Federal Court  Cour fédérale

Date: 20180720

Docket: T-1379-17

Citation: 2018 FC 765

Ottawa, Ontario, July 20, 2018

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ALLAN J. HARRIS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

I. Introduction

[1] This is a motion by the Defendant for an Order striking the Plaintiff's Amended Statement of Claim, i.e., his action, which may also result in the Court striking some 200 similar case-managed actions. These actions are in most cases identical and are copied from a website on the internet.

[2] The motion is brought on the basis that it is plain and obvious that the claim fails to disclose a reasonable cause of action. In addition it is alleged that the Plaintiff's action is frivolous and vexations. Finally, in respect of what I will refer to as the "short-changing" pleadings, the Defendant argues this issue is moot because of a regulatory or policy change. Because I am not persuaded the Defendant has established her case, the motion to strike must be dismissed. There is no merit to the argument that the pleadings are frivolous and vexatious. The Court must also reject the Defendant's submission that the short-changing claim is moot; while for some it may be moot, for this Plaintiff it is not.

[3] The Defendant's motion is brought pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules]. Rule 221 of the Rules permits the Court to strike a claim on certain grounds:

221(1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221(1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
…	…
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
…	…
Evidence	**Preuve**
(2) No evidence shall be heard on a motion for an order under	(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé

paragraph (1)(a) à l’alinéa (1)(a).

[4] The action sought to be dismissed, stripped to its essentials, claims *Charter*-damages for alleged unconscionable delays in the processing time taken between the filing of an application for, and obtaining a permit allowing an applicant to grow marijuana for medical purposes. In addition, the claim alleges delays in the processing time taken between the filing of an application to renew such a permit and when it is obtained.

[5] The permits requested are issued under the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 [ACMPR]; these in turn are enacted pursuant to subsection 55(1) of the *Controlled Drugs and Substances Act*, SC 2015, c 22, s. 4(1).

[6] Also in terms of background, drugs and controlled substances are primarily regulated by the *Controlled Drugs and Substances Act*, the *Food and Drugs Act*, RSC 1985, c F-27 and related regulations. At the present time, cannabis (marijuana) is a controlled substance scheduled under the *Controlled Drugs and Substances Act* and is a narcotic subject to the *Narcotic Control Regulations*, CRC, c 1041.

[7] In addition, ACMPRs may permit an applicant to grow and store marijuana for medical purposes, or to allow another person to do so for an applicant.

[8] Permits under the ACMPR are available to persons who demonstrate their need for cannabis marijuana to treat their medical conditions. Applications for these permits must be

supported by a medical document from an authorized health care practitioner - basically a prescription.

[9] It is also germane that permits, once granted, have an expiry date established under the ACMPR; such permits may be renewed upon their expiry with a new prescription.

[10] The effect of the ACMPR for the purposes of this motion is to authorize the possession and cultivation of marijuana where both possession and cultivation is illegal under the *Controlled Drugs and Substances Act* and *Narcotic Control Regulations* without such a permit. Unauthorized possession and or cultivation of marijuana exposes an individual such as the Plaintiff to the possibility of both fines and imprisonment.

II. History and basis of right to medical marijuana

[11] The right to possess and cultivate marijuana for medical purposes has been litigated in Canada for almost two decades. A brief overview of this history is provided by Phelan J. of this Court in *Allard v Canada*, 2016 FC 236, from which I take the following:

> 1 This is a *Charter* challenge to the current medical marihuana regime under the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 [MMPR] brought by four individuals. It is important to bear in mind what this litigation is about, and equally, what it is not about.
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> 2 This case is not about the legalization of marihuana generally or the liberalization of its recreational or life-style use. Nor is it about the commercialization of marihuana for such purposes.
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> 3 This case is about the access to marihuana for medical purposes by persons who are ill, including those suffering severe

pain, and/or life-threatening neurological conditions. Such persons also encompass those in the very last stages of their life.

4 This is another decision in a line of cases starting with *R v Parker*, (2000) 49 OR (3d) 481, 188 DLR (4th) 385 (ONCA) [*Parker*], and culminating in *R v Smith*, 2015 SCC 34, [2015] 2 SCR 602 [*Smith*], that have examined, often with a critical eye, the efforts of government to regulate the use of marihuana for medical purposes and the various barriers and impediments to accessing this necessary drug.

5 Like other cases, this most recent attempt at restricting access founders on the shoals of 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*], particularly s 7, and is not saved by s 1.

> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
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> 1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
>
> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> 7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

6. The Court has concluded that the Plaintiffs' liberty and security interest are engaged by the access restrictions imposed by the MMPR and that the access restrictions have not been proven to be in accordance with the principles of fundamental justice.

[12] Suffice it to say that the right to access marijuana and cannabis for medical purposes is guaranteed by the *Charter*, an undoubted legal matter having been decided by this Court, the Supreme Court of Canada, and as well, by Superior Courts in the provinces. In addition, the right of access to marijuana and other cannabis products for medical purposes is a right conferred upon individuals, on application, by the Governor in Council in subordinate legislation, i.e., regulations issued pursuant to the relevant legislation.

III. Law on a motion to strike

[13] The law in relation to motions to strike is set out below.

[14] In *Lee v Canada*, 2018 FC 504, at para 7, Heneghan J stated the following in respect of the test for motions to strike:

> The test upon a motion to strike a pleading is set out in the decision in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, that is whether it is plain and obvious that the pleading discloses no reasonable cause of action According to the decision in *Bérubé v. Canada (2009)*, 348 F.T.R. at paragraph 24, a claim must show the following three elements in order to disclose a reasonable cause of action
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> i. Allege facts that are capable of giving rise to a cause of action
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> ii. Indicate the nature of the action which is to be founded on those facts, and
>
> iii. Indicate the relief sought, which must be of a type that the action could produce and that the court has jurisdiction to grant

[15] The moving party bears the onus of meeting the test set out by the Supreme Court of Canada in *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*]: *Al Omani v Canada*, 2017 FC 786 per Roy J. at paras 12-16:

> [12] The test to strike a claim under Rule 221 sets a high bar. First, it is assumed that the facts stated in the statement of claim can be proven. The Court must be satisfied that it is plain and obvious that the pleading discloses no reasonable cause of action assuming the facts pleaded are true: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*] at p 980. The Defendant bears the onus of meeting this test: *Sivak v Canada*, 2012 FC 272, 406 FTR 115 [*Sivak*] at para 25.
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> [13] In *Hunt*, the Supreme Court sided with the articulation of the rule in England to the effect that "if there is a chance that the plaintiff may succeed, then the plaintiff should not be "driven from the judgment seat"" (p. 980). A high bar indeed to succeed on a motion to strike. Some chance of success will suffice or, as Justice Estey said in *Att. Gen. of Can. v Inuit Tapirisat et al*, [1980] 2 SCR 735, "(o)n a motion such as this a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in plain and obvious cases and where the court is satisfied that "the case is beyond doubt"" (p.740).
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> [14] To show a plaintiff has a reasonable cause of action, the statement of claim must plead material facts satisfying <u>every element</u> of the alleged causes of action: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, 476 NR 219 [*Mancuso*] at para 19; *Benaissa v Canada (Attorney General)*, 2005 FC 1220 [*Benaissa*] at para 15. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the Defendant's liability (*Mancuso*, para 19, *Baird v Canada*, 2006 FC 205 at paras 9-11, affirmed in 2007 FCA 48).
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> [15] Thus, there appears to be a balance. On one hand, a chance of success is enough for the matter to proceed. On the other, the material facts must be pleaded in sufficient detail such that the cause of action may exist. The purpose of pleadings is to give notice to the opposing party and define the issues in such a way that it can understand how the facts support the various causes of action. As the Court of Appeal put it in *Mancuso*, "(i)t is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought" (para 16). The Plaintiffs note that pleadings can still proceed despite

> being "far from models of legal clarity" (*Manuge v Canada*, 2010 SCC 67, [2010] 3 SCR 672 at para 23). But it remains that adequate material facts must be pleaded. Parties cannot make broad allegations in their statement of claim in the hope of later going on a "fishing expedition" to discover the facts: *Kastner v Painblanc* (1994), 176 NR 68, 51 ACWS (3d) 428 (FCA) at p.2.

[16] On motions to strike, no evidence outside the pleadings may be considered (except in limited instances that do not apply here). This is expressly enacted by Rule 221(2) and confirmed by the authorities: *Pelletier v Canada*, 2016 FC 1356 [*Pelletier*] per Leblanc J. at para 6:

> [6] As is well-settled too, no evidence outside the pleadings may be considered on such motions and although allegations that are capable of being proven must be taken as true, the same does not apply to pleadings which are based on assumptions and speculation and to those that are incapable of proof (*Imperial Tobacco*, at para 22; *Operation Dismantle v The Queen*, [1985] 1 SCR 441, at p. 455 [*Operation Dismantle*]; *AstraZeneca Canada Inc. v Novopharm Ltd.*, 2009 FC 1209 at paras 10-12).

[17] In *Pelletier*, Leblanc J. also stated that while a Statement of Claim must be read as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies, the claimant must plead the facts upon which he makes his claim and is not entitled to rely on the possibility of new facts turning up as the case progresses:

> [7] In this regard, while the Statement of Claim must be read as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies (*Operation Dismantle*, at p. 451), it is incumbent on the claimant to clearly plead the facts at the basis of its claim:
>
> > [22] […] It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them.

> But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted".
> (*Imperial Tobacco*) (*My emphasis*)

[18] In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, the Federal Court of Appeal said at paras 16-17 that plaintiffs must plead material facts in sufficient detail to support the claim and relief sought:

> [16] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action."

IV. The Plaintiff's Amended Statement of Claim

[19] The Plaintiff's Amended Statement of Claim is relatively straightforward. Factual allegations, as noted, are taken as proven. It starts with a claim for a declaration that the long processing time for ACMPR production permits (the Plaintiff refers to the approval document as a "registration" which technically it is, but I prefer to use the word "permit") and renewals violates his section 7 *Charter* right to life, liberty and security. He further claims a remedy of damages under section 24 of the *Charter* in the amount of the value of his prescription during any delay which the Court may rule inappropriate for a reasonable processing time.

[20] The Plaintiff also seeks a declaration that back-dating the period of registration and renewal from the effective date for registration or expiry date for renewals to the date the doctor

signed the prescription under the ACMPR violates his section 7 *Charter* rights and claims remedy for the full term of the prescription to take effect on the effective date of the registration and on the expiry date of a renewed registration.

[21] He alleges and it is taken as proven that he has a medical document signed by an authorized health care professional to use cannabis for medical purposes under the ACMPR. He claims against the Defendant alleging the Minister for Health Canada is the Minister responsible for Health Canada and certain aspects of the *Controlled Drugs and Substances Act* including the *Narcotic Control Regulations* and the ACMPR. While these are legal matters, they are not disputed.

[22] He says, and I must accept it as true, that he submitted an application under the ACMPR on June 11, 2017, for a permit to grow marijuana for medical purposes. Further, he received a permit to grow marijuana for medical purposes with an effective date of October 11, 2017, with an expiry date of March 23, 2018.

[23] He states that under the MMAR, a predecessor form of regulations under the ACMPR, the time to process an application to produce marijuana was touted before this Court by a named official of the Controlled Substances and Tobacco Directorate, as “done in under 4 weeks. Renewals far less.” He adds, “Reported 2 weeks!” This again is taken to be true.

[24] He claims, and it must be taken as proven, that the ACMPR may now take 30 weeks to process only 10 data fields:

- Name
- Date of birth
- Daily quantity
- Possession limit
- Name of healthcare practitioner
- Production area (outdoor)
- Production site address
- Maximum number of plants outdoor
- Maximum storage quantity
- Storage address.

[25] He states that the MMAR permits began on the effective date of issuance and renewed on the same date each year. In contrast, he states that the ACMPR permits and renewals are back-dated to when the doctor signed the medical document, reducing the term of registration and renewal by the time to process the application. I note in this case his permit lasted only five or so months. We do not know when his medical document was signed. But we do know that four months of possible permit time, if you will, was lost in processing.

[26] He states that not only is over 6 months to key in the data unconscionable but by short-changing from the full-term registration under the MMAR to a half-term registration under the ACMPR, applicants or renewals always get less than the full term of medication prescribed by the measure of the unconscionable amount of time spent for processing.

[27] The Plaintiff says that the two 1-year prescriptions should end up being 24 months of registration and asks the Court to return the time short-changed from patients' permits and renewals and prevent any further short-changing.

[28] The Plaintiff says that having to see the doctor more often does cost the Plaintiff more money and having to wait for the mail to find out if the registration was renewed before its expiry date when everything would have to be destroyed does cause the Plaintiff more stress.

V. Analysis

[29] Stepping back and reviewing the Plaintiff's action "as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies", as I am obliged to do as noted in *Pelletier* at para 7, the Plaintiff's claim comes down to the following. He has a medical condition and a prescription to treat his medical condition. In other words, he has the required prescription and needs marijuana for medical purposes. He wants to have a permit to produce marijuana himself. He therefore requested a permit from Health Canada on July 11, 2017. He obtained the permit four months later, on October 11, 2017. He says it took unreasonably long for Health Canada to send him his permit. He says that under a previous regulatory regime similar approvals were granted in less than four weeks, and some reportedly in two. Now, he says it may take 30 weeks for an approval. However, on the facts pleaded, it took a little over 17 weeks for him to get his permit. He asserts a right to obtain his permit within a reasonable time. He claims what appeared to be liquidated damages for unreasonable delay – namely the value of his prescription – during any delay which the Court may rule an unreasonable processing time.

And he claims general damages for stress while waiting. He says his section 7 *Charter* rights have been violated.

[30] He also claims to be short-changed because the delay in processing results in a shorter period of validity of the resulting permit once granted. Instead of it running for a year, if that is what the medical practitioner prescribed, from the date it is issued, the permit he obtained ran for a year from the date of the medical document supporting it. Thus, assuming a 17 week delay as taken to be proven, his permit is only good for 35 weeks, not 52.

[31] Finally, albeit briefly, he states, and it must be taken as proven, that it caused stress to wait for a renewal because everything would have to be destroyed when the original permit expires in order to comply with the *Controlled Drugs and Substances Act* and *Narcotic Control Regulations*. This at least is how I read his pleadings, with limited generosity.

A. *Should the action be dismissed as disclosing no reasonable cause of action per Rule 221(1)(a)?*

[32] In this respect, no evidence is admissible. The pleadings must be taken as true. The Defendant has the onus to make out her case.

[33] I start with the proposition that the Plaintiff has the right to a permit to grow marijuana for medical purposes if he satisfies the criteria of a *Charter*-compliant permit regime established under the *Controlled Drugs and Substances Act* and *Narcotic Control Regulations*. This right has been confirmed by the Supreme Court of Canada, in addition to the Federal Court and various

Superior Courts. So far as I am aware the ACMPRs are *Charter*-compliant. No one argued otherwise. The Applicant's right to a permit to grow marijuana for medical purposes is also legislated in the ACMPRs, provided he meets the conditions. And we must accept as true that he did: the Defendant's employees, after all, have given the Plaintiff a permit.

[34] The issue is delay. The Plaintiff says that delay violated his *Charter*-rights under section 7 to life, liberty and security of the person. There is no doubt he has such rights, and that these include his right to access a production permit for medical marijuana.

[35] In a situation like this, I take it as a given that when the Courts and the legislature (the Governor in Council in this case) declare rights and create administrative mechanisms to deliver them, those rights may not be denied through unreasonable delay. Rather the converse; the executive government, in this case the Minister of Health, has a duty to act with reasonable dispatch, absent explanation otherwise, where rights have been declared by the Courts, particularly *Charter*–rights. To argue otherwise may entail a less than respectful application of the law including of course delivering upon *Charter*-protected rights.

[36] It appears to me that the Minister of Health take the position that *Charter*-protected rights may be delayed unreasonably without legal consequence; although not expressed, this seems to underline the position advanced by the Defendant. I do not make a ruling in this connection, but am not persuaded that the Plaintiff has no chance to show that such a position is untenable.

[37] I am not persuaded it is plain and obvious that the Plaintiff's pleadings disclose no reasonable cause of action on the facts presumed to be true in this case. Put another way, I have concluded there is a chance the Plaintiff may succeed in his claim.

[38] I appreciate there are many related claims being case managed relating to this action; I am the case management judge, have reviewed each, and have issued a large number of orders dealing with interim and other relief. While I have stayed all interim interlocutory proceedings in the related cases, I have lifted the stay where a motion alleges a delay in the issuance of a permit of more than 60 days and invited the Crown to respond. That said, the argument that there are many related claims does not assist the Defendant; rather, it underscores the importance of the duty lying upon the Minister of Health to establish administrative mechanisms that deliver on *Charter*-protected rights determined not only by the Governor in Council – in the ACMPRs – but by the Supreme Court of Canada.

[39] In this connection, the Court keeps in mind that the Plaintiff has a medical condition and a prescription for marijuana to treat his medical condition. It may be found that the Minister of Health may not unreasonably delay issuing permits to the Plaintiff in his circumstances, if that is in fact his or her position. The Plaintiff wishes to grow his own marijuana, which with a permit in hand, he is entitled to do. But he cannot do that until he has the permit or renewal.

[40] And if he needs to renew a production permit, and the renewal application is unreasonably delayed with the result his original permit expires, "everything would have to be destroyed" as he claims; otherwise, he is would be subject to fine and imprisonment for the

possession of unused plants and stored marijuana grown previously. As to the stress referred to in the pleadings, this is also a matter for evidence. The Plaintiff may or may not succeed; that will be determined by the evidence. The Defendant has not established it is plain and obvious such that this claim should be struck.

[41] I will deal with the short-changing issue later in these reasons; those allegations will be struck however.

[42] Nothing in what is stated above should be taken as determining whether the Plaintiff will succeed or fail in his action. I make no finding of whether there is a cause of action for unreasonable delay, or if so, what constitutes unreasonable delay. It may be that a delay of four months in processing the Plaintiff's permit application was reasonable; the point of today's ruling is that the Plaintiff has a chance of succeeding in his claim. However, it may be that the delay in the Plaintiff's case was reasonable. In that case the Defendant will succeed.

[43] In terms of damages, I am not persuaded it is plain and obvious that no damages would be awarded if the Plaintiff establishes his *Charter*-protected rights were infringed or denied contrary to subsection 24(1) of the *Charter*. It is well-established, again by the Supreme Court of Canada, that *Charter* breaches may be remedied under subsection 24(1) by an award of monetary damages: see for example, *Vancouver (City) v Ward*, 2010 SCC 27.

[44] In this respect, the Court is performing a gate-keeping function. The onus was on the Defendant and in my respectful view she failed to meet the test: it is not plain and obvious that these pleadings disclose no reasonable cause of action.

B. *Is the action frivolous and vexatious?*

[45] The Court has determined that it is not plain and obvious that this action discloses no reasonable cause of action. The essence of the Defendant's submission that the action is frivolous and vexatious is that the Plaintiff's claims are so lacking in material facts, and unintelligible, that it is frivolous and vexatious. The argument in this respect is contained in a single paragraph in the Defendant's memorandum of fact and law. The Defendant only states that the action should be struck as frivolous and vexatious. In my respectful view there is insufficient merit in that submission to warrant its further consideration.

C. *Is the allegation of short-changing moot having regard to subsequent changes?*

[46] I start by noting that the Defendant may, and did, submit affidavit evidence in support of her allegations of mootness, which is permitted on a mootness argument.

[47] I agree with the Defendant that the Supreme Court of Canada established a two-step test for deciding whether to dismiss a case as moot. The governing authority is *Borowski v Canada (Attorney General),* [1989] 1 SCR 342. At the first step, the court must decide whether the case is moot in the sense that a decision will have no practical effect on the rights of the parties. If

moot, the court must then consider at the second step whether there are any reasons to hear the case on its merits notwithstanding that it is moot.

[48] On the facts pleaded in respect of the short-changing issue, the Plaintiff seeks a declaration that the dating of the permit back to the date that the medical document was signed to coincide with the time period for use stated by his health care practitioners - the alleged "backdating" of the permit - violates his section 7 *Charter* rights.

[49] In response, the Defendant's evidence is that on March 2, 2018, the Minister of Health Canada issued several class exemptions pursuant to section 56 of the *Controlled Drugs and Substances Act*. These exemptions apply to anyone with a permit issued *on or after* March 2, 2018. Pursuant to these exemptions Health Canada now issues permits with a period of use that begins on the date the permit is issued, instead of on the date that the medical document was signed by the health care practitioner.

[50] This, says the Defendant, is the very relief sought by the Plaintiff. Relief having been granted by the Minister, the Defendant says that the requested declaration is now moot. I respectfully disagree.

[51] I agree the short-changing issue raised by this Plaintiff is moot for permits dated after March 2, 2018.

[52] However, on the facts of this case, the Plaintiff's permit was dated well before that, on October 11, 2017. If the change in policy was made to apply to the Plaintiff's permit, the Defendant would be correct because the Plaintiff's permit would have been valid until October 10, 2018; in that case his claim would be moot in that respect.

[53] However, the policy change was forward looking only. As I see it, the Plaintiff did not obtain the benefit of the change in policy, because his permit was *not* issued on or after March 2, 2018. Therefore mootness does not apply in the Plaintiff's case.

[54] That said, I have concluded that the short-change submission should be struck because, while I understand the Plaintiff does not obtain a full year's worth of permit, and must reapply sooner as a result, his "loss" does not support an allegation of breach of section 7 *Charter* rights. I do not see the resulting reduction in the term of the permit or document to infringe or deny a *Charter* right. He simply experiences the vagaries of having to renew his permit earlier, and not getting the benefit of the full term otherwise available. Such delays may commonly occur where one applies by mail for a time-limited permit or document from government such as for example, a passport or motor vehicle licence. Even if a *Charter* right was breached by a reduction in the term of a permit, which I do not accept, this Court recently held in *Johnson v Canada (Attorney General)*, 2018 FC 582 per Diner J., at para 7, "the *Charter* does not protect against trivial limitations of rights (*Cunningham v Canada*, [1993] 2 SCR 143 at 151)." Such reduction in my view would be trivial.

[55] In this respect, I revert to that part of the motion to strike based on no reasonable cause of action; I find it plain and obvious that the short-changing aspect of the Plaintiff's claim discloses no reasonable cause of action. I see no need to allow an amendment in this respect as none could save this aspect of his pleading. In any event, this Plaintiff has already been granted leave to amend twice, once on consent, but the second time on a contested motion. Therefore paragraphs 1(b), 8 and 9 of the Amended Statement of Claim must be struck.

[56] In the result, the motion to strike is dismissed except as it relates to the short-changing allegation.

[57] Because success is divided each party shall bear their own costs.

ORDER in T-1379-17

THIS COURT ORDERS that

1. The motion to strike the Amended Statement of Claim is dismissed in part.
2. Paragraphs 1(b), 8 and 9 are struck from the Amended Statement of Claim without leave to amend.
3. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1379-17
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:	JULY 20, 2018

SOLICITORS OF RECORD:

Attorney General of Canada	FOR THE DEFENDANT