

Federal Court



Cour fédérale

Date: 20160825

Docket: T-2016-15

Citation: 2016 FC 965

Ottawa, Ontario, August 25, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

MITCHEL TIMOTHY NOME

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] **UPON** this motion from the respondent for an order allowing the Application and quashing the decision of the Independent Chairperson, sitting at Millhaven Institution, dated October 27, 2015, convicting the applicant of the disciplinary offence in subsection 400(f) of the *Corrections and Conditional Release Act*;

[2] **AND UPON** considering that this Order resolves the Application;

[3] **AND CONSIDERING** that the applicant asserts that he wishes to amend his Notice of Application to raise other issues;

[4] **AND NOTING** that a similar assertion was made before Prothonotary Mireille Tabib during a hearing on June 29, 2016, and that she determined in her Order dated June 30, 2016, that the applicant would have adequate time to move to amend the Notice of Application if the present motion were heard as planned on August 24, 2016;

[5] **AND CONSIDERING** that no steps have been taken to amend the Notice of Application, and I agree with Prothonotary Tabib that the time given to seek such amendments was adequate;

[6] **AND UPON** hearing (i) the applicant's allegation that all of his property required to prepare for this hearing and make adequate representations was seized by the Correctional Service of Canada (CSC) in July 2016; and (ii) the respondent's assertion that the applicant's allegation is untrue;

[7] **AND UPON** noting that there is no evidence to support any finding of wrongdoing by the CSC other than the applicant's unsworn submissions to the Court;

[8] **AND CONSIDERING** that, if the applicant has indeed been improperly blocked from making his case, he may use the grievance process that is available to him for such complaints;

[9] **AND UPON** considering the respondent's submissions with respect to the third clause of the *ex parte* Order of Justice Mactavish, dated June 23, 2016, issued in connection with this Application and prohibiting the CSC from taking any steps to destroy any property belonging to the applicant pending further order of this Court;

[10] **AND UPON** considering the applicant's allegation that the CSC intends to destroy his seized property, including property that is relevant to other proceedings, immediately after any lifting of said third clause;

[11] **AND CONSIDERING** that the usual prohibitions against the destruction of relevant documents and evidence will remain in place despite any lifting of said clause;

[12] **AND UPON** considering the parties' submissions on costs (including the applicant's contentious allegation that he has been denied access to documents necessary to support his submissions), and the Court's discretion over the amount and allocation of costs and the determination of by whom they are paid;

[13] **AND UPON** considering that the applicant's additional requests regarding the return of his seized coffee maker and the payment of back pay are beyond the scope of this proceeding;

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application is allowed and the decision of the Independent Chairperson is quashed;
2. The Correctional Service of Canada is directed to make file corrections with respect to the conviction in the applicant's Correctional Service of Canada records;
3. The third clause of the order of Justice Mactavish dated June 23, 2016, prohibiting the Correctional Service of Canada from taking any steps to destroy any property belonging to the applicant pending further order of this Court, is lifted, though the usual prohibitions against the destruction of relevant documents and evidence remain in place;
4. The applicant is awarded costs in the amount of \$100.00.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2016-15

STYLE OF CAUSE: MITCHEL TIMOTHY NOME v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO BY TELECONFERENCE WITH
AGASSIZ, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 24, 2016

JUDGMENT AND REASONS: LOCKE J.

DATED: AUGUST 25, 2016

APPEARANCES:

Mr. Mitchell Timothy Nome

FOR THE APPLICANT
(SELF-REPRESENTED)

Mr. Thomas Finlay

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT