

COURT OF APPEAL FOR ONTARIO

CITATION: Massicotte v. Williams, 2014 ONCA 792

DATE: 20141107

DOCKET: C58785

Hoy A.C.J.O., Epstein and Hourigan JJ.A.

BETWEEN

Laurie Massicotte, Shauna Fraser, Jenna Fraser and Rachelle Fraser

Plaintiffs

(Appellants on Appeal)

and

David Russell Williams, Mary Elizabeth Harriman and Her Majesty the Queen in
right of Ontario

Defendants

(Respondents on Appeal)

Philip Healey and Brian Chung, for the appellants

Pasquale Santini, for the respondent

Heard and released orally: November 3, 2014

On appeal from the order of Justice Martin S. James of the Superior Court of
Justice, dated April 28, 2014.

ENDORSEMENT

[1] This is an appeal from the order of the motion judge denying the appellants
leave to amend their statement of claim.

[2] The appellants' claim arises from an assault committed by the respondent,
David Russell Williams, on the appellant Laurie Massicotte.

[3] The motion judge denied the proposed amendments in which the appellants sought a declaration that s. 30 of the *Pension Act*, R.S.C. 1985, c. P-6 violates s. 7 of the *Canadian Charter of Rights and Freedoms* and is therefore of no force and effect. The purpose of the proposed amendments was to permit the appellants to access Mr. Williams' federal pension for the purpose of enforcing any judgment obtained at trial.

[4] The motion judge denied leave on the basis that the amendments would complicate and lengthen the proceedings and constitute an impediment to the timely and efficient disposition of the issues as currently framed.

[5] We see no basis to interfere with the motion judge's conclusion.

[6] The declaratory relief should have been sought against the federal government, not against Mr. Williams, and should therefore not be permitted. Further, in our view, the proposed amendments are premature. The issue of whether Mr. Williams' pension is exigible does not arise until after the final determination of the issues as currently pleaded. In that context, if warranted, it would be open to the appellants to assert their *Charter* argument.

[7] We would, however, allow the amendments to the claim the appellant advanced against Her Majesty the Queen in right of Ontario at para. 56 and elsewhere.

[8] The appeal is otherwise dismissed.

[9] Given the divided success, we order no costs.

“Alexandra Hoy A.C.J.O.”

“Gloria Epstein J.A.”

“C. William Hourigan J.A.”