice of birth alerts existed at least as far back as 1977, when the then-Ministry of Community and Social Services issued a birth alert to all hospital administrators in Ontario following a coroner’s inquest into the death of an infant.

12. All CAS Agencies have stopped using birth alerts since, at the latest, October 15, 2020, as a result of Policy Directive CW 005-20 issued by Ontario’s Ministry of Children, Community and Social Services (the “Ministry”). The CAS Agencies expressly deny the allegations that pregnant women in Thunder Bay, Ontario continue to be the subject of birth alerts.

13. Individuals who were the subject of birth alerts (the “Birth Parents”), could become involved with CAS Agencies in various ways, including:

- (a) If The Birth Parent or their family was already involved with a CAS Agency.
- (b) A referral from a member of the community, including the police, schools, medical professionals or neighbours;
- (c) A referral from family members of the Birth Parents; and
- (d) A self-referral by a Birth Parent to a CAS Agency.

14. In other cases, the CAS Agency received information about the Birth Parent from various referral sources, including family members, friends, neighbours and other community members, school officials, police, or health professionals.

15. Birth alerts were not issued based on speculations, assumptions or without supporting evidence. The serious and substantiated underlying issues faced by the Birth Parent varied, and included the individual actively abusing substances while pregnant, being homeless or transient, being the victim of domestic violence while pregnant, having serious uncontrolled mental health conditions, or a prior history of serious injury or death to a child in their care. In some instances, the Birth Parent communicated to the referral source an intention to harm, kill, or abandon the child once born.

16. Once the CAS Agency became aware of an underlying issue which could create a child protection risk to the baby at birth, CAS workers would typically attempt to engage the Birth Parent to address the underlying issue. This could include offering counselling, housing, and resources such as services of health care professionals and other community supports to the Birth Parent. Such supports could mitigate or even eliminate the child protection risks to the baby once born.

17. The purpose of birth alerts was to inform CAS Agencies that the baby had been born to allow them to promptly assess any child protection concerns in furtherance of the Agencies' statutory obligations, functions and services. Accordingly, birth alerts played an important role in the protection of children.

18. The CAS Agencies expressly deny the allegation that birth alerts "often" resulted in apprehension of an infant. To the contrary, apprehension of infants where a birth alert had been issued was quite rare.

19. The CAS Agencies relied on the *Child Protection Standards* issued from time to time by the Ministry. They also relied on the Ontario Association of Children's Aid Societies' *Ontario Child Welfare Eligibility Spectrum* ("*Eligibility Spectrum*"). The *Child Protection Standards*, which referenced the *Eligibility Spectrum*, are referenced in the regulations under applicable child welfare legislation.

20. In 2016, the Defendant His Majesty The King In Right Of The Province of Ontario (then Her Majesty The Queen In Right Of The Province Of Ontario) (the “Crown”) entered into the *Provincial/Territorial Protocol on Children, Youth and Families Moving between Provinces and Territories* (“Protocol”), which explicitly provided for the issuance of child protection alerts by child welfare agencies in one province to be directed to agencies in other provinces for a high-risk pregnant person who had left or was suspected to have left the province. The CAS Agencies relied on this Protocol.

21. The practice of issuing birth alerts was also supported by the Pediatric Death Review Committee of the Office of the Coroner of Ontario (“PDRC”). The PDRC reviewed events and circumstances related to children’s death including infants. Matters addressed by the PDRC included matters where a CAS was involved with a family during the mother’s pregnancy and had closed its file prior to the birth of the child. The PDRC forwarded reports of its reviews to the Ministry and the CAS which engaged with the family prior to the baby’s birth (and after the baby’s birth) which reports set out the PDRC recommendations to prevent infant deaths in the future.

22. The practice and particulars of how such alerts were issued varied depending on several things, including but not limited to:

- (a) the CAS Agency in question and its particular practices and policies;
- (b) the geographical location of the particular CAS Agency and child protection risks existing in that location;
- (c) the timeframe (year) in which the alert was being issued;
- (d) the manner in which the CAS Agency became aware of the information forming the basis of the birth alert;
- (e) whether or not the CAS Agency was already involved with the family in question;
- (f) whether or not the CAS Agency received information about the Birth Parent from a third-party, and if so, the identity of the third-party provider;
- (g) the underlying issues giving rise to the birth alert;

- (h) whether the CAS Agency was able to establish contact with the Birth Parent;
- (i) the success of the steps taken by the CAS Agency to engage with the Birth Parent prior to issuing a birth alert;
- (j) the types of services offered to the Birth Parent prior to issuing a birth alert;
- (k) the level of engagement and discussion between the CAS Agency and the Birth Parent before the birth alert was issued;
- (l) how far into a pregnancy a birth alert was issued;
- (m) the type of information and degree of specificity included in the birth alert;
- (n) how widely a birth alert was disseminated and to whom it was sent; and
- (o) whether the birth alert was sent to other jurisdictions, other Agencies, or other provinces.

23. The CAS Agencies deny that Birth Parents were unaware of the birth alerts having been issued. To the contrary, in many instances the individual in question was advised that a birth alert would be issued prior to its issuance. In other instances, the individual learned prior to or shortly after the birth that a birth alert had been issued.

**Information not shared with expectation that information would not be disclosed to address child protection concerns**

24. The CAS Agencies deny that information in birth alerts was private or confidential.

25. To the extent that birth alerts were issued, based on, or included information which came directly from the Plaintiffs / Birth Parents, the CAS Agencies deny that the Birth Parents imparted information to the CAS agencies which was private or confidential, or imparted in circumstances in which an obligation of confidence arose. The CAS Agencies deny that the Plaintiffs / Birth Parents had any reasonable expectation of privacy that any such information would be protected or treated as confidential.

26. To the contrary, the Plaintiffs / Birth Parents were aware or ought to have been aware that information obtained by the CAS – either through communications with Plaintiffs / Birth Parents or otherwise – could not be held in any form of confidence given the overarching responsibilities of the CAS Agencies to the best interests of the child(ren).

27. To the extent that the information contained in the birth alerts came to the CAS Agencies from third-party referral sources, such information was not and could not have been confidential or private in any way. Such information was often based on the observations of the referral source.

28. The CAS Agencies therefore deny that the Plaintiffs / Birth Parents had any privacy right *vis a vis* the CAS Agencies.

29. In the alternative, to the extent that the Plaintiffs / Birth Parents had any such privacy rights, and to the extent that the CAS Agencies had any privacy obligations *vis a vis* the Plaintiffs / Birth Parents, the CAS Agencies state that such rights and obligations changed at various times throughout the last several decades. Whether such privacy rights and obligations existed and the extent of any such rights and obligations that existed therefore depends on the timeframe and circumstances in which the birth alert was issued. At all times, the CAS Agencies only disclosed such information as was reasonably necessary in the circumstances.

30. To the extent that there were any privacy rights or obligations in place at any material time, the CAS Agencies met such obligations and acted in accordance with such privacy rights, obligations, and standards in place at the material times.

### **The Representative Plaintiffs**

(a) **Katherine Gandy**

31. Katherine Gandy (“Katherine”) has been involved with both the Children’s Aid Society of Toronto and then the Native Child and Family Services of Toronto (“NCFST”). She now has three children.

32. Aside from NCFST, none of the other defendant CAS Agencies had any involvement with respect to the issuance of the birth alert for Katherine.

33. To the extent that Katherine herself or others provided information to the NCFST, it was not provided in confidence nor was it private.

34. With respect to her first two children, child protection agencies were involved as a result of concerns regarding Katherine's parenting ability, substance abuse, mental health and intimate partner violence. Following court proceedings, her first two children were made Crown wards by 2011. Following that time, NCFST continued to work with her regarding access to these two children.

35. In September 2016, NCFST received an unsolicited referral from Katherine's midwives, advising that Katherine was about 37 weeks pregnant and inquiring whether there was a birth alert issued for her. At the same time, Katherine was visibly pregnant to the community.

36. Given Katherine's significant history of child protection concerns, NCFST issued a birth alert for her.

37. NCFST also:

- (a) promptly reached out to Katherine and spoke with her about her pregnancy and the concerns;
- (b) spoke with the midwives;
- (c) met with the midwives, Katherine and Katherine's doula (support person) together;
- (d) visited Katherine in her home to conduct an in-person assessment;
- (e) with Katherine's written consent, reviewed information from Katherine's counsellors, legal representatives and support persons;
- (f) worked with Katherine to facilitate the home birth that she desired;
- (g) purchased a crib for Katherine's newborn; and
- (h) provided advice regarding safe sleeping arrangements for the newborn.



38. The NCFST advised Katherine that a birth alert had been issued and that following the birth, it would assess whether there were any child protection concerns.

39. Katherine hoped to have a home birth. Following careful consideration of the potential risks, and in order to respect Katherine's wishes for a home birth, the NCFST amended the original birth alert to delete the request for meconium and urine screening of the newborn (to eliminate the need for the baby to be transported to hospital following the birth for testing). The NCFST also confirmed that the baby could be released with Katherine following the birth.

40. Accordingly, Katherine was aware of the fact that a birth alert had been issued by, at the latest, October 12, 2016.

41. Katherine continued to receive pre-natal support and medical care during this time. The issuance of the birth alert did not impact any pre-natal, labour and delivery, or post-natal care received by Katherine.

42. Katherine ultimately gave birth at a local hospital in October, 2016. At the request of the midwives, the hospital called the child protection Emergency After Hours Services in Toronto to report that the birth had occurred. The NCFST promptly confirmed to the hospital that Katherine and her baby could be discharged and that it would follow up with Katherine when she returned home.

43. Following the birth of the child, NCFST worked with Katherine to ensure that she had adequate supports and that the previously identified risks were no longer an issue. The final home visit was December 8, 2016 and NCFST then closed its file with respect to this third child.

44. Katherine continues to engage with NCFST.

45. These Defendants deny that Katherine dropped out of the Technical Institute as a result of the birth alert as alleged in paragraph 64 of the Statement of Claim or as a result of any acts or omissions of the NCFST and plead that Katherine dropped out of school for unrelated reasons.

**b) Emily Walker**

46. Aside from Linck Child, Youth and Family Supports (formerly known as the Chatham-Kent Children's Services), none of the other defendant CAS Agencies had any involvement with Emily or the birth alerts pertaining to Emily.

47. To the extent that Emily herself or others provided information to the Linck, it was not provided in confidence nor was it private.

48. The initial referral for Emily was from her mother who called Linck in November, 2018 to advise that Emily was pregnant and due in February, 2019. Emily's mother's concerns were that the father of the coming baby (the "father") was using crystal meth, there had been several incidents of domestic violence, and the condition of Emily's home was not safe.

49. The Chatham Kent Police also independently contacted Linck to report that there had been domestic violence and that the father had been arrested. The police noted that Emily appeared about 6 months pregnant, the home was unsanitary, and that the father was a meth user.

50. In December, 2018, Emily advised Linck that she had previously used illicit drugs, including crystal meth and opioids, but had stopped when she found out she was pregnant in June, 2018. She admitted that there was domestic violence from the father and that he had tried to kill himself multiple times when she tried to break off their relationship.

51. By late December, 2018, Emily was agreeable to receiving support from Ongoing Services of Linck to help her through the pregnancy. Emily authorized Linck to receive her personal information from a number of sources, including her health care practitioners, in order to support her through her pregnancy. Emily continued to receive pre-natal and medical care during this time.

52. Given the risks identified by Emily herself, Emily's mother and the Chatham-Kent police, Linck issued a birth alert on January 22, 2019. The Birth Alert said that Linck would like to meet with Emily prior to the baby being discharged to confirm Emily's plans and to ensure all necessary supports were in place and requested that the hospital contact Linck in advance of discharge.

53. Emily was aware of the birth alert being issued and that the hospital would call Linck following the birth, by, at the latest, January 31, 2019.

54. Following the birth of the baby on January 31, 2019, Linck assessed the situation and Emily and the baby were discharged home.

55. Linck had continued involvement with Emily and the first child as a result of ongoing domestic violence concerns from the father. By June 2019, the first child was brought into the temporary care of Linck as a result of the risks to the child from the domestic violence, with supervised access for Emily.

56. In or around April, 2020, Emily's mother contacted Linck, unsolicited, to advise that Emily was pregnant and that she (the mother) had concerns with respect to ongoing domestic violence issues with the father. In late June, 2020, Chatham-Kent Police contacted Linck, also unsolicited, to advise that they had attended at Emily's home in response to a domestic violence incident and that Emily appeared to be about 8 months pregnant.

57. As a result of the clear need to take immediate steps after birth to ensure the protection of the child given the continuing domestic violence, Linck issued a birth alert in or about July, 2020, asking the hospital to advise Linck when Emily presented in labour.

58. The day after the child was born, Linck obtained a Warrant to immediately bring this child to a place of safety.

59. Emily was aware that a birth alert had been issued for the second child by, at the latest, July 13, 2020.

60. The issuance of the birth alerts did not impact any pre-natal, labour and delivery, or post-natal care received by Emily with respect to either child.

61. Linck has had continued involvement with both children and Emily as a result of ongoing child protection concerns, particularly regarding domestic violence.

### **No Intrusion Upon Seclusion**

62. The CAS Agencies were not intruders with respect to information they received pertaining to the Plaintiffs / Birth Parents.

63. Information provided to the CAS prior to the birth of a child was provided by:

- (a) the Plaintiffs / the Birth Parents;
- (b) with the consent of the Plaintiffs / Birth Parents; or
- (c) by third parties who chose to voluntarily share this information with the CAS Agencies.

64. In issuing birth alerts based on such information, the actions of the CAS Agencies would not be viewed by a reasonable person as highly offensive.

65. The CAS Agencies plead that they sought information for the purpose of addressing child protection risks which would be present at birth.

### **No Breach of Confidence**

66. Information provided by the Plaintiffs / the Birth Parents to the CAS Agencies was not provided in confidence nor was it confidential.

67. Information conveyed by the Plaintiffs / the Birth Parents to the CAS Agencies was not misused by the CAS Agencies. It was used for the purpose of addressing child protection risks which would be present at birth.

### **No Misfeasance in Public Office**

68. The CAS Agencies and their staff were not public officers.

69. In issuing birth alerts, the CAS Agencies acted in good faith and pursuant to their mandate to address child protection risks which could be present at birth.

70. The issuance of birth alerts was permitted by law. In the alternative, the CAS Agencies believed that issuing a birth alert was permitted by law.

### **No Conspiracy**

71. There was no agreement between the CAS Agencies themselves nor between any CAS Agencies and the Ontario Association of Children's Aid Societies, regarding steps they took to address child protection concerns, including the issuance of birth alerts.

72. Each of the CAS Agencies acted in accordance with its own particular procedures and practices in issuing birth alerts.

73. In issuing birth alerts, the CAS Agencies did not intend to injure the Plaintiffs / Birth Parents and birth alerts were issued for the purpose of addressing child protection risks which would be present at the birth of the child.

### **No Breach of Privacy**

74. Breach of Privacy is not a recognized cause of action in common law. In the alternative, the CAS Agencies did not breach any alleged privacy by issuing birth alerts.

### **No Breaches of the *Charter of Rights and Freedoms***

75. The CAS Agencies deny that their actions in issuing birth alerts were governed by the *Charter*.

76. In the alternative, the CAS Agencies deny that any act or omission on their part or any person for whom they are in law responsible violated the rights to life, liberty, and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") of the Plaintiffs / Birth Parents. In the alternative, any such violation accords with the principles of fundamental justice. In the further alternative, the CAS Agencies plead that any such violation amounts to a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society such that it is justified under section 1 of the *Charter*.

77. The CAS Agencies deny that birth alerts were discriminatory.

78. The CAS Agencies also deny that any of their acts or omissions or of any person for whom they are in law responsible, violated the Plaintiffs' / Birth Parents' rights under s. 15 of the *Charter*. In the alternative, the CAS Agencies plead that any violation amounts to reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society such that it is justified under s.1 of the *Charter*.

79. With respect to the claim for damages under s.24 of the *Charter*, the Plaintiffs / Birth Parents are not entitled to *Charter* damages. A *Charter* damage award would not fulfill the objects of compensation, vindication of rights nor deterrence of future *Charter* breaches, particularly given that the practice of using birth alerts ceased as of October, 2020. In the alternative, any functional considerations in favour of awarding *Charter* damages are negated by countervailing factors, including that this would interfere with the decision making of CAS Agencies in responding to child protection concerns under the *CFYSA*.

#### **This action is statute-barred**

80. Any claims are statute-barred by operation of section 5 of the *Limitations Act, 2002*, S.O. 2002 c.24 Sched. B, as amended and section 45 of the *Limitations Act*, R.S.O. 1990, c. L.15. The Plaintiffs / Birth Parents knew, or ought to have known, that a birth alert had been issued prior to or shortly after the birth of their child.

81. Further, section 15 of the *Limitations Act, 2002* setting out the ultimate limitation period of 15 years also bars the claims by many, all or some of the Birth Parents.

#### **No Damages**

82. The CAS Agencies deny that the Plaintiffs / Birth Parents have suffered any injuries or damages as alleged, and plead that the damages claimed are unreasonable, excessive, and too remote. The CAS Agencies put the Plaintiffs / Birth Parents to the strict proof of all injuries and damages alleged.

83. The CAS Agencies plead that if the Plaintiffs / Birth Parents have suffered the damages and injuries alleged (which is not admitted but expressly denied), such injuries and damages were

not caused or contributed by any act or omission on the part of the CAS Agencies. Rather, such alleged injuries and damages were caused by:

- (a) Child protection risks arising before and after birth;
- (b) Reports by third parties before and after birth regarding child protection concerns;
- (c) Court decisions after birth addressing child protection concerns;
- (d) Medical conditions or circumstances (medical and otherwise) that pre-existed or arose subsequent to and was wholly unrelated to CAS Agencies' involvement with the Plaintiffs;
- (e) The natural progression of conditions of the Plaintiffs / Birth Parents;
- (f) The Plaintiffs' / Birth Parents' failures to follow the advice and recommendations of their health care providers, other support providers and/or the CAS Agencies;
- (g) The failure of the Plaintiffs / Birth Parents to seek appropriate medical attention on a timely basis or at all; and
- (h) Such other grounds as will be advised in advance of trial.

84. The injuries and damages alleged (which are not admitted but expressly denied) were contributed to or caused by circumstances, injuries, illnesses or situations for which the Agencies had neither responsibility nor involvement.

85. Should any damages be awarded against the CAS Agencies, they plead their entitlement to any sums of money which would otherwise constitute double recovery.

86. The CAS Agencies deny that the Family Class members are entitled to claim damages under the *Family Law Act*, RSO 1990, c F.3, and further deny that they have suffered any damages within the meaning of the *Family Law Act*.

87. The CAS Agencies deny that the Plaintiffs / Birth Parents are entitled to aggravated, punitive, or exemplary damages and state that there is no basis in fact or in law for an award of such damages in this case.

88. The Plaintiffs / Birth Parents have a duty to mitigate their damages, and they have failed to do so.

89. The Plaintiffs / Birth Parents ought not be entitled to prejudgment interest.

90. The CAS Agencies plead and rely on the provisions of the following legislation and any predecessor legislation, as amended from time to time:

- (a) *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (b) *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1;
- (c) *Child and Family Services Act*, R.S.O. 1990, c. C.11 and its regulations;
- (d) *The Child and Family Services Act, 1984*, S.O. 1984. c.55 and its regulations;
- (e) *Family Law Act*, R.S.O. 1990, c.F31;
- (f) *Corporations Act*, R.S.O., 1990, c.C.38
- (g) *Limitations Act, 2002*, S.O. 2002 c.24, Sched. B and *Limitations Act*, R.S.O. 1990, c. L.15, as well as any applicable statutes of limitations in effect for Birth Parents in other provinces or territories of Canada;
- (h) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) *General Matters under authority of the Minister, O.Reg 156/18* made under the *Child, Youth and Family Services Act, 2017*.

91. The CAS Agencies therefore request that this action be dismissed with costs.



## CROSSCLAIM

92. The Defendant CAS Agencies (identified in **Schedule A**) claim against the Defendant His Majesty The King in Right of the Province of Ontario (the “Crown”):
- (a) Contribution, indemnity and other relief over for any amounts which the CAS Agencies may be found liable to the Plaintiffs herein;
  - (b) Costs of defending this action on a substantial indemnity basis; and
  - (c) Such further and other relief as this Honourable Court may deem just.
93. The CAS Agencies plead and rely upon the statements made in its Statement of Defence herein.
94. For the purposes of this crossclaim only, the CAS Agencies plead and rely upon the allegations made against the Crown in the Statement of Claim.
95. The CAS Agencies requests that this crossclaim be tried together with the main action.

July 21, 2023

**STIEBER BERLACH LLP**  
3200 – 130 Adelaide Street West  
Toronto, Ontario  
M5H 3P5

**Elizabeth Bowker (47069K)**  
*ebowker@sblegal.ca*  
**Jacinte Boudreau (29779L)**  
*jboudreau@sblegal.ca*  
**Jessica DiFederico (58252T)**  
*jdifederico@sblegal.ca*

Tel.: (416) 366-1400

Lawyers for the Defendants,  
Children’s Aid Societies

**TO: WADDELL PHILLIPS PROFESSIONAL CORPORATION**

36 Toronto Street  
Suite 1120  
Toronto, Ontario  
M5C 2C5

**Margaret L. Waddell (29860U)**

*marg@waddellphillips.ca*

**Tina Q. Yang (60010N)**

*tina@waddellphillips.ca*

**Adam Babiak (77899C)**

*adam@waddellphillips.ca*

Tel.: (647) 261-4486

Lawyers for the Plaintiffs

**AND TO: MINISTRY OF THE ATTORNEY GENERAL**

Crown Law Office – Civil  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, Ontario  
M7A 2S9

**Victoria Yankou (43399K)**

*victoria.yankou@ontario.ca*

Tel.: (437) 993-1616

**Nansy Ghobrial (68740N)**

*nansy.ghobrial@ontario.ca*

Tel.: (416) 884-1988

Lawyers for the Defendant,  
His Majesty the King in Right of Ontario

**Schedule A – CAS Agencies**

1. Akwesasne Child and Family Services provides child protection services to the Mohawk community in the territorial jurisdiction of Tsisnaicna and Kanatakon in Quebec and Kawehnoke in Ontario. It received its mandate to operate in or around 2011.
2. The Children’s Aid Society of Algoma provides child protection services in Algoma District, Ontario. It received its mandate to operate in or around 1902.
3. Anishinaabe Abinoojii Family Services provides child protection services to the following communities and its members on and off reserve in the Kenora and Rainy River Districts: Wauzhushk Onigum Nation, Asubpeeschoseewagong Netum Anishinabek First Nation, Obashkaandagaang First Nation, Naotkamegwanning First Nation, Migisi Sahgaigan First Nation, Niisaachewan Anishinaabe Nation, Shoal Lake #40 First Nation, Wabauskang First Nation, Wabigoon Lake Ojibway Nation, Northwest Angle #33 First Nation, Animakee Wa Zhing First Nation, and Iskatewizaagegan #39 Independent First Nation. It received its mandate to operate in or around 2006.
4. Bruce Grey Child and Family Services (“BGCFS”) provides child protection services within the County of Bruce and the County of Grey in Ontario. BGCFS came into existence on or about April 1, 2012 through the merger of the Children’s Aid Society of Owen Sound and the County of Grey and the Children’s Aid Society of the County of Bruce. These entities received their mandate to operate in or around 1894 and 1933 respectively.
5. Dilico Anishinabek Family Care (“Dilico”) provides child protection services in the City and District of Thunder Bay, Ontario, in addition to lands for First Nations affiliated with Dilico. The following First Nations are included within Dilico’s jurisdiction: Animbigoo Zaagi’igan Anishinaabek, Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay), Bingwi Neyaashi Anishinaabek (Sandpoint), Fort William, Ginoogaming, Kiashke Zaaging Anishinaabek (Gull Bay), Long Lake #58, Michipicoten, Pawgwasheeng (Pays Plat), Pic Mobert, Biigtigong Nishnaabeg (Pic River), Red Rock (Lake Helen), and Whitesand. It received its mandate to operate in or around 1995.
6. Child and Family Services of Grand Erie provides child protection services to communities in the City of Brantford, Counties of Brant, Haldimand and Norfolk, and Mississaugas of The Credit First Nation in Ontario. The Society formed through two separate mergers: a merger of Haldimand Children’s Aid Society and Norfolk Children’s Aid Society in or around the late 1990s/early 2000s; and a merger of Brant Family and Children’s Services and the Children’s Aid Society of Haldimand and Norfolk in or around April 2022. Brant Family and Children’s Services received its mandate to operate in or around 1894. The Children’s Aid Society of Haldimand and Norfolk received its mandate to operate in or around the early 1900s.

7. Linck Child, Youth & Family Supports (“Linck”) (previously known as Chatham-Kent Children’s Services) provides child protection services within the Municipality of Chatham-Kent and immediately beyond. It also provides services to the Delaware Nation located near Bothwell, Ontario, Walpole Island Nation in Lambton, Ontario, and the Caldwell Nation in Leamington, Ontario. Linck formed through the amalgamation of three agencies. On or about March 6, 1998, the Children’s Aid Society of the County of Kent, the Lester B Pearson Centre for Youth, and the Heritage Children’s Center amalgamated to form Chatham-Kent Integrated Children’s Services. On or about July 7, 2005 Chatham-Kent Integrated Children’s Services became Chatham-Kent Children’s Services. On or about April 5, 2022, the agency became Linck Child, Youth and Family Supports. It received its mandate to operate in or around 1990.
8. Dnaagdawenmag Binnoojiiyag Child & Family Services (“DBCFS”) provides child protection services in the Simcoe Muskoka, Haliburton, York Region, Durham, Kawartha and Highland Shores areas in Ontario. DBCFS serves nine member First Nations: Beausoleil First Nation, Georgina Island, Hiawatha First Nation, Alderville First Nation, Chippewas of Rama First Nation, Scugog Island, Moose Deer Point, Wahta Mohawks, and Tungasuvvingt among others. It received its mandate to operate on or about February 28, 2019.
9. Dufferin Child & Family Services provides child protection services in Dufferin County, Ontario. It received its mandate to operate in or around 1932.
10. Durham Children’s Aid Society provides child protection services in Ajax, Bowmanville, Brock, Clarington, Oshawa, Pickering, Port Perry, Scugog, Uxbridge, and Whitby, Ontario. It received its mandate to operate in or around 1905.
11. Family and Children’s Society of Frontenac Lennox & Addington (“FACSFLA”) provides child protection services in the Counties of Frontenac and Lennox and Addington in Ontario. FACSFLA formed through the amalgamation of the Children’s Aid Society of the City of Kingston and County of Frontenac and Lennox and Addington Family and Children’s Services in or around 2012. It received its mandate to operate in or around the late 1890s.
12. Family & Children’s Services of Guelph and Wellington County provides child protection services in the City of Guelph and Wellington County in Ontario. It received its mandate to operate in or around 1905.
13. Halton Children’s Aid Society provides child protection services in the Halton Region, Ontario. It received its mandate to operate in or around 1935.
14. The Children’s Aid Society of Hamilton provides child protection services in the City of Hamilton, Ontario. It received its mandate to operate in or around 1894.
15. Catholic Children’s Aid Society of Hamilton provides child protection services in the City of Hamilton, Ontario. It received its mandate to operate in or around 1953.

16. Highland Shores Children's Aid Society provides child protection services in Hastings County, Northumberland County, and Prince Edward County in Ontario. The Society formed through two amalgamations. The first amalgamation occurred on or about April 1, 2012, when Northumberland Children's Aid Society and Hastings Children's Aid Society merged to form Highland Shores Children's Aid Society. On or about April 1, 2013, the Children's Aid Society of the County of Prince Edward and Highland Shores Children's Aid Society amalgamated. Highland Shores Children's Aid Society received its mandate to operate in or around 2013. The Children's Aid Society of the County of Prince Edward received its mandate to operate in or around 1933.
17. Huron Perth Children's Aid Society provides child protection services in Huron County and Perth County. This Society is an amalgamation of the Children's Aid Society of Huron County and the Children's Aid Society of the County of Perth which occurred on or about April 1, 2003. It received its mandate to operate in or around 1911.
18. Jewish Family and Child Service of Greater Toronto provides child protection services to members of the Jewish and others in the Greater Toronto Area and York region in Ontario. It received its mandate to operate in or around 1980.
19. Kawartha Haliburton Children's Aid Society provides child protection services in the City of Peterborough, County of Peterborough, City of Kawartha Lakes, and Haliburton County in Ontario. It received its mandate to operate in or around 1966.
20. Kenora-Rainy River Districts Child & Family Services ("KRRCFS") provides child protection services in the Districts of Kenora and Rainy River in Ontario. KRRCFS is an amalgamation of Kenora Patricia Child and Family Services and Family & Children's Services of the District of Rainer River which occurred in 2011. It received its mandate to operate in or around 2011.
21. Kina Gbezhgomi Child & Family provides child protection services in the Island of Manitoulin and the Greater City of Sudbury in Ontario. It serves the following First Nations groups: Whitefish River First Nation, Aundeck Omni Kaning First Nation, Sheguiandah First Nation, M'Chigeeng First Nation, Sheshegwaning First Nation, Zhiibaahaasing First Nation, and Wikwemikong Unceded Indian Reserve. It received its mandate to operate on or about April 1, 2015.
22. Kunuwanimano Child & Family Services provides child protection services in Northeastern Ontario that ranges from Hornepayne to Matachewan First Nation and includes eleven Aboriginal First Nations communities: Beaverhouse First Nation, Brunswick House First Nation, Chapleau Cree First Nation, Chapleau Ojibwe First Nation, Constance Lake First Nation, Hornepayne First Nation, Matachewan First Nation, Mattagami First Nation, Missanabie Cree First Nation, Wahgoshig First Nation, and Taykwa Tagamou Nation. It received its mandate to operate on or about May 1, 2015.

23. Family & Children's Services of Lanark, Leeds & Grenville provides child protection services in the counties of Lanark, Leeds and Grenville in Ontario. It is an amalgamation of Legacy Lanark and Legacy Leeds Grenville which occurred in or around 1933. It received its mandate to operate in or around 1934.
24. The Children's Aid Society of London & Middlesex provides child protection services in the City of London and Middlesex County in Ontario. It received its mandate to operate in or around 1894.
25. Family & Children's Services Niagara provides child protection services in the Niagara Region in Ontario. It received its mandate to operate in or around 1898.
26. The Children's Aid Society of the District of Nipissing and Parry Sound provides child protection services in the Districts of Nipissing and Parry Sound in Ontario. It is an amalgamation of the Children's Aid Society of Parry Sound and the Children's Aid Society of Nipissing, which occurred on or about March 25, 1998. These entities received their mandates to operate in or around 1939 and 1941 respectively.
27. Nogdawindamin Family & Community services provides child protection services to the following First Nations communities: Thessalon First Nation, Serpent River First Nation, Sagamok Anishnawbek, Mississauga First Nation, Garden River First Nation, Batchewana First Nation, and Atikameksheng Anishnawbek. It received its mandate to operate on or about April 1, 2017.
28. North Eastern Ontario Family and Children's Services ("NEOFACS") provides child protection services in the Districts of Cochrane and Timiskaming in Ontario. It is the product of two amalgamations. On or about April 1, 2012, NEOFACS was formed through the amalgamation of Child and Family Services of Timmins and District, Timiskaming Child and Family Services and Jeanne Sauvé Family Services. These legacy agencies came into effect in or around 2000 through the amalgamations of Children's Aid Societies and Children's Mental Health Agencies in Cochrane and Timiskaming. Prior to this, the legacy agencies were known as Porcupine District Children's Aid Society, Timiskaming Children's Aid Society and North Cochrane Children's Aid Society.
29. Ogwadeni:deo is a child welfare agency ensuring the protection of Ogweho:weh children on the Six Nations Territory, in the City of Brantford and Brant County, while incorporating Haudenosaunee culture when working with families. It received its mandate to operate in 2017.
30. The Children's Aid Society of Oxford County provides child protection services in Oxford County, Ontario. It received its mandate to operate in or around 1865.
31. Payukotayno James & Hudson Bay Family Services provides child protection services in Peawanuck, Attawapiskat, Kashechewan, Fort Albany, Moosonee, and Moose Factory in Ontario. It provides child protection services to six First Nations communities: Attawapiskat First Nation, Fort Albany First Nation, Kashechewan First Nation, Moose Factory, Moosonee, and Peawanuck. It received its mandate to operate in or around 1984.

32. Peel Children's Aid Society provides child protection services in the Peel Region, including the Cities of Brampton, Mississauga, and the Town of Caledon in Ontario. It received its mandate to operate in or around 1912.
33. Family & Children's Services of Renfrew County provides child protection services in Renfrew County, Ontario. It received its mandate to operate in or around 1912.
34. Sarnia-Lambton Children's Aid Society provides child protection services in the City of Sarnia and the County of Lambton. Additionally, it provides child protection services to Walpole Island First Nation, Kettle and Stony Point First Nation and Aamjiwnaang First Nation. It received its mandate to operate in or around 1933.
35. Simcoe Muskoka Family Connexions provides child protection services in Simcoe County and the District of Muskoka in Ontario. It is an amalgamation of the Simcoe Children's Aid Society and Family, Youth and Child Services of Muskoka which occurred on or about April 1, 2015. It received its mandate to operate in or around 1935.
36. Family & Children's Services of St. Thomas and Elgin County provides child protection services in St. Thomas and Elgin County in Ontario. It received its mandate to operate in or around 1894.
37. The Children's Aid Society of Stormont, Dundas, & Glengarry provides child protection services in the Counties of Stormont, Dundas and Glengarry in Ontario. It received its mandate to operate in or around 1906.
38. The Children's Aid Society of The Districts of Sudbury and Manitoulin provides child protection services in the districts of Sudbury and Manitoulin in Ontario. It received its mandate to operate in or around 1907.
39. The Children's Aid Society of the District of Thunder Bay provides child protection services in the City and District of Thunder Bay, Ontario. It received its mandate to operate in or around 1908.
40. Tikinagan Child & Family Services ("Tikinagan") provides child protection services within an area which stretches from Ogoki in the east to the Manitoba border in the west, and from Savant Lake in the south to Fort Severn in the north in Ontario. Within this area, Tikinagan provides services to thirty First Nations, as well as Pickle Lake, Savant Lake and Allanwater. In addition to the Ministry designated jurisdiction, Tikinagan also has agreements with Kenora-Rainy River Districts Child and Family Services to provide child protection services to the families from communities who reside in Atikokan, Dryden, Ear Falls, Fort Frances, Ignace, Kenora, Rainy River, Red Lake and Sioux Lookout. It received its mandate to operate in or around January, 2020.
41. The Children's Aid Society of Toronto provides child protection services in the City of Toronto, Ontario. It received its mandate to operate in or around 1875.

42. The Catholic Children's Aid Society of Toronto provides child protection services to Catholic children, young people and families in Toronto, Ontario. It received its mandate to operate in or around 1894.
43. Native Child and Family Services of Toronto serves self-identified Status, Non-Status, Inuit and Metis people in the Greater Toronto Area, including individuals and families from over sixty-two diverse First Nations in Ontario and across the country. It received its mandate to operate in or around 2004.
44. Valoris for Children & Adults Prescott Russell provides child protection services in the United Counties of Prescott-Russell in Ontario. On or about January 1, 2001, this agency became the host of five organizations: Prescott-Russell Community Services/ Services Communautaires de Prescott-Russell, Prescott-Russell Family Services Centre / Centre des services familiaux de Prescott-Russell, Groupe Action pour l'enfant, la famille et la communauté de Prescott-Russell, Prescott-Russell Association for Community Living / Association pour l'intégration communautaire de Prescott-Russell, and Prescott-Russell Children's Aid Society/ Société de l'aide à l'enfance de Prescott-Russell. It received its mandate to operate in or around 1935.
45. The Children's Aid Society of the Regional Municipality of Waterloo provides child protection services in the Regional Municipality of Waterloo, which includes the cities of Cambridge, Kitchener, Waterloo and surrounding areas. It received its mandate to operate in or around 1967.
46. Weechi-It-Te-Win Family Services provides child protection services to members of ten First Nations residing in the Kenora/Rainy River District in Northwestern Ontario: Anishinaabeg of Naongashiing, Big Grassy River Community, Onigaming, Rainy River First Nation, Naicatchewenin First Nation, Mitaanjigamiing First Nation, Couchiching First Nation, Nigigoonsiminigaaning, Seine River, and Aa-kwii-no-win. It received its mandate to operate in or around 1987.
47. Windsor Essex Children's Aid Society provides child protection services in Windsor and Essex County, Ontario. It is an amalgamation of Essex County Children's Aid Society and Catholic Children's Aid Society of Windsor-Essex which occurred in or around 1998. It received its mandate to operate in or around 1899.
48. York Region Children's Aid Society provides child protection services in the Regional Municipality of York, Ontario. It received its mandate to operate in or around 1933.
49. The Children's Aid Society of Ottawa provides child protection services in the City of Ottawa, Ontario. It received its mandate to operate in or around 1893.



KATHERINE GANDY et al  
Plaintiffs

HIS MAJESTY THE KING IN  
and RIGHT OF THE PROVINCE OF  
ONTARIO et al  
Defendants

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

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF DEFENCE AND  
CROSSCLAIM OF THE CAS AGENCIES**

**STIEBER BERLACH LLP**  
3200 – 130 Adelaide Street West  
Toronto Ontario  
M5H 3P5

**Elizabeth Bowker (47069K)**

*ebowker@sblegal.ca*

**Jacinthe Boudreau (29779L)**

*jboudreau@sblegal.ca*

**Jessica DiFederico (58252T)**

*jdifederico@sblegal.ca*

Tel.: (416) 366-1400

Lawyers for the Defendants,  
Children's Aid Societies