

Federal Court



Cour fédérale

Date: 20150717

Docket: T-2099-14

Citation: 2015 FC 877

Ottawa, Ontario, July 17, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

SIMON JAMES ELLIOTT

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

[1] This is a motion in writing to appeal a decision of Prothonotary Aalto dated April 10, 2015, which struck the present action. For the reasons set out below, I dismiss the appeal and confirm Prothonotary Aalto's decision.

[2] The defendant acknowledges that, because the prothonotary's order had the effect of disposing of the action, the Court should consider this matter *de novo*.

[3] The defendant also acknowledges that a pleading may be struck only when it is “plain and obvious” that it has no merit, even assuming the allegations of fact therein to be true.

[4] The Statement of Claim seeks an award of damages (general, special, and aggravated) following a decision of the Justice Minister (the Minister) to cease funding for certain religious services to inmates in federal correctional facilities. The plaintiff alleges that, as a result of this decision, he lost the spiritual guidance of his imam. The plaintiff cites four legal grounds for his claim:

1. negligence;
2. violation of the plaintiff’s rights under section 2(a) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [the Charter]*;
3. violation of the plaintiff’s rights under section 7 of the *Charter*; and
4. violation of the plaintiff’s rights under section 12 of the *Charter*.

I. Issue: whether the claim should be struck for failure to disclose a reasonable cause of action pursuant to rule 221(1)(a) of the *Federal Courts Rules*

A. *Alleged negligence*

[5] The defendant notes that there are four requirements for a finding of negligence:

1. a duty of care;
2. damage;
3. causation; and
4. foreseeability

[6] The defendant argues that the plaintiff suggests no basis in law for duty of care that would oblige the funding of an imam for him.

[7] The plaintiff has not responded to this argument.

[8] I accept the defendant's argument, and find that it is plain and obvious that this aspect of the plaintiff's claim has no merit.

B. *Allegations of Charter violations*

[9] Section 2(a) of the *Charter* reads as follows:

Fundamental freedoms	Libertés fondamentales
2. Everyone has the following fundamental freedoms:	2. Chacun a les libertés fondamentales suivantes :
(a) freedom of conscience and religion;	a) liberté de conscience et de religion;

[10] The defendant asserts that this provision is intended to prevent the state from interfering with individuals' religious beliefs and practices, but does not extend to imposing a positive obligation on the state to provide the plaintiff with free access to his preferred means of practising his religion.

[11] Section 7 of the *Charter* reads as follows:

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

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[12] The defendant argues that the failure of the state to provide funding for an imam for the plaintiff does not constitute a deprivation of his life, liberty, or security, or any combination of these. In the absence of such a deprivation, there can be no violation of section 7 of the *Charter*.

[13] Section 12 of the *Charter* reads as follows:

Treatment or punishment

Cruauté

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

[14] The defendant argues that an allegation of violation of section 12 of the *Charter* requires the Court to consider “whether the treatment or punishment is so excessive as to outrage standards of decency and surpass all rational bounds of treatment or punishment”: *Piche v Canada (Solicitor General)*, [1984] FCJ No 1008 at para 455 (FCTD) (QL), aff’d [1989] FCJ No 204 (CA) (QL). The defendant also argues that this standard is relatively high. The defendant asserts that, based on this high standard, the Minister’s decision to cease funding Imams’ services in federal correctional facilities does not violate section 12 of the *Charter*.

[15] The plaintiff has not responded to any of these *Charter* arguments.

[16] I accept all of the defendant's arguments concerning the *Charter* issues, and find that it is plain and obvious that these aspects of the plaintiff's claim have no merit.

II. Other issues

[17] Because of the conclusions I have reached above, it is not necessary for me to consider the defendant's other argument that the plaintiff's claim constitutes an abuse of process.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present appeal of the prothonotary's decision is dismissed, and the striking of the action is confirmed.
2. Costs of this appeal are awarded to the defendant in the amount of \$300.

"George R. Locke"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2099-14

STYLE OF CAUSE: SIMON JAMES ELLIOTT v HER MAJESTY THE
QUEEN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE FEDERAL COURTS RULES**

JUDGMENT AND REASONS: LOCKE J.

DATED: JULY 17, 2015

APPEARANCES:

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FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

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FOR THE DEFENDANT

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