

R. v. David T. Little - 2008 NBPC 2

File: 07878605

CANADA

PROVINCE OF NEW BRUNSWICK

PROVINCIAL COURT

B E T W E E N:

Her Majesty the Queen

Plaintiff;

- and -

David T. Little,

Defendant,

Dates of Trial: November 24, 2006 and March 8, 2007

Date of Decision: November 9, 2007

Before: Chief Judge R.Leslie Jackson

Appearances: Keith Ward and Suhanya Edward, for the Crown;

Douglas H. Christie for the Defendant

DECISION

JACKSON, C.J.P.C.

[1] The Defendant is charged with three counts of failing to comply with a notice served on him by the Minister of Natural Revenue requiring him to file T1 Income Tax Returns and a Statement of Income and Expenses for each of the years 2000, 2001 and 2002.

[2] It is not contested that the Defendant did not file the required returns and statements as required by the demands served on him. Indeed, the Defendant testified that he did not do so, he would not do so, and that his actions were deliberate.

[3] The Defendant's counsel in oral argument, conceded that the offences with which Mr. Little is charged are strict liability offences and that following my ruling denying his motion for a directed verdict, the Defendant must be found guilty of the offences unless he can demonstrate that he acted with due diligence. In this regard, he argues that because of the sincerely held and bona fide religious conviction held by the Defendant, he, that is the Defendant, has come to the conclusion that he is unable to participate in the scheme envisaged by the *Income Tax Act* as it relates to the reporting of income because to do so would violate his freedom of conscience and religion, a right that's enshrined by section 2(a) of the *Canadian Charter of Rights and Freedom*.

[4] The Defendant testified to being a devout member of the Roman Catholic Church who has been active in the anti-abortion movement for years. He says that at first

he filled out his Income Tax Returns and included a letter or note objecting to the use of his tax monies in the funding of abortions. Later, as he saw no results from this action, he wrote letters to Members of Parliament and filed his returns but did not pay the taxes. The latter course saw his wages being garnished to pay taxes due. Finally, he says it, “settled in my soul that this was not okay” and he stopped filing his returns.

[5] He testified that he is concerned about the moral consequences of filing a tax return because he is aware that some of the money paid by him may be used to fund abortions, an act that is morally repugnant to him as a devout Roman Catholic who believes that abortion is “morally unjustifiable”. To participate in this scheme in his view, is to be complicit in “murder” or “genocide” acts which go against his religious beliefs and moral compass.

[6] In his *Submission in Reply* the Defendant’s counsel said at paragraph 2:

“This is not a case of general application attacking the constitutional validity of section 238 of the *Income Tax Act*; it is a case where a remedy under section 24(1) of the *Charter* is appropriate in the unique circumstances of this case.”

[7] Crown counsel, in his brief, has raised a preliminary objection as to whether or not the Defendant has put before the court a proper factual basis for his claim under the *Charter*. The gist of the Defendant’s objection to filing is that he is thereby compelled to participate in the funding of abortions which he finds to be morally reprehensible. This, of course, would be true only if the Defendant actually had an obligation to pay taxes assessed as a result of his return. The Crown suggests that there is

no evidence before the Court establishing that the Defendant's tax dollars would be used to fund abortion services. The Defendant counters with the suggestion that the Court is entitled to take judicial notice of publications and statutes of Canada, including reports prepared by Statistics Canada as to the number of abortions performed. He further says that the Court should take judicial notice of the fact that the vast majority of health services, including abortions, are paid for under the purview of the *Canada Health Act*.

[8] In my view, as a result of the Defendant's testimony of past experiences when he has filed returns and either paid taxes or had his wages garnished to pay taxes, I am satisfied that, on a balance of probabilities, the Defendant would owe taxes if he filed as requested and further, because I am of the opinion that I may take judicial notice of the fact that health services, including therapeutic abortions are funded by the state under the *Canada Health Act*, I am satisfied that the Defendant has established a sufficient factual basis to assert a *Charter* claim.

[9] I now turn to the Defendant's claim that in requiring him to file a T-1 return and Statement of Income and Expenses the Government of Canada has violated his rights to freedom of religion under section 21(a) of the *Charter*.

[10] In *Balvin Sing Multani v. Marguerite-Bourgeois* [2006] 1SCR 256 at par 34 the SCC said:

34 In *Amselem*, the Court ruled that, in order to establish that his or her freedom of religion has been infringed, the claimant must demonstrate (1) that he or she sincerely believes in a practice or belief that has a nexus with religion, and (2) that the impugned

conduct of a third party interferes, in a manner that is non-trivial or not insubstantial, with his or her ability to act in accordance with that practice or belief.

[11] In *Syndicate Northcrest v Amselem* [2004] 2 SCR 511 Iacobucci J, writing for the majority of the SCC said at paragraphs 61 and 62:

61 In this respect, it should be emphasized that not every action will become summarily unassailable and receive automatic protection under the banner of freedom of religion. No right, including freedom of religion, is absolute:In the real world, oftentimes the fundamental rights of individuals will conflict or compete with one another.

62 Freedom of religion, as outlined above, quite appropriately reflects a broad and expansive approach to religious freedom under both the Quebec *Charter* and the Canadian *Charter* and should not be prematurely narrowly construed. However, our jurisprudence does not allow individuals to do absolutely anything in the name of that freedom. Even if individuals demonstrate that they sincerely believe in the religious essence of an action, for example, that a particular practice will subjectively engender a genuine connection with the divine or with the subject or object of their faith, and even if they successfully demonstrate non-trivial or non-insubstantial interference with that practice, they will still have to consider how the exercise of their right impacts upon the rights of others in the context of the competing rights of private individuals. ... The ultimate protection of any particular *Charter* right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises.

[12] The Defendant clearly holds a sincere belief that abortion is wrong which view is rooted in his Roman Catholic faith. What is less clear is how the requirement to file an Income Tax Return interferes, in a non trivial or non important way, with the freedom to practice his religion. For the cases quoted by both parties, *Amselem* and *Multani* there was a clear connection between the conduct in question (that is the construction of a succah and the wearing of a kirpon respectively) and the tenets of the

religious right sought to be upheld. Amselem did say that a section 2(a) right could be triggered where the line of conduct was, in the claimant's eyes, sufficiently necessary without proving that the practice was also objectively necessary in the eyes of the religion in question.

[13] However, in my view, the Defendant has failed to establish in the evidence presented any connection or religious requirement between filing or refusing to file a tax return and his Roman Catholic faith, which is the basis of his claim to religious freedom.

[14] In my view, section 2(a) is not triggered, but even if it were, or if it could be said that there was some relationship between the two, I agree with the submissions of Crown Counsel contained in paragraph 44 to 56 his written submissions, that the Defendant has failed to demonstrate any interference with his religious freedom that is more than trivial or insubstantial.

[15] Further, I agree with the reasons in Prior vs. R [1989] 2 CTC 280 and O'Sullivan vs. R [1991] 2 CTC 117; and in particular Justice Muldoon's decision in O'Sullivan (supra) on essentially the same argument raised by Defendant in this case. While these decisions are not binding on me, they are of great persuasive value and I adopt the reasoning therein.

[16] Consequently, I find that the Defendant has not demonstrated that section 231.2(1)(a) and 238(1) of the *Income Tax Act* actually interfere with his religious beliefs or practices and that there has been no violation of his section 2(a) *Charter* rights.

[17] In his eloquent oral argument the Defendant's counsel made reference to the preamble of the *Charter* and in particular the reference therein to the "supremacy of God" as support for the proposition that a government may not impose a legal requirement or obligation on a citizen which takes priority over the citizen's religious beliefs.

[18] With respect, I cannot interpret these words in the manner suggested by Mr. Christie. I can do no better than to quote, and adopt, the words of Justice Southen of the British Columbia Court of Appeal in *R vs. Sharpe* (1999) 175 DCR (4th) 1, quoted at page 62 of the Crown brief:

[78] I accept that the law of this country is rooted in its religious heritage.

[79] But I know of no case on the *Charter* in which any court of this country has relied on the words Mr. Staley invokes. They have become a dead letter and while I might have wished the contrary, this Court has no authority to breathe life into them for the purpose of interpreting the various provisions of the *Charter*.

[19] Finally, the Defendant submits that to require him to comply with the demand served on him by the state pursuant to the *Income Tax Act* would discriminate

against him on the basis of religion by requiring him to participate in a scheme to fund abortion which his religion, as he sees it, forbids him to do.

- [20] To succeed in a section 15(1) *Charter* claim, the claimant must show that:
1. the law draws a formal distinction between him and others on the basis of personal characteristics;
 2. he is subjected to different treatment on the basis of one or more of the enumerated grounds, and
 3. that the differential treatment discriminates against him in a manner which reflects the view that he is less capable or worthy of recognition or value.

[21] The analysis requires both a subjective and objective assessment to determine whether or not a reasonable person in the same circumstances as the claimant would believe his or her dignity had been violated.

[22] Objectively, the requirement under section 231.2(1)(a) does not differentiate between the Defendant and anyone else; however, the Defendant asserts that because of his view of the connection between filing and the funding of abortion, it is subjectively discriminatory.

[23] Even if I were able to conclude that the section affects the Defendant differently from all other Canadians required to file tax returns, I cannot come to the

conclusion that in that distinction the Defendant is made out to be a person less capable or worthy of recognition or value as a human being or as a member of Canadian society.

[24] The Defendant therefore has not demonstrated that his section 158(a) *Charter_Rights* have been violated.

[25] Accordingly, I find the Defendant guilty on all three counts in the information.
