

# COURT OF APPEAL FOR ONTARIO

CITATION: G.G. v. Ontario, 2026 ONCA 164

DATE: 20260304

DOCKET: M56663, M56667, M56673, M56675 (COA-25-CV-0957 & COA-25-CV-0958)

Zarnett J.A. (Motion Judge)

BETWEEN

G.G. and W.W.

Plaintiffs (Appellants/Respondents)

and

His Majesty the King in Right of the Province of Ontario\*, Native Child and Family Services of Toronto, Linck Child, Youth and Family Support, 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 of 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 Society, Jewish Family and Child Services, Kawartha-Haliburton Children's Aid Society, Kenora-Rainy River Districts 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, ~~Niijaansinaanik 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 (Respondents/Appellant\*)

Margaret Waddell, Karine Bédard, Tina Q. Yang, and Melanie Anderson, for G.G. and W.W., appellants in COA-25-CV-0957 and respondents in COA-25-CV-0958

Elizabeth Bowker, Jessica DiFederico, Shadi Katirai, Thomas Russell, Grace Murdoch, and Zachary Sherman, for the Children's Aid Societies, respondents in COA-25-CV-0957

Lisa Brost, Waleed Malik, Spencer Nestico-Semianiw, Elizabeth Guilbault, Andrea Huckins, and Nansy Ghobrial, for His Majesty the King in Right of the Province of Ontario, respondent in COA-25-CV-0957 and appellant in COA-25-CV-0958

Dana M. Peebles, Brandon Kain, and Aya Schechner, for the proposed intervenor, Ontario Chamber of Commerce

James Sayce, Caitlin Leach, and Laura Clerk, for the proposed intervenor, Class Action Clinic at the University of Windsor Faculty of Law

Golnaz Nayerahmadi and Jessica Marshall, for the proposed intervenor, the Canadian Civil Liberties Association

Sabrina Lombardi, Chanele Rioux-McCormick and Emily Assini, for the proposed intervenor, Women of Class

Heard: in writing

## REASONS FOR DECISION

[1] These reasons address motions to intervene in respect of an issue that arises in one of two grouped appeals from a May 21, 2025 order that certified an action as a class proceeding against His Majesty the King in Right of the Province

of Ontario (“Ontario”) and declined to certify the action against 49 Children’s Aid Societies (“CASs”) across the province.<sup>1</sup>

[2] The representative plaintiffs have appealed the decision refusing to certify the action as against the CASs. Ontario has appealed the decision certifying the action as against it.

[3] The action concerns the now-defunct use of “Birth Alerts” – notifications to hospitals and other healthcare facilities issued by a CAS when it deemed that a child protection concern arose in respect of an unborn child. The Birth Alerts asked the healthcare provider to notify the relevant CAS when the birth occurred.

[4] One of the reasons the motion judge declined to certify the action as against the CASs was the “*Ragoonanan* principle”, which requires that there be a representative plaintiff (and not merely any member of the proposed class) with a cause of action against each defendant: *Ragoonanan Estate v. Imperial Tobacco Canada Ltd.* (2000), 51 O.R. (3d) 603 (S.C.J.). The *Ragoonanan* principle has been adopted by this court: *Hughes v. Sunbeam Corporation (Canada) Ltd.* (2002), 61 O.R. (3d) 433 (C.A.), leave to appeal refused, [2002] S.C.C.A. No. 446.

[5] Four organizations move for leave to intervene as a friend of the court under r. 13.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to address the question of whether the *Ragoonanan* principle should continue to be applied. Each

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<sup>1</sup> Reasons for the Superior Court order are reported at: *G.G. v. Ontario*, 2025 ONSC 3011, 578 C.R.R. (2d) 321.

requests that it be allowed to file a factum and present oral argument at the hearing of the appeals.

[6] The proposed interveners are:

(1) The Ontario Chamber of Commerce (the “Chamber of Commerce”), an organization that represents the interests of around 60,000 Ontario businesses.

(2) The Class Action Clinic at the University of Windsor Faculty of Law (the “Clinic”), an organization that supports, serves, and advocates on behalf of class members.

(3) The Canadian Civil Liberties Association (the “CCLA”), an organization that advocates for the furtherance and protection of civil liberties, constitutional rights and values, and democratic accountability.

(4) Women of Class (“WOC”) an organization that, among other things, advocates for vulnerable and/or marginalized class members in Canada.

[7] The representative plaintiffs do not oppose any of the motions for leave to intervene, but argue that the Chamber of Commerce’s intervention should be more limited than it proposes.

[8] Ontario takes no position on the motions to intervene, except that it requests the right to reply to the CCLA should the CCLA be permitted to raise what Ontario describes as an additional issue-- whether a group that has been granted public

interest standing can act as a representative plaintiff. That issue was not argued before the Superior Court.

[9] The CASs oppose all but the Chamber of Commerce's motion for leave to intervene. If permission is granted to the other intervenors, the CASs request that only one of the remaining three should be permitted to intervene, and that its factum should be limited to 10 pages with no oral argument.

[10] The appeals are perfected and scheduled to be heard on April 13, 2026.

[11] For the reasons that follow, I grant the motions to intervene of the Clinic and WOC and grant in part the motions of the Chamber of Commerce and the CCLA, on the terms described below.

### **The Test**

[12] In determining motions for leave to intervene, the court will generally consider "the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties": *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990), 74 O.R. (2d) 164 (C.A.); *Foster v. West*, 2021 ONCA 263, at para. 10; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29, at para. 8.

[13] The overarching consideration is whether the intervener is likely to make a useful contribution: *Peel*, at p. 167; *Bedford v. Canada (Attorney General)*, 2009

ONCA 669, 98 O.R. (3d) 792, at para. 2. Usefulness may arise from the fact that an intervener brings a different perspective to bear on the issue, even if its arguments overlap to some extent with those of a party: *Peel*, at p. 167. Totally duplicative arguments are, however, not useful: *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619, at para. 13.

[14] Where the litigation at issue is a private dispute, the court will apply a more onerous standard before permitting intervention. However, where the issues that arise have implications that transcend the interests of the immediate parties and engage matters of public policy, the more onerous threshold may “be softened somewhat”: *Baker v. Van Dolder’s Home Team Inc.*, 2025 ONCA 578, at para. 6; *Jones v. Tsige* (2011), 106 O.R. (3d) 721 (C.A.), at para. 23; *Caruso v. Law Society of Ontario*, 2025 ONCA 270, at para. 8.

### **The Nature of the Appeals**

[15] The representative plaintiffs’ appeal involves the question of whether this court should revisit its decision in *Hughes* and hold that the *Ragoonanan* principle should not be applied. They argue that this question has important consequences for access to justice and judicial efficiency. In support of their position, they advance three principal submissions.

[16] First, the representative plaintiffs argue that neither *Ragoonanan* nor *Hughes* engaged in a thorough interpretation of s. 5(1)(a) of the *Class Proceedings*

*Act, 1992*, S.O. 1992, c. 6 (“*CPA*”), nor did they consider rr. 5 and 10 of the *Rules of Civil Procedure*. In their submission, nothing in the *Rules* or the *CPA* mandates the *Ragoonanan* principle.

[17] Second, the representative plaintiffs argue that the *Ragoonanan* principle is undermined by the Supreme Court of Canada’s decision in *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 SCR 725, which states that “[n]othing in the nature of class actions [...] requires representatives to have a direct cause of action against, or a legal relationship with, each defendant in the class action”.

[18] Third, and in the alternative, the representative plaintiffs submit that there should be an exception to the *Ragoonanan* principle in cases where (i) the class is advancing the same causes of action and common issues against multiple defendants; (ii) the fact-finding process necessary to adjudicate at least one common issue incorporates all the defendants; and (iii) refusing to certify the action would cause a substantial injustice.

[19] In response, the CASs submit that *Ragoonanan* and *Hughes* were correctly decided; that the appellants’ reference to *Marcotte* is misplaced, as *Marcotte* dealt with Quebec’s legislation; and that the *Ragoonanan* principle is “baked into” the *CPA*, particularly s. 2(1), which requires a representative plaintiff to be a member of the class.

## **The Proposed Interveners**

### **a. The Chamber of Commerce**

[20] The Chamber of Commerce proposes to argue that the *Ragoonanan* principle is well-established in Ontario law and should not be departed from. Further, they argue that the certification criteria in the *CPA* justify the *Ragoonanan* principle. Finally, they propose to address the doctrine of horizontal *stare decisis*.

[21] As noted, neither Ontario nor the CASs oppose the intervention. The representative plaintiffs do not oppose the intervention but submit that this court needs no assistance on the question of *stare decisis*.

### **b. The Clinic**

[22] The Clinic proposes to argue that the *Ragoonanan* principle does not flow from the *Rules* or the provisions of the *CPA* and is inimical to access to justice. Further, the Clinic proposes to argue that the assumption that a class cannot consist of individuals with distinct claims against multiple discrete defendants is flawed. Finally, the Clinic proposes to argue that rejecting the *Ragoonanan* principle will cause no mischief for class members or the courts.

[23] Ontario takes no position on this intervention. The CASs oppose the intervention primarily on the ground that the Clinic's proposed submissions are duplicative of the representative plaintiffs' submissions.

**c. The CCLA**

[24] The CCLA proposes to focus its submissions on the importance of class actions for addressing the impact of systemic wrongdoing, particularly by state institutions. The CCLA proposes to argue that the *Ragoonanan* principle is at odds with *AIC Limited v. Fischer*, 2013 SCC 69, [2013] 3 S.C.R. 949, which emphasized that class proceedings exist not only to provide access to a procedure but also to substantive results. In their proposed submission, the *Ragoonanan* principle: 1) is not consistent with the text or purpose of the *CPA*; 2) overshoots its purpose by impeding access to justice in meritorious cases; and 3) impedes the court's ability to manage class proceedings in accordance with their unique circumstances. The CCLA proposes to argue that dispensing with the *Ragoonanan* principle would not cause unfairness to defendants or open the floodgates to unmeritorious claims.

[25] Additionally, CCLA proposes to argue that the *Ragoonanan* principle forecloses the ability of alternative representative plaintiffs, including groups granted public interest standing, to advance class actions arising from human rights and *Charter* violations.

[26] Both Ontario and the CASs take issue with this last proposed argument because it broadens the scope of the appeal. If the CCLA is granted leave to address this issue, Ontario has requested the right to file a reply factum. The CASs

oppose the balance of the CCLA's intervention because its proposed submissions would duplicate those of the representative plaintiffs and the other interveners.

**d. WOC**

[27] WOC proposes to argue for the utility of class actions in addressing systemic negligence affecting vulnerable and/or marginalized litigants. According to WOC, the *Ragoonan* principle is an unnecessary and improper barrier to the effective prosecution of systemic negligence class actions, and is also both inconsistent with the foundational policy objectives of class proceedings and increasingly out of alignment with how these objectives are applied in other Canadian jurisdictions.

[28] The CASs oppose WOC's intervention on the basis that it merely repeats the representative plaintiffs' arguments. The CASs also argue that WOC does not possess sufficient recognition or distinct expertise to be granted leave to intervene.

**Discussion**

[29] The continued application of the *Ragoonan* principle in Ontario class proceedings is an issue that transcends the interests of the immediate parties and has policy implications. This issue is quintessentially one in which it is important for the Court to "have all of the relevant possibilities brought to its attention, including submissions on the impact on its judgment, not only on the parties, but on those not before the court whose positions may be similar to but not the same

as the parties”: *Louie v. Lastman* (2001), 208 D.L.R. (4th) 380 (Ont. C.A.), at para. 12.

[30] The Chamber of Commerce’s proposed intervention provides a perspective from the business community, members of which are frequently defendants in class proceedings. Although its proposed arguments about the *Ragoonan* principle overlap to an extent with those of the CASs, the different perspective the Chamber of Commerce offers may be useful to the court. I agree with the representative plaintiffs, however, that input from an intervener on the principle of horizontal *stare decisis* is of limited utility at best. I therefore do not grant leave to the Chamber of Commerce to address that issue.

[31] The CASs’ principal opposition to the interventions of the Clinic, the CCLA and WOC is that their arguments about the *Ragoonan* principle overlap with those of the representative plaintiffs and each other. There is some, but not total, overlap. Moreover, the perspectives of the representative plaintiffs and proposed interveners are different. The Clinic’s focus is on the interests of class members in various circumstances that arise broadly in class proceedings, distinct from the interests of those who seek to represent them. WOC’s focus is generally on the vindication of the interests of marginalized persons by means of class actions generally, beyond the circumstances of this action. The CCLA’s interest is in class proceedings as a means of advancing or defending civil liberties, constitutional rights and democratic accountability. Those added perspectives may be useful to

the court. I do not consider WOC's lack of a lengthy track record of interventions to mean that it would not offer a perspective in this case that could be useful.

[32] However, I agree that to the extent the CCLA wishes to argue that the *Ragoonanan* principle interferes with the ability of an organization to serve as a representative plaintiff through a grant of public interest standing, it would be raising a new issue that would expand the scope of the appeal. It would require exploration of the implicit premise that a person without private interest standing to make a claim against any defendant could serve as a representative plaintiff. That issue does not arise in this case. The CCLA should not be permitted to raise that issue.

### **Disposition**

[33] The intervention motions of the Chamber of Commerce, the Clinic, the CCLA, and WOC are granted on the following terms:

- (1) Each of the interveners shall take the record as it is and not supplement the record by way of their factum or otherwise;
- (2) Each of the interveners is permitted to serve and file a factum on the appeal of no more than ten (10) pages in length by **March 12, 2026**.
- (3) The factums of the Chamber of Commerce and the CCLA shall not address the issues on which they have not been granted leave to intervene, as addressed above.

- (4) Any party wishing to reply to any of the interveners' factums on the appeal may deliver a reply of no longer than five (5) pages by **March 23, 2026**.
- (5) Each of the interveners shall be permitted ten (10) minutes to make oral submissions at the hearing of the appeal;
- (6) The interveners shall not be entitled to, nor subject to, any costs of these motions or of the appeal.

"B. Zarnett J.A."