

Federal Court



Cour fédérale

**Date: 20110720**

**Docket: T-1249-10**

**Citation: 2011 FC 909**

**Vancouver, British Columbia, July 20, 2011**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**DAVID CLARE VAN VLYMEN**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA,  
THE ATTORNEY GENERAL OF CANADA,  
THE SOLICITOR GENERAL OF CANADA,  
THE COMMISSIONER OF CORRECTIONS  
OF CANADA, THE CORRECTIONAL  
SERVICE OF CANADA, SERGE BOUDREAU,  
JANE DOE and JOHN DOE**

**Defendants**

**REASONS FOR ORDER AND ORDER**

**I. Overview**

[1] Mr. David Van Vlymen committed a bank robbery in the United States in 1987 and incurred a sentence of 55 years' imprisonment. He then applied to serve his sentence in Canada. The U.S. Department of Justice approved his request in 1991, but Canadian authorities did not respond until

2000, after Mr. Van Vlymen had applied for judicial review of the government's apparent refusal of his request. They then granted his application.

[2] Nevertheless, the judicial review application proceeded and resulted in a decision by Justice James Russell in August 2004. Justice Russell concluded that the almost ten-year delay in responding to Mr. Van Vlymen's transfer request was totally unacceptable and violated his rights under sections 6 and 7 of the *Canadian Charter of Rights and Freedoms*. Justice Russell could not award damages on the judicial review, but he clearly anticipated that Mr. Van Vlymen would seek financial compensation by way of a subsequent action against the government.

[3] Mr. Van Vlymen did not begin his action until July 28, 2010, almost six years after Justice Russell's decision, when he filed his statement of claim. The respondents have brought a motion to strike the statement of claim on the basis that it is out of time.

[4] The parties agree that the most appropriate limitation period is the six-year deadline set out in the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 32. To be clear, Mr. Van Vlymen does not concede that there is any time limitation applicable to a claim based on the Charter, but he maintains that, if one does apply, it is the six-year limit.

[5] Accordingly, it is not the limitation period itself that is in issue here. The question is when the clock began to run. The respondents argue that the clock started on February 3, 2000, when Mr. Van Vlymen filed his application for judicial review. He must have known at that point, the respondents submit, all of the facts necessary to begin his action.

[6] Mr. Van Vlymen argues, however, that in 2000 he continued to seek from the government disclosure of the grounds on which his transfer application had been refused. He maintains that the clock did not begin to run until after Justice Russell's decision, particularly in light of the fact that Justice Russell ordered the government to provide him further disclosure of its records.

[7] In my view, in the particular circumstances of this case, the six-year limitation period did not commence until August 2004 at the earliest. Accordingly, I must dismiss the respondents' motion to strike the statement of claim.

## II. When Did the Clock Begin to Run on Mr. Van Vlymen's Action?

[8] There is no doubt that Mr. Van Vlymen knew in 2000 that his transfer application had effectively been refused. However, it is clear that he was still very much in the dark about the reasons why it was turned down. I note that Justice Edmond Blanchard issued a disclosure order in January 2001 (*Van Vlymen v Canada (Solicitor General)*, [2001] FCJ No 288 (TD)(QL)). Justice Russell found that Mr. Van Vlymen had not become aware of the grounds for the refusal until he received those documents (*Van Vlymen v Canada (Solicitor General)*, 2004 FC 1054, para 37). Even then, however, Mr. Van Vlymen only received heavily redacted materials.

[9] After concluding that Mr. Van Vlymen's Charter rights had been violated, and after determining, reluctantly, that he could not order damages himself, Justice Russell ordered the respondent to provide "complete disclosure of all materials and documentation in its possession that are relevant to the matters complained of by the applicant, such materials and documents to be

unredacted except as may be agreed to by the parties or allowed by this Court upon motion by the respondent to be brought within 20 days of this order.”

[10] Obviously, therefore, Justice Russell considered, on August 3, 2004, that Mr. Van Vlymen did not yet possess all of the information he required in order to begin his civil action for damages. Otherwise, his order of further disclosure would have served no useful purpose.

[11] I also note that a civil action in damages would likely have been regarded as premature until after Justice Russell had dealt with the application for judicial review: *Grenier v Canada*, 2005 FCA 348. Mr. Van Vlymen, under the law that applied at the time, had to bring his application for judicial review first.

[12] Accordingly, I find that the clock did not begin to run on Mr. Van Vlymen’s civil action until some time after August 3, 2004. Therefore, his statement of claim, filed on July 28, 2010, was not out of time.

### III. Conclusion and Disposition

[13] Mr. Van Vlymen’s statement of claim was filed within the six-year time limitation set out in the *Crown Liability and Proceedings Act*, s 32. Therefore, I must dismiss the respondents’ motion to strike the statement of claim, with costs.

**ORDER**

**THIS COURT ORDERS that** the respondents' motion to strike the statement of claim is dismissed, with costs.

“James W. O’Reilly”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1249-10

**STYLE OF CAUSE:** DAVID CLARE VAN VLYMEN v. HMQ et al.

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** July 18, 2011

**REASONS FOR ORDER  
AND ORDER:** O'REILLY J.

**DATED:** July 20, 2011

**APPEARANCES:**

John W. Conroy, Q.C.

FOR THE PLAINTIFF

Erin Tully

FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Conroy & Company  
Abbotsford, BC

FOR THE PLAINTIFF

Myles J. Kirvan  
Deputy Attorney General of Canada  
Vancouver, BC

FOR THE DEFENDANTS