

Decision of Federal Court (Russell, J.) in COMER appeal from motion to strike

In its 59-page decision of April 24th, 2014, the Federal Court (Justice Russell), substantially over-turned the decision of Prothonotary Aalto which had struck the claim, with no opportunity to amend it.

Justice Russell, in over-turning the decision of Prothonotary Aalto, ruled as follows:

1. That the declaratory relief sought, which is the bulk of the claim, as to the meaning of, and misuse of the Bank of Canada provisions, as they relate to interest-free loans for human capital infrastructure, as well as the Finance Minister's fudging of the numbers in the budgetary process, *IS* justiciable and can proceed.
2. That the tort and Charter claims need elaboration and need to be amended if to proceed.
3. That, while Prothonotary Aalto had found that the plaintiffs had standing, and the Federal Court had jurisdiction, Justice Russell did not pronounce on these issue(s) pending the re-amended statement of claim.

Both the government, and COMER, have appealed.

The government has appealed in the main, and bulk of the ruling, that the action can proceed.

COMER has appealed on the narrow issue that the Court should only have left struck the tort and Charter portion(s) of the claim and found, as the Court below had found, that standing of the parties, and jurisdiction of the Court, with respect to the (bulk) declaratory part of the action, can proceed without the need to redraft the whole thing which in essence would mean only re-drafting the tort and Charter portions.

Lawyers for the government and COMER, have agreed not to redraft the claim now, but await the ruling of the Federal Court of Appeal after which point the extent, if any, of the required redrafting of the Statement of Claim, will be clear. (Rather than having to possibly amend twice).

All in all, and in summary, the decision of the Federal Court was a victory, at this stage of the proceedings, for COMER.