

DATE: 20040310
DOCKET: C40817

COURT OF APPEAL FOR ONTARIO

RE: CHARLES MACINTYRE (Applicant/Appellant) v. HER MAJESTY THE QUEEN, in Right of the Province of Ontario as represented by the Ministry of Community and Social Services (Respondent/Respondent in Appeal)

BEFORE: McMURTRY C.J.O., MOLDAVER AND CRONK JJ.A.

**COUNSEL: Darcy Merkur
for the appellant**

**Lori Patyk
for the respondent**

**HEARD &
ENDORSED: March 10, 2004**

On appeal from the order of Justice S. Greer dated October 7, 2003.

APPEAL BOOK ENDORSEMENT

[1] We are satisfied that by virtue of the combined effect of s. 7(1) and s. 8 of the *Motor Vehicle Accident Claims Act* and s. 43 of the *Financial Administration Act* the Crown was entitled to set-off the damages that were due and payable by the Crown under the judgment obtained by the appellant against the monies owed to the Crown under the restitution order.

[2] In our opinion, the principles applicable to the seizure of non-pecuniary damages in a bankruptcy setting have no application here.

[3] Further, in our view, the res judicata argument has no merit. The appeal is therefore dismissed.

[4] Given the unusual facts in this case, there will be no order as to costs.