

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170920

Docket: A-263-16

Citation: 2017 FCA 191

**CORAM: GAUTHIER J.A.
NEAR J.A.
GLEASON J.A.**

BETWEEN:

LOREN MURRAY PEARSON

Appellant

and

(CANADA) ATTORNEY GENERAL

Respondent

Heard at Ottawa, Ontario, on September 19, 2017.

Judgment delivered at Ottawa, Ontario, on September 20, 2017.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**NEAR J.A.
GLEASON J.A.**

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Loren Murray Pearson appeals a decision of Fothergill J. of the Federal Court dismissing his application for judicial review of what is alleged to be a decision of the Department of National Defence (DND) and Canadian Forces' Legal Advisor (the Legal Advisor) dated July 9, 2015. In its reasons (2016 FC 679 at paragraph 3), the Federal Court held that the letter from the Legal Advisor dated July 9, 2015 was not a decision amenable to judicial review.

[2] The factual background is detailed in the Federal Court decision. It is sufficient to note that on September 21, 2012, the Director, Military Careers Administration, determined that the appellant should be released from the Canadian Armed Forces for sexual misconduct.

[3] On October 26, 2012, the appellant was released and ceased his active military service (Federal Court reasons at para. 6). However, the release was only officially approved by the Governor in Council on May 23, 2013. The appellant was paid his regular Force pay until October 26, 2012 but believes he should have been paid and had benefit and pension coverage until May 23, 2013.

[4] On January 27, 2015, his legal counsel wrote to the Legal Advisor stating that unless the matter was settled, the appellant intended to file an action to seek compensation for his 'regular Force pay' between October 26, 2012 and May 23, 2013, as well as an increase of his pension and retirement benefits as a result of this additional seven-month service, together with applicable interest and legal costs.

[5] The letter dated July 9, 2015 (Appeal Book, Tab 4, at p. 30) that is the subject of the application for judicial review is a reply to this demand. It is marked "without prejudice" and provides the Crown's position in relation to the appellant's claim. It indicates that "according to paragraph 208.31 of the QR&O, a Canadian Forces member who does not provide military service may have his pay ceased ... The date on which the Governor General approved the release does not modify the date upon which military services has ceased to be provided."

[6] The signatory adds that “there is no liability on the part of the Crown and no compensation can therefore be offered”. The letter concludes by stating that this consideration of the claim is made “strictly without prejudice to Her Majesty’s right to raise any Defence available to Her at law, and is not to be taken as a waiver of any available limitation period that may apply”.

[7] The applicant, who now represents himself, submits that the Federal Court erred in finding that this was not a decision amenable to judicial review. He submits that the Legal Advisor is authorized to negotiate settlements in respect of his claim against DND and that the refusal to do so affects his rights to a timely settlement of his claim in accordance with DND and Treasury Board directives. I cannot agree.

[8] The directives to which the appellant referred to are policies, not law, and they do not provide the appellant a legal right to the settlement of his claim. Even if the appellant is correct in asserting that he was entitled to the monies he claims, he has no legal right to require Her Majesty to settle his claim. Because the policies in issue do not provide legal rights, a decision taken under them is not amenable to judicial review: *Air Canada v. Toronto Port Authority*, 2011 FCA 347 at para. 29, [2013] 3 F.C.R. 605.

[9] While I appreciate that the appellant may well think it would be more expedient if he were able to bring the issue of his entitlement to the monies he seeks before the courts by way of a judicial review application as opposed to an action, that does not entitle him to an administrative law remedy when there has been no reviewable decision made.

[10] There was some discussion at the hearing about whether the Federal Court should have converted the application of the appellant into an action. This issue is not raised in the Notice of Appeal and we agree with the Attorney General that at the hearing before the Federal Court, the Court was not asked to do so.

[11] I would therefore dismiss this appeal with costs fixed at an amount of \$1000.00 (all inclusive).

"Johanne Gauthier"

J.A.

"I agree
D.G. Near J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE FOTHERGILL
DATED JUNE 20, 2016, DOCKET NO. T-1342-15**

DOCKET: A-263-16

STYLE OF CAUSE: LOREN MURRAY PEARSON v.
(CANADA) ATTORNEY
GENERAL

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2017

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: NEAR J.A.
GLEASON J.A.

DATED: SEPTEMBER 20, 2017

APPEARANCES:

Loren Murray Pearson FOR THE APPELLANT
ON HIS OWN BEHALF

Abigail Martinez FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
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