

S-173843

No. ....

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

SINGLE MOTHERS' ALLIANCE OF BC SOCIETY, NICOLINA BELL (also known as Nicole Bell), and A.B.

Plaintiffs

And

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and LEGAL SERVICES SOCIETY

Defendants

PUBLICATION BAN ORDER

BEFORE	)		)	
	)	THE HONOURABLE	)	
	)		)	April 26, 2017
	)		)	
	)		)	

*NADAM JUSTICE WARDEN*

ON THE APPLICATION of the Plaintiffs, A.B. and Nicolina Bell, without notice coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on April 26, 2017 and on hearing Michael Seaborn, lawyer for the Plaintiffs, A.B. and Nicolina Bell.

THIS COURT ORDERS that:

1. There is a prohibition on the publication of any information which would tend to identify the Plaintiff, A.B.; her ex-husband, C.D.; their children C.C. and D.D.; and the Plaintiff, A.B.s, current partner, X.Y.

2. There is a prohibition on the publication of any information which would tend to identify the children of the Plaintiff, Nicolina Bell, A.A. and B.B.

APPROVED AS TO FORM:

M. Seaborn  
Signature of  party  lawyer for Plaintiffs  
Michael Seaborn

By the Court

James Lee Warner Jr  
Registrar



APR 26 2017

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NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

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

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

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

**Time for response to civil claim**

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

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFFS**

**Part 1: STATEMENT OF FACTS**

Overview:

1. Women who are not in spousal relationships with the male parents of their children, or women who are separated from their ex-spouses in heterosexual relationships, are more likely than their co-parents or ex-spouses to:
  - a. have low or unstable income or live in poverty following relationship breakdown;
  - b. have primary economic and parental responsibilities for children following relationship breakdown; and
  - c. experience family violence or abuse and have their personal security, or the security of a child, at stake in a legal proceeding.

2. Women with these characteristics, including the plaintiffs Bell, A.B. and members of the Single Mothers' Alliance of BC Society (the "S.M.A."), require access to the province's superior or provincial courts to resolve legal issues that affect their vital interests and the vital interests of their children.
3. This Notice of Civil Claim uses the phrase "Family Law Proceedings" to refer to proceedings under the Family Law Act, S.B.C. 2011, c. 25 or the Family Relations Act, R.S.B.C. 1996, c. 128 in the provincial or superior courts; under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) in the Supreme Court; or at common law or at equity for orders:
  - a. to protect a woman or her children, or both, from family violence or abuse;
  - b. concerning guardianship, custody, parenting or support arrangements, where there is history of family violence or abuse; or
  - c. to prevent or repair disruption to the parent-child bond.
4. Family Law Proceedings typically involve significant interpersonal and legal conflict, and are more likely than other legal proceedings to involve court-related abuse, harassment or violence by one party towards the other.
5. Family Law Proceedings often involve a plurality of substantive and procedural issues, interim or interlocutory applications before final disposition, and applications to vary or enforce orders.
6. Women in Family Law Proceedings often have limited control over the pace of the proceedings and the court time required for their conduct.
7. Women in Family Law Proceedings often need legal representation for the just resolution of the issues in their cases but some women cannot afford to retain a lawyer.
8. A woman who requires a lawyer in a Family Law Proceeding but does not have one or whose retainer with a lawyer ends before resolution of the proceeding is at risk, or increased risk, of:

- a. being unable to protect her own safety or the safety of her children;
  - b. suffering physical or mental health risks from family violence or abuse;
  - c. experiencing continued or aggravated poverty;
  - d. agreeing to inappropriate or impractical guardianship, parenting or custody and access arrangements;
  - e. intentionally or unintentionally abandoning rights without a remedy; or
  - f. experiencing court-related harassment, manipulation or abuse from the opposing party.
9. Children in Family Law Proceedings are generally dependent on their mothers to articulate and advance their interests. Children's interests are at risk if their mothers need, but do not have access to, a lawyer in Family Law Proceedings.
  10. This Notice of Civil Claim uses the phrase "women litigants of limited or moderate means" to describe women engaged in Family Law Proceedings who cannot afford to retain a lawyer to advise and represent them, either at all or without sacrificing reasonable living expenses for themselves or their children.
  11. The plaintiffs Bell, A.B. and members of the S.M.A. are women litigants of limited or moderate means.

The Plaintiffs:

(a) The S.M.A.

12. The S.M.A. is a member-driven, non-profit community-building and advocacy organization, created for and by single mothers in British Columbia and incorporated pursuant to the Society Act, R.S.B.C. 1996, c. 433. The S.M.A. has an address for service at 702 – 2695 Granville Street, Vancouver, British Columbia.
13. The S.M.A.'s mandate is to:
  - a. build community and promote empowerment among single mothers;

- b. develop leadership skills for single mothers to participate in public policy-making that affects their lives and the lives of their children; and
  - c. advocate for the rights of single mothers and their children to live free of poverty and discrimination.
14. S.M.A.'s members reside throughout British Columbia. Many of S.M.A.'s members have been, are, or will be involved in Family Law Proceedings.
15. Some members of S.M.A. have characteristics that impede their access to justice in Family Law Proceedings, including, among others:
- a. limited ability to express themselves or be understood in English;
  - b. status as a recent immigrant to Canada, an Indigenous person or as a member of a racialized group;
  - c. limited education;
  - d. physical and/or mental disability; or
  - e. rural isolation.

(b) Nicolina (Nicole) Bell

16. The plaintiff Nicolina (Nicole) Bell is a 31 year old woman who resides in Langley, British Columbia. Bell has an address for service at 702 – 2695 Granville Street, Vancouver, British Columbia.
17. Bell is a university student and formerly worked as a pricing coordinator for a food company. At all material times, Bell has been unemployed, or has worked part time.
18. Bell met her ex-partner, Kristopher Flintoff, in March 2011. Bell and Flintoff lived together for periods of time between July 2011 and December 2012. Bell ended the relationship on or about December 3, 2012.
19. Bell and Flintoff are the parents of A.A., who is now four years old. A.A. is autistic and requires intensive parenting from Bell. A.A.'s care needs limit Bell's ability to engage in paid employment.

20. Bell is also the mother of B.B., who is 12 years old.
21. Flintoff was physically and sexually violent towards Bell during their relationship.
22. Flintoff engaged in increasingly controlling and verbally abusive behaviour towards Bell during their relationship, including in front of B.B., to B.B.'s detriment.
23. Shortly after A.A.'s birth in 2012, Flintoff was charged with uttering threats against Bell, contrary to s. 264.1(1) of the Criminal Code of Canada, R.S.C. 1985, c. C-46. Flintoff was subject to bail conditions, including a condition that restricted his contact with Bell.
24. Flintoff's interactions with A.A. were limited to supervised visits in the presence of Flintoff's parents.
25. Flintoff's behaviour during his supervised visits with A.A. in 2012 and 2013 was such that Bell felt it was not in A.A.'s best interests to continue with the supervised visits.
26. In or around January 2013, Bell commenced a Family Law Proceeding in the Provincial Court of British Columbia. The Family Law Proceeding sought a restraining order against Flintoff, an order for Bell to have custody and guardianship of A.A., and orders for Flintoff to pay maintenance and special expenses for A.A. Bell did not have a lawyer when she filed the Family Law Proceeding.
27. Flintoff, through counsel, replied to the Family Law Proceeding and counterclaimed against Bell.
28. In or around January or February 2013, Bell applied to the Legal Services Society (the "L.S.S.") for legal aid in relation to her Family Law Proceeding. Bell's application for legal aid was denied because she held \$8,009 in a Registered Retirement Savings Plan (RRSP).



29. In or around February 2013, Bell liquidated her RRSP and used the proceeds to pay debts. She then re-applied for legal aid and was approved.
30. Bell retained counsel in or around March 2013.
31. On or about April 9, 2013, Flintoff pleaded guilty to the charge of uttering threats against Bell, was granted a conditional discharge, and was placed on probation for one year. It was a term of the probation order that Flintoff not have contact with Bell.
32. In or around May 2013, Flintoff applied for interim guardianship, parenting and other orders in relation to A.A.
33. Flintoff's applications went to hearing in 2014. During the hearing, Flintoff attempted to intimidate witnesses called by Bell. A sheriff intervened. Further, Flintoff threatened a social worker from the Ministry of Children and Family Development (the "Ministry") who was a witness in the proceeding.
34. Between the second and third day of the proceedings, counsel for Flintoff e-mailed counsel for Bell semi-nude photographs of Bell which had been given to him by his client. Bell felt humiliated by Flintoff's lawyer's handling of the photographs and made a complaint to the Law Society of British Columbia.
35. After three days of hearings, Bell and Flintoff reached an agreement, formalized by consent Orders, which provided in material part as follows:
  - a. sole guardianship of, and sole parental responsibilities for A.A. to Bell;
  - b. Bell to provide Flintoff's parents with updates about A.A.'s circumstances not less than once every six months;
  - c. Flintoff to pay child support and certain expenses for A.A., and to provide extended medical and dental coverage for A.A., on terms;
  - d. Flintoff is restrained from directly or indirectly contacting or communicating with Bell, A.A. or B.B.; and

e. Bell will have a one-year protection order in her favour.

(the "June 2014 Orders").

36. Bell's legal aid coverage ended at or around the time the June 2014 Orders were pronounced. The retainer with her lawyer ended at the same time.
37. In or around December 2014, local police advised Bell that they had been informed that Flintoff was planning to kill Bell by hitting her with a car or by hiring a person to kill her. Bell became frightened for her safety and the safety of her children.
38. Between mid-2014 to July 2015, Bell dealt directly with Flintoff's lawyer on issues arising in relation to the June 2014 Orders.
39. In or around July 2015, due to her safety concerns, Bell applied to the Provincial Court for a new protection order and to vary the June 2014 Orders to remove the requirement for Bell to provide information about A.A. to Flintoff's parents. Bell also applied to vary child support in accordance with Flintoff's income.
40. Bell re-engaged her lawyer in August 2015, due to the stress and difficulty of self-representing in the new Family Law Proceedings.
41. Bell applied for legal aid anew in or around mid-August 2015. The application was denied. On or about September 21, 2015, an appeal from the denial was rejected on the grounds that:
  - a. Bell's legal problem was not covered by legal aid;
  - b. L.S.S. had already provided Bell with coverage "to assist [her] in her family matter at an extremely high cost";
  - c. there were several orders in place to protect Bell and her child A.A., including orders for sole guardianship, custody, child support and extraordinary and special expenses;

- d. Flintoff had consented to no-contact and protection orders and was abiding by them;
  - e. Flintoff was not seeking parenting time;
  - f. duty counsel may be able to assist with applications to vary child maintenance; and
  - g. a reasonable person of modest means would not continue the litigation.
42. Bell understood and believed that following the denial of her appeal in September 2015, she could not make a further application for legal aid for the Family Law Proceeding.
43. Although counsel offered services to Bell at a reduced rate, Bell incurred approximately \$8,900 in legal fees, disbursements and taxes in and from August 2015. Bell paid these costs with student loan funding, and used credit cards to pay for living expenses.
44. Bell had to sacrifice reasonable living expenses to pay her legal costs, including foregoing speech therapy recommended to treat A.A.'s autism.
45. In or around March 2016, Bell received copies of police records concerning reports of threats by Flintoff against Bell and certain of her family members.
46. In or around June 2016, a person advised Bell that Flintoff had made death threats against A.A. and was reported to have said that he'd rather have A.A. dead than in Bell's care. Bell's lawyer applied to the Provincial Court for a non-expiring protection order against Flintoff for the benefit of Bell, A.A. and B.B.
47. The hearing of the application for the non-expiring protection order is expected to proceed in 2017. The application is contentious. Flintoff is represented by the same lawyer who represented him in 2014.
48. Bell needs legal representation in the application for a non-expiring protection order due to:

- a. the contentious nature of the issues and the procedural steps required to bring the application to hearing;
  - b. the number and nature of the witnesses expected to give evidence;
  - c. Flintoff's history of attempting to intimidate witnesses in Family Law Proceedings involving Bell;
  - d. the history of Flintoff's threats against Bell and Bell's fears for her own safety in relation to Flintoff; and
  - e. the power imbalance between Bell and Flintoff's lawyer, particularly in light of the incident involving the semi-nude photographs.
49. On or about February 2, 2017, Bell was counselled to re-apply to the L.S.S. for legal aid. She did so and her application for coverage to seek the non-expiring protection order was approved.
50. The lack of access to legal aid between June 2014 and February 2017 caused Bell adverse psychological and physical impacts including:
- a. stress;
  - b. lowered sense of self-worth;
  - c. feelings of despair, hopelessness and helplessness;
  - d. persistent and intrusive fears about the future and personal safety for Bell, A.A. and B.B.;
  - e. insomnia, sleep disruption, nightmares and chronic fatigue;
  - f. tension headaches, migraines and jaw pain;
  - g. other stress-related illnesses, such as colds and flus;
  - h. guilt relating to Bell's inability to provide required supports and therapies to treat or ameliorate A.A.'s autism; and
  - i. anxiety about mounting debt.

(c) A.B.

51. The plaintiff A.B. is a 35 year old woman who resides on Vancouver Island with her domestic partner X.Y. A.B. has an address for service at 702 – 2695 Granville Street, Vancouver, British Columbia.
52. [REDACTED] A.B.'s employment income is approximately \$34,000 per year. X.Y. [REDACTED] [REDACTED] has an employment income of less than \$32,000 per year.
53. A.B. and her ex-husband C.D. married in 2004, separated in 2007 and were divorced in 2012.
54. A.B. and C.D. have two daughters together. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Both C.C. and D.D. have ongoing medical needs.
55. C.D. behaved in an abusive manner towards A.B. during the marriage and has continued to behave abusively towards A.B. since the separation and divorce, including verbally belittling and degrading A.B. and making threats against her.
56. A.B. separated from C.D. after he physically attacked her.
57. A.B. is afraid to be alone with C.D. and has, from time to time, called on the police and others for assistance when she must interact with him.
58. C.D. yells, uses foul language and engages in name-calling and other verbally abusive behaviour towards C.C. and D.D. from time to time. Both children have attended counselling due, in part, to the impact of their father's behaviour towards them.
59. Since the separation, C.D. has made spurious complaints against A.B. to the Ministry.

60. From time to time, school officials and others outside of the family have contacted the Ministry regarding C.D.'s conduct towards C.C. and D.D., most recently in or around the fall of 2016. A.B. reported concerns about C.D. to the Ministry on one occasion in January 2017.
61. By orders of the Supreme Court made between 2008 and 2012, C.C. and D.D. live with A.B. and C.D. on alternate weeks. [REDACTED]  
[REDACTED]
62. C.D. has used his decision-making authority with respect to C.C. and D.D. in a manner that is not in C.C.'s and D.D.'s best interests. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
63. C.C. and D.D. are unhappy with the current parenting arrangements and do not wish to reside with their father on alternate weeks.
64. It is not in C.C.'s and D.D.'s best interests for the current parenting [REDACTED]  
[REDACTED] arrangements to continue.
65. In February 2015, A.B. applied to vary the prevailing orders concerning parenting [REDACTED] arrangements. A.B. also applied for no-contact and other protection orders with respect to C.D., and for other orders. The matters are scheduled for trial in September 2017.
66. In or around May 2015, A.B. applied to the L.S.S. for legal aid funding for the Family Law Proceedings described in paragraph 65, and funding was approved.
67. By order of this Honourable Court, a report was prepared under s. 211 of the Family Law Act, supra, in 2016. Legal aid funding paid for approximately one

- third of the cost of the report; A.B. paid for the remainder. C.D. contests the opinions expressed and the recommendations made in the report.
68. A.B.'s legal aid allotment ran out in or around December 2016.
69. A.B. applied for new legal aid funding. The application was denied. A.B. appealed the denial, but the appeal was denied on or about January 30, 2017. The reasons cited for the denial of the appeal were that:
- a. "generous funding" had been provided for A.B.'s family matter over the years;
  - b. the L.S.S. does not normally provide funding for trials;
  - c. "all opinions" have been heard in relation to the matter and the children "can visit their father how and when they wish"; and
  - d. there has been "ample opportunity to have safety issues resolved" and further litigation would not be something that a reasonable person of modest means would do.
70. A.B. requires the assistance of a lawyer in the Family Law Proceeding scheduled for hearing in September 2017, due to:
- a. the contentious nature of the issues and the procedural steps required to bring the application to hearing;
  - b. the number and nature of the witnesses expected to give evidence; and
  - c. C.D.'s history of abusive behaviour towards A.B. and her fear for her safety in relation to him.
71. A.B.'s lawyer has agreed to continue to act for A.B. through the trial of the Family Law Proceeding at a discounted rate and on preferential payment terms. To afford counsel's services, even on preferential terms, A.B. and her family have been obliged to sacrifice reasonable living expenses, as follows:
- a. A.B. has eliminated discretionary spending;
  - b. A.B. pays part of each paycheque to her lawyer;

- c. [REDACTED]
- d: [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]
- h. [REDACTED]

72. A.B.'s lack of access to legal aid since December 2016 has caused A.B. adverse psychological and physical impacts including:

- a. sleep disturbance;
- b. anxiety;
- c. increased stress from the burden of taking on additional paid work and the need to reduce services and activities for her children;
- d. stress and strain in the relationship with X.Y., due to the financial impact of the Family Law Proceedings on the household budget; and
- e. isolation from family members on mainland British Columbia, due to financial restrictions on travel.

The Respondents:

73. Her Majesty the Queen in right of the Province of British Columbia is named in these proceedings pursuant to the Crown Proceeding Act, R.S.B.C. 1996, c. 89, s. 7 and is a manifestation of the government of the Province of British Columbia (the "Province") for the purposes of s. 24(1) of the 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 (the "Charter").

74. The Province is constitutionally responsible for the administration of justice in British Columbia, pursuant to s. 92(14) of the Constitution Act, 1867, 30 & 31 Victoria, c. 3 (the "Constitution Act, 1867").
75. The L.S.S. is a corporation created in 1979, and continued pursuant to the Legal Services Society Act, S.B.C. 2002, c. 30 (the "LSS Act"). The L.S.S. implements and administers the Province's policy and programme of legal aid services in British Columbia.
76. Pursuant to s. 9(1) of the LSS Act, the objects of the L.S.S. include:
  - a. to assist individuals to resolve their legal problems and to facilitate their access to justice;
  - b. to establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia; and
  - c. to provide advice to the Attorney General of British Columbia respecting legal aid and access to justice for individuals in British Columbia.
77. Pursuant to s. 10(1) of the LSS Act, the L.S.S. is empowered to, among other things:
  - a. establish priorities for the types of legal matters and classes of persons for which it will provide legal aid;
  - b. establish policies for the kinds of legal aid to be provided in different types of legal matters;
  - c. determine the method or methods by which legal aid is to be or may be provided, with power to determine different methods for different types of legal matters and different classes of persons; and
  - d. determine who is and who is not eligible for legal aid based on any criteria that the society considers appropriate.

Legal aid and access to justice in Family Law Proceedings:

78. Most of the individuals who require legal aid in Family Law Proceedings are women.
79. The L.S.S. may approve limited scope legal aid retainers to financially qualifying women in Family Law Proceedings, on an emergency basis.
80. Access to legal aid in Family Law Proceedings depends upon the applicant meeting financial eligibility criteria, based on household size, net monthly income and certain asset qualifications. The L.S.S. sets the criteria by policy. The current criteria include:

**Household size and income chart**

Table of net household monthly income (for representation services)	
Household size	Monthly net income
1	\$1,550
2	\$2,160
3	\$2,780
4	\$3,400
5	\$4,020
6	\$4,640
7 or more	\$5,250

**Personal property chart**

<b>Personal property</b> <ul style="list-style-type: none"> <li>• Accounts receivable</li> <li>• Antiques</li> <li>• Bank accounts</li> <li>• Cash</li> <li>• Collections</li> </ul>	Applicants are permitted to own personal property up to the exemption limit for their household size.	
	Personal property exemption limits	
	Household size	Exemption
	1	\$2,000

• Household furnishings	2	\$2,100
• Insurance policies		
• Jewellery	3	\$2,700
• Livestock		
• Other personal property	4	\$3,290
• Pending settlements	5	\$3,890
• Recreational equipment		
• Recreational boat	6	\$4,490
• Stocks/bonds/investments	7 or more	\$5,090
• RRSPs		
• Works of art		

81. The L.S.S. counts child support payments towards the monthly net household income of an applicant for legal aid.
82. Many women litigants of limited or moderate means in Family Law Proceedings are financially ineligible for legal aid.
83. Some women litigants of limited or moderate means who need a lawyer in a Family Law Proceeding must limit employment or liquidate modest assets or savings to qualify for legal aid. This exacerbates their socio-economic disadvantage and the socio-economic disadvantage of their children.
84. In all cases, the L.S.S. pays the lawyers of women receiving legal aid in Family Law Proceedings under a tariff that caps the lawyers' billable hours.
85. In particular, the tariff caps "general preparation" hours — including time spent on meetings and phone calls with the client, correspondence, drafting pleadings and affidavits, document disclosure, preparing for court appearances and discoveries, and legal research — at 25 hours for Provincial Court matters and 35 hours for Supreme Court matters.

86. The L.S.S. has discretion in exceptional cases to approve extended services of 25 or 35 general preparation hours, depending on the level of court in which the Family Law Proceeding is filed, subject to funding. Generally, the LSS does not approve more than one request for extended services in a Family Law Proceeding.
87. The preparation hours available under the LSS tariff, including where extended services are granted, are frequently inadequate for lawyers of reasonable competence and experience to obtain effective relief for clients in moderately complex Family Law Proceedings. Once the hourly cap on services has been exhausted, many women litigants of limited or moderate means may be left without legal representation.

The Province has a significant role in British Columbia's legal aid regime:

88. The Province provides more than 90 percent of the L.S.S.'s annual funding (the "Provincial Transfer").
89. Pursuant to ss. 10(2), 10(3), 11, 17 – 19 and 21 of the LSS Act, the Attorney General and other Ministers of the Government of British Columbia exercise significant control over the administration of legal aid. For example:
  - a. the L.S.S.'s budget is subject to approval by the Attorney General; and
  - b. the L.S.S. is prohibited under ss. 10(2) and (3) of the *LSS Act* from accruing liabilities and making expenditures in a fiscal year that exceed the revenue for that year and accumulated surpluses from previous years, except with the approval of the Attorney General and the Minister of Finance.
90. Pursuant to the LSS Act, the Attorney General and the L.S.S. must enter into negotiations every three years to attempt to negotiate a memorandum of understanding ("MOU") concerning, among other matters:
  - a. an estimate of the Provincial Transfer in each of the three fiscal years to which the MOU is to apply;

- b. the types of legal matters in relation to which the L.S.S. may provide legal aid, and those in relation to which the L.S.S. must not provide legal aid, from the Provincial Transfer;
  - c. the priority to be accorded to the types of legal matters in relation to which the L.S.S. may provide legal aid from the Provincial Transfer; and
  - d. how, if at all, the L.S.S. is able to provide legal aid from the Provincial Transfer in circumstances that are not contemplated by, or do not accord with, the terms and conditions established under paragraphs b. and c.
91. At all material times, there have been in place MOU arrangements between the Attorney General and the L.S.S. The most recent MOU, covering the period April 1, 2014 to March 31, 2017, provided, among other things:
- a. Subject to approval of the L.S.S.'s annual budget by the Attorney General, the L.S.S. will apply the Provincial Transfer in the manner and amounts set out in that budget.
  - b. The family law services to which the L.S.S. will apply the Provincial Transfer are:
    - i. representation of eligible individuals where a court order is required to ensure the safety and security of an individual;
    - ii. continuing representation in such cases, including where:
      - 1. there are significant contested issues involving sexual, mental or physical abuse of the client or the client's children;
      - 2. the justice system is being used by the opposing party to continue a pattern of abuse;
      - 3. there is a significant risk of the client being alienated from her or his children;
      - 4. the client or children may be left at physical or psychological risk if coverage in the case is discontinued; or
      - 5. resolution of the family law issues will have a significant positive impact on the relationship between the client and her or his child or the environment in which the child lives;

- iii. duty counsel in Provincial or Supreme Court; and
  - iv. information and advice via publications and web sites, legal information outreach workers, advice lawyers, telephone advice services, or liaison with community organizations and others.
92. In 2015/16, approximately 18 percent of the L.S.S.'s budget went to family law services. In comparison, approximately 52 percent of L.S.S.'s budget went to criminal law services.
93. In 2015-16, fewer than one third (30.6 percent) of the individuals in British Columbia who received legal aid were women.

## **Part 2: RELIEF SOUGHT**

The plaintiffs seek:

1. a declaration that ss. 10(2), 10(3), 11, 17-19 and 21 of the LSS Act, *the* MOU and/or the L.S.S. policies (the "impugned legal scheme") unjustifiably infringe ss. 7 and 15 of the and are of no force and effect;
2. a declaration that the impugned legal scheme impedes access to the superior courts in Family Law Proceedings in a manner inconsistent with the requirements of s. 96 of the Constitution Act, 1867;
3. further or in the alternative, a declaration that the administration of the impugned legal scheme unjustifiably infringes ss. 7 and 15 of the Charter;
4. an order that L.S.S. exercise its discretion to determine legal aid coverage for Family Law Proceedings in accordance with the requirements of the Charter;
5. costs, assessed as special costs in any event of the cause; and
6. such further and other relief as this Honourable Court deems just.

## **Part 3: LEGAL BASIS**

1. The plaintiffs rely on:

- a. ss. 92 (14) and 96 of the Constitution Act, 1867;
  - b. ss. 7 and 15(1) of the Charter; and
  - c. ss. 24(1), 32 and 52 of the Constitution Act, 1982.
2. The impugned legal scheme is "law" for the purposes of s. 1 of the Charter and s. 52 of the Constitution Act, 1982.
  3. Further, the provision of legal aid in British Columbia is an activity of the government under s. 32 of the Constitution Act, 1982, and the Charter applies in respect of it.

The Charter claims:

4. Sections 7 and 15 of the Charter provide as follows:
  7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
  - ...
  15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
  - (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
5. The protections of the Charter are presumed to conform to the values and principles of the international treaties to which Canada is party. The rights afforded by ss. 7 and 15 of the Charter in relation to legal aid for Family Law Proceedings are to be interpreted in a manner that is consistent with the requirements of the:
  - a. International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171;

- b. Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13; and
- c. International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3.

(a) The s. 7 claims:

- 6. The impugned legal scheme and/or its administration infringe the s. 7 Charter interests in life and security of the person of women litigants of limited or moderate means engaged in Family Law Proceedings by denying them access to the legal services they require to effectively participate in those proceedings and obtain remedies to protect themselves and their children from family violence or abuse.
- 7. These deprivations are not in accordance with the principles of fundamental justice:
  - a. the financial eligibility criteria for legal aid arbitrarily, or in a manner that is grossly disproportionate or overly broad, disqualify women litigants of limited or moderate means from having legal ~~counsel~~ in Family Law Proceedings;
  - b. the cap on lawyers' preparation hours in Family Law Proceedings is arbitrary or grossly disproportionate to the state's interest in controlling legal aid spending;
  - c. discontinuance of legal aid in a Family Law Proceeding before the hearing or disposition of the case because the woman's lawyer has reached the cap on preparation hours is arbitrary or grossly disproportionate to the state's interest in controlling legal aid spending from case to case, where the risk to the safety or security of a woman or her children will continue or be exacerbated by the discontinuance;
  - d. denial or discontinuance of legal aid to women of limited or moderate means engaged in Family Law Proceedings denies them the opportunity to effectively present their cases, leading to procedural unfairness in those Family Law Proceedings; and



- e. the impugned scheme arbitrarily, or in a manner that is grossly disproportionate, undermines the L.S.S.'s mandate to create an effective legal aid system that helps people to access justice and resolve their legal issues, as well as the Province's interest in facilitating legal aid services for low income people in British Columbia.
8. Further, or in the alternative, the impugned legal scheme and/or its administration infringes the security of the person of Bell and A.B. and women like them, including members of the S.M.A., by causing them serious stress due to the denial or withdrawal of legal aid before resolution of a Family Law Proceeding.
9. In particular, women litigants of limited or moderate means engaged in Family Law Proceedings without a lawyer suffer stress from:
  - a. self-representing against violent or otherwise abusive ex-spouses or co-parents;
  - b. assuming responsibility for the conduct of legal proceedings while dealing with the needs of their children and, where applicable, employment demands;
  - c. not understanding the applicable substantive and procedural law;
  - d. anxiety that they will not adequately present the case for the remedies necessary to protect themselves or their children, or both; and
  - e. threats to the parent-child bond, where custody, guardianship or parenting arrangements are at issue.
10. These deprivations are not in accordance with the principles of fundamental justice for the reasons given at paragraph 7 of this Part.

(b) The s. 15 claims:

11. The impugned legal scheme and/or its administration violates s. 15(1) of the Charter and is not protected from constitutional scrutiny by s. 15(2), as follows.

12. Women are disproportionately impacted by the impugned legal scheme and/or its administration because:
  - a. Women, particularly women who are racialized, Indigenous, recent immigrants, disabled, or who have limited English language skills or education, are less likely than their male ex-spouses or co-parents to be able to afford to retain counsel; and
  - b. As the primary victims of family violence and abuse, the physical and psychological integrity of women is more likely to be at stake in Family Law Proceedings than for their male ex-spouses or co-parents.
13. This differential treatment widens the gap between women litigants of limited or moderate means seeking justice in Family Law Proceedings and the rest of society and constitutes differential treatment on the basis of sex, and the intersecting grounds of race, national or ethnic origin, and disability.
14. In particular, the restrictive financial eligibility requirements and the tariff cap imposed by the impugned legal scheme limit the ability of women of limited or moderate means to access adequate legal representation in Family Law Proceedings. This denies their right to equality before and under the law, and to the equal benefit and protection of the law, because it denies equal access to:
  - a. remedies available under the *Family Law Act*, the *Family Relations Act*, the *Divorce Act*, the common law and this Honourable Court's equitable jurisdiction, as it is exercised in Family Law Proceedings; and
  - b. denies equal access to a fair judicial determination of a Family Law Proceeding before this Honourable Court or the Provincial Court of British Columbia.
15. Further, women litigants of limited means at the lowest end of the income spectrum experience disproportionately greater disadvantage from the cap on lawyers' billable hours under legal aid retainers. Women who are unable to spare any income and who have no assets, investments or debt capacity are

the least able to afford legal representation in Family Law Proceedings when their legal aid hours run out.

16. Further, or in the alternative, legal aid for Family Law Proceedings is more often required by women than by men. Legal aid for criminal law matters is more often required by men than women. Legal representation for criminal law proceedings receives more public funding than legal representation for Family Law Proceedings. This deprives women of the equal benefit and protection of the law.
17. Further, or in the alternative, women litigants of limited or moderate means engaged in Family Law Proceedings are disproportionately affected by the unequal distribution of legal aid benefits. Individuals with other kinds of legal issues where constitutionally protected interests are at stake, such as criminal law matters, have access to greater legal aid than do women in Family Law Proceedings. As such, women litigants of limited or moderate means engaged in Family Law Proceedings are disproportionately unable to avail themselves of a lawyer's services where their fundamental interests, including life and security of the person, are at stake. This is discrimination based on sex.
18. Further, or in the alternative, women litigants of limited or moderate means and their children are disproportionately affected by the inclusion of child support payments in the determination of net monthly household income for the purposes of assessing eligibility for legal aid. Child support payments are intended for the financial support of children, and inclusion of these payments in the calculation of a woman's income for the purposes of determining legal aid eligibility artificially inflates household income and undermines the best interests of the children.
19. Further, or in the alternative, children whose best interests are to remain with their mothers are disadvantaged under the impugned legal scheme in comparison with children whose best interests are to remain with their fathers. In particular, children who are dependent on their mothers to present to the

court the facts and legal propositions necessary to determine the best interests of the child are disproportionately affected by their mothers' lack of access to a lawyer. The impugned legal scheme or its administration therefore discriminates against the children of women of limited or moderate means under s. 15(1) of the Charter on the basis of family status and denies those children the equal benefit and protection of the law.

20. Further or the alternative, the impugned legal scheme and/or its administration violates s. 7 and 15(1), as those provisions of the Charter interact with each other.
21. The impugned legal scheme constitutes a broad societal regime that does not target the conditions of a specific and identifiable disadvantaged group. The regime is not an ameliorative program and s. 15(2) of the Charter does not protect it from constitutional scrutiny under s. 15(1).

The claim concerning s. 96 of the *Constitution Act, 1867*

22. Section 96 of the Constitution Act, 1867 ensures the maintenance of the rule of law by protecting the core jurisdiction of the superior courts to resolve disputes between individuals and decide questions of law. British Columbia's jurisdiction under s. 92(14) of the Constitution Act, 1867 over the administration of justice in the province must be exercised consistent with s. 96 of the Constitution Act, 1867 and in a manner that does not interfere with the core jurisdiction of superior courts.
23. Measures that create barriers to the ability of individuals to come to court to resolve legal issues, such as measures denying access to reasonably necessary legal services in Family Law Proceedings, undermine this jurisdiction and impermissibly infringe s. 96 of the Constitution Act, 1867.
24. Access to justice is fundamental to the rule of law. Access to justice embodies the ability of litigants to exercise their right to seek resolution of legal disputes in the superior courts.

25. The rule of law and access to justice are each protected by s. 96 of the Constitution Act, 1867, which must be interpreted consistent with the constitutionally-enshrined norm of substantive equality.
26. The impugned legislative scheme denies women litigants of limited or moderate means access to the legal aid necessary for them to access the superior courts for the resolution of Family Law Proceedings where their fundamental interests are at issue. This limitation on access to the superior courts offends the rule of law and the right to access justice, each of which is protected by s. 96 of the Constitution Act, 1867.
27. The impugned legislative scheme offends the rule of law by denying access to legal services necessary to give effect to substantive rights and obligations at law, which access must be available equally to everyone to whom the laws apply, and to everyone the laws are intended to protect.
28. The impugned legislative scheme effectively denies women litigants of limited or moderate means access to the superior courts' remedial jurisdiction.
29. The impugned legislative scheme creates unlawful barriers for women litigants of limited or moderate means to access the superior courts in Family Law Proceedings, and thereby prevents the courts from complying with their basic judicial function of resolving disputes between individuals and deciding questions of law. This, in turn, impedes the development of the law.
30. As a result of the disproportionately constrained ability of women litigants of limited or moderate means to access legal services, the impugned legislative scheme and/or its administration creates undue hardship for women seeking resolution of Family Law Proceedings because it:
  - a. requires these litigants to sacrifice reasonable current and future living expenses for themselves and their children in seeking access to justice;
  - b. denies these litigants a meaningful opportunity to seek adjudication by the courts of Family Law Proceedings where fundamental rights and

obligations are at stake and the assistance of counsel is reasonably necessary to justly resolve the Family Law Proceeding; and

- c. provides only piecemeal and inadequate resolution of Family Law Proceedings where fundamental rights and obligations are at stake, thereby creating ongoing hardship.

31. The impugned legislative scheme subjects women litigants of limited or moderate means engaged in Family Law Proceedings to undue hardship in accessing the core, dispute resolution function of the superior courts of British Columbia. It, thereby, effectively prevents access to justice.

Plaintiff's address for service:

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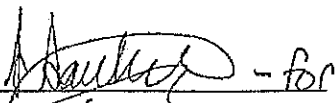
Fax number address for service (if any):  
E-mail address for service (if any):

1-866-591-0597  
monique@ethoslaw.ca

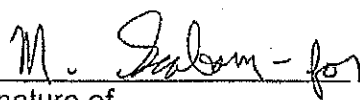
Place of trial:  
The address of the registry is:

Vancouver  
800 Smithe Street, Vancouver

Date: 26 April, 2017

  
\_\_\_\_\_  
Signature of  
 Plaintiff  lawyer for Plaintiffs

Monique Pongracic-Speier

  
\_\_\_\_\_  
Signature of  
 Plaintiff  lawyer for Plaintiffs

Kate Feeney

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Signature of  
 Plaintiff  lawyer for Plaintiffs

Kasari Govender

M. Seaborn - for

Signature of  
 Plaintiff  lawyer for Plaintiffs

Rajwant Mangat

M. Seaborn

Signature of  
 Plaintiff  lawyer for Plaintiffs

Michael Seaborn

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

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

## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for remedies under s. 24(1) and 52 of the *Constitution Act, 1982* and pursuant to the inherent jurisdiction of the court for breaches of rights under ss. 7 and 15(1) of the *Charter* that are not justified under s. 1 of the *Charter*, and for declarations that the legislative regime for legal aid in family law proceedings in the Province of British Columbia is inconsistent with the requirements of s. 96 of the *Constitution Act, 1867*.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4:

1. *Legal Services Society Act*, S.B.C. 2002, c. 30
2. *Constitution Act, 1867*, 30& 31, Vict. c. 3
3. *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK)*, 1982, c. 11.

[B.C. Reg. 119/2010, Sch. A, s.38; B.C. Reg. 95/2011, Sch. A, s.11]