

AMENDED THIS NOV. 15, 2011 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
 RULE/LA RÈGLE 26.02 (B)

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

.....
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-10-403688

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

Applicants

- and -

**ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of
Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under the
Canadian Charter of Rights and Freedoms

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing on a date to be set by the Court at 393 University Avenue, Toronto, Ontario.

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 applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, 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.

Date: May 26, 2010

Issued by:

"S. CHANDRADAT"

Registrar
393 University Avenue
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Toronto, ON M5G 1E6

TO: THE ATTORNEY GENERAL OF CANADA
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AND TO: THE ATTORNEY GENERAL OF ONTARIO
Constitutional Law Division
7th Floor, 720 Bay Street
Toronto, ON M6G 2K1

APPLICATION

THE APPLICANTS make an application for:

- a) A declaration that decisions, programs, actions and failures to act by the government of Canada (“**Canada**”) and the government of Ontario (“**Ontario**”) have created conditions that lead to, support and sustain conditions of homelessness and inadequate housing. Canada and Ontario have failed to effectively address the problems of homelessness and inadequate housing.
- b) A declaration that Canada and Ontario have obligations pursuant to sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) to implement effective national and provincial strategies to reduce and eventually eliminate homelessness and inadequate housing.
- c) A declaration that the failure of Canada and Ontario to have implemented effective national and provincial strategies to reduce and eliminate homelessness and inadequate housing violates the applicants’ and others’ rights to life, liberty and security of the person contrary to s. 7 of the *Charter*. These violations are not in accordance with the principles of fundamental justice and are not demonstrably justifiable under section 1 of the *Charter*;
- d) A declaration that the failure of Canada and Ontario to have implemented effective national and provincial strategies to reduce and eliminate homelessness and inadequate housing violates the applicants’ and others’ right to equality contrary to s. 15(1) of the *Charter*. These violations are not demonstrably justifiable under section 1 of the *Charter*;
- e) An order that Canada and Ontario must implement effective national and provincial strategies to reduce and eliminate homelessness and inadequate housing, and that such strategies:

- i. must be developed and implemented in consultation with affected groups; and
 - ii. must include timetables, reporting and monitoring regimes, outcome measurements and complaints mechanisms;
- f) An order that this Honourable Court shall remain seized of supervisory jurisdiction to address concerns regarding implementation of the order in (e);
- g) Their costs of this application; and
- h) Such further and other relief as counsel may advise and this Honourable Court permit.

THE GROUNDS for this Application are:

The Applicants

1. Jennifer Tanudjaja is a nineteen year old college student of Asian descent who is a single mother with two sons, aged one and three. She is in receipt of social assistance. Despite extensive efforts to find affordable housing in the private rental market, she has been unable to secure housing within the shelter allowance provided by social assistance. The rent for her two bedroom apartment is almost double the amount she receives as a shelter allowance. In fact, her rent is more than the entire monthly allowance she receives from social assistance. She has been on a waiting list for subsidized housing for over two years. She lives in fear of becoming homeless with her two young sons.

2. Ansar Mahmood emigrated from Pakistan. He is married with four children. He was severely disabled in an industrial accident in 1999. He and his family live on a fixed income consisting of his pension, disability benefits and child tax benefits. Two of his children are disabled: one son, Rohail, has cerebral palsy and is confined to a wheelchair; another son, Ahad, has severe autism and requires full time care and supervision. Mr. Mahmood and his family live in inadequate housing. They live in a two bedroom apartment that is too small to adequately house six people and that is neither accessible nor safe for his children with disabilities. Mr.

Mahmood and his family have been on a waiting list for subsidized accessible housing for four years.

3. Brian DuBourdieu became homeless after being diagnosed with thyroid cancer several years ago. Following the diagnosis he was unable to return to work. With no income, he was unable to pay his rent and lost his apartment. He has lived in shelters and currently lives on the street. He has been on the waiting list for subsidized housing for approximately four years.

4. Janice Arsenault and her two young sons became homeless after her spouse died suddenly. After trying - and failing - to find affordable, adequate housing, Ms. Arsenault had no option but to place her sons in her parents' care. Ms. Arsenault continued to struggle for many years with homelessness: living in shelters, in rooming houses, and on the street. Only in the last year has she been able to retain housing in a shared apartment. Ms Arsenault is in receipt of income support benefits through Ontario Works. Her modest rent consumes fully 64% of her monthly income making her housing situation precarious. She lives in fear of finding herself homeless, again.

5. The Centre for Equality Rights in Accommodation (“CERA”) is an Ontario based non-profit organization which addresses human rights in housing. CERA is membership based; many of its members have experienced homelessness. Annually CERA provides direct services to approximately 500 low income tenants facing discrimination in housing, and to persons who are homeless or at risk of homelessness, throughout Ontario. The majority of these cases involve women, single mothers, people in receipt of social assistance, persons with disabilities, and members of racialized groups. CERA also assists close to 1,500 individuals and families each year who are facing eviction in Toronto.

Housing is a Basic Necessity

6. Housing is a necessity of life. Adequate housing is fundamental to ensuring basic human survival, health, social inclusion, participation in society and the capacity to realize other fundamental rights. Yet, there are hundreds of thousands of people in Canada who are currently homeless or inadequately housed.

7. The *Universal Declaration of Human Rights* guarantees the right to adequate housing and the right to the equal enjoyment of this right without discrimination. These rights are also guaranteed in subsequent UN human rights treaties, all of which Canada has ratified, including:

- *International Covenant on Economic, Social and Cultural Rights*
- *Convention on the Elimination of All Forms of Discrimination Against Women*
- *International Covenant on Civil and Political Rights*
- *Convention on the Rights of the Child*
- *Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Rights of Persons with Disabilities.*

8. These human rights instruments place positive obligations on Canada and Ontario to take reasonable and effective measures to ensure the realization of the right to adequate housing.

9. International human rights instruments that Canada has ratified are relevant and persuasive sources for interpreting the provisions of the *Canadian Charter of Rights and Freedoms*. Canada's international human rights commitments inform the interpretation of the scope of protection under the *Charter*. The *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified.

10. The provisions of the *Charter* should be interpreted in light of, and in a way that is consistent with, Canada's international human rights obligations regarding the right to adequate housing. In particular, the rights to life, liberty and security of the person under s. 7 of the *Charter* and the right to equality under s. 15 of the *Charter* should be interpreted in light of Canada's international human rights obligations regarding adequate housing.

11. The government of Canada has informed the UN Committee on Economic, Social and Cultural Rights that the guarantee of security of person under section 7 of the *Charter* ensures that persons are not to be deprived of the basic necessities of life. The government of Canada

has pointed to the *Charter of Rights and Freedoms* as a primary source of legal protection for the rights found in the *International Covenant on Economic, Social and Cultural Rights*, which include the right to adequate housing.

The Role of Government and the Right to Adequate Housing

12. Protections against homelessness and inadequate housing include at least three important and interconnected components:

- (a) access to affordable housing;
- (b) income supports to ensure affordability of housing; and
- (c) access to accessible housing and housing with supports.

13. The Respondents, Canada and Ontario, both have jurisdiction to address the right to adequate housing. Both levels of government have been engaged in the design, implementation and delivery of programs integrally related to access to adequate housing.

14. Canada and Ontario have instituted changes to legislation, policies, programs and services which have resulted in homelessness and inadequate housing. Canada and Ontario have either taken no measures, and/or have taken inadequate measures, to address the impact of these changes on groups most vulnerable to, and at risk of, becoming homeless. Canada and Ontario have failed to undertake appropriate strategic coordination to ensure that government programs effectively protect those who are homeless or most at risk of homelessness. As a result, they have created and sustained conditions which lead to, support and sustain homelessness and inadequate housing.

Eroding Access to Affordable Housing:

15. Canada has historically had an active and central role in relation to affordable housing since the adoption of the *Dominion Housing Act* in 1935 and the establishment of the Central Mortgage and Housing Corporation (now the Canada Mortgage and Housing Corporation) in

1946. Canada had an active role in supporting access to affordable housing through programs such as:

- (a) direct funding for the construction of affordable rental housing units;
- (b) government administration of affordable rental housing through a wide variety of public housing, non-profit housing, co-operative and rent supplement rental units;
- (c) programs of affordable housing funded through cost-sharing agreements with provinces; and
- (d) the provision of rent supplements to tenants in private rental units.

16. Beginning in the mid-1990s and continuing to the present, Canada has taken a number of decisions which have eroded access to affordable housing including, but not limited to:

- (a) cancelling funding for the construction of new social housing;
- (b) withdrawing from administration of affordable rental housing;
- (c) phasing out funding for affordable housing projects under cost-sharing agreements with the provinces; and
- (d) failing to institute a rent supplement program comparable to those in other countries.

17. Beginning in the mid-1990s and continuing to the present, Ontario has taken a number of decisions which have eroded access to affordable housing including, but not limited to:

- (a) terminating the provincial program for constructing new social housing;
- (b) through changes to legislation eliminating protection against converting affordable rental housing to non-rental uses and eliminating rent regulation;
- (c) downloading the cost and administration of existing social housing to municipalities;

- (d) failure to implement a rent supplement program comparable to those in other countries;
- (e) downloading responsibility for funding development of new social housing to municipalities which lack the tax base to support such construction; and
- (f) heightening insecurity of tenancy by creating administrative procedures that facilitate evictions.

18. More than 140,000 households in Ontario are on the waiting list for affordable housing and this waiting list has increased by 10% since 2009.

19. Canada and Ontario have taken these decisions and implemented these program changes without appropriately addressing their impact on homelessness and inadequate housing and without ensuring that alternative measures are provided to protect vulnerable groups from homelessness and inadequate housing.

Erosion of Income Support Programs

20. Canada and Ontario have historically been active in implementing a variety of income support programs which were aimed at ensuring support at a level that could realistically enable those who are impoverished to access affordable housing. Canada and Ontario have made decisions, taken actions and implemented changes to those programs that have the effect of increasing the risk of homelessness and inadequate housing for vulnerable groups.

21. Until 1996, federal transfer payments for social assistance were conditional on the province ensuring that social assistance was provided at a level that would cover the cost of basic necessities, including housing. In 1996, the federal transfer payments were restructured by repealing this legislated standard for social assistance. Since that time federal transfer payments included no such substantive condition.

22. In the mid-1990s, Canada also implemented changes to the *Employment Insurance Act* which resulted in far fewer people qualifying for benefits when unemployed. This resulted in

those most vulnerable to homelessness being disproportionately disentitled to benefits under this legislation and without access to income replacement to meet their housing costs.

23. In 1995 Ontario cut provincial welfare rates by 21.6%. Since that time, Ontario has maintained social assistance shelter allowances at levels far below what is required to secure rental housing in the private market. The result is that those in receipt of social assistance are often unable to obtain adequate housing, many become homeless and many more are inadequately housed.

24. Canada and Ontario have taken these decisions and implemented these program changes in respect of income supports without appropriately addressing their impact on homelessness and inadequate housing and without ensuring that alternative measures are provided to protect vulnerable groups from homelessness and inadequate housing.

Inadequate Supports for Housing

25. Beginning in the 1960s and carrying on into the 1990s a general policy was implemented in Canada and Ontario of deinstitutionalizing persons with psycho-social and intellectual disabilities. Implementing this policy of deinstitutionalization in the absence of providing effective mechanisms to support independent community living for persons with psycho-social and intellectual disabilities has resulted in widespread homelessness among persons with these disabilities. In Canada and Ontario, persons with psycho-social and intellectual disabilities currently are unable to access adequate housing which provides appropriate supports for daily living. In addition, they are often discharged from medical care without appropriate attention to whether they have access to adequate housing with appropriate supports. Both Canada and Ontario have failed to ensure the provision of adequate support services so that those affected by these policies can access and maintain adequate housing in their communities.

26. UN human rights treaty monitoring bodies have expressed concern at Canadian governments' failure to provide adequate supports for community living for persons with mental disabilities, noting that in some instances this has resulted in such persons being forced to live in detention, solely because of a lack of community based housing with supports. The UN has

recommended that governments in Canada increase their efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities. Canada and Ontario have failed to effectively implement this recommendation. Consequently, homelessness remains widespread among members of this group. Canada's and Ontario's policies of deinstitutionalization, without ensuring adequate community based support, has failed to effectively address the impact of these legislative program and policy changes on homelessness and inadequate housing.

The Impact of Homelessness and Inadequate Housing

27. Homelessness and inadequate housing harm people in direct and substantial ways including, but not limited to, reduced life expectancy, hunger, increased and significant damage to physical, mental and emotional health and, in some cases, death.

28. The inability to access adequate affordable housing causes particular harm to women in situations of domestic violence. Without access to adequate housing, women trying to escape from domestic violence are forced to choose between returning to or staying in a violent situation or facing homelessness for themselves and their children.

29. Homelessness and inadequate housing contribute to and result in parents, and in particular single mothers, losing custody of their children.

30. People with disabilities are disproportionately vulnerable to the effects of homelessness and inadequate housing. Existing housing is often inaccessible while sufficient new accessible, affordable housing is not being built. It is not uncommon for people with disabilities to wait ten years or longer to get into affordable housing that meets their needs.

31. Aboriginal people are overrepresented in the homeless and inadequately housed population, suffering some of the worst housing conditions in the country.

32. Newcomers, racialized communities, seniors, and youth are disproportionately affected by homelessness and inadequate housing.

33. A number of United Nations bodies responsible for monitoring Canada's compliance with international human rights commitments have repeatedly raised grave concerns about the effects of homelessness and inadequate housing on vulnerable groups and the failure to take positive measures to protect the right to life. The UN Committee on Economic, Social and Cultural Rights as well as the UN Special Rapporteur on Adequate Housing have repeatedly recommended that a national strategy that ensures the right to adequate housing be implemented on an urgent basis to address this "national emergency". They recommend that this strategy be developed in collaboration with provincial/territorial governments. Despite these concerns and recommendations, Canada and Ontario have failed to implement an effective strategy to address homelessness and inadequate housing.

Application of the Charter

34. The harm caused by Canada's and Ontario's failure to implement effective strategies to address homelessness and inadequate housing deprives the applicants and others similarly affected of life, liberty and security of the person in violation of section 7 of the *Charter*. This deprivation is not in accordance with the principles of fundamental justice. The deprivation is arbitrary, disproportionate to any government interest, fundamentally unfair to the applicants, and contrary to international human rights norms. Further, Canada's and Ontario's failure to effectively address homelessness and inadequate housing violate s. 15 of the *Charter* by creating and sustaining conditions of inequality.

35. Those who are homeless and inadequately housed are subject to widespread discriminatory prejudice and stereotype and have been historically disadvantaged in Canadian society. Their rights, needs and interests have been frequently ignored or overlooked by governments. People who are homeless and inadequately housed are perhaps the most marginalized, disempowered, precarious and vulnerable group in Canadian society.

36. Canada's and Ontario's failure to adopt effective strategies to address homelessness and inadequate housing, result in the further marginalization, exclusion and deprivation of this group. Canada and Ontario have failed to take into account the circumstances of people who are homeless and have created additional burdens, disadvantage, prejudice and stereotypes, in violation of section 15 of the *Charter*.

37. Furthermore the persons affected by homelessness and the lack of adequate housing are disproportionately members of other groups protected from discrimination under s. 15(1) including: women, single mothers, persons with mental and physical disabilities, Aboriginal persons, seniors, youth, racialized persons, newcomers and persons in receipt of social assistance. Canada's and Ontario's failure to implement effective strategies to address homelessness and inadequate housing therefore constitutes adverse effects discrimination against these groups under s. 15(1).

38. There is no pressing and substantial objective served by these violations and the violations are not demonstrably justifiable under s. 1 of the *Charter*.

Statutory Provisions

Canadian Charter of Rights and Freedoms, including sections 1, 7, 15(1), 24 and 52;

Rules of Civil Procedure, Rules 14.05(3)(g.1); and

39. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

- i) The Affidavit of Jennifer Tanudjaja;
- ii) The Affidavit of Janice Arsenault;
- iii) The Affidavit of Ansar Mahmood;
- iv) The Affidavit of Brian Dubourdieu;
- v) The Affidavit of Leilani Farha, Centre for Equality Rights in Accommodation;
- vi) The Affidavit of Linda Chamberlain;
- vii) The Affidavit of Phillip Dufresne;

- viii) The Affidavit of Dr. David Hulchanski;
- ix) The Affidavit of Dr. Stephen Hwang;
- x) The Affidavit of Miloon Kothari;
- xi) The Affidavit of Ann Fitzpatrick;
- xii) The Affidavit of Dr. Janet Mosher;
- xiii) The Affidavit of Cathy Crowe;
- xiv) The Affidavit of Michael Shapcott;
- xv) The Affidavit of Charlie Taiowisakarere Hill;
- xvi) The Affidavit of Paula Goering;
- xvii) The Affidavit of Catherine Frazee and Esther Ignagni;
- xviii) The Affidavit of Michael Bach;
- xix) The Affidavit of Marie-Eve Sylvestre;
- xx) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: May 26, 2010

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Applicants

- and -

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ATTORNEY GENERAL OF ONTARIO
Respondents

Court File No. CV-10-403688

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED NOTICE OF APPLICATION

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