

Date: 20071129

Docket: A-376-06

Citation: 2007 FCA 380

**CORAM: LINDEN J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

EDWIN PEARSON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 28, 2007.

Judgment delivered at Toronto, Ontario, on November 29, 2007.

REASONS FOR JUDGMENT BY:

LINDEN J.A.

CONCURRED IN BY:

**SHARLOW J.A.
RYER J.A.**

Date: 20071129

Docket: A-376-06

Citation: 2007 FCA 380

**CORAM: LINDEN J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

EDWIN PEARSON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

LINDEN J.A.

[1] This appeal arises out of events that transpired in 1989, which in 1991 led to the Appellant's conviction on four counts of trafficking in narcotics. Following these convictions, there were many complex legal proceedings including two appeals to the Quebec Court of Appeal, one of them leading to a new hearing on an issue of entrapment, and an appeal to the Supreme Court of Canada. The fresh entrapment hearing ended unsuccessfully for the Appellant. He served time in custody as a result of his convictions.

[2] As a result of all of this, the Appellant's life and that of his family was negatively affected for the last 18 years, which he blames on the Crown's failure to disclose certain key documents and allegedly false evidence given by certain RCMP officers at his criminal trial.

[3] The Appellant commenced this action in 1999 seeking \$13,000,000 in damages under section 24 of the *Canadian Charter of Rights and Freedom* for the Crown's violations of sections 7 and 11 of the *Charter*.

[4] After a lengthy trial that was held in Toronto from October 24-26, 2005 and in Montreal from November 17-25, 2005, the Trial Judge issued his 45 page decision dismissing the action, dealing in considerable detail with the legal issues that had been raised.

[5] During the hearing of this appeal, the procedural issues of prescription and collateral attack, which were dealt with by the Trial Judge, were canvassed at length by Mr. Pearson, who was self-represented, and by counsel for the Crown. However, in the light of our view on the merits of the appeal, we need not deal with these two procedural matters here.

[6] While it is clear that a violation of the *Charter* may sometimes ground an award of civil damages pursuant to section 24, this is not automatic. The jurisprudence is clear that to recover damages something more than a technical violation of the *Charter* is required. It is necessary to demonstrate that there has been conduct that was done in bad faith, clearly wrong or which amounted to an abuse of power. Merely acting in an unconstitutional way, if it is done in good faith

and without abuse of power, does not lead to civil liability, (See *Mackin v. New Brunswick; Rice v. New Brunswick*, [2002] 1 S.C.R. 405, per Gonthier J. at paras. 78 and 79) even though there may be other legal consequences. ((*R v. Carosella*), [1997] 1 S.C.R. 44.)

[7] On the facts of this case, as found by the Trial Judge, which findings of fact are only reviewable if there is palpable and overriding error, the case for civil damages has not been established. In paragraphs 70-88, the Trial Judge explained that, after carefully considering the “documentary evidence and the testimonies of the various witnesses called by plaintiff, ... Mr. Pearson has not made out this claim for damages”. (para. 70) While there were elements of the Crown’s evidence that contained “discrepancies of no significance”, the Trial Judge held that the Appellant has not succeeded in his attempt to demonstrate that the behaviour of the Crown agents (Prosecutors and RCMP officers) amounted to the type of conduct calling for an award of damages. (para. 76) Further, he explained that the “evidence (both testimonial and documentary) that was laid before me does not demonstrate an infringement of Mr. Pearson’s rights, nor does it show the kind of misconduct that could justify the remedy sought by the plaintiff”. (para.76) We were informed that there were 8 large binders of documents which the Trial Judge indicated were all perused and which contained most of the disputed material, disclosure of which had been sought earlier to no avail by the Appellant. When, at the hearing of this appeal, he was asked by this Court to respond to these factual findings by the Trial Judge, the Appellant was unable to satisfy the Court’s inquiry. We can, therefore, discern no basis for interfering with these factual findings.

[8] The Trial Judge, in arriving at this conclusion, correctly outlined the law in this area relying primarily on the cases *Mackin, supra*, and *Beliveau St. Jacques v. Fédération des employées et employés de service publics Inc.*, [1996] 2 S.C.R. 345. He concluded that, based on the legal authorities, the “Crown prosecutors cannot be faulted for not having disclosed all the documents requested by Mr. Pearson”. Consequently, he held, “an award of damages would not be appropriate and just in the circumstances”. (para. 86) I can see no basis for interfering with the Trial Judge’s conclusions on the law.

[9] The Trial Judge also found that the “allegations of perjured evidence and fraudulent documents having been tendered by various witnesses are simply without merit”. After having studied all the evidence, including the transcripts of the evidence, the Trial Judge concluded that although there were some “inconsequential discrepancies that are innocent in nature”, he had “heard nothing that would lead him to conclude that the Crown wilfully, knowingly and maliciously provided false evidence or condoned the tendering of fraudulent documents”. (para. 87) I can see no basis for interfering with this finding.

[10] The Trial Judge also rightly decided that, even if there had been Charter violations, evidence was required to show that these violations “caused” Mr. Pearson to be convicted and imprisoned. (para. 60) In other words, there had to be a “reasonable possibility that the disclosure affected the outcome of the trial”. The Trial Judge, relying in part on the decisions of the Quebec Courts, found that it was not proven that the non-disclosures and the alleged perjury “may have had an impact on the verdict”. (paras. 62 to 69) This, too, was a factual finding about the requisite element of

causation, which manifests no palpable and overriding error. I can see no basis for upsetting these factual conclusions.

[11] The Trial Judge ended his analysis by opining that there was no infringement of the Appellant's constitutional rights nor was there any "reprehensible" conduct "to the extent required to call for damages". (para. 88) If the Appellant was, without fault, impaired in presenting his entrapment defence, he was "granted an appropriate remedy in obtaining a new trial limited to the issue of entrapment" by the Quebec Court of Appeal. The fact that he chose not to avail himself of the documents disclosed to him at that time because they had been "vetted", was the Appellant's decision and he must accept the consequences that flowed from that choice, sad as that has been for him and his family.

[12] This appeal will therefore, be dismissed, but in all the circumstances of the case, without costs.

"A.M. Linden"

J.A.

"I agree

K. Sharlow"

J.A.

"I agree

C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-376-06

(AN APPEAL FROM THE JUDGMENT OF de MONTIGNY J., DATED JULY 28, 2006, IN FEDERAL COURT FILE NUMBER: T-290-99)

STYLE OF CAUSE: EDWIN PEARSON v. HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 28, 2007

REASONS FOR JUDGMENT: LINDEN J.A.

CONCURRED IN BY: SHARLOW J.A.
RYER J.A.

DATED: NOVEMBER 29, 2007

APPEARANCES:

Mr. Edwin Pearson FOR THE APPELLANT (Self-Represented)

Mr. Jacques Savary FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Edwin Pearson
Burlington, Ontario FOR THE APPELLANT (Self-Represented)

John H. Sims, Q.C.
Deputy Attorney General of Canada
Toronto, Ontario FOR THE RESPONDENT