

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

B E T W E E N :

JAMES STILES

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant.

D E F E N C E



The Deputy Attorney General of Canada on behalf of Her Majesty the Queen, in answer to the Plaintiff's Amended Statement of Claim, says as follows:

1. He admits the allegations of fact as drafted in paragraphs 1 and the last sentence of paragraph 18 of the Amended Statement of Claim.

2. He further admits the following with respect to the allegations set out in paragraphs 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 19, and 22 of the Amended Statement of Claim:

- a) with respect to paragraphs 2 and 13 he admits that the Plaintiff became a regular member of the Royal Canadian Mounted Police (hereinafter referred to as the "R.C.M.P.") in 1969 and was employed in the Security Service of the R.C.M.P. from February 1, 1973, to July 15, 1984. He was seconded to the Canadian Security Intelligence Service (hereinafter referred to as "C.S.I.S.") from July 16 to August 1, 1984, resigned from the R.C.M.P.

as a regular member on August 9, 1984, and re-engaged as a civilian member on August 10, 1984, and remains as a member of the R.C.M.P. in that capacity as of the date of this Defence;

- b) with respect to paragraph 3, he admits that the Plaintiff generally performed his duties in a competent and satisfactory manner throughout his tenure as a regular member of the R.C.M.P.;
- c) with respect to paragraph 4, he admits that the Plaintiff was confronted by Assistant Commissioner J. F. Duthie with the allegations that he was a homosexual or had had homosexual experiences and that the Plaintiff denied these allegations;
- d) with respect to paragraph 5, he admits that on or about June 21, 1984, the Plaintiff was questioned by Superintendent F. E. Saunders (who was an officer with the R.C.M.P. until July 16, 1984), and again denied that he was a homosexual or that he had had homosexual experiences. However, on June 25, 1984, he again met with Superintendent Saunders and this time told him that he had had homosexual experiences and urges and still had said urges, but was trying to control them;
- e) with respect to paragraph 7, he admits that the Plaintiff was subsequently questioned by Inspector Ralph Thorhauge (who was an officer

with the R.C.M.P. until July 16, 1984), as to the Plaintiff's homosexuality and homosexual experiences and during this time the Plaintiff cooperated in answering the said Inspector's questions;

- f) with respect to paragraph 8, he admits that on June 29, 1984, the Plaintiff formally and in writing elected to remain a member of the R.C.M.P. rather than become an employee of C.S.I.S;
- g) with respect to paragraph 9, he admits that on July 19, 1984, the Plaintiff met with R. Moffatt, Deputy Commissioner of the R.C.M.P., and that during the said meeting the Plaintiff's resignation as a regular member was requested. The Plaintiff refused to resign at that time;
- h) with respect to paragraph 10, he admits that on or about July 20, 1984, the Plaintiff met with Deputy Commissioner Moffatt;
- i) with respect to paragraph 11, he admits that the Plaintiff sent a memorandum dated July 23, 1984, to the Commissioner of the R.C.M.P. asking that he be allowed to remain as a regular member of the R.C.M.P. and setting out his reasons for his request;
- j) with respect to paragraph 12, he admits that on or about August 9, 1984, the Plaintiff

met with Norman Inkster, Assistant
Commissioner of the R.C.M.P.;

k) with respect to paragraph 19, he admits that as a civilian member of the R.C.M.P., the Plaintiff is entitled to retire at age 56 and that his salary and service pay is approximately \$1,500.00 per year less than he would have received as a regular member of the R.C.M.P. He also admits that there is a difference in medical, dental and drug benefits between civilian and regular members;

l) with respect to the allegations contained in paragraph 22, he admits that on or about August 18, 1985, Mr. McIver, the Deputy Director, Administration of C.S.I.S. met with the Plaintiff, at the latter's request.

3. Other than as admitted above, each and every other allegation in the Amended Statement of Claim is denied.

4. In answer to the allegations set out in the Amended Statement of Claim he says as follows: with respect to the allegations in paragraphs 7 and 20 of the Amended Statement of Claim, it was made clear and was clear to the Plaintiff during the meeting between Inspector Thorhauge and the Plaintiff that any information provided by the Plaintiff and any reports resulting therefrom or relating thereto would be disclosed when necessary as part of the R.C.M.P. investigation. At no time was any information or reports released independent of or unrelated to said investigation

by Inspector Thorhaug or by anyone else for whom in fact or law the Defendant is responsible. During the meeting the Plaintiff mentioned the names of certain individuals (some of whom were employed by the R.C.M.P.) with whom he had had homosexual relations. Furthermore (as more specifically set out in paragraph 14 of this Defence), any knowledge or awareness of the Plaintiff's homosexuality (or homosexual acts) by any persons (and any resulting injury or damage which is not admitted but denied) resulted from the Plaintiff's own disclosures and not from any release of information or reports from anyone for whom in law the Defendant is responsible.

5. With respect to the allegations set out in paragraph 5, 6 and 7 of the Amended Statement of Claim he says that Superintendent Saunders had indicated to the Plaintiff during their meeting on or about June 21, 1984, that he had difficulty believing the Plaintiff's denial that he was a homosexual (or that he had not had homosexual experiences), and suggested that the Plaintiff seek advice and counsel from someone whom he could trust and to then contact him if he wished. The Plaintiff subsequently contacted Superintendent Saunders on or about June 25, 1984, and admitted to him that he had had homosexual urges and homosexual experiences and that he continued to have such urges but was trying to control them. No assurances of any sort were requested by the Plaintiff nor were any given by Superintendent Saunders during this meeting or at any time, nor by anyone else for whom in law the Defendant is responsible. Superintendent Saunders advised the Plaintiff that he would submit a report to his superiors and asked the Plaintiff to deliver to him the aforementioned admissions in writing and the Plaintiff agreed to do so and subsequently did so.

6. During the said meeting on or about June 25, 1984, the Plaintiff asked Superintendent Saunders for his advice concerning whether he should stay with the R.C.M.P. or go to the soon to be created C.S.I.S. Superintendent Saunders replied that he did not know what to advise, but that he would make enquiries. He subsequently did so by asking Assistant Commissioner Lees who also had no knowledge concerning the employment of homosexuals in the soon to be created C.S.I.S. Superintendent Saunders met with the Plaintiff again on or about June 27, 1984, and told him that he still had no knowledge concerning employment of homosexuals in the soon to be created C.S.I.S. The Plaintiff again requested Superintendent Saunders advice on the same matter and Superintendent Saunders replied that he could not give him any advice in this regard but that he was aware of situations where the R.C.M.P. had treated persons in the R.C.M.P. discovered to be homosexuals with compassion and sensitivity. Superintendent Saunders told the Plaintiff that aside from the above, he could not be of any further assistance. He neither encouraged nor discouraged the Plaintiff with respect to his choice and specifically told him that he would have to make up his own mind.

7. At any rate, the alleged acts or omissions of Superintendent Saunders set out in the Amended Statement of Claim were solely his own and not those for which in law the Defendant is responsible.

8. With respect to paragraph 10 of the Amended Statement of Claim, he says that on or about July 20, 1984, the Plaintiff met with Deputy Commissioner Moffatt during which the latter advised the Plaintiff that he had two options, namely:

- a) to resign as a regular member and be retained as a civilian member of the R.C.M.P. with free training, and at a salary slightly less than what he would be entitled to as a regular member; or
- b) to remain as a regular member with the R.C.M.P. and to face the possibility of discharge and fight it, in which case Deputy Commissioner Moffatt would recommend to the Commissioner that he be discharged.

9. Subsequently, the Plaintiff chose to avail himself of option (a) set out above rather than to remain as a regular member and resist any discharge or seek redress pursuant to law.

10. With respect to paragraph 12 of the Amended Statement of Claim, he states that prior to the meeting between Assistant Commissioner Inkster and the Plaintiff a meeting had taken place between the Commissioner of the R.C.M.P., Assistant Commissioner Inkster, and the then Solicitor General of Canada concerning the Commissioner's intention of creating Commissioner's Standing Orders prohibiting the retention or employment of homosexuals as regular members. After this meeting it was the intention of the R.C.M.P. to proceed with the creation of such Directives and that this was Assistant Commissioner Inkster's understanding of the latest state of developments respecting homosexuals as regular members of the R.C.M.P. when Assistant Commissioner Inkster met with the Plaintiff on or about August 9, 1984. During this meeting, Assistant Commissioner Inkster advised the Plaintiff of this latest

state of developments (as he understood them) and the possibility of the creation of such Directives in order that the Plaintiff would have in his possession all current information to assist him in deciding what, if any, action he may care to take.

11. With respect to paragraphs 22 to 24 of the Amended Statement of Claim, he says that although the Plaintiff indicated an interest in C.S.I.S. he did not apply to join C.S.I.S. during his meeting with Mr. McIver on or about August 18, 1985. The discussion concerned the new agency, and in response to the Plaintiff's questions concerning how one would become a member thereof, Mr. McIver replied that persons such as the Plaintiff who had previously elected to remain with the R.C.M.P. could not now automatically transfer across to C.S.I.S., but would have to make an application for employment like everybody else. He also pointed out that the selection criteria for which the Plaintiff would be suited normally required a university degree.

12. At no time did the Plaintiff ever apply to become a member of C.S.I.S. Furthermore, at no time did C.S.I.S. ever refuse to employ the Plaintiff nor deny him the opportunity to seek and obtain employment with it, nor intimate to him that if he were to apply for employment, he would not be employed by it because he is a homosexual.

13. In answer to the Amended Statement of Claim as a whole, he says as follows: The R.C.M.P. had commenced their investigation after receiving information that the Plaintiff had been observed in a public establishment frequented by homosexuals. As part of this investigation, several

officers of the R.C.M.P. met and questioned the Plaintiff as set out above. At all such times it was made clear and was clear to the Plaintiff that any information provided by him and any reports resulting therefrom or relating thereto would be disclosed when necessary as part of the R.C.M.P. investigation. At no time was any such information released independent of or unrelated to said investigation or reports by any persons for whom the Defendant is in law responsible.

14. Both before and after the aforementioned investigation or reports by the R.C.M.P. and admissions or information provided by the Plaintiff, and independently thereof, the Plaintiff had voluntarily disclosed by his oral statements, behaviour, activities and conduct that he was a homosexual (or that he had had homosexual urges and experiences). Any resulting injury or damage suffered by the Plaintiff (which is not admitted but denied) resulted from the Plaintiff's said voluntary and independent disclosures and not from any acts or omissions by any persons for whom the Defendant is in law responsible.

15. Notwithstanding the fact that the Plaintiff had deliberately lied to his employer (the R.C.M.P.) on at least two occasions as aforesaid during their investigation, the R.C.M.P. nevertheless treated the Plaintiff and his situation with compassion, sensitivity and dignity and in a manner designed to remove or minimize (and which did remove or minimize) any distress, humiliation, embarrassment or

loss of livelihood. Instead of terminating any further relationship with him, the R.C.M.P. provided him with alternative employment as a civilian member and provided him with all necessary training at its own cost.

16. He further says that any mental and emotional distress humiliation or embarrassment suffered by the Plaintiff (which is not admitted but denied) resulted from the Plaintiff's confrontation with and adaption to or coming to terms with his homosexuality (or homosexual urges and experiences) and not from any acts or omissions by any persons for whom the Defendant is in law responsible.

17. He specifically denies that the Plaintiff sought readmission as a regular member of the R.C.M.P. since April 17, 1985, and further says that there has been no refusals by the R.C.M.P. to employ him as a regular member since that date. Since all the events alleged in paragraphs 1 to 20 of the Amended Statement of Claim occurred prior to the coming into effect of section 15 of the Charter, the Plaintiff has no claim in law for the relief claimed under the Charter for any alleged violations thereof.

18. He further says that the facts as alleged in the Amended Statement of Claim do not support in fact or in law any of the relief claimed by the Plaintiff in paragraph 26 thereof.

19. The Deputy Attorney General, on behalf of the Defendant, therefore says that the Plaintiff is not entitled to any of the relief claimed in his Amended Statement of Claim and that this action be dismissed with costs.

Dated at Ottawa this 9th day of March, 1987.

Frank Iacobucci
Deputy Attorney General
of Canada

Per: Arnold S. Fradkin
ARNOLD S. FRADKIN

TO: The Administrator
The Federal Court of Canada
Trial Division
Ottawa, Ontario

AND TO: Janice B. Payne
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Solicitor for the Plaintiff

This document is a true copy of the original filed of record in the Registry of The Federal Court of Canada the 9th day of March A.D. 1987
dated this 9th day of March 1987

Rachelle Joly-Grondin

RACHELLE JOLY-GRONDIN
Registry Officer
Agent du greffe

Court Number T-2284-85

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TRIAL DIVISION

B E T W E E N :

JAMES STILES

Plaintiff

- and -

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Defendant

D E F E N C E

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*Service of a true copy
has been admitted
this 9th day of March,
1987. Nelligan/Powell
per JBP*