

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**NELL TOUSSAINT**

Plaintiff

and

**ATTORNEY GENERAL OF CANADA**

Defendant

**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

**AMENDED NOTICE OF MOTION**

**THE DEFENDANT** will make a motion to the Court on a ~~date to be fixed by the Registrar~~ June 13, 2022 at 10:00 a.m., at 330 University Avenue, 8<sup>th</sup> floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard (*choose appropriate option*)

~~in writing under subrule 37.12.1(1) because it is~~ (insert one of on consent, unopposed or made without notice);

~~in writing as an opposed motion under subrule 37.12.1(4);~~

orally;

**THE MOTION IS FOR:**

- a) An Order striking out the Amended Amended Statement of Claim dated May 25, 2021, and dismissing the action, with costs;
- b) In the alternative, an Order extending the time in which to file a Statement of Defence, to 60 days from the date of the Order; and
- c) Such further and other relief as this Court deems appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

- 1) The Defendant established the Interim Federal Health Program (the "IFHP") in 1957. The IFHP provides health care benefits to four categories of foreign nationals seeking admission to Canada. It creates an exception to legislative provisions which generally limit public health insurance coverage to residents.
- 2) The Plaintiff is a 51 year old woman of colour who is a national of Grenada. The Plaintiff entered Canada as a visitor in 1999. Her visitor status expired. She lived in Canada from 1999 to 2013 without obtaining residency status.
- 3) In 2006 the Plaintiff's health began to deteriorate. In 2009, the Plaintiff applied for health-care coverage under the IFHP. The Plaintiff was denied coverage, as did not fit into any of the four eligible categories.
- 4) The Plaintiff sought judicial review before the Federal Court of the decision denying her coverage under the IFHP. She argued that the decision was in breach of the *Charter*, and not consistent with Canada's international obligations. The Federal Court dismissed the application in August, 2010.
- 5) The Plaintiff appealed to the Federal Court of Appeal, arguing, among other things, that the Federal Court's decision was contrary to Canada's international obligations. The Federal Court of Appeal dismissed the appeal in June, 2011. The Plaintiff's application for leave to appeal to the Supreme Court of Canada was denied in April 5, 2012.
- 6) In April, 2013, the Plaintiff became eligible for health-care coverage under the Ontario Health Insurance Plan as a result of a successful application for permanent residence.
- 7) In December, 2013 the Plaintiff submitted a communication to the United Nations Human Rights Committee (the "UNHRC") under the International Covenant on Civil and Political Rights (the "ICCPR"). The Plaintiff claimed

that as a result of her exclusion from the IFHP she was a victim of violations of, among others, the right to life and the right to non-discrimination recognized in articles 6 and 26 of the ICCPR.

- 8) On July 24, 2018 the UNHRC released its views that the Defendant had violated the Plaintiff's right to life recognized in article 6 of the ICCPR.
- 9) The Plaintiff wrote to Canadian officials and demanded a remedy following the UNHRC's decision. The Defendant took the position that it had met its obligations under the ICCPR, and refused to provide compensation to the Plaintiff.
- 10) The Statement of Claim discloses no reasonable cause of action:
  - a) Canadian courts have already decided, based on the same facts asserted in this claim, and taking into account Canada's international obligations, that the Plaintiff's exclusion from health care coverage under the IFHP is not a breach of her Charter rights;
  - b) The facts pleaded do not disclose any cause of action or right to damages under international law;
  - c) The facts pleaded do not disclose any cause of action or right to damages under domestic law, including the Charter;
  - d) The facts pleaded do not disclose any right to a declaration by this Court:
    - i) that the Plaintiff's rights under an international treaty have been breached;
    - ii) that IFHP breaches the Charter
    - iii) that the Defendant's response to the UNHRC Committee's views reached the Charter
  - e) The non-binding views of an international tribunal do not give right to any right to damages in this Court;
  - f) It is settled law that Canadian legislation, which generally limits public health insurance coverage to residents, complies with the Charter;
  - g) It is settled law that a right to health care insurance coverage regardless of status is not a principle of fundamental justice;
  - h) The Plaintiff's attack on the constitutional validity of a policy which is no longer in effect is moot and would serve no purpose.

- i) The action is statute barred by the Limitations Act;
  - j) There is no basis in law for the Plaintiff's claim that the common law rules of res judicata, issue estoppel, abuse of process and collateral attack are unconstitutional if they bar a claim against the Defendant.
- 11) The action is frivolous and vexatious, and an abuse of process:
- a) The Plaintiff is seeking to re-litigate of issues previously decided and the litigation of matters that have been concluded;
  - b) In previous proceedings dating back to 2010, the Plaintiff either did raise, or could have raised the Charter arguments and international law arguments referred to in the Statement of Claim, including a potential claim for damages;
  - c) A party cannot re-litigate a claim that it could have raised in an earlier proceeding;
  - d) The action is an impermissible collateral attack on a decision of a federal tribunal.
- 12) The Statement of Claim sets out allegations that are frivolous and vexatious, and an abuse of process of the Court, in particular:
- a) Allegations made without evidentiary foundation;
  - b) Allegations based on assumptions and speculation, or which are incapable of proof;
  - c) Purported allegations of fact which are, in fact, arguments or conclusions.
- 13) The court has no jurisdiction over parts of the relief claimed in the Statement of Claim:
- a) The Plaintiff is effectively seeking judicial review of decisions of a federal tribunal, matters which are in the exclusive jurisdiction of the Federal Court;
- 14) Rules 21.01(1)(b); 21.01(3)(a) and (d); 25.06(1) and (2); and 25.11(b) and (c) of the Rules of Civil Procedure.
- 15) The *Limitations Act*, 2002, SO 2002, c 24, Sch. B, ss. 4 and 15
- 16) The *Federal Courts Act*, R.S., 1985, c. F-7, s. 18
- 17) The *Canada Health Act*, RSC 1985, c C-6, ss. 2, 7

- 18) The *Health Insurance Act*, RSO 1990, c H.6, s. 2, 3
- 19) Regulation 552, *General*, R.R.O. 1990, Reg. 552, s. 1.4
- 20) Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be relied on in the disposition of this motion:

- 21) The Amended Statement of Claim, dated May 25, 2021.

Date: ~~July 20, 2021~~ February 10, 2022

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Ontario Regional Office  
National Litigation Sector  
120 Adelaide Street West Suite #400  
Toronto, ON M5H 1T1  
Fax: (416) 954-8982

Per: David Tyndale  
Asha Gafar  
LSO#: A028696K  
44981W  
Tel: (647) 256-7309  
(647) 256-0720  
Email: David.Tyndale@justice.gc.ca  
Asha.Gafar@justice.gc.ca

Lawyers for the Defendant

TO: Andrew C. Dekany  
Barrister and Solicitor  
5 Edenvale Crescent  
Toronto, ON M9A 4A5

Tel: (416) 888-8877  
Email: [andrewcdekany@gmail.com](mailto:andrewcdekany@gmail.com)

Lawyer for the Plaintiff

AND Yin Yuan Chen  
TO: Vanessa Gruben  
Martha Jackson

Faculty of Law, University of Ottawa  
57 Louis Pasteur  
Ottawa, ON K1N 6N5

Tel: (613) 562-5800  
Email: [yy.chen@uottawa.ca](mailto:yy.chen@uottawa.ca)  
[Vanessa.Gruben@uottawa.ca](mailto:Vanessa.Gruben@uottawa.ca)  
[Martha.Jackman@uottawa.ca](mailto:Martha.Jackman@uottawa.ca)

Lawyers for the Interveners, Charter Committee on Poverty Issues, Canadian Health Coalition and FCJ Refugee Centre

AND Iris Fischer  
TO: Kaley Pulfer  
Alysha Li  
Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
199 Bay Street  
Suite 400, Commerce Court West  
Toronto, ON M5L 1A9

Tel: (416) 863-2408  
(416) 863-2756  
(416) 826-2407  
Fax: (416) 863-2653  
Email: [iris.fischer@blakes.com](mailto:iris.fischer@blakes.com)  
[kaley.pulfer@blakes.com](mailto:kaley.pulfer@blakes.com)  
[alysha.li@blakes.com](mailto:alysha.li@blakes.com)

Lawyers for the Intervener, Canadian Civil Liberties Association

AND Raj Anand  
TO: Megan Mah  
WeirFoulds LLP  
Barristers and Solicitors  
Suite 4100 – 66 Wellington Street West  
P.O. Box 35, Toronto-Dominion Centre

Tel: (416) 365-1110  
Fax: (416) 365-1876  
Email: [ranand@weirfoulds.com](mailto:ranand@weirfoulds.com)  
[mmah@weirfoulds.com](mailto:mmah@weirfoulds.com)

Lawyers for the Interveners, Colour of Poverty/Colour of Change Network, Black Legal Action Centre; South Asian Legal Clinic of Ontario and Chinese and Southeast Asian Legal Clinic

AND Rachael Saab  
TO: Alex Bogach  
TORYS LLP  
79 Wellington St. W., 30<sup>th</sup> Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2

Tel: (416) 865-8192  
(416) 865-7379  
Fax: (416) 865-7380  
Email: [rsaab@torys.com](mailto:rsaab@torys.com)  
[abogach@torys.com](mailto:abogach@torys.com)

Lawyers for the Interveners, Amnesty International Canada and ESCR-net -  
International Network for Economic, Social and Cultural Rights

**NELL TOUSSAINT**

Plaintiff

AND

**ATTORNEY GENERAL OF CANADA**

Defendant

**ONTARIO  
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Proceeding Commenced at  
TORONTO

**NOTICE OF MOTION**

**ATTORNEY GENERAL OF CANADA**

Department of Justice  
Ontario Regional Office  
120 Adelaide Street West  
Suite 400  
Toronto, Ontario  
M5H 1T1  
Fax: (416) 954-8982

Per: David Tyndale  
Asha Gafar  
Tel: (647) 256-7309  
(647) 256-0720  
Email: David.Tyndale@justice.gc.ca  
Asha.Gafar@justice.gc.ca

Lawyers for the Defendant