Court File No. CV-20-00649404-000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NELL TOUSSAINT

Plaintiff/Respondent

- and -

ATTORNEY GENERAL OF CANADA

Defendant/Moving Party

-and-

CHARTER COMMITTEE ON POVERTY ISSUES, CANADIAN HEALTH COALITION, FCJ REFUGEE CENTRE, AMNESTY INTERNATIONAL CANADA, INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE COLOUR OF POVERTY/COLOUR OF CHANGE NETWORK, THE BLACK LEGAL ACTION CENTRE, THE SOUTH ASIAN LEGAL CLINIC OF ONTARIO, AND THE CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC AND CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION (MOTION TO STRIKE)

February 28, 2022

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PART I - OVERVIEW

1. The plaintiff, Nell Toussaint, seeks to challenge the federal government's framework regulating access to essential healthcare for individuals living in Canada with precarious immigration status. This includes a challenge to the framework as it existed in and/or was applied between 2009-2013, and as it exists in its current form, as being contrary to sections 7 and 15(1) of the *Canadian Charter of Rights and Freedoms* (the "***Charter***"). Rather than address these fundamental rights-based issues raised in her claim, the Attorney General of Canada ("**AGC**") has moved to strike the plaintiff's Amended Amended Statement of Claim (the "**Claim**") at this early

stage, taking the position that (among other things) the claim discloses no reasonable cause of action, is frivolous or vexatious, and is an abuse of process.[1]

2. The Canadian Civil Liberties Association (the "**CCLA**") intervenes to assist the Court in determining the factors to consider in a motion to strike a rights-based claim, such as this one, which has potential impact beyond the immediate parties to the action:

(a) first, the Court ought to consider the impacts on access to justice where the government seeks to use procedural mechanisms to prevent rights-based claims from being heard, which warrants the Court considering: (i) the inherent imbalance of power between a rights-claimant and the government respondent in *Charter* claims; (ii) the importance of hearing rights-based claims on their merits and on a full evidentiary record; and (iii) the broad-ranging impacts of rights-based claims on similarly situated individuals, who may not have the knowledge, means, or ability to access justice for themselves; and

(b) second, in applying the doctrine of *res judicata* to strike a claim challenging the constitutionality of a law or government action, the Court ought to exercise its discretion and consider factors including: (i) there are similarly-situated individuals who also have interests in the outcome of the claim; and (ii) the constitutionality of any new iterations of the impugned law or rule, which grant new powers to a decision maker that have not been tested in court.

PART II - SUMMARY OF FACTS

3. The facts are set out in the plaintiff's Claim at paragraphs 7-34.[2] As noted, in 2009, the plaintiff sought judicial review of the government's decision to deny her access to healthcare coverage in relation to life-threatening illnesses, on the basis that she did not fall into any of the

[1] Factum of the Defendant at para 31, Motion Record of the Moving Party, the Attorney General of Canada [**MRM**] Tab 3 at p 45.
[2] Amended Amended Statement of Claim at paras 7-34, MRM Tab 2 at pp 15-28.

four specified categories of immigrants eligible for coverage under the Interim Federal Health Program ("**IFHP**"), established pursuant to the Order-in-Council 157-11/848 made on June 20, 1957 (the "**1957 OIC**").[3] In 2010, the Federal Court denied her application (the "**2010 FC Decision**").[4]

4. In 2011, the CCLA intervened in the plaintiff's appeal at the Federal Court of Appeal (the "**2011 FCA Decision**").[5] Following that appeal, which was unsuccessful:

(a) in April 2012, the 1957 OIC was repealed and replaced with the Order Respecting the Interim Federal Health Program, 2012, SI/2012-26 (the "**2012 OIC**").[6] The 2012 OIC did not provide healthcare coverage for individuals living in Canada with precarious immigrations status, but gave a discretionary power to the Minister of Citizenship and Immigration (the "**Minister**") on their own initiative to provide healthcare coverage in "exceptional and compelling circumstances", without guidance as to the exercise of such discretion;[7]

(b) in 2013, Ms Toussaint submitted a communication to the United Nations Human Rights Committee ("**UNHRC**") claiming that as a result of her exclusion from the IFHP, she was a victim of Canada's violations of, among others, the right to life and the right to non-discrimination, recognized in articles 6 and 26 of the International Covenant on Civil and Political Rights ("**ICCPR**");[8]

(c) in 2014, the 2012 OIC was declared unconstitutional and was replaced by the current IFHP policy, effective as of April 1, 2016, pursuant to the Immigration, Refugees and Citizenship Canada Notice "Changes to the Interim Federal Health

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[3] Amended Amended Statement of Claim at paras 13-14, MRM Tab 2 at pp 16-17.
[4] *Toussaint v Canada (Attorney General)*, 2010 FC 810, Book of Authorities of the Intervener, Canadian Civil Liberties Association [**BOA-CCLA**] Tab 1.
[5] *Toussaint v Canada (Attorney General)*, 2011 FCA 213, BOA-CCLA Tab 2.
[6] Amended Amended Statement of Claim at para 4, MRM Tab 2 at p 14.
[7] Amended Amended Statement of Claim at paras 19 and 34(f), MRM Tab 2 at pp 19 and 28-29.
[8] Amended Amended Statement of Claim at para 22, MRM Tab 2 at p 20.

Program" dated April 11, 2016 ("**2016 IFHP Policy**").[9] However, as with the 2012 OIC, the Minister continues to maintain unspecified discretionary powers to grant IFHP coverage;[10] and

(d) in 2018, the UNHRC found that Canada had violated the plaintiff's right to life under article 6 of the ICCPR and that the distinction drawn by Canada for the purpose of admission to the IFHP between those with legal status and those with irregular status in Canada constituted discrimination under article 26 of the ICCPR.[11] The UNHRC further concluded that Canada must ensure that those without formal immigration status have access to essential healthcare in order to prevent foreseeable risks that could result in loss of life.[12]

5. In 2021, the plaintiff commenced this action in the Ontario Superior Court of Justice. Among other things, she challenges the constitutionality of the 1957 OIC and the 2012 OIC as they were applied to her as a foreign national with precarious immigration status. The plaintiff also challenges the constitutionality of the 2016 IFHP Policy, which continues to be in force, with the same unspecified Ministerial discretionary powers to grant IFHP coverage as contained in the 2012 OIC.

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[9] Amended Amended Statement of Claim at para 4, MRM Tab 2 at p 14.
[10] Amended Amended Statement of Claim at paras 19 and 34(f), MRM Tab 2 at pp 19 and 28-29.
[11] Amended Amended Statement of Claim at paras 27-28, MRM Tab 2 at pp 22-23; *Toussaint v Canada*, CCPR/C/123/D/2348/2014 at paras 11.5 and 11.8, BOA-CCLA Tab 3 [*Toussaint* UNHRC].
[12] Amended Amended Statement of Claim at para 29, MRM Tab 2 at pp 23; *Toussaint* UNHRC, *ibid* at para 13.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

6. The issue on this motion is whether the Claim should be struck on the basis that, *inter alia*, it discloses no reasonable cause of action (Rule 21.01(1)(b)) and/or is frivolous and vexatious, and an abuse of process (Rules 21.01(3)(d) and 25.11(b) and (c)).[13]

A. Test for Striking Out Claims

7. Under Rule 21.01(1)(b), a claim should only be struck if it is plain and obvious that there is no reasonable prospect that the claim can succeed, taking the facts pleaded to be true.[14] If the claim has some chance of success – a "glimmer" of hope – it must be permitted to proceed.[15]

B. Striking *Charter* Claims Requires Additional Considerations

8. At the outset, it is important to note that, contrary to the AGC's assertions, this is not a case about a right to "free health care".[16] Rather, the plaintiff asks this Court to consider the constitutionality of a government policy which has impacted, and which continues to impact, the ability of individuals living in Canada with precarious immigration status to access the kind of healthcare necessary to prevent reasonably foreseeable risks of loss of life or irreversible negative health consequences. The plaintiff asks that the Court considers this in light of a decision from the UNHRC, which found that Canada had breached her right to life and that its decision to distinguish between those with legal status and those with irregular status constituted discrimination.[17]

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[13] Notice of Motion at paras 10-12, 14, MRM Tab 1 at pp. 6-7.
[14] *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at p. 980, BOA-CCLA Tab 4 [*Hunt*]; *Conway v. Law Society of Upper Canada*, 2016 ONCA 72 at para 7, BOA-CCLA Tab 5.
[15] *MacKinnon v. Ontario (Municipal Employees Retirement Board)*, 2007 ONCA 874 at paras 19-20, BOA-CCLA Tab 6. *Canadian National Railway v Brant*, [2009] O.J. No. 2661 (Sup Crt) at para 46, BOA-CCLA Tab 7.
[16] See e.g., Factum of the Defendant at paras 1, 40-41, 52, MRM Tab 3 at pp. 34, 48, 51.
[17] Amended Amended Statement of Claim at paras 27-28, MRM Tab 2 at pp 22-23; *Toussaint* UNHCR, *supra* note 11 at paras 11.5 and 11.8.

9. It is in that context that this Court must consider the Supreme Court of Canada's caution that the power to strike out proceedings should be exercised with great care and reluctance.[18] This means that if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat".[19]

10. In the context of rights-based or *Charter* claims where the government seeks to employ procedural mechanisms to strike a claim, there are additional factors that warrant consideration in order to ensure that the test is applied fairly and results in a just outcome. Such factors include the inherent imbalance of power between a rights-claimant and the government respondent in *Charter* claims; the importance of hearing rights-based claims on a full evidentiary record; and the potential wide-ranging impacts on other rights-holders not before the court.

a. The imbalance of power between the parties

11. For ordinary Canadians, affordability of legal advice and representation may be prohibitive to accessing the justice system.[20] *Charter* claims often rely on individual litigants to take on litigation which, by its nature, pits the individual – often marginalized and of limited means, as is the case here[21] – against the state, resulting in an inherent imbalance of power.[22]

12. This is an important distinction between *Charter* claims and civil claims involving two private parties. The government's use of procedural roadblocks may have the effect of preventing

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[18] *Hunt, supra* note 14 at p. 977, BOA-CCLA Tab 4.
[19] *Ibid* at p. 980.
[20] *Hryniak v. Mauldin*, 2014 SCC 7 at para 24, BOA-CCLA Tab 8.
[21] Amended Amended Statement of Claim at para 2, MRM Tab 2 at p 14.
[22] See Lorne Sossin & Gerard J. Kennedy, "Justiciability, Access to Justice and Summary Procedures in Public Interest Litigation, (2019) 90 SCLR (2d), BOA-CCLA Tab 23. The court in *Nova Scotia (Attorney General) v Nova Scotia Teachers Union*, 2020 NSCA 17 at paras 55-56, BOA-CCLA Tab 9, acknowledged the *Charter* prohibits the government from abusing the power imbalance between the state and individuals during public sector negotiations.

a rights-claimant from advancing litigation as it adds to the temporal, financial and emotional costs of litigation, and can create barriers to access to justice in a given case and for similarly situated non-litigants.[23] In addition, however, it may have a broader "chilling" effect in discouraging or deterring other potential rights-claimants, many of which may be from marginalized communities or rely on public interest bodies with limited resources, from advancing novel claims.[24] As the Supreme Court of Canada has recognized, an inability to access the courts jeopardizes the rule of law.[25] Justice Brown in his concurrent decision in *Uber Technologies Inc v Heller* also emphasized the importance that everyone has reasonable access to the law and its processes, particularly to address the dynamics between the well-resourced and "weaker" members of society.[26]

13. Accordingly, when used too often or improperly, procedural mechanisms like a motion to strike have the capacity to impede the understanding of *Charter* rights, deter litigation that seeks

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[23] This was precisely the result in *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 BOA-CCLA Tab 10 [*Tanudjaja*]. In Lorne Sossin & Gerard J. Kennedy, "Justiciability, Access to Justice and the Development of Constitutional Law in Canada", (2017) Osgoode Hall LJ 708 at 718, BOA-CCLA Tab 24, the authors noted: "Cases like *Tanudjaja* demonstrate the potentially devastating effect of the Crown's procedural discretion (coupled with the Court's own jurisprudence on justiciability and related doctrines)". See also *AIC Limited v Fischer*, 2013 SCC 69 at para 27, BOA-CCLA Tab 11.

[24] See Vasuda Sinha, Lorne Sossin, & Jenna Meguid, "Charter Litigation, Social and Economic Rights & Civil Procedure" (2017) 26 Osgoode Hall LJ 43 at 66, BOA-CCLA Tab 25, in which the authors conclude: "[g]iven the importance of the litigation process in advancing *Charter* jurisprudence, courts overseeing such cases should ensure the *Rules of Civil Procedure* enhance rather than impede the development of our constitutional jurisprudence".

[25] *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59, BOA-CCLA Tab 12.

[26] *Uber Technologies Inc v Heller*, 2020 SCC 16 at para. 112 (Justice Brown, concurring), BOA-CCLA Tab 13.

to assert, apply or expand *Charter* rights, and can undermine the development of *Charter* jurisprudence.[27] As then Chief Justice McLachlin said in *Imperial Tobacco*:

> Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed.[28]

b. Public interest in Charter rights being heard on a full record

14. Courts play a critical role in reviewing and constraining law and government action. Accordingly, there is a strong public interest in ensuring that *Charter* rights and the constitutionality of law and government action are adjudicated on their merits, in context and on a full evidentiary record.

15. As Justice Brown and Justice Rowe commented in *Nevsun Resources Ltd v Araya* (dissenting in part, but not on this point) there are certain questions that the court *could* answer on a motion to strike, but ought not to, including questions related to the interpretation of the *Charter*.[29]

16. An example of this risk was observed by Justice Feldman in her dissenting opinion in *Tanudjaja v Canada (Attorney General)*.[30] Justice Feldman took particular issue with the motion judge making factual findings and "observations" that were not in the pleadings, without having

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[27] See Lorne Sossin & Gerard J. Kennedy, *supra* note 22 at 127-129, 134-135, BOA-CCLA Tab 23.
[28] *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 21, BOA-CCLA Tab 14 [*Imperial Tobacco*].
[29] *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para 145, BOA-CCLA Tab 15.
[30] *Tanudjaja*, *supra* note 23 at paras 70-74, BOA-CCLA Tab 10.

reviewed a full record, in support of granting the motion to strike on the grounds that the appellant's claim under s. 15 of the *Charter* disclosed no reasonable cause of action.[31]

17. That risk is present here and must be considered by this Court. The constitutionality of the 2012 OIC and 2016 IFHP Policy which continues to impact individuals living in Canada today ought to be scrutinized in context, and on a full evidentiary record. Dismissing the Claim at this early stage would prevent that.

c. Impact of Claim beyond the Plaintiff

18. It is well recognized that *Charter* litigation has public importance beyond the narrow dispute between the immediate parties.[32] In the CCLA's submission, cases which raise important *Charter* rights issues, with potentially wide-ranging impacts, ought not to be struck out at an early stage except in the clearest of cases.

19. The issues raised in the Claim have the potential to impact other rights-holders, many of whom may not be able to access the justice system themselves. In the current case, whether the government policies which resulted in the plaintiff's exclusion from the IFHP[33] comply with the *Charter* is a crucial issue which impacts the lives of many other people living in Canada, including their ability to access potentially life-saving healthcare.

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[31] *Ibid.*
[32] See *Carter v Canada*, 2015 SCC 5 at para 137, BOA-CCLA Tab 16, in which the SCC noted "almost all constitutional litigation concerns 'matters of public importance'".
[33] Including the 1957 OIC and the 2012 OIC, which continue in the form of the 2016 IFHP Policy today.

20. The breadth of the potential impact of this Claim is evident not only on the face of the Claim, but from the fact that ten groups, representing an array of interests and perspectives on the policy being challenged by the plaintiff, have intervened on this motion.

21. There is a need for courts to use principled restraint, taking into account the above factors, when asked to stop a rights-based claim from proceeding to a hearing on its merits.[34] This approach will help to mitigate the power imbalance between parties and will allow for the proper development of *Charter* jurisprudence.

C. *Res Judicata* in *Charter* Claims

22. The AGC relies on the 2010 FC and 2011 FCA Decisions to submit that the plaintiff's claim that her *Charter* rights were violated, and her claim that the IFHP breaches the *Charter*, are *res judicata* and have "no chance of success".[35]

23. *Res judicata* operates through a number of legal doctrines, including issue estoppel and abuse of process.[36] Issue estoppel precludes the re-litigation of issues between the parties (or their privies) which has been finally decided.[37]

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[34] *Lamb v Canada (Attorney General)*, 2018 BCCA 266 at paras 15, 40-41, BOA-CCLA Tab 17 [*Lamb*].
[35] Factum of the Defendant at paras 57-62, 64, 79, MRM Tab 3, pp 53-55, 59-60.
[36] *Reliable Mortgages Investment Corp. v. Chan*, 2014 BCCA 14 at para 23, BOA-CCLA Tab 18.
[37] *Danyluk v Ainsworth Technologies Inc*., 2001 SCC 44 at para 24, BOA-CCLA Tab 19 [*Danyluk*].

24. Because these are doctrines of public policy, designed to advance the interests of justice, it is crucial that neither doctrine be applied mechanically in such a way that would work an injustice.[38] As the Supreme Court of Canada in *Danyluk v Ainsworth Technologies Inc.* held:

> The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. […] The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel… If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied…[39]

25. In the context of issue estoppel, a failure to address the factors for and against the exercise of discretion—a list which remains open—constitutes an error of principle.[40]

26. Here, the plaintiff's Claim goes beyond the issues decided in the 2010 FC and 2011 FCA Decisions regarding the 1957 OIC, to include subsequent developments that were not before the Federal Court or the Federal Court of Appeal, including the UNHRC decision. Moreover, the Claim not only challenges the IFHP's constitutionality as it existed and/or was applied in 2009, but also as it existed and/or was applied until 2013, and in its current form.[41] The plaintiff also seeks a declaration that the Minister violated her *Charter* rights by not providing her with essential health care coverage between 2012-2013, when he had the discretionary power to do so.[42] These are claims which the plaintiff could not have raised in her Federal Court proceedings in 2010-2011, and which remain untested by courts on the basis of current law and evidence.

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[38] *Ibid* at para 1.
[39] *Ibid* at para 33, citations omitted.
[40] *Ibid* at paras 66-67.
[41] Amended Amended Statement of Claim at para. 1(c), MRM Tab 2, pp 11-12.
[42] Amended Amended Statement of Claim at para. 1(d), MRM Tab 2, pp 12.

27. In addition, even if the elements of issue estoppel are met, there are a number of factors before the Court that must be considered in exercising its discretion regarding whether to strike the plaintiff's *Charter* claims on the basis of *res judicata*.[43] Those factors include the interests of others beyond the immediate parties to the action, and the principle that determining the constitutionality of government legislation or policies should proceed on current evidence, both of which are discussed above.[44]

28. Furthermore, and in particular, the AGC's argument of abuse of process warrants additional scrutiny. The government healthcare program to which the plaintiff was denied access evolved following the 2010 FC and 2011 FCA Decisions, including through the 1957 OIC's subsequent iterations – the 2012 OIC and the 2016 IFHP Policy – which were not before the Court in 2010 or 2011. The constitutionality of the government's laws and policies ought to be evaluated based on a current evidentiary record.

29. This was acknowledged by the AGC in another case, *Lamb v Canada (Attorney General)*.[45] There, the AGC was responding to a motion to strike in a *Charter* case and argued, among other things, that it was entitled to create a full factual matrix in defence of new legislation, and that restraint was to be exercised when applying the doctrine of abuse of process to strike pleadings. In advancing these arguments, the AGC pointed specifically to "the crucial importance

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[43] See: *Danyluk*, *supra* note 37 at para 33, BOA-CCLA Tab 19; *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 35, BOA-CCLA Tab 20.
[44] *Apotex Inc v Canada (Attorney General)*, [1997] 1 FC 518 at para 48, BOA-CCLA Tab 21; *Lamb*, *supra* note 34 at para 100, BOA-CCLA Tab 17.
[45] *Lamb*, *supra* note 34, BOA-CCLA Tab 17.

of evidence in *Charter* litigation", arguing that "the new legislation should be examined on as full a factual matrix as reasonably possible".[46]

30. The BC Court of Appeal accepted this argument, holding that the constitutionality of government legislation, policies and rules should proceed on "relevant, current evidence", specific to the objectives and effects of the legislation, policy, or rule, and properly tested through the normal processes of tendering evidence.[47]

31. This principle can be seen in the motion to strike context generally. As noted above, in *Knight v Imperial Tobacco*, then Chief Justice McLachlin of the Supreme Court of Canada cautioned that motions to strike must be used with care, as "[t]he law is not static and unchanging".[48] And, as Justice Feldman in her dissenting opinion in *Tanudjaja v Canada (Attorney General)* stated: "The motion to strike should not be used […] as a tool to frustrate potential developments in the law."[49]

32. These principles are relevant to the present case. In particular, the 2012 OIC bestowed on the Minister a new discretionary power to provide health care coverage to applicants in exceptional and compelling circumstances. This discretion was not exercised in favour of the plaintiff. That aspect of the 2012 OIC was carried through into the 2016 IFHP Policy, which remains in place today. Accordingly, the government has created the possibility for individuals with precarious immigration status to access healthcare coverage, but only in exceptional and compelling

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[46] *Ibid* at paras 40-41.
[47] *Ibid* at para 100.
[48] *Imperial Tobacco, supra* note 28 at para 21, BOA-CCLA Tab 14; see also *Meekis v Ontario*, 2021 ONCA 534 at para 63, BOA-CCLA Tab 22.
[49] *Tanudjaja, supra* note 23 at para 49, BOA-CCLA Tab 10.

circumstances. Whether the 2016 IFHP Policy and/or the system established by the government is compliant with s. 7 and/or s. 15 of the *Charter* has not been tested in Court.

33. The constitutionality of the government using a discretionary power to insulate otherwise unconstitutional rules or policies is exactly the type of issue that needs to be considered on a full evidentiary record. If the Claim is permitted to proceed, the CCLA intends to seek leave to intervene in the main action. The CCLA anticipates making submissions regarding the constitutionality of the IFHP precluding access to essential, lifesaving healthcare for individuals living in Canada with precarious immigration status, unless and until the Minister determines that "exceptional and compelling circumstances" warrant it. These are issues that ought to be adjudicated on their merits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of February, 2022.

February 28, 2022

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SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Toussaint v Canada (Attorney General)*, 2010 FC 810
2. *Toussaint v* Canada *(Attorney General)*, 2011 FCA 213
3. *Toussaint v Canada*, CCPR/C/123/D/2348/2014
4. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959
5. *Conway v. Law Society of Upper Canada*, 2016 ONCA 72
6. *MacKinnon v. Ontario (Municipal Employees Retirement Board)*, 2007 ONCA 874
7. *Canadian National Railway v Brant*, [2009] O.J. No. 2661 (Sup Crt)
8. *Hryniak v. Mauldin*, 2014 SCC 7
9. *Nova Scotia (Attorney General) v Nova Scotia Teachers Union*, 2020 NSCA 17
10. *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852
11. *AIC Limited v Fischer*, 2013 SCC 69
12. *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59
13. *Uber Technologies Inc v Heller*, 2020 SCC 16
14. *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42
15. *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5
16. *Carter v Canada*, 2015 SCC 5
17. *Lamb v Canada (Attorney General)*, 2018 BCCA 266
18. *Reliable Mortgages Investment Corp. v. Chan*, 2014 BCCA 14
19. *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44

20. *Toronto (City) v CUPE, Local 79*, 2003 SCC 63

21. *Apotex Inc v Canada (Attorney General)*, [1997] 1 FC 518

22. *Meekis v Ontario*, 2021 ONCA 534

Secondary Sources

23. Lorne Sossin & Gerard J. Kennedy, "Justiciability, Access to Justice and Summary Procedures in Public Interest Litigation", (2019) 90 SCLR (2d)

24. Lorne Sossin & Gerard J. Kennedy, "Justiciability, Access to Justice and the Development of Constitutional Law in Canada", (2017) Osgoode Hall LJ 708

25. Vasuda Sinha, Lorne Sossin, & Jenna Meguid, "Charter Litigation, Social and Economic Rights & Civil Procedure" (2017) 26 Osgoode Hall LJ 43

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY – LAWS

***Canadian Charter of Rights and Freedoms*, ss 7, 15(1), Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11**

LEGAL RIGHTS

Life, Liberty, and Security of the Person

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.

EQUALITY RIGHTS

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.

***Rules of Civil Procedure*, RRO 1990, Reg 194**

RULE 21 DETERMINATION OF AN ISSUE BEFORE TRIAL

Where Available
To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b).

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

(a) the court has no jurisdiction over the subject matter of the action;

Capacity

(b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

(c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court, and the judge may make an order or grant judgment accordingly.

RULE 25 PLEADINGS IN AN ACTION

Striking out a Pleading or Other Document

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court.

NELL TOUSSAINT -and-	ATTORNEY GENERAL OF CANADA	Court File No. CV-20-00649404-000
Plaintiff/Respondent	Defendant/Moving Party	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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