Federal Court  Cour fédérale

Date: 20170111

Dockets: See below

Citation: 2017 FC 30

Ottawa, Ontario, January 11, 2017

PRESENT: The Honourable Mr. Justice Phelan

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BETWEEN:

In the matter of numerous filings seeking a declaration pursuant to s 52(1) of the *Canadian Charter of Rights and Freedoms*

ORDER AND REASONS

I. Introduction

[1] The decision in this matter addresses 316 proceedings initiated by self-represented plaintiffs and an applicant in eight (8) different provinces and territories, all related to the then current medical marihuana regulations which the Court ultimately found to be unconstitutional as contrary to the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*], in *Allard v Canada*, 2016 FC 236, [2016] 3 FCR 303 [*Allard*].

[2] The specific proceeding in issue is a motion in writing under Rule 369 seeking an order striking these claims/application without leave to amend.

[3] The grounds for the motion can be summarized thus:

a) Since February 2014, 316 self-represented litigants have commenced virtually identical claims in the Federal Court claiming declarations and damages for

breaches of constitutional rights in enacting the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 [MMPR];

b) The identical claims are based on "kits" downloaded from the website of a plaintiff John C. Turmel [Turmel Kit], which contained a pro forma statement of claim to be used with the insertion of some specific information related to each individual, such as name, address and amount claimed.

c) The Turmel Kit claims were collectively case managed with two other proceedings which seek similar relief, namely *Bradley Hunt et al v Her Majesty the Queen in Right of Canada* (T-1548-14) [the Hunt claim] and *Derek Francisco v Attorney General of Canada* (T-697-14) [the Francisco application].

II. Background

A. *History*

[4] Since February 2014, more than 300 self-represented plaintiffs have filed virtually identical claims at the Federal Court in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, and Saskatchewan. The claims are based on the Turmel Kit downloaded from the website of a plaintiff John Turmel. The claims seek declarations that the *Marihuana Medical Access Regulations*, SOR/2001-227 [MMAR] (repealed on March 31, 2014), and the MMAR replacement, the MMPR (declared unconstitutional on February 24, 2016), are unconstitutional. The MMPR was replaced in August 2016 by the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 [ACMPR].

[5] In addition to declaratory relief, the claims requested an order striking "marihuana" from Schedule II of the *Controlled Drugs and Substances Act*, SC 1996, c 19 [CDSA]. In the alternative, the claims seek permanent exemptions from the CDSA for the Plaintiffs' personal medical use of marihuana or, in the further alternative, damages for the loss of the Plaintiffs' marihuana plants and production sites when the personal production regime embodied by the MMAR was replaced by the commercial licensed producer regime of the MMPR.

[6] As noted earlier, all Turmel Kit claims are collectively case managed with the Hunt claim and the Francisco application.

[7] The self-represented Plaintiff in the Hunt claim seeks a declaration that a constitutionally viable exemption from the CDSA must exist to allow individuals to produce and possess cannabis, and to approve one's own use of cannabis in any form. Hunt also claimed for a declaration that several provisions of the MMAR, MMPR, and CDSA are invalid and that provisions of the *Narcotic Control Regulations*, CRC, c 1041 [NCR] and Ontario's *Drug and Pharmacies Regulation Act*, RSO 1990, c H.4 [DPRA] are invalid to the extent that they require a physician's approval for an individual to use marihuana.

Hunt also sought interim exemptions from the CDSA, some other relief that is somewhat difficult to understand, and $1 billion in "aggravated" costs.

[8] In the Francisco application, the Applicant seeks judicial review of a decision by the Minister of Health to deny his request for an exemption from s 4 (possession) and s 7 (production) of the CDSA. The application requests declarations authorizing medical use of

cannabis by medically approved persons in any form and striking out the restrictions to "avoid marihuana" and the 150 gram possession limit in the MMPR, as well as a personal constitutional exemption from the CDSA for the Applicant's personal medical use of marihuana.

[9] In addition to these 300 plus proceedings, the Court, at about the same time, was seized of *Allard*, which was a comprehensive constitutional challenge to Canada's then medical marihuana regime under the MMPR.

The relief sought in *Allard* was similar, if not identical, to the declarations sought in these proceedings.

[10] Prior to the hearing of *Allard*, Justice Manson granted an injunction which had the effect of preserving the substance of the MMAR for the significant majority of those holding authorizations under that regulation, pending the Court's determination of the constitutionality of the MMPR.

[11] Given the circumstances of the pending *Allard* hearing, the Chief Justice, by way of direction, stayed the Turmel Kit claims pending the interim injunction request.

After Justice Manson's injunction decision, I, as case management judge of all of these Turmel Kit claims/application, continued the stay for reasons which included the substantial overlap between the issues in *Allard* and the Turmel Kit claims recognizing that the relief sought, while not always identical to *Allard*, was very similar.

[12] This Court noted that most, if not all, of these 300 plus proceedings lacked the type of detail necessary to properly plead the respective claims. The Plaintiffs/Applicant were given 10 days to amend the pleadings to address this lack of detail, but none availed themselves of that opportunity.

[13] On June 11, 2015, the Supreme Court of Canada in *R v Smith*, 2015 SCC 34, [2015] 2 SCR 602 [*Smith*], found that the restriction to "dried" marihuana was contrary to s 7 of the *Charter* and declared s 4 (possession) and s 5 (trafficking) of the CDSA to be of no force and effect to the extent that they prohibit individuals with medical authorizations from possessing cannabis derivatives for medical purposes.

Smith addressed some of the issues raised by the Plaintiffs/Applicant.

[14] On February 24, 2016, this Court, in the *Allard* decision, found that the MMPR infringed those Plaintiffs' rights under s 7 of the *Charter* and that this infringement was not justified under s 1. The Court declared the MMPR to be of no force or effect but suspended the declaration for six months to provide the government time to implement a new regulatory regime. The potential for a new regime eliminated any need to suspend CDSA provisions. The Manson injunction continued during this six-month period.

The Defendant has advised that 162 of the Plaintiffs/Applicant met the criteria of the *Allard* decision and were entitled to its benefits.

[15] On August 24, 2016 (six months after the *Allard* decision), the government enacted the *Access to Cannabis for Medical Purposes Regulations* to replace the unconstitutional MMPR.

III. Analysis

A. *Rule 369 Motion*

[16] The time to appeal the *Allard* decision having passed without an appeal, and having notice of the Defendant/Respondent's intention to move to strike the claims/application, the Court directed that any such motion be filed by April 26, 2016.

[17] In the meantime, on April 8, 2016, John Turmel brought his own motion for summary judgment. In so doing, Turmel acknowledged that his requests for declarations in respect of the MMAR and MMPR have been rendered moot as a result of the *Allard* decision. He also appeared to have abandoned his claim for damages.

[18] On this motion only Turmel (in Court File T-488-14) sought to challenge the motion. Hunt filed a separate proceeding which was directed at maintaining his action. While neither Turmel nor any of the other Plaintiffs/Applicant specifically raised an objection under Rule 369(2) to the matter being in writing, the Court understands that Turmel wants the matter to be heard orally and that he purports to speak on behalf of all other Plaintiffs/Applicant, despite the prohibition in R 119 against a non-solicitor representing other persons.

[19] This is an appropriate case for a R 369 proceeding. The issues of mootness, relief not available at law, absence of reasonable causes of action, proceedings that are frivolous, vexatious, and abuse of process, and ancillary issues are all capable of being decided on the

record. As noted, the record is thin in substance and largely consists of a template-type statement of claim.

[20] The matter can be disposed of expeditiously, efficiently, and, most importantly, fairly on the basis of written materials. The time, expense, and logistics of addressing each action/application in person in each filing location are unreasonable, cumbersome, and add no substantive fairness to the process.

[21] Therefore, the Court concludes that this matter should be disposed of on the written record.

B. *Mootness*

[22] In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231, the Court set out a two-step process for determining whether to dismiss due to mootness.

Firstly, a court determines whether a decision will have no practical effect, and is therefore moot. Secondly, the court must consider whether, despite being moot, there are good reasons to hear and determine the case.

[23] In these cases the requests for declaratory relief are moot. The MMAR has long been repealed. The MMPR was declared invalid, and it has now been repealed and replaced by the ACMPR.

[24] The lis or interference with constitutional rights under the MMAR and MMPR has ended with the introduction of the ACMPR. Any declaration would have no practical effect on the Plaintiffs/Applicant. (The issue of damages is dealt with separately later.)

C. *Discretion*

[25] There are several good reasons why the Court should not exercise its discretion to continue to adjudicate these matters:

a) there is nothing to adjudicate: the substrata of the lis has disappeared completely with the introduction of the ACMPR;

b) judicial economy militates against expenditure of judicial resources on a theoretical claim; and

c) the role of a court is to adjudicate, not to make general statements at large on legal issues.

[26] No party other than Turmel seems to be interested in litigating the issues. Even Turmel seems to recognize that the matters are moot and there is nothing on which to give a useful declaration.

[27] There is no regulation to attack and therefore nothing useful to declare. The MMAR has been replaced by two different regulatory regimes. The MMPR has been struck down, the appeal period has passed, and the matter of the validity of the MMPR is *res judicata*. Finally, the MMPR has been replaced in its entirety by the ACMPR.

[28] In terms of judicial economy, handling more than 300 similar cases across the country without a lead file or some coordination is a daunting task. Before working out the logistics, the Court must be able to conclude that something legally useful might be attained. However, here there are no issues which can usefully be resolved in terms of present or future proceedings. Any problems with the new regime should be handled directly in claims under or against the ACMPR.

[29] Any declaration that the Court might make would be a general pronouncement on past laws, not an adjudication with some effect on the claimants' existing rights. The adjudicature culminated in the *Allard* decision.

[30] Therefore, these proceedings are moot and there is no good reason to allow the actions/application to continue. This motion can be granted on these grounds alone; however, for the sake of completeness, the Court will briefly address other grounds raised by the Defendant/Respondent.

D. *Other Grounds*

[31] With respect to the requests to have certain provisions of the CDSA struck down, this Court in *Allard* refused to do so on the basis that a new regime was a better remedy than the potential disruption caused by striking down legislative provisions. The issue was sufficiently addressed in *Allard* to constitute *stare decisis*. While another judge of this Court could theoretically reach a different conclusion, judicial comity favours consistency in results. There is no good reason to revisit the issue.

[32] While the Plaintiffs claim damages – with few of the necessary specifics for such claims – the claims are largely for loss of unused marihuana grown or loss of the production sites.

[33] As held in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 SCR 789, absent wrongful conduct, bad faith, or abuse of power, in respect of public law matters courts will not award damages for harm suffered as a result of an enactment which is subsequently declared unconstitutional.

[34] The subject pleadings contain insufficient, if any, particulars of bad faith or abuse of process.

[35] In respect of the Hunt claim (Court File T-1548-14), the Plaintiff seeks a declaration that provisions of the NCR and DPRA are invalid because they require a physician to approve the use of marihuana.

[36] It is settled law, as recently as *Smith*, that the requirement for medical authorization is constitutionally sound.

[37] In addition, the pleading is deficient in allegations concerning the limitation of access to marihuana by reason of the requirement for medical authorization. In a similar vein, the Hunt pleading shows no connection of the provincial DPRA to a body of federal law. Therefore, the Court has no jurisdiction over this aspect of his claim.

[38] I need not go into great detail that the claims disclose no reasonable cause of action. I noted that neither the users of the Turmel Kit nor Hunt have filed claims that contain details of their personal circumstances and personal infringement of their rights. These pleadings are in marked contrast to the pleadings in *Allard*.

[39] This Court in its stay decision referred to the "dearth of detail", the vague generalities and hyperbole of the Turmel Kit, and the paucity of information on personal circumstances. Nothing has changed and no party took advantage of the opportunity provided by the Court to amend and provide further details. It would be unjust to allow amendments at this stage.

[40] Along the same lines and with respect to the "frivolous, vexatious and abuse of process" argument, the pleadings fail on this ground also. A pleading is frivolous and vexatious if it is argumentative or includes statements that are irrelevant, incomprehensible, or inserted for colour, as if it seeks relief that the Court clearly cannot grant (*Simon v Canada*, 2011 FCA 6, 197 ACWS (3d) 485).

[41] The pleadings, as noted above, suffer from such a lack of specificity that it is difficult to respond or to regulate the proceedings. Comments in the Turmel Kit are overblown, insulting, and argumentative.

[42] The Hunt pleading suffers from allegations and case references of uncertain relevance. Pleading relief such as *habeas corpus* under s 15 or referencing the "supreme law" is difficult to

understand. The claim for exaggerated damages of $1 billion adds nothing to the seriousness of the pleadings. The claims are frivolous and vexatious.

[43] As noted earlier, the Plaintiffs/Applicant seek to re-litigate decided matters. As such, this is an abuse of process.

IV. Conclusion

[44] For all these reasons, the motion is granted. The Court will issue an Order that:

a) all of the claims/application listed are struck without leave to amend; and

b) no costs being requested, no costs will be granted. (It is doubtful under the circumstances if the Court would have granted costs.)

ORDER

THIS COURT ORDERS that:

1. The Defendant/Respondent's motion is granted and all of the claims/application listed are struck without leave to amend; and

2. As no costs are requested, no costs are granted.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	Various
STYLE OF CAUSE:	In the matter of numerous filings seeking a declaration pursuant to s 52(1) of the *Canadian Charter of Rights and Freedoms*

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

ORDER AND REASONS:	PHELAN J.
DATED:	JANUARY 11, 2017

WRITTEN REPRESENTATIONS BY:

John Turmel	FOR THE PLAINTIFF (T-488-14)
Jon Bricker	FOR THE DEFENDANT

SOLICITORS OF RECORD:

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