CITATION: Toussaint v. Attorney General of Canada, 2025 ONSC 2008
COURT FILE NO.: CV-20-00649404-0000
DATE: 20250331

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ANN TOUSSAINT, APPOINTED REPRESENTATIVE OF THE ESTATE OF NELL TOUSSAINT, DECEASED, FOR THE PURPOSES OF THIS PROCEEDING Plaintiff	*Andrew Dekany*, for the Plaintiff
– and –	
ATTORNEY GENERAL OF CANADA Defendant	*David Tyndale & Asha Gafar*, for the 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: February 14, 2025

PAPAGEORGIOU J.

Reconsideration Decision

[1] I provided reasons giving a variety of intervenors leave to intervene as friends of the court pursuant to reasons dated December 12, 2024. There were a number of amendments the parties requested on consent, in part necessitated by the fact that I had inadvertently left the Canadian Civil Liberties Association out.

[2] I also incorrectly stated that the deceased Nell Toussaint came to Canada pursuant to an authorized work permit in paragraph 132 (previously paragraph 131). She, in fact, came to Canada as a visitor. It is uncontradicted that she then overstayed her visitor status and worked illegally while trying to regularize her status. She became severely ill while seeking to regularize her status, and sought coverage pursuant to the Interim Federal Health Program (the "IFHP") which was denied.

[3] The IFHP provides an exception to federal and provincial legislation that limits public health insurance coverage to Canadian residents. It is part of Canada's immigration law and was under the responsibility of Canada's Minister of Citizenship and Immigration until November 3, 2013, and since then the Minister of Immigration, Refugees and Citizenship has responsibility for the IFHP.

[4] The IFHP provides public health care coverage to certain status categories of immigrants in particular resettled refugees, refugee claimants, persons detained under the Immigration and Refugee Protection Act and victims of human trafficking. The Minister also has discretion to extend health care under the IFHP in some circumstances. However, it provides no exemptions for people without any immigration status. It provides no exception for situations where life or health of a claimant is at risk.

[5] Canada argues that I should amend my reasons to state that Ms. Toussaint came to Canada "as a visitor with no authorization to work and had no entitlement under the IFHP for paid coverage for her health care costs."

[6] The Migrant Worker Coalition argues that I should simply amend paragraph 132 (previously paragraph 131) to indicate that she came "as a visitor who remained in Canada and worked without obtaining residency status or permission to work."

[7] I am amending my decision in accordance with the submission of the Migrant Worker Coalition. This addresses the error. The additional facts that Canada wishes to insert regarding the IFHP were never even argued. Nor was there any evidence filed by Canada on the issue. Accordingly, it is unclear why reference to the IFHP and her entitlement thereunder should be inserted.

[8] Canada has also asked me to reconsider my decision granting leave to the Migrant Worker Coalition to intervene as a friend of the court. It asserts that I made my decision based upon an erroneous fact that Ms. Toussaint was here pursuant to an authorized work permit and that had I properly adverted to the fact that Ms. Toussaint came to Canada as a visitor and not pursuant to an authorized work permit, I would not have granted leave for the Migrant Worker Coalition to be added as a friend of the Court.

[9] Canada argues that success in Ms. Toussaint's case would mean that every visitor to Canada should have access to free coverage to healthcare under the IFHP, which Canada does not

believe is a practical or feasible suggestion. This is an argument about the merits of the case and not whether this intervenor may have leave to intervene. Canada has already lost the motion to strike it brought and so the argument it makes now, has already been implicitly rejected as a basis for preventing this case from going forwards, at least for now.

[10] Canada's position is also a continuing mischaracterization of what this case is about. In his decision dismissing the motion to strike, *Toussaint v. Canada*, 2022 ONSC 4747, Perell J. found that Canada mischaracterized Ms. Toussaint's claim as being a claim to receive free health care anywhere in the world, regardless of one's lack of status, or a right to receive purely socio-economic rights outside the guarantees of the *Charter*: paras 134-135. He called Canada's argument "a dog whistle argument that reeks of the prejudicial stereotype that immigrants come to Canada to milk the welfare system" in doing so: para 134. He concluded that her claim is not a claim for free health care but is a claim for public health care in circumstances where the claimant's right to life is demonstrably and not just theoretically at risk of being seriously impaired or extinguished.

[11] He referenced Ms. Toussaint's serious irreversible health consequences including one leg amputated above the knee, becoming blind, kidney failure, a stroke, and an anoxic brain injury due to heart failure. At the time of that motion, she was living with irreversible sicknesses, but she ultimately passed away.

[12] I have reconsidered my decision taking into account the fact that Ms. Toussaint was a visitor whose visitor status expired. I have concluded that it does not change my decision for the following reasons:

- The focus of Canada's argument at the original hearing was on the number of intervenors and that one more intervenor was one too many.

- The focus of Canada's factum and argument during the original motion was not on the fact that Ms. Toussaint came as a visitor initially. In fact, the word "visitor" did not appear anywhere in Canada's factum and no one ever referenced that fact during the argument although to be fair, Canada's factum did say that Ms. Toussaint was not a migrant worker.

- Canada also filed no evidence on the motion. I mistakenly understood from the parties' arguments that Ms. Toussaint had come to Canada pursuant to an authorized work permit which had expired after which she was working illegally, when the actual fact is that she came as a visitor, whose visitor status had expired, after which she was working illegally while she tried to regularize her status.

- It was the precarity of her access to health care that was similar to migrant workers and which was relevant to me, not my incorrect understanding that she initially came pursuant to an authorized work permit.

- Now that this fact has been clarified, it is still my view that Ms. Toussaint's situation, in working after her visitor status expired, while trying to regularize her status, is still analogous to migrant workers in terms of their precarious access to healthcare.

    - In its Statement of Defence, Canada admitted that Nell Toussaint "lawfully entered Canada on December 11, 1999, as a visitor from Grenada and…worked in Canada from 1999 to 2008 without obtaining residency status or permission to work". It also pleads that her visitor status expired on June 11, 2000. Therefore, Canada admitted that Ms. Toussaint was working without status, after having arrived as a visitor, which is similar to some migrant workers, as I will set out below.

    - The Migrant Workers Coalition set out the following definition of "migrant worker" under international law in paragraph 26 of its factum as follows:

        > *It is of note that international law, through article 2(1) of the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, defines a migrant worker not based on their participation in a formal migrant work program but rather as a person who 'is to be engaged or has been engaged in a remunerated activity in a state of which he or she is not a national'*

        Canada did not dispute this definition or even reference it, not at the motion and not in its request for reconsideration.

    - In the Affidavit of Christopher Ramsaroop, Organizer and Co-founder of Justice for Migrant Workers (J4MW) he states: "There are also numbers of workers who are migrant farm workers as contract workers. These workers may have a visitor visa or visitor record and be working without authorization or are undocumented."

    - Mr. Ramsaroop also stated that "J4MW has a genuine and substantial interest in this matter because: a) Migrant workers are a population frequently at risk of losing, or going without, access to health care due to the conditional nature of their immigration status and employment in Canada. Nell Toussaint had no or insufficient access to health care despite her many working years in Canada and attempts to regularize her status."

    - In paragraph 3 of its factum on the motion, Canada stated that it did not take issue with the evidence filed by the Migrant Worker Coalition which means it took no issue with the evidence above. In fact, as noted, it filed no evidence at all in response to the motion.

- In my view, Ms. Toussaint's status in coming to Canada initially as a visitor and subsequently working without status is similar to the situation of migrant workers who may have a visitor visa or visitor record and be working without authorization. Both came as visitors. Both types of workers have precarious access to healthcare.

- Her situation is also similar to migrant workers who are injured and then lose their jobs, their status, and with it access to health care because their access to health care is tied to their legal status to work in Canada and to their continued ability to work for their employers. Migrant workers are also vulnerable to being fired for any reason, including health reasons and injuries. As I set out in my December 12, 2024 decision, the UN Special Rapporteur on contemporary forms of slavery recently stated that Canada's temporary foreign work program "serves as a breeding ground for contemporary forms of slavery." Like Ms. Toussaint, migrant workers do not have access to healthcare under the IFHP. The UN Special Rapporteur stated that their inability to access programs like the IFHP is one of the discriminatory conditions that produces their vulnerability to abuse and adverse health conditions.

- In his decision, Justice Perell categorized Ms. Toussaint as an "irregular" migrant: para 15.

- In paragraph 10 of its factum on the motion Canada stated that it "did not dispute that the Migrant Workers Coalition members "have knowledge and experiences that would enable them to make valuable contributions in proceedings that are related to the interests of their respective constituencies." In paragraph 11 it stated that the Migrant Workers Coalition has an interest "at a very general level, in the issues raised in this proceeding."

- I repeat and rely upon the paragraphs in my December 12, 2024 decision in respect of the application of the *Bedford* test, in particular my conclusions about how this Coalition has a real and substantial identifiable interest, has an important perspective distinct from the immediate parties and is a well-recognized group with special expertise and a broadly identifiable membership base. In particular, there is no intervenor who is bringing forth the expertise on migrant workers.

Papageorgiou J.

Released: March 31, 2025

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Plaintiff

– and –

ATTORNEY GENERAL OF CANADA

Defendant

RECONSIDERATION DECISION

Papageorgiou J.

Released: March 31, 2025