Court File No. 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

-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

MOTION TO STRIKE STATEMENT OF CLAIM

FACTUM OF THE INTERVENERS, 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

February 28, 2022

WEIRFOULDS LLP
Barristers and Solicitors
Suite 4100 – 66 Wellington Street West
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Raj Anand (LSO# 19763L)
ranand@weirfoulds.com

Megan Mah (LSO # 70967K)
mmah@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for the Moving Parties, 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

TO: **ANDREW C. DEKANY**
Barrister & Solicitor
5 Edenvale Crescent
Toronto, ON M9A 4A5

Andrew C. Dekany (LSO # 18383F)
andrewcdekany@gmail.com

Tel: 416-888-8877

Lawyers for the Plaintiff
Nell Toussaint

AND TO: **THE ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

David Tyndale
david.tyndale@justice.gc.ca

Asha Gafar
asha.gafar@justice.gc.ca

Tel: 647-256-7309 / 647-256-0720
Fax: 416-954-8982

Lawyers for the Defendant,
The Attorney General of Canada

Court File No. 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

-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 INTERVENERS, 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

MOTION TO STRIKE STATEMENT OF CLAIM

PART 1 - INTRODUCTION

1. The Colour of Poverty/Colour of Change Network ("**COP-COC**"), the Black Legal Action Centre ("**BLAC**"), the South Asian Legal Clinic of Ontario ("**SALCO**"), and the Chinese

and Southeast Asian Legal Clinic ("**CSALC**") (together, the "**Coalition**"), have been granted leave to intervene as a friend of the Court in the defendant's motion to strike the plaintiff's claim.

2. In order for the plaintiff's claim to be struck, the defendant must demonstrate that it is "plain and obvious" that the plaintiff's action cannot succeed, as it discloses no reasonable cause of action. In this case, it is not "plain and obvious" that the plaintiff's action cannot succeed.

3. A significant aspect of the plaintiff's claim relates to Canada's obligations under international law and the plaintiff's rights under the *Canadian Charter of Rights and Freedoms* (the "***Charter***"). The case law has recognized that Canadian courts play an important role in the ongoing application of international law in domestic courts. The case law has also established that courts must consider systemic discrimination and systemic barriers when interpreting a party's statutory, constitutional and common law obligations. As a result, the effect of systemic discrimination and systemic barriers must be considered when interpreting Canada's obligations under international law in the context of a party's rights under the *Charter.*

4. The plaintiff's claim raises unsettled issues of law. In particular, the Court must interpret Canada's obligations under international law in the context of its obligations under the *Charter* and its failure to provide essential health care benefits to irregular migrants, who are disproportionately racialized. This analysis will rely on evidence of the systemic barriers faced by racialized irregular migrants, particularly in the area of health care. Neither the legal issue nor its evidentiary backdrop has previously been addressed by the courts. Therefore, it is not "plain and obvious" that the claim discloses no reasonable cause of action, and the defendant has not met the stringent test for a motion to strike under r. 21.01.

PART II – FACTS

5. The plaintiff seeks damages and declaratory relief with respect to her exclusion from health care benefits under the Interim Federal Health Program between July 2009 and April 2013, and the constitutionality of the defendant's failure to provide irregular migrants with essential health care benefits. The plaintiff also seeks damages and declaratory relief with respect to the defendant's failure to give effect to the Views of the United Nations Human Rights

Committee (the "**UNHRC**") regarding the plaintiff's exclusion from the Interim Federal Health Program.

6. The defendant's motion seeks to strike the plaintiff's amended statement of claim on the basis that it discloses no reasonable cause of action, and that the action is frivolous and vexatious and an abuse of process. The defendant also asserts that the Court has no jurisdiction over a portion of the relief claimed by the plaintiff.

7. Pursuant to the Order of Justice Belobaba dated January 14, 2022, the Coalition and three other interveners were granted leave to intervene in the defendant's motion to strike the plaintiff's claim.

8. The plaintiff's action raises issues of public importance, specifically, the constitutionality of the government's failure to provide essential health care benefits to irregular migrants under the Interim Federal Health Program, and its failure to give effect to Canada's obligations under international law with respect to such benefits.

9. Members of the Coalition, individually and collectively, have extensive experience in advocating to advance the rights of racialized communities in Canada with varying degrees of immigration status, including irregular migrants. The Coalition's work focuses on, among other things, the racialization of poverty, racialized poverty in health and child welfare, and racialized poverty in immigration and newcomer settlement.

PART III – ISSUES AND LAW

The test for a motion to strike under r. 21.01

10. When a party brings a motion under r. 21.01 of the *Rules of Civil Procedure*, that party must demonstrate that, assuming the facts as pleaded are true, it is "plain and obvious" that the statement of claim or defence does not demonstrate a reasonable prospect of succeeding at trial.

11. In *Hunt v Carey Canada Inc.,* the Supreme Court set out the test for a motion to strike as follows:

> [A]ssuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect […] should the relevant portions of a plaintiff's statement of claim be struck out. […][1]

12. The Supreme Court has also stated that the test for a motion to strike "is a stringent one." Furthermore, it is "only if the statement of claim is certain to fail because it contains a 'radical defect' that the plaintiff should be driven from the judgment."[2]

13. In *R v Imperial Tobacco Canada Ltd.,* the Supreme Court emphasized that a motion to strike must be used with caution, and with regard to the fact that the common law is evolving and developing:

> 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. […] The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson.* Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.[3] [Emphasis added.]

14. In *Imperial Tobacco.,* the Supreme Court summarized the test for a motion to strike as follows: "The question is whether, considered in *the context of the law and the litigation process*, the claim has no reasonable chance of succeeding."[4]

15. In this case, as set out below, the Court must consider evidence and argument regarding the social and economic context in order to address the interpretation of the *Charter,*

---

[1] *Hunt v Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959, at p 980.
[2] *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15.
[3] *R v Imperial Tobacco Canada Ltd.*., 2011 SCC 42 [*Imperial Tobacco*] at para 21.
[4] *Ibid* at para 25.

systemic discrimination and Canada's obligations under international law. Assuming the facts as pleaded are true, there is clearly a "chance that the plaintiff might succeed". Furthermore, there is no "radical defect" in the statement of claim, such that the plaintiff "should be driven from the judgment".

Systemic discrimination and the interpretation of *Charter* rights

16. As the Supreme Court noted in *Imperial Tobacco,* the "law is not static and unchanging."[5] This is particularly applicable to the case law in respect of s. 15 of the *Charter.* Courts must consider the societal context, including systemic discrimination and systemic barriers in this case, in interpreting statutory and common law obligations, including obligations under the *Charter.*

17. In its recent decision in *Fraser v Canada (Attorney General),* the Supreme Court emphasized that there is "no doubt that substantive equality is the 'animating norm' of the s. 15 framework". The Court further stated that substantive equality requires attention to the "full context of the claimant group's situation", to the "actual impact of the law on that situation", and to the "persistent systemic disadvantages [that] have operated to limit the opportunities available to that group's members."[6] The Court further held that courts will benefit from evidence about the physical, social, cultural or other barriers which provide the "full context of the claimant group's situation", as well as "evidence about the outcomes that the impugned law or policy (or a substantially similar one) has produced in practice".[7]

18. In addition to recognizing the importance of evidence about physical, social, cultural or other barriers, courts have increasingly taken judicial notice of such barriers, including systemic racism.

19. In *R v S (RD)*, the Supreme Court considered historical discrimination in its analysis of the defendant's allegations of reasonable apprehension of bias. The Court described the "reasonable person" as follows:

---

[5] *Ibid* at para 21.
[6] *Fraser v Canada (Attorney General),* 2020 SCC 28 [*Fraser*] at para 42.
[7] *Ibid* at paras 57-58.

> an informed and right-minded member of the community, a community which, in Canada, supports the fundamental principles entrenched in the Constitution by the *Canadian Charter of Rights and Freedoms*. Those fundamental principles include the principles of equality set out in s. 15 of the *Charter* and endorsed in nation-wide quasi-constitutional provincial and federal human rights legislation. The reasonable person must be taken to be aware of the history of discrimination faced by disadvantaged groups in Canadian society protected by the *Charter*'s equality provisions. These are matters of which judicial notice may be taken.[8] [Emphasis added.]

20. In *R v S (RD)*, the Supreme Court specifically cited the decision in *R v Parks,* in which the Ontario Court of Appeal took judicial notice of the fact that racism, and in particular anti-Black racism, "is a part of our community's psyche", and that "our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes."[9]

21. Similarly, in *Peel Law Association v Pieters*, the Ontario Court of Appeal acknowledged that courts have repeatedly recognized the fact that "racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices" as a "sociological fact."[10]

22. More recently, courts have expressly acknowledged the broader impact of systemic racism on racialized individuals and communities. Courts have considered the impact of systemic racism in a variety of contexts, including detention analysis, sentencing decisions, credibility assessments, and the test for impartiality.

23. In *R v Le,* the Supreme Court held that a proper detention analysis under s. 9 of the *Charter* must consider "the larger, historic and social context of race relations between the police and the various racial groups and individuals in our society".[11] Citing the Supreme Court's decision in *R v Grant*, the Court recognized that to truly engage in the "realistic appraisal of the entire interaction", as required by the case law, courts "must appreciate that individuals in some communities may have different experiences and relationships with police than others and such may impact upon their reasonable perceptions of whether and when they are being detained."[12]

---

[8] *R v S (RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para 46.
[9] *R v Parks,* 1993 CanLII 3383 (ON CA), 15 OR (3d) 324 (CA) at p 342.
[10] *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 113-114.
[11] *R v Le,* 2019 SCC 34 at para 75.
[12] *Ibid* at para 73, citing *R v Grant,* 2009 SCC 32 at para 32.

24. In its recent decision in *R v Morris,* the Ontario Court of Appeal emphasized the importance of acknowledging the harm caused by systemic racism in interpreting the statutory framework governing sentencing. The Court expressly stated that it must acknowledge and consider the existence of, and harm caused by, systemic racism:

> Although we reject the claim that societal complicity in anti-Black racism diminishes the need to denounce and deter serious criminal conduct, we accept wholeheartedly that sentencing judges must acknowledge societal complicity in systemic racism and be alert to the possibility that the sentencing process itself may foster that complicity. A frank acknowledgement of the existence of, and harm caused by, systemic anti-Black racism, combined with a careful consideration of the kind of evidence adduced in this case, will go some distance toward disassociating the sentencing process from society's complicity in anti-Black racism.[13]

25. Similarly, in *R v Theriault*, the Court of Appeal stated that "it is incumbent on trial judges to consider relevant social context, such as systemic racism, when making credibility assessments."[14] The Court further emphasized the importance of taking into account the "racial context" within which the offence took place, stating that "the current moment of reckoning with respect to systemic racism in Canada is long overdue."[15]

26. In its recent decision in *R v Chouhan*, the Supreme Court considered the impact of systemic discrimination on the common law and statutory right to peremptory challenges, as well as the right to a jury trial under s. 11(f) of the *Charter*. Specifically, the Court stated the following with respect to the test for impartiality in respect of peremptory challenges:

> The test for impartiality is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude" […]. An informed person would know that, throughout history, peremptory challenges enabled an accused to veto some prospective jurors without proof of cause and to influence the ultimate composition of the jury. An informed person would understand the history of discrimination faced by disadvantaged groups in Canadian society, recognize widespread and systemic racism and account for diverse realities. […][16]

---

[13] *R v Morris*, 2021 ONCA 680 [*Morris*] at para 86.
[14] *R v Theriault,* 2021 ONCA 517 at para 146.
[15] *Ibid* at paras 211-212.
[16] *R v Chouhan*, 2021 SCC 26 at para 195.

27. In this case, in assessing whether it is "plain and obvious" that the statement of claim has no reasonable prospect of success, the Court must consider the evidence of systemic barriers that face irregular migrants, particularly in relation to health care. The Court must also consider the developing case law with respect to systemic discrimination and systemic racism. Specifically, courts have increasingly taken judicial notice of systemic discrimination and racism. This judicial notice has informed the courts' interpretation of a party's statutory and common law obligations, including obligations under the *Charter.*

28. The risk of rejecting a human rights claim without hearing the social context evidence was recently illustrated by the Federal Court's decision in *Zoghbi v Air Canada*.[17] The applicant brought a complaint before the Canadian Human Rights Commission, based on his removal from an international flight . The Commission dismissed his complaint because certain remedies were precluded by the *Convention for the Unification of Certain Rules for International Carriage by Air,* which is incorporated into Canadian law by the *Carriage by Air Act*. The application for judicial review was allowed on the basis that the Commission should have considered the availability of remedies other than those that are precluded by the statute.

29. The Federal Court in *Zoghbi* considered the Supreme Court's decision in *Fraser,* referenced above, which stated that courts will benefit from evidence about the physical, social, cultural or other barriers which provide the "full context of the claimant group's situation". This includes evidence related to the outcomes of the impugned law in practice, and evidence of disproportionate impact on the disadvantaged group.[18]

30. The Court in *Zoghbi* stated that the Commission had dismissed the applicant's complaint without assessing its merits, and therefore there was "scant evidence before this Court about the circumstances that gave rise to his human rights complaint, and none of this has been tested by cross-examination or otherwise."[19] The Court stated that it was not in a position to determine the applicant's "multi-faceted and potentially far-reaching *Charter* challenge,

---

[17] *Zoghbi v Air Canada*, 2021 FC 1154.
[18] *Ibid* at paras 58-59.
[19] *Ibid* at para 60.

particularly given the potential implications for Canada's compliance with its international obligations."[20] The same is true of the present motion.

31. In considering the systemic discrimination and systemic barriers faced by irregular migrants, it is clear that there is no "radical defect" in the plaintiff's claim, and that there is a "chance that the plaintiff might succeed".

The interpretation of Canada's obligations under international law

32. Similar to systemic discrimination in the interpretation of *Charter* rights, the "law is not static and unchanging" in respect of the courts' interpretation of Canada's domestic obligations under international law.

33. Again, courts must have regard to societal context, including systemic discrimination and systemic barriers, in the analysis and interpretation of Canada's obligations under international law.

34. In *National Corn Growers Assn. v Canada (Import tribunal)*, the Supreme Court held that where domestic legislation is unclear, "it is reasonable to examine any underlying international agreement", and "where the text of the domestic law lends itself to it, one should also strive to expound an interpretation which is consonant with the relevant international obligations."[21]

35. In *Nevsun resources Ltd. v Araya,* the Supreme Court set out an overview of Canada's obligations under international law.[22] The Court in *Nevsun* expressly stated that Canadian courts "play an important role in the ongoing development of international law",[23] and that "recognizing the possibility of a remedy for the breach of norms already forming part of the common law is such a necessary development."[24]

---

[20] *Ibid* at para 61.
[21] *National Corn Growers Assn. v Canada (Import tribunal)*, 1990 CanLII 49 (SCC), [1990] 2 SCR 1324 at 1371.
[22] *Nevsun Resources Ltd. v Araya,* 2020 SCC 5 [*Nevsun*].
[23] *Ibid* at para 70.
[24] *Ibid* at para 118.

36. The Court in *Nevsun* also canvassed the historical development of international law "from a state-centric to a human-centric conception of global order." The result of these developments is that international law now works "not only to maintain peace between States, but to protect the lives of individuals, their liberty, their health, [and] their education."[25]

37. The Court specifically referenced Canada's obligations under the *International Covenant on Civil and Political Rights*, including the "prohibition against cruel, inhuman and degrading treatment" as an "absolute right".[26] The Court further recognized Canada's obligations "to ensure an effective remedy to victims of violations of those rights."[27]

38. It is important to note that *Nevsun* also dealt with a motion to strike the plaintiffs' claim on the basis that it had no reasonable prospect of success. The Court reiterated that motions to strike "must be used with care", and that "[t]he law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed."[28]

39. The Supreme Court agreed with the Court of Appeal's statement that the "current state of the law in this area remains unsettled", and held that the defendant had not established that the claim had no reasonable likelihood of success.[29]

40. The defendant in this case asserts that the cause of action in *Nevsun* is distinguishable, as it relates to obligations under customary international law, rather than specific treaty provisions and the views of the UNHRC. The defendants assert that it is settled law that the views of the UNHRC are not binding or enforceable in this Court.

41. However, the plaintiff's claim raises issues of law that remain unsettled. Specifically, the extent to which courts may consider the existence and impact of systemic discrimination and systemic barriers in the interpretation of a party's statutory and common law obligations is a developing area of law. In addition, as set out in *Nevsun,* Canadian courts play an important role in the ongoing development of international law.

---

[25] *Ibid* at para 108.
[26] *Ibid* at para 103.
[27] *Ibid* at para 119.
[28] *Ibid* at para 66, citing *Imperial Tobacco* at para 21.
[29] *Ibid* at para 69.

The impact of social context on the interpretation of breaches and remedies in this case

42. In this case, the plaintiff's action raises issues related to the constitutionality of the defendant's failure to provide essential health care benefits to racialized irregular migrants under the Interim Federal Health Program. The plaintiff's action also raises issues related to the interpretation of Canada's human rights obligations under international law. These issues must be assessed with regard to systemic discrimination and systemic barriers faced by racialized irregular migrants.

43. As in other cases of systemic racism and anti-Black racism, it is appropriate for the Court at trial to recognize the evidence and jurisprudence concerning the systemic barriers faced by vulnerable irregular migrants, who are already the subject of racist stereotypes and attitudes. In many respects, these are matters of which judicial notice may be taken. These facts must also be considered in analyzing whether the plaintiff's claim has a reasonable prospect of success.

44. The defendant's position on the provision of health care to vulnerable irregular migrants further exacerbates the disadvantage experienced by such individuals. The denial of health care perpetuates the systemic discrimination and racist stereotypes and attitudes faced by racialized irregular migrants, and constitutes a breach of the defendant's obligations under s. 15 of the *Charter*. Vulnerable irregular migrants are entitled to a remedy for this breach.

PART IV – ORDER REQUESTED

45. In the Coalition's view, the defendant's motion to strike the plaintiff's claim should be dismissed, as is not "plain and obvious" that the plaintiff's action cannot succeed.

46. The Supreme Court has recognized that domestic law should be interpreted in a manner which is consonant with Canada's international obligations, and that customary international law norms form part of the Canadian common law. Evidence and jurisprudence regarding the effect of systemic discrimination and systemic barriers must be considered when interpreting such international obligations in the context of a party's rights under the *Charter.* The extent to which these factors may be considered by the courts is an issue that remains unsettled, and therefore gives rise to a reasonable prospect of success for the plaintiff's claim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

February 28, 2022

Raj Anand and Megan Mah
Counsel for the Interveners,
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

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Hunt v Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959.

2. *Odhavji Estate v Woodhouse*, 2003 SCC 69.

3. *R v Imperial Tobacco Canada Ltd.*., 2011 SCC 42.

4. *Fraser v Canada (Attorney General)*, 2020 SCC 28.

5. *R v S (RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484.

6. *R v Parks*, 1993 CanLII 3383 (ON CA), 15 OR (3d) 324 (CA).

7. *Peel Law Association v Pieters*, 2013 ONCA 396.

8. *R v Le*, 2019 SCC 34.

9. *R v Grant*, 2009 SCC 32.

10. *R v Morris*, 2021 ONCA 680.

11. *R v Theriault*, 2021 ONCA 517.

12. *R v Chouhan*, 2021 SCC 26.

13. *Zoghbi v Air Canada*, 2021 FC 1154.

14. *National Corn Growers Assn. v Canada (Import tribunal)*, 1990 CanLII 49 (SCC), [1990] 2 SCR 1324.

15. *Nevsun resources Ltd. v Araya*, 2020 SCC 5.

SCHEDULE "B"
LEGISLATION

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. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(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). R.R.O. 1990, Reg. 194, r. 21.01 (2).

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. R.R.O. 1990, Reg. 194, r. 21.01 (3).

TOUSSAINT
Plaintiff

- and -

ATTORNEY GENERAL OF CANADA
Defendant

Court File No. CV-20-00649404-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

FACTUM OF THE INTERVENERS

WEIRFOULDS LLP
66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto ON M5K 1B7

Raj Anand (LSO# 19763L)
ranand@weirfoulds.com

Megan Mah (LSO# 70967K)
mmah@weirfoulds.com

Tel: (416) 365-1110
Fax: (416) 365-1876

Lawyers for the Interveners,
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