

Federal Court



Cour fédérale

Date: 20070115

Docket: T-1974-06

Citation: 2007 FC 31

[ENGLISH TRANSLATION]

Montréal, Quebec, January 15, 2007

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

DENIS BÉGIN

Applicant

and

**MARC SÉGUIN
PAROLE OFFICER
FOR CORRECTIONAL SERVICE CANADA**

Respondent

Written motion by the respondent to strike out the applicant's statement of claim under Rules 221(1)(a) and 369 of *the Federal Rules of Court* (the Rules).

REASONS FOR ORDER AND ORDER

[1] The applicant is incarcerated under the jurisdiction of Correctional Service Canada (CSC) at the medium-security La Macaza Institution (Quebec).

[2] An objective reading of the statement of claim indicates that the applicant—who represents himself—claims that a copy of a statement that he considers was obtained in a way that does not comply with Canadian law in his correctional record and is used by CSC, though he unsuccessfully requested (see paragraphs 13 and 17 of the applicant’s statement of claim) that the statement of claim in question dated March 11, 2006, be withdrawn from his file. As a result, he is claiming damages of \$50,000.00.

[3] Subsection 24(2) of the *Corrections and Conditional Release Act* S.C. 1992, c. 20 (the Act), sets out the procedure that an inmate must follow to correct his correctional record:

24. [...]

(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

24. [...]

2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.

[4] In this case, the applicant claims to have not followed the procedure set out in subsection 24(2) of the Act.

[5] However, the applicant should not have more rights than another inmate who is pursuing remedies under the Act, so the applicant cannot proceed directly through an action.

[6] Furthermore, if the applicant requested that information in his record be corrected, and he is not satisfied with the reply he received, he had to have this Court conduct a judicial review of that reply, which he did not do.

[7] Indeed, as extensively explained by the respondent, only an application for judicial review can determine the lawfulness of this reply or decision.

[8] Here, the applicant cannot collaterally attack a decision by a tribunal by means of an action for damages to avoid parceling out the review of the lawfulness of decisions by federal bodies.

[9] Furthermore, even if we considered, as claimed by the applicant in his motion record against the motion under review, that the central premise of his action for damages is not founded on the decision to deny the withdrawal of a statement obtained from the applicant, but rather that the applicant is seeking to properly bring an action against respondent Séguin for false and malicious allegations, this action, despite the wording of paragraph 17(5)(b) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, as amended, would not fall under the jurisdiction of the Federal Court because the applicant's cause of action would be founded on provincial law rather than on existing federal law.

[10] As noted by authors Saunders et al. in their book *Federal Courts Practice*, 2007, Thomson Canada Ltd., at pages 76 and 89:

The extent of the jurisdiction conferred on the Federal Court depends upon not only the words of section 17 but also the constitutional limits of section 101 of the *Constitution Act, 1867*. For the Federal Court to have jurisdiction, all three of the following questions must be answered in the affirmative.

1. Do the words of section 17 purport to confer jurisdiction in respect of such a claim?
2. Is the claim founded upon existing and applicable federal law?
3. Is that federal law within the legislative competence of the Parliament of Canada?

(...)

Leblanc v. Canada (2003), 237 F.T.R. 169, 2003 CarswellNat 1936, 2003 FCT 776 (Proth.); affirmed 2004 CarswellNat 1648, 2004 FC 774; reversed (2005), 339 N.R. 244, 2005 CarswellNat 1672, 2005 FCA 234 – The fact that a power allegedly misused by a federal public servant emanates from a federal statute, or that a duty alleged to have been breached was created by a federal statute, does not mean there is federal law to support the grant of jurisdiction. The rights arising from such misuse of power or breach of statutory duty, including the tort of misfeasance in public office, remain emanations of provincial law.

(Emphasis added)

[11] Consequently, it is clear and obvious that the statement of claim does not reveal any valid cause of action and must thus be struck out under paragraph 221(1)(a) of the Rules, without leave to amend, with costs.

[12] Furthermore, with regard to the amendment that the applicant requests of his case management team, other than the fact that this Court does not have jurisdiction because no motion has been filed in that respect, it is likely a decision that solely concerns administrative management

on the part of CSC as part of its management power over its employees and over which this Court would likely not have jurisdiction.

ORDER

Under paragraph 221(1)(a) of the Rules, the applicant's statement of claim is struck out, without leave to amend, with costs.

"Richard Morneau"
Prothonotary

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1974-06

STYLE OF CAUSE: DENIS BÉGIN

Applicant

and

MARC SÉGUIN

PAROLE OFFICER

FOR CORRECTIONAL SERVICE CANADA

Respondent

WRITTEN MOTION REVIEWED AT MONTRÉAL WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: JANUARY 15, 2007

WRITTEN SUBMISSIONS:

Denis Bégin

APPLICANT

Dominique Guimond

FOR THE RESPONDENT

Héloïse Dumont

SOLICITORS OF RECORD:

Denis Bégin

APPLICANT

JOHN H. SIMS, Q.C.

FOR THE RESPONDENT

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