

T-2284-85

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

BETWEEN:

JAMES STILES

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

AMENDED STATEMENT OF CLAIM



1. The Plaintiff is 38 years of age. He is presently employed as a civilian member of the Royal Canadian Mounted Police.
2. The Plaintiff became a regular member of the Royal Canadian Mounted Police ("the R.C.M.P." or "the Force") in 1969 and was employed in the Security Service of the R.C.M.P. from February 1st, 1973 to August 10th, 1984.
3. The Plaintiff performed his duties in a competent and fully satisfactory manner throughout his tenure as a regular member of the R.C.M.P.
4. In or about September, 1983, the Plaintiff was confronted during an interview with Assistant Commissioner J.F. Duthie with the allegation that he was a homosexual. The Plaintiff denied the allegation.
5. On or about June 22nd, 1984, the Plaintiff was questioned by Superintendent F.E. Saunders who at all material times was an officer of the R.C.M.P., as to whether the Plaintiff was a homosexual. Although the Plaintiff initially denied the allegation, he subsequently on June 25th, 1984, contacted Superintendent Saunders and told him that he had had homosexual experiences.
6. Superintendent Saunders advised the Plaintiff that his admission laid to rest any security concerns and he assured the Plaintiff that he need not consider resignation from the R.C.M.P. At about this time, the

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Plaintiff was faced with deciding whether to make election under s. 66(5) of the Canadian Security Intelligence Service Act, S.C. 1983-84, c. 21, to remain with the R.C.M.P. or whether to become a member of the then newly-established Canadian Security Intelligence Service by operation of s. 66(1) of the Canadian Security Intelligence Service Act, S.C. 1983-84, ch. 21. The Plaintiff sought advice from Superintendent Saunders who undertook to make enquiries and advise the Plaintiff as to the course that would best protect the Plaintiff's well being and security of employment. The following day, Superintendent Saunders advised the Plaintiff that he had made enquiries and he advised the Plaintiff to elect to remain with the R.C.M.P. The Plaintiff states that this advice was negligent and was given in the knowledge and with the intention that the Plaintiff would rely on it.

7. A few days after his admission to Superintendent Saunders, the Plaintiff was questioned by Inspector Ralph Thorhauge, who at all material times was an officer of the R.C.M.P., as to the Plaintiff's past homosexual experiences. The Plaintiff asked for an assurance that the information he provided would not be used against the Plaintiff or other persons whom he named and that the information would remain confidential. Upon being given these assurances and upon being told that the Force required complete candour on his part, the Plaintiff cooperated fully in answering Inspector Thorhauge's questions. The Plaintiff was asked by Inspector Thorhauge to confirm or deny whether certain individuals in the Security Service were homosexual, to which the Plaintiff answered truthfully.

8. On June 29th, 1984, on the strength of the advice obtained from Superintendent Saunders, the Plaintiff formally and in writing elected to remain a member of the R.C.M.P. rather than become an employee of the Canadian Security Intelligence Service.

9. On July 19th, 1984, the Plaintiff was summoned to a meeting with R. Moffat, Deputy Commissioner of the R.C.M.P., at which the Plaintiff's resignation was requested. The Plaintiff refused to resign.

10. On or about July 23rd, 1984, the Plaintiff was again summoned to a meeting with Deputy Commissioner Moffat at which the Plaintiff was again asked to resign and refused. Deputy Commissioner Moffat then knowingly and intentionally threatened the Plaintiff with discharge from the R.C.M.P.

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unless he resigned or accepted a transfer to a position as a civilian employee of the Force.

11. On the following day, the Plaintiff sent a memorandum dated July 23rd, 1984, to the Commissioner of the R.C.M.P. asking that he be allowed to remain as a member of the Force and setting out the reasons for his request.

12. On or about August 9th, 1984, the Plaintiff was summoned to meet Norman Inkster, Assistant Commissioner of the R.C.M.P., who represented to the Plaintiff that he and the Commissioner of the R.C.M.P. had met that day with the Solicitor General and secured his agreement to change the policy of the R.C.M.P. such that the R.C.M.P. would not retain a known homosexual as a regular member. The Plaintiff states that this representation was to the knowledge of Assistant Commissioner Inkster false and that the policy of the Force has never been changed to prevent retaining a homosexual as a regular member and that the Solicitor General has never agreed to such a policy. Assistant Commissioner Inkster knowingly and intentionally threatened the Plaintiff that unless he resigned as a regular member immediately and before this purported policy change became effective, he would be discharged and would not be offered employment as a civilian employee with the Force. The Plaintiff states that the actions of Assistant Commissioner Inkster and Deputy Commissioner Moffat were unlawful in that false representations were made to the Plaintiff on which representations the Plaintiff relied and in that there was no valid or lawful basis for discharging the Plaintiff.

13. Under duress, the Plaintiff agreed to resign from the Force effective August 9th, 1984. He was employed as a civilian member of the R.C.M.P. on August 10th, 1984.

14. The Plaintiff states that his decision to resign from the Force was made under duress and coercion and under threat of the loss of his livelihood and the humiliation and embarrassment of discharge and that his resignation was induced by the false representations made to him by Assistant Commissioner Inkster.

15. The Plaintiff was in a depressed and vulnerable mental state as a result of the pressure brought to bear on him and the threats made to him. The Plaintiff states that his mental state was known both to his superiors and to the medical officer of the Force. As a result of these facts and the facts set out in the preceding paragraphs, the Plaintiff states that his purported resignation is of no force or effect.

16. The Plaintiff suffered serious mental and emotional distress as a result of the termination of his career as a regular member of the Force and the manner in which that termination was effected. Deputy Commissioner Moffat and Assistant Commissioner Inkster knew that their actions would be likely to cause such distress and they intended to cause such distress.

17. The mental and emotional distress suffered by the Plaintiff, for which he sought and received medical treatment, had and continues to have deleterious effects on his health, his satisfaction with his work, and his ordinary enjoyment of life.

18. On or about September 4th, 1984, the Plaintiff was assigned a civilian position as a computer systems analyst, a position for which he had no training, experience or aptitude. The Plaintiff was assigned various "self-teach" computer courses for which he possessed neither the technical skills nor aptitude. The unusual circumstances of his transfer from a highly-skilled position as a long-standing regular member of the Force to a very junior civilian position aroused comment and suspicion on the part of the Plaintiff's new and former colleagues and superiors which was demeaning and embarrassing to him. The Plaintiff was subsequently on September 3rd, 1985, transferred to another civilian position as a member "surplus to establishment". The Plaintiff continues to hold a Top Secret security clearance.

19. On terminating his employment as a regular member of the R.C.M.P., the Plaintiff lost the right which he had intended to exercise under the terms of the R.C.M.P. Superannuation Plan to retire after 25 years' service with an unreduced annual pension equal to one-half of his salary averaged over his six highest-paid years. As a civilian member of the Force, the Plaintiff is not entitled to retire with an unreduced pension until he reaches age 56. As a result, the Plaintiff has lost the

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right to receive an unreduced pension as well as income from other employment from age 46 to age 56. The Plaintiff's salary as a civilian employee in the R.C.M.P. is approximately \$1,500.00 per year less than the salary and service pay he would have received as a regular member of the Force. On becoming a civilian member, the Plaintiff also lost D.V.A. benefits including full reimbursement for all medical, dental and drug expenses, which benefits he would have received had he remained a regular member of the Force. As a civilian member, the Plaintiff is required to pay one-half the cost of hospitalization and medical insurance coverage.

20. On or about September 14th, 1984, the Plaintiff became aware that details of the prior investigation concerning himself and details of information he had given to Inspector Thorhauge on assurance of strict confidentiality had been given wide circulation among his past and present colleagues both in Ottawa and in Toronto. As a result of this publicity, for which Inspector Thorhauge and other officers and members of the R.C.M.P. are responsible, the Plaintiff's friends and colleagues avoided association with him for fear of being stigmatized. The Plaintiff also suffered further humiliation, embarrassment and mental distress which the responsible officers and members of the Force knew would result from the deliberate release of information given by the Plaintiff under promise of strict confidence. The Plaintiff states that such acts constituted an invasion of his privacy and a breach of confidence and were intended to cause him mental suffering.

21. The Plaintiff has since April 17th, 1985, sought re-admission as a regular member of the R.C.M.P. and all of these requests have been denied on the sole ground of the R.C.M.P. policy preventing employment of homosexuals. The Plaintiff states that this policy and the refusal of the R.C.M.P. to re-admit him as a regular member of the Force constitute an infringement of his rights under s. 15 of the Canadian Charter of Rights and Freedoms to equal protection and benefit of the provisions of the law.

22. Following his forced resignation from the R.C.M.P., the Plaintiff has also sought employment with the Canadian Security Intelligence Service ("C.S.I.S."). The Plaintiff's desire to obtain employment with C.S.I.S. was made known by the Plaintiff's solicitor to senior officials of C.S.I.S., including Mr. A. Barr who advised the Plaintiff through his solicitor to

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seek employment through Mr. William McIver, C.S.I.S. Director of Personnel.
On or about August 16th, 1983, the Plaintiff met with Mr. McIver for the
purpose of seeking employment with C.S.I.S., which purpose the Plaintiff
communicated to Mr. McIver. Mr. McIver told the Plaintiff that he would
not be considered for employment with C.S.I.S. and led him to understand
that this was because he was a homosexual.

23. As a result of statements made by Mr. McIver during the course of
the meeting, the Plaintiff understood and was meant to understand that if
he did submit a formal written application for employment with C.S.I.S., it
would not be considered because the Plaintiff was a homosexual and further
that the excuse that would be given for rejection of such an application
would be that the Plaintiff lacked formal educational requirements.

24. The Plaintiff states that he was denied the opportunity to seek
and obtain employment with C.S.I.S. because he was a homosexual. The
Plaintiff states that he was fully qualified by experience and education to
be employed by C.S.I.S. The Plaintiff states that the actions of C.S.I.S.
and its employees in denying him the opportunity to seek and obtain
employment infringed his right under s. 15 of the Charter to equal benefit
and protection of the law.

25. The Plaintiff pleads and relies on s. 53 of the Royal Canadian
Mounted Police Act.

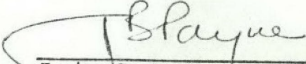
26. Wherefore the Plaintiff claims:

- (a) a declaration that his purported resignation from the R.C.M.P. is
of no force or effect and that he remains a regular member of the
R.C.M.P. entitled to all the salary and benefits thereof from
August 9th, 1984;
- (b) a declaration that the refusal of the R.C.M.P. to re-admit the
Plaintiff as a regular member of the R.C.M.P. is an infringement
of his rights and freedoms under the Canadian Charter of Rights
and Freedoms;
- (c) a declaration that the refusal of the R.C.M.P. not to retain
homosexuals as regular members of the Force is an infringement of
s. 15 of the Canadian Charter of Rights and Freedoms and to the
extent that such refusal is based on authorized or unauthorized

- policy of the Force, that such policy is of no force or effect;
- (d) a declaration that C.S.I.S. denied the Plaintiff an opportunity to seek and obtain employment with the Canadian Security Intelligence Service and that such denial infringed the Plaintiff's rights under s. 15 of the Canadian Charter of Rights and Freedoms;
 - (e) damages for breach of the Canadian Charter of Rights and Freedoms or such other remedy as the Court deems just under s. 24 of the Canadian Charter of Rights and Freedoms;
 - (f) general damages for negligent representation, intimidation, intentional infliction of mental suffering, invasion of privacy, breach of confidence and abuse of public authority in the amount of \$200,000.00;
 - (g) damages for wrongful and unlawful dismissal in the amount of \$200,000.00;
 - (h) damages for mental distress in the amount of \$100,000.00;
 - (i) out-of-pocket expenses for medical, dental and drug expenses borne by the Plaintiff as a civilian member of the R.C.M.P., particulars of which will be provided prior to trial;
 - (j) punitive damages in the amount of \$100,000.00;
 - (k) costs on a solicitor and client basis;
 - (l) such other relief as the Court deems just.

March 26th, 1986

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Solicitors for the Plaintiff

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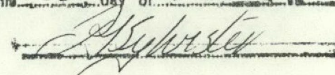
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Solicitors for the Plaintiff

(JBP:DEB:ac:14427-ANN15)

I HEREBY CERTIFY that the above document is a
true copy of the original filed for record in the Registry
of The Federal Court of Canada the 26th day
of March A.D. 1986
Dated this 26th day of March 1986



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