

Court file number:

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)**

BETWEEN:

**INFANT NUMBER 10968, also known as  
D. MARIE MARCHAND**

Applicant  
(on application for leave)

and

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
CATHOLIC CHILDREN'S AID SOCIETY OF TORONTO**

Respondents  
(Respondents)

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**AFFIDAVIT OF D. MARIE MARCHAND**  
**(Section 59(1) of the *Supreme Court Act* and Rule 6(2) of the Rules of  
the *Supreme Court of Canada*)**

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**I, D. MARIE MARCHAND, DO HEREBY MAKE OATH AND SAY AS  
FOLLOWS:**

1. I am a self represented Applicant in an Application of Leave to the Supreme Court of Canada, and have knowledge of the matters in which I hereinafter depose.
2. I contacted the Registrar by email on several occasions including the 27<sup>th</sup> of November whereupon I was informed on November 28, 2007, at 1:27 p.m. that “you might want to look at Rule 5.1 concerning the computation of time”.

3. Having done so, I made the erroneous assumption that the computation of time applied to the Notice of Application for Leave to the Supreme Court of Canada, whereby the computation of time did not include the time between December 21 and January 7 in the following year, as prescribed by Rule 5.1.

4. Based on this erroneous interpretation and my inexperience in Supreme Court procedures, I gave myself this “extra” time but proceeded as if my deadline was the 15<sup>th</sup> of January, 2008.

5. My material was ready and I was prepared to serve and file it before the 15<sup>th</sup> of January, 2008.

6. I had a meeting with Janet Minor, Counsel for the Attorney General on this case on appeal at the Appeal Court of Ontario, and, Counsel for the Attorney General at the Ontario Superior Court of Justice in *Cheskes et al. v. Ontario (Attorney General)*, Ontario Superior Court of Justice, Court File No. 06-CV-319936PD2, on the 14<sup>th</sup> of January, 2008 at 5:00 P.M., about this Application for Leave to the Supreme Court of Canada.

7. At this meeting I was encouraged to make a motion to submit, *inter alia*, the affidavits of the Attorney General’s expert witnesses in *Cheskes, supra*, as fresh evidence in support of this case.

8. I was told, and believe this to be true, that Counsel for the Attorney General having provided me with the entire record of *Cheskes, supra*, before the hearing of the appeal before the Court of Appeal for Ontario, on November 13<sup>th</sup> and 14<sup>th</sup>, 2007, in order for me to make a motion to include this material on appeal which, I was told, and believe to be true, they would not oppose, and would as well, provide to me for the hearing 3 complete copies of the record for submission to the bench hearing the appeal, would be willing to provide me with these same materials in order to spare me photocopying costs, (if they still had them), for the purpose of my submission of a motion to adduce fresh evidence before the Supreme Court of Canada.

9. That night - the evening of January 14<sup>th</sup>, 2008, I read the Rules of the *Supreme Court of Canada* and understood it would be better to file a notice of motion under

Section 62(3) of the *Supreme Court Act*, Rule 47, of the Rules of the *Supreme Court of Canada*, and to serve and file the latter motion to adduce new evidence at the same time as I filed my Application for Leave to the Supreme Court of Canada, which I believed was February the 4<sup>th</sup>, 2008.

10. I made the decision in paragraph 9 above for the additional reason that it would save me courier costs.

11. On January 17<sup>th</sup>, 2008, being satisfied that my material was as ready as it would be, I e-mailed Janet Minor, Counsel for the Attorney General, informing her I was ready to serve my material and asking her if she would ask her client if it would be ok to serve them early and post-date the acceptance of service to February 29<sup>th</sup>., giving her client more time to respond and myself more time to raise funds for the appeal. Admittedly, the date of February 29<sup>th</sup> was the result of a brain cramp, and should have read January 29<sup>th</sup>, 2008, the date that appears on my grey covers for leave, which I have corrected to read January 28<sup>th</sup>., 2008.

12. I have not received a response from Ms. Minor and believe her to out of the office.

13. On January 25<sup>th</sup>, 2008, Mr. Green, Counsel for the Attorney General, inquired as to when I would be serving my Application for Leave, informing me that the deadline was January 15<sup>th</sup>., 2008, and that his client would be willing to accept service by the end of next week (the week beginning January 28<sup>th</sup>, 2008), and that I would need to file a Notice of Motion for the Extension of Time. In this same e-mail Mr. Green, Counsel for the Attorney General, informed me that I would be able to pick up the copies of the *Cheskes, supra*, case, on Monday, January 28<sup>th</sup>., 2008, in triplicate as Janet Minor, Counsel for the Attorney General, had indicated at our meeting on January 14<sup>th</sup>., 2008, would try to secure for me.

14. In response to Mr. Green's e-mail, I forwarded to Mr. Green a copy of the e-mail I had received from the Registrar of the Supreme Court of Canada on November 28<sup>th</sup>.,

2007 and told him of my belief that the computation of time, according to Rule 5.1 of the Rules of the Supreme Court of Canada meant that my leave application was not yet due.

15. For the purposes of discernment, I forwarded my response to Mr. Green to the Registrar of the Supreme Court of Canada, requesting that as I understood it was better to include the motion for the receipt of new evidence at the same time as a filed my Application for Leave, would it be ok with his client if I served the notice of motion for new evidence and the application for leave on February 4<sup>th</sup>, 2008, as I was feeling somewhat wacking [sic] out by the number of motions I would have to write never having done anything like this before.

16. Mr. Green, acknowledged the forwarding of my e-mail to him to the Registrar of the Supreme Court of Canada, and provided the clarity I needed, informing me that Rule 5.1 did not apply to an Application for Leave to the Supreme Court of Canada, and that, yes, I would have to file a Notice of Motion for an Extension of Time for Application for Leave to the Supreme Court of Canada.

17. At this point, mid-afternoon Friday afternoon, January 25<sup>th</sup>, 2008, I began cranking out motions and affidavits for the next 10 hours to the best of my ability. At 1:23 A.M. January 26<sup>th</sup>, 2008 (early Saturday morning), I checked my e-mails and realized Mr. Green had sent me a message at 4:26 P.M, inquiring as to why, if my Leave Application was ready, did I need until the 4<sup>th</sup> of February to file it, suggesting that I serve and file the Leave Application as soon as possible and file the motion for the receipt of fresh evidence at a later date.

18. At this time, 1:23 A.M. Saturday morning the 26<sup>th</sup> of January, 2008, I responded to Mr. Green's e-mail, that I would be serving the Leave for Application to the Supreme Court of Canada, as soon as possible which, in other words, would be Monday morning, January the 28<sup>th</sup>, 2008.

19. I require, for the above reasons and in the interest of justice, that my Application for Leave to the Supreme Court of Canada, be served, sent by courier, and accepted, on January 29<sup>th</sup>, 2008, with the additional notice of motion for an order to receive further

evidence to be submitted at a later time and within the Rules for the submission of further evidence for Leave to This Honourable Court.

SIGNED BY:

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Applicant

Affirmed before me in the City of Toronto )  
in the province of Ontario this day )  
of 200 )

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A Commissioner of Oaths

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