Federal Court  Cour fédérale

Date: 20170301

Docket: T-525-15

Citation: 2017 FC 248

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 1, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RICHARD TIMM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant is currently an inmate at medium-security La Macaza Institution [the correctional institution]. He is serving a life sentence with eligibility for parole after 25 years of incarceration, having been found guilty of the first-degree murder of his adoptive parents in 1995.

[2] The applicant is challenging the legality and/or reasonableness of the decision by acting Senior Deputy Commissioner, Ms. Lori MacDonald [Deputy Commissioner], rendered on November 27, 2014, which upholds in part his grievances regarding actions by his parole officer [PO], the acting Warden of La Macaza Institution, and the Manager, Assessment and Interventions.

[3] As legal remedies, the applicant is seeking from the Court a declaration of illegality, as well as an order requiring the respondent to reimburse him the sum of $2,032.54 that was deducted from his pay.

[4] Since 2009, the applicant has filed more than ten claims before the Federal Court following the departmental refusal to review his criminal conviction in accordance with sections 696.1 et seq. of the *Criminal Code*, SRC 1985, c. C-46. In particular, he contested the final decision of the Criminal Conviction Review Group [CCRG] dated October 21, 2010. The application for review was dismissed on May 2, 2012, by Harrington J. (*Timm v Canada (Attorney General)*, 2012 FC 505, [2012] FCJ No. 556), and this dismissal was confirmed by the Federal Court of Appeal on November 7, 2012 (*Timm v Canada (Attorney General)*, 2012 FCA 282 [2012] FCJ No. 1398). The applicant then submitted an application for leave to appeal before the Supreme Court of Canada on November 23, 2012. That application was dismissed on March 14, 2013.

[5] Similarly, on December 21, 2011, the applicant filed an action for damages against the Crown (docket T-2076-11). That action was largely based on irregularities alleged by the

departmental authorities as part of his application for judicial review in docket T-680-11. The respondent filed a motion to dismiss the action. On January 8, 2013, Prothonotary Morneau made a stay order in docket T-2076-11 until there was a final adjudication regarding the application for judicial review in docket T-680-11. The applicant appealed that order. On January 29, 2013, Bédard J. made an interlocutory order dismissing his appeal with costs [Order]. It is precisely that Order—which was not shared in due time with the applicant by those in charge at his correctional institution—that is the subject of the grievances that were upheld in part by the Deputy Commissioner on November 27, 2014.

[6] According to the evidence on record, on the date of the Order, a Federal Court clerk contacted the applicant's PO to inform her that she would send her a copy of the Order via fax, and asked her to give it to the applicant. In fact, a copy of the Order was sent by the Federal Court via fax to the correctional institution. However, the applicant did not receive notification of the Order at that time. On March 15, 2013, the applicant received a letter from the respondent that included a bill of costs for $2,032.54 for the costs arising from the Order, all of which was dated March 12, 2013. It was then that the applicant learned of the Order's existence and he filed grievances following the failure or refusal of the correctional authorities to send him a copy of the Order in due time.

[7] Although this application for judicial review involves the dismissal of grievances at the third level, on November 27, 2014, the crux of the problem was in fact upstream, i.e. the direct taxation of costs related to the Order of January 29, 2013. In fact, during the hearing that was held before the undersigned judge in fall 2016, counsel agreed that any taxation of costs in

docket T-2076-11 was premature so long as the Supreme Court had not rendered its judgment on the applicant's leave to appeal in docket T-680-11 and that he had not been finally disposed of his action for damages by the Federal Court. Prothonotary Morneau's order rightly ordered the stay of any proceedings in docket T-2076-11 while awaiting the final judgment of the Supreme Court in docket T-680-11. On the other hand, the cause of action must be subject to one taxation only (*Inverhuron & District Ratepayers Assoc v Canada (Minister of Environment)*, 2001 CFPI 410, [2001] FCJ No. 666 at para 9 [*Inverhuron*] referring to *Casden v Cooper Enterprises Ltd*, [1991] 3 FC 281, [1991] FCJ No. 454, and *Smith and Nephew Inc v Glen Oak Inc.*, [1995] FCJ No. 1604 (QL) (CFPI), [1995] FCJ No.1604 at para 6).

[8] Not only was any taxation of the charges against the applicant in docket T-2076-11 premature in March 2013, but the unilateral recovery of an amount of $2,032.54 (bill of costs related to the Order) from the applicant's pay was not possible in March 2013. In fact, the certificate of taxation on the total amount of $8,443.21 in docket T-2076-11 (which includes the contested amount of $2,032.54), was issued on May 13, 2014, after all the applicant's remedies were exhausted.

[9] However, the case is more complex than it appears at first glance, because the correctional authorities also took actions to recover from the applicant's pay the numerous costs charged in other cases, as well as in docket T-2076-11 following the order made by Prothonotary Morneau on April 30, 2013, striking the action for damages, and the dismissal by de Montigny J. of the applicant's appeal of the Prothonotary's order on May 15, 2013 — for its part, the Federal

Court of Appeal dismissed the applicant's appeal of the order by de Montigny J. (*Timm v Canada*, 2014 FCA 8 [2014] FCJ No. 61).

[10] During the hearing on September 26, 2016, counsel therefore asked the Court to suspend its deliberations in this case so that the parties could attempt to reach an overall settlement. That motion was allowed from the bench in the interest of justice. On December 21, 2016, the Court received an affidavit from Ms. Rosemary Onyeuwaoma, Financial Officer at the Regional Comptroller's Office of Correctional Service Canada [CSC], indicating that the sum of $2,032.54 relating to the bill of costs related to the Order had been deducted from the total amount of $34,478.84 charged as the applicant's debt to the Crown for all his various legal proceedings. On January 25, 2017, counsel for the applicant confirmed that that sum had been taken from his client's account, but that the applicant wanted this Court to rule nonetheless on the merit of his application for judicial review.

[11] The standard of review of reasonableness applies to the review of the administrative decision under study (*Johnson v Canada (Correctional Service)*, 2014 FC 787 [2014] FCJ No. 822 at para 37; *Gallant v Canada (Attorney General)*, 2011 FC 537 [2011] FCJ No. 679 at para 14; *James v Canada (Attorney General)*, 2015 FC 965, [2015] FCJ No. 951 at paras 44–45. In the case at hand, the Deputy Commissioner noted that although the Order had indeed been sent by the Federal Court, no entry of that document had been recorded in the correctional institution's system. Nothing allowed her to conclude that the PO would have had the copy of the Order in her possession. Consequently, the Deputy Commissioner concluded that the PO could not be personally held accountable for that situation, and in turn, dismissed the applicant's claims

regarding other officers at the correctional institution. The Deputy Commissioner also indicated that she had asked management at the correctional institution to amend the intervention log so that it would comply with the provisions of Annex B of *Commissioner's Directive 701: Information Sharing*. For that reason, the Deputy Commissioner noted that the correctional institution had already implemented, on the date of the decision, a new intake procedure that would allow for the sending of documents via fax or email to be traced better from then on. Regarding the allegations of discrimination and harassment, the Deputy Commissioner noted that although CSC took those kinds of allegation very seriously, the applicant had failed to submit any evidence to demonstrate that he had been personally targeted by acts of discrimination or harassment, as established in *Commissioner's Directive 081: Offender Complaints and Grievances*.

[12] There is no reason to intervene in the case at hand. As for reimbursing the $2,032.54, the applicant obtained the outcome he was seeking in December 2016 through a credit granted against the total amount due to the Crown. The application for judicial review on this contentious issue of the case now becomes moot. Furthermore, the appropriate corrective actions regarding the document intake process were prescribed by the Deputy Commissioner. On the other hand, the Commissioner or the Deputy Commissioners have significant expertise on issues related to internal penitentiary management compared to the courts. This justifies considerable deference with respect to decisions made by the latter. I see no special reason for reviewing the Deputy Commissioner's decision regarding the insufficient evidence demonstrating harassment or discrimination. Consequently, the Deputy Commissioner's decision is among the possible and

acceptable outcomes in light of the particular facts of the case and the applicable law on the matter.

[13] For these reasons, this application for judicial review is dismissed without costs.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review be dismissed without costs.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	RICHARD TIMM v ATTORNEY GENERAL OF CANADA
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APPEARANCES:

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