Federal Court  Cour fédérale

Date: 20181022

Dockets: T-963-17
T-964-17

Citation: 2018 FC 1054

Ottawa, Ontario, October 22, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MITCHEL TIMOTHY NOME

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

UPON motion by the Applicant, made to the Court at the General Sittings, in Winnipeg, Manitoba, on October 9, 2018, the Respondent asked for:

a) An Order that the Respondent:

i) Provide the Applicant with reasonable access to legal resources, specifically access to online legal resources such as Canlii, Westlaw, or Nexis, and the ability to store and review documents obtained from those sites;

> ii) Allow the Applicant to contact by phone law and email professors, law students, lawyers, or any community legal organizations capable of assisting the Applicant with the preparation of his case; and
>
> iii) Provide the Applicant with a personal laptop and a method of storing files electronically, such as USB drives, and that the Respondent shall regard such files as privileged and as the property of the Applicant;
>
> iv) Costs of this motion.

AND UPON noting that the Applicant withdrew the request for the relief previously sought under clause a) iii above;

AND UPON confirming that counsel is representing the Applicant unless and until Rule 124 under the *Federal Court Rules* (SOR /98-106) is complied with;

AND UPON reading the material filed and hearing the parties arguments;

[1] I note that Justice Manson in an Order dated August 24, 2017, granted the following:

> 1. The Applicant shall proceed with his application under the applicable Rules of the Court.
>
> 2. The Respondent shall provide all reasonable access to supplies and communication tools necessary for the Applicant to pursue his legal recourse forthwith, failing which the Court shall consider appropriate recourse and remedies for the Applicant on reasonable terms and conditions.
>
> 3. Given that settlement negotiations are ongoing, the parties shall advise the Court if any mediation or other alternative dispute resolution may be effective in helping resolve the dispute, and upon request of the parties, the Court shall appoint a mediator to help facilitate resolution of the dispute.

[2] The Applications for Judicial Review were filed for T-964-17 on June 29, 2017 and for T-963-17 on June 29, 2017. Subsequent to Justice Manson's Order, Justice Pentney in an Order dated August 17, 2018, ordered the current motions for both matters to be heard on October 9, 2018.

[3] I further note that the parties have tried to settle the issues related to Justice Manson's Order as they arise. In doing so, the parties have reached agreement on some issues. However, two matters still have live issues and were brought to this Court for relief. The remaining matters were articulated by the Applicant as:

a) That the inmate be given access via Internet to Canlii or other online legal research tool; and

b) That in order to telephone legal counsel, professors, or other legal resources that he be given space for more than 40 individuals on his institutional telephone list. Or, in the alternative that the Applicant must know who is on his capped 40-persons telephone list so that he can subtract and add to that list.

[4] When asked why the grievance procedure was not utilized instead of bringing this motion, the Applicant's position is that it would take too long to go through the grievance process. The Applicant submits that these issues need resolved so he can put his best foot forward when he prepares his judicial review applications.

[5] In *Strickland v Canada (Attorney General)*, 2015 SCC 37, the Supreme Court held that one of the discretionary grounds for refusing to undertake judicial review is if there is an

alternative adequate remedy. Having an adequate alternative remedy in the context of inmates has been dealt by this court in *Thompson v Canada (Correctional Service)*, 2018 FC 40. In that case, Justice Southcott reaffirmed that grievance procedures available to offenders affords an adequate alternative remedy to judicial review. Justice Southcott further explained that judicial review will generally only be appropriate after a final decision is rendered in the grievance process.

[6] The issues before me are in the context of a further motion that is seeking relief before the Court for judicial reviews already filed, so the matter in front of me is not factually identical with the cases noted above. Notwithstanding that, when examined, it is clear that the Applicant asking for this order is akin to getting something indirectly to what you cannot obtain directly.

[7] The requests made arise from the same subject matter that can be dealt with in the grievance system or have already been dealt with by Justice Manson's Order. Although this is not the Applicant's preferred way to proceed, due to time factors, the avenue of the grievance system is still an adequate alternative remedy. As there is an adequate alternative remedy, I will not give the relief sought.

[8] In the alternative, if the above are not adequate alternative remedies, then I do not accept the argument put forward by the Applicant. Counsel for the Applicant submitted that as a principle, simply being afforded the opportunity to have a judicial review is not enough. The Applicant advanced the argument that an inmate should be given an opportunity to put their best

foot forward by presenting their case in a meaningful way. In the submission of the Applicant, this can only be done by having access to Canlii.

[9] I find that the Applicant does have access to a librarian. When asked, the librarian does provide cases to the inmate, but the Applicant argued the request process takes too long and that the font that the cases are printed in is not one that he can read. The Court confirmed that the Applicant has access to an annotated text, *Federal Courts Practice* by Saunders, Rennie and Garton where he can find case law. Though the Applicant says this accommodation is not sufficient. The Applicant complained that even with the annotated text, the Applicant has to take a single citation from the annotated Act and Rules and then needs to follow up in his legal research. In addition he argued that the librarian is not legally trained which makes this an inefficient process that does not allow the Applicant to present his written argument to the Court.

[10] The Applicant submitted that in order to have greater access to legal professors and counsel, he has to be provided with his institutional list of 40 people he currently has on his telephone list. In the institution, an inmate is allowed a certain number of approved individuals that he is allowed to call. The Applicant said that this institution allows 40 people and he has that many people on his list already. The Applicant's position is that his preference is to have more than 40 people on his list as he is very litigious and has counsel and/ or cases filed in Quebec, Ontario, and other superior courts for current and past litigation. The Applicant submits that in the alternative, if the institution will not increase the number of people he can have on his list then, he needs to be given his telephone list so that he can subtract some individuals and add others.

[11] It is of note that the Applicant's request to have full internet access to a legal search engine has never been done before in the institution. The Applicant argued that although it had never been done before, any security issues that the institution perceives could be dealt with by blocking all but the legal research tool. That way the Applicant is able to mount his legal argument, and yet the institution's security needs are met.

[12] I canvased with the Applicant's counsel about the ability the Applicant has to correspond with the individuals that he seeks to help him in writing. While the Applicant accepts that this is possible, it is not the preferred method of communication according to the Applicant. In addition, given that the Applicant has or had numerous counsel throughout Canada (admittedly on a *pro bono* basis) it was not established why counsel could not provide him the CanLii case or relevant research by mailing the case to him or the citation he could then provide to the institution's library.

[13] The Respondent presented evidence of the institution already granting some exceptional "favors" (such as special computer access) to the Applicant and then having to take them back given: 1) his misuse of the access 2) his behaviour and 3) tighter security after a stabbing weapon was found in the Applicant's cell. In addition, it was expressed that as the underlying nature of these actions are administrative matters, and not criminal, the same rights are not at issue. The Respondent submits that the institution is going to great lengths to accommodate the Applicant so that he can file his application record. The Respondent tenders that the Applicant is instead of filing his application record and moving the matters forward to a hearing he is bringing this motion through legal counsel. This is despite the Respondent's best attempts to comply with

Justice Manson's Orders throughout this process. Finally, the Respondent indicates that the Applicant's representations in his affidavit and material are not completely truthful.

[14] When the Applicant was asked for authority related to these issues, the Applicant relied on the Alberta Court of Queen's Bench *R v Biever*, 2015 ABQB 301. In that case, a self-represented individual, Mr. Biever was charged with a number of offences in connection with bank robberies and was in front of Justice Graesser. Mr. Biever was representing himself in this criminal matter and had been denied bail and held in a provincial correctional centre (remand) awaiting trial. Mr. Biever requested special access to obtain legal research to mount his legal defence and at the hearing did admit that he was receiving copies of cases and research material by family and a lawyer.

[15] The procedural fairness and rights that are discussed in that case are in the criminal law context, and would not be the same that would be accorded the Applicant on a judicial review application. I find that *Biever* is therefore distinguishable, as Mr. Biever was not in a Federal Institution where there is a librarian and had not been convicted as he was in remand so his ability to mount his criminal defence and liberty was at issue.

[16] In contrast, the Applicant has already been convicted, and has numerous resources available to him in the Federal Institution. Indeed, even in that heightened criminal law context, Justice Graesser did not specially order access to all on-line resources, but rather suggested that Alberta Justice and the Edmonton Remand Centre (ERC) come up with a way to give reasonable access.

[17] I find on our facts that the Applicant has been given reasonable access to research materials to date, and I see no impediment to him having access via the librarian and having mailed copies sent to him by his various legal counsel and professors continuing in the future. Of course, that is all subject to the institutional rules and the Applicant's behaviour.

[18] I find that Justice Manson's Order is more than enough to meet the Applicant's needs and I will not order the relief sought by the Applicant. These motions will be dismissed.

[19] I will further order that the matter be specially managed so that the judicial reviews can proceed in a timely basis, and so that any other motions brought can be scheduled promptly.

[20] Pursuant to Rule 384 of the Federal Court Rules, this matter will be a specially managed proceeding so that the matter will proceed in a timely fashion, as it is not proceeding and getting mired in disputes and delays of which the administrative process of judicial review should not.

[21] The Respondent sought costs in the amount of $1,000.00. Given that the parties had reached an agreement after meeting the warden regarding computer access, and the grievance had been withdrawn and signed off on by the Applicant 8 days before these motions were brought, I will reduce the amount given the Applicant's current incarceration to a $200.00 lump sum award inclusive of taxes and disbursements.

ORDER in T-963-17 and T-964-17

THIS COURT ORDERS that:

1. The matters are specially managed proceedings;

2. The motions are dismissed;

3. Costs in the amount of $200.00 lump sum are to be paid to the Respondent forthwith by the Applicant.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-963-17 AND T-964-17
STYLE OF CAUSE:	MITCHEL TIMOTHY NOME V AGC
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	OCTOBER 9, 2018
ORDER AND REASONS:	J. MCVEIGH
DATED:	OCTOBER 22, 2018

APPEARANCES:

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Meghan Riley	FOR THE RESPONDENT

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