Federal Court  Cour fédérale

Date: 20180522

Docket: T-788-17

Citation: 2018 FC 529

Ottawa, Ontario, May 22, 2018

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

WILLIAM A. JOHNSON

Applicant

and

THE COMMISSIONER OF CORRECTIONS, as represented by Larry Motiuk, Assistant Commissioner, Policy

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision of the Assistant Commissioner, Policy [the Commissioner] of Correctional Service Canada [CSC], made on December 8, 2016. In that decision, the Chairperson denied the Applicant's grievance of two decisions by CSC: 1) its refusal to issue cheques on behalf of federal inmates to pay Federal Court filing fees, and 2)

CSC's requirement that inmates pay the $7.00 fee charged by banks for money orders which, instead of cheques must now be used by inmates to pay Federal Court filing fees.

[2] The Applicant seeks a writ of *certiorari* quashing the decision of the Commissioner; a declaration that the decision to restrict access to cheques or money orders is in violation of paragraphs 4(c) and 4(d) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*] and section 7 of the *Canadian Charter of Rights and Freedoms* [*Charter*]; and a writ of *mandamus* to allow the Applicant to obtain a cheque or money order as needed as previously allowed.

II. Facts

[3] In December 2013, the Applicant, a 58-year-old federal offender serving an indeterminate sentence as a Dangerous Offender at Warkworth Institution [WI] made a request to CSC for either a certified cheque or a money order to pay certain filing fees to the Federal Court.

[4] A few days later, the Applicant's request was denied with a note stating, "we can no longer provide certified cheque or money orders."

[5] In July 2014, the Applicant filed a complaint against CSC's denial of his cheque/money order request [the First Complaint]. In the grievance, the Applicant noted that CSC changed its cheque/money order practices without consultation with inmates, constituting an alleged violation of section 74 of the *CCRA*. In fact, section 74 does not speak of "consultation" but recognizes a duty to allow inmates "to contribute to decisions" affecting inmates.

[6] Section 57.1 of the *Federal Courts Act*, RSC 1985, c F-7 requires filing fees in respect of Federal Court proceedings be paid to the Receiver General for Canada [Receiver General]. The Applicant's grievance stemmed from the fact that money orders are now the only option available to inmates (who cannot attend at Court offices and use cash) to pay Federal Court filing fees.

[7] It is not disputed that banks currently charge a $7.00 fee for money orders. The Applicant says that the $7.00 bank fee for money orders is significant for inmates because their maximum daily earnings are only $5.25. The Applicant requested that CSC "continue with the simple inexpensive and expedient cheque process as before" and reimburse him for the $7.00 bank fee paid for his money order. The previous process involved CSC issuing hand-written cheques.

[8] In August 2014, the Chief of Finance of CSC refused the Applicant's First Complaint [the First Refusal]:

> In December we did not have the ability to purchase a money order from either the bank or the post office. We have since changed our policy and we are able to use our petty cash to purchase money orders. As of December [2013] we also no longer issued hand-written/DBA cheques. In the past we used these cheques to make payments to the Receiver General (federal court). Because we cannot issue these types of cheques our only option is regular cheques through Public works which would mean we have to set up the Receiver General as a supplier. It is not possible for us to set up the Receiver General as a supplier; it would be like the Receiver General paying the Receiver General. The system will not allow it. Any and all requests for payments to the federal court must be done via a money order and there is a $7.00 fee unfortunately. My apologies but we cannot take the correction action you are requesting. We cannot prepare a cheque for this type of payment and we cannot reimburse your $7.00.

[9] In response to the First Refusal, the Applicant filed a grievance to the Warden [the First Level Grievance]:

> The response does not correct the unfair and extortion of inmate money. CSC reduces our wages and holds our money hostage by having full control over inmate funds. Given CSC takes responsibility for inmate funds, either provide a cheque as requested or provide inmate's with their own personal bank-accounts to avoid this present extortion of inmate money. Inmates are the most vulnerable and poorest people in wages and confinement.

[10] The Warden refused the First Level Grievance:

> The Receiver General cannot be set up as a supplier, therefore, any payments to the court must be done via a money order. The fee for a money order is $7.00 which is the responsibility of the offender t pay via a 532 form. CSC no longer issues handwritten/DBA cheques, therefore, money orders must be utilized which incur a fee. Inmates cannot set up their own personal bank accounts to write cheques to pay for these items.
>
> Based on all available information, your grievance is denied.

[11] On October 10, 2014, the Applicant filed a final grievance [the Final Level Grievance], alleging that:

> The response by the Warden fails to recognize the law cited and the arguments provided on CSC's flip flop responses.
>
> Submissions repeated for response and corrective actions requested.
>
> Additional issue: the Warden violated CD policy on time frames and failed to provide any extension notice. Ongoing repeated violations sanctioned by NHQ by refusing to take corrective actions to stop the abuse of power at all levels.
>
> To suggest CSC can pay the Receiver General money owed by inmates without any fee by money order and/or all other purchases while deciding to extort extra money from any inmate that attempts funds to access the courts to expose CSC's unlawful actions is a

> form of intimidation (bully) and obstruction that services only to discourage inmates wanting to obtain justice with the courts.

[12] In December 2014, the Applicant filed supplementary submissions:

> Attached is a copy of my Inmate's Request dated 2014-11-12 and my 532 (Inmate Request to Encumber / Disburse Funds) dated 2014-11-12. This Money Order request was for family assistance.
>
> First I was told no Money Orders are available. Only regular cheques are available.
>
> Then I was told no Money Orders are available. Only regular cheques.
>
> Now I am being told I can't obtain Money Orders. I can only receive regular cheques. Money Orders are reserved strictly for Attorney General use only.
>
> This further shows violations of law to extort money from Inmate's attempting to gain access to the Federal Courts to obtain Justice.

[13] The Final Level Grievance was dismissed. The Applicant seeks judicial review of this dismissal.

III. Decision

[14] The decision dismissing the Final Level Grievance was made December 8, 2016, and stated:

> In your complaint and initial grievance, you indicated that you had to spend an extra $7.00 when paying for Court filing fees. You claimed that your initial request for a certified cheque or money order was denied but that you were later informed that you could request a money order from the bank; however, there was a $7.00 surcharge for doing so. You allege that this was an obstruction of justice as $7.00 is more than offenders make in one (1) day. You also recalled that, prior to this, cheques or money orders could be written from the Institution, which did not then have a surcharge.

In the complaint and initial grievance responses, it was explained that the Receiver General of Canada no longer accepted Departmental Bank Account cheques, leaving the Institution only able to issue cheques through Public Works; which would mean that the Receiver General would be paying the Receiver General. As such, a new method for processing fees was required. It was determined that a money order was an acceptable method of payment; however, there was a $7.00 fee imposed by the bank.

In your final submission, you maintain your position that the fee is unreasonable and that offenders should not be required to pay an extra $7.00 for bank fees for a money order. You also late submitted an addendum in which you grieved that when you later tried to send a money order to family, you were allowed to send a cheque instead.

In your final grievance submission, you argue that charging offenders for a money order essentially restricts offender's access to the legal system. […]

Please note that whether you are an offender or an individual in the community, you would be required to pay for a money order. As an offender, paying for a money order is not limiting or restricting your access to the legal system, as you have to follow the same process as anyone else.

[…] the [Regulations] guarantee reasonable access to legal counsel and legal reading materials and there is nothing to indicate that fees associated with the cost of your legal proceedings must be subsidized by the Service.

Furthermore, Commissioner's Directive (CD) 860, *Offender's Money*, paragraph 24, indicates that offenders are responsible for additional processing fees on money from an outside source, and in this case, the fee is imposed by the bank to process the money order:

> Inmates will be responsible for additional processing fees on any money from outside sources.

As it is reasonable that the fee for the money order you require be paid by you and not the Service, and there is no indication that this creates an undue hardship on your or prevents you from accessing the legal system, this portion of your grievance is **denied.**

With regard to the concern that you raised in your addendum that you were able to send a cheque to your family, rather than a money order, as explained above, cheques for court purposes are not

> permitted as it will result in the Receiver General paying the Receiver General. This is different from you sending a cheque to your family. As an explanation of the difference in circumstance has not been explained to you, this portion of your grievance requires **no further action.**
>
> [Emphasis in original]

IV. Issues

[15] In my view, the Applicant raises the following issues:

1) In refusing to provide a cheque or free money order as once provided, did CSC contravene paragraphs 4(c) and (d) of *CCRA*, and or section 7 of the *Charter*?

2) In denying the Applicant's Complaint, First Grievance and Final Grievance, has CSC denied the Applicant's right to a cheque or money order, failed to address the Applicant's statutory violations, and acted in a perverse or capricious manner or without regard or proper regard for the fact that there is nothing in law that prevents the Receiver General from issuing a cheque to the Receiver General; the result being the CSC's conclusions are without rational or based on legal justification?

3) Is CSC's refusal to address violations raised against subsection 74(1) of the *CCRA* a further violation of the Applicant's rights?

[16] The underlying issue for determination is whether the Commissioner's decision to refuse the use of cheques to pay Federal Court filing fees is reasonable. An additional issue concerns the delay of over two years and one month between the filing of the Final Level Grievance and the decision dismissing the Final Level Grievance, which the Applicant submits is a matter of procedural unfairness.

V. Standard of Review

[17] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." Reasonableness is the standard of review for findings of mixed fact and law made in the context of the CSC offender grievance process and such decisions are owed a high degree of deference by the Court due to CSC's expertise in inmate and institutional management: *Leone v Canada (Attorney General)*, 2018 FC 54 [*Leone*] per Manson J at para 19.

[18] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[19] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses'*].

[20] Questions of procedural fairness, including issues of procedural fairness in the context of the CSC offender grievance process are reviewed on the correctness standard: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; and *Leone* at para 19.

[21] In *Dunsmuir* at para 50, the Supreme Court of Canada explained what is required of a court reviewing on the correctness standard of review:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VI. Analysis

[22] As a preliminary issue, there was a dispute as to whether the Commissioner's decision was defective in that it in addition, should have dealt with the decision not to issue money orders in respect of payments to recipients other than the Receiver General, for example, payments of family assistance. While there was evidence to that effect in the record, this issue was not squarely raised by the Applicant in his final and supplementary submissions.

[23] In my respectful view, the key to the issue before me is the fact that the Receiver General has decided that federal institutions may not issue cheques payable by the Receiver General to the Receiver General. This is not a decision, nor policy of the Commissioner. It is a decision of the Receiver General.

[24] This leads me to conclude that the Commissioner acted reasonably in terminating the previous practice of issuing cheques for Federal Court filing fees. Indeed, it appears to be the only reasonable response the Commissioner could have made to the change in practice apparently mandated by the Receiver General. The downstream consequences complained of by the Applicant are not within the control of the Commissioner, nor are they of the Commissioner's making. I am unable to see how the Court may order judicial review of a decision where the decision-maker before the Court did not make the decision in issue to be reviewed.

[25] I emphasize that the Applicant is not challenging the Receiver General's change of policy. The Receiver General is not a party to these proceedings.

[26] I also note that the Applicant is still able to access "regular cheques" - which do not involve any additional surcharges - for transactions not involving the Receiver General, such as for providing family assistance. In addition, the Applicant does not challenge section 57.1 of the *Federal Courts Act*, which states that all fees payable in respect of proceedings in the Federal Court shall be paid to the Receiver General.

[27] I recognize that the *CSC* is guided by the principle that offenders have, among other things, certain rights including those set out in subsection 4(d), which are relied upon by the Applicant:

Principles that guide Service	**Principes de fonctionnement**
4 The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:	4 Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants:

[…]	[…]
(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;	d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;

[28] I am not persuaded that the Commissioner offends subsection 4(d) of the *CCRA* by requiring the Applicant to pay a fee required by a bank to issue a money order. All members of society when seeking bank services must pay relevant bank fees; the Applicant is being treated the same way as any other member of society in being required to pay the $7.00 bank fee. The fact that the Applicant cannot attend a Court registry office and pay the fee with cash is a consequence of his sentence of imprisonment.

[29] I recognize that a $7.00 bank fee is more significant to an inmate earning $5.25 a day, but restricted earning power is also a consequence of a sentence of imprisonment.

[30] In this connection, it is also relevant, as the Commissioner's decision states, that the *Commissioner's Directive 860: Offender's Money* provides, "inmates will be responsible for additional processing fees on any money from outside sources." In my view and with respect, this directive justifies and confirms the Commissioner's decision to require reimbursement of the bank's fee for the service it provides in issuing a money order. The decision is in accordance with the Directive. Also, as noted by the Respondent, there is no requirement in the *Corrections and Conditional Release Regulations*, SOR/92-620 that the Respondent cover fees associated with or subsidize an inmate's legal proceedings.

[31] Lastly, the Applicant asserts that the Commissioner breached the duty "to provide inmates with the opportunity to contribute to decisions" affecting inmates as set out in section 74 of the *CCRA*:

Inmate input into decisions	**Participation aux decisions**
74 The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters.	74 Le Service doit permettre aux détenus de participer à ses décisions concernant tout ou partie de la population carcérale, sauf pour les questions de sécurité.

[32] There is no merit to this submission. As already noted, the relevant decisions in this case were not made by the Commissioner; they were made as a consequence of policies of the Receiver General. Therefore section 74 of the *CCRA* does not apply.

[33] The foregoing deal with the reasonableness of the decisions in this case.

[34] In terms of delay, there was a delay of over two years and one month between the filing of the Final Level Grievance and the Commissioner's decision. The Applicant was periodically informed of the status of the matter at the outset, although not in the ten months leading up to the Commissioner's decision.

[35] A decision respecting excessive delay as breach of procedural fairness would require a factual analysis; the Applicant provided no evidence except the time taken to respond to his case. I am not persuaded delay in this case breached a duty of procedural fairness owed to the

Applicant on a correctness standard, or that it was an abuse of power, or that it was unreasonable on the record before the Court.

[36] The Applicant made a number of other unsubstantiated or unmeritorious allegations:

- the purpose of the change is to "punish and discourage the [A]pplicant from seeking justice against the [R]espondent's unlawful actions";
- the change violated section 7 of the *Charter*;
- showing his convictions on the cover sheet of material submitted to the Commissioner served no purpose but bias against him;
- in the alternative, a reasonable apprehension of bias was evidenced by CSC decision-makers selectively disregarding certain materials which, in the Applicant's view, prove that CSC is acting without any legal justification;
- the change constitutes an obstruction of justice contrary to subsection 139(2) of the *Criminal Code*, RSC 1985, c C-46;
- the change is unfair and constitutes extortion of inmate money;
- CSC engaged in a form of intimidation (bully) and obstruction of access to justice;
- CSC extorts money from inmates attempting to gain access to the Federal Courts to obtain justice.

[37] Finally, the Applicant placed before the Court a fairly extensive affidavit in support of his application. In the hearing I advised the Applicant, who was self-represented, that such evidence was not generally admissible subject to limited exceptions, and that judicial review generally proceeds on the record that was before the decision-maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19. The hearing proceeded on the basis of the Certified Tribunal Record only.

VII. Conclusion

[38] In my view, taken as an organic whole, the decision of the Commissioner falls within the range of acceptable and possible outcomes that are defensible both on the law and on the record, as required by the Supreme Court of Canada in *Dunsmuir*. There is no merit in the allegation of procedural unfairness, nor the other submissions made by the Applicant. While the Applicant requested $500 in costs, the Respondent did not seek costs. Therefore, this application for judicial review will be dismissed without costs.

JUDGMENT in T-788-17

THIS COURT'S JUDGMENT is that this application is dismissed without costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-788-17
STYLE OF CAUSE:	WILLIAM A. JOHNSON v THE COMMISSIONER OF CORRECTIONS as represented by Larry Motiuk, Assistant Commissioner, Policy
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 9, 2018
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DATED:	MAY 22, 2018

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