

Date: 20090316

Docket: A-429-08

Citation: 2009 FCA 84

**CORAM: EVANS J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

BRYAN RALSTON LATHAM

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Winnipeg, Manitoba, on March 16, 2009.

Judgment delivered at Winnipeg, Manitoba, on March 16, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS, J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on March 16, 2009)

EVANS J.A.

[1] The appellant, Bryan Ralston Latham, was convicted of sexual offences in 1971. A court subsequently declared him a dangerous offender and he is serving an indeterminate sentence.

[2] Mr Latham has appealed an order of the Federal Court, dated July 31, 2008, in which Justice Tremblay-Lamer upheld an order of Prothonotary Lafrenière, dated June 20, 2008, striking his statement of claim as an abuse of process.

[3] The statement of claim requested a declaration that, properly interpreted, subsection 122(4) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“the Act”), entitles an inmate in the position of Mr Latham to reapply to the National Parole Board (“the Board”) for day release six months after the Board has refused a similar request from the inmate.

[4] The basis of the Prothonotary’s order was that Mr Latham was essentially seeking a declaration that the Board had erred in rejecting his application for day parole on the ground that subsection 123(5) of the Act provides that an inmate may not reapply for day parole within two years of a previous refusal. Accordingly, by virtue of subsections 18(1) and (3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, the appropriate proceeding was an application for judicial review.

[5] On July 18, 2008, Justice Zinn of the Federal Court released a decision holding that an inmate whose application for day parole had been dismissed by the Board could reapply six months later: *Dixon v. Canada (Attorney General)*, 2008 FC 889. The Attorney General has not appealed this decision.

[6] The Board is bound by the interpretation of the Act in *Dixon*, and Mr Latham’s case is materially indistinguishable from that of Mr Dixon. Consequently, since Mr Latham has, in effect, obtained the relief that he was seeking in his statement of claim, his appeal is moot.

[7] We would only add that we find it astonishing and disturbing that at no time did counsel for the Crown bring the decision in *Dixon* to the attention of the Court, even though it was decided more than five months before the Crown's memorandum of fact and law was signed.

[8] This omission is particularly surprising in view of the Board memoranda of August and September 2008 informing staff about the implications of *Dixon* for both day and full parole applications and stating that, in accordance with *Dixon*, day and full parole applications would be scheduled within six months after their receipt.

[9] Mr Latham's appeal will be dismissed for mootness and, in the unusual circumstances of this appeal, he will be awarded his reasonable expenses in the amount of \$400.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-429-08

**(APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED JULY 31, 2008,
DOCKET NO. T-517-08)**

STYLE OF CAUSE: Bryan Ralston Latham v.
Her Majesty the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: March 16, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (EVANS, RYER, TRUDEL JJ.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

Bryan Ralston Latham SELF-REPRESENTED

Marcia Jackson FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada