

No.  
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:

PROVINCIAL HEALTH SERVICES AUTHORITY

DEFENDANT

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 defendant, Provincial Health Services Authority, controls and operates the Newborn Screening Program of British Columbia (the "Program"), through its agents, British Columbia Women's Hospital & Health Centre ("BCWH") and British Columbia Children's Hospital ("BCCH").
3. Under the Program, BCCH and BCWH, on behalf of the defendant, take or direct

the taking and storage of blood samples from all infants born in the Province of British Columbia and Yukon Territory. In December of 2006 and in July of 2009, the defendant 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 defendant directed the preparation of 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 defendant's 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 defendant's knowledge, the Blood Sample Cards contain genetic, biological, health, ancestral and other information about the parents 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 defendant has 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 defendant did not obtain consent or informed consent to the collection or storage of the blood samples and Blood Sample Cards. The defendant did not obtain consent or informed consent for the use of the blood samples and Blood Sample Cards, outside testing for 18 testable conditions. 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 and guardians are not and were not advised by the defendant or its agents 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 defendant 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 and midwives who drew the blood samples failed to so inform L.D. and E.D. because the defendant 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, storage and use of blood samples and Blood Sample Cards, L.D. and E.D.'s parents would not have consented to the collection, storage or use of blood samples and Blood Sample Cards.
12. By failing to advise parents that blood samples drawn from their newborns would be collected, stored and used for purposes other than testing for the 18 testable

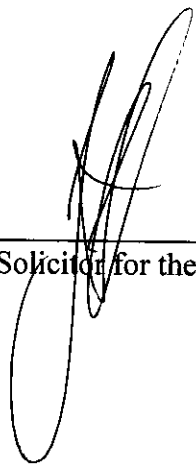
conditions, the defendant knowing and/or negligently misrepresented the purpose and effect of the collection and storage of the blood samples, and breached its obligations to protect the interests, including the privacy interests, of their patients. In the alternative, the defendant knowingly and/or 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 defendant without the consent of the plaintiffs' lawful guardian or guardians. In particular, the Blood Sample Cards containing the plaintiffs' blood were collected, stored and used without the informed consent of either of the plaintiffs' parents. Any consent to the collection, storage and use of the blood samples and Blood Sample Cards was vitiated and negated by the defendant's misrepresentation of or failure to state the defendant's 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 defendant's 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, 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:
- a. themselves;
  - b. the class of persons whose blood samples were collected and stored by the defendant; and
  - c. the class of the biological parents of persons from whom blood samples were collected and stored by the defendant.
17. Wherefore the plaintiffs claim, on their own behalf and on behalf of the Class Members, for the following relief as against the defendant:
- 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*; and
    - iii. breach of s.8 of the *Canadian Charter of Rights and Freedoms*, pursuant to s.24(1) of the *Charter*.
  - b. General damages for fraudulent and/or negligent misrepresentation, breach of fiduciary duty and inducing or contributing to breach of fiduciary duty.
  - c. Aggravated, exemplary and/or punitive damages.
  - d. An Order requiring the defendant to destroy all blood samples and Blood Sample Cards.
  - e. An Order requiring the defendant to destroy all information derived from the blood samples and Blood Sample Cards.
  - f. An Order requiring the defendant to disclose the identities of all persons or entities that may have accessed the plaintiffs' and Class Members' blood samples or Blood Sample Cards.
  - g. An Order preventing the defendant from prospectively retaining blood samples and Blood Sample Cards without informed consent to storage, collection and use.
  - 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 18<sup>th</sup> 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)