Federal Court  Cour fédérale

Date: 20220712

Docket: T-233-22

Citation: 2022 FC 1021

Ottawa, Ontario, July 12, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ALLEN TEHRANKARI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for an interlocutory injunction which would allow the Applicant to have an in-cell computer or tamper-proof tablet in his cell.

II. Background

[2] The Applicant is a federally-sentenced person ("FSP") serving life in prison without possibility for parole for 25 years. The Applicant represented himself in this matter.

[3] This began as an application for judicial review of a decision of the Office of the Information Commissioner of Canada ("OICC") made on January 19, 2022 regarding the Applicant's complaints against the Royal Canadian Mounted Police ("RCMP") (complaint dated August 30, 2015) regarding a refusal of an Access to Information and Privacy ("ATIP") request made on October 15, 2014. These ATIP requests pertained to his "personal and other case-related information." The actual ATIP matters are not the subject matter of this application.

[4] Subsequently, the Applicant requested that his application be treated as an Action under s. 18.4(2) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 which allows this Court, if it considers it appropriate, to direct that an application for judicial review be treated and proceeded with as an Action. The relief sought as stated by the Applicant:

A. A declaration that his rights under section 7 of the Canadian Charter of Right's and Freedoms (the "Charter") have been infringed by both Respondents,
B. Damages for breaches of the Applicant's section 7 Charter rights pursuant to the section 24(1) of the Charter;
C. Aggregated damages,
D. Interest,
E. Costs, and,

F. Such further relief as this Honourable Court may deem just.

[5] Of note is at the above paragraph at point A, the original application had one Respondent, but directed at both the RCMP and the Attorney General of Canada ("AGC"). This is why would image the Applicant makes reference to two (2) Respondents instead of one.

[6] However, Respondent's counsel noted that to have the application treated as an action that this must be done by filing a Motion, which would allow both parties to submit arguments and case law relevant to determining whether the request should be granted, and if necessary to file affidavits setting out any facts they wish to rely on. It will also provide the AGC with sufficient information to determine whether it should object to the motion, consent to it, or leave it to the discretion of the Court.

[7] One may ask why this background is relevant, as the issue of filing by motion was not argued as such at the hearing. However, this motion (if it had been brought), as well as Mr. Tehrankari's response require, as noted above, support from things like case law. This forms the basis of his request, in that he wants a computer to do case law research for this motion. At the hearing, he noted other reasons for the request; namely that he wants to communicate with his family and do other legal research to prove his innocence.

[8] The Respondent suggested that the Applicant's arguments in the instant case would be more appropriately made as an application for judicial review containing a constitutional question.

[9] In the instant injunction, the Applicant stated that he does not have access to case law, and that databases which may contain case law do not exist within the prison systems he has access to. He also argued his family is busy and do not have time as suggested to look up cases on the internet and provide them to him. He indicated he has no alternative but to ask for this mandatory injunction by way of this motion.

A. *Relief Requested*

[10] The Applicant requests the following relief:

A. Direct the Correctional Service of Canada (“CSC”) to allow the Applicant, at his own expense, to purchase an in-cell computer or a tamper-proof electronic tablet with monitored Internet access or connection with a specific server-site for the purpose of the items recommended on pages 76 and 77 of the Correctional Investigator 's Annual Report (“CIAR”), #47, 2019-2020:
    i. Exchange email with people on an approved list of contacts,
    ii. Use video conference to connect with family and friends rather than waiting to use a telephone in an area that barely provides privacy,
    iii. Download games, music, movies and books from a limited selection,
    iv. File grievances,
    v. Access to a law library,
    vi. Take education and job training courses, and,
    vii. Participate in correctional programming.
B. An extension of time for filing the Applicant's Affidavit due to any unforeseen delay that may be caused by the proceedings and conclusion of this Motion.

B. *Grounds for the Motion*

[11] The Applicant submits that there are 11 grounds for this Motion:

A. The CSC failed to act on the recommendations of the Correctional Investigator for over two decades, by disallowing the Applicant from having access to an in-cell computer or a tamper-proof tablet as provided in the relief sought, above, contrary to provisions of section 7 o f the Charter and sections 4(c) and 5(a) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CCRA");

B. The CSC chose not to respond to the Applicant and requests regarding this problem, contrary to various provisions of the CCRA and CCRR;

C. The provisions of the Commissioner's Directives preventing the Applicant from having an in-cell computer are *ultra vires*;

D. The CSC failed to act on the Applicant's Grievance filed in April 2021, contrary to their written policies;

E. The CSC failed to provide the Applicant with the necessities he needs to do complete, effective, and efficient research in order to prepare and present his litigation, including but not limited to his Appeal against his conviction, contrary to CSC's written policies;

F. The CSC providing incorrect information to this Honourable Court in their letter of response, on March 4, 2022, to the Applicant's letter of February 14, 2022, to the Right Honourable Chief Justice Mr. Paul S. Crampton;

G. The CCRA having no provisions to enforce the CIAR's recommendations;

H. The exigency/time sensitivity of the Applicant's need for an in-cell computer or a tamper-proof electronic tablet and an in-cell printer, purchased at his own expense;

I. The CSC's involved agents' retaliation against the Applicant for submitting grievances on this matter;

J. The CSC's general history of abuse of power and defiance of the rule of law as concluded by independent experts throughout the decades;

K. The extensive expenses that the CSC's failure, in re the aforementioned, has caused the Applicant and, in turn, his family;

III. Issue

[12] The issue is whether this motion for interlocutory relief should be granted.

IV. Analysis

[13] This motion, and the file itself, are a complicated tangle of motions and applications. The underlying judicial review concerns an access to information request, and it has ballooned into a contentious motion challenging broad regulations, seeking permanent orders to subvert them, and requested declarations of unconstitutionality.

[14] However, the single question I must decide is whether to grant an interlocutory injunction ordering the CSC to grant the Applicant in-cell computer or tamper-proof tablet for the purpose of preparing his different applications before this Court.

A. *The Law*

[15] The test for the granting of a mandatory injunction has been clearly set out by the Supreme Court of Canada in *R v Canadian Broadcasting Corporation*, 2018 SCC 5 as follows:

> (1) The applicant must demonstrate a strong prima facie case that it will succeed at trial. This entails showing a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice;
>
> (2) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and
>
> (3) The applicant must show that the balance of convenience favours granting the injunction.

[16] The test is conjunctive meaning that all three branches of the test must be met before the mandatory injunction will be granted.

[17] The Applicant submits that he requires an in-cell computer or tamper-proof tablet in order to conduct case law research to prepare his applications, such as the one underlying this motion. He points to the computer facilities inmates are afforded (approximately 4 computers for 400 inmates), as well as the unreliability and lack of speed of these computers. He disputes the evidence filed by the Respondent about when he could actually access the computers.

[18] In addition, he argues that the CSC's refusal to grant him the requested access, and their general demeanor towards him, is indicative of a "delay and deny" tactic that amounts to both an abuse of power and "repulsiveness to the rule of law," both of which are tantamount to sentencing him to "death behind bars." He submits that this represents a failure of the CSC,

given that in his view some other provincial institutions provide what he is requesting, and argues that the CSC is lagging behind other institutions and countries technologically. He makes the argument that this is inconsistent with – and frustrating to – Canada's role as a global human rights leader. He argues that the CSC allowing him to have an in-cell computer or tablet would be a step in the right direction. He argues that it would be beneficial psychologically, educationally, easing the burden of communication for himself and his family, reducing his and his family's distress, providing a better rehabilitation environment, "creating a better image for the CSC," eliminating paperwork, and eliminating abuses of power from CSC staff.

[19] The Applicant asserts that some provincial jails allow internet access, which should be grounds to grant this mandatory injunction. He argued that the Federal Correctional service facilities must catch up on infrastructure and modernization when it was pointed out to him that the CSC currently does not have infrastructure in place to implement such access for inmates.

[20] The Respondent submits that the Applicant's interlocutory injunction should not be granted for any of four reasons. First, this is because several of the remedies have a broad reach going beyond the conduct of the present Application, which is not what an interlocutory injunction is to be used for. Second, because the remedies sought by the Applicant should be the subject of their own applications for judicial review, given the subject matter. Third, because the Applicant's allegations are not founded in evidence. Fourth, even if it was considered, because the Applicant's motion should not be granted given the test for such an injunction.

[21] I will consider the fourth ground, though my failure to write on any of the preceding three is not an endorsement of the Applicant's position on them.

(1) Strong *Prima Facie* Case

[22] Given the complexity of the web of motions, the motion before me, as well as the underlying application that is not before me presently, the application of the first step of the test is difficult. As I am of the view that the Applicant fails on the second step of the test, I will concentrate my analysis on that factor. This is in no way meant to indicate a conclusion that the Applicant has met this step of the test and presented a strong *prima facie* case.

(2) Irreparable Harm

[23] The second branch of this test asks whether the Applicant has demonstrated that irreparable harm will result if the relief requested is not granted. That is, if the Applicant is not given the ability to have an in-cell computer or tamper-proof tablet on which to do, among other things, legal research, has he convinced me that he will suffer irreparable harm? The answer is no.

[24] The Applicant raised concerns regarding his access to computers given the number of inmates and the relative lack of computers, as well as his inability to access case law on those computers. I agree that if he was being completely denied access to technology, this may raise concerns. However, the Applicant has not convinced me this is the case. This is especially the case in light of the Respondent's submissions that it can guarantee the Applicant 8-10 hours of

computer access per week at all times, and up to 15-19 hours of access per week outside periods of sanitary restrictions. As well, contained within the Respondent's Affidavit of Linda Giordano, Deputy Warden of the Applicant's facility, is the fact that inmates have ample access to case law and other legal texts, rules, and legislation via their library resources. As such, the Applicant has not convinced me he will suffer irreparable harm so as to justify my granting of this injunction. Rather, the fact of the matter is that the Applicant would *prefer* to have an in-cell computer or tamper-proof tablet, both for legal research and for his other noted purposes, such as entertainment and communication with those close to him. Though inconvenient and not ideal, this is not irreparable harm as described by the Supreme Court of Canada in the test for such an injunction.

(3) Balance of Convenience

[25] Given my finding of no irreparable harm, I need not write on this step of the test. That said, I wish to once again clarify that this is not an endorsement, nor a finding in favour of, the Applicant's position on this step.

V. Costs

[26] No costs were sought by the Respondent and none are ordered.

JUDGMENT IN T-233-22

THIS COURT'S JUDGMENT is that:

1. This application for a mandatory injunction is dismissed;

2. No costs are awarded.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-233-22
STYLE OF CAUSE:	ALLEN TEHRANKARI v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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APPEARANCES:

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Mathieu Laliberté	FOR THE RESPONDENT

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