

Federal Court



Cour fédérale

Date: 20210413

Docket: T-1765-18

Citation: 2021 FC 322

Ottawa, Ontario, April 13, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ALLAN J. HARRIS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

and

**THE PARTIES LISTED IN SCHEDULE
“A” ATTACHED HERETO**

ORDER AND REASONS

[1] These reasons deal with the Crown’s motion in writing to set a timetable for the next steps in this action and the actions listed in Schedule A attached hereto.

[2] By way of background, the Plaintiff and some 35 other similarly situated plaintiffs filed virtually identical claims for declarations that the possession and shipping limits in the former

Access to Cannabis Regulations, SOR/2016-230, infringe sections 7 and 15 of *the Canadian Charter of Rights and Freedoms*.

[3] By Order dated November 1, 2018, the Court designated this action, *Allan J. Harris v HMQ* (“Harris”) as the lead claim among this group of claims, ordered Mr. Harris to amend his claim to reference the current *Cannabis Regulation*, SOR/2018-1444, and placed the other claims in abeyance pending the Crown’s motion to strike the Harris claim.

[4] By judgment dated July 21, 2020, the Federal Court of Appeal struck the Harris claim in its entirety, without leave to amend, because it was plain and obvious it did not disclose a reasonable cause of action. The appeal was from my judgment granting these Plaintiffs interim constitutional relief (*Harris v Canada*, 2019 FC 553).

[5] In November 2020, Mr. Harris attempted to serve and file an application for leave to appeal to the Supreme Court of Canada. However, his leave application was not accepted for filing because it was late and incomplete. Mr. Harris took no immediate steps to rectify that situation, leading to the Crown’s current request by letter dated March 11, 2021.

[6] However, Mr. Harris takes the position the Crown’s motion is premature. By letter dated March 15, 2021, the Crown reported that Mr. Harris now advises that “he in fact submitted an application for leave to appeal to the Supreme Court of Canada on March 10, 2021. It is Canada’s understanding that he has also filed a motion for an extension of time to seek leave,

and that the Supreme Court of Canada registry is currently reviewing these materials to determine whether they will be accepted for filing.”

[7] The Plaintiff advises he now has a lawyer, something the Court urged on him on several occasions in 2018, and possibly in early 2019.

[8] Notwithstanding, the Crown reiterates its request for a direction setting out next steps to deal with this and other remaining claims despite matters now proceeding in the Supreme Court of Canada. The Crown argues that Mr. Harris’ letter does not identify the basis for his extension motion, does not identify any issue of public importance that would warrant the Supreme Court of Canada granting leave to appeal, or any error in the Federal Court of Appeal decision that could lead to a different result even if leave to appeal is granted.

[9] In the circumstances, I am of the view the Crown’s motion for directions regarding next steps should not be determined at this time. In my view and as presently advised it is preferable for this Court to await a decision by the Supreme Court of Canada on the Plaintiff’s application for leave to appeal.

[10] This is of course contingent on Mr. Harris moving with due diligence in the prosecution of this application for leave to appeal as I agree there must be an end to litigation.

[11] To that end the Crown is asked to monitor the progress of the Plaintiff's application for leave to appeal, and advise the Court if the Plaintiff is not proceeding with due diligence, and to report the result of the application for leave to appeal.

[12] This motion is therefore dismissed without prejudice to the Defendant bringing it back on if appropriate once the application for leave to appeal is decided.

ORDER in T-1765-18

THEREFORE IT IS ORDERED that:

1. The Defendant's motion to set a timetable for next steps in these actions is dismissed, without prejudice to the Crown bringing it back depending on the result of the application for leave to appeal in the Supreme Court of Canada.
2. The Defendant is to monitor the progress of the Plaintiff's application for leave to appeal in the Supreme Court of Canada and report to the Court if the Plaintiff is not proceeding with due diligence, and to report the result of the application for leave to appeal.
3. A copy of the Order shall be placed in this and each Federal Court file identified in Schedule "A" attached hereto.

"Henry S. Brown"

Judge

Schedule "A"

T-1784-18	T-1822-18	T-1878-18
T-1900-18	T-2066-18	T-788-19
T-789-19	T-831-19	T-832-19
T-833-19	T-834-19	T-835-19
T-836-19	T-837-19	T-838-19
T-839-19	T-840-19	T-841-19
T-842-19	T-843-19	T-845-19
T-846-19	T-850-19	T-853-19
T-854-19	T-855-19	T-856-19
T-857-19	T-858-19	T-859-19
T-860-19	T-862-19	T-863-19
T-881-19	T-1549-19	

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1765-18

STYLE OF CAUSE: ALLAN J. HARRIS v HER MAJESTY THE QUEEN

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

ORDER AND REASONS: BROWN J.

DATED: APRIL 13, 2021

WRITTEN REPRESENTATIONS BY:

Allan J. Harris

FOR THE PLAINTIFF

Jon Bricker

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE DEFENDANT