

Date: 20090619

Docket: A-202-09

Citation: 2009 FCA 211

Present: PELLETIER J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

J.P.

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 19, 2009.

REASONS FOR ORDER BY:

PELLETIER J.A.

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REASONS FOR ORDER

PELLETIER J.A.

[1] The appellant Attorney General of Canada (the Attorney General) brings this motion for:

- 1- a stay of the order under appeal, that is, the decision of Mosley J. of the Federal Court dated April 24, 2009, dealing with the interpretation of certain provisions of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, dealing with parole eligibility for a young offender serving a period of incarceration in an adult correction institution.
- 2- an order of confidentiality with respect to certain materials to be filed in connection with the appeal, the need for confidentiality arising from the fact that at the time of

the events giving rise to the proceedings under the *Youth Criminal Justice Act*, the appellant was under the age of eighteen years.

3- an order settling the contents of the appeal book.

[2] For the most part, the second and third heads of relief are not contentious and will be granted. The issue is whether this Court should order a stay of the order under appeal.

[3] The issue in the appeal is whether, for purposes of calculating the parole eligibility of a person sentenced under the *Youth Criminal Justice Act*, whose period of incarceration is served in an adult correctional institution, the base period is the entire period of the sentence or simply the period of incarceration, The National Parole Board decided that the base period was the entire period of the sentence while the Federal Court decided that the base period was the period of incarceration, The Attorney General appeals from the Federal Court's decision and asks that the execution of the Federal Court's order be stayed pending the disposition of the appeal.

[4] The conditions for granting a stay are the same as those for the granting of an interlocutory injunction: see *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, at para. 29. Those conditions are the existence of a serious question, irreparable harm, not compensable in damages, should the stay (injunction) not be granted, and the balance of convenience: see *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at para. 35.

[5] In this case, it is conceded that there exists a serious question to be decided, The real question is whether the public interest, as represented by the Attorney General, will suffer irreparable harm, if the stay is not granted, As the respondent has pointed out, the Attorney General has not submitted any affidavit evidence in support of its arguments on irreparable harm, While arguing that Mosley J.'s decision will have an effect on others whose situation is similar to the respondent's, we have no idea how many cases might be involved, While the harm to the public interest is not a function of the number of cases which might be affected by the decision, the limited application of decision may undermine a claim of irreparable harm.

[6] The Attorney General relies on the notion that an interference with the administration or execution of a public duty is prima facie evidence of irreparable harm: see para. 23 of the Attorney General's Memorandum of Fact and Law, This is not such a case, This is a dispute about how the public duty is to be performed, The National Parole Board, who is charged with the duty, has one view, The Federal Court has another which, until it is set aside, has the force of law, It is difficult to see how the interpretation of a statutory disposition dealing with the calculation of parole eligibility, without more, rises to the level of irreparable harm.

[7] As noted in *Harkat v. Canada (Minister of Citizenship and Immigration)* 2006 FCA 215, [2007] 1 F.C.R. 370, at paragraph 16, the issue of the public interest can also be considered under the heading of balance of convenience, The Attorney General's argument on this point appears to be that since the respondent will suffer no inconvenience unless he applies for full parole, therefore the balance of convenience favours the Crown, In other words, the respondent is not inconvenienced

unless he seeks to exercise the rights which the Federal Court's judgment would give him, It is difficult to see why this should tilt the balance of convenience in the Crown's favour.

[8] I can see no basis for staying the execution of the order made by Mosley J. pending the disposition of the Attorney General's appeal. The motion for a stay of execution is dismissed.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-202-09

STYLE OF CAUSE: *Attorney General of Canada and J.P.*

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: PELLETIER J.A.

DATED: June 19, 2009

WRITTEN REPRESENTATIONS BY:

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