Federal Court Cour fédérale

Date: 20210812

Docket: T-36-18

Citation: 2021 FC 835

Ottawa, Ontario, August 12, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

TERRY THOMPSON

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

JUDGMENT AND REASONS

I. Background

[1] The Plaintiff (Mr. Thompson) is a federal inmate who is serving a penal sentence. He brought an action against the Defendant, Her Majesty the Queen [“HMTQ”]. His opening statement and Statement of Claim indicate that he seeks damages for $1,000,000.00.

[2] He alleges the damages were caused because of collusion between Justice Ferguson, a Judge [the "Judge"] of the New Brunswick Queen's Bench ["NBQB"] and his parole officer, Nicole McGillivary [the "Parole Officer"]. He alleges this collusion was to deny him his *habeas corpus* hearing set for April 28, 2016 in New Brunswick, by facilitating his transfer out of province on April 25, 2016, before he could have his hearing. His *habeas corpus* hearing was to determine the lawfulness of his segregation.

[3] The Statement of Claim that is filed is three hand written pages with few particulars and without a cause of action stated. At a generous reading it would appear the cause of action that is alleged is misfeasance of public office. The Statement of Claim is attached as Annex "A".

[4] Mr. Thompson represented himself at this trial. He currently is incarcerated at the Regional Psychiatric Centre in Saskatchewan. The trial proceeded virtually with counsel for the Defendant in Montreal, Quebec; the defence witness in Sydney, Nova Scotia; the Plaintiff in Saskatoon, Saskatchewan; the Registry officer in Winnipeg, Manitoba; and myself in Ottawa, Ontario.

[5] The parties agree with the basic facts regarding his transfer and the hearing before Justice Ferguson.

[6] The Plaintiff claims that Correctional Service Canada ["CSC"] did not provide him with any disclosure on why he could not go back into his previous Atlantic Institution unit. Because of there being no evidence (disclosure), he claims that the Parole Officer must have transferred

him to take away his right to a *habeas corpus* hearing. His argument is that his transfer is contrary to the *Habeas Corpus Act, 1679* (UK), 31 Cha II, c 2 [*Habeas Corpus Act UK*]. The Wikipedia entry cited (and filed) by the Plaintiff says you cannot transfer a prisoner out of the jurisdiction to evade a writ of *habeas corpus*.

[7] The Defendant's submission is that the action should be dismissed for several reasons. One being that the Parole Officer has no authority to approve a transfer, but only to recommend so could not collude with a Judge to take away his right to a *habeas corpus* hearing. The Defendant argues that the Judge is not a servant of the Crown, so the Crown cannot be liable for his actions. The *Habeas Corpus Act UK*, cited by the Plaintiff is a British act and not in force in Canada, rendering his arguments related to it of no effect. Finally, a hearing before a justice of the New Brunswick Queen's Bench did take place, albeit by telephone. But because Mr. Thompson was no longer in segregation the Judge dismissed the request for a *habeas corpus* hearing because it was moot.

II. The Law

[8] The Plaintiff relies on the *Habeas Corpus Act UK*, and the Wikipedia discussion of that act (attached as Annex "B": Exhibit "P1").

[9] Though the Plaintiff did not use the term, it would appear from his argument that misfeasance in public office is the cause of action he is alleging occurred which he claims affected his rights given in the above *Habeas Corpus Act UK*.

[10] Misfeasance in public office is an intentional tort and the elements are set out in *Odhavji Estate v Woodhouse*, 2003 SCC 69 [*Odhavji*]. The elements of misfeasance of public office are:

> First, the public officer must have engaged in **deliberate** and **unlawful** conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff.
>
> (*Odhavji* at para 23, emphasis added)

[11] The misconduct must be deliberate and unlawful and an intent to harm with the element of "bad faith" or "dishonesty" (*Odhavji* at paras 23, 25). Proof that the tortious conduct was the cause of the injuries and are compensable in law is also required (*Odhavji* at para 32).

III. Evidence

[12] The Agreed Statement of Facts is attached in Annex "B".

[13] Mr. Thompson called himself as a witness and HMTQ called Nicole McGillivary as a witness.

A. *Evidence of the Plaintiff*

[14] The joint book of documents and trial record were entered as an Exhibit P1.

[15] A summary of the Plaintiff's evidence follows:

- CSC did not provide him with full disclosure of why he could not go back to the unit he had been in. He asked for the reason when he was segregated on February 8, 2016.

Without this information he was denied procedural fairness and breaches of sections 7 and 9 of the *Charter*. As well he was denied his right to counsel contrary to section 99(2) of the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) ["*CCRA*"]. He referred to his affidavit dated of March 16, 2016 to say:

> I was denied evidience [*sic*] and information that should have been proived [*sic*] before my segation [*sic*] hearing not a description of events I was denied full disclosure as 7,9 of Charter of Rights states.

- He filed a Notice of Preliminary Motion for a *Habeas Corpus* Order in the Queen's Bench of New Brunswick on March 6, 2016 (there is some confusion on the date but nothing turns on it whether it was February or March);
- He rebutted his previous voluntary transfer request to Donnacona Institution, dated March 9, 2016, because Atlantic Institution had not provided him with:

  > …any evidence or evidence that my safety is in jeopardy. … My safety is not in jeopardy there is no need for transfer … Atlantic has not yet provide me with any disclosure on any events.

- He was denied access to the Court by CSC;
- He was scheduled a hearing for April 15, 2016 at 9:30 am for Court at NBQB for preliminary issue and then scheduled for April 28, 2016, but then instead he was sent to Donnacona on April 28, 2016;
- He says that approval of the involuntary transfer is illegal because of the *Habeas Corpus Act UK* and his previous voluntary transfer not approved;
- There was no reason to transfer him as he wanted to go back to the unit he was before and with no reason why he could not go back (no disclosure);
- He should be able to conduct the *habeas corpus* hearing before Justice Ferguson of the NBQB on May 5, 2016 even though he was in a Quebec institution;

- The court transcript said the adjournment was to let CSC determine in January if he was going to be granted his voluntary transfer to Donnacona. Then in May, during the call, he said to the Judge he was being deprived his right to a hearing because the Judge had no jurisdiction now he was in Quebec;
- CSC made the transfer to get him out of the province so he could not have his *habeas corpus* hearing;
- CSC knew about the hearing and should have accommodated it like they did for this hearing but instead they "shipped him out";
- He read passages from the Wikipedia page regarding the *Habeas Corpus Act UK* as evidence of what he was entitled to.

[16] The Crown chose not to cross-examine the Plaintiff.

B. *Evidence of the Defendant*

[17] The Defendant called Nicole McGillivary of Sydney, Nova Scotia as their witness. A summary of her evidence follows:

- She had been with CSC for 15 years and has been a parole officer for 13 years. She went to the Atlantic Institution in 2008;
- She was Mr. Thompson's parole officer a number of years previous to her leaving the Atlantic Institution. She thinks about 2 or 3 years;
- Evidence of the various CSC documents in Exhibit P1 were explained as was her role in the creation of the documents;

- She testified that an inmate has the option to write a transfer request voluntarily at any time of their choosing. It does not mean that CSC will support the transfer but they have a legal right to apply;
- She said Mr. Thompson had applied for a transfer but after the incident he could not be reintegrated into the population he chose and did not wish to integrate into the other population;
- She indicated that because she could no longer put him into the population, and they had to alleviate the segregation status at the earliest possible opportunity, they opted for an involuntary to alleviate his segregation;
- Donnacona is the closest maximum security prison to the Atlantic Institution, but also she chose it because he had asked to be transferred there previously. She was trying to accommodate Mr. Thompson's personal request for institutional placement;
- Because of the institutional incidents she testified he was unable to enter unit A1 (his previous unit) as he was considered unmanageable. He had been the aggressor and there was a concern that he brought a lot of "heat" to that population and so should not re-enter. They were unaware if the Plaintiff's safety could be managed based on the fact that he had assaulted several people within that population, and there could be retaliation against him. They could not guarantee his safety back in the general population either;
- When someone is put in segregation, there is a review that day to determine if segregation is justified. Then on the fifth day, and every 30 days after there are reviews. She said Mr. Thompson would have been coming up to his 30-day review, and that is when the report would be written (P1 at tab 10). The report states he was placed in segregation on February 8, 2016 after attacking another inmate on unit 1A and the date of

the report is April 6, 2016. This document discusses the different solutions to alleviate segregation. The recommendation was to maintain segregation and then transfer to Donnacona on "next weeks flight." The Warden made the final decision to release him from segregation to transfer him to another institution to facilitate his transfer. That decision is dated April 25, 2016;

- She said her role as a parole officer is not to go to court as she is dealing with inmates already sentenced and would only go to court if subpoenaed so she does not talk to Judges as part of her job;
- She prepared the Assessment for decision (EVD/A4d) dated March 23, 2016 for Mr. Thompson. Those reports are prepared when a transfer decision is to be made and it could be for security classifications, temporary absences or a request for a voluntary transfer or for a number of reasons a parole officer would prepare one. A decision is made by the appropriate decision-maker based off the recommendation in the document;
- This Assessment for decision states:

> The purpose of this report is to make a recommendation in regards to voluntary transfer application for Mr. Terry Thomson to Donnacona Institution in the Quebec region. This report will also address security classification and an involuntary transfer to Donnacona Institution put forth by the CMT. The inter-regional involuntary transfer recommendation is to alleviate segregation for Mr. Thompson at Atlantic Institution.

- The document at page 2 states:

> Mr. Thompson was transferred to Atlantic Institution in order to alleviate his long term segregation and to provide a safe environment on 2014-05-01. At Kent Institution he was housed in segregation as a result of being assaulted twice in Kent's Unit 1 population; Thompson could no longer return to that population. He also refuses to enter the Unit 2 population at Kent. Upon arrival at AI he entered the Unit 1 restricted 1B Alternative Population (formally known as General Population.) This has now expanded

> but still comprises only two ranges of inmates who adamantly follow a high level of the "con code" and refuse to integrate into the larger open population where programming and access to greater employment opportunities is present as they view this open population as "protective custody" and the inmates of a lower stature than they…

- The document goes on to say that he has refused to go into that population and has had five segregation placement because of charges and institutional incidents including 2 stabbing incidents where he was the aggressor. Because of that he is now considered a risk to enter into the unit A1 population. In her assessment regarding the voluntary transfer to Donnacona, made before his latest incident, resulted in him being placed in segregation she noted that because of this incident the "…CMT is recommending that the voluntary transfer be declined and an involuntary transfer to alleviate segregation be approved."
- Comments are noted that the alternative to his being involuntarily transferred is continued long term placement in segregation at Atlantic Institution because of his not being able to be placed in the general population, so CMT supported him being sent to Donnacona. The recommendation was that he be involuntarily transferred to Donnacona institution and not approved for voluntary transfer. This document was completed by Nicole McGillivary.
- The witness then testified about the document SCC DEC/CSC DEC Referral decision sheet for Inst. Transfer (Involuntary) dated April 8, 2016. The decision to involuntarily transfer Mr. Thompson was approved and signed by the Assistant Deputy Commissioner Correctional Operations Quebec-Region Headquarters to be effective April 8, 2016, with her signature dated April 11, 2016. The purpose of the involuntary transfer is stated on the document as "provide a safe environment". The regional transfer board in the

decision noted that to "…alleviate his segregation status" and "It has been determined that a return to general population is no longer viable. He refuses to avail of a placement in a unit in the main open population..." It is noted that "Mr. Thompson decided not to submit a rebuttal in regards to this involuntary transfer submission to the Quebec Region." This transfer was supported and approved in order to keep him out of segregation and because he could not return to Unit 1 population in the Atlantic Institution, and could not be placed in the open population. It was noted that he could enter the general population at Donnacona;

- When she was directed to the Offender Final Grievance Response dated May 31, 2016 she said she had nothing to do with this decision. The final grievance regarding the involuntary transfer to Donnacona goes to National headquarters to be determined. The final level grievance decision discussed that "you claim that you were not provided with any information or evidence that your safety was in jeopardy at AI." As well as not having counsel as well as other specifics regarding the transfer;
- She has never spoke to Justice Ferguson outside of court and does not remember if she ever appeared in front of him in the past. She would only ever appear in court if subpoenaed;
- She does not have authority to make a transfer, but she is able to recommend for a transfer. This transfer was done, in his case, by Assistant Deputy Commissioner Corrections, Operations Quebec-Reg. Headquarters.
- She testified that there were two units, and he could not go back to his old unit as the other inmates said he brought "heat" to them (she air quoted heat). As well, because of his assaults on other inmates he could not go to the general population unit;

- He had to get out of segregation so they had to find another max security prison for him. This was the closest but more importantly it was the institution that he had asked to be transferred to before;
- They had to deny his voluntary transfer and use the involuntary transfer given that he could withdraw the voluntary and then they would be back to no where for him again given they wanted to get him out of segregation and could not put him back in the other two units. With an involuntary transfer he would have to go.

[18] The Plaintiff cross-examined the witness. The summary of the cross-examination is as follows:

- She does not know the procedure for *habeas corpus* as that is not in her job description;
- The CSC has a sentence management department that deals with court proceedings and tries to make the clients available for them;
- The reason that the voluntary transfer was refused and the involuntary was used was so Mr. Thompson could not back out. He could have withdrawn his voluntary application and they could not have that happen because they had to alleviate segregation at the earliest possible opportunity;
- When asked if Mr. Thompson had put in a rebuttal to the voluntary transfer, she responded that he did not, but he may have entered a grievance or some other type of procedure. Mr. Thompson was offered an opportunity to enter a rebuttal but Mr. Thompson declined to answer the rebuttal at that time in that fashion;
- When asked if when they made the involuntary transfer, there knew there was any danger, or if anything was going to happen, her answer was that the Atlantic Institution

has two primary populations. Mr. Thompson had resided within one population, the other bring the general population. The general population was one which Mr. Thompson could have entered into. However, he chose not to integrate in to that population; he was only interested in returning to the first one that he had been in before he was segregated. She said they had no idea whether there were secure safety concerns awaiting Mr. Thompson's personal safety after he was involved as the aggressor in multiple violent incidents in that first population. They could not put him back in that population with unknown risks present and he had declined to enter the general population, and because segregation needed to be alleviated in some fashion, they achieved that by way of inter regional transfer to Donnacona;

- When asked if she talked to a justice but did not know Ferguson she clarified that she may have attended court and spoke to a judge if subpoenaed. It could have been Justice Ferguson in the past; she does not know who the judge was. She had absolutely no idea who Justice Ferguson is and never spoke to him outside the courtroom;
- She agreed that CSC gave him no information about why he could not go back into his old unit.

IV. Summary of the Plaintiff's argument

[19] The Plaintiff's argument is that he feels strongly that he was denied his *habeas corpus* hearing because CSC transferred him in order to deny him the hearing. He says that he is entitled to a hearing by policy and law. He relied on the *Habeas Corpus Act UK* which says you cannot move prisoners from one prison to another to avoid the hearing. Further, he asserted that CSC must accommodate people to get them to court, whereas they transferred him instead. He said he

told the justice that during their conversation on the phone. Because CSC had no evidence that he would be harmed if put back in his original population, they should have done that. At trial, the witness confirmed they had given him no disclosure of any harm that would result from being put back in the unit where he had been, and without that they denied him his rights.

[20] The Plaintiff led no evidence or argument related to the claim for damages or causation.

V. Analysis

[21] I find both witnesses to have reliable evidence. The documentary evidence in Exhibit P1 and the Agreed Statement of Facts and Admissions supports the witnesses' evidence heard at trial and fills in the blanks. How the Plaintiff interpreted the evidence and his legal arguments, I do not agree with. I will explain to the Plaintiff why I am dismissing his action based on the evidence. To do this I will set out the evidence in a chronological order and then my findings.

[22] On May 1, 2014, the Plaintiff was transferred from the Kent Institution to the Atlantic Institution (Maximum security) in New Brunswick, in order to alleviate his long-term segregation, and to provide him with a safe environment.

[23] On August 23, 2016, while in custody in the Atlantic Institution, he was placed in segregation because he and two other offenders stabbed another inmate. He was no longer welcome on his unit due to his behaviour. He had been in segregation four times since his arrival at Atlantic Institution. His CMT recommended he remain in segregation as no other alternative was viable due to his violent history. He had lived on unit 1A (a restrictive unit) and refused to

live in the general population. There are only two units that he could have resided at in the Atlantic Institution.

[24] While he was in segregation he formally requested a voluntary transfer to the Donnacona Institution (Maximum Security) in Quebec.

[25] On February 8, 2016, while this request was under review, the Plaintiff attacked a newly arrived offender using a shank, and he was placed in segregation.

[26] In February, 2016, the Plaintiff filed a Notice of Preliminary Motion for a *Habeas Corpus* Order with the NBQB to assert unlawful detention in segregation.

[27] On March 9, 2016, he was provided with a written Notice of Involuntary Transfer Recommendation to be transferred to the Donnacona Institution. He did not oppose the involuntary transfer at the time. His voluntary transfer to Donnacona Institution was refused because the involuntary transfer cannot be rescinded by the inmate unlike a voluntary transfer.

[28] He filed a final grievance in March 2016 regarding the transfer. In an offender grievance (third level) dated March 9, 2016, he rebutted his transfer to another maximum-security prison. In the final grievance, the reasons explained that the grievance and a rebuttal of a voluntary transfer are two separate processes and may not have been considered in the inter-regional transfer and only in the grievance process.

[29] The Parole Officer recommended that he be involuntary transferred because CSC could not guarantee his safety if they put him back in unit 1B, and he would not go in the general population. They could not guarantee his safety because of his part in two separate stabbing incidents of other inmates. CSC had a responsibility to alleviate him being in segregation, and he had previously applied to Donnacona for a voluntary transfer, so it was recommended for an inter-regional transfer to another maximum-security prison to alleviate his segregation. An inter-regional transfer is only considered to alleviate the segregation of an inmate.

[30] On April 8, 2016, the final decision to transfer him to Donnacona Institution was made.

[31] He was released from segregation by the A/Warden on April 25, 2016, to facilitate his transfer that day.

[32] Correspondence from the Court (Exhibit P1), and the Court transcript confirm that:

a) there was a Court date for a preliminary regarding his *habeas corpus* application held on April 15 at 9:30 am by telephone; and
b) in a letter dated April 18, 2016, a date was set for the hearing on April 28, 2016 at 1:30 pm by teleconference;
c) Court correspondence indicates the matter was adjourned until May 5, 2016 at 3:00 pm.

[33] The Plaintiff was at the Donnacona Institution on April 28, 2016 and not in segregation.

[34] On May 5, 2016, the Plaintiff had his *habeas corpus* hearing over the phone with Justice Ferguson of the NBQB. The Application was determined moot because the Plaintiff was no longer in segregation given that he was no in the general population at Donnacona Institution.

[35] Justice Ferguson said, during the telephone hearing: "Well the conversation was because we didn't close off this application for habeas corpus when we last were toget-[er]". He then explained: "…in the province of New Brunswick the superior court does not have any jurisdiction to issue a non-removal order to prevent CSC from moving inmates from one province to another and so the purpose of this call was to determine if you were still in segregation".

[36] Mr. Thompson complained he was transferred before he could have a hearing. But, he confirmed that he was no longer in segregation. Justice Ferguson said that is what the hearing is about. The Crown argued that the application is now moot because "…he is no longer in segregation his application is moot and there is–the only relief that the Court can is to release him from segregation and will not be in segregation."

[37] Justice Ferguson asked if he had filed a grievance regarding the transfer. The Plaintiff responded: "So right-legally, it's legally they had to produce me to court legally. … It's their responsibility to make sure I get to court …"

[38] Justice Ferguson confirmed that "…first of all the purpose of the adjournment was to determine what the correction service of Canada was going to do to you bearing in mind that in

January you had requested a transfer to Donnacona." The Plaintiff said that he had "[b]een deprived access to a court. I put in application they shipped me out. According to law you got to put the body to the court where the application is. You know that."

[39] Justice Ferguson concluded that because he was in a general population that he could not have a *habeas corpus* hearing. The Judge said if he has a grievance against CSC for the transfer there was nothing that his Court could do. It is at that point he was told he could go to Federal Court and it is clear from the transcript that Justice Ferguson is referencing going to Federal Court for a Judicial Review of the a final level grievance decision regarding the CSC transfer, and not the *habeas corpus* matter.

[40] Justice Ferguson held that because Mr. Thompson was no longer in segregation that the *habeas corpus* hearing was moot.

[41] As set out in the evidence in Exhibit P1, the CSC segregation review document states that the Plaintiff was released from administrative segregation to be transferred on April 25, 2016, and he was at Donnacona by April 28, 2016. There is no documentation or evidence of why the *habeas corpus* hearing was adjourned from April 28, 2016 to May 5, 2016, or by whose request. From the letters from the Court it would appear possible it was the Court itself; that after holding the preliminary hearing on April 15, 2016, of which I have no transcript, the date of April 28, 2016 was adjourned to May 5, 2016. I assume the adjournment was because the Court was informed the Plaintiff was to be released from segregation and was in transit on April 28, 2016 the date scheduled for the hearing. But, that is an assumption and I have no evidence at to why

there was an adjournment. In any event his transfer relieving segregation was effective April 8, 2016, as evidenced in Exhibit P1 at page 20, tab 3, the SCS decision by the ADCCO-Quebec Region which was before the hearing was scheduled to be heard.

[42] On May 31, 2016, the final level grievance on the involuntary transfer was denied by the senior Deputy Commissioner. The final level grievance decision lays out the facts in detail, and explains why the transfer occurred. The Plaintiff did not apply for a judicial review of the final level grievance to the Federal Court.

[43] In the final grievance decision it sets out the *CCRA* sections 28 and 31(2):

> 28. Where a person is, or is to be, confined in a penitentiary, the Service shall take all reasonable steps ta ensure that the penitentiary in which the person is confined is one that provides the least restrictive environment for that person, taking into account
>
> (a) the degree and kind of custody and control necessary for
> (i) the safety of the public,
> (ii) the safety of that person and other persons in the penitentiary, and
> (iii) the security of the penitentiary;
>
> (b) accessibility to
> (i) the person's home community and family,
> (ii) a compatible cultural environment, and
> (iii) a compatible linguistic environment; and
>
> (c) the availability of appropriate ·programs and services and the person's willingness ta participate in those programs;
>
> […]
>
> 31. (2) The inmate is ta be released from administrative segregation at the earliest appropriate time.

[44] The decision goes on to say:

> Furthermore, an Inter-Regional Transfer is only considered when such a transfer will alleviate the Segregated Status of an inmate. Paragraph 47(c) of Guidelines 710-2-3. *Inmate Transfer Process*, states:
>
> > 47. An inter-regional transfer will normally be considered in cases where such a transfer will:
> >
> > c. alleviate the segregated status of an inmate where all alternative options to segregation have been exhausted, including those cases that are within six months of their statutory release or warrant expiry date, regardless of whether or not there is confirmed community support in the receiving region. In such cases, the Assessment for Decision must provide a detailed account of the alternative options to segregation that were considered.

[45] The Plaintiff signed the Statement of Claim for this action in Quebec on November 13, 2017, and it was issued on January 9, 2018.

[46] The Plaintiff put forth no evidence to support any collusion to transfer him out of the Atlantic region before his hearing.

[47] The evidence is that his Parole Officer did not know Justice Ferguson so she did not collude with the Judge. There was no intention to transfer the Plaintiff to avoid a *habeas corpus* hearing and his transfer was to get him out of segregation as soon as possible as is the CSC policy.

[48] The documentary evidence and oral evidence of the Parole Officer confirmed the reason for the transfer was to alleviate segregation given they had safety concerns about putting him back into where he had been or the other population given his recent assaults on other inmates.

[49] The *Habeas Corpus Act UK* relied on by the Plaintiff as being what was breached by transferring him before his hearing is not in force in Canada, and so his legal argument on those ground must fail.

[50] With regards to the first part of the test for misfeasance in public office, the Public officer, Nicole McGillivary did not engage in deliberate and unlawful conduct in her capacity as a public officer. There was no bad faith or dishonesty as the reasons for the recommended transfer were clearly set out and they were to alleviate his segregation. Further, she did not approve the transfer.

[51] CSC has to alleviate segregation as soon as they can, and that was the reasoning for the transfer. Though the Parole Officer is a public officer, and she did recommend the transfer, she did not approve the transfer as she does not have the power to do so. She did not collude with Justice Ferguson in any way. Her recommendation gave reasons for the recommendation. I find that the reason for the transfer was as she testified, and not because there was collusion to thwart the *habeas corpus* hearing.

[52] Further, Justice Ferguson has immunity. The doctrine of judicial immunity applies to Justice Ferguson because he has judicial immunity from such a civil liability suit for actions with

respect its adjudicative function he preformed as a Judge (*MacKeigan v Hickman*, [1989] 2 SCR 796 at p 830; *Slansky v Canada (Attorney General)*, 2013 FCA 199 at paras 134-135).

[53] The transcript clearly shows Justice Ferguson held the hearing, sought evidence of whether the Plaintiff was in segregation, and when he found out he was not then the *habeas corpus* hearing was moot. He tried to explain that he had no jurisdiction to deal with the transfer and that the Plaintiff would have to grieve it and then go to the Federal Court. Further, because the *Habeas Corpus Act UK* is not law in Canada, when the Plaintiff attempted to use it, there was confusion, and no one understood what he was talking about.

[54] As for the second part of the test, the public officer does not fulfil the condition that her conduct was unlawful, because it was not. Nor were her actions likely to harm the Plaintiff when in fact it was the opposite; the transfer was being made for his own safety given his aggressive actions at Atlantic Institution. There was no misconduct with an intent to harm that was deliberate and unlawful. This is also in the shadow of the public officer not having actually made the transfer.

[55] Finally, the Plaintiff did not prove any injuries so he did not prove any tortious conduct was the cause of compensable injuries.

[56] The Plaintiff has not, on a balance of probabilities, proved any of the elements of the misfeasance of public office.

VI. Summary

[57] The *habeas corpus* hearing took place before Justice Ferguson in May and when it was confirmed that the Plaintiff was not in segregation then he dismissed the matter as moot. The transfer was effective as of April 8, 2016, and the Plaintiff was removed on April 25, 2016 which was before the hearing date set for April 28, 2016. .I have no evidence that this adjournment was to prevent the Plaintiff from having his hearing. That finding is made given that even if the hearing had occurred on April 28, 2016, it would also have been moot because Mr. Thompson was out of segregation by April 25, 2016 and the transfer effective April 8, 2016.

[58] I wish to make clear I make the finding that there is no evidence to support that Nicole McGillivary or Justice Ferguson did anything wrong either separately or together, and that there was no collusion between the two individuals. Nor has the Plaintiff proved on a balance of probabilities any other cause of action.

VII. Conclusion

[59] This action is dismissed with costs. Given his status as an inmate and his respectful appearance before the court, I will award a reduced amount of costs in the lump sum, inclusive of taxes and disbursement, of $100.00 to be paid by the Plaintiff to the Defendant.

JUDGMENT IN T-36-18

THIS COURT'S JUDGMENT is that:

1. The action is dismissed;

2. Costs in the amount of $100.00 inclusive of disbursements and taxes is payable by the Plaintiff to the Defendant.

"Glennys L. McVeigh"
Judge

ANNEX A

T-36-18

Federal Court

Terry Thompson

V

Her Majesty The Queen

Plaintiff

Defendant

Section 48(1) - Proceeding against the Crown

STATEMENT OF CLAIM

In support To The Statement of Claim the Plaintiff invokes The Following Grounds:

CONTEXT:

1) I Terry Thompson is in the custody of correctional Service Canada.

2) I Filed a habeas corpus around Feb. 2016 for a Unlawful detention.

3) The hearing was schedule in Apr. 2016

4) This habeas corpus was against Atlantic Inst. In New Brunswick

5) The Judge Fred Ferguson and my Parole officer Nichole McGillivary concluded together

6) They Postpone the hearing so Atlantic Inst. could transfer me out of province before hearing

7) The hearing was schedule for Apr. 28, 2016 I was transfer Apr. 25, 2016

8) I arrive to Donnacona Institution in Quebec Apr. 25, 2016 the warden at Donnacona ~~Stor~~ Should have sent me back to New Brunswick for hearing but did not.

9) By the actions of Correctional Service Canada and Judge Fred Ferguson they denied me access to court and remedy.

10) The Habeas Corpus act states no Jailer should transfer a prisoner out of province to avoid a writ of habeas corpus or another Jail.

11) And if so must pay prisoner for cost and damages and pay serious fines

12) I ask for emotional and Pyscological damages

11:10

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JAN 20 18

Deputy Minister of Justice
and Deputy Attorney General of Canada
Sous-Ministre de la Justice
et Sous-procureure générale du Canada

ANNEX B

7. The Plaintiff filed a Notice of Preliminary Motion for a *Habeas Corpus* Order (*Habeas Corpus*) in February 2016 challenging his placement into segregation while incarcerated at AI.

8. On March 9, 2016, the Plaintiff was provided with the written *Notice of involuntary transfer recommendation*. He did not submit a rebuttal in regard to his involuntary transfer.

9. On April 8, 2016, the final decision to transfer the Plaintiff from AI to DI was made, and he arrived at Donnacona Institution on April 28, 2016.

10. Although the Plaintiff did not submit rebuttal to his involuntary transfer, he submitted a final grievance in March 2016.

11. On May 31, 2016, the decision on his final grievance was rendered.

12. Between March and May, 2016, the Court of Queen's Bench of New Brunswick communicated with the Plaintiff with regard to his *Habeas Corpus.* The hearing of the *Habeas Corpus* was scheduled in April 2016.

13. On May 5, 2016, the Plaintiff had a hearing of his *Habeas Corpus* before Mr. Justice Fred Ferguson of the Court of Queen's Bench of New Brunswick, by conference call.

9. On January 12, 2018, the Plaintiff served the Defendant with the present Statement of Claim.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-36-18
STYLE OF CAUSE:	THOMPSON v HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 21, 2021
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	AUGUST 12, 2021

APPEARANCES:

Terry Thompson	FOR THE PLAINTIFF, ON HIS OWN BEHALF
Renalda Ponari	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Montreal, Quebec	FOR THE DEFENDANT