

Court File No. T-1301-09

FEDERAL COURT

BETWEEN:

Nell Toussaint

Applicant

and

Attorney General of Canada and Minister of Health

Respondents

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7

Affidavit of Nell Toussaint

I, Nell Toussaint, of the City of Toronto, Province of Ontario, the applicant herein, make oath and say:

1. I am poor and don't have the financial resources to pay legal fees and related expenses to bring this application. I receive funding to do so from Legal Aid Ontario based on the recommendation of Legal Aid Ontario's Test Case Committee.
2. I am 40 years old, a woman of colour and a national of Grenada where I was born. I was married to Curt Alexander. He was abusing me physically and we separated and divorced. I do not have any children. I sometimes use the surname Alexander or Toussaint Alexander.

3. In Grenada I had been working for a Canadian pharmaceutical company, Abbott Grenada Limited, which was shut down following a hurricane. I had heard good things about Canada from my employer and I came to Canada from Grenada on December 11, 1999 as a visitor. When I came I found opportunities to work and support myself. I have continuously resided in Canada ever since my arrival here.
  
4. When I came to Canada I did not have any immediate health care needs. I had been diagnosed with diabetes while I was in Grenada and had been given medication which I was taking and I did not have a problem. I did not see a physician in Canada during my first three years here, and when I first saw a doctor I paid for it and I paid for subsequent appointments out of money I was earning whenever I was able to.
  
5. I supported myself by working at a variety of temporary jobs including factory work, baby sitting, and cleaning between 1999 and 2006. In 2006 I developed an abscess on my right side that left me with chronic pain and difficulty walking. As well, I developed chronic fatigue and my energy decreased. The abscess and fatigue forced me to largely discontinue working, although afterwards I did do some cleaning and factory work from October to December 2007 and some volunteering for Meals on Wheels in early 2008. From 2008 on I had no fixed income. I did receive occasional money by collecting aluminum and other returnable cans from the garbage and occasionally I received money by helping

- friends and others with light housekeeping. This was before I went into hospital in November 2008, as described below.
6. When I worked sometimes I was paid a net amount for my work after the employer deducted amounts for federal and provincial taxes, Canada Pension Plan, and Employment Insurance. I have been recognized as a resident of Canada by Canada Revenue Agency. Attached hereto and marked as exhibit "A" is a true copy of a letter dated December 19, 2007 from Canada Revenue Agency to me in which they write that in their opinion I have established significant residential ties with Canada, and they consider me to be a resident of Canada.
  7. On September 12, 2008 I made an application for permanent residency from within Canada based on humanitarian and compassionate considerations. I am poor and cannot pay the \$550 application fee. Through my immigration consultant, Mr. Macdonald Scott, I asked the Minister of Citizenship and Immigration for a waiver of that fee. Attached hereto and marked together as exhibit "B" are a true copy of Mr. Scott's covering letter, my affidavit that accompanied my application, and my application. In my affidavit I pointed out that I suffer from a serious medical condition and that I am indigent.
  8. In June 2008 I went to Women's College Hospital after being referred there for an operation for the removal of my uterine fibroids. I was given percocet, a very strong painkiller, and an appointment for two days later at the Women's College

Hospital gynecology department. When I went there to see the surgeon who would do the operation the receptionist asked me for my health card. I said I didn't have one. She then said I would have to pay before I could see the doctor. I said that I could not pay. She then said they could not help me and I left.

9. Afterwards I went to about 5 different community health centres to try to get help with arranging to have the operation. However, I was turned down most of the time. During this period I was in a lot of pain and taking the painkillers. When at first I went to York Community Services by myself they said they were filled and could not take me. Afterwards, with the help of a caseworker at St. Christopher House community centre who called to York Community Services I was finally accepted there and York Community Services arranged for me to have the operation at Humber River Regional Hospital.

10. In November 2008, I underwent an operation at Humber River Regional Hospital in Toronto for removal of more than 40 uterine fibroids. When I was discharged I was severely anemic and the day after my discharge I had to return to the emergency room to receive four units of blood. Humber River Regional Hospital has indicated to me that I now owe a total of \$9,385 for the standard ward room I was in.

11. On November 27, 2008, I went to the St. Michael's Hospital emergency department with very high blood pressure. I was admitted and stayed in the

hospital for ten days. It was determined that I had a type of kidney disorder called nephrotic syndrome. I was prescribed several medications for high blood pressure when I was discharged.

12. The Minister of Citizenship and Immigration decided not to grant me a fee waiver in my application for permanent residency. This decision was communicated to Mr. Scott in a letter dated January 12, 2009, a true copy of which is attached hereto and marked as exhibit "C". On January 26, 2009 I applied for leave and for judicial review of this decision in application no. IMM-326-09 made in this court. I was granted leave with the consent of the Minister of Citizenship and Immigration and my application, along with those of two other sets of applicants, was argued on June 23 and 24, 2009 before the Honourable Madam Justice Snider whose decision is presently under reserve.

13. At the end of February 2009 I developed increasing pain in my right leg. Dr. Sally Sharpe, the family doctor who was then seeing me at York Community Services, sent me to the St. Michael's Hospital emergency department. I was asked to return the next day for an ultrasound. When I did so, the hospital personnel refused to carry out the ultrasound because I did not have OHIP and could not pay for the procedure. Shortly afterwards that same day I developed chest pain on my left side. I subsequently learned that the pain was caused by a life-threatening pulmonary embolism.

14. Two days later, on March 2, 2009, I was rushed to the St. Michael's Hospital emergency department by my lawyer on the advice of Dr. Sharpe because I was dangerously ill. Attached hereto and marked as exhibit "D" is a true copy of Dr. Sharpe's March 4, 2009 letter confirming that I had been refused care because I could not pay and that I had been at imminent risk of my life. I was admitted and kept in hospital until March 12, 2009 when I was discharged. Attached hereto and marked as exhibit "E" is a true copy of the 5 page discharge summary dated March 11, 2009 from the St. Michael's Hospital records. On page 1 of the letter I see that it states I did not get the ultrasound referred to above since I "was unable to pay."

15. I was unable to pay for any of the medication I needed, including the medication I needed to reduce the risk of recurrence of the pulmonary embolism and to control my high blood pressure and my diabetes, when I was discharged from St. Michael's Hospital. The hospital initially indicated it would cover the cost of one half of a month's supply of the medication if I could arrange to cover the other half. I contacted York Community Services for this but they said they had no budget to pay. I didn't have anyone else to turn to, and eventually St. Michael's Hospital gave me the entire month's supply of the medication.

16. While in the hospital I applied for social assistance under the *Ontario Works Act*.

I was initially turned down but through my lawyer I asked for an internal review of this decision. My lawyer pointed out, among other things, that I had made an application for permanent resident status on the basis of humanitarian and compassionate grounds with a request for waiver of the \$550 application fee and that the Minister's decision to not waive the fee was the subject of an application for judicial review in the Federal Court that had been ordered to be heard on June 23, 2009. He also pointed out that I needed assistance to pay for further medication that I desperately needed to avoid becoming sicker and possibly even dying. I was about to run out of insulin within 6 days and the other medication I needed would last no more than another 3 weeks.

17. By letter dated April 1, 2009 Metro Hall Social Services advised me that they had completed their internal review and reversed their original decision since I had confirmed to them that I was in the process of applying for permanent residence from within Canada, based on humanitarian and compassionate grounds. Attached hereto and marked as exhibit "F" is a true copy of their April 1, 2009 letter. However, Ontario Works only pays for certain medication and it does not pay for any medical services.

18. On March 12, 2009, through my immigration consultant Mr. Scott, I applied directly to the Minister of Citizenship and Immigration for an exemption from the

fee for an application for a temporary resident permit since I am poor and cannot pay the fee. Mr. Scott pointed out that I have serious health issues and that a temporary resident permit would make me eligible for health coverage under the Ontario Health Insurance Plan ("OHIP"). He also stated that I had outstanding medical bills of approximately \$9,300 at the time. Those bills continue to be outstanding. Attached hereto and marked together as exhibit "G" is a true copy of Mr. Scott's letter.

19. By letter dated April 19, 2009 from the national headquarters of Citizenship and Immigration Canada I received a reply stating that my application for a temporary resident permit must be accompanied by the required fee. A true copy of that letter is attached hereto and marked as exhibit "H". The file number on that letter is NHQ 6157 8132, and I understand from a letter dated August 10, 2009 from the Department of Justice to my solicitor that this same number, 6157-8132, has been assigned to me by Citizenship and Immigration Canada as my FOSS number. A true copy of the August 10, 2009 letter (with certain information about another person with the same name as mine covered over) is attached hereto and marked as Exhibit "I".

20. Some time in June 2009 I went to inquire about obtaining public health coverage under OHIP. Even though I have resided in Ontario for over 9 years I was told that I am not eligible since I am not a landed immigrant. Attached hereto and marked as exhibit "J" is a photocopy of the English version of the brochure I was



given that indicates this. I do not have the financial resources to pay for private health coverage.

21. I applied for coverage under the Interim Federal Health (IFH) Program on May 6, 2009 through my immigration consultant, Mr. Scott. In his letter of that date to Citizenship and Immigration Canada Mr. Scott pointed out, among other things, that I have serious medical problems and lack the funds to pay for necessary medical care. Attached hereto and marked as exhibit "K" is a true copy of Mr. Scott's May 6, 2009 letter.
22. I was denied coverage under the IFH Program by letter dated July 10, 2009. This is the decision which is the subject of this application. I do not understand what is meant by the statement at the end of the letter that I have "no active immigration application with Citizenship and Immigration Canada (CIC)". As I set out above, I am in the process of applying for permanent residence from within Canada, based on humanitarian and compassionate grounds. Madam Justice Snider has reserved her decision in my application for judicial review of the Minister's failure to grant a fee waiver. I have been issued a FOSS number by Citizenship and Immigration Canada.
23. I do not have the resources to pay for the costs of my medical care, hospitalization, and incidental expenses, nor does the Ontario Works program pay

for such costs other than the costs of certain medication. I continue to receive invoices from the St. Michael's Hospital Physicians' Association looking to me for full payment. I know that I cannot pay these bills. Attached hereto and marked together as exhibit "L" are true copies of their accounts dated March 20, April 16 (with covering letter), April 16 (with covering letter), May 4, May 14, June 8, and July 9, 2009.

24. Without health coverage I am constantly anxious whether I will get treatment or not, or whether delays in obtaining it will jeopardize my health or my life. This frequently causes me to be unable to sleep and makes me exhausted. I can't understand how people can deny me health care that I need when it is a matter of life and death. They don't seem to be able to understand how it feels to be in my situation. I frequently feel depressed about this.

25. Every time I have an appointment I become anxious about whether when I arrive I will be turned away because I cannot afford to pay. The uncertainty causes me anxiety and stress, and makes me feel even worse. It sends up my blood pressure and worsens my diabetes by sending my blood sugar level higher. This in turn increases my chronic pain and I worry that it increases the risk of other life threatening complications.

26. I have had several experiences in which my lack of access to coverage of, or ability to pay for, my healthcare created what I perceived to be serious risks to my health or life.
27. On July 16, 2009 I saw Dr. Jan Irvine, a gastroenterologist at St. Michael's Hospital. She said she would arrange for me to have a gastrocolonoscopy. She explained the procedure to me and gave me a paper with procedures for the gastrocolonoscopy and a prescription for the solution I was to take. Some time during the visit, after I had undressed and was in a gown lying down waiting to be examined, Dr. Irvine's receptionist came and asked me how I was going to pay for the gastrocolonoscopy. She asked me if I had spoken to an administrator at the hospital about paying. I told her I had not. Dr. Irvine was supposed to call me and tell me the date the gastrocolonoscopy will take place. I haven't heard from Dr. Irvine since then. I believe that I am not getting the gastrocolonoscopy because I am unable to pay for it.
28. Recently I saw in the St. Michael's Hospital records supplied to me by the hospital, a reporting letter dated July 16, 2009 about my visit with Dr. Irvine. After referring to my family history of large bowel cancer and the fact that I am at high risk because of my recent pulmonary embolus, Dr. Irvine recommended the gastrocolonoscopy including a bridging with low molecular weight Heparin,

which I understand is a protection against forming blood clots during the procedure. Dr. Irvine then wrote:

“The only thing I am uncertain of this (sic) how, she will pay for the low molecular weight Heparin that will be required for bridging for the 10 days pre-post her procedures. We will complete the home care requisitions for this, but I am unsure how this would be handled given that she has no OHIP coverage.”

Attached hereto and marked as exhibit “M” is a true copy of Dr. Irvine’s letter.

29. This makes me worry that concerns about my ability to pay may interfere with doctors making the best decisions about my healthcare. I feel that if I had health coverage or if I could afford to pay for my healthcare the doctors might dig more deeply into what is wrong with me. I am anxious that something may be missed that will put my life in danger.

30. Another example of the delay and uncertainty caused by my not having health coverage occurred on August 12, 2009. On that day Dr. Kamel's secretary gave me a requisition from Dr. Kamel for blood work and told me to go downstairs to the laboratory in the same building as his office and have my blood work done before leaving. I went downstairs to the laboratory and spoke with the receptionist at the front desk. He asked me for my health card and I said I don't have one. He then said he was not doing the test unless I paid or presented a health card. This

was in the public lobby. There were people behind me who could have overheard this. Among the emotions I felt were embarrassment and humiliation.

31. I then telephoned to Dr. Kamel's secretary. She was not there but Dr. Kamel picked up the phone. I told him what the receptionist said. Dr. Kamel asked me what I wanted him to do about it. I asked if he could call to the laboratory and say that I'm his patient, but he told me he couldn't do anything about this. Again, I felt embarrassed and humiliated. I told him that I was sorry for having bothered him by asking him for help.

32. After I left I happened to see Dr. Kamel's secretary and told her about this. She went back in with me to the laboratory receptionist and spoke to him to ask him to do the blood work. She explained to him that I was very sick and the doctor needed the results the following morning and that this was urgent. However, the receptionist said he was not going to do the testing. Dr. Kamel's secretary she did not know what was wrong with these people, but suggested that I try to have it done somewhere else and have the results faxed to her. Fortunately I was able to have the blood work done by York Community Services, who told me they would send me the invoice for it.

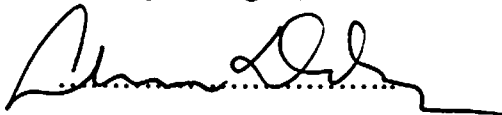
33. I never know whether I will be able to get treatment or tests I need in a timely fashion. I cannot predict when doctors or service providers will agree to provide services without pay and when they will not. This makes me feel that I lack control over my health.
34. I am extremely grateful for the services that I have been provided by doctors and service providers, despite the fact that I am unable to pay for them. On the other hand, I find it humiliating and degrading to have to negotiate with doctors and other healthcare service providers to receive healthcare, out of charity. It makes me feel that I am not considered of the same worth or value as other patients.
35. I am aware that many doctors, receptionists and people in waiting rooms who hear me explain why I have no health coverage and ask for compassion based on my serious circumstances may have negative attitudes about immigrants seeking healthcare in Canada. I feel vulnerable to being treated as an outsider. I feel that administrators, receptionists, other patients and doctors who do not know the details of my circumstances may have negative ideas about people in my situation. They may think that I have set out to “take advantage” of Canada’s healthcare system, rather than thinking of me as an equal human being, a resident of Canada who has worked hard and contributed to society but who has become ill and needs healthcare to save my life.

36. When people are hostile toward me or do not want to allow me to have access to the healthcare I require, I feel that my life and health are devalued because of my immigration status and my disability. This leaves me depressed and anxious about my vulnerable situation and I have to work hard to maintain my dignity and self-esteem.

37. When I last saw Dr. Kamel in his clinic on Thursday, August 20, 2009 he sent me to the St. Michael's Hospital emergency department with a note indicating he was concerned that I may have another pulmonary embolism. His office called ahead to the triage in the emergency room and they were waiting for me when I arrived. I was admitted to the hospital in the early morning of Friday, August 21, 2009. That is where I now am as I swear this affidavit. I was, and continue to be, in a lot of pain. Dr. Kamel visited me on August 21, 2009 in the afternoon. During his visit he asked me how I will be paying for the attendance and the stay in the hospital. I said that I didn't know.

Sworn before me at )  
the City of Toronto, in the )  
Province of Ontario this )  
23<sup>rd</sup> day of August, 2009 )

.....*Nell Toussaint*.....  
Nell Toussaint



Andrew C. Dekany  
A commissioner for taking affidavits