

**PRACTICE**

PARTIES

Standing

Judicial review of two Parole Board of Canada decisions relating to respondent Philip James Baker — Case unusual in that applicant not subject of, not otherwise participating in, Board proceeding, Baker not participating in present proceeding, Attorney General's response to applicant's claims not addressing substance of allegations of fraud, perjury — Applicant seeking relief under *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 18.1(4) — Baker convicted for fraud, sentenced to prison in the U.S. — Later transferred to Canada to complete sentence — Board granting Baker early release subject to specified conditions — Issued second decision, making changes to original release conditions so that Baker could travel to Germany to testify at his ex-wife's trial for money laundering — Those decisions containing "Avoid Certain Persons" clause — Newspapers published articles about Baker's case — Referred to applicant in detail, indicating he had been business partner with Baker, was implicated in certain matters relating to fraud — Applicant arguing that in arriving at its decisions, Board placing substantial reliance on narrative Baker conveyed to Correctional Service of Canada — Also submitting that decisions propagating false narrative that applicant, "criminally active" "co-accused", "accomplice" of Baker — Board issued amended versions of both decisions to correct "administrative error" (corrected decisions) — Qualifier "co-accused" no longer preceding reference to applicant — Whether Federal Court having jurisdiction in relation to claim against Baker — Application for judicial review not proper vehicle to address issues herein — Applicant seeking mandatory order enjoining Baker from making any representations about applicant, or referring to applicant to any media source — S. 18.1(4) providing that Court may grant this discretionary relief "if it is satisfied that the federal board, commission or other tribunal... (e) acted, or failed to act, by reason of fraud or perjured evidence" — Baker not part of any "federal board, commission or other tribunal" — Federal Court not having jurisdiction over individuals where cause of action accurately described as defamation, libel or fraud — Whether applicant having standing to challenge Board's original or corrected decisions — Applicant not having standing to challenge Board decisions based on ground decisions obtained by perjury or fraud under s. 18.1(4)(e) — Test for standing to bring application for judicial review in Federal Court set out in subsection 18.1(1) — In order to have direct standing under this provision, person must fall within one of three categories, i.e. decision "directly affects the party's rights, imposes legal obligations on it, or prejudicially affects it directly" — Phrase "directly affected" not to be given restricted meaning — Applicant not party to Board proceeding — Corrected decisions not directly affecting applicant's legal rights or obligations — While newspaper coverage negatively impacting applicant, no evidence that decisions direct or substantially contributing factor in relation to these articles — Focus of this judicial review on Board's corrected decisions — Corrected decisions not referring to applicant as "co-accused" — By issuing corrected decisions, Board significantly diminished any possible negative impact on applicant — Application dismissed.

KURGAN V. CANADA (ATTORNEY GENERAL) (T-659-19, 2021 FC 1084, Pentney J., reasons for judgment dated October 15, 2021, 26 pp.)