



Strykiwsky v. Mills (in his capacity as Warden of Stony Mountain Institution)

Court File no. T-389-00

Country: Canada

Region: Americas

Year: 2000

Court: Federal Court - Trial Division

Health Topics: Controlled substances, Health care and health services, Medicines, Prisons

Human Rights: Freedom from discrimination

Facts

The applicant was an inmate of Warkworth prison and a long time heroin addict. While an inmate, the applicant sought to overcome this addiction. The Correctional Service of Canada had a 2-phase program to address addiction cases. Phase I provided regular doses of methadone only to those entering federal prison already enrolled in a community methadone maintenance program. The sole exception was where an inmate displayed a dire need for immediate medical intervention in order to receive methadone. Phase II had not been implemented yet but contemplated making all inmates eligible to receive methadone as treatment.

The applicant was denied Phase I treatment under the exception. He filed a notice of application for judicial review alleging that the refusal was contrary to section 86 of the Corrections and Conditional Release Act and a breach of sections 7, 12 and 15 of the Canadian Charter of Rights and Freedoms and part 1 of the Constitution Act, 1982. The applicant also filed for interim relief pending the resolution of judicial review.

A consent order was filed on March 14, 2000 wherein the respondents set aside the refusal to treat the applicant and provided interim relief. There was a controversy on whether this meant that the judicial review was completed and so the case continued. The issue in the present case was whether the applicant could further extend the time for filing three affidavits (all discussing the need for a heroin-free prison environment if a prisoner is to succeed with his methadone treatment) from Dr. Pearson, Dr. Gourlay and Mr. Wallace.

Decision and Reasoning

In order to determine whether additional time should be granted to applicant, the Court analyzed four separate issues: (1) which test was applicable to the decision of whether to allow affidavits (2) whether the case was now moot given the March 14 order (wherein the respondents agreed to give interim relief to the applicant) (3) whether the applicant could satisfy the Court as to his reasons for the reasons for delay in filing the affidavits (4) whether the affidavits were admissible and relevant.

On the first issue, the Court held that the applicant must prove that the case was not moot and that the Mapei Inc. test was appropriate. The Mapei Inc. test had two parts: the first part looked at the reason for delay and the second part looked at whether the affidavits contained relevant and admissible evidence.

On the second issue, the Court noted that the respondents had not conceded they had a legal duty to provide methadone and that the only current way for a federal inmate to obtain on methadone was via the exceptional circumstances program. The Court thus held that the case was not moot as the applicant had not received the relief sought, but instead had only received temporary relief which could be taken away if Phase II was not implemented.

On the third issue, the Court noted that an applicant was not required to request an extension for filing an affidavit prior to the expiry of the filing deadline, but the applicant should have informed the respondent that he would request an extension of time once the affidavits became available. Such failure to want the opposing party, however, did not necessarily bar the applicant from relief.

On the fourth issue, the respondents only objected to Dr. Gourlay's affidavit, arguing that it lacks expertise in the field of institutional inmate environments. Considering that the respondent did not object to the relevancy of the content of the other two affidavits the Court deemed Dr. Pearson's and Mr. Wallace's affidavits to be

relevant and granted time to file. Considering that the applicant had not objected to the respondent's contention that Dr. Gourlay's expertise was outside of the institutional environment, the Court agreed that this affidavit was irrelevant and refused to allow the time to file it.

Decision Excerpts

In regard to the first issue, the applicant submits that the proper test for whether to extend time for filing affidavits has two parts. The first part looks at the reasons for the delay and the second part looks at whether the affidavits in question contain evidence which is relevant and admissible. While the respondents' submissions appear, at first glance, to have a certain logic inherent in them, this Court cannot, in the end, adhere to the reasoning behind them. Mr. Strykiwsky should, instead, merely face the two-step procedure along the lines his counsel envisioned at the hearing. First, he must prove to the Court's satisfaction that his case, in light of the March 14 order, is not moot. Assuming that the case is not moot and, in essence, still alive, there would be no reason why he then needs to do more than satisfy the Mapei Inc. test for filing late affidavits. Paragraph 7-8.

As he alleges, the respondents have not yet conceded that they have a legal duty, or that the moving party has a right to Phase II treatment. The fact that the February 11 refusal was set aside on consent and the fact that the moving party has since received special dispensation to be provided with the treatment, therefore, while benefiting him for the time being, does not dispose of the questions put at issue in the notice of application nor answer the prayer for relief cited above. Paragraph 13.

While Mr. Strykiwsky has received substantial relief, he has not received the relief which is tied to the rights he seeks to establish before this Court. In particular, it should be noted that the Phase II treatment might conceivably be taken away from the moving party were he no longer in urgent medical need of it. Paragraph 14

The statements made in the three affidavits appear, however, to exhibit only a tenuous connection to any argument based on paragraph 86(1)(a) of the Corrections and Conditional Release Act. It is also to be noted that counsel for Mr. Strykiwsky did not even attempt to link the statements to his proposed sections 7, 12 and 15 Charter and administrative law arguments. Nevertheless, as counsel for the applicant suggested at the hearing of the matter, this is not the time or the place to engage in an analysis of the merits or precise value of the statements (Transcript: p. 120 and p. 130). In addition, the respondent, as noted above, chose not to take issue with the admissibility or relevance of the Pearson and Wallace affidavits. This Court will, therefore, albeit reluctantly and only for the limited purposes of this motion, accept that these two affidavits contain information which is both admissible and relevant to the moving party's case. Paragraph 22.