Federal Court  Cour fédérale

Date: 20091218

Docket: T-458-09

Citation: 2009 FC 1293

Ottawa, Ontario, December 18, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BENOIT COLLIN

Applicant

and

LECLERC INSTITUTION

Respondent

REASONS FOR ORDER AND ORDER

[1] As we might expect, prison life is highly regimented. Inmates are subject to the *Corrections and Conditional Release Act*, the *Corrections and Conditional Release Regulations*, and a number of Commissioner's directives.

[2] One of the Commissioner of Correctional Service's directives is Directive No. 730 entitled *Inmate Program Assignment and Payments*. The purpose of this directive is to encourage

inmates to participate in programs identified in their correctional plans that allow them to receive some remuneration for work accomplished, which is normally based on daily rates from $5.25 to $6.90.

[3] Mr. Collin was registered in this program and started working as a chapel cleaner at the Leclerc Institution in 2003.

[4] In 2008, along with a number of other inmates, he filed a grievance against the secular use of the chapel on Valentine's Day. Some weeks later, Mr. Collin was suspended from his cleaning duties. Section 38 of the Directive states:

> The program supervisor may suspend an inmate who leaves a program assignment without authorization or whose actions demonstrate a refusal to participate in a program assignment. This includes any negative behaviour or action that necessitates the removal of the inmate from the program assignment.

[5] The following reason was given for his suspension:

> [TRANSLATION]
> [Mr. Collin] challenges the chaplain's authority (and interferes with the management of activities at the chapel.[)]
>
> There were a number of meetings with Mr. Collin to reframe his role at the chapel. Unfortunately, these meetings resulted in interminable arguments, and his behaviour in recent weeks does not show any improvement in his relationship with the chaplains or instructions.

[6] Mr. Collin was offered other positions, including a position at the bakery, but he refused all of them. He became voluntarily unemployed for purposes of the Directive.

[7] Mr. Collin disputed his suspension but was unsuccessful. He availed himself of the grievance process, a three-level process in which each level is a hearing *de novo*. He failed at each level and seeks judicial review of the third-level decision.

[8] At the beginning of the hearing, the respondent brought a motion to dismiss the application on the ground that it is moot because Mr. Collin has been released from prison, and reinstating him in his duties is no longer an option. I refused because there seems to be a live issue between the parties and because Mr. Collin is claiming damages. As noted in the Federal Court of Appeal decision in *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.J. 287, an application for judicial review must be commenced before bringing an action in damages arising from a decision by a federal board or tribunal.

[9] Mr. Collin, who is representing himself, but who has an impressive knowledge not only of the various rules that govern prison life but also of the *Federal Courts Act*, immediately requested that his application for judicial review be converted to an action under section 18.4 of the Act. I refused on the grounds that the request was made at the last minute and that it is unnecessary for the applicant to commence an action to determine whether the third-level decision should be set aside.

ISSUES FOR REVIEW

[10] Although Mr. Collin summarized much of his prison life, which had nothing to do with his suspension or the three grievance levels, the following issues can be extracted:

a. Was his suspension a reprisal for the complaint that he and the others filed about the secular use of the chapel on Valentine's Day in 2008? If so, the decision would be a breach of section 91 which states that "Every offender shall have complete access to the offender grievance procedure without negative consequences."
b. Was one of the decision-makers in a conflict of interest because he was also the decision-maker in the Valentine's Day incident?
c. Was the third-level hearing procedurally unfair because he was accused of intimidation, which took him by surprise and gave him no opportunity to respond?
d. Were the findings of fact unreasonable?
e. Were his rights under the the *Charter of Rights and Freedoms* infringed?

STANDARD OF JUDICIAL REVIEW

[11] The standard of review with respect to fairness and conflict of interest is correctness. The Court does not have to show deference. However, the Court will not change the decision with respect to the findings of fact unless they are unreasonable (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

REPRISAL

[12] Although one might suspect that it was not a coincidence that Mr. Collin was suspended only a few weeks after his complaint about the Valentine's Day incident, there is nothing in the

record that justifies Mr. Collin's suspicions. He had already been suspended once, and although he was suspended from his duties in the chapel, he was offered other positions, such as in the bakery, that he refused.

[13] In *Canada (Department of Employment and Citizenship) v. Satiacum*, [1989] F.C.J. No. 505 (F.C.A.), Mr. Justice MacGuigan said:

> The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v. Great Western Railway Co*. (1930), 47 T.L.R. 39 at 45, 144 L.T. 194 at 202 (H.L.):
>
> - The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference.

CONFLICT OF INTEREST

[14] The record shows that, objectively, regardless of what Mr. Collin thinks, the Valentine's Day incident was the subject of a separate grievance, which was ultimately denied. The fact that a Correctional Service employee was involved in that process did not prevent her from participating in Mr. Collin's grievances.

INTIMIDATION

[15] Mr. Collin notes that the term "intimidation" is a technical expression and that, had he been intimidated by anyone, a report would have been written to that effect, which is not the case. The respondent says that, in context, the language was only a dramatic way to identify

Mr. Collin's negative behaviour, which is the term used in section 38 of Directive No. 730. The record supports the respondent's position.

FINDINGS OF FACT

[16] Mr. Collin denies that he refused to participate in a reasonable program assignment or that he exhibited negative behaviour. It is true there were personality conflicts, but they arose from the chaplain's lack of confidence.

[17] He disputes the following five findings:

(a) that he increasingly disputed decisions about the use of the chapel;

(b) that he had received a number of warnings;

(c) that the officers met with him a number of times to "reframe" his tasks. He said he met with them only once, on March 3, 2008;

(d) that, despite the alleged meetings, his behaviour did not change;

(e) that he continued to interfere with the management of activities at the chapel.

[18] Mr. Collin's argument is very convoluted but can be summarized as differences of opinion with respect to the contents, the time and the importance of the various discussions and meetings. The third-level decision-maker did not act in a capricious manner by preferring the testimony of the staff at the Leclerc Institution or by denying Mr. Collin's grievance.

[19] In *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, Mr. Justice Iacobucci noted at paragraph 80 that the reviewer on a judicial review must resist the temptation to "find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's" and called for restraint. In the circumstances, the application for judicial review must be dismissed.

CHARTER

[20] Mr. Collin's freedom was restricted because of his criminal activities. He did not have the right to "pursue the gaining of a livelihood" (6(2)(*b*)) in prison. The decisions against him did not result from criminal or penal matters under section 11. This really was an administrative issue. His treatment was not cruel or unusual within the meaning of section 12, and he is not entitled to a remedy, including damages, under section 24. He did not suffer any damages because he himself decided to refuse a transfer to the bakery. Although he subsequently asked to work in the library and was not selected, that decision is not before this Court.

ORDER

FOR THE ABOVE-NOTED REASONS;

THE COURT ORDERS that the application is dismissed with costs.

"Sean Harrington"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-458-09
STYLE OF CAUSE:	BENOIT COLLIN v. LECLERC INSTITUTION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 4, 2009
REASONS FOR ORDER AND ORDER BY:	MR. JUSTICE HARRINGTON
DATED:	December 18, 2009

APPEARANCES:

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Eric Lafrenière	FOR THE RESPONDENT

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