
CANADA / JUDGMENT

Grenier v. Canada (Attorney General)

2004 FC 1435

COURT

Federal Court

DECIDED

18 October 2004

Source: decisions.fct-cf.gc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Grenier v. Canada (Attorney General)

Court (s) Database

Federal Court Decisions

Date

2004-10-18

Neutral citation

2004 FC 1435

File numbers

T-954-01

Notes

Digest

Decision Content

Date: 20041018

Docket: T-954-01

Citation: 2004 FC 1435

Ottawa, Ontario, the 18th day of October 2004

PRESENT: THE HONOURABLE MR. JUSTICE BLANCHARD

BETWEEN:

DANIEL GRENIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

Introduction

- [1] This is a motion filed by the respondent to appeal the decision of Prothonotary Richard Morneau allowing in part the action brought by the applicant.

Background and prothonotary's decision

- [2] The applicant is an inmate at the Donnacona Institution who is claiming by action damages of some \$49,000, consisting of \$24,000 as compensatory damages and \$25,000 as exemplary damages. He alleged he suffered harm as a result of the decision on May 29, 1998, to place him in administrative segregation which lasted for 14 days, a decision he considered amounted to unjustified and illegal imprisonment.
- [3] Exercising his jurisdiction to hear a simplified action pursuant to Rule 50(2) of the Federal Court Rules, 1998, SOR/98-106 (the Rules), Prothonotary Morneau on January 28, 2004, allowed the applicant's action in part, awarding him the sum of \$3,000 in compensatory damages and \$2,000 in exemplary damages as compensation for having been arbitrarily imprisoned from May 29 to June 11, 1998.
- [4] The prothonotary accepted the applicant's argument that the gist of an action for arbitrary imprisonment is the simple fact of being imprisoned, and the exclusion of an inmate from the general prison population to transfer him to more restrictive quarters constitutes imprisonment. The prothonotary also accepted the argument that once the imprisonment has been established by the applicant's evidence, the burden is on the respondent to justify placing him in administrative segregation. The prothonotary concluded as follows:
- [85] For these reasons, I agree with the Court in Brandon, *supra*, paragraph 69 and the Court in Saint-Jacques v. Canada (Solicitor General) (1991), 45 F.T.R. 1, that the defendant did not discharge her burden to persuade the Court that, from May 29 to June 11, 1998, the plaintiff's administrative segregation was warranted. So, for this period, my finding is that the plaintiff was arbitrarily imprisoned. The plaintiff is therefore entitled to compensatory and exemplary damages in this respect.

Points at issue

- [5] The respondent argued that the applicant should have proceeded by way of judicial review, and raised the preliminary question of whether the applicant could make use of the action as a means of seeking a remedy. I will deal with this point before moving on to the points at issue, which take the following form in the case at bar:
- (a) what standard should this Court apply to an appeal from a decision in a proceeding by simplified action heard by a prothonotary?
 - (b) do the test and principles in *Montambault v. Hôpital Maisonneuve-Rosemont*, [2001] J.Q. No. 948, on the immunity of a public body from liability apply here?
 - (c) did the prothonotary err in awarding compensatory and exemplary damages and in determining their quantum?
 - (d) did the prothonotary commit an error by failing to consider the fact that the grievance procedure created by the Corrections and Conditional Release Act, S.C. 1992, c. 20 (CCRA), was not exhausted?

Analysis

Could the applicant use the action as a vehicle for seeking his remedy?

- [6] The respondent relied on *Canada v. Tremblay*, 2004 FCA 172, as a basis for arguing that an applicant cannot choose between two forms of proceeding and in the case at bar he should proceed by way of judicial review. In *Tremblay*, unlike the case at bar, the applicant necessarily had to proceed by way of judicial review to get the Court to quash the decision dealing with his compulsory retirement, since he was trying to be reinstated in his employment. As Desjardins J.A. explained in *Tremblay*, the Court recognized that there may be cases in which an application for judicial review can be of no value, and each case is *sui generis* and must be decided on its own merits in determining the appropriate procedure.
- [7] I consider that in the case at bar it would be useless for the applicant to proceed by way of judicial review to have a decision quashed when it is clearly no longer applicable. I therefore conclude that the only proceeding that could make it possible to eliminate or redress the harm caused by the penalty already served is that of an action in damages. For these reasons, I feel that the facts in the case at bar are similar to those considered by Létourneau J.A. in *Zarzour v. Canada*, [2000] F.C.J. No. 2070, on line: QL, and they do not involve the same factors as those considered in *Tremblay*. I accordingly take the liberty of reproducing the analysis given by Létourneau J.A. in *Zarzour*, at paragraph 48 of his judgment, that it is necessary:
- [48] . . . to adopt a utilitarian approach to this, and favour the proceeding that can be used to eliminate or repair the harm resulting from the decision that was rendered. For example, there is no use in requiring that an inmate who has already served his 15-day segregation

period seek to have the decision that forced this on him set aside by way of judicial review. However, when a decision is still operative, as is the Board decision in this case imposing a prohibition on contact as a condition of release, it is not only useful but necessary to proceed by judicial review in order to have it quashed. Otherwise, both the decision and its effects will drag on, with possible aggravation of the harm during the period in which the action in damages follows its course.

- [8] It appears from the precedents applicable in this matter that, in cases in which the decision giving rise to the harm is still operative at the time the remedy is sought, the aggrieved party cannot make use of an action but must proceed by way of judicial review: *Sweet v. Canada*, [1999] F.C.J. No. 1539, on line: QL; *Zarzour*, supra; *Tremblay*, supra. Conversely, where the decision which gave rise to the alleged harm is no longer effective at the time, it is possible for the applicant to bring an action claiming damages: *Creed v. Canada (Solicitor General)*, [1998] F.C.J. No. 199, on line: QL; *Shaw v. Canada*, [1999] F.C.J. No. 657, on line: QL.
- [9] As the placement in administrative segregation had ended at the time the court proceedings were initiated by the applicant, he could make use of an action as a means of making his protest. The disputed decision was no longer operative at the time.
- [10] As stated in subsection 12(3) of the Federal Courts Act, R.S.C. 1985, c. F-7, the prothonotary's powers are determined by the Rules. In the case at bar, the prothonotary could hear the case under Rule 50(2), which provides that he may hear an action for monetary relief of \$50,000 or less.
- (a) What standard should this Court apply to an appeal from a decision in a proceeding by simplified action heard by a prothonotary?
- [11] Rule 51 states that an order of a prothonotary may be appealed to the Federal Court. This Court accordingly has the case before it as an appeal and I must determine the applicable standard.
- [12] The Federal Court of Appeal's judgment in *Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425, held that a prothonotary's discretionary orders may be reviewed on appeal if (1) they are clearly wrong, in the sense that the exercise of the prothonotary's power is based upon a wrong principle or upon a misapprehension of the facts, or (2) the prothonotary exercised his discretion improperly on a question vital to the final issue of the case.
- [13] I feel that this standard cannot be applied here, since this is not an interlocutory decision or one based solely on written evidence, but a judgment on the merits resulting from an action.
- [14] The standard laid down by the Supreme Court of Canada in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, is the one which in my view should apply in the circumstances of an appeal from a prothonotary's decision on a simplified action, since for all practical purposes he is then acting as a trial judge.

[15] The rule that emerges from Housen is that, on questions of law, appellate courts apply the standard of the correct decision. However, where questions of fact are concerned, a palpable and overriding error must be found in the trial judge's conclusions if an appellate court is to intervene. Finally, on mixed questions of fact and law, the rule for intervention must be adjusted to take all the facts of each case into account.

The standard of review on pure questions of law is one of correctness, and an appellate court is thus free to replace the opinion of the trial judge with its own . . .

The standard of review for findings of fact is such that they cannot be reversed unless the trial judge has made a "palpable and overriding error". (at 237)

[16] In particular, three fundamental principles were identified by the Supreme Court to justify restraint with respect to findings of fact made by the trial judge.

First, given the scarcity of judicial resources, setting limits on the scope of judicial review in turn limits the number, length and cost of appeals. Secondly, the principle of deference promotes the autonomy and integrity of the trial proceedings. Finally, this principle recognizes the expertise of trial judges and their advantageous position to make factual findings, owing to their extensive exposure to the evidence and the benefit of hearing the testimony *viva voce*. (at 237)

[17] In short, I feel that the appropriate standard in the case at bar is that laid down in Housen, since we are concerned with an appeal from a final decision made after a trial was held.

(b) Do the test and principles in *Montambault v. Hôpital Maisonneuve-Rosemont*, [2001] J.Q. No. 948, on the immunity of a public body from liability apply here?

[18] In a case between the estate of a physician who had been dismissed and the hospital where he was working, the Quebec Court of Appeal held that hospitals are public bodies. Damages were awarded because the discretion of the public body in question was deliberately used for a purpose not intended by the law.

[19] The Quebec Court of Appeal dealt with the question of discretion because, in its cross-appeal, the hospital argued that it enjoyed immunity and consequently could not be ordered to pay compensation relating to decisions made in good faith.

[20] To answer this question Deschamps J.A., for the Court, formulated a classification procedure. She concluded that it is first necessary to identify, in accordance with law, the public body's level of discretion, and that will determine whether it has immunity and whether the courts of law can intervene to hold it civilly liable. If the decision is not reasonably within the discretion conferred on the public body, it is then necessary, secondly, to look at the civil standard and decide whether a fault giving rise to liability was committed.

[TRANSLATION]

- [77] . . . If the public body infringes its legislation or exceeds its discretion, there will be a basis in public law for intervention by the courts. When harm results from the unreasonable exercise of the executive power, the courts may penalize it if there was fault in the private law sense. If the decision was one not supported by any discretion, the only measurement must be that of private law. Between the two extremes, determining the scope of the decision will guide the intervention. The greater the discretion, the closer the standard will be to unreasonableness.
- [82] Once the Court has determined whether it can intervene because of the unreasonable nature of a decision or because the act does not fall within the discretion conferred on the public body, it must still determine whether the act in question is a contravention of a civil standard.
- [21] The respondent argued that in the case at bar the prothonotary had no jurisdiction to rule on the legality of the decision: accordingly, it does not meet the first part of the test laid down in *Montambault*. Alternatively, the respondent maintained that on the facts in the record the decision was not unreasonable. Finally, in her submission if it is concluded that the decision was unreasonable the prothonotary could not conclude that there was fault, since bad faith by the authorities was not established.
- [22] In my view, the respondent errs in her interpretation of the Quebec Court of Appeal's judgment. I feel that was a judgment setting out a test for determining whether the public body has immunity insulating it from the civil liability which could be imposed on it by a court ruling in an action. The respondent actually relied on it to introduce the concept of judicial review into consideration. In my opinion, *Montambault* does not introduce that proceeding into consideration of the civil liability of a public body.
- [23] Additionally, *Deschamps J.A.* makes it clear that the method in *Pushpanathan v. Canada*, [1998] S.C.R. 982, should not be introduced into this analysis in its entirety, since it does not involve judicial review of a decision of a public body. However, the Court of Appeal referred to the *Pushpanathan* continuum in determining the question of the immunity of a public body sued in delict. Thus, at one extreme, a discretionary decision must have a degree of unreasonableness for judicial intervention to be possible; at the other extreme, when a decision is not discretionary, the courts may intervene depending on how the power is exercised.

[TRANSLATION]

- [78] These analytical stages make it possible to take account of all the fine distinctions now made necessary by the sophistication of administrative acts. This approach also refers back to the continuum used to decide on judicial intervention to review the legality of government decisions. Although a clear distinction has been made in our law between these two grounds of intervention, the fact remains that in both cases they involve relations between government and the individual, and in both cases the individual is objecting that government has failed to perform a duty.

[79] The analytical method of the standard of review set out in *Pushpanathan v. Canada*, [1998] 1 S.C.R. 982, cannot be transposed in its entirety . . .

(Emphasis added.)

[24] As the Court is not concerned here with a judicial review proceeding, the prothonotary had jurisdiction to hear the proceeding in this simplified action, where there is no reason to be concerned with the legality of the decision, but rather to determine the respondent's civil liability.

[25] The precedents emerging from Quebec, where *Montambault* has been applied, confirm that the rule resulting from that judgment does not relate to judicial review of the decision of a public body against which a liability action is brought. Rather, the Court of Appeal developed a test to determine a public body's immunity to such liability, which exists depending on the level of discretion it exercises in making the decision: *Lagueux v. Collège d'électronique de Québec inc.*, [2004] J.Q. No. 7516; *Saint-Étienne-de-Bolton (Municipalité) v. Paradot*, [2003] J.Q. No. 4, on line: QL; *Reliance Power Equipment Ltd. v. Montréal (Ville)*, [2002] J.Q. No. 3812, on line: QL; *Hatton v. Batshaw Youth and Family Centres*, [2002] J.Q. No. 2301, on line: QL; *Finney v. Barreau du Québec*, [2002] J.Q. No. 1522, on line: QL; *Ouimette v. Canada (Procureur général)*, [2002] J.Q. No. 967, on line: QL; *Cadieux v. Montréal (Communauté urbaine de Montréal)*, [2002] J.Q. No. 363, on line: QL.

[26] In short, we are not reviewing the legality of the decision, we are considering whether the decision-maker enjoyed immunity.

[27] In the case at bar, the application of these principles supports the prothonotary's finding that the officer had the discretion to place the applicant in detention, but not to prolong its duration. The prothonotary reviewed the CCRA provisions on administrative segregation simply to determine whether the authorities had a broad discretion in deciding to extend an inmate's administrative segregation. He concluded from the CCRA that segregation will be permitted if the penitentiary's security is jeopardized, if one is trying to prevent contacts with other inmates, and the inmate must be placed among the other inmates again at the earliest appropriate time: paragraphs 31(1), (2) and (3). The prothonotary concluded that the decision was legal in that it was possible to make the decision under the CCRA, but it was arbitrary because the authorities had not justified their position.

[84] . . . From my assessment of the evidence, it appears that it is essentially because of the fact that the plaintiff maintained his version of events that he was kept in administrative segregation. This position of the plaintiff, apart from the fact that it is logical, does not in any way justify, in my opinion, keeping him in administrative segregation. It was raised in the evidence by the defendant that this attitude of the plaintiff indicated that he was at risk of recidivism. Even though I am prepared to recognize that the penal authorities are entitled to a high degree of deference in their assessment of the situation, I do not think that this statement is warranted and supported in this case.

- [28] Like the prothonotary, I cannot find in the legislation or the facts any basis for concluding that the officer who decided to continue the applicant's detention had immunity shielding him from liability.
- [29] I cannot conclude that the prothonotary made a conclusive error. In my opinion, the final outcome would not have been different even if the Montambault principles had been applied. It seems clear to me that the prothonotary would not have proceeded to determine whether a fault giving rise to liability had been committed if he had first found that the "public body" was not liable because it enjoyed immunity.
- [30] In view of the standard laid down in Housen, I conclude that my intervention in the decision by the prothonotary is not justified since he made no reviewable error of law or any palpable and overriding error of fact. He properly applied the principles set out in article 1457 of the Civil Code of Quebec, S.Q. 1991, c. 64, used in determining civil liability in Quebec.
- (c) Did the prothonotary err in awarding compensatory and exemplary damages and in determining their quantum?
- [31] To begin with, the respondent argued that the prothonotary erred in awarding damages since the applicant suffered none. The respondent felt that the applicant had in fact been sentenced by a disciplinary court, the decision of which is not at issue in the case at bar, to serve a term of segregation for 14 days, added to the 14 days already served in administrative segregation, making a total of 28 days. The respondent argued that if the applicant had not served this time in administrative segregation the court would have imposed a 28-day penalty on him, so that he would not have suffered any damage.
- [32] The applicant simply maintained that the prothonotary found that on the facts in evidence damage was sustained as a result of the arbitrary decision.
- [33] In deciding the action, the prothonotary looked at the components of civil liability and concluded that in the case at bar there was fault, damage and a causal connection. He noted that being sentenced to a 14-day term of segregation by the court was a new act in the series of events, which he did not have to consider. Since he concluded that the 14-day administrative segregation disputed by the applicant was unjustly imposed on him, he awarded the appropriate damages and, applying the Housen standard, I feel there is no basis for intervening in that decision.
- [34] Alternatively, the respondent challenged the quantum of damages. The respondent maintained that the prothonotary erred by relying on the applicant's argument that, in determining compensatory damages, reference should be made to *Brandon v. Canada (Correctional Service)*, [1996] F.C.J. No. 1, on line: QL, and *Saint-Jacques v. Canada*, [1991] F.C.J. No. 306, on line: QL, and accordingly the sum of \$20 a day is appropriate. For the 14 days of segregation, this makes a total of \$280. The respondent challenged the fact that the prothonotary increased this amount to \$3,000 without justification.

- [35] On this point, I accept the applicant's argument that the damages were assessed by the prothonotary in accordance with the evidence submitted. Based on the precedents on the point, the amounts awarded in the case at bar are not excessive: *LeBar v. Canada*, [1989] 1 F.C. 603; *Brandon; Saint-Jacques; Abbott v. Canada*, [1993] F.C.J. No. 673, on line: QL. In view of the rule stated in *Housen*, I do not feel it is necessary to intervene as the prothonotary's assessment of the quantum of damages was not vitiated by any palpable and overriding error.
- (d) Did the prothonotary commit an error by failing to consider the fact that the grievance procedure created by the Corrections and Conditional Release Act, S.C. 1992, c. 20 (CCRA), was not exhausted?
- [36] Since the applicant's period of segregation had already been served, I cannot disregard the precedents as set out in *Zarzour*, and I concur in the view that the grievance procedure suggested by the respondent was not useful as, since the decision was no longer operative, cancelling it would not eliminate or repair the harm suffered by the applicant. Since the CCRA and the related regulations provide no means for an inmate to obtain compensation by damages in the case of administrative segregation which is no longer operative, the only option open to the applicant was that of an action filed in this Court. I therefore conclude that in the case at bar the grievance procedure, and possibly that of judicial review, are not alternative remedies for claiming damages.

Conclusion

- [37] I consider that the prothonotary had jurisdiction to rule on the determining of the fault giving rise to liability in this simplified action and that the decision he made is supported by the evidence presented and not vitiated by any overriding error.

ORDER

THE COURT ORDERS THAT:

1. The motion is dismissed with costs.

"Edmond P. Blanchard"

Judge

Certified true translation

Jacques Deschênes, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-954-01

STYLE OF CAUSE: Daniel Grenier v. Attorney General of Canada

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: August 25, 2004

REASONS [FOR ORDER AND JUDGMENT]: Blanchard J.

DATED: October 18, 2004

APPEARANCES:

Julie Gagné FOR THE APPLICANT

Dominique Guimond FOR THE RESPONDENT

SOLICITORS OF RECORD:

Labrecque, Robitaille, Roberge & Asselin FOR THE APPLICANT

Québec, Quebec

Morris Rosenberg FOR THE RESPONDENT

Deputy Attorney General of Canada

Montréal, Quebec

FEDERAL COURT

Docket: T-954-01

BETWEEN:

DANIEL GRENIER

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER

AND ORDER

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/40253/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/grenier-v-canada-attorney-general-2004>

Prepared on 29 October 2026 · Esheria