

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)

Application under *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, C.11

**STATEMENT OF ARGUMENT ON A MOTION TO RECEIVE FRESH
EVIDENCE ON AN APPLICATION FOR RECONSIDERATION
(Section 62(3) of the *Supreme Court Act*, Rule 47 & Rule 73 of the *Supreme Court of
Canada*)**

STATEMENT OF ARGUMENT:

1. The Applicant seeks leave to receive fresh evidence under section 62(3) of the *Supreme Court Act*, rule 47 of the *Supreme Court of Canada*. The Applicant submits that as a result of the decision in *Cheskes et al. v. Ontario (Attorney General)*, Superior Court of Justice, Court file No. 06-CV-319936PD2, that the law is, *inter alia*, unclear as to the meaning of “privacy” and “confidentiality” in the context of Vital Statistics records and the rights of adopted people to not be deprived of access to their own true biological information.

Cheskes et al. v. Ontario (Attorney General), Superior Court of Justice, Court file No. 06-CV-319936PD2

2. The Applicant relies on the case law in *R. v. Perlett*, at para. 140, for the admission of new evidence: 1) it must not have been available by the exercise of due diligence; 2) it must be relevant to a potentially decisive issue; 3) it must be credible; and, 4) it could, if believed and taken together with the rest of the evidence reasonably be expected to have affected the verdict.

R. v. Perlett, 82 O.R. (3d) 89

3. The Applicant submits that: 1) the nature of the issue is that there will always be new evidence and further that the new evidence will continue to support the Applicant's position; 2) it goes to the question of whether people need to be protected from adopted people; 3) it is credible in that the respondent has itself used the evidence to defend legislation that would provide adopted people with information about themselves, and; 4) in combination with the first 3 principles and in lieu of the special expertise of the witness it would have affected the outcome in this case.

4. The Applicant also submits that in *Cheskes, supra*, counsel for the applicants represented 3 adopted people and a birth father on the issue of whether section 7 of the *Charter's* principles of fundamental justice contained a fundamental right to privacy. The case was not concerned with the section 15 rights of adopted people to not be deprived of true and accurate biological information about themselves and that adopted people *qua* adopted people were not represented independently as individuals in the *Cheskes, supra*, litigation. Section 7 reads as follows:

Everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in the accordance with the principles of fundamental justice.

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, C.11

5. The Applicant submits that adopted people were deprived of their right to adequate representation in *Cheskes, supra*, because their interests were subsumed by the interests of birth parents, (a birth father), in procreative anonymity, who do have access to their own true birth certificates as do all other Canadians but for adopted people. The

Applicant submits that while the adopted people in *Cheskes, supra*, were correct in claiming that their right to dignity under section 7 was infringed in terms of having people other than themselves have access to their most personal information, that it was premature and inappropriate to grant them as adopted people representative status in a *Charter* application without independent legal advice which would define that which is theirs as private and inaccessible to them, in contrast, to that which confidential and belongs to them, thus depriving all, adopted people of this determination, whether they, as individuals, choose to have their information or not.

SUBMISSIONS FOR COSTS

6. The Applicant submits that this is a test case representing the interests of over 500,000 people and that the Applicant bear no costs in the interests of the access to Justice.

ORDER SOUGHT

7. The Applicant submits that for these reasons, the interests of justice and the necessity of this fresh evidence to enable This Honourable Court to adjudicate the question in issue that this fresh evidence be received.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, this 25th day of May, 2008

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**CASELAW REFERRED TO ON MOTION A MOTION TO ADDUCE FRESH
EVIDENCE**

1. *Cheskes et al. v. Ontario (Attorney General)*, Superior Court of Justice, Court file No. 06-CV-319936PD2
2. *R. v. Perlett*, 82 O.R. (3d) 89
3. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, C.11