

S103418-



No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

L.D. and E.D., INFANTS BY THEIR GUARDIAN AD LITEM,
NATALIE DOCHERTY, as representative plaintiffs,
and NATALIE DOCHERTY, in her personal capacity

PLAINTIFFS

AND:

BRITISH COLUMBIA WOMEN'S HOSPITAL & HEALTH CENTRE
and BRITISH COLUMBIA CHILDREN'S HOSPITAL

DEFENDANTS

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

WRIT OF SUMMONS

(Name and address of each plaintiff)

L.D. and E.D., Infants by the Guardian Ad Litem, Natalie Docherty
and Natalie Docherty, in her personal capacity
c/o Gratl & Company
302-560 Beatty Street
Vancouver, B.C. V6B 2L3
Attn: Jason Gratl

(Name and address of each defendant)

British Columbia Children's Hospital
4480 Oak Street, Room F402B
Vancouver, B.C. V6H 3V4

British Columbia Women's Hospital & Health Centre
4500 Oak Street, Room F402B
Vancouver, B.C. V6H 3V4

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s):

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ

of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and

(b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1)	The address of the registry is: The Supreme Court of British Columbia 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The plaintiffs' ADDRESS FOR DELIVERY is: 302-560 Beatty Street Vancouver, BC V6B 2L3 Fax number for delivery (if any): 604-608-1919
(3)	The name and office address of the plaintiffs' solicitor is: GRATL & COMPANY Barrister and Solicitor 302-560 Beatty Street Vancouver, BC V6B 2L3

The Plaintiff's claim is set out in the attached Statement of Claim.

Dated May 14, 2010



Solicitor for the Plaintiffs

THIS WRIT OF SUMMONS is filed and served by Gratl & Company, Barristers and Solicitors
302-560 Beatty Street, Vancouver, British Columbia V6B 2L3
(telephone: 604-694-1919 facsimile: 604-608-1919)

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Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

L.D. and E.D., INFANTS BY THEIR GUARDIAN AD LITEM,
NATALIE DOCHERTY, as representative plaintiffs,
and NATALIE DOCHERTY, in her personal capacity

PLAINTIFFS

AND:

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DEFENDANTS

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

STATEMENT OF CLAIM

1. The plaintiff, L.D, born December 2006, and the plaintiff, E.D., born July 2009, are the children of their biological mother and guardian ad litem, Natalie Docherty. Natalie Docherty is a resident of Vancouver, British Columbia.
2. The defendants, British Columbia Women's Hospital & Health Centre ("BCWH") and British Columbia Children's Hospital ("BCCH"), are agents of the Provincial Health Services Authority. Working in partnership, the defendants control and operate the Newborn Screening Program of British Columbia (the "Program").

3. Under the Program, BCCH and BCWH take or direct the taking of blood samples from all infants born in the Province of British Columbia and Yukon Territory. In December of 2006 and July of 2009, BCCH and BCWH took or directed the taking of blood samples from L.D. and E.D.
4. Under the Program, blood samples are sent by hospitals and midwives to the Program Laboratory at 4480 Oak Street in Vancouver, British Columbia. The blood samples are smeared on a card ("Blood Sample Card"). The blood samples are tested for 18 detectable disorders. The defendants prepared Blood Sample Cards for L.D. and E.D.
5. After testing is complete, Blood Sample Cards are temporarily stored at the Program Laboratory. Thereafter, Blood Sample Cards are taken off-site and stored at an Iron Mountain storage facility (the "Blood Sample Storage Facility"). L.D. and E.D.'s blood samples and Blood Sample Cards were stored at the Blood Sample Storage Facility.
6. To the defendants' knowledge, the Blood Sample Cards contain genetic, biological, health, ancestral and other information, pertaining to and belonging to the persons from whom the blood was drawn, including L.D. and E.D.
7. To the defendants' knowledge, the Blood Sample Cards contain genetic, biological, health, ancestral and other information about parents and blood relatives of persons from whom the blood was drawn, including the plaintiff, Natalie Docherty.
8. The Blood Sample Storage Facility and Program Laboratory have possession and control of Blood Sample Cards for every child born in British Columbia and Yukon Territory since 1999. The defendants have possession and control of approximately 800,000 Blood Sample Cards at the Blood Sample Storage Facility and at the Program Laboratory.
9. Medical and academic researchers have access to, and have accessed, the Blood

Sample Cards for unknown research and testing purposes. Blood Sample Cards have also been accessed or may have been accessed by unknown persons, institutions, and agencies for unknown purposes in relation to which the plaintiffs do not have particulars. Potential users of the Blood Sample Cards include law enforcement personnel and agencies, coroners, health regulators and health insurers. The Blood Sample Storage Facility amounts to a legally unauthorized fully functional DNA database. Expansion of the range of information that can be extracted from blood is reasonably foreseeable.

10. The defendants did not obtain consent or informed consent to the collection or storage of the blood samples and Blood Sample Cards. If consent was obtained from parents, that consent was obtained solely on the basis that blood samples would be tested for 18 testable conditions. Parents were not advised that the blood samples or Blood Sample Cards would be stored or used for any purpose other than testing for the 18 testable conditions.
11. L.D. and E.D.'s parents were not informed that the blood samples and Blood Sample Cards would be collected and stored for purposes other than testing for the 18 testable conditions. The defendants failed to so inform L.D. and E.D.'s parents, and instead provided them with incomplete and inaccurate information using pamphlets and a website. Medical practitioners who drew the blood samples failed to so inform L.D. and E.D. because the defendants provided those medical practitioners with incomplete and inaccurate information. If L.D. and E.D.'s parents had been informed of the full purpose and effect of the collection and storage of blood samples and Blood Sample Cards, L.D. and E.D.'s parents would not have consented to the collection or storage of blood samples and Blood Sample Cards.
12. By failing to advise parents that blood samples drawn from their newborns would be collected and stored for purposes other than testing for the 18 testable conditions, the defendants knowing and/or negligently misrepresented the purpose and effect of the collection and storage of the blood samples, and breached their

obligations to protect the interests, including the privacy interests, of their patients. In the alternative, the defendants knowingly and/or negligently caused other medical practitioners to misrepresent the purpose and effect of the collection and storage of the blood samples, and/or caused other medical practitioners to breach their fiduciary obligations to protect the interests, including the privacy interests, of their patients.

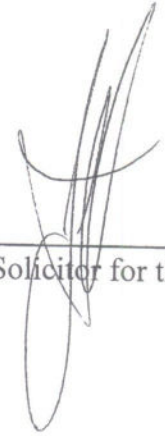
13. The blood samples and Blood Sample Cards were collected and stored by the defendants without the consent of their lawful guardian or guardians. In particular, the Blood Sample Cards containing the plaintiffs' blood were collected and stored without the informed consent of either of the plaintiffs' parents. Any consent to the collection and storage of the blood samples and Blood Sample Cards was vitiated and negated by the defendants' misrepresentation of or failure to state the defendants' intention to store the Blood Sample Cards.
14. The collection and storage of the blood samples and Blood Sample Cards, and the misrepresentation of and/or failure to fully disclose the purposes for which the blood samples and Blood Sample Cards were collected and stored, constitutes a breach of the *Freedom of Information and Protection of Privacy Act* and *Privacy Act*. The defendants' failure to obtain the consent of the infants' parents is a breach of the *Freedom of Information and Protection of Privacy Act* and *Privacy Act*. The unlawful collection and storage of information includes the information of the infants L.D. and E.D. and the information of their mother and blood relative Natalie Docherty.
15. The collection and storage of the blood samples and Blood Sample Cards constitutes an unlawful search and seizure pursuant to section 8 of the *Canadian Charter of Rights and Freedoms*. The plaintiffs rely on s.24(1) of the *Canadian Charter of Rights and Freedoms*.
16. The plaintiffs undertake this action on behalf of themselves and on behalf of all persons whose blood samples have been collected and stored by the defendants

and on behalf of their parents and blood relatives.

17. Wherefore the plaintiffs claim, on their own behalf and on behalf of the Class Members, for the following relief as against each of the defendants:
 - a. General damages for breach of privacy, including:
 - i. breach of the *Privacy Act*;
 - ii. breach of the *Freedom of Information and Protection of Privacy Act*;
 - iii. breach of s.8 of the *Canadian Charter of Rights and Freedoms*, pursuant to s.24(1) of the *Charter*; and
 - iv. breach of fiduciary duty and inducing breach of fiduciary duty.
 - b. General damages for fraudulent and/or negligent misrepresentation.
 - c. Aggravated, exemplary and/or punitive damages.
 - d. An Order requiring the defendants to destroy all blood samples and Blood Sample Cards.
 - e. An Order requiring the defendants to destroy all information derived from the blood samples and Blood Sample Cards.
 - f. An Order requiring the defendants to disclose the identities of all persons or entities that may have accessed the plaintiffs' blood samples or Blood Sample Cards.
 - g. An Order preventing the defendants from prospectively retaining blood samples and Blood Sample Cards.
 - h. Interest pursuant to the *Court Order Interest Act*;
 - i. Costs of this action; and
 - j. Such further and other relief as this Honourable Court may consider just.

Place of trial: Vancouver, British Columbia

Dated this 14th day of May, 2010.



Solicitor for the Plaintiffs

Name and address of solicitor:

Jason B. Gratl
Gratl & Company
Barristers and Solicitors
302-556 Beatty Street
Vancouver, BC V6B 2L3

THIS STATEMENT OF CLAIM is filed and served by Gratl & Company, Barristers and Solicitors, whose place of business and address for delivery and service is 302-560 Beatty Street, Vancouver, British Columbia V6B 2L3 (telephone: 604-694-1919 facsimile: 604-608-1919)