

From: Andrew Csont Dekany <andrewcdekany@gmail.com>

Sent: Monday, June 22, 2026 6:57 AM

To: Archer, Kristina (JUD) <Kristina.Archer@ontario.ca>

Cc: Engel, Daniel (he him il lui) <Daniel.Engel@justice.gc.ca>; Cho, Charlene <Charlene.Cho@justice.gc.ca>; Martha Jackman <Martha.Jackman@uottawa.ca>; Megan Mah <MMAH@weirfoulds.com>; Taneeta Doma <Taneeta.Doma@uwindsor.ca>; Stefanovic, Marina (she her elle la) <Marina.Stefanovic@justice.gc.ca>; Gafar, Asha (she her elle la) <Asha.Gafar@justice.gc.ca>; Volpe, Giancarlo (he him il lui) <Giancarlo.Volpe@justice.gc.ca>; Effs, Tanisha <Tanisha.Effs@justice.gc.ca>; barb <barb@bjackman.com>; James Yap <mail@jamesyap.ca>; Rachael Saab <rsaab@torys.com>; Li, Alysha <alysha.li@blakes.com>; Town, Brittany <brittany.town@blakes.com>; Bogach, Alex <abogach@torys.com>

Subject: Re: TOUSSAINT v ATTORNEY GENERAL OF CANADA - CV-20-00649404-0000

Attention : courriel externe | external email

Good morning, Ms. Archer. I write as counsel for the Plaintiff to address the three matters raised in your 19 June email.

1. Canada's designated discovery representative

Canada has designated Fabien Lengelle, the current Director General of Migration Health Branch at Immigration, Refugees and Citizenship Canada, to be examined for discovery.

The Plaintiff understands M. Lengelle's appointment as Director General is relatively recent and has expressed concerns whether M. Lengelle has knowledge of the facts in issue, but we are prepared to proceed as soon as we receive production of documents bearing on Canada's decision not to implement the Human Rights Committee's Views – a key focus of the examination, on the basis that if M. Lengelle's answers are not sufficiently responsive

then we may ask her Honour under section 7 of the Crown Liability and Proceedings (Provincial Court) Regulations to order that another person be examined in his place.

2. Tab 2 of the Plaintiff's case conference brief

The complete Plaintiff's Case Conference Brief dated 8 May 2026 is at Case Centre (A5847 to A5865). The table of contents is at A5847 and there is a Tab 2 at A5860 (PDF pages 17-18). Tab 2 is the Notice of Examination dated 1 April 2026, including the eight categories of documents required to be brought to the examination.

It is not Tab 2 that sets out the Plaintiff's disclosure of the existence of her medical records. Rather, Tab 3 (A5862), the 28 November 2025 Bridgepoint letter, discloses the existence of the extensive Bridgepoint Hospital records and the cost of obtaining them. It is referenced in paragraph 8 of the plaintiff's case conference memorandum which also describes other of the plaintiff's medical records that have been disclosed and refers to authorizations provided to Canada to obtain medical records from various hospitals thereby disclosing the existence of such records. Those authorizations form part of the total of 8 authorizations provided to Canada referenced in paragraph 7 of the plaintiff's memorandum.

3. Outstanding production and the examination of Canada's representative

I confirm that at the May 13 case conference I stated that the Plaintiff was prepared to begin the discovery process, request any outstanding documents through the examination, and bring a motion later if necessary. That statement was intended to avoid delay over ordinary undertakings or discrete refusals. It was not intended as an agreement that the Plaintiff would conduct the examination without the core decision-making record after Canada has taken the categorical position that the entire record is irrelevant.

The disputed categories are identified at paragraph 17 of the Plaintiff's memorandum and in the 1 April 2026 Notice of Examination. They are described below in Schedule A to this email. They concern the information, analysis, consultations, briefing materials, meeting records and applicable federal-provincial-territorial processes relating to Canada's response to, and non-implementation of, the Views. Canada's counsel stated in a 25 May 2026 email: "With respect to the categories of documents identified in paragraph 17 of your case management brief, as you know, the parties do not agree on the relevance of those categories of documents, to the extent such documents exist."

These documents are directly relevant to pleaded matters. Paragraph 1(g) of the Fresh as Amended Statement of Claim alleges that Canada's refusal to implement the Views (which includes its refusal to review legislation and policy to ensure that irregular migrants have access to essential health care where life is at risk) violates sections 7 and 15 of the Charter, interpreted in light of the Views. The internal record bears on whether the decision accorded with principles of fundamental justice, whether any limit can be justified under section 1, whether Canada's decision-making included discriminatory purposes, assumptions, distinctions or effects relevant to section 15. It also bears on whether Canada failed to act in good faith as alleged by the plaintiff in paragraphs 30 and 34 of the Fresh as Amended Statement of Claim, or did in fact act in good faith as asserted by Canada (see paragraphs 19 and 98 of Canada's Statement of Defence).

The same documents are also relevant to the claim in paragraph 1(h) that the refusal was incorrect or unreasonable. The information before the decision-makers, the options considered, the reasons for rejecting implementation, and compliance with applicable procedures is plainly material to that inquiry.

Canada's formal responses to the Committee and the 9 April 2019 letter from the then Prime Minister disclose the position ultimately communicated publicly. They do not disclose how that position was reached. Production of the underlying record is necessary

to determine what evidence and non-privileged legal or policy considerations informed the decision; whether implementation options were considered; whether affected persons, civil society experts, and provincial or territorial governments were consulted; and whether alternative measures short of a continued ineligibility to access the Interim Federal Health Program were evaluated.

The relevance of those process questions is reinforced by Canada's published [Protocol for Follow-up to Recommendations from International Human Rights Bodies](#) and [Engagement Strategy on Canada's International Human Rights Reporting Process](#), the authenticity of both of which Canada has admitted for the purposes of this action by its 4 June 2026 response to request to admit. The Protocol expressly applies to final treaty-body Views following an individual complaint. It contemplates sharing recommendations and background materials, identifying responsible departments, intergovernmental collaboration, prioritizing implementation, monitoring, reporting and information to civil society. The Engagement Strategy contemplates opportunities for civil society and experts to participate and share expertise, including regarding recommendations received from international human rights bodies.

Both the Protocol and Engagement Strategy state that they arose from directions given by federal, provincial and territorial ministers in December 2017, prior to Canada's formal response to the Views in 2019. Records concerning Canada's later responses to related Universal Periodic Review and Human Rights Committee recommendations are also relevant insofar as they show how Canada applied these follow-up mechanisms to the *Toussaint* Views or to the continuing exclusion of irregular migrants from essential health care.

The Plaintiff notes that although no discovery plan was finalized, Canada in paragraph 22.6(A) to (E) of its 10 May 2024 draft discovery plan filed for the 22 May 2024 case conference held before her Honour had agreed to produce documents in many of the

categories described in Schedule A below.

Without this production, an examination of Canada's representative would be practically impossible to conduct meaningfully, or at minimum materially ineffective. Counsel could not test the representative's account against the record or assess whether the representative was properly informed. The likely result would be a second examination after a production motion. That would multiply the cost of preparation, attendance and transcription and would be particularly disproportionate in this public-interest litigation.

Proposed next steps

The Plaintiff therefore respectfully asks that the Court direct a prompt timetable to determine the disputed production before the examination of Canada's representative, or direct Canada to produce the non-privileged documents in the Schedule A categories below by a fixed date. This could be done by her Honour establishing a discovery plan pursuant to rule 29.1.05(2) that provides for the scope of documentary discovery to include the documents in the categories described in Schedule A below and ordering that the examination for discovery of Canada's representative be conducted in accordance therewith, ordering Canada to deliver a further and better affidavit of documents pursuant to rule 30.06(b), or both. Once that production is complete, the Plaintiff would be ready to conduct the examination of Canada's representative expeditiously.

There are factors that may delay the examination of the Plaintiff Ms Ann Toussaint, namely her current health condition and the continuing dispute about production of medical records. Those matters should not delay completion of the discovery of Canada's representative.

Accordingly, the Plaintiff respectfully requests that:

A) The documents in the categories described in Schedule A below concerning Canada's response to and non-implementation of the Views be produced or determined on a prompt timetable before the examination of Canada's representative; and

B) the examination of Canada's representative then proceed promptly, without awaiting resolution of the separate issues concerning the Plaintiff's medical records or the resolution of the Plaintiff's current health condition.

Sincerely,

Andrew C. Dekany

Counsel for the Plaintiff

Schedule A - Disputed production categories

The following categories are based on paragraph 17 of the Plaintiff's 8 May 2026 case conference memorandum and the 1 April 2026 Notice of Examination referred to therein.

1) Documents relating to the Government of Canada's consideration or implementation of the recommendation made by the United Nations Human Rights Committee in 2015 (CCPR/C/CAN/CO/6) that Canada establish mechanisms and appropriate procedures to give full effect to the Committee's Views so as to guarantee an effective remedy when there has been a violation of the Covenant.

2) Documents relating to the commitment made at the Federal-Provincial-Territorial Meeting of Ministers Responsible for Human Rights on 11-12 December 2017 to develop a protocol for following up on recommendations Canada receives from international human rights bodies and a stakeholder engagement strategy.

3) Canada's Protocol for Follow-up to Recommendations from International Human Rights Bodies, Engagement Strategy on Canada's International Human Rights Reporting Process, and any other protocols, policies and procedures for considering, following up on and implementing Human Rights Committee Views, including their application to Ms Toussaint's complaint, within the Government of Canada and with provincial and territorial bodies, civil society organizations, individuals and groups.

4) Documents concerning steps taken under those protocols, policies or procedures in relation to Ms Toussaint's complaint, including consideration of the requirement that Canada take all steps necessary to prevent similar violations in the future.

5) Documents concerning any consideration or discussion within the Government of Canada regarding Canada's response to the Human Rights Committee on measures taken to give effect to the Views, including backgrounders, briefing materials, correspondence, meeting minutes, analyses and possible means of implementing the Views.

6) Documents concerning consultations with provincial, territorial or other bodies, including backgrounders, briefing materials, correspondence, meeting minutes, analyses of implementation possibilities, the timelines set by the Human Rights Committee, and actions prioritized for discussion in relation to the Views.

7) Documents showing the information and considerations before Canadian officials involved in deciding how to respond to the Human Rights Committee's Views in *Toussaint v. Canada* and to the Committee's follow-up requests, including Canada's response to paragraph 1 of the 24 August 2021 list of issues preceding Canada's seventh periodic report.

8) Documents concerning engagement with civil society organizations, individuals or groups to share expertise on issues raised by the Human Rights Committee's Views.

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On Fri, Jun 19, 2026 at 2:39 PM Archer, Kristina (JUD) <Kristina.Archer@ontario.ca> wrote:

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> Good afternoon,

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> At the May 13 case conference, Justice Papageorgiou directed that Canada designate someone to be examined for discovery within 7 days. Was this done and does this resolve issues related to who will be examined on behalf of Canada?

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> As well, Justice Papageorgiou's notes of the case conference say that the plaintiff referenced Tab 2 of the case conference brief which set out the disclosure of the existence of the plaintiff's records. However, there is no tab 2 of the case conference brief that has been uploaded.

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> As well, there were production issues raised by the plaintiff at the case conference with respect to Canada's productions. Justice Papageorgiou's notes indicate that Mr. Dekany indicated that he was prepared to begin the discovery process and ask for any outstanding documents and then bring a motion at a later date. Justice Papageorgiou asks that Mr. Dekany confirm this position.

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> Thank you,

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> Kristina Archer

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> Judicial Assistant to Madam Justice Akbarali, Mr. Justice Koehnen, Madam Justice B. Dietrich, and Madame Justice Papageorgiou

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> PLEASE NOTE:

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> Communicating with the Court – Ontario Superior Court of Justice

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> Under Rule 1.09 of the Rules of Civil Procedure, no party to the proceeding and no party's lawyer shall communicate about the proceeding with a judge out of court directly or indirectly unless (a) all the parties consent in advance to the out-of-court communication or (b) the court orders otherwise.

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> Judges have asked that you comply with Rule 1.09 and cease from sending any communication directly to them, whether by e-mail, letter, or otherwise. Thank you.

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