
CANADA / JUDGMENT

Carriere v. Canada

2001 FCT 569

COURT

Federal Court

DECIDED

1 June 2001

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Carriere v. Canada

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Decision Content

Date: 20010601

Docket: T-2205-98

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BETWEEN:

DIANE CARRIERE, MELANIE CARRIERE by way of her Guardian

Ad Litem, Diane Carrière and MARC-ANDRE CARRIERE, by way of his

Guardian Ad Litem, Diane Carriere

Plaintiffs

AND:

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

ROULEAU, J.

- [1] This is an application by the defendant for an order pursuant to Rule 221(1)(a) of the Federal Court Rules, striking out the plaintiffs' Statement of Claim on the grounds that it discloses no reasonable cause of action.
- [2] The plaintiffs are the widow and children of Constable Frank Carriere who drowned on November 30, 1997 while performing his duties as an R.C.M.P. diver. Following his death, Mrs. Carriere received pensions pursuant to the RCMP Superannuation Act and pursuant to the Pension Act. On November 25, 1998 the plaintiffs filed their Statement of Claim in this Court, alleging negligence on the part of the defendants leading to the death of Constable Carriere. The claim seeks monetary relief in excess of \$50,000.00 exclusive of interests and costs. In particular, the plaintiffs claim relief for general damages, special damages, prejudgment interest, punitive damages, aggravated damages for pain and suffering and costs.
- [3] On August 3, 1999 the defendant brought an application in this Court seeking to have the Statement of Claim struck on the grounds that it was an abuse of process or was beyond the jurisdiction of the Court. By decision dated August 19, 1999, Pelletier, J. dismissed the motion without prejudice to the defendant's right to bring an application to strike the Statement of Claim under Rule 221(1)(a). The plaintiffs appealed that decision and, on March 27, 2000 Sexton, J. ordered that the appeal be held in abeyance pending disposition of the within motion to strike.
- [4] The essence of the Crown's argument in support of its application to strike is that the plaintiffs' action is beyond the Court's jurisdiction as it is statutorily barred by subsection 32(2) of the RCMP Superannuation Act, R.S., c. R-11, section 111 of the Pension Act, R.S., c. P-7, and section 9 of the Crown Liability and Proceedings Act, R.S. 1985, c. C-50. These legislative provisions read as follows:

Royal Canadian Mounted Police Superannuation Act

32(2) All claims for pension under this Part shall be dealt with and adjudicated on in like manner as claims under the Pension Act, and all provisions of that Act not inconsistent with this Part apply with such modifications as the circumstances require in respect of any claim under this Part.

32.2 Toutes les réclamations de pension selon la présente partie doivent être étudiées et jugées de la même manière que les réclamations sous le régime de la Loi sur les pensions, et toutes les dispositions de cette loi non incompatibles avec la présente partie s'appliquent, avec les adaptations nécessaires, à l'égard de toute réclamation prévue par la présente partie.

Pension Act

111. No action or other proceeding lies against Her Majesty or against any officer, servant or agent of Her Majesty in respect of any injury or disease or aggravation thereof resulting in disability or death in any case where a pension is or may be awarded under this Act or any other Act in respect of the disability or death.
111. Nulle action ou autre procédure n'est recevable contre Sa Majesté ni contre un fonctionnaire, préposé ou mandataire de Sa Majesté relativement à une blessure ou une maladie ou à son aggravation ayant entraîné une invalidité ou le décès dans tous cas où une pension est ou peut être accordée en vertu de la présente loi ou de toute autre loi, relativement à cette invalidité ou à ce décès.

Crown Liability and Proceedings Act

9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.
9. Ni l'État ni ses préposés ne sont susceptibles de poursuites pour toute perte - notamment décès, blessures ou dommages - ouvrant droit au paiement d'une pension ou indemnité sur le Trésor ou sur des fonds gérés par un organisme mandataire de l'État.
- [5] In *Langille v. Canada (Minister of Agriculture)*, (1992) 2 F.C. 208 the Federal Court of Appeal made the following comments with respect to section 9 [then subsection 4(1)] of the Crown Liability Act:

Subsection 4(1) outlaws a proceeding "in respect of a claim if . . . compensation has been paid . . . out of the Consolidated Revenue Fund . . . in respect of . . . damage or loss in respect of which the claim is made". The words "in respect of" are words of very broad import. Indeed, in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at page 39, Dickson J. (as he then was), described the same words in another federal statute in these terms:

The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

- [6] In *Sarvanis v. Canada*, [2000] F.C.J. No. 12, the Court of Appeal again considered the interpretation of section 9 of the Crown Liability Act and, relying on its decision in *Langille*, concluded as follows:

We are not persuaded that the first issue identified by the Motions Judge raises a genuine issue for trial. Section 9 covers both compensation and pension whether the payment of a pension is meant to fully compensate or not. Therefore, it is irrelevant that the disability payments received by the Respondent are not indemnity payments.

Nor are we persuaded that the second argument represents a genuine issue for trial. In our view, despite the factual differences, the interpretation placed on section 9 by the Court in *Langille*, *supra*, would appear to be equally applicable here. As was noted in that case, section 9 is very broadly framed. In our view, the "pension" in this case was paid out of the Consolidated Revenue Fund "in respect of" the injury sustained by the Respondent on June 16, 1992. Indeed, in his own application for the CPP disability pension the Respondent identified the cause of this injury as the accident which he suffered on that date.

- [7] Applying these principles of law to the facts of the case now before me, I am satisfied that by virtue of section 32 of the RCMP Superannuation Act, section 9 of the Crown Liability and Proceedings Act and section 111 of the Pension Act, the plaintiffs' claim is, as a matter of law, statute barred, insofar as the plaintiffs have received pensions, paid out of the Consolidated Revenue Fund "in respect of" the untimely death of Constable Carriere while their claim in their present action is also for relief from the same damage and loss.

- [8] The plaintiffs maintain that they are not seeking double recovery, but rather are asking for damages which are not covered by the benefits available under the Pension Act and related legislation. However, that is precisely the type of claim which the legislation does not permit. In *Langille*, the Court of Appeal stated:

The only difference here is that respondents, by way of this action in tort, are seeking to enhance recovery in respect of that destruction beyond the level of the compensation they were paid in 1978 out of the Consolidated Revenue Fund. In our view, subsection 4(1) [now section 9] of the Crown Liability Act bars them from doing so.

(Emphasis added)

- [9] This reasoning is equally applicable to the plaintiffs' claim in the present matter.

- [10] For these reasons, the defendant's application is granted and the plaintiffs' Statement of Claim is struck pursuant to Rule 221(1)(a) of the Federal Court Rules.

JUDGE

OTTAWA, Ontario

June 1st, 2001

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