

Court file no. F/CRA/6/07

No du dossier:

**IN THE NEW BRUNSWICK COURT OF QUEEN'S BENCH
DANS LE COUR DU BANC DE LA REINE DU NOUVEAU-
BRUNSWICK**

BETWEEN / ENTRE

DAVID T. LITTLE

Appellant

and / et

HER MAJESTY THE QUEEN

Respondent.

Appearances: David T. Little in person, as Appellant.

Keith Ward and Suhanya Edwards, for the Crown.

APPEAL SUBMISSIONS

[1] I, David T. Little, the Appellant, seek to appeal the conviction imposed upon me by Chief Judge R. Leslie Jackson, on November 9, 2007, following a trial, in the Provincial Court, in the Province of New Brunswick, Canada, which took place on November 24th 2006 and March 8, 2007. The Action was numbered 2008 NBPC 2: File 07878605. At the trial, Douglas H. Christie, appeared on my behalf, and Keith Ward and Suhanya Edwards, appeared for the Crown. I have not retained Counsel in this Appeal.

[2] I am charged with and convicted of three counts of failing to comply with a notice served on me by the Minister of Natural Revenue, requiring me to file T1 Income Tax Returns and a Statement of Income and Expenses, for each of the years 2000, 2001 and 2002.

[3] I have admitted not filing the returns and statements, as required by the demands served on me.

[4] I have also admitted that the offences, with which I am convicted, are strict liability offences, and that the Court has no discretion, but to find me guilty of the offences, unless I can demonstrate that I acted with due diligence, which I intend to do, in this Appeal. In this regard, my due diligence is that (i) I hold a bona fide religious conviction, and (ii) I am

unable to freely practice my religion with freedom of conscience if I am required to participate in the scheme envisaged by the *Income Tax Act* as it relates to the reporting of income, because to do so would lead to my tax contributions funding of abortions. This would violate my freedom of conscience and religion, a right that is guaranteed in section 2(a) of the *Canadian Charter of Rights and Freedom*.

[5] I am a devout member of the Roman Catholic Church, who has been active in the anti-abortion movement for years. At first I filled out my Income Tax Returns and included a letter or note objecting to the use of my tax monies in the funding of abortions. Later, as I saw no results from this action, I wrote letters to Members of Parliament and filed my returns, but paid no taxes. As a result, my wages were garnished to pay the taxes assessed. Finally, to quote my evidence, it, “settled in my soul that this was not okay” and I stopped filing my returns. My reasons for this are that I sincerely believe in my Roman Catholic faith, which I would be unable to practice properly and freely, both in relation to its teachings, and my own personal relationship with God, if I was required to complete the TI Income Tax Returns, knowing that my financial tax contributions were to be used by the Government to fund abortions. To me this is a serious matter, which is abhorrent to me, and which adversely interferes with and frustrates my

freedom of conscience, and interferes with me practicing my religion, with freedom of conscience.

[6] My testimony at the hearing was that I am concerned about the moral and religious consequences of filing a tax return, because some of the money paid by me would be used to fund abortions, an act that is morally and religiously repugnant to me as a devout Roman Catholic, who believes that abortion is “morally unjustifiable” and is against my faith. Knowingly and avoidably contributing to abortion, to me, is a serious, non-trivial, defiance of my religious beliefs, which is a restraint on my conscience and my practice as a Roman Catholic and is against my Roman Catholic religion. To participate in this scheme, in my opinion, is to be complicit in acts of “murder” or “genocide”, which go against my religious beliefs and moral compass, and is against my conscience and religion, and would prevent me from freely practising my faith. Requiring me to file the returns, therefore, interferes with my freedom of conscience and frustrates me in the practice of my religion. The filing of a tax return would result in me being assessed for and paying tax, which would be applied to the funding of abortion. To impose upon me taxation, which would contribute to abortion, in however small a way, would be to (i) make me subscribe to an activity, which is substantially against both my freedom of conscience and religion, and is

abhorrent to both, and (ii) prevent me from practicing my faith with a free conscience, which is an essential element of my belief, in my religion.

[7] At the trial, my Counsel, in the Submission in Reply said at paragraph 2:

“This is not a case of general application attacking the constitutional validity of section 238 of the *Income Tax Act*; it is a case where a remedy under section 24(1) of the *Charter* is appropriate in the unique circumstances of this case.”

[8] And I confirm that this continues to be the case in this Appeal. Section 24 (1) of the Charter reads, “Anyone whose rights or freedoms as guaranteed by this Charter have been infringed or denied, may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances”. My original case, as argued by my Counsel, was either to quash the charges against me, or to seek a finding that I had applied due diligence in my refusal to file the Tax returns, and thereby maintain my rights and freedoms to practice my religion, according to the highest degree as that religion proscribes, which is the freedom which the State guarantees. My Roman Catholic Religion existed, and was in contemplation, at the time the Charter was made. This religion calls us to be ‘perfect, as our heavenly Father is perfect’. It is a high calling, to which all are invited, and which religious freedom stated in the Charter guarantees.

My funding of abortions, through taxation, would interfere with this invitation, which, to my mind, is non trivial and a significant fundamental aspect of my religion, going to the root of my faith and its practice. The due diligence test is objective and subjective. It is submitted that the Law makes a distinction between those of a higher and lower skill, or calling, which is to say that the standard is not purely objective and not purely subjective, and that the Court should therefore take me as they find me, namely as a Roman Catholic, who seeks to be obedient to the 'truths' of his religion, to the highest degree that is possible, which is my right, under the Charter. (Soper v. The Queen, 1997 DTC 5407)

[9] In my submission, for my appeal to succeed, I must satisfy several tests. These may be summarised as follows: The Court must be satisfied that I hold a sincere belief, which has a nexus with religion. Once this is established Section 2(a) of the Charter may be triggered. Thereafter, the Court must ascertain whether there has been a non-trivial or non-substantial interference with the exercise of the right, which constitutes the infringement of the freedom guaranteed, by the Charter. Once the Court is satisfied that there has been a non-trivial interference with the exercise of that right, the Court must then examine whether the religious conduct, if it is to be protected under the Charter, would potentially cause harm, or interfere

with the rights of others, which would not automatically be protected. The ultimate protection of any Charter rights must therefore be measured in relation to the rights of others. If the Court is ultimately satisfied that all these tests have been met, I humbly submit that I will have proved that (i) I had applied due diligence in my refusal to file returns, and (ii) that my rights and freedoms to practice my religion, under the Charter, had been infringed, and (iii) that I am entitled to a remedy, which is just and appropriate, which is that my appeal should be allowed and the Convictions set aside, so that I may thenceforth be able to practice my faith with freedom of conscience.

[10] This submission is supported, in part, by the trial Judge, who, in his Decision, on 9th November 2007, referred to Amselem, saying:-

In Balvin Sing Multani v. Marguerite-Bourgeoys [2006] 1SCR 256 at par 34, the SCC said:

In Amselem, the Court ruled that, in order to establish that his or her freedom of religion has been infringed, the claimant must demonstrate (1) that he or she sincerely believes in a practice or belief that has a nexus with religion, and (2) that the impugned conduct of a third party interferes, in a manner that is nontrivial or not insubstantial, with his or her ability to act in accordance with that practice or belief.

[11] Crown Counsel, in his brief, raised a preliminary objection as to whether or not I had put before the court a proper factual basis for the claim under the *Charter*, but I submit that this objection is no longer arguable by the Crown, because the trial Judge

found that I had established a sufficient factual basis to assert the Charter Claim.

[12] In his Decision, the Judge held: “In my view, as a result of the Defendant’s testimony of past experiences when he has filed returns and either paid taxes or had his wages garnished to pay taxes, I am satisfied that, on a balance of probabilities, the Defendant would owe taxes if he filed as requested and further, because I am of the opinion that I may take judicial notice of the fact that health services, including therapeutic abortions are funded by the state under the *Canada Health Act*, I am satisfied that the Defendant has established a sufficient factual basis to assert a *Charter* claim.” The Court has, therefore, already determined in my favour that I have a proper factual basis to assert my claim, and I do not seek to disturb this part of the trial Judges finding, in this appeal.

[13] The Judge, having found that I have to demonstrate a sufficient factual basis, to assert a claim under the Charter, it remains for me to satisfy this appeal Court that my rights under the Charter should be triggered, and the tests, previously stated, have been properly met, and demonstrate that in requiring me to file a T-1 return and Statement of Income and Expenses, the Government of Canada has violated my rights to freedom of religion under the Charter.

[14] In *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 the SCC said *Per* McLachlin C.J. and Iacobucci, Major, Arbour and Fish JJ, it was held:-

In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to his or her self definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.

Freedom of religion under the **Quebec *Charter of Human Rights and Freedoms* (and the *Canadian Charter of Rights and Freedoms*) consists of the freedom to undertake practices and harbour beliefs**, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. This understanding is consistent with a personal or subjective understanding of freedom of religion. As such, a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion. It is the religious or spiritual essence of an action, not any mandatory or perceived as mandatory nature of its observance that attracts protection. The State is in no position to be, nor should it become, the arbiter of religious dogma. Although a court is not qualified to judicially interpret and determine the content of a subjective understanding of a religious requirement, it is qualified to inquire into the sincerity of a claimant's belief, where sincerity is in fact at issue. Sincerity of belief simply implies an honesty of belief and the court's role is to ensure that a presently asserted belief is in good faith, neither fictitious nor capricious, and that it is not an artifice. Assessment of sincerity is a question of fact that can be based on criteria including the credibility of a claimant's testimony, as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices. Since the focus of the inquiry is not on what others view the claimant's religious obligations as being, but what the claimant views these personal religious "obligations" to be, it is inappropriate to require expert opinions. It is also inappropriate for courts rigorously to study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held. Because of the vacillating nature of religious belief, a court's inquiry into sincerity, if

anything, should focus not on past practice or past belief but on a person's belief at the time of the alleged interference with his or her religious freedom.

Freedom of religion is triggered when a claimant demonstrates that he or she sincerely believes in a practice or belief that has a nexus with religion. Once religious freedom is triggered, a court must then ascertain whether there has been non-trivial or non-insubstantial interference with the exercise of the implicated right so as to constitute an infringement of freedom of religion **under the Quebec (or the Canadian) Charter**. However, even if the claimant successfully demonstrates non-trivial interference, religious conduct, which would potentially cause harm to, or interference with, the rights of others would not automatically be protected. The ultimate protection of any particular *Charter* right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises.

[15] At the trial, having satisfied himself that I would pay tax, if I filed returns, for the years subject to the Charges, and that the State funded abortions, under the Canada Health Act, he made the following further findings:-

- a. "The Defendant clearly holds a sincere belief that abortion is wrong", and
- b. "which view is rooted in his Roman Catholic faith".

[16] These two findings, I submit, confirm that in the Court's opinion, on the evidence, I hold a sincere, bone fide belief, or conviction that abortion is wrong, and that my practice or belief has a nexus with religion. In specie, these finding can be listed :-

1. That the State under the Canada Health Act, funds abortions. He states, "I am of the opinion that I may take judicial notice of the fact that health services, including therapeutic abortions, are

- funded by the state under the Canada Health Act"; and
2. That if I completed the TI Returns I would pay taxes. He said, "I am satisfied that, on a balance of probabilities, the Defendant would owe taxes if he filed as requested"; and
 3. That I hold a sincere bone fide belief, or conviction, that abortion is wrong. He states, "The Defendant clearly holds a sincere belief that abortion is wrong".
 4. That the practice or belief, in my case, has a nexus with religion. He states, "The Defendant clearly holds a sincere belief that abortion is wrong, which view is rooted in his Roman Catholic faith."

[17] In my submission, by his statements referred to in [16] 1 & 2 above, the trial Judge held that I had demonstrated a factual basis to assert a Charter Claim. Further, by his statements or findings in 3 and 4 above, a claim under the Charter was, in fact, triggered, or should have been. However, the trial Judge failed to recognise that by his findings there was a factual basis, therein, for triggering the Charter Claim.

[18] In my submission, although he erred in law by failing to properly apply his findings, when reaching his decision, the trial Judge's findings assist my appeal, if correctly applied. These findings were that (i) If I completed and filed the TI returns, I would owe taxes, and (ii) Abortions are funded by the State, under the Canada Health Act, which I interpret to mean that, if I paid taxes, judicial notice is already taken of the fact that such taxes, paid by me, would be used as part of the Government funds to pay for abortion, and (iii) I

hold a sincere belief, which has a nexus with religion. In making these findings, the trial Judge should have concluded that I had made out a factual basis for a claim under the Charter, and I invite this Honourable Court to allow this appeal, at this stage, to the extent that Section 2(a) has been triggered.

[19] In my submission, therefore, this Court can accept those findings of the trial Judge, and hold that a Charter Claim has been triggered, and, thereafter, proceed to determine whether the remaining tests are satisfied, namely (i) whether there has been a non trivial or non substantial interference with the exercise of the implicated right as to constitute an infringement of freedom of religion under the Charter, and if satisfied, (ii) whether the granting of protection to me will harm or interfere with the rights of others.

[20] With regard to whether requiring me to file a return is a non-trivial or non substantial interference with the exercise of the implicated right, so as to constitute an infringement of my fundamental freedom of conscience and religion, I ask the Court to take into consideration, the following paragraphs [21] to [26].

[21] I hold a sincere belief that abortion is wrong. This is a feature of the case, which, I submit, has already been accepted by the Court. The filing of a T1. Return, with a statement of my income for the years 2000, 2001, and 2002, will lead to the payment of tax. This is also an aspect of my case, which has been accepted by the Court. Abortions are funded by the State under the Canada Health Act. This

is also accepted by the Court. Ergo, taxes paid are used to fund abortions.

[22] I submit, therefore, that there is a connection between the filing of a return and the payment of tax, and a connection between the filing of a return and the funding of abortion. And it follows that my filing of a return for the years 2000, 2001 and 2002, will create a concatenation of events, which will lead to me contributing to a fund which will pay for abortion. The filing of a return is not an act unassociated with abortion, but is an act linked and connected therewith, and by imposing on me the obligation to file returns, for the three years specified, the State further imposes on me the burden of indirectly funding abortions. This is a cause of distress, **as direct induced abortion to my mind is an act of killing another human being, and is against the Commandment “Thou shalt not kill” or as an ancient Hebrew translation states, “Thou shalt not do murder.”**

[23] Filing returns and funding abortions is, I submit, linked, and it follows, that the filing of returns, knowing that I am contributing to abortion, is an anathema to both my Roman Catholic Religion, and my own personal faith, and I cannot live with my conscience, nor practice religious freedom, if I am required to file returns, knowing that my taxes may or will be used to fund abortions. To me there is no difference to funding abortions directly or by taxation. Contributing directly or indirectly to abortion is not an option for me. Requiring me to file a return, under this knowledge, upon pain of conviction and sentencing, should I fail to file the same,

which could lead possibly to imprisonment, is to apply pressure, which takes my freedom of conscience away, and as such, I submit that Section 2 (a) of the Charter should protect me from this burden or imposition which, under the circumstances described, is non trivial, and non insubstantial.

[24] In *Amselem, Iacobucci J.* at paragraph 63, stated, “In respect of Mr. Klein and Mr. Fonfeder, a finding of infringement depends upon what the substance of their belief was. If they sincerely believed that they must build their own succah because doing so engenders a greater connection with the divine or with their faith, then their rights to freedom or religion will be infringed by the declaration of co-ownership to the same extent as Mr. Amselem’s. For the purpose of determining if freedom of religion is triggered or whether there is a non-trivial interference therewith, there is no distinction between sincere belief that a practice is required and sincere belief that a practice having a nexus with religion engenders a connection with the divine or with the subject of object of a persons spiritual faith. If, however, they sincerely believed that they must build a succah of their own because the alternatives of either imposing on friends and family or celebrating in a communal succah as proposed by the respondent will subjectively lead to extreme distress and thus impermissibly detract from the joyous celebration of the holiday, the joy of which, as intimated by their witness Rabbi Ohana, is essential to its proper celebration, then they must prove that these alternatives would result in more than trivial or insubstantial interferences and non trivial distress. In my opinion, this has been successfully proven. At

trial, the appellants testified as to the substantially distressing nature of the burden imposed upon them by the prohibition that they must eat every meal in the succah throughout the nine-day holiday. Imposing on others for the entire holiday amounts to a severe burden, especially when dealing with children, as testified by Mr. Klein.” In my own case, the Court should, I submit, follow *Amselem*, and accept that infringement depends upon what the substance of my belief is. If I sincerely believe that I must not fund abortions, because to do so would be to offend the Divine, then my right to freedom of religion will be seriously infringed, if I am required, upon pain of sentencing, to file a return. In my case I hold a **belief in conscience that direct induced abortion is totally wrong, the gravest of evil** and I cannot contribute thereto, as to do so would be to cause me to undergo a lesser and more distant connection with the divine and disunity with my faith, and an interference with the calling which I seek, which is union with God. **To accede in a voluntary way to the requirement of filing a return, would continue to deeply distress me in my very essence, and in my conscience. Paragraph 1776 of the Catechism of the Catholic Church states, "Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and to avoid evil, sounds in his heart at the right moment. . . . For man has in his heart a law inscribed by God. . . . His conscience is man's most secret core and his sanctuary. There he is alone with God whose voice echoes in his depths."** I am obligated, according to my beliefs, not to accede to the ‘filing’ requirement, lest I compromise my faith in a most cowardly way.

I therefore submit that the requirement for me to file a return, is an actual and a threatened interference with my right to follow my conscience, upon pain of sentencing which could lead to imprisonment, is an actual and a threatened interference with my right to follow my conscience and is a matter of the utmost importance to me and which is a cause of genuine concern and distress, well beyond, indeed far beyond, being non trivial.

[25] **In R. v. Morgentaler, [1988] 1 S.C.R.**, at page 37, the Supreme Court of Canada stated, “The decision whether or not to terminate a pregnancy is essentially a moral decision and in a free and democratic society the conscience of the individual must be paramount to that of the state. Indeed, s. 2(a) makes it clear that this freedom belongs to each of us individually. "Freedom of conscience and religion" should be broadly construed to extend to conscientiously held beliefs, whether grounded in religion or in a secular morality and the terms "conscience" and "religion" should not be treated as tautologous if capable of independent, although related, meaning. The state here is endorsing one conscientiously held view at the expense of another. It is denying freedom of conscience to some, treating them as means to an end, depriving them of their "essential humanity".” In my submission, in the light of the findings of the trial judge, my conscience has a right not to be impugned by the State requirement to file a return, and to impose this requirement and uphold my conviction, is to interfere with my right in a non-trivial way. **If by judgment of the S.C. of Canada a woman has a right in conscience to have equal access to direct induced abortion, then by the same logic, I have the right in conscience not to pay for this ‘procedure’**

through surrendered taxes because my faith teaches me formally, that which I believe with all my heart conscientiously, that direct induced abortion is nothing less than the plain and simple “murder of an innocent child.” (Pope John Paul II, February 1982, Nigeria)

[26] With regard to whether the exercise of my right under the Charter interferes with the rights of others, I invite the Court to take into account the following submissions contained in paragraphs [27] to [28].

[27] The question to determine is whether any third party rights will be interfered with or harmed in any way. The words in *Amselem* are these: “However, even if the Claimant successfully demonstrates non trivial interference, religious conduct, which would potentially cause harm to, or interfere with, the rights of others would not automatically be protected. The ultimate protection of any particular Charter right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises”.

[28] In my submission, unlike the case of *Amselem*, where the rights of co owners had to be considered, there is no one, with an identifiable right, which would potentially be interfered with or harmed, by my appeal being allowed, and by my not being required to file a return for the years 2000, 2001 and 2002. There is no one who can be identified with a right to assert, and which falls to be considered for protection. At least, I have to say, that there is no one, unless one considers the ordinary tax-payer, who might complain. However, I submit that the ordinary tax-payer has no identifiable

right, which is being interfered with or which could be harmed. I can also confirm that after 2004 I have earned little income, and no tax would be payable for subsequent years. **If a tax payer or citizen were to refer to a right, he would be represented by the State, which is the Prosecutor, in this instance. I submit that no one is identifiable in these proceedings, who falls to be considered.**

[29] I therefore invite the Court to allow the appeal and to find that I have demonstrated that the Income Tax Act, as it requires me to file returns actually interferes with my religious beliefs or practices in the manner described and that there has been a violation of my section 2(a) Charter rights.

[30] Finally, at the original trial I submitted, through my Counsel, that to require me to comply with the demand served on me by the state pursuant to the *Income Tax Act* would discriminate against me on the basis of religion by requiring me to participate in a scheme to fund abortion which my religion, as I see it, forbids me to do. I confirm that I am **pursuing that part of my appeal as it relates to discrimination, and section 15(1) and 158 (a) of the Charter. If a minority of persons of the same gender can claim protection against unjust discrimination concerning marriage, an institution affirmed by civilization for millennia as a covenant and/or contract solely between a man and a woman, then I can justly claim that as a believing and orthodox Roman Catholic citizen of Canada who religiously and in good conscience hold that direct induced abortion is intrinsically evil, that I, therefore, and**

millions or other Christians in this country, a plain majority, are being discriminated against by the state in being forced through threat of incarceration to sign a tax return while knowing that money therein submitted is being used to pay for this “abominable crime”, Vatican II Council (Gaudium et Spes, #51)

David T. Little

Date : 2008.