

Federal Court



Cour fédérale

Date: 20201218

Docket: T-1483-20

Citation: 2020 FC 1169

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 18, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CHRISTIAN DESCHÊNES

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] This is a motion for a mandatory interlocutory injunction to compel the Correctional Service of Canada [CSC] to allow the applicant to visit his spouse who has cancer, as part of an unescorted temporary absence [UTA] granted on October 15, 2020, by the Parole Board of Canada [PBC].

[2] The applicant, who is 64 years old, is an inmate of the Federal Training Centre [FTC], a minimum security institution, serving a cumulative sentence of forty-five years and four months for various crimes, including repeat offences. He alleges that his spouse of about 15 years has cancer with a prognosis of one year; as a result of this prognosis, the applicant expressed the desire to support his spouse and to be with her during the last months of her life.

[3] In October 2020, the PBC denied the application for parole and day parole, but authorized a UTA for personal development, which is suspended until the CSC can implement it, given the current COVID-19 pandemic. In fact, the UTA was temporarily suspended by the director of the FTC due to the pandemic. Furthermore, upon review of this position by the Manager of Assessment and Interventions, the Director and the Deputy Commissioner, the applicant did not meet the criteria of Commissioner's Directive 710-3. No grievance was filed against the decision of the Director or of the Deputy Commissioner.

[4] This application is for implementation of the PBC's decision. To do so, the Court must be satisfied that the outcome presents a serious issue, that the applicant risks irreparable harm and that the balance of convenience favours the applicant (*RJR-Macdonald Inc. v Canada (Attorney General)*, 1994 CSC 117 [*RJR-Macdonald*]).

[5] First, in the absence of failure to exhaust the internal recourses, the Court cannot establish a serious issue (see *Teale v Canada (Attorney General)* [2000] FCJ No 1666, 104 ACWS (3d) 570, 49 WCB (2d) 447 at para 16; *Mackinnon v Bowden Institution Head*, 2016 FCA 14 at para 6). The facts are such that the grievance decision maker should consider the seriousness of the inmate's spouse's condition, as well as the safety and health of the FTC and its community.

[6] As for irreparable harm, the applicant asserts that he and his wife be harmed if he cannot support her in these times of instability. However, this was not supported in the written submissions.

[7] Finally, the balance of convenience favours the respondent with a legislated mandate to ensure the safety of the public, inmates and penitentiaries (*RJR-Macdonald* at paras 69, 71). It is in the public interest for the respondent to observe the risks associated with COVID-19. With all due respect to the applicant's testimony that he is in a delicate situation, the evidence on the record demonstrates that the pandemic remains a danger to the community, inmates and penitentiary staff. Like King Solomon, torn between two testimonies, the Court is faced with two pleadings that are not without heart-wrenching consequences, but, taking into account the case law, the balance cannot be tipped in the applicant's favour.

[8] For these reasons, the motion for a mandatory interlocutory injunction is dismissed.

ORDER in T-1483-20

THE COURT ORDERS that the motion for a mandatory interlocutory injunction is dismissed.

OBITER

The Court notes that, in the applicant's words, time is short for his spouse and that if a grievance is presented, it should be considered as soon as possible, within reason.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1483-20

STYLE OF CAUSE: CHRISTIAN DESCHÊNES v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 15, 2020

ORDER AND REASONS: SHORE J.

DATED: DECEMBER 18, 2020

APPEARANCES:

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Véronique Forest FOR THE RESPONDENT

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