CV-20-00649404-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

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

FACTUM OF THE DEFENDANT
MOTION TO STRIKE STATEMENT OF CLAIM

PART I – STATEMENT OF FACTS

A. OVERVIEW

1. The Plaintiff's claim does not raise a reasonable cause of action. The issues which underpin the Plaintiff's claim are matters of settled law. Firstly, there is no right (under the *Charter* or otherwise) to government funded health insurance in Canada, regardless of immigration status. Second, the views of a United Nations Committee do not give rise to a cause of action in damages in Canada, especially when they run counter to Canadian domestic legislation and jurisprudence.

2. In 2009 the Plaintiff sought judicial review of the decision to deny her health insurance benefits. The Plaintiff either did raise, or could have raised all of

the arguments raised in this action. The Federal Court and the Federal Court of Appeal found no breach of the *Charter*. The Supreme Court dismissed leave. The Plaintiff's current claim, based on the same facts, has no hope of success.

B. FACTS ALLEGED IN THE STATEMENT OF CLAIM

3. For the purposes of this motion, the Defendant relies on the facts as set out in the Statement of Claim, subject to certain exceptions. The Defendant does not accept as facts the allegations in the Statement of Claim which consist of argument, conclusions stated without material facts, or abusive or superfluous allegations, as noted below.

1) The Interim Federal Health Program

4. The Defendant established the Interim Federal Health Program (the "IFHP" under Order-in-Council number 157-11/848 in 1957. There is no Act of Parliament that deals with such health care benefits [paragraphs 4, 6].[1] The IFHP provides health care benefits to four categories of foreign nationals: refugee claimants, resettled refugees, persons detained under the *Immigration and Refugee Protection Act* and victims of trafficking [paragraph 13]. The IFHP creates an exception to Federal and Provincial legislation, which generally limits public health insurance coverage to residents.[2] The IFHP was under the responsibility of the Minister of Citizenship and Immigration until November 3, 2015 and since then the Minster of Immigration, Refugees and Citizenship [paragraph 5].

5. On April 5, 2012 the Defendant repealed the 1957 Order-in-Council

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[1] Hereinafter, references in square brackets are to paragraphs of the Statement of Claim
[2] Canada Health Act, RSC 1985, c C-6 ("CHA"), s. 2; *Health Insurance Act*, RSO 1990, c H.6, ss. 2-3; *General*, R.R.O. 1990, Reg. 552, s 1.4

and replaced it with the 2012 Order-in-Council. The 2012 Order-in-Council does not provide irregular migrants with health-care coverage under the Program [paragraph 19]. In 2014, the 2012 Order-in-Council was declared unconstitutional, and was replaced in 2016 by the 2016 Interim Federal Health Care Program policy [paragraph 4]. The 2012 Order-In-Counsel and the 2016 policy make no explicit exception for situations where life or health is at risk, except where there is a clear health risk to the public [paragraph 19].

2) <u>Summary of Plaintiff's immigration history and medical issues</u>

6. The Plaintiff is a 51 year old woman of colour who is a national of Grenada. She has lived in Canada since December 1999 and currently resides at a rehabilitation hospital in Toronto, Ontario. She is impecunious [paragraph 2].

7. On 11 December 1999 the Plaintiff lawfully entered Canada as a visitor from Grenada. The Plaintiff's visitor status expired. She worked in Canada from 1999 to 2008 without obtaining residency status or permission to work. During this period, she managed to pay privately for any medical costs [paragraph 7].

8. The Plaintiff began to seek regularization of her status in Canada in 2005. She paid a significant part of her savings to an immigration consultant who was dishonest and provided no useful service. The Plaintiff could not afford to make further attempts to regularize her status for some time [paragraph 8].

9. In 2006 the Plaintiff's health began to deteriorate as she developed chronic fatigue and abscesses. In November 2008, she became unable to work due to illness, and in 2009 her health deteriorated to life-threatening status. In February 2009 she was diagnosed with pulmonary embolism and suffered from poorly controlled diabetes with complications of renal dysfunction, proteinuria,

retinopathy and peripheral neuropathy. Her neurological problems resulted in severe functional disability with marked reduction in mobility and impairment of basic activities. She also suffered from hyperlipidaemia and hypertension [paragraph 9]. The Statement of Claim alleges (without providing dates or particulars) that the Plaintiff suffered from stroke, leg amputation above the knee, partial blindness, kidney failure requiring dialysis several times a week, and heart failure resulting in an anoxic brain injury [paragraph 33].

10. On September 12, 2008 the Plaintiff made an application for permanent resident status on humanitarian and compassionate grounds, but did not pay the required fee for filing the application [paragraph 10].

11. On 6 May 2009, the Plaintiff applied for health-care coverage under the IFHP [paragraph 12]. The Plaintiff did not fit into any of the four categories of immigrants eligible for IFHP coverage. Her application was denied. The life-threatening nature of the Plaintiff's health problems was not mentioned as a consideration [paragraph 13].

3) <u>Canadian Courts uphold decision to deny benefits</u>

12. The Plaintiff sought judicial review of the decision denying her health-care coverage under the IFHP. She argued that the decision was in breach of her sections 7 and 15 of the *Charter of Rights and Freedoms* (the "*Charter*") and that the immigration officer had failed to apply domestic law in a manner consistent with the international human rights treaties ratified by Canada. The Plaintiff provided the Court with extensive medical evidence proving that her life had been put at risk [paragraph 14].

13. The Federal Court accepted that the Plaintiff experienced extreme

delay in receiving medical treatment and suffered severe psychological stress resulting from the uncertainty surrounding whether she would receive the medical treatment she needed. The Federal Court also found that the evidence established a deprivation of the Plaintiffs' right to life and security of the person that was caused by her exclusion from the IFHP. However, the Court found that the deprivation was not contrary to section 7 of the *Charter*. The Court found that denying financial coverage for health care to persons who have chosen to enter or remain in Canada illegally is consistent with the principles of fundamental justice, and that the impugned policy was a permissible means to discourage defiance of Canada's immigration laws. [paragraph 15].

14. The Plaintiff appealed to the Federal Court of Appeal, arguing, among other things, that the Federal Court's decision was contrary to the right to life under article 6 of the International Covenant on Civil and Political Rights (the "ICCPR") and to protection from discrimination on the ground of immigration status under international human rights law [paragraph 16].

15. The Federal Court of Appeal upheld the Federal Court's finding that the Plaintiff was exposed to a significant risk to her life and health, a risk significant enough to trigger a violation of her rights to life and security of the person. The Court held, however, that the operative cause of the risk to her life was her decision to remain in Canada without legal status [paragraph 17].

16. The Statement of Claim omits the Court of Appeal's conclusion: that the Plaintiff failed to show that the deprivation was contrary to the principles of fundamental justice, and that section 7 of the Charter does not require governments to provide access to health care to everyone inside Canada's

borders, even to those defying Canada's immigration laws.[3] The Court of Appeal held that any deprivation in the Plaintiff's case accorded with the principles of fundamental justice [paragraph 17]. The Federal Court of Appeal further held that discrimination on the grounds of immigration or citizenship status did not qualify for protection as an "analogous ground" of discrimination under the *Charter*. [paragraph 17].

17. The Court held that international human rights law could be considered in interpreting the *Charter* [paragraph 17]. The Statement of Claim alleges that the Federal Court of Appeal held that principles of international law were "not relevant" to the Plaintiff's case [paragraph 17]. What the Court actually said was that courts can be assisted by principles of international law when defining the content of certain principles of fundamental justice, but that in the Plaintiff's case the Court had not reached that point. The Plaintiff had not offered a principle that met the criteria for admission as a principle of fundamental justice.[4]

18. The Plaintiff sought leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada. Her application for leave to appeal was dismissed on April 5, 2012 [paragraph 18].

19. On April 30, 2013, the Plaintiff became eligible for health-care coverage as a result of her application for permanent residence based on spousal sponsorship. Since then, the Plaintiff has been granted health-care coverage under the provincial Ontario Health Insurance Plan [paragraph 23].

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[3] *Toussaint v. Canada (AG)*, 2011 FCA 213 ("*Toussaint*, FCA") at para. 74-80
[4] *Toussaint*, FCA, supra, at paras. 86-88

4) Plaintiff's communication to the UNHRC

20. In December, 2013 the Plaintiff submitted a communication to the United Nations Human Rights Committee (the "UNHRC") under the First Optional Protocol to the International Covenant on Civil and Political Rights. The Committee is an independent body established by the ICCPR specifically to supervise the application of the ICCPR and is recognized as an authority on the interpretation of the scope and nature of the obligations thereunder. 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 [paragraph 22].

21. The Defendant acceded both to the ICCPR and the Optional Protocol on May 19, 1976. By so doing the Defendant undertook and agreed to binding international obligations, among other things, to act as follows in the Plaintiffs interests, intending to provide to the Plaintiff as well as other individuals within Canada and subject to Canada's jurisdiction the benefits contained in such undertakings and agreements:

(a) undertook to respect and to ensure to the Plaintiff the rights to life and to non-discrimination without distinction of any kind;

(b) undertook to take the necessary steps to adopt measures as may be necessary to give effect to such rights;

(c) agreed that it may not derogate from its obligations to protect by law the Plaintiffs inherent right to life and to prohibit any discrimination against the Plaintiff and guarantee to the Plaintiff equal and effective protection against discrimination (other than a limited right of derogation in times of emergency from its obligation to prohibit discrimination but no derogation under any circumstances from the obligation to protect the right to life);

(d) agreed to recognize the competence of the Committee to receive and consider the Plaintiffs claims to violations of her rights recognized in

> the ICCPR, and to engage in good faith in those proceedings before the Committee including submitting to the Committee written explanations or statements clarifying the matter in response to the Plaintiffs communication and any additional written information or observations requested by the Committee, including remedial measures that have been taken;
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> (e) undertook to ensure that the Plaintiff shall have an effective remedy for the violation of such rights, notwithstanding that the violation has been committed by persons acting in an official capacity; and
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> (f) undertook to ensure that the Plaintiff shall have her right to an effective remedy determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by Canada's legal system, and to develop the possibilities of judicial remedy. [paragraph 23]

22. On October 14, 1970 the Defendant acceded to the Vienna Convention on the Law of Treaties (the "VCLT"). By so doing the Defendant agreed to perform its obligations under, among other treaties, the ICCPR and the Optional Protocol, to do so in good faith, and not to invoke any provisions of its internal law as a justification for its failure to perform such obligations. These provisions of the VCLT codify the rule of customary international law known as *pacta sunt servanda*, which is a peremptory norm and forms part of *jus cogens* [paragraph 24].

23. Between 2014 and 2017 the Committee received from the Defendant various submissions and observations contesting both the admissibility and merits of the Plaintiffs claims, and also received from the Plaintiff her submissions and observations in response thereto [paragraph 25].

24. Among other things, the Plaintiff brought to the Committee's attention that case of Canada v. Bedford,[5] in which the Supreme Court of Canada discussed the standard required to show causation between a law and the violation of the

[5] *Canada (AG) v Bedford*, 2013 SCC 72

rights to life and security of the person under section 7 of the *Charter* [paragraph 26]. The Statement of Claim alleges that the reasoning of the Supreme Court in *Bedford* undermines the rationale of the Federal Court of Appeal's 2011 decision in the Plaintiff's case [paragraph 26]. This is a statement of argument, not fact.

25. On July 24, 2018 the UNHRC determined that the Defendant had violated the Plaintiff's right to life recognized in article 6 of the ICCPR, noting both the Federal Court and the Federal Court of Appeal acknowledged that, despite the care the Plaintiff may have received, she had been exposed to a serious threat to her life and health because she had been excluded from the benefits of the IFHP. The Committee also noted the medical opinions to this effect which were accepted by the Federal Court. The Committee noted that the Plaintiff did not claim a right to health, but that specific rights under the ICCPR had been violated in the context of access to health care. The Committee stated that the obligation to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life, and includes the obligation to provide access to existing health-care services that are reasonably available and accessible when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life [paragraph 27].

26. The UNHRC also determined that the Defendant is not entitled to make a distinction, for the purposes of respecting and protecting the right to life, between regular and irregular migrants. The Committee stated that in the particular circumstances of the Plaintiffs case where, as recognized by the Federal Court and the Federal Court of Appeal, the exclusion of the Plaintiff from the IFHP could result in her loss of life or irreversible, negative consequences for her health, the

distinction drawn by the Defendant for the purpose of admission to the IFHP between those with legal status in Canada and those with irregular status was not based on a reasonable and objective criterion and therefore constituted discrimination under article 26 of the ICCPR [paragraph 28]. The Committee further determined that pursuant to article 2.3(a) of the ICCPR the Defendant is under an obligation to provide the Plaintiff with an effective remedy and is therefore obliged, among other things, to take appropriate steps to provide the Plaintiff with adequate compensation, and is also under an obligation to take all steps necessary to prevent similar violations in the future and ensure that irregular migrants have access to essential health care to prevent a reasonably foreseeable risk that can result in loss of life [paragraph 29].

5) <u>Plaintiff requests compensation based on UNHRC views</u>

27. The Plaintiff by her counsel wrote to the Prime Minister of Canada on August 30, 2018 asking for his assurance that the Defendant will make good on its obligation to provide her with redress and to amend its regulatory scheme. The Prime Minister’s office replied that the matter is the responsibility of the Minister of Immigration, Refugees and Citizenship. On September 25, 2018 the Plaintiffs counsel wrote to the then Minister asking for the same assurance. The Minister’s office replied that the correspondence had been forwarded to the appropriate Departmental officials for their information and consideration. However, neither the Minister nor any Departmental officials replied to the Plaintiff [paragraph 31].

28. On July 16, 2020, as part of its follow up procedure to its Views, the Committee assigned the Defendant two E grades (the worst possible, indicating

that the information provided or measures taken by the defendant were contrary to or reflected rejection of the Committee's views) for failing to meet its obligations to provide the Plaintiff with adequate compensation and of failing to take all steps necessary to prevent non-repetition, noting that the Defendant had rejected the Committee's assessment of the case and mistakenly viewed the follow-up procedure as an opportunity to reargue the case [paragraph 32].

29. On July 17, 2020 the Plaintiffs counsel wrote to the current Minister of Immigration, Refugees and Citizenship asking that the Defendant provide the Plaintiff with an effective remedy for the violation of her rights. On September 15, 2020 the Director General, Migration Health at Immigration, Refugees and Citizenship Canada responded that the Defendant would not take any measures to do so, relying on reasons the Defendant gave to the Committee in its reply to the Committee's request for information about the measures taken by it to give effect to the Committee's Views [paragraph 33]. The Statement of Claim alleges that the Defendant "mistakenly viewed the Committee's follow-up procedure as an opportunity to reargue the case" [paragraph 33]. This is a statement of argument, not fact.

30. The Defendant , in its reply to the UNHRC's views, relied on its own, different interpretation of its obligations under the ICCPR and on the decisions of the Federal Court and Federal Court of Appeal in relation to rights under the *Charter*. In particular, the Defendant:

(a) asserted that a serious risk to the Plaintiffs life was in no way a reasonably foreseeable outcome of the denial of coverage under the IFHP;

(b) continued to rely on the Federal Court of Appeal's "operative cause"

standard of causation;

(c) continued to assert that excluding irregular migrants from the IFHP advances a legitimate aim of encouraging persons not lawfully present in Canada to take steps to regularize their status

(d) recognizing that it has obligations under the ICCPR, asserted that the provision of lifesaving emergency medical services to irregular migrants at Canadian hospitals is sufficient to meet such obligations

(e) asserted that it meets its obligations under the ICCPR by the 2012 Order-in-Council giving a discretionary power to the Minister of Immigration, Refugees and Citizenship on his or her own initiative to grant IFHP benefits in exceptional and compelling circumstances to persons otherwise not entitled thereto

(f) asserted that any compensation whatsoever to the Plaintiff is unwarranted [paragraph 32]

PART II – POINTS IN ISSUE

31. The Statement of Claim should be struck, and the action dismissed, on the grounds that:

(a) The Statement of Claim discloses no reasonable cause of action;

(b) The Statement of Claim is scandalous, frivolous or vexatious; and is an abuse of the process of the court;

(c) The Statement of Claim seeks relief that is within the exclusive jurisdiction of the Federal Court; and

(d) The action is an abuse of process.

PART III – SUBMISSIONS

A. ARGUMENTATIVE OR ABUSIVE ALLEGATIONS SHOULD BE STRUCK

32. While most factual allegations must be taken as true for the purposes of a motion to strike,[6] those made without evidentiary foundation are an abuse of process.[7] Allegations based on assumptions and speculation, or which are

[6] *R v Imperial Tobacco Canada Ltd.*, [2011] 3 SCR 45, 2011 SCC 42 at para 22
[7] *AstraZeneca Canada Inc. v Novopharm Ltd*, 2009 FC 1209 at paras 16-18, aff'd 2010 FCA 112 at para 5; Merchant *Law Group v Canada (CRA*), 2010 FCA 184 at para 34

incapable of proof need not be taken as true.[8] A claim that merely contains arguments or conclusions should likewise be struck.[9] The court is not obliged to accept as a proven material fact the conclusion that there is a cause of action or a duty of care; rather, the court must examine whether the genuine material facts disclose a reasonable cause of action.[10]

33. In *Carney Timber Company, Inc. v. Pabedinskas*,[11] this court provided examples of "scandalous", "frivolous" or "vexatious" pleadings:

> • *a pleading that is superfluous or can have no effect on the outcome of the action is scandalous, frivolous and vexatious;*
>
> • *…a pleading that is purely argumentative will be struck out;*
>
> • *…pleadings that are clearly designed to use the judicial process for an improper purpose are an abuse of process – these include harassment and oppression of other parties by multifarious proceedings, the re-litigation of issues previously decided and the litigation of matters that have been concluded.*

34. The Plaintiff alleges that the Federal Court and the Federal Court of Appeal found that the Plaintiff's "rights to life and security of the person were violated" [paragraph 20]. This allegation is argumentative, and incapable of proof. The Federal Court and the Court of Appeal both concluded that the Plaintiff's rights under s. 7 of the *Charter* were not violated.[12]

35. The allegation that the Minister or his delegates "negligently, in bad faith or in abuse of their powers" denied benefits to the Plaintiff [paragraph 20] is a statement of argument, not fact. The allegation that the Defendant, based on its

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[8] *Operation Dismantle v The Queen, [1985] 1 SCR 441, 1985 CanLII 74*, at para 27; *Imperial Tobacco*, *supra* at para 22; *Sivak v Canada,* 2012 FC 272 at para 33
[9] *Merchant Law Group v Canada (CRA), supra,* note 7, at para 34
[10] *Abdullahi et al v Children's Aid Society of Toronto et al*, 2019 ONSC 3816 at para. 54
[11] *Carney Timber Company, Inc. v Pabedinskas*, [2008] O.J. No. 4818 (S.C.J.), citing *George v Harris* [2000] OJ No. 1762 and *Brodie v Thomson Kernaghan & Co.*, [2002] O.J. No. 1850, (2002), 27 B.L.R. (3d) 246 (S.C.J.)
[12] *Toussaint v. Canada (AG)*, 2010 FC 810 ("*Toussaint,* FC"); *Toussaint*, FCA, supra

international obligations, became obligated to make reparations to the Plaintiff [paragraph 30]. This is a statement of argument, not fact.

36. The Plaintiff further alleges that the Defendant, by responding to the Plaintiff's complaint to the UNHRC, led the Plaintiff to believe that it would make reparations to the Plaintiff [paragraph 30]. This is an argumentative statement, and incapable of proof. Every material fact pleaded by the Plaintiff leads to the opposite conclusion – that the Defendant never led the Plaintiff to believe that it would make reparations to her.

37. The Plaintiff alleges that the Defendant incorrectly, in bad faith and unreasonably refused to give effect to the UNHRC's decision, based on the Defendant's interpretation of the ICCPR and of the decision of the Federal Court of Appeal in the Plaintiff's case, and that the Defendant failed to meet its international obligations under the ICCPR [paragraph 33]. The Plaintiff's recitation of the reasons the Defendant has allegedly fallen short of its obligations are statements of argument, not fact.

B. CLAIM DISCLOSES NO REASONABLE CAUSE OF ACTION

1) General principles

38. The essence of a Defendant's motion under Rule 21.01(1)(b) is that the "wrong" described in the Claim is not recognized as a compensable violation of the Plaintiff's legal rights, with the result that the court would be unable to grant a remedy even if the Plaintiff proved all the facts alleged. To permit the Plaintiff to litigate the claim through discovery and trial would be a waste of both the parties' and the Court's time.[13]

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[13] *Dawson v Rexcraft Storage and Warehouse Inc.*, [1998] OJ 3240 (ONCA) at para 8

39. It is not open to a Plaintiff on a motion to strike to argue that the material facts necessary to ground his or her claims will emerge during the action. If the Statement of Claim does not set out at the outset basic material facts which are necessary to ground the claim, the Plaintiff is not entitled to proceed with those claims.[14]

2) <u>Causes of action pleaded by the Plaintiff cannot succeed</u>

a) No right to damages under customary international law

40. Customary international law does not impose a duty on Canada to provide free health care, regardless of immigration status. Further, customary international law does not give rise to a right to a domestic remedy in damages in the Plaintiff's case.

41. The Plaintiff's argument begins with reference to the "right to life" and the "right to be free from discrimination" protected by the ICCPR.[15] However, the Plaintiff is not simply asserting a "right to life" or a "right to non-discrimination" at large. The Plaintiff's claim is very particular – she claims that those general principles include a right to receive free health care anywhere in the world, regardless of one's lack of status.

42. There is no international consensus or consistent state action that supports such a conclusion. The UNHRC's non-binding views on this issue are not indicative of a customary international norm. Indeed, Canada's clear disagreement with the views shows a lack of *opinion juris* with respect to the content of the rights at issue.

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[14] *Region Plaza Inc. v Hamilton-Wentworth*, [1990] 12 OR (3d) 750; *Vardy v Canada*, [1977] F.C.J. No. 909 (F.C.C.) at paras. 7 and 9

[15] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, articles 6 and 26

43. In any event, the case law is clear that principles of international law are not directly enforceable in Canada, unless they are incorporated into Canadian law.[16] The Plaintiff cannot point to any Canadian law which incorporates or includes the right she is seeking: the right to free health care regardless of immigration status.

44. Customary international law principles are part of Canadian common law, *absent express legislation to the contrary.*[17] In this case, the legislation which governs public health insurance in Canada and Ontario is express legislation which runs counter to the Plaintiff's claim.

45. The *Canada Health Act*[18] (the *"CHA"*) provides for funding of public provincial health care plans. Provincial programs must provide coverage to residents of a province.[19] "Resident" is defined as "a person lawfully entitled to be or to remain in Canada who makes his home and is ordinarily present in the province, but does not include a tourist, a transient or a visitor to the province".[20]

46. The Ontario Health Insurance Plan ("OHIP"), is a public health care plan available to residents of Ontario.[21] A person cannot be recognized as a resident for the purposes of OHIP coverage unless the person has a specific eligible status.[22] The Plaintiff in 2009 was not a "resident" under OHIP or the CHA.

47. Canadian Courts and tribunals have consistently held that legislation

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[16] *Entertainment Software Assoc. v Society Composers*, 2020 FCA 100, at paras. 76-92; *Canadian Doctors for Refugee Care v. Canada (Attorney general)*, 2014 FC 651 at para 474
[17] *Nevsun Resources Ltd. v Araya*, 2020 SCC 5, at para. 121
[18] *Canada Health Act*, RSC 1985, c C-6 ("*CHA*")
[19] *CHA*, *supra*, s. 7c)
[20] *CHA*, *supra,* s. 2
[21] *Health Insurance Act*, RSO 1990, c H.6, ss. 2-3
[22] *General*, R.R.O. 1990, Reg. 552, s 1.4

which limits public health insurance coverage to residents complies with sections 7 and 15 of the *Charter*.[23]

48. The IFHP is a policy which provides federally funded health care coverage to certain categories of immigrants. It operates as an exception to the legislative provisions which limit public health insurance coverage to residents. However, the governing Canadian law, as well as the IFHP policy, expressly exclude persons without <u>any</u> status from receiving state-provided health care insurance coverage.

49. Canadian Courts have repeatedly held that that, to the extent possible, domestic legislation should be interpreted so that it is consistent with Canada's international obligations.[24] However, Canada is not *required* to adopt treaty definitions or treaty obligations directly into domestic law.[25] International law cannot be used to support an interpretation that is not permitted by the words of a Canadian legislative instrument. The presumption of conformity does not overthrow clear legislative intent.[26] If a treaty obligation conflicts with the clear wording of a Canadian statute, a Canadian Court must give precedence to statute over the international obligation.[27]

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[23] *Irshad v Ontario (Minister of Health)* (2001), 55 OR (3d) 43 (On CA) at paras. 135-137; Covarrubias v Canada (MCI), 2006 FCA 365 at para. 36;*Toussaint v Canada (AG)* 2011 FCA 213 at paras. 99-100; *Canadian Doctors for Refugee Care v. Canada (AG)*, 2014 FC 651 at paras. 867-870; *Canadian Snowbirds Association Inc*. v AG (Ontario), 2020 ONSC 5652, at para. 73; see also, e.g., *Toussaint v. Ontario (Health and Long-Term Care)*, 2011 HRTO 760 at para. 7

[24] *R v Hape*, 2007 SCC 26 at para. 53; *Baker v Canada (MCI)* [1999] 2 SCR 817 at para. 70; *Schreiber v Canada (AG)*, 2002 SCC 62 at para. 50

[25] *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at para.117

[26] *Kazemi Estate v Islamic Republic of Iran*, [2014] 3 SCR 176, at para. 60

[27] *Kazemi Estate, supra,* at para. 60; *Febles v. Canada (MCI), 2014 SCC 68* at para. 64; *Németh v. Canada (Justice)*, 2010 SCC 56 at para. 35*; R. v. Hape, 2007 SCC 26; Schreiber v Canada (AG),* [2002] 3 SCR 269 at para. 50*; Bouzari v Islamic Republic of Iran* (2004), 71 OR (3d) 675 (CA) at paras. 64-65; *Revell v Canada (MCI)*, 2019 FCA 262, at paras. 131-135

50. Even where rules of customary international law are incorporated into Canadian domestic law, it does not automatically follow that they create a cause of action in Canadian courts. The Supreme Court of Canada, in the *Nevsun* case,[28] recently discussed the relationship between Canada's customary international obligations and a right to domestic remedies, including damages. In that case, three Eritrean workers claimed that they were conscripted into a forced labour regime in a Canadian-owned mine. The workers sued the mine owner in British Columbia. The Plaintiffs in *Nevsun* alleged breaches of customary international law prohibitions against cruel and inhuman or degrading treatment. The Supreme Court ultimately found that the claim in Canada should not be struck at a preliminary stage for disclosing no cause of action, but did not decide the issue on the merits.[29]

51. The *Nevsun* case is distinguishable. The Supreme Court found in *Nevsun* that it was possible that Canadian law should be interpreted so as to support a cause of action in damages if a Plaintiff was subjected to forced labour, slavery, cruel, and inhuman or degrading treatment.[30]

52. In this case, however, the Plaintiff's specific interpretation of the right to life and the right to non-discrimination (namely, that they include a right to free health care regardless of immigration status) is not a principle of customary international law, and finds no parallel in Canadian law.

53. The Court in *Nevsun* found that there was no domestic law or other

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[28] *Nevsun Resources Ltd. v Araya*, 2020 SCC 5
[29] *Nevsun Resources Ltd. v Araya*, *supra* at para. 132
[30] *Nevsun Resources Ltd. v Araya*, *supra* at para. 127

procedural bar precluding the Eritrean workers' claims.[31] In this case, there are domestic legislative provisions that preclude the Plaintiff's claims: the provisions of the *Canada Health Act* and the *Ontario Health Insurance Act*, as well as the IFHP policy.

54. The views of the UNHRC in the Plaintiff's case are non-binding in international law and are not directly enforceable in this Court. There is no support for the Plaintiff's claim in Canadian law.[32] As the Ontario Court of Appeal held in *Ahani*,[33]

> *31 Ahani… seeks to use s. 7 to enforce Canada's international commitments in a domestic court. This he cannot do.*
>
> *32 A further answer to Ahani's submission is found in the nature of Canada's international commitment under the Covenant and the Protocol… **In signing the Protocol, Canada did not agree to be bound by the final views of the Committee**, nor did it even agree that it would stay its own domestic proceedings until the Committee gave its views. In other words, **neither the Committee's views nor its interim measures requests are binding on Canada as a matter of international law, much less as a matter of domestic law.** The party states that ratified the Covenant and the Optional Protocol turned their minds to the question of whether they should agree to be bound by the Committee's views… They decided as a matter of policy that they should not, leaving each party state, on a case by case basis, free to accept or reject the Committee's final views, and equally free to accede to or not accede to an interim measures request.*
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> *33 **To give effect to Ahani's position, however, would convert a non-binding request in a Protocol, which has never been part of Canadian law,** into **a binding obligation enforceable in Canada by a Canadian court, and more, into a constitutional principle of fundamental justice. Respectfully, I find that an untenable result**.*
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> *34 The principle that international treaties and conventions not incorporated into Canadian law have no domestic legal consequences has been affirmed by a long line of authority in the Supreme Court of Canada [emphasis added].*

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[31] *Nevsun Resources Ltd. v Araya*, *supra* at para. 122
[32] *Ahani v Canada (MCI)* (2002), 58 O.R. (3d) 107 (C.A.) at paras. 32 and 35, leave to appeal to SCC dismissed [2002] S.C.C.A. No. 62; *Mugesera v Kenney*, 2012 QCCS 116 at para. 37
[33] *Ahani v Canada (MCI)*, *supra*, at paras. 31-34

55. Even where a UN Committee expresses the view that Canada has violated its obligations under an international treaty, this does not automatically translate into a breach of the *Charter* giving rise to a right to damages.[34]

56. The Plaintiff has no reasonable cause of action based on the views of the UNHRC.

b) No right to damages under s. 24(1) of the Charter

57. Canadian courts have already decided, based on the same facts asserted in this claim, that the Plaintiff's exclusion from health care coverage under the IFHP is not a breach of her rights under s. 7 or 15 of the *Charter*.[35] The Federal Court of Appeal, having reviewed the applicable case law from the Supreme Court of Canada, found that the Plaintiff's s. 7 rights were not engaged, and that, in any event, access to free health care was not a principle of fundamental justice.[36] The Supreme Court dismissed the Plaintiff's application for leave to appeal.[37]

58. The Plaintiff's argument relies on the Supreme Court's decision in *Bedford*. That decision clarified, for the purpose of deciding if Section 7 of the *Charter* was engaged, the standard of causation required to prove that a law impacts *Charter* protected rights. The Supreme Court held in Bedford that the standard of a "sufficient causal connection" was appropriate. The Court clarified

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[34] In *Dumont*, for example the Plaintiff sued for damages as a wrongfully accused person, citing the ICCPR. The Quebec Superior Court dismissed the claim in 2009. In 2010, the UNHCR released views in Mr. Dumont's case which it found that Canada had violated the ICCPR. In 2012, the Québec Court of Appeal upheld the Superior Court's decision, and held that the ICCPR did not give rise to a right to damages: *Dumont c. Québec (PG)*, 2009 QCCS 3213, at para. 127 ; Dumont v. Canada, CCPR/C/98/D/1467/2006, UN Human Rights Committee (HRC), 21 May 2010; *Dumont c. Québec (Procureur général)*, 2012 QCCA 2039 at paras. 107-118

[35] *Toussaint v. Canada (AG)*, 2010 FC 810, appeal dismissed 2011 FCA 213, leave to appeal dismissed 2012 CanLII 17813 (SCC)SCC

[36] *Toussaint*, FCA, at paras 74-86

[37] *Toussaint v. Canada (AG)*, 2012 CanLII 17813 (SCC)

that the standard "does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant".[38]

59. The Plaintiff argues that this development puts into doubt the Federal Court of Appeal's 2011 decision in the Plaintiff's case, because the Court of Appeal found that the "operative cause" of any harm to the Plaintiff was the Plaintiff's choice to remain in Canada without status.

60. The Plaintiff ignores the fact that the Federal Court of Appeal concluded that the Plaintiff's *Charter* argument failed even if the denial of health benefits to the Plaintiff was considered to be the "operative cause" of any harm to her: "[e]ven if the appellant had discharged the burden of showing that the Order in Council is the operative cause of the injury… she would still have to establish that the deprivation… was contrary to the principles of fundamental justice". The Court of Appeal rejected the argument that fundamental justice requires governments to provide access to health care to everyone inside its borders, even to those defying immigration laws.[39]

61. This is entirely consistent with the reasoning in *Bedford*, where the Supreme Court pointed out that establishing a deprivation of *Charter* protected rights, using the "sufficient causal connection" threshold, was only the first step in the analysis. There is no violation of Section 7 if a deprivation is ultimately found to be in accordance with the principles of fundamental justice.[40]

62. The Plaintiff *Charter* claim was dismissed in 2011 on the grounds

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[38] *Bedford*, supra, at para. 76
[39] *Toussaint v. Canada (AG)*, 2011 FCA 213 ("*Toussaint*, FCA") at para. 74-80
[40] *Bedford*, supra, at para. 78

that a right to free health care regardless of status is not a principle of fundamental justice. This was settled law in 2011, and it still holds today.[41] The issue of whether the Plaintiff's *Charter* rights have been violated is *res judicata*. The Plaintiffs' claim to *Charter* damages has no chance of success.

c) No right to damages under domestic Ontario law

63. The Plaintiff has not cited any Ontario law which would entitle her to free health care coverage regardless of her immigration status. Ontario law expressly excluded the Plaintiff from health care coverage when she arrived in Canada. The applicable Ontario Law has repeatedly been held to comply with the *Charter*.[42] The Plaintiff's argument on this ground has no chance of success.

d) No right to a declaration that IFHP breaches the Charter

64. The Defendant repeats and relies on the arguments made with respect to the Plaintiff's claim for *Charter* damages. The *Charter* does not protect the right to free health care, regardless of immigration status. This was the finding of the Federal Courts in the Plaintiff's case in 2010-2011, and it remains the law. The Plaintiff's request for a different finding from this Court has no chance of success. Likewise, the Plaintiff's argument that the IFHP breaches the rights of all "irregular migrants" cannot succeed.

e) No right to a declaration that the Minister violated the Plaintiff's rights between 2012 and 2013

65. The Defendant repeats that the refusal to provide IFHP coverage to

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[41] *Chaoulli v Québec (AG)*, 2005 SCC 35, at para 104; *Wynberg v. Ontario* (2006), 82 O.R. (3d) 561 at para. 220 , *Flora v. Ontario*, 2008 ONCA 538 at paras. 106 - 108; *Tanudjaja v AG (Canada)* 2013 ONSC 5410, at paras. 32, 37-40, upheld 2014 ONCA 852; *Canadian Doctors for Refugee Care v Canada (AG)*, 2014 FC 651, at paras, 511 – 571; *R v Ferkul*, 2019 ONCJ 893 at paras.16-17

[42] See cases cited at footnote 24, *supra*

the Plaintiff in 2009 complies with the *Charter*. The Plaintiff has not pleaded that she applied for health coverage after the IFHP was amended in 2012. The Statement of Claim does not disclose any real or potential breach of the Plaintiff's *Charter* rights between 2012 and 2013.

f) No right to an order directing re-interpretation or amendment of the IFHP

66. With respect to the IFHP in force in 2009, when the Plaintiff applied for health care coverage, the Defendant repeats that the policy complied with the *Charter.* In any event, that policy is no longer in effect, having been replaced in 2012. There is no point in this Court opining on the constitutional validity of a policy which is no longer in effect. The Court may strike out a pleading where the declaratory relief sought is moot, superfluous, or would serve no purpose.[43]

67. The requirement that domestic law be interpreted in accordance with international obligations cannot be used to effectively amend domestic legislation or policy.[44]

g) No right to a declaration under the ICCPR

68. In the context of an action between parties, there is no basis in law for a declaration by a Canadian court that the Plaintiff's rights under an international treaty have been breached. Such a finding would have no binding effect.[45] There is a possibility that a Court may be able to issue a declaration in the context of a reference, but the declaration's effects would be "non-juridical" and

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[43] Lucas v Toronto Police Service Board, 2001 CanLII 27977 (ON SCDC), at paras. 11-12
[44] *Canada (AG) v Kattenburg*, 2020 FCA 164 at para. 24, citing Entertainment Software Association at paras. 89-91; B010 v Canada (Citizenship and Immigration), 2015 SCC 58, [2015] 3 S.C.R. 704.
[45] *Quebec (Minister of Justice) v Canada (Minister of Justice)*, 2003 CanLII 52182 (QCCA), at paras. 89-105;

would have “no coercive effect” from a domestic standpoint.[46]

h) No right to a declaration regarding the Minister’s response to non-binding UNHRC views

69. The Plaintiff seeks to treat the UNHRC’s 2018 views as a new fact which would warrant a claim for damages, despite the previous findings of Canadian courts. The UNHRC’s views did not change the law of Canada, and do not give rise to a right to damages in Canada.[47]

70. The UNHRC is not a court or a tribunal. The views of the UNHRC are not binding in international law or domestic law. Canada is within its rights to disagree with the Committee’s views, and to choose not to implement the Committee’s recommendations .[48]

71. The Plaintiff further alleges that she wrote to the Minister requesting that the Minister give effect to the UNHRC’s views, and that the Minister refused to do so [paragraph 33]. Here the Statement of Claim devolves into the language of judicial review. The Plaintiff suggest that the Minister’s decision is “unreasonable”, and requests an order “remitting the matter” to the Minister to grant the relief requested [paragraph 1(h)].

72. Judicial review of federal administrative decisions lies in the exclusive jurisdiction of the Federal Court.[49]

73. Where an action is, in effect, a disguised application for judicial

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[46] Ibid., at paras. 101-105
[47] *Ahani v Canada (AG), supra, at paras 32-42; Dumont c. Québec (Procureur général)*, 2012 QCCA 2039 at paras. 109-111, and 118
[48] *Ahani v Canada (AG)* (2002), 58 OR (3d) 107 at paras 32, 35 (CA).
[49] Federal Courts Act, R.S., 1985, c. F-7, s. 18

review of a decision of a federal tribunal, the Court may dismiss the action as disclosing no cause of action,[50] or on the grounds that the Court has no jurisdiction to great the relief sought.[51] A plaintiff in a damages action is not entitled to add a supplementary claim for a declaration or injunction to prevent the government from acting on a decision said to be tainted by illegality. That is the domain of the Federal Court.[52]

C. ACTION IS STATUTE BARRED

74. On its face, this claim to relief is statute barred by operation of the two-year limitation of actions under the *Limitations Act*.[53] The facts giving rise to the Plaintiff's cause of action, the Plaintiff's awareness of those facts, and the Plaintiff's ability to seek legal redress arising out of those facts all date back to 2009. The *Limitations Act* applies to claims in tort, and to claims for damages under the *Charter*.[54]

75. In cases where the facts giving rise to the expiry of a limitation period are clear, and not in dispute, the Court may rely on a statutory limitation period on a preliminary motion to strike.[55]

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[50] *Veley v. Canada (AG)*, 2002 CanLII 33864 (ON SC)
[51] *861808 Ontario Inc. v. Canada (CRA)* 2013 ONSC 152, appeal dismissed 2013 ONCA 604; *Smith v Canada (AG) et al*, 2016 ONSC 489
[52] Canada (AG) v TeleZone Inc., 2010 SCC 62, at para 52
[53] *Limitations Act*, 2002, SO 2002, c 24, Sch B, s. 4 (the Act provides and exception at s. 16(1)(a) for claims for a declaration if no consequential relief is sought, which does not apply in this case)
[54] *Alexis v Darnley*, [2009] OJ No 376, affirmed 2009 ONCA 847; *Dugalin v Canada*, 2019 ONSC 6656; *Manitoba Metis Federation Inc. v. Canada (AG)*, 2013 SCC 14; *Ravndahl v. Saskatchewan*, 2009 SCC 7
[55] For a discussion of the general tendency against applying limitation periods on a motion to strike, and of the exceptions, see *Davidoff v Sobeys Ontario* 2019 ONCA 684 (leave to appeal dismissed 2020 CanLII 26447 (SCC)), at paras.10-15; *Active Customs Brokers v Shapero et al*, 2020 ONSC 5719 at paras. 38-39; *Metropolitan Toronto Condominium Corp. No. 1352 v. Newport Beach Development Inc.*, 2012 ONCA 850, at paras. 114-116 and *Tran v. University of Western Ontario*, 2016 ONCA 978, 19-21.

76. Based on the facts known to her at the time, the Plaintiff's interpretation of her *Charter* rights, and her interpretation of Canada's international obligations, the Plaintiff could have commenced this action in 2009. In the alternative, based on the Plaintiff's application to the UNHRC, in which she engaged with the federal government and argued that Canada's international obligations gave her a right to compensation in Canada arising out of the denial of IFHP benefits, the Plaintiff could have commenced this action in December, 2013. In the further alternative, even assuming that the Plaintiff's cause of action arose after the UNHRC released its views that Canada was in breach of its obligations under the ICCPR, the Plaintiff could have commenced this action on July 24, 2018.

77. The Plaintiff's attempts to seek non-judicial remedies, by corresponding with various government officials and asserting a right to a remedy, do not serve to extend a statutory limitation period.[56]

D. ABUSE OF PROCESS

1) Re-litigation of settled issues

78. The Plaintiff seeks a declaration that the Defendant violated her *Charter* rights between 2009 and 2013 by not acting to pay the Plaintiff's medical costs [paragraph 1(d)]. An attempt to re-litigate an issue that was raised (or could have been raised) in a previous proceeding is an abuse of process.[57]

79. The Plaintiff's claim that she is entitled to relief under the *Charter* is *res judicata*. In 2010, the Federal Court determined that the denial of free health care benefits to the Plaintiff did not violate the Plaintiff's right to life under s. 7 of

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[56] *Dugalin v Canada*, 2019 ONSC 6656, at para. 26
[57] *Moran v Cunningham*, 2009 CanLII 34992 (ON SC) at paras. 84-85; Wernikowski v. Kirkland, Murphy & Ain, 1999 CanLII 3822 (ON CA), at paras. 12-14

the *Charter*, or the Plaintiff's right to equality under s. 15 of the *Charter*.[58] The Plaintiff argued at that time that the denial of benefits was contrary to the principles of international law and to Canada international obligations.[59]

80. The Federal Court dismissed the argument, for the reasons outlined above.[60] The Federal Court of Appeal dismissed the Plaintiffs appeal.[61] The Supreme Court of Canada dismissed the Plaintiff's application for leave to appeal.[62]

81. In 2010 the Plaintiff either did raise,[63] or could have raised the *Charter* arguments and international law arguments referred to in the Statement of Claim, including a potential claim for damages. A party cannot litigate a claim that it could have raised in an earlier proceeding.[64]

2) <u>Collateral attack on administrative decisions</u>

82. This action constitutes an abuse of process. It is an impermissible collateral attack on a decision of a federal tribunal. The rule against collateral attack prevents a party from using an institutional detour to attack the validity of an order, by seeking a different result from a different forum, rather than through the designated judicial review route.[65]

83. In paragraphs 1(a) and 20 of the Statement of Claim, it is clear that the Plaintiff is seeking to reverse the initial decision to deny her benefits under the

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[58] Toussaint, FC, *supra*, at para. 83, 93-94
[59] Toussaint, FC, *supra*, at para. 88
[60] Toussaint, FC, *supra*, at para 95
[61] *Toussaint*, FCA, *supra*
[62] *Toussaint v. Canada (AG)*, 2012 CanLII 17813 (SCC)
[63] *Toussaint,* FC, *supra* at paras. 64, 73 and 84
[64] *Rathwell v Hershey Canada Inc.*, 2001 CanLII 8598 (ON CA); Moran v Cunningham, 2009 CanLII 34992 (ON SC) at para 84-85
[65] *Hardy Estate v Canada (AG)*, 2015 FC 1151 at para 74, citing *Canada (AG) v TeleZone Inc.*, 2010 SCC 62

IFHP, over 10 years after the fact. In paragraph 1(d), 1(h), 40, 43 and 44 of the Statement of Claim, it is clear that the Plaintiff is challenging what the Plaintiff characterizes as an administrative decision not to grant compensation to the Plaintiff.

84. In *Canada (AG) v TeleZone Inc.*[66] the Supreme Court held that a potential litigant did not necessarily need to seek judicial review of an underlying administrative decision before commencing an action for damages arising out of the effects of the decision. The Court added a *caveat*, that a provincial superior court may stay the damages claim because, in its essential character, it is a claim for judicial review with only a thin pretence to a private wrong. The fundamental issue is whether there is a reasonable cause of action for damages.

85. The caveat expressed in *Telezone* applies here. There is no private law cause of action raised on the facts pleaded. The Plaintiff's request to "remit" the Minister's decision is a request for judicial review with only a "thin pretence to a private wrong" referred to in Telezone. The Court should exercise its discretion to strike out the corresponding portions of the Statement of Claim as an abuse of process.

E. LIMITATIONS, RES JUDICATA AND ESTOPPEL APPLY TO CHARTER CLAIMS

86. There is no basis in law for the Plaintiff's request for a declaration invalidating the statutory limitation periods applicable to this case. Likewise, there is no basis in law for a declaration invalidating common law doctrines of *res judicata*, issue estoppel, abuse of process or collateral attack. Common law

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[66] *Canada (AG) v TeleZone Inc.*, *supra*, at para 78

restrictions on pursuing a claim for damages do not engage or breach section 7 of the Charter, and do not breach section 15 of the Charter.[67] The Supreme Court of Canada has held that claims for Charter damages are subject to relevant limitation periods.[68] The Charter contains no purely procedural provisions and no rule governing prescription.[69]

87. The Ontario Court of Appeal has clearly held that the doctrine of *res judicata* applies to claims made under that *Charter*.[70] The Ontario Court of Appeal has clearly held that the doctrine of abuse of process and issue estoppel apply to claims made under that *Charter*.[71]

3) <u>Conclusion</u>

88. The Statement of Claim discloses no reasonable cause of action. The Claim is an attempt to re-litigate issues that were litigated and decided eight years ago. Neither the Court nor the Defendant should have to spend any further time dealing with the Plaintiff's unfounded claims.

F. EXTENSION OF TIME TO FILE DEFENCE

89. In the alternative, if the Claim is not struck, the Defendants request an extension of time to serve and file a Statement of Defence, until 60 days after the determination of this motion. Should the motion be unsuccessful, the

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[67] *Allen v. Morrison*, 2006 CanLII 7281 (ON SC) at para. 31; *Filip v. Waterloo*, 1992 CanLII 8652 (ON CA), [1992] O.J. No. 2470 at paras 8-11; *St. Onge v. Canada*, 2001 FCA 308;
[68] *Vancouver (City) v Ward*, 2010 SCC 27, at para 43; *Ravndahl v Saskatchewan*, 2009 SCC 7 at para 17, [2009] 1 SCR 181; see also *St-Onge v. Canada*, 2001 FCA 308 at para 2; *Alexis v Darnley*, [2009] OJ No 376, affirmed 2009 ONCA
[69] St-Onge v Canada, [1999] 178 FTR 104 at paras 4-5, *St-Onge v. Canada*, 2001 FCA 308 at para 2
[70] Las Vegas Strip Ltd. v. Toronto (City) (1997), 30 O.R. (3d) 286, at para. 25 (Gen. Div.), aff'd (1997) 32 O.R. (3d) 651 (C.A.); CUPE Local 79 v Toronto, 2012 ONSC 1158 at paras. 47-50; Vaughan v. Ontario, 2003 CanLII 1954 (ON SCDC) at para. 2; see also R. v. Robinson (1999), 1999 ABCA 367 at para. 37;
[71] College of Traditional Chinese Medicine Practitioners v Federation of Ontario Traditional Chinese Medicine Association, 2015 ONCA 851 at paras. 3-7

Defendants should have the opportunity to file and serve a Statement of Defence.

PART IV – ORDER SOUGHT

90. The Defendants request an Order:

(a) Striking the Statement of Claim and dismissing the action;

(b) In the alternative, allowing an extension of time to file a Statement of Defence, to 60 days following the Court's order;

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, February 10, 2022.

David Tyndale / Asha Gafar
Of Counsel for the Defendants

TO: Registry Office
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Proceeding Commenced at Toronto

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