

York counsel issues clarification on recent Supreme Court of Canada decision

This statement is to provide some clarity around the recent decision of the Supreme Court of Canada not to grant to the University leave to appeal an order of the Court of Appeal of Ontario in the case brought by Daniel Freeman Maloy against York University. Notwithstanding that leave to appeal was withheld, this does not mean that any court has now decided that a Canadian university president is a public official for the purpose of the tort of misfeasance in public office.

The claim that the president is a public official and subject to the tort was made by the plaintiff in this action in the original statement of claim. That claim and several others were struck out by the court of first instance on a motion by the University on the basis that to date there is no support in law for such a claim. The plaintiff appealed the decision to strike out the claim, arguing that the issue of whether a president is a public official should be argued at a trial. The Court of Appeal of Ontario agreed with the plaintiff on that point.

It was that decision which the University sought leave to appeal , i.e. whether the issue could be struck at a preliminary stage or should go to trial. The Supreme Court's decision not to hear the case did not address the issue itself, but only their interest in hearing the matter. It means that the issue of whether the president is or is not a public official is now a matter to be dealt with in the pleadings and argued at trial.

No court has yet decided the issue of whether the president of York is a public official, and if so, whether the elements of the tort are present in these circumstances.

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