

CANADA / JUDGMENT

Crawshaw v. Canada (Attorney General)

2003 FCT 621

COURT

Federal Court

DECIDED

16 May 2003

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Crawshaw v. Canada (Attorney General) Court (s) Database Federal Court Decisions Date 2003-05-16 Neutral citation 2003 FCT 621 File numbers T-180-02 Decision Content Date: 200300516 Docket: T-180-02 Citation: 2003 FCT 621 BETWEEN: ALLAN ARTHUR CRAWSHAW Applicant and THE ATTORNEY GENERAL OF CANADA Respondent REASONS FOR ORDER SIMPSON, J.

- [1] Allan Arthur Crawshaw (the "Applicant") is serving a life sentence for first degree murder. Following his conviction on May 17, 1993, he was incarcerated at the Mission Medium Security Institution. In December of 2000, he was transferred to the Elbow Lake Minimum Security Institution and, shortly thereafter in early 2001, he was moved to the Ferndale Minimum Security Institution where he remains today.
- [2] This application for judicial review concerns a decision dated December 31, 2001 (the "Decision") which was made in response to a third level grievance in file number V80A00000095/V80A00000700.
- [3] The Applicant's grievance at the third level was dated August 28, 2001. It read:
1. I have in the past stated to Federal Court Judges - and will undoubtedly be stating to Federal Court Judges in the future - that I DO NOT have a grievance process worth pursuing within the Correctional Service of Canada, as guaranteed under the Corrections and Conditional Release Act section 90 - in that the grievance process is not in compliance with the law, is not timely, and does not effectively or fairly respond based on adequate investigation. This is a violation of the law.
 2. The fact that your employees premeditatively [sic] and consistently violate the law is not surprising - however, the fact that your office condones these illegal procedures is most reprehensible - and illegal.
 3. This grievance started out as Reference number V80A00000095 - now it has been changed to V80A00000700 - Why?

4. This grievance is once again in violation of the Commissioner's Directive 081 section 7 - "CSC shall ensure that offenders are provided with complete, written responses to issues raised in complaints and grievances within 15 working days of receipt, when the complaint or grievance is assessed as being a priority case, and within 25 working days in all other cases." So far, it has taken some 8 months to get this grievance just to this stage. Why?
 5. I would like to draw the Commissioner's attention to the Criminal Code of Canada sections [sic] 337; concerning - a Public Servant refusing to deliver property:
337. Every one who, being or having been employed in the service of Her Majesty in right of Canada or a province, or in the service of a municipality, and entrusted by virtue of that employment with the receipt, custody, management or control of anything, refuses or fails to deliver it to a person who is authorized to demand it and does demand it is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. R.S., c. C-34, s. 297. ACTION REQUESTED Your employees are in possession of my ORIGINAL documents concerning the purchase of my computer - which was damaged while in their custody - and I request the ORIGINAL documents to be turned over to me. The documents were illegally sent from Ferndale to Mission Institution.
- [4] The respondent framed the Decision as follows: Your third level grievance as referenced above has been reviewed. You are not satisfied with the explanations you have received from the previous levels with regard to the issues surrounding the delays you have experienced the change in grievance numbers and the lack of original paperwork concerning the purchase of your computer. While I agree that it is disconcerting that the Service has not been able to respond to your issues within the appropriate timeframes an apology was extended to you in this regard by the second level of the grievance process. Regarding your continued request for an explanation concerning the change in the grievance number, I have been provided a copy of a memo sent to you by the Chief Administrative Services, Mission Institution dated 2001-05-24. Although the original memo was provided to you, a copy is attached for your reference. The explanation is clear. With regard to the issue of missing original documentation, you have been informed that the paperwork concerning the purchase of your computer cannot be located. Although the original documents are not required to address any problems you may have with the computer you have been informed that staff in Admissions and Discharge at Ferndale Institution could assist you with the supplier of your computer. I apologize for any complication you may have incurred due to the loss of your paperwork. As it is my opinion that the previous respondents have appropriately addressed these issues, no further action will be taken at this level. Discussion
- [5] The memorandum referred to in the fourth paragraph of the Decision informed the Applicant that his complaint V80A00000095 was originally handled by Elbow Lake Institution. However, that file was closed because the Applicant's computer was stored at and shipped from the Mission Institution. For this reason, the complaint was assigned a new number, V80A0000070, and was submitted to the Warden at Mission Institution.

- [6] With regard to the Applicant's original computer purchase documents, it is clear that they have been misplaced or were never received. In any case, they are not available.
- [7] There was a delay in dealing with the Applicant's third level grievance (the "Grievance"). It is dated August 28, 2001 and it appears that it was received on September 6, 2001. However, the Decision was not rendered until the end of December 2001. This was well outside the time frame for responses to grievances provided in paragraph 7 in the Commissioner's Policy Directive 081 (the "Directive"). In the Directive, Correctional Services of Canada ("CSC") is asked to ensure that complaints in non-priority cases are answered in writing within twenty-five working days of their receipt by the respondent. The Directive relates to section 90 of the Corrections and Conditional Release Act, S.C. 1992, c.20 (the "Act") which states that there shall be a procedure for fairly and expeditiously resolving offenders' grievances.
- [8] The Applicant received an apology for the delay dated October 18, 2001. It is referred to in the third paragraph of the Decision. It read: I refer to my previous letter dated 2001-09-19 concerning your third level grievance presentation. As stated in that letter, we had expected to respond to your grievance by 2001-10-25. I regret that we are unable to provide a response to your grievance within the timeframe that was prescribed due to the unexpected large amount of grievances received. We expect to have a reply by 2001-11-30. Again, please accept my apologies for this delay.
- [9] Pursuant to subsection 18.1(2) of the Federal Court Act, R.S.C. 1985, c. F-7, the Applicant has the right to apply for judicial review of a decision or order of a Federal Tribunal. In this case, the Applicant is not alleging that reviewable errors appear in the Decision. Rather, in his Applicant's Record at page 92, he submits that, because his grievance was not handled expeditiously, he seeks: An Order of Mandamus, ordering the Correctional Service of Canada to process grievances in a Fair and Expeditious manner as per CCRA section 90.
- [10] In support of his application for this order, the Applicant provided examples of CSC's failure to provide timely responses to inmate grievances and copies of Annual Reports from the Correctional Investigator which criticize the inmates' grievance process. However, this evidence is not admissible on this application. On judicial review, the Court is only entitled to consider the Decision and any material relied on by the Decision-maker.

Conclusion

- [11] I have not been persuaded of any reviewable errors or of any justification for an award of costs to the Applicant. Accordingly, this application will be dismissed without costs. "Sandra J. Simpson" JUDGE Ottawa, Ontario May 16, 2003 FEDERAL COURT OF CANADA TRIAL DIVISION NAMES OF COUNSEL AND SOLICITORS OF RECORD DOCKET: T-180-02 STYLE OF CAUSE: Allan Arthur Crawshaw v. AGC PLACE OF HEARING: Vancouver, B.C. (In Writing) DATE OF HEARING: April 9, 2003 (In Writing) REASONS FOR : Simpson, J DATED: May 16, 2003 APPEARANCES: Allan Arthur Crawshaw FOR APPLICANT Ken Manning FOR RESPONDENT SOLICITORS OF RECORD: Allan Arthur Crawshaw On his own behalf c/o

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