

Date: 20051019

Docket: T-397-04

Citation: 2005 FC 1426

Montréal, Quebec, October 19, 2005

PRESENT: RICHARD MORNEAU, PROTHONOTARY

BETWEEN:

GEORGES FLYNN

and

ELIZABETH BOUCHER

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ODER AND ORDER

[1] In the matter of the defendant's motion in writing pursuant to paragraphs 208(d), 221(1)(a) and (f), subsection 298(2) and section 369 of the *Federal Courts Rules* (the Rules);

[2] Whereas, in the context of their proceeding, the plaintiffs essentially allege that the officers or servants of the defendant and of the Correctional Service of Canada (the CSC) were at

fault in cancelling the program of private family visits (PFV) between the plaintiff Georges Flynn and the plaintiff Elizabeth Boucher and in placing the plaintiff George Flynn in administrative segregation;

[3] Whereas prior to the present action, the plaintiff George Flynn had initiated an application for judicial review before this Court (T-997-03) concerning the same facts and the same decisions made by the CSC for which the plaintiff George Flynn filed a grievance and the plaintiffs now seek compensation;

[4] Whereas the prior application for judicial review was dismissed by the Court on March 17, 2004, after the plaintiff George Flynn failed to respond to a Notice of Status Review within the prescribed time;

[5] Whereas the plaintiffs initiated their action only a few days after the plaintiff Flynn allowed his application for judicial review, on the same matter, to be dismissed by this Court on account of delay;

[6] Whereas the Court is satisfied that it is plain and obvious that allowing the present action to continue would be tantamount to allowing the plaintiffs to obtain a judicial review indirectly via an action for the decisions for which they failed and neglected to obtain judicial review by this Court. Such a practice would be contrary to the orderly administration of justice and the public interest and would represent an abuse of process.

[7] The plaintiffs cannot short-circuit the system introduced by Parliament to review the legality of decisions by filing a statement of claim pursuant to section 17 of the *Federal Courts Act*, R.S.C. (1985), c. F-7, as amended.

[8] Whereas, furthermore, the plaintiff Boucher cannot have any more remedies in the circumstances than her spouse;

[9] Therefore, the Court has no jurisdiction to rule on the present statement of claim, which discloses no reasonable cause of action and represents an abuse of process.

ORDER

NOW THEREFORE, THE COURT ORDERS that the plaintiffs' statement of claim be struck and their action dismissed, with costs.

“Richard Morneau”

PROTHONOTARY

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-397-04

STYLE OF CAUSE: GEORGES FLYNN and ELIZABETH BOUCHER

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

**MOTION IN WRITING CONSIDERED AT MONTRÉAL WITHOUT THE
APPEARANCE OF THE PARTIES**

REASONS FOR ORDER: RICHARD MORNEAU, PROTHONOTARY

DATED: October 19, 2005

WRITTEN SUBMISSIONS:

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