Date: 20060511

Docket: T-1583-05

Citation: 2006 FC 593

Ottawa, Ontario, May 11, 2006

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

JEAN RICHER

Applicant

and

THE CORRECTIONAL SERVICE OF CANADA AND ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an appeal of the decision of Prothonotary Aronovitch dated December 21, 2005.

[2] The applicant brought an application for judicial review to quash the decision of the Commissioner of the Correctional Service of Canada dated July 22, 2005.

[3] Attached to the application was a Rule 317 request. The respondent raised objections to the Rule 317 request on October 6, 2005.

[4] A certified copy of record was prepared by the Correctional Service of Canada and provided to the applicant on October 11, 2005. On October 14, 2005, the applicant served a motion record dated October 12, 2005, requesting compliance of the respondent with Rule 317.

[5] On December 21, 2005, Prothonotary Aronovitch granted the motion in part and ordered that having regard to the applicant's circumstances, the respondent was to provide the applicant with a copy of the CRTC policy within 20 days of the order.

[6] The respondent complied with the order and the applicant was provided with a copy of the CRTC policy on January 5, 2006.

[7] On March 28, 2006, the respondent filed and served a motion to appeal Prothonotary Aronovitch's order.

ISSUE

[8] Should the order of Prothonotary Aronovitch dated December 21, 2005 be set aside?

[9] The standard of review on appeal of a discretionary decision of a prothonotary has been established by *Canada v. Aqua-Gem Investments Ltd.*, [1993] 149 N.R. 273 (F.C.A.), and *Z.I. Pompey Industrie v. ECU-Line N.V.*, [2003] S.C.J. No. 23 (QL). Justice Michel Bastarache stated at paragraph 18:

> Discretionary orders of prothonotaries ought to be disturbed by a motions judge only where (a) they are clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of facts, or (b) in making them, the prothonotary

> improperly exercised his or her discretion on a question vital to the final issue of the case.

[10] The applicant alleges in his motion that the respondent has failed to provide all the materials which were before the decision maker when the decision was made regarding the applicant's third level grievance.

[11] The applicant also alleges that there were additional materials before the decision maker of which he was not provided a copy including: i) Prior third level grievance decisions; and ii) CRTC policy.

[12] The respondent suggests that the reference to the prior third level grievance decisions at page 11 of the certified copy of record "has been misinterpreted and that the statement serves not only to clarify the role and involvement of both Mr. Price and the Security Branch, but also to explain the rationale behind such policy decisions. This explanation is a result of the applicant's request that Mr. Price not be involved in determining the grievance as it arises in part from his policy determination dated April 1, 2005."

[13] The respondent also suggests that this reference is to the applicant's own prior third level grievance decisions.

[14] Obviously, Rule 317 provides access to documents which are not in the applicant's possession. The respondent suggests that there is no obligation to provide documents in the file for which copies could already be in possession of the applicant.

[15] Regarding the CRTC policy, in my view, the documents were already provided and this issue is now moot.

[16] In reply, the applicant has filed written representations supported by an affidavit which mentioned that the applicant discussed the decision which is the subject of this judicial review with the decision maker Mr. Matthew Campbell. The applicant elaborates on the content of those discussions, questions asked to the decision maker, responses, discussions of the decision maker with other employees at the Department of Justice, recommendations and responses by third parties.

[17] In my view, it is clear that the discussions by the applicant with the decision maker are improper given that they were made for the purpose of discussing and looking at what motivated the decision.

[18] The respondent also suggests that it was also improper to suggest as a remedy that the respondent be ordered to provide an affidavit from the decision maker as to what he meant by the particular wording of his decision.

[19] In my view, this action by the applicant when the issues are before the courts, is totally inappropriate and vitiates the whole process.

[20] After reviewing the whole file, I have no hesitation to conclude that the applicant has failed to demonstrate that Prothonotary Aronovitch's decision is clearly wrong or that the question raised is vital to the final issue in this case.

[21] I also add that the applicant, by his own means, vitiated the process by acting improperly.

[22] For all those reasons, this appeal of Prothonotary Aronovitch's decision is dismissed with costs in favour of the respondent.

ORDER

THIS COURT ORDERS that

The appeal of Prothonotary Aronovitch's decision be dismissed with costs in favour of the respondent.

"Pierre Blais"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1583-05
STYLE OF CAUSE:	Jean Richer v. Correctional Service of Canada and Attorney General of Canada
PLACE OF HEARING:	On the Record – 369 Motion
DATE OF HEARING:	N/A
REASONS FOR ORDER AND ORDER:	Mr. Justice Blais
DATED:	May 11, 2006

APPEARANCES:

N/A	FOR THE APPLICANT
N/A	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jean Richer	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General	FOR THE RESPONDENT