

CANADA / JUDGMENT

LaRue v. Canada (Attorney General)

2024 BCSC 2166

COURT

Supreme Court of British Columbia

DECIDED

29 November 2024

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2024 BCSC 2166 LaRue v. Canada (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

LaRue v. Canada (Attorney General),

2024 BCSC 2166

Date: 20241129

Docket: 32903-2

Registry: Vancouver

Between:

Norman Eli LaRue and Jennifer Joan LaRue

Petitioners

And

Minister of Attorney General, Pacific Institution (Warden), Mission Institution (Warden) and Kent Institution (Warden)

Respondents

Before: The Honourable Justice Doyle

Reasons for Judgment

The Petitioners, appearing in-person:

N.E. Larue

J.J. LaRue

Counsel for the Respondents:

J. Mack

Place and Date of Hearing:

Vancouver, B.C.

August 14, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 29, 2024

INTRODUCTION

- [1] Norman Eli LaRue and his wife Jennifer Joan LaRue are the petitioners in this matter. Their petition was filed April 26, 2024.
- [2] The named respondents are the Minister of Attorney General and the wardens of three Correctional Service of Canada ("CSC") penitentiaries located in British Columbia: Pacific Institution, Mission Institution and Kent Institution.
- [3] The petition seeks various relief, set out at Part 1. I will summarize it broadly as:
- 1) To "review the questions raised by Mr. LaRue within the habeas corpus" matter which led to a decision by Madam Justice Murray, the reasons for which are indexed as LaRue v. Kent Institution (Warden), 2022 BCSC 1672;
 - 2) Expungement and/or correction of all documents from Mr. LaRue's CSC files which were relied upon by CSC in that habeas corpus matter and an order to cease targeting Mr. LaRue by creating and relying upon alleged false documents in a defamatory manner;
 - 3) The "reinstatement of services lost due to the Emergency Involuntary Transfer such as pre-existing Private Family Visits with [Mr. LaRue]'s family (wife and children)"; and
 - 4) Review or annulment of CSC decisions relating to new and old allegations based on perjury, libel or defamation.
- [4] By notice of application filed June 13, 2024, the Attorney General of Canada ("Canada") seeks that the petition be dismissed.
- [5] With reference to the petition, Canada submits:
- 1) Habeas corpus is not available, since it only applies to current and ongoing detention;
 - 2) Mr. LaRue is no longer in a maximum security institution, since he was transferred to a medium security institution pursuant to the decision of Murray J. referred to above. The decision of Murray J. is concluded, and there is no basis upon which that matter may be reopened;

- 3) The various relief sought of expungement, correction and use of alleged false records cannot be granted on this habeas corpus application;
 - 4) Habeas corpus does not apply to loss of privileges, and private family visits are privileges;
 - 5) The Federal Court of Canada--not this Court--has jurisdiction over review of CSC decisions other than those which allege a deprivation of liberty;
 - 6) A challenge by an inmate for refusal to correct CSC files must be brought through the process under the Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA]; and
 - 7) Both petitioners may request correction to information pursuant to the Privacy Act, R.S.C. 1985, c. P-21.
- [6] Both petitioners appeared in person for the hearing of this application. Counsel from the Department of Justice Canada appeared for Canada.

FURTHER BACKGROUND

- [7] Mr. LaRue is a federal inmate, serving a life sentence for first-degree murder. Ms. LaRue is his wife, and is not incarcerated.
- [8] As noted, Mr. LaRue made an earlier habeas corpus application, heard and determined by Murray J. in 2022. At that time, Mr. LaRue sought relief for the CSC involuntarily transferring him from a medium security institution to a maximum security institution.
- [9] Mr. LaRue claimed that his transfer was procedurally unfair on what Murray J. framed at para. 15 of her decision as five grounds or issues. The first of those issues was that the Warden at Pacific Institution failed to provide him written reasons for her decision on the transfer within five days, as required by s. 13(2)(c) of the Corrections and Conditional Release Regulations, SOR/92-620.
- [10] For the reasons set out in her decision, Murray J. found that the transfer decision was unlawful because the CSC failed to provide Mr. LaRue with written reasons for the transfer decision within five days, as required by the aforementioned s. 13(2)(c).
- [11] Given that finding, Murray J. did not need to, and did not, address the other four issues she framed at para. 15. She found that Mr. LaRue was entitled to relief by habeas corpus, and directed that he be returned to a medium security institution.

THE HEARING

- [12] The hearing of Canada's application came before me on August 14, 2024.
- [13] At that time, I was advised by counsel for Canada and the petitioners that Mr. LaRue's private family visits have been reinstated. As such, that is no longer a live issue for determination, and I will not address it further.

[14] I will address the remaining grounds upon which Canada submits that the petition be dismissed. Those are:

- 1) Review of issues not determined by Murray J. in her decision at 2022 BCSC 1672;
- 2) Expungement, correction and future reliance upon allegedly false CSC records; and
- 3) Review or annulment of the CSC decisions.

[15] I heard thorough submissions from counsel for Canada, and thorough submissions from both Mr. LaRue and Ms. LaRue. Ms. LaRue is not incarcerated, and has no standing to seek a habeas corpus remedy. However, counsel for Canada, Ms. Mack, fairly took no issue with Ms. LaRue addressing the Court on this matter and assisting her husband, which was in turn of assistance to this Court.

[16] Mr. and Ms. LaRue have various concerns about records kept by the CSC. Some of these concerns relate to records which they say contain unchallenged, false and defamatory drug trafficking allegations against them.

[17] It is clear from the petitioners' materials and submissions that they forcefully object to the CSC records which they allege contain and perpetrate false information about them. In their petition, they are in part seeking a remedy akin to a writ of mandamus commanding the CSC to expunge, correct and/or not rely upon some records and prior decisions.

[18] The submissions by both Mr. and Ms. LaRue were helpful to my understanding of the issues that concern them.

DISCUSSION

Review of Issues not determined by Murray J. in 2022 BCSC 1672

[19] Though Murray J. set out the five issues before her for determination at para. 15 of her decision, she was able to resolve the matter on the first of those five issues.

[20] Mr. LaRue was successful in establishing that the CSC decision was unlawful, and that he was entitled to relief by habeas corpus. Accordingly, Murray J. directed that Mr. LaRue be returned to a medium security institution.

[21] Given that successful result for Mr. LaRue, that was the end of the matter.

[22] Though I appreciate the petitioners have residual concerns about the disclosure and process leading to the decision transferring Mr. LaRue to maximum security, Murray J. resolved the matter in Mr. LaRue's favour on the first ground, finding that transfer unlawful. She directed that he be returned to a medium security institution, and that occurred.

[23] There is no basis for this Court to re-visit the other four issues at this time. That is essentially a request for this Court to re-open the habeas corpus matter already determined by Murray J. to have been an unlawful deprivation of liberty (*Moradkhan v. Mofidi*, 2013 BCCA 132 at paras. 31 to 32, albeit in a different context than the proceeding before Murray J.).

[24] The matter before Murray J. is concluded.

Habeas Corpus

[25] Habeas corpus provides a remedy for an unlawful deprivation of liberty, as it did for Mr. LaRue in the case before Murray J.

[26] The overall position of Canada on this preliminary application is not to contest the petitioners' concerns as set out in the petition, nor to address them substantively.

[27] Rather, Canada brings this application to dismiss the petition on the basis that none of the relief sought, including expungement, correction, future reliance upon CSC records or review or annulment of CSC decisions, is an available remedy pursuant to this Court's jurisdiction on a habeas corpus application.

[28] In *May v. Ferndale Institution*, 2005 SCC 82 at para. 74, the Supreme Court of Canada states:

74 A successful application for habeas corpus requires two elements: (1) a deprivation of liberty and (2) that the deprivation be unlawful. The onus of making out a deprivation of liberty rests on the applicant. The onus of establishing the lawfulness of that deprivation rests on the detaining authority.

[29] *Mission Institution v. Khela*, 2014 SCC 24 at para. 39 [Khela], summarized the boundaries of this Court's jurisdiction, as a provincial superior court, on a habeas corpus application:

[39] In the Federal Court, a wide array of relief can be sought in an application for judicial review of a CSC decision (see s. 18.1(3)(b) of the [Federal Courts Act]). But all a provincial superior court can do is determine that the detention is unlawful and then rule on a motion for discharge.

[30] The CSC falls within the definition of a "federal board, commission or other tribunal" under section 2 of the Federal Courts Act, R.S.C. 1985, c. F-7.

[31] Sections 18 and 18.1 of the Federal Courts Act grant the Federal Court exclusive original jurisdiction over injunctions, various writs (including mandamus) and declaratory relief against the CSC.

[32] As set out in *Khela*, all this Court "can do" on a habeas corpus application is to determine if the detention is unlawful and rule on a motion for discharge.

[33] Accordingly, this Court has no jurisdiction on this habeas corpus application to hear or determine the petitioners' claims which with respect to:

- 1) Expunging, correcting or future reliance upon CSC records; and
- 2) Reviewing or annulling the CSC decisions.

Other Proceedings

[34] As noted by Canada, the petitioners have initiated other proceedings with regard to matters of concern to them (noted at para. 9 of Canada's notice of application and in affidavit #1 of Nathalie Minsky at para. 5 (with some attachments)). These include:

- 1) Canadian Human Rights Commission complaints by Ms. LaRue;
- 2) CSC grievance of Mr. LaRue dated January 31, 2024; and
- 3) Amended notice of civil claim of both petitioners filed May 9, 2024 in the Abbotsford registry of this Court (this was filed after the present petition).

[35] For completeness, the offender final grievance response, dated June 6, 2024, was filed as Exhibit 1. Mr. LaRue takes issue with the offender final grievance response, as he is entitled to do. But his avenue to do so is not in this Court on a habeas corpus application.

[36] The offender final grievance response and the amended notice of civil claim both post-date the filing of this petition. At least in part as a result of this application, Mr. and Mrs. LaRue are aware of avenues other than this habeas corpus application. Indeed, at the hearing, counsel for Canada noted the provisions for review and correction of records, notably s. 24 of the CCRA and s. 12 of the Privacy Act.

CONCLUSION

[37] In light of all the foregoing:

- 1) The petition filed by Mr. and Ms. LaRue on April 26, 2024 is dismissed without leave to amend;
- 2) There shall be no costs to either party; and
- 3) The requirement for approval as to the form of the order by Mr. and Ms. LaRue is to be dispensed with.

[38] I should conclude by commending the parties for their approach to this application. Ms. Mack's submissions were both comprehensive and fair. Similarly, Mr. and Ms. LaRue's submissions were forthright, organized, concise and focused.

"Doyle J."

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