CITATION: Toussaint v Attorney General of Canada, 2026 ONSC 3961
COURT FILE NO.: CV-20-00649404-0000
DATE: 20260707

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ANN TOUSSAINT, APPOINTED REPRESENTATIVE OF THE ESTATE OF NELL TOUSSAINT, DECEASED, FOR THE PURPOSES OF THIS PROCEEDING	*Andrew Dekany*, for the Plaintiff
Plaintiff	
– and –	
ATTORNEY GENERAL OF CANADA	*David Tyndale* and *Asha Gafar*, for the Defendant
Defendant	
	Yin Yuan Chen and *Martha Jackman* for the Proposed Intervenors, Charter Committee on Poverty Issues, Canadian Health Coalition, FCJ Refugee Centre and Madhu Verma Migrant Justice Centre
	HEARD: In writing

PAPAGEORGIOU

REASONS FOR DECISION

Overview

[1] The main issue this decision addresses is whether or not the Plaintiff must pay the cost of obtaining medical records requested by Canada from third party medical service providers.

[2] I am case managing this matter.

General Description of the Case

[3] This case involves claims related to irregular migrant rights to healthcare.

[4] I set out here the pleaded allegations.

[5] In 1999 Nell Toussaint ("Ms. Toussaint") entered Canada as a visitor. She worked in Canada from 1999 to 2008 without obtaining residency status or permission to work. However, some of her employers made deductions from her salary to cover federal and provincial taxes, Canada Pension Plan and Employment Insurance.

[6] Beginning in 2005 she sought to regularize her status without success.

[7] In 2006 Ms. Toussaint's health began to deteriorate.

[8] Between 2009 and 2013 Ms. Toussaint asked Canada for urgently needed healthcare under Canada's Interim Federal Health Program (the "IFHP"). This program provides an exception to federal and provincial legislation that limits public health insurance coverage to Canadian residents. Her request was refused by the Minister because she did not fit within any of the four categories of immigrants eligible for coverage in that she was not a refugee claimant, a resettled refugee, a person detained under the *Immigration and Refugee Protection Act*, or a victim of trafficking.

[9] In 2010 Ms. Toussaint brought judicial review proceedings to the Federal Court regarding Canada's failure to provide her with healthcare funding as an irregular migrant worker.

[10] The Federal Court accepted that Ms. Toussaint 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 Ms. Toussaint's right to life and security of the person that was caused by her exclusion from the IFHP. However, the Court found that the deprivation of the rights to life and security of the person in Ms. Toussaint's case was not contrary to section 7 of the Canadian Charter, that denying financial coverage for health care to persons who have chosen to enter or remain in Canada "illegally" is consistent with fundamental justice and that the impugned policy was a permissible means to discourage defiance of Canada's immigration laws. The Federal Court raised, but did not decide, whether Ms. Toussaint's right to non-discrimination on the basis of her immigration status as an irregular migrant had been violated.

[11] The Federal Court of Appeal dismissed her appeal. In doing so, it upheld the finding that Ms. Toussaint had been exposed to a significant risk to her life and health, a risk that was significant enough to trigger a violation of her rights to life and security of the person. However, it held that the operative cause of the risk to her life was her decision to remain in Canada without legal status and that the deprivation of the right to life and security of the person accorded with the principles of fundamental justice.

[12] The Supreme Court of Canada denied leave to appeal.

[13] In the interim she suffered health consequences including having a leg amputated above the knee, becoming blind, kidney failure, a stroke, and an anoxic brain injury.

[14] Ms. Toussaint subsequently became a permanent resident and became entitled to OHIP coverage in Ontario.

[15] In 2013 she then brought a proceeding before the United Nations Human Rights Committee (the "UN Human Rights Committee" or the "Committee").

[16] In 2018, the Committee concluded that Canada had violated her right to life and her equality rights. It directed that Canada provide Ms. Toussaint compensation and take steps so that other similarly situated migrants would have the right to healthcare.

[17] Canada did not follow the direction of the Committee, and Ms. Toussaint brought this proceeding.

[18] She sought a declaration that Canada's failure to give effect to the Views adopted by the Committee violates ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

[19] Paragraph 45 of the Claim pleads:

> By excluding irregular migrants, and/or failing or refusing to consider the Views in applying the IFHP in a manner that continues to exclude irregular migrants, the IFHP breaches section 7 and section 15(1) of the Canadian Charter. In particular, the exclusion of irregular migrants such as [Ms. Toussaint], from essential health care benefits violates their right to life and security of the person, in a grossly disproportionate manner that is arbitrary and not in accordance with the principles of fundamental justice, including but not limited to the government's obligation to perform treaty obligations in good faith. The exclusion of certain groups of migrants is also discriminatory, in purpose and/or effect, based on the distinction drawn by the government, for the purpose of admission to the IFHP, between those having legal status in the country, and those who have not been fully admitted to Canada, when the exclusion of those migrants could result in loss of life or irreversible negative consequences for their health, as was held in the Views of United Nations Human Rights Committee. Moreover, the addition of Ministerial discretion - the discretionary power of the Minister of Immigration, Refugees and Citizenship on his or her own initiative to grant IFHP benefits in exceptional and compelling circumstances - to the 2012 Order-in-Council, as continued in the current 2016 IFHP Policy, does not render the policy constitutional, nor can the violations be justified under section 1 of the *Canadian Charter*.

[20] She also claimed that as a direct and proximate cause of the breaches by Canada, she suffered personal injury, economic and non-economic damages and that damages were an appropriate remedy.

[21] She then passed away and her mother, Anne Toussaint, continues the proceeding on her behalf. I refer to Anne Toussaint as the Plaintiff in these reasons.

[22] There have been a variety of procedural hearings including a motion to strike and motions for leave to intervene by the intervenors.

[23] Although the action was commenced in 2020, it has not gotten very far owing to the motion to strike, and other procedural steps.

The May 13, 2026 Case Conference

[24] The parties arranged a case conference for May 13, 2026 to address a variety of issues relating to discovery and productions.

Issues Related to Canada's intended Motion for Summary Judgment and the Plaintiff's Submission that this Matter Should be Bifurcated.

[25] As noted in my short endorsement issued on May 13, 2026, I directed that I could not decide whether a summary judgment motion would be appropriate or whether it should occur before discovery, and that I could only do so upon receipt of the proposed notice of motion and more fulsome submissions. To date, I have not received a proposed Notice of Motion for Summary Judgement.

[26] I also directed that I could not determine whether the matter should be bifurcated on the basis of the brief and limited materials before me and that that issue would have to proceed to a formal motion.

Issues Related to the Designation of Canada's Witness to Be Examined

[27] At the case conference, I directed that Canada designate a witness to be examined in the place of Prime Minister Mark Carney who the Plaintiff had sought to examine. I indicated I would provide reasons later.

[28] These are my reasons.

[29] The Plaintiff says it served its notice of examination that Prime Minister Mark Carney be examined because Canada had failed to designate anyone to be examined despite numerous requests.

[30] Section 27 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 indicates that:

> Except as otherwise provided by this Act or the regulations, the rules of practice and procedure of the court in which proceedings are taken apply in those proceedings.

[31] Section 7 of the *Crown Liability and Proceedings (Provincial Court) Regulations*, SOR/91-604 provides:

> Subject to sections 37 to 39 of the Canada Evidence Act, where, under the provincial rules, there is provision under which, if an action were an action between a corporation (other than an agency of the Crown) and another person, an officer or

> servant of the corporation could be examined for discovery, such officer or servant of the Crown or an agency of the Crown, as the case may be, as may be designated for the purpose by the Deputy Attorney General or after such designation by order of the court, may be examined for discovery during an action subject to the same conditions and with the same effect as would apply to the examination for discovery of the officer or servant of a corporation.

[32] In *Bryson v. Canada*, 1997 CanLII 26121 (NS SC), the Supreme Court of Nova Scotia analyzed the interplay between the above section 27 of the *Crown Liability and Proceedings Act*, section 7 of the regulation made under that Act, and Nova Scotia's Civil Procedure Rules pertaining to examinations for discovery. At paragraph 17 the court stated:

> Although this case has been outstanding for more than a year, the Deputy Attorney General has not yet designated a witness or witnesses for discovery. Where there has been undue delay, I would assert jurisdiction to order the Deputy Attorney General to make a designation by a set date, but s. 7 does not permit this court to make a designation until the Deputy Attorney General has done so or has failed to do so after having been ordered.

[33] The court went on at paragraph 19 indicating it was prepared to convene a conference and that:

> At that conference, I will be prepared to exercise my authority under rule 26.01(e) including the possibility of setting a deadline for the Deputy Attorney General to make a designation, setting dates for an application to designate further witnesses, and setting dates for the discovery examinations.

[34] Here, this action has been outstanding for many years. As well, the Plaintiff has repeatedly requested that Canada designate someone to be examined for discovery.

[35] It would not be in accordance with the applicable legislative scheme to permit Canada to fail to designate someone to be discovered, which effectively stymies the Plaintiff's ability to proceed with examination for discovery.

[36] As such, at the case conference I ordered that Canada designate someone to be discovered within seven days. I understand that it has done so.

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

[38] The Plaintiff has expressed concerns about this owing to the fact that Mr. Lengelle's appointment is relatively recent and he may not have knowledge of the facts in issue. However, the Plaintiff is content to proceed as soon as it receives Canada's productions. If Mr. Lengelle's answers are not sufficiently responsive, then they reserve the right to bring a motion to have another individual examined.

Issues Related to Canada's Productions

[39] The Plaintiff has raised issues regarding whether Canada had produced all relevant documents. At the case conference, the Plaintiff indicated that she was prepared to commence discovery and request any necessary documents through the examination process. She would bring a motion later if necessary.

[40] When I wrote to the Plaintiff as part of my assessment of the issues raised before me at the case conference, I requested confirmation of the above.

[41] The Plaintiff then set out her position that while she did make the submission at the case conference, this was to avoid any further delay and was not meant to constitute any agreement that the Plaintiff would conduct the examination without the core decision-making record.

[42] She then set out in these further submissions that these disputed documents are 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 has taken the position in a May 25, 2026 email that it did not agree on the relevance of this category of documents to the extent that any such documents exist.

[43] The Plaintiff takes the position that these documents are relevant because they directly relate to the claim by the Plaintiff set out in paragraph 1(g) of the Claim that Canada breached sections 7 and 15 of the *Charter*. She argues that these records bear on whether the decision accorded with the principles of fundamental justice, whether any limit can be justified under s. 1 of the *Charter*, whether Canada's decision making included discriminatory purposes, assumptions, distinctions or effects relevant to s. 15. She says it also bears on whether Canada failed to act in good faith as alleged by the Plaintiff in paragraphs 30 and 34 of the Claim.

[44] The Plaintiff asks that I order that Canada produce all of these immediately, but Canada has not had a chance to make fulsome submissions on this issue which is now raised after the case conference.

[45] Therefore, I direct that there be a motion before me regarding this category of documents.

[46] I trust the parties can timetable this themselves. I will arrange to hear the matter on an urgent basis. If the parties cannot resolve timetable issues they can arrange a further case conference with me.

Issues Related to the Plaintiff's Disclosure and Production Obligations

[47] Canada argues that the Plaintiff had not fulfilled her disclosure obligations because she had not produced all requested medical documents.

[48] The Plaintiff served her affidavit of documents on January 29, 2026. She provided supplementary affidavits of documents on February 14 and 24, 2026. The documents that she has listed and produced fill 4 bankers' boxes and include many medical documents in her possession including from St. Michael's hospital (555 printed pages and 252 printed pages), York Community

Services (328 printed pages and 197 printed pages), and Humber River Regional Hospital (330 pages).

[49] With respect to the medical records that were not in the Plaintiff's possession, she provided complete OHIP summaries as well as authorizations allowing Canada to obtain medical records from 7 hospitals and a health clinic. Canada had requested such authorizations in paragraph 19 of its draft discovery plan filed for the May 22, 2024 case conference.

[50] The medical records for which the Plaintiff provided authorizations are voluminous.

[51] Canada argues that the mere provision of an authorization for Canada to obtain the documents is insufficient and that the Plaintiff must order and list all of the medical records from medical providers listed in the OHIP summaries and also list productions in respect of the Plaintiff's medical care prior to her arrival in Canada. It also argues that she pay any charges from third party providers for these productions.

[52] At the case conference it was agreed that the parties would address the issue of the Plaintiff's productions by way of written submissions in accordance with a timetable agreed to at that time. The parties have now provided their submissions.

[53] I note that in Canada's submission it requested that this be dealt with as if it was a motion in writing and the Plaintiff did provide evidence as part of its written submissions. Canada did not object to this evidence or provide any supplementary submissions arguing that it wished to cross-examine on this material. As such, I have taken into account the materials from the Plaintiff which include evidence.

Decision

[54] For the reasons that follow, I order that the Plaintiff has satisfied her disclosure obligations by providing the authorizations. If Canada wishes to obtain production of medical documents that are not currently in the Plaintiff's possession, then it must order them from the parties in whose possession they are, and it must also pay for that production.

Analysis

***The Applicable Rule*s**

[55] Rule 30.02(1) provides:

> Every document relevant to any matter in issue in an action that is or has been in the **possession, control or power** of a party to the action shall be disclosed as provided in rules 30.03 to 30.10, whether or not privilege is claimed in respect of the document. [Emphasis added]

[56] Rules 30.03 to 30.10 all relate to what is "disclosed" in an affidavit of documents, requests for "inspection", orders for "production" that a court may make, the consequences of a failure to produce a document, and productions from non-parties.

[57] The provisions particularly relevant to the issues before me are as follows.

[58] Rule 30.03 provides:

> 30.03 (1) A party to an action shall serve on every other party an affidavit of documents (Form 30A or 30B) **disclosing** to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession, control or power. [Emphasis Added]
>
> Contents
>
> (2) The affidavit shall list and describe, in separate schedules, all documents relevant to any matter in issue in the action,
>
> > (a) that are in the party's possession, control or power and that the party does not object to producing;
> >
> > (b) that are or were in the party's possession, control or power and for which the party claims privilege, and the grounds for the claim; and
> >
> > (c) that were formerly in the party's possession, control or power, but are no longer in the party's possession, control or power, whether or not privilege is claimed for them, together with a statement of when and how the party lost possession or control of or power over them and their present location.

[59] The relevant part of Rule 30.04 provides:

> (1) A party who serves on another party a request to inspect documents (Form 30C) is entitled **to inspect any document** that is not privileged and that is referred to in the other party's affidavit of documents as being in that party's possession, control or power.
>
> (5) The **court may at any time order production for inspection of documents** that are not privileged and that are in the possession, control or power of a party.
>
> Copying of Documents
>
> (7) **Where a document is produced for inspection, the party inspecting the document is entitled to make a copy of it at the party's own expense, if it can be reproduced, unless the person having possession or control of or power over the document agrees to make a copy, in which case the person shall be reimbursed for the cost of making the copy**. [Emphasis added throughout]

[60] It is notable that in the above Rules, the legislature used the words "disclose", "produce", and "inspect". These are different words and as such, the legislature must have meant something different when they used these different words.

[61] It is also notable that there is no provision in any of the above rules that addresses who is required to pay for the production of documents listed in an affidavit of documents where there is a fee that must be paid to a third-party provider before the third-party provider will release them.

[62] The obligation in r. 30.03 with respect to affidavits of documents is not to "produce" all relevant documents, but rather to "disclose" documents in a party's power, possession, or control. This can only mean to advise the other side that these documents exist and what they are. It cannot mean "produce" or "provide a copy to" because r. 30.03(2)(b) also references the requirement that a party disclose privileged documents which is typically done in Schedule B of an affidavit of documents. If "disclose" meant "produce" or "provide a copy to" the other party, then those privileged documents listed in Schedule "B" would have to be produced to the other side.

[63] Once the documents have been disclosed in an affidavit of documents pursuant to r. 30.03, there are provisions for inspection of such documents in r. 30.04. The rule with respect to inspecting documents only requires that the document be produced for inspection. It does not require the plaintiff to pay for the photocopying of any such documents if the defendant wants a copy. Rather, the party inspecting the document is entitled to make a copy at their own expense. And if the person who has possession, control or power over the document agrees to make a copy that person shall be reimbursed for the cost of making that copy.

[64] Further, the Rules also carve out the concept of proportionality in terms of what must be produced.

[65] Rule 29.2 provides:

> Definition
>
> **29.2.01.1.1** In this Rule,
>
> "document" has the same meaning as in clause 30.01 (1) (a).
>
> Application
>
> **29.2.02** This Rule applies to any determination by the court under any of the following Rules as to whether a party or other person must answer a question or **produce a document**:
>
> 1. Rule 30 (Discovery of Documents).
>
> 2. Rule 31 (Examination for Discovery).
>
> 3. Rule 34 (Procedure on Oral Examinations).
>
> 4. Rule 35 (Examination for Discovery by Written Questions).

> Considerations
>
> General
>
> **29.2.03** (1) In making a determination as to whether a party or other person must answer a question or **produce a document**, the court shall consider whether,
>
> > (a) the time required for the party or other person to answer the question or **produce the document** would be unreasonable;
> >
> > (b) the expense associated with answering the question or **producing the document** would be unjustified;
> >
> > (c) requiring the party or other person to answer the question or **produce the document** would cause him or her undue prejudice;
> >
> > (d) requiring the party or other person to answer the question or **produce the document** would unduly interfere with the orderly progress of the action; and
> >
> > (e) the information or the document is readily available to the party requesting it from another source.
>
> Overall Volume of Documents
>
> (2) In addition to the considerations listed in subrule (1), in determining whether to order a part or other person to **produce one or more documents**, the court shall consider whether such an order would result in an excessive volume of documents required to be **produced by the party** or other person. [Emphasis added throughout]

[66] See also Rule 1.04(1.1) which also references "proportionality":

> Proportionality
>
> (1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[67] Given all of the above Rules, the issue of who must pay for the production of documents, where there is a fee that must be paid to a third-party, is a matter of discretion.

Who Has Possession, Control, or Power over the Documents?

[68] I am satisfied that the medical records are not in the Plaintiff's possession or control. She does not have them and the parties who do have imposed conditions for their production, namely the payment of photocopying expenses: *Zurich Insurance Co v. Paveco Road Builders Corp*, 2007 CarswellOnt 9175 at para 21.

[69] Thus, the issue is whether the documents are within the Plaintiff's power.

[70] Rule 30.01(1)(b) defines the term "**power**" as follows:

> A document shall be deemed to be in a party's power if that party is entitled to obtain the original document or a copy of it **and the party seeking it is not so entitled**. [Emphasis added]

[71] The Plaintiff references *Zurich Insurance*, where Newbould J. wrote at para 23:

> For a document or a copy of it to be in a party's power requires that party to be entitled to obtain the document or a copy **but the other party requesting its production is not so entitled.** In this case, both parties are entitled to production of documents from the interim receiver and indeed Zurich has done so. Therefore, it cannot be that these documents are within the "power" of the defendants within the meaning of Rule 30.03.

[72] The Plaintiff reasons that since it has given Canada an authorization pursuant to which Canada would be "entitled" to obtain these documents, the documents are not within the Plaintiff's power as that term is defined.

[73] Canada references a number of decisions which hold that the mere fact of having given an authorization does not relieve a party of the obligation to produce medical records relevant to a dispute even if that means they have to pay for them.

[74] In *Demiroglu v. Kwarteng*, 1999 CarswellOnt 4752, the court concluded that medical records in the possession of third-party service providers are in the power of the plaintiff, and it ordered that the plaintiff produce them and that it also pay any costs associated with this production. The court reasoned that where a party is required by the Rules to disclose and produce documents, he should be required to pay whatever cost is required. Notably, the Master in that case had noted that it may be that there is an inherent discretion in the court to order otherwise. As well, the court referenced other decisions that held that "normally" a party required to produce information should bear the cost of doing so: para 17.

[75] In *Hollo v. Toronto Transit Commission*, 2010 ONSC 1656 at para 20, the Court held at para 8 that the provision of an authorization only discharges that party's obligations where the other party "consented or agreed to accept the authorizations."

[76] See also *Gorin v. Ho*, 1983 CarswellOnt 503, where Master Peppiatt held that the party that received medical treatment was responsible for producing the medical records, and that providing the opposite party with an authorization did not relieve them of this responsibility.

[77] Even though the above cases made these determinations, this does not detract from the fact that there is no rule that requires a plaintiff to pay these fees in all cases, or which changes the fact that the issue remains one of discretion.

[78] In *Trumble v. Soomal*, 2020 ONSC 8097 the court did hold that a plaintiff in a personal injury action had to pay for the production of medical records, but it also left open the possibility of a different result if there were an access to justice issue. The court described that case as a run of the mill type personal injury action with the production of medical records costing only a few hundred dollars.

[79] Similarly, in *Endale v. Park*er, 2022 ONSC 2008 at para 19 the court did order the plaintiff to pay reasonable costs associated with photocopying but recognized that where the Plaintiff lacks the financial resources to produce the documents, they might not be ordered to do so.

[80] Finally, in *Suchan v. Casella*, 2006 CanLII 20844, the plaintiff sued for damages for a brain injury arising from a car accident. The defendants sought production of raw test data of the Plaintiff's experts. The plaintiff agreed to produce clinical records of certain physicians but not others. The court ordered the plaintiff to produce the raw data and clinical notes and records from various physicians at the defendants' expense: para 22.

[81] I do not agree with the Plaintiff's overall submission that the medical records are not in her power merely because the Plaintiff has given an authorization to Canada. If that were the case, then every plaintiff would be relieved of the obligation of producing relevant medical records in purely personal injury cases by simply providing an authorization. As set out in *Suchan* at para. 27, medical documentation about a plaintiff are prima facie in her power.

[82] Nevertheless, irrespective of whether or not they are in the Plaintiff's power, I am satisfied that there are multiple reasons to order that if Canada seeks production of additional documents from third-party service providers, beyond those in the Plaintiff's possession, it must pay the fees imposed by these service providers at first instance.

[83] The cases cited by Canada deciding that the Plaintiff must pay for the production of medical records were all personal injury cases that did not have a wider public interest. The case before me is a complex constitutional case involving matters of public interest whose outcome could affect potentially thousands of migrants. In *Sauders v. John Doe and the City of Ottawa*, 2016 ONSC 2060 at paras 20-21 the Plaintiff had brought a motion for interim costs from the defendant to pay for medical records. While the issue was somewhat different, at paras 12 and 13, the court drew a distinction between personal injury litigation and constitutional litigation. The Fresh as Amended Statement of Claim sets out that the nature of this case is both a personal claim brought by Nell Toussaint claiming that Canada violated her rights, as well as a systemic claim related to other migrants in similar circumstances who do not receive healthcare in Canada.

[84] There are ten intervenors in this matter precisely because this matter broadly involves constitutional issues. The court has accepted that the decision in this matter will impact many individuals who are not immediate parties.

[85] If the Plaintiff is required to produce these documents at her own expense this public interest litigation may not proceed to adjudication and/or have sufficient resources to make it to trial.

[86] The cost of producing copies of the Hennick Bridgepoint Hospital documents alone is estimated to be $12,105 and the Plaintiff is impecunious.

[87] In contrast, Canada has provided no evidence that it does not have the resources to pay for these records.

[88] The Plaintiff has not entered into a contingency fee agreement with Plaintiff counsel such that counsel would be responsible for disbursements pending the outcome.

[89] Apart from costs awards in favour of the Plaintiff, the only source of funding is from the Court Challenges Program. That funding is limited and all expenses to be eligible for reimbursement must be reasonable in the context of the funded matter. In a letter dated December 19, 2025 to the Plaintiff's counsel, legal counsel for the Court Challenges Program wrote.

> After reviewing your update on the potential expenses related to obtaining medical records, we acknowledge that there is a risk these expenses may be considered unreasonable in the context of the file. As you know, the CCP's mandate is to support cases in which courts are likely to clarify and advance constitutional human rights in Canada. Accordingly, a portion of funding is withheld to conserve resources for the hearing itself. Given this case's complexity and its current stage of discovery, it is of particular importance that CCP funds be used prudently to bring the case to hearing on the merits. In this context, the CCP would be reluctant to approve the allocation of such a significant share of the remaining funds to medical records whose relevance has not yet been established.

[90] As well, the Plaintiff takes the position that Canada has not established the relevance of all of the documents sought.

[91] In particular, the Plaintiff questions how the documents are relevant to the systemic issue given that in its Statement of Defence, Canada does not dispute that Ms. Toussaint had been residing in Canada since 1999, became ill while in Canada, and was denied funding because she did not fall within any of the classes in the IFHP. Canada admits in paragraph 64 of its Statement of Defence that the Federal Court of Appeal found that Ms. Toussaint had demonstrated a serious risk to her life and security of the person.

[92] Canada's main assertion of relevance is with respect to the Plaintiff's claim for civil damages. In that regard, Canada denies in its Statement of Defence that any irreversible negative health issues suffered by Ms. Toussaint were a result of Canada failing or refusing to provide essential health benefits. It has pleaded that she had certain preexisting health issues.

[93] As a general category, Ms. Toussaint's medical records are relevant to her claim for civil damages and in particular to the issue of causation. As noted above, Ms. Toussaint takes the position that the issue of damages and liability be bifurcated which is one way that this issue could be addressed without anyone paying for the medical records yet. If issues of liability were dealt with first, then there might be no need for the medical records at all if Ms. Toussaint is unsuccessful on the issue of liability. However, Canada does not agree to bifurcation and wishes to immediately proceed with the action and discovery on all issues. The issue of bifurcation will have to proceed to a motion.

[94] Even if the matter is not bifurcated, the Plaintiff still questions the necessity for and proportionality of the request for every single medical record. For example, Canada seeks all the documents from Ms. Toussaint's stay at Bridgepoint. Ms. Toussaint resided at Bridgepoint for several years. There are 22,000 pages recording the daily medications that she took. There are also 20,000 pages of nurses' notes recording her daily activities. Canada has not provided persuasive argument that the request for all of these documents is proportionate.

[95] I note as well that Canada expressly requested the authorizations from the Plaintiff at first instance in its discovery plan filed for the May 22, 2024 case conference in the following terms:

> The Plaintiff shall provide to the Defendant a consent to the release of any personal and medical/health information relating to the provision of health care services to Nell Toussaint.

[96] This can reasonably be taken to mean that Canada intended to use the authorizations to obtain these documents. It must have known that there would be expenses associated with the use of the authorizations and it did not reserve the right to claim such costs when it requested the authorizations.

[97] The estimate from Bridgepoint notes that the main fee is for photocopying at 25 cents per page. Pursuant to r. 30.04, if the Plaintiff did the photocopying, she would have been entitled to be reimbursed and if Canada did the photocopying, it would have had to pay for that. Thus, Canada would have had to pay something for the copies of these medical records in any event although I acknowledge it probably would have been less than the third-party providers are charging, particularly if Canada had done its own photocopying.

[98] In view of all of the factors before me, I conclude that visiting the expense associated with producing all these documents upon the Plaintiff at this time would be unjustified, would result in an excessive and disproportionate volume of documents required to be produced by the Plaintiff, would cause her undue prejudice and would interfere with the orderly progress of the case.

[99] Therefore, if there are documents that Canada feels are required, it may seek to obtain them using the authorizations Canada requested, and if there are any costs associated with this, then Canada shall pay the third-party for the production of such medical records at first instance.

[100] Since the Plaintiff is impecunious, Canada will likely not be able to recover these costs if it is successful in this case.

[101] Thus, to address concerns about fairness, I seek further submissions on whether a term of this order should be that if the Plaintiff is ultimately successful in this matter, any disbursements incurred by Canada with respect to such production will be deducted from any damage award in favour of the Plaintiff.

Papageorgiou J.

Released: July 7, 2026

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ANN TOUSSAINT, APPOINTED REPRESENTATIVE OF THE ESTATE OF NELL TOUSSAINT, DECEASED, FOR THE PURPOSES OF THIS PROCEEDING

Plaintiff

– and –

ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR DECISION

Papageorgiou J

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