

# Court pauses lawsuit by woman who lost her leg, sight and kidneys after Canada denied her health care

She lost a leg, her sight and her kidneys. An Ontario court had ruled she could sue Ottawa for denying her 'right to life,' but an appeal court has put a stop to it for now.



By [Nicholas Keung](#) Immigration Reporter

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An appeal court has stayed a lower court order that had given the green light to a woman to sue the federal government for failing to meet its international obligations to her “right to life” because she was an undocumented migrant in Canada.

In a ruling released Monday, the Court of Appeal for Ontario granted a motion by the federal government to put a stop to the lawsuit by Nell Toussaint until it hears the full appeal of the matter.

“The Attorney General will be prejudiced if it is forced to proceed while this preliminary pleadings litigation remains outstanding before this court,” Justice Gary Trotter wrote in his decision.

“I accept that, a failure to stay the underlying order will result in a fragmented, inefficient, and unsatisfactory discovery process.”

Toussaint came to Canada from Grenada in 1999 and remained in the country as an irregular migrant after her visitor visa expired and numerous attempts to regularize her status failed.

She asked the Canadian government for urgently needed health care under Canada’s Interim Federal Health Program, which covers limited health-care benefits for asylum seekers, resettled refugees and migrants held in detention.

Although the immigration minister has the discretionary power to extend the coverage in some circumstances, Toussaint's request was refused. Her challenge of the minister's decision was dismissed by the Federal Court and the Federal Court of Appeal.

By the time Toussaint finally got her permanent residence on humanitarian grounds — and the much-needed health insurance coverage — she had already suffered “irreversible sicknesses.”

As years passed, she had one leg amputated above the knee and became blind. Her kidneys failed. She had a stroke and an anoxic brain injury due to heart failure.

In 2013, she made a submission to the United Nations Human Rights Committee that Canada had violated her right to life and her right to non-discrimination. In 2018, the committee concluded that Toussaint's rights were violated and that Canada was obligated to offer the woman an effective remedy, including appropriate compensation, and to take all steps necessary to prevent similar violations in the future.

In 2020, Toussaint took the federal government to the Ontario court, suing the government for \$1.2 million and demanding that irregular migrants be granted access to essential health care after the federal government refused to follow the UN committee's directive.

Last month, the Ontario Superior Court of Justice dismissed a motion by the government to strike Toussaint's claim and ordered the defence to file a statement of defence with limitations.

At an appeal court hearing last week, government lawyers argued that the hearing judge, Justice Paul Perell, exceeded his jurisdiction, by making a declaration that the Ontario court had the authority to hear the Charter claims and prevented the defence from using the argument that the legal action was past the statutory time limitation.

In arguing against the government's motion, Toussaint's lawyers said staying the lower court proceedings would cause delay in letting the Toronto woman, who has developed “irreversible illnesses” and is in poor health conditions, access justice.

*More to come*



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