

Court file number:

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
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

TAKE NOTICE that **Infant Number 10968, also known as D. Marie Marchand** applies for leave to the appeal to the court, pursuant to s.40 (1) of the Supreme Court Act, from the judgment of the Ontario court of Appeal, file number C45673, made November 16, 2007, and for an order pursuant to 43(c) to determine the application or any further order that the court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. The Ontario Court of Appeal erred in law at para. 10 of their decision in finding that the application judge's analysis is a "fair application of the leading equality cases, especially *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, whose framework she faithfully followed" in her analysis of the constitutionality of the adoption disclosure provisions of the *Child and Family Services Act* and the *Vital Statistics Act*;
2. the Ontario Court of Appeal erred in law in finding the standard of review is

“correctness” not “fairness” (*Housen v. Nikolaisen*, [2002] 2S.C.R. 255);

3. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in finding that the Applicant’s rights guaranteed by the *Canadian Charter of Rights and Freedoms* are constrained by the privacy interest of the man identified by her birth mother as her birth father;

4. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in law in doing the section 1 analysis in section 15(1) of the *Charter of Rights and Freedoms* before determining the rights effected and “leaving the analogous grounds test for another day” (para. 141 of the Superior Court decision);

5. the Ontario Court of Appeal erred in law at para.9 in failing to find the application judge erred in law in finding that that the impugned legislation’s scheme allows for access against the backdrop of an assessment of an adoptee’s health, safety and welfare, when the legislation, in fact allows, by the simple denial of paternity by a birth father, the health, safety and welfare of the of the adopted person to be trumped by this denial, irrespective of sworn statement of paternity assumed truthful at the time of the adoption;

6. the Ontario Court of Appeal erred in law in finding that the applicant has raised the issue of the impropriety of section 28 of the *Vital Statistics Act*, whereby allowing adoptive parents to be exempt from the operation of sections 377 & 378 of the *Federal Criminal Code* provisions for the first time, when the applicant raised the issue as the third question in the Notice of Constitutional Question;

7. the Ontario Court of Appeal erred in law in finding that the impugned provisions permitting an adopted person’s name to be changed outside the legal statutory framework of the *Change of Name Act* thereby breaching sections 377 & 378 of the *Federal Criminal Code* whereby adopted people are deprived of equal benefit of a law guaranteeing all but adopted people a true and accurate statement of their biological origins, is an argument without merit;

8. the Ontario court of Appeal erred in failing to find that adopted people are discriminated against unequally as between provinces by the breaching of the *Federal Criminal Code*, a national standard which if not breached provides all people but adopted people with true and

accurate statements of live birth;

9. the Ontario Court of Appeal erred in law in failing to find the application judge erred in law in failing to find that the ameliorative purpose of the impugned legislation was to regulate the unregulated trade in human infants - a serious and pressing concern, and not to encourage adoptions, an action of last resort in the best interest of the child;

10. the Ontario Court of Appeal erred in failing to find the application judge erred in fact and law in failing to address the unequal treatment of adopted people in Ontario vis-à-vis adopted people in British Columbia;

11. the Ontario Court of Appeal erred in law and in fact finding in finding the application judge “fairly” applied the case law in giving no weight to the applicant’s doctors’ reports and dismissing all the evidence of the expert witnesses including the respondent’s expert witnesses who clearly supported the applicant’s claims;

12. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in law in drawing a negative inference from the fact that the evidence of the appellant’s health care professionals was in report rather than affidavit form;

13. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact in finding that the medical reports prepared by physicians who treated the appellant show that the appellant’s emotional and psychological problems are unrelated to the non-disclosure of adoption information, despite a preponderance of evidence to the contrary and reaching conclusions opposite to those of the professionals in the absence of evidence contradicting them;

14. the Ontario Court of Appeal erred in fact and law in failing to find the application judge erred in fact and in law in finding that the appellant did not have standing to question the constitutional validity of subsections 28(2), (3), (4) and (5) of the *Vital Statistics Act*;

15. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in characterizing the reliability of the appellant’s birth mother’s declaration of paternity and her statement to the respondent Catholic Children’s Aid Society (CCAS) of the identity of the appellant’s birth father on the basis that it is not the practice of the

CCAS to verify such information, placing any claimant in the applicant's position of having to rely on the veracity of an agency that deliberately deprives the Court in a Crown Ward hearing or Adoption hearing of its judicial function of formally dispensing with the birth father's paternal interest and the child's interest in knowledge of their paternal roots;

16. the Ontario Court of Appeal erred in law in failing to find the application judge erred in law in characterizing the appellant's treatment of the Adoption Disclosure Unit as abusive and their treatment of her as being responsive and professional after curtailing submissions on this issue during oral argument;

17. the Ontario Court of Appeal erred in law in failing to find the application judge erred in law in giving weight to inadmissible, irrelevant and unsworn hearsay information in the internal files of the Adoption Disclosure Registry;

18. the Ontario Court of Appeal erred in law in failing to find the application judge erred in law in finding that the applicant is not a person of reasonable sensibilities in failing to consider compelling evidence respecting the impact of the impugned provisions across the spectrum of adopted persons;

19. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and law in attributing any negative aspect of the appellant's circumstances to her genetics;

20. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and law in attributing any negative aspect of the appellant's circumstances to her genetics despite the lack of any evidence from any health care professional respecting the Applicant's genetics;

21. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and law in failing to consider evidence respecting the impact of the withholding of information from the applicant pursuant to the impugned legislation;

22. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in finding that the secrecy that informed the appellant's life and the resulting emotional impediments were not a product of the impugned legislative provisions, but rather

entirely attributable to the attitude and approach of her adoptive parents;

23. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in giving no weight to the evidence of Evelyn Robinson;

24. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in failing to consider evidence that Dr. Smith lacked impartiality and neutrality;

25. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in failing to consider the entire body of writings made available to her from Dr. David Brodzinsky, an authority recognized by the expert witnesses of all parties;

26. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in rejecting evidence available to her from Dr. David Kirschner and Dr. David Brodzinsky that adopted persons are more likely than non-adopted persons when deprived of openness by their adoptive parents, do experience psychological and emotional problems;

27. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in law in failing to properly consider the entirety of the evidence and, in so doing, failing to recognize the impact on adopted persons of laws that withhold access to the identities of their birth parents and ancestry;

28. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact and in law in failing to consider compelling evidence that access to information is linked to identity in adopted persons;

29. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in giving weight to a statement from a witness at a legislative committee, who relied upon anonymous sources, to support a finding that confidentiality of adoption information was a necessary consideration in resolving the issues on the application;

30. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in finding that the appellant could not raise section 1 of the *CFSA* or the provisions of the United Nations Convention on the Rights of the Child respecting the

interpretation of the impugned legislation on the grounds that the appellant is no longer a child;

31. the Ontario court of Appeal erred in law in failing to find the application judge failed to consider that the *CFSA* is a children's welfare act and not a parent's rights act in her interpretation of section 1 of the *CFSA* and the provisions of the *United Nations Convention on the Rights of the Child*;

32. the Ontario Court of Appeal erred in law in failing to find the application judge erred in law in finding that the exceptional disclosure provisions in section 168 of the *CFSA* satisfied the requirement that the disclosure scheme respond to the best interests of the adopted person;

33. the Ontario Court of appeal erred in law in failing to find that the application judge erred in law in failing to find that the impugned legislation does not violate section 7 of the *Canadian Charter of Rights and Freedoms*;

34. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in failing to properly consider the evidence and by rejecting the evidence that knowing one's ancestry lies at the core of what it means to enjoy individual liberty and independence;

35. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in characterizing the right to know the identity of one's birth parents as mere curiosity on the part of adopted persons rather than recognizing it as a fundamental constitutional issue;

36. the Ontario Court of Appeal erred in law in failing to find the application judge erred in failing to recognize the distinction between confidentiality interests of birth parents (which relate to birth parents' confidentiality as against third parties) and the anonymity of birth parents from their own children;

37. the Ontario court of Appeal erred in failing in law in failing to find the application judge erred in fact and in law in failing to properly consider the evidence and by rejecting the evidence that the impugned legislative provisions impose serious psychological stress on adopted persons;

38. the Ontario Court of Appeal erred in law in failing to find the application judge erred in

fact and in law in finding that the denial of information to the appellant is not the denial of a benefit conferred by law nor the imposition of a burden the law does not impose on others;

39. the Ontario Court of Appeal erred in law in failing to find that the application judge erred in fact in finding that the impugned legislation does not make stereotypical assumptions about the appellant or adopted persons generally, despite evidence that the impugned legislation promotes stereotypes or demeaning messages about adopted persons;

40. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law by considering the irrelevant question of whether adopted persons have a need to know their birth parents rather than the proper question of whether adopted persons have a right to adoption disclosure because disclosure is important to the abilities of adopted persons to know themselves;

41. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in finding that the appellant has been able to obtain extensive information about her birth relatives and lacks only one piece of information when the uncontradicted evidence was that the appellant has received no information about half of her ancestry;

42. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in failing to consider or in rejecting the discriminatory effect of the denial of their pre-adoption medical records to adopted persons;

43. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact and in law in finding that the appellant had not been denied disclosure of information pursuant to sections 162 & 165 of the *CFSA*, and further erred in fact and in law in finding that an appeal and/or review was available to the Applicant pursuant to section 172 of the *CFSA*;

44. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact in finding that there was no evidence of the appellant taking steps available through the *CFSA* to locate her birth parents until 1998;

45. the Ontario court of Appeal erred in law in failing to find the application judge erred in fact in finding that the evidence was inconsistent with an adoptive person in the Applicant's

position's being anxious, depressed and trapped in an existential nightmare by the not having information about where they come from when it exists and is withheld by the respondents;

46. the Ontario Court of Appeal erred in law in failing to find the application judge erred in fact in finding that the evidence does not support that an adopted person in the Applicant's position is fundamentally and negatively affected when denied information about their true origins, and in failing to consider a preponderance of evidence in support of the Applicant's assertion in the absence of evidence to the contrary;

47. the Ontario court of Appeal erred in law in failing to find the decision of the application judge patently unreasonable in all of the circumstances and incorrect in the application of the case law; and

48. such further and other grounds as counsel may advise and This Honourable Court permit.

January 24, 2008

SIGNED BY

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