Federal Court | Cour fédérale

Date: 20150106
Docket: T-2030-13

Vancouver, British Columbia, January 6, 2015

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBER AND SHAWN DAVEY

Applicants/Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent/Defendant

ORDER

UPON considering the motion records of the parties with respect to the Plaintiffs' request to adjourn the trial of this matter, scheduled to commence on February 23, 2015, for three (3) weeks, pursuant to Rule 36 of the *Federal Courts Rules*;

AND UPON hearing counsel for the parties' submissions at the oral hearing on January 6, 2015;

[1] It is hereby ordered that the motion is dismissed, for the reasons that follow.

[2] The Plaintiffs seek to adjourn the trial of this matter in the Federal Court, pending determination of the appeal to the Supreme Court of Canada [SCC] in *R* v *Smith*, 2014 BCCA 322, scheduled to be heard on March 20, 2015. It is argued that the Section 1 and 7 *Charter* issues are the same and central to both cases and therefore this matter should await the decision of the SCC in *R* v *Smith*, before proceeding. It is the Plaintiffs' position that the SCC decision and the remedy that flows therefrom may obviate the need for the trial in this case. I disagree.

[3] The constitutional questions before the SCC are:

a) Do the Marihuana Medical Access Regulations, SOR/2001-227 [MMAR], as amended, infringe s.7 of the *Canadian Charter of Rights and Freedoms*, insofar as they only allow access to "dried marihuana"? and

b) If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?

[4] This action concerns a number of issues by way of a Civil Constitutional Challenge by the Plaintiffs to the new medical marihuana regulatory regime under the MMAR:

a) replacement of the regulatory regime which once permitted home cultivation of medical marihuana with provision of access to marihuana through licensed producers only;

b) prohibition of cultivation of marihuana in dwelling places and outdoor areas;

c) limits on the amount of marihuana for medical purposes (150 g.) that can be possessed by an authorized individual; and

d) the production and possession of dried marihuana only, thus prohibiting production or possession of non-dried forms of marihuana.

[5] The Plaintiffs rely on the decisions in *Union of British Columbian Indian Chiefs v Westcoast Transmission Co*, [1977] FCJ No 1102 (TD) at paras 19-24; *Novak v Bond*, [1998] BCJ No 2034 (SC) at para 11; *Schreiber v Canada (Attorney General)*, [1997] FCJ No 1301 (TD) at para 10; affirmed on appeal, [1998] FCJ No 298, and *Alberta v Canada (Minister of the Environment)*, [1991] FCJ No 450 (T.D.) at para 39.

[6] In considering a request for an adjournment of a trial, the Court must consider a number of factors:

a) principles of fairness and natural justice;

b) prejudice to one or more of the parties;

c) prejudice to the Court of losing time that has been assigned for the hearing;

d) public interest in the timely conclusion of litigation; and

e) the interests of justice and the efficacy of the judicial system.

(*Martin v Minister of Employment and Immigration* (1999), 162 FTR 127 (TD); *Ismail v Canada (Attorney General)*, 1999 CanLII 8732 (TD); *Markestyn v Canada*, 2000 CanLII 17160 (FC); *Alberta v Canada (Minister of the Environment)*, [1991] FCJ No 450 (TD)).

[7] The Chief Justice of this Court issued a Notice to the Profession dated May 8, 2013, advising parties and counsel that a fixed trial date will be adjourned only in "exceptional and unforeseen circumstances":

> The Federal Court operates on a guaranteed, fix-date system. When the Court has fixed a date for trial or for a hearing, parties are expected to proceed on that date. Adjournments cause inconvenience and expense. Court resources are not used efficiently as there often is not sufficient time to schedule another matter to take the place of the adjourned hearing."

[8] Justice David Stratas of the Federal Court of Appeal recently confirmed the need to maintain the scheduling and timing of the Court's hearings, and to avoid the prejudice of adjournments (*UHA Research Society v Canada (Attorney General)*, 2014 FCA 134 at paras 2, 8-10 and 14).

[9] The *R v Smith* appeal before the SCC involves only one of the issues before this Court in this proceeding – whether or not authorized users of medical marihuana are constitutionally entitled to have access to non-dried marihuana. The Plaintiffs argue that nevertheless, the import of any roadmap decided upon by the SCC in considering the applicability of section 7 and

section 1 of the *Charter* will have a far broader scope of effect on the merits of this case. This assumption is, in my opinion, speculative at best.

[10] It does not address the Plaintiffs constitutional challenges to prohibition on home cultivation, the requirement of patients to purchase medical marihuana from licensed producers only, and the costs associated with supply of medical marihuana in doing so, or the legal limits on volumes of medical marihuana that can be possess by patients. As such, unlike in the *Schreiber* case or the *Alberta* case, above, relied on by the Plaintiffs, any decision by the SCC in *R v Smith* would not be dispositive of at least three issues in this proceeding. Again, the impact of any decision of the SCC at this time is for the most part speculative.

[11] The parties agreed that it is likely any decision of this Court in this matter will be appealed. As for the single overlapping issue, any decision by the SCC, if prior to a decision in this case, can be made the subject of additional submissions as may be requested by the trial judge. If the SCC decision in *R v Smith* has any impact after a decision is tendered in this proceeding, again, that decision may be considered in any appeal that may be brought by either party.

[12] Moreover, and as important as the preceding issues I have discussed, the scheduling of the trial of this matter was made with the push by both parties for an early trial, requiring the need for an expedited hearing, given the impact of any injunction granted on the new regulatory regime under the MMAR. Specific recognition of the public safety risks associated with production of marihuana under the old regulatory regime factored into this concern for the

Court's scheduling of the expedited trial scheduled to commence next month. The Plaintiffs waited until late last month to bring this motion – there is no excuse in the delay in doing so. In addition, some 275 self-represented claimants have filed boiler-plate pleadings in this Court, since February, 2014, seeking substantially the same relief as is being sought in this proceeding. These numerous parallel proceedings have been stayed by the Court pending the Court's decision on the merits at trial next month, and any appeals therefrom. The stay order also applies to any subsequent constitutional challenges to the MMAR filed with the Federal Court that are substantially identical to this action.

[13] The prejudice to the Defendant, the public at large and the parties to the numerous pending proceedings before this Court as currently stayed, if an adjournment is granted, is real.

[14] For all of the above reasons, the Plaintiffs' motion to adjourn is dismissed. Costs of the motion to the Defendant in the cause.

THIS COURT ORDERS THAT:

1. The Plaintiffs' motion to adjourn is dismissed.

2. Costs of the motion to the Defendant in the cause.

"Michael D. Manson"

Judge