2005 CarswellOnt 1265
Ontario Court of Appeal

Deep v. Ontario

2005 CarswellOnt 1265, [2005] O.J. No. 1294, 138 A.C.W.S. (3d) 572

Dr. Albert Ross Deep (Plaintiff / Appellant) and Her Majesty the Queen in Right of Ontario, The Ministry of Health and Long-Term Care, Dr. Steven Ingle, Dr. David McCutcheon, The General Manager of the Ontario Health Insurance Plan, Dr. Barnet Israel Giblon, The College of Physicians and Surgeons of Ontario and Mr. Ernie Eves (Defendants / Respondents)

Goudge J.A., MacFarland J.A., and McPherson J.A.

Heard: April 6, 2005
Judgment: April 6, 2005
Docket: CA C42154

Counsel: Dr. Albert Ross Deep for himself
Walter Myrka, Shannon M. Chace-Hall for Respondent, HMQ in Right of Ontario, Ministry of Health and Long-Term Care, Dr. Steven Ingle, Dr. David McCutcheon, General Manager of the Ontario Health Insurance Plan, Mr. Ernie Eves
David A. Shiller for Respondents, College of Physicians and Surgeons, Dr. Barnet Israel Giblon

Subject: Civil Practice and Procedure; Torts; Public; Constitutional; Human Rights

Table of Authorities

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

s. 7 — referred to

s. 15 — referred to

Health Insurance Act, R.S.O. 1990, c. H.6

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s. 40.2(2) [en. 1996, c. 1, Sched. H, s. 34] — referred to

s. 40.2(6) [en. 1996, c. 1, Sched. H, s. 34] — referred to

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 20 — referred to

R. 21 — referred to

R. 25 — referred to

APPEAL by plaintiff from judgment reported at *Deep v. Ontario* (2004), 2004 CarswellOnt 2625 (Ont. S.C.J.), granting summary judgment in favour of defendants.

***Per curaim*:**

1 The appellant, Dr. Albert Ross Deep, appeals the judgment of Justice James Spence dated June 25, 2004. In the judgment, the motion judge dealt with three motions.

2 The motion judge allowed a motion brought by the respondents Her Majesty the Queen in Right of Ontario, Dr. Steven Ingle, Dr. David McCutcheon and Mr. Ernie Eves (the "Crown respondents") seeking to strike out portions of the appellant's statement of claim and to have the action dismissed as against them on a number of grounds, principally that the statement of claim failed to disclose any reasonable cause of action against them. Causes of action asserted by the appellant included claims based in negligence, malice, misfeasance in public office and alleged breaches of *Charter* rights.

3 The motion judge also granted a similar motion to strike by the respondents Dr. Barnet Giblon and the College of Physicians and Surgeons of Ontario (the "College respondents").

4 Finally, the motion judge dismissed a motion for summary judgment brought by the appellant. He determined that certain causes of action asserted in the statement of claim did not exist at law or that no facts were pleaded to support the entitlement of the appellant to assert certain causes of action. In the result, the motion judge disposed of the motion by dismissing the appellant's claims and granting judgment in favour of the respondents.

5 The appellant appeals the motion judge's decision. In our view, the appeal must fail. The motion judge wrote careful and comprehensive reasons (154 paragraphs) dealing with all of the issues, including procedural issues relating to Rules 20, 21 and 25 of the *Rules of Civil Procedure*,

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and substantive issues raised by the appellant and both sets of respondents. We explicitly record our agreement with the motion judge's reasoning, which we regard as sound, and with his dispositions of the three motions.

6 With respect to the Crown respondents, the appellant's pleadings were seriously deficient. There is no cause of action in law pertaining to breach of natural justice. To the extent that the allegations sound in malice or bad faith, no particulars are pleaded. As regards allegations sounding in negligence, there are no material facts evidencing a duty of care on the part of the Crown respondents towards the appellant, a breach of that duty or causation. Further, there are no particulars at all of any misconduct by the named respondents. With respect to the *Charter* claims, s. 7 does not protect purely economic interests. Finally, the appellant does not allege any facts that could give rise to a finding that the decision of the General Manager of the Ontario Health Insurance Plan to suspend payments to the appellant in 2000 violates s. 15 of the *Charter*, or that ss. 40.2(2) and 40.2(6) of the *Health Insurance Act* infringe ss. 7 or 15 of the *Charter*. In short, claims concerning all of these matters were properly struck.

7 With respect to the College respondents, the appellant made two claims relating to the suspension of his OHIP payments in August 2000 and the College respondents allegedly superseding their jurisdiction and violating the rules of natural justice in taking $93,493.02 of the appellant's earnings in 1982-1984.

8 The former claim was asserted against the General Manager and the Ministry of Health and Long-Term Care. The appellant did not plead any involvement by the College or Dr. Giblon in connection with the OHIP claim. The latter claim, relating to the 1982-1984 period, is *res judicata*.

9 For these reasons, the appeal is dismissed. The respondents are entitled to their costs of the appeal which are fixed at $8000 for the Crown respondents and $5000 for the College respondents, inclusive of disbursements and GST.

Appeal dismissed.

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