

04-CV-280530cm1

Court File No.

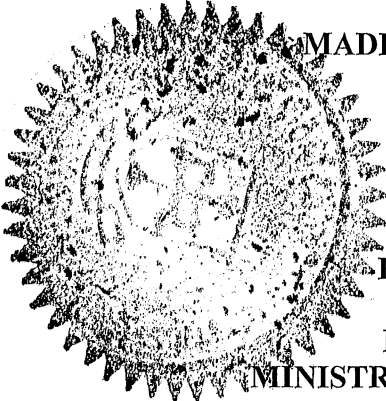
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MADÉLINE CHOKOMOLIN, DAVID LANCE and LYNNE PRINE

Applicants

- and -



HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
MINISTRY OF FINANCE (CANADA),
MINISTRY OF SOCIAL DEVELOPMENT (CANADA),
MINISTRY OF STATE FOR FAMILIES AND CAREGIVERS (CANADA),
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
MINISTRY OF COMMUNITY AND SOCIAL SERVICES (ONTARIO),
DIRECTOR OF ONTARIO DISABILITY SUPPORT PROGRAM (ONTARIO),
DIRECTOR OF ONTARIO WORKS (ONTARIO)

Respondents

APPLICATION UNDER Rule 14.05(3)(g.1) of the
Rules of Civil Procedure, R.R.O. 1990, O. Reg. 194

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants.
The claim made by the Applicants appears on the following pages.

THIS APPLICATION will come on for a hearing on *Thursday* the
10th day of *March*, 2005, at *10:00* (am) pm at 393 University Ave.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this Court office, and you or your lawyer must appear at the hearing.


IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES

ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

December 10, 2004

Issued by: 
Local Registrar

Address of Court Office: 
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

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**AND TO: MINISTRY OF STATE FOR FAMILIES
AND CAREGIVERS (CANADA)**
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AND TO: MINISTRY OF COMMUNITY AND SOCIAL SERVICES (ONTARIO)
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AND TO: DIRECTOR OF ONTARIO DISABILITY SUPPORT PROGRAM (ONTARIO)
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AND TO: DIRECTOR OF ONTARIO WORKS (ONTARIO)
56 Wellesley St. W., 17th Floor
Toronto, ON M7A 1E9

APPLICATION

1. **The Applicants make an application for:**
 - (a) A declaration that paragraph 2 of section 53 of O.Reg. 134/98, as amended (promulgated under the *Ontario Works Act* S.O. 1997, c. 25) and paragraph 2 of section 42 of O.Reg. 222/98, as amended (promulgated under the *Ontario Disability Support Program Act*, S.O. 1997, c. 35) (collectively "**the impugned provisions**") violate sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* ("**Charter**") and are not saved by section 1;
 - (b) A declaration striking out the impugned provisions and declaring them to be of no force or effect;
 - (c) A declaration that all amounts paid to the applicants under section 122.61 of the *Income Tax Act* are to be excluded from the calculation of the applicants' income under the *Ontario Works Act* or the *Ontario Disability Support Program Act*, and the regulations thereunder;
 - (d) A declaration that one or more of the Respondents Queen in the Right of Canada, Ministry of Finance (Canada), Ministry of Social Development (Canada), and Ministry of State for Families and Caregivers (Canada) (collectively "**the Federal Respondents**") and one or more of the Respondents the Queen in the Right of Ontario, Ministry of Community and Social Services, Director of Ontario Disability Support Program (Ontario) and Director of Ontario Works (Ontario) (collectively "**the Provincial Respondents**") have violated sections 7 and 15 of the *Charter* by entering into an agreement or agreements that require and/or authorize the violations of section 7 and 15 referred to in sub-paragraph (a), and that these violations are not saved by section 1;

- (e) A declaration that any federal/provincial/territorial agreements setting out the parameters of the National Child Benefit, insofar as they authorize the impugned provisions of sections 7 and 15, referred to in sub-paragraph (a), are of no force or effect;
- (f) A declaration that the applicants are entitled to an exemption from the impugned provisions as of the date when they came into effect, and as such that the applicants are entitled to payment of the amounts that were deducted from the applicants' social assistance benefits pursuant to the impugned provisions;
- (g) Costs if this application on a substantial indemnity basis; and
- (h) Such further and other relief as to this Honourable Court may seem just.

2. **The grounds for the application are:**

- (a) In 1997, the Federal, Provincial and Territorial Ministers responsible for Social Services entered into a Framework Agreement, among other agreements, for the provision of a National Child Benefit to be delivered through the federal tax system, the declared purpose of which was to prevent and reduce child poverty ("**Framework Agreement**");
- (b) The terms of the Framework Agreement provided that the National Child Benefit would consist of two amounts, being a Canada Child Tax Credit, available to all families, and a National Child Benefit Supplement ("**NCBS**"), payable directly only to the poorest families with children defined as being those with an annual income below a specified low income threshold;
- (c) The terms of the Framework Agreement further provided that as part of the National Child Benefit program the provinces would (1) reduce social assistance payments, to persons eligible for the NCBS, by the amount of

the NCBS ("**the clawback**"), and (2) reinvest the amount of that reduction in programs benefiting low income families with children;

- (d) The effect of the clawback is that persons who receive social assistance do not get the benefit of the NCBS, even though their income is so low that they are entitled to it;
- (e) The applicants Madeline Chokomolin and David Lance receive income benefits under the *Ontario Works Act* and are subject to the clawback;
- (f) The applicant Lynne Prine receives income benefits under the *Ontario Disability Support Program Act* and is subject to the clawback;
- (g) The deprivation caused by the clawback so negatively impacts the applicants' access to basic means of subsistence that it deprives them of life, liberty and security of the person within the meaning of section 7 of the *Charter*;
- (h) The deprivation of the applicants' life, liberty and security of the person is not carried out in accordance with the principles of fundamental justice because, among other things, the clawback is arbitrary, irrational, and ignores the applicants' basic needs as families with children;
- (i) The clawback applies only to persons who receive social assistance and to no other class of persons in Ontario or any other province;
- (j) Receipt of social assistance is an analogous ground under section 15 of the *Charter*;
- (k) The persons affected by the clawback consist disproportionately of members of disadvantaged groups, such as women, single mothers, persons with disabilities, Aboriginal persons, and racialized persons, all of which are protected groups under section 15 of the *Charter*;

- (l) The impact of the clawback on the applicants is such that it is discriminatory within the meaning of section 15 of the *Charter*;
- (m) There is no pressing and substantial objective served by the clawback;
- (n) The salutary effects of the clawback, if any, are outweighed by its negative effects;
- (o) One or more of the Federal Respondents is responsible for entering into and implementing the Framework Agreement on behalf of the Federal government;
- (p) One or more of the Provincial Respondents is responsible for entering into and implementing the Framework Agreement on behalf of the Provincial government;
- (q) Sections 1, 7, 15, 24(1) of the *Canadian Charter of Rights and Freedoms*;
- (r) Section 52 of the *Constitution Act, 1982*;
- (s) Rules 14.05(3)(g.1) and 38 of the *Rules of Civil Procedure*; and
- (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Affidavit of the Applicant Madeline Chomolkin, sworn December 9, 2004;
- (b) The Affidavit of the Applicant , to be sworn;
- (c) The Affidavit of the Applicant Lynne Prine, to be sworn; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

December 10, 2004

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Applicants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, et al
Respondents

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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