

Federal Court of Canada
Trial Division



Section de première instance de
la Cour fédérale du Canada

Date: 20010820

Court File No.: T-629-01

Neutral Citation: 2001 FCT 921

Ottawa, Ontario, this 20th day of August, 2001

PRESENT: THE HONOURABLE MR. JUSTICE BLANCHARD

BETWEEN:

J.J. MARC PAQUETTE

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

Nature of Proceedings

[1] This is a motion brought by the plaintiff for an order of *mandamus* compelling the respondent to do its duty and provide him the medicine prescribed by his physician in his section 56 exemption.

Facts

[2] The applicant suffers from serious chronic and fatal diseases.

[3] On March 12, 2001, Dr. Jody Gomber, Director General of Drug Strategy and Controlled

Substances - Health Canada, granted the applicant his third letter of exemption pursuant to section 56 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the Act).

[4] The applicant's exemption ends on September 11, 2001.

[5] The applicant alleges that he is not able to procure sufficient quantities of medical marijuana for his needs and is seeking an order of *mandamus* from this Court compelling the Respondent to provide him with marijuana buds seized as evidence in criminal prosecutions.

Issue

[6] Is an order for *mandamus* an appropriate remedy in the case at bar?

Analysis

[7] Section 56 of the *Act* provides as follows:

56. The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

56. S'il estime que des raisons médicales, scientifiques ou d'intérêt public le justifient, le ministre peut, aux conditions qu'il fixe, soustraire à l'application de tout ou partie de la présente loi ou de ses règlements toute personne ou catégorie de personnes, ou toute substance désignée ou tout précurseur ou toute catégorie de ceux-ci.

[8] This Court could not find any statutory provision that would require the respondent to exercise his discretion and consider supplying the applicant with marijuana seized in criminal cases.

In fact, the Minister of Health's discretion, as provided for in section 56, is limited to exempting

certain individuals from all or certain sections of the Act.

[9] In the case at bar, the Minister did exercise his discretion as provided to him by s. 56 of the Act. On March 12, 2001, the Minister decided to exempt the applicant from subsection 4(1) and section 7 of the Act. As a result, the applicant is allowed to have marijuana in his possession and is also allowed to grow the substance for his own personal use. In exercising his discretion, the Minister also thought fit to impose certain conditions to the exemption and to limit the quantities that the applicant could have in his possession at a particular time.

[10] I express great sympathy for the applicant in his struggle to find lawful sources for medical marijuana he is legally permitted to possess. However, the Court is unable to grant the relief sought. As was held by the Federal Court of Appeal in *Hahlon v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 386, a *mandamus* may be used to compel the performance of a public duty, however, it cannot dictate the result to be achieved.

[11] In the case at bar, it is unclear if the respondent has the statutory right to do what the applicant asks, that is to say, provide the applicant access to seized illegal marijuana. The Court has not been made aware of any such statutory provision. I accept the respondent's submission that there remain many constraints that must be dealt with, from a policy perspective, before this issue of supply of medical marijuana can be satisfactorily addressed. At this time, I am unable to find that the respondent failed to exercise a public duty he was required to exercise under law.

[12] In this case, s. 56 of the Act is the only statutory provision providing for ministerial discretion before the Court. It could be said that the Minister of Health did exercise his discretion under s. 56 of the Act in favour of the applicant.

[13] I would further accept the submission of the respondent that an interim *mandamus* is in effect an interim declaration of right. *Mandamus* does not lie in such circumstances. The Court has no jurisdiction to grant the relief sought. For these reasons, the motion is dismissed.

ORDER

IT IS ORDERED that:

1. The motion is dismissed without costs.


Judge

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-629-01

STYLE OF CAUSE: J.J. MARC PAQUETTE v. ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 17, 2001

REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE
BLANCHARD

DATED: AUGUST 20, 2001

APPEARANCES:

MR. MARC PAQUETTE FOR APPLICANT

MS. RITU BANERJEE FOR RESPONDENT

SOLICITORS OF RECORD:

ON HIS OWN BEHALF FOR APPLICANT

MR. MORRIS ROSENBERG FOR RESPONDENT
DEPUTY ATTORNEY GENERAL OF CANADA
OTTAWA, ONTARIO