

07-W-38779

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID THOMASSON

Applicant

and

ONTARIO MINISTRY OF COMMUNITY AND SOCIAL SERVICES; DIRECTOR OF
INCOME SUPPORT (CORNWALL)
and SOCIAL BENEFITS TRIBUNAL

Respondents

NOTICE OF CONSTITUTIONAL QUESTION

The plaintiff intends to question the constitutional validity of *the and* to claim a remedy under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Ontario.

The question is to be argued on *Sept 4, 2007*, at *10 AM*, at *161 Elgin Street Ottawa*.

The following are the material facts giving rise to the constitutional question:

1. The applicant, David Thomasson, is a person with a disability as defined under the Ontario Disability Support Program (ODSP);
2. The applicant farms as part of his therapy for his disability;
3. The applicant has created a market share for his organically grown vegetables in exclusive restaurants in Ottawa;
4. The applicant has been certified as an organic farmer and his farm has been registered as a farm and subject to the benefits attributable to being a registered farm;

5. The applicant, in order to maintain his market share, had to hire farm help for seeding and picking, in 2005;
6. The applicant had to name the farm help as an employee under the provisions of the Canadian Revenue Agency (CRA) and pay employee source deductions to the CRA for the farm help;
7. The applicant maintains that the farm help was an essential expense for his farm and the expense did result in greater production and enabled the applicant to maintain his market share;
8. The applicant, in abiding with the provisions of CRA, cannot claim under the ODSP that the farm help was under contract as he was paid as an employee of the farm in accordance with the provisions of CRA;
9. The applicant explained to the Director that there was no contract for his farm help in 2005 and prior to hiring the employee, sent the Director a letter stating that the person was required to be considered as an employee and provided to the Director the amount that the person was being paid;
10. The Director ODSP in 2005 never sent the applicant any alternatives to the CRA process;
11. In 2006, the Director ODSP requested a contract for the employee of 2005, which could not be provided as the farm help was hired as an employee and not under a contract;
12. In January 2007, the Director ODSP denied the farm expense of the farm help in 2005 and claimed that the applicant's income was greater than reported and thus the applicant was in an over-payment situation;
13. The applicant requested reconsideration, which was denied, and the applicant appealed the decision of the Director to the Social Benefits Tribunal (SBT);
14. Where the SBT, under the enabling Legislation, cannot hear a Constitutional Question, the applicant is required to bring this Notice to the Ontario Superior Court of Justice.

The following is the legal basis for the constitutional question:

15. Does the interpretation of the Minister's Directive 5.1-5.7, for the calculations of income by the Director under ODSP discriminate against persons with disabilities, who want to be farmers and restrict a person with a disability in the pursuit of their life, liberty and security of the person in violation of the principles of fundamental justice?
16. Whereas, the Minister's Directive 5.7, states:

"Wages to Employees: Wages paid to employees of the farm are not approved expenses. Related payroll expenses (e.g., income tax, Employment Insurance (EI), Canada Pension Plan (CPP), Workplace Safety and Insurance Benefits (WSIB) are also not approved expenses. The recipient may deem this expense as necessary; however, it is not an approved expense and is considered earned income. If the recipient claims wages and related expenses, it should not be allowed as a farm expense."

17. Whereas the actions of the Director in following this Ministerial Directive constitutes a discriminatory act whereby the Government of Ontario is in fact treating persons with a disability who attempt to make a living by farming different than persons who are not disabled and elect to farm for a living. Such an action on the part of the Director is contrary to the provisions of the Charter of Rights and Freedoms, section 7 which protect the individuals "life, liberty and security of the person in accordance with the fundamental principles of natural justice" and section 15 which protect the rights of persons with disabilities to "equal treatment under the law."

Date: July 11, 2007

GREEN & VESPRY LAW OFFICES

200-190 O'Connor Street
Ottawa, ON K2P 2R3

Terrance Green

Tel: 613-560-6565 ext. 22
Fax: 613-560-0545

Solicitor for the Plaintiff
David Thomasson

TO The Attorney General of Ontario
Constitutional Law Branch
4th floor
720 Bay Street
Toronto, Ontario M5G 2K1
Fax: (416) 326-4015

The Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

Ministry of Community and Social Services

Eastern Region
10 Rideau Street, 7th Floor
Ottawa, Ontario K1N 9J1

Director of Income Support (Cornwall)
Ministry of Community and Social Services
4 Montreal Road, 3rd Floor
Cornwall, Ontario K6H 1B1
Fax: (613) 993-0354

Social Benefits Tribunal
1075 Bay Street, 7th Floor
Toronto, Ontario M5S 2B1
Fax: (416) 326-5135

ORIG

David Thomasson

PLAINTIFF

- and -

Ontario Ministry of Community and Social Services;
Director of Income Support (Cornwall) and Social Bene
Tribunal

DEFENDANTS

Court File No. 07-CV-38779

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at

Ottawa

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GREEN & VESPRY Law Offices

200 - 190 O'Connor Street
Ottawa, Ontario, K2P 2R3

Terrance Green, LSUC# 44758J

Tel: (613) 560-6565 ext. 22
Fax: (613) 560-0545

Solicitor for the Plaintiff