

Court File No. 07-CV-38779

**ONTARIO
SUPERIOR COURT OF JUSTICE
(East Region)**

BETWEEN:**DAVID THOMASSON**

**Applicant
(Responding Party to Motion)**

-and-

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

**Respondents
(Ministry of Community and Social Services, and
Director of the Ontario Disability Support Program, Moving Parties)**

**AMENDED NOTICE OF MOTION
OF THE MOVING PARTY RESPONDENTS,
MINISTRY OF COMMUNITY AND SOCIAL SERVICES and
DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM**

THE MOVING PARTIES, properly described as the Ministry of Community and Social Services and the Director of the Ontario Disability Support Program, respectively, will make a motion to this Honourable Court on **Thursday, February 28, 2008 at 10:00 am** at the Courthouse at 161 Elgin Street in Ottawa.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is
 in writing as an opposed motion under subrule 37.12.1(4)
 orally.

THE MOTION IS FOR AN ORDER directing that

1. this Application be struck or dismissed, as the Social Benefits Tribunal has allowed an appeal by the Applicant that entirely disposes of the matters raised in this Application;
2. costs be awarded to the Moving Parties on this motion; and
3. such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On January 31, 2007, the Director of the Ontario Disability Support Program denied certain expenses claimed by the Applicant in relation to income support payments provided to him under the *Ontario Disability Support Program Act, 1997, S.O. 1997, c.25, Sch. B, as amended* ("ODSPA"). The expenses were disallowed after the Applicant failed to submit appropriate documentation to verify the expenses incurred.
2. The Applicant appealed the Director's decision to the Social Benefits Tribunal, under section 23 (*Appeal to Tribunal*) of the ODSPA. The Applicant's appeal was heard by the Social Benefits Tribunal on October 24, 2007.
3. Before his appeal to the Social Benefits Tribunal was heard, the Applicant brought the main Application before this Honourable Court to constitutionally review the Director's decision (i.e., the same decision under appeal before the Social Benefits Tribunal) under (sub)sections 7, 15 and 24(1) of the *Charter*.

4. In its decision of November 26, 2007, the Social Benefits Tribunal allowed the Applicant's appeal, rescinded the Director's decision of January 2007, and directed that the contested expenses at issue be allowed after finding that the Applicant's disability precluded him from submitting appropriate expense verifying documentation, as otherwise required.

5. The underlying dispute giving rise to this Application (i.e., the same matter that was the subject of appeal before the Social Benefits Tribunal) was resolved fully by the Tribunal in its decision of November 26, 2007. As such, this Application should be struck, or dismissed, as the underlying dispute in this matter is now completely moot. This Honourable Court should not entertain the issues raised in this Application as they are *not necessary* to resolve the proceedings, which are now entirely moot.

6. Should the Applicant wish to challenge the November 22, 2007 decision of the Social Benefit Tribunal, his appropriate recourse is to bring a statutory appeal to the Divisional Court under section 31 (*Appeal to Court*) of the ODSPA. In the event of an appeal from the Tribunal's decision, the Divisional Court would benefit from a full and complete factual record on the appeal that is necessary for a proper consideration of any constitutional issues that may be raised.

7. It is improper for the Applicant to circumvent the statutory appeal process under s.31 of the ODSPA by bringing this Application before this Honourable Court.

8. Rules 14.09, 21.01(3), 25.11, 37 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

9. 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 motion:

1. Application Record delivered July 23, 2007.
2. Notice of Constitutional Question dated July 11, 2007.
3. Social Benefits Tribunal Decision dated November 22, 2007.
4. Amended Affidavit of Virginia Burt sworn February 22, 2008.
5. Such further and other materials as counsel may advise and this Honourable Court may permit.

February 22, 2008

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Social Benefits Tribunal

DAVID THOMASSON
v.
**ONTARIO MINISTRY OF COMMUNITY
AND SOCIAL SERVICES, DIRECTOR OF
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Proceedings Commenced in Ottawa

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