**Date: 20090928**

**Docket: T-1266-08**

**Citation: 2009 FC 971**

**Ottawa, Ontario, September 28, 2009**

**PRESENT: The Honourable Mr. Justice Lemieux**

**BETWEEN:**

**JEFF EWERT**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA AND THE COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA**

**Respondents**

## REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] By order dated May 28, 2009, pursuant to Rule 220 of the *Federal Courts Rules*, I set down for hearing and determination, in this judicial review application, two preliminary questions of law namely:

1) Does the decision denying the Proposal make the Applicant's judicial review application moot?; and

2) If the Applicant's judicial review application is not moot, does the grievance procedure established by the *Corrections and Conditional Release Act and Regulations* constitute an adequate alternative remedy leading the Court to exercise its discretionary authority to decline to exercise its judicial review jurisdiction?

[2] Jeff Ewert (the Applicant) is an inmate at the Kent Penitentiary (Kent), a maximum security prison, and at the relevant times, Chairman of its Unit 2 Prisoner's Committee. He is the Applicant in this judicial review application in which he seeks a number of remedies against the Respondent, Correctional Service of Canada (CSC), in connection with what he describes as CSC's "final decision, dated May 14, 2008, to deny federal serving prisoners to purchase movies that are available for purchase on DVD by the free and general public for showing within the penitentiary setting, contrary to law and the *Canadian Radio-Television and Telecommunications Commission* (CRTC) *Regulations*."

Facts

[3] On March 8, 2008, the Applicant, in his capacity as Chairman of the Unit 2 Prisoner's Committee at Kent, wrote a lengthy letter to the Commissioner of the CSC (the Commissioner) in which he raised several issues. One issue was the dropping of Movie Central 1 and Movie Central 2 from the then current Shaw Cable contract for which the inmates are charged and replacing those two channels with two closed-circuit DVD undertakings (the Proposal). He indicated Kent's Unit 1 Prison Committee also supported the Proposal.

[4] In his letter to the Commissioner, Mr. Ewert stated CSC's Regional Headquarters for the Pacific (RHQ Pacific) was under the erroneous impression there were copyright issues which would preclude the implementation of the Proposal. As a result, Kent should not be adhering to the 1998 policy enunciated by P.H. de Vink, the Deputy Commissioner (Pacific) not to allow the rental or viewing of videos in the penitentiaries in the Pacific Region.

[5] Mr. Ewert stated the DVD undertakings being proposed are perfectly legal pointing to CRTC Public Notice 2000-10, which are the final revisions to certain CRTC exemption orders. He focussed on that part of the Public Notice which specifically applied to closed-circuit video programming undertakings enabling them to provide a programming service, whether for a separate fee or not, to temporary residents of hotels, motels, hospitals and/or the inmates of prisons only (my emphasis). The CRTC public notice went on to explain the programming consists only of feature motion pictures intended for theatrical release, video games programming services and information or news.

[6] In his March 8, 2008 letter, Mr. Ewert stated the CRTC Public Notice 2000-10 made it clear there is no copyright issue "so long as we do not profit from the showing of DVDs on our closed-circuit channels."

[7] On May 14, 2008, Elizabeth Van Allen, then Executive Director in the Executive Secretariat at the CSC responded to Mr. Ewert's May 8, 2008 letter. She swore an affidavit in this judicial review application. She was not cross-examined. In that affidavit, she explains that part of her duties as Executive Director was to respond to correspondence received in the Office of the

Commissioner. She stated she had no delegated or other decision-making authority with respect to inmate complaints or grievances including whether inmates may purchase DVDs or the use of closed-circuit television at Kent. (My emphasis.) At paragraph 7 of her affidavit, she writes: "In mentioning those issues in my letter I was simply conveying information I had received from Kent Institution." (My emphasis.)

[8] She wrote the following to Mr. Ewert about the Proposal:

> Your request to replace current movie channels with DVDs to be played over closed-circuit television cannot be approved since this would be a violation of copyright laws. Furthermore, the institution does not have the capacity for a stand-alone closed-circuit television channel.
>
> Since the other issues raised in your correspondence were addressed in previous responses, I will not comment further on them.
>
> In closing, I would like to reiterate that inmates may write to the Commissioner without any fear of reprisals by institutional authorities, and to encourage you to use the offender redress system to address concerns that cannot be resolved though discussions with the institutional management. (My emphasis.)

[9] Mr. Ewert's application record contains his affidavit and several exhibits. He was not cross-examined. Mr. Ewert traced some of the history behind the evolution of the efforts by the various prisoner units at Kent to obtain approval for DVD showings. He referred to his letter of July 24, 2006, in which he forwarded a Proposal for consideration by management at Kent. He also enclosed, with that letter, documentation he had obtained from the CRTC a few weeks earlier. He argued the legal concerns of violating copyright which led to the discontinuance of the video rental program were no longer applicable having been overtaken by the CRTC's Public Notice 2000-10-1 on closed circuit video programming. In his view, the Proposal was copyright clear.

[10] In his affidavit, Mr. Ewert states that on August 17, 2006, the then Warden at Kent rejected the Proposal; but did not mention copyright was the reason. At paragraph 8, Mr. Ewert says, at subsequent warden meetings, Warden Lubimiv told him the viewing of feature full-length motion pictures on a closed-circuit DVD undertaking constituted a violation of copyright law.

[11] His affidavit relates that on September 22, 2006, he sent a revised suggestion to allay the Warden's concerns. He again referred to the CRTC public notice stating: "nor is there a copyright issue whatsoever when we purchase the DVDs as the film company royalties are included in the price of the DVDs."

[12] Of this revised Proposal, Mr. Ewert states at paragraph 10 of his affidavit:

> 10. The proposal sat in limbo for some time, neither being formally denied nor approved, but nothing came of it. Kent senior management said they were waiting for a legal opinion.

[13] Mr. Ewert's application record was also supported by a number of other affidavits including that of James Doherty, an inmate at Kent since 1994 who deposed at that time there existed a close-circuit undertaking through which Video Cassette Recordings (VCR) of popular feature length movies were available for viewing in each prisoner's cell on channel 10. These VCR movie rentals were the same movies that were available at movie rental outlets serving the general public. Mr. Doherty provided other details on the functioning of the VCR viewing system at Kent. Another affidavit is that of Robert Johnstone who had been held at the provincial Wilkinson Road jail in Victoria, B.C. He states he owned a Playstation 2 and numerous feature length DVD movies he

purchased with his own funds. David Poirier also deposed an affidavit in which he talked about the availability of DVD movies at the Fraser Regional Correctional Remand Centre. He said the DVD's were shown by a closed-circuit undertaking connected to the cable outlets in each cell.

[14] What precipitated subsequent events connected to Mr. Ewert's challenge of Elizabeth Van Allen's May 14, 2008 "decision", was spawn in the affidavit of Gordon Mattson, sworn on October 21, 2008. He is the Assistant Warden, Management Services at Kent. In his affidavit, upon which he was not cross-examined, he deposed to the following:

- The Applicant has proposed inmates at Kent be authorized to purchase movies for broadcast on closed-circuit television to inmates at Kent.

- Before May 6, 2008, the management at Kent understood the Proposal could not be considered because it would violate copyright laws.

- On May 6, 2008, he had a meeting with members of management at Kent and representatives of the Unit 2 Committee where the Proposal was discussed and where the CRTC public notice was referred to by the Applicant.

[15] Paragraphs 6, 7 and 8 of his affidavit read:

> 6. At that meeting Heidi Wall, Procurement Contracting Specialist, Regional Supply Depot with the CSC advised the Applicant that the issue of whether the Applicant's proposal would result in a violation of copyright would be referred for further consideration

> and consultation within the CSC. To my knowledge the copyright issue is still being canvassed by the CSC.
>
> 7. If it is concluded that the Applicant's Proposal would not result in a violation of copyright, then additional issues flowing from the Proposal will need to be considered. These additional issues include the capacity to and cost associated with implementing a closed circuit broadcast system within Kent Institution (including electrical infrastructure requirements) and the degree of support for the Applicant's Proposal within the inmate population.
>
> 8. If the Applicant is dissatisfied with the response Kent Institution provides to his Proposal, he will be able to challenge it by way of the offender redress process. (My emphasis.)

[16] When this matter came before me in Vancouver, on February 6, 2009, I was informed the long-awaited CSC's view on whether the Proposal violated Canada's Copyright laws "had been prepared in draft form but had been placed in abeyance pending the outcome of this judicial review application". I then expressed the view the release of CSC's opinion should be finalized and issued before the judicial review application proceeded. With the agreement of the parties, Mr. Ewert's judicial review application was adjourned.

[17] On February 27, 2009, Heidi Wall wrote to the Warden at Kent Institution and commented on the Proposal. That same day, the Warden wrote to the Unit 2 Committee stating he had "reviewed your Proposal submitted in February 2008 … to remove two cable movie channels from the current Shaw cable contract and replace them with purchased DVDs to be played over Kent Institution's closed circuit television system." She enclosed a copy of the memorandum of Heidi Wall had sent to her and said she was in agreement with Ms. Wall's assessment and "adopted her reasoning as my own". Warden Diane Knopf concluded:

> Accordingly, your Proposal to replace movie channels with purchased DVDs to be played over institutional closed circuit television is denied.
>
> If you are dissatisfied with this decision, you may grieve it to the Regional Deputy Commissioner, second level, in accordance with Commissioner's Directive 081. (My emphasis.)

[18] I summarize Heidi Wall's findings which are based on "her research and consultations with CSC."

1. She referred to the definition of copyright in section 3 of the *Copyright Act* as including the sole right to "publicly present the work as a cinematographic work" and "to communicate the work to the public by telecommunication." Based on her research and consultations, she concluded the playing of DVD's over Kent's institution closed circuit television to multiple inmate cells are covered by section 3 of the *Copyright Act*. She added:

> Therefore, to ensure that CSC is not in violation of section 27 of the Act, it would have to enter into separate licensing arrangements with studio film distributors before DVDs could be purchased and broadcast over closed circuit television systems. It is for this reason that, prior to the introduction of cable/satellite services inside penitentiaries, CSC held licensing agreements with several Canadian film distribution companies so as to permit the showing of VHS films to inmate cells via closed circuit systems.

2. She commented on the point raised by the Unit 2 Committee no copyright issue arose because a portion of the DVD purchase price is directed towards copyright licensing fees. She stated:

> It is my understanding that any licensing fees that may be included in the purchase price of a DVD apply only to private viewings such as

> the showing of a movie in a domestic residence and do not include royalties for telecommunication to the public.

and concluded on this issue:

> Therefore, any fees paid as part of the DVD purchase price would not overcome the copyright concerns raised by the Inmate Committee's Proposal and a separate agreement with film distribution companies would be required in order to ensure compliance with the *Copyright Act*.
>
> The above circumstances should be distinguished from the distribution of video signals (including movie channels from cable/satellite service providers) in prisons as royalties for the distribution of movies are paid by the service providers. Therefore, in the case of cable/satellite services, royalties for telecommunication to the public are subsumed in the cost of the subscription.

3. She then tackled another issue raised by Mr. Ewert's Unit 2 Committee, namely, the inmates would derive no profit from the showing of the DVDs nor would they sell advertisements as part of their Proposal. She wrote:

> This position is untenable in law because the rights under section 3 of the *Copyright Ac*t are stand-alone.

In her view, this section applies whether a third party profits from the public presentation or telecommunication of a cinematic work.

4. She then discussed one of the main points raised by the Unit 2 Committee: the contention the CRTC Public Notice in 2000 permitting the broadcast on closed circuit televisions in prisons creates an exemption to the application of Canadian copyright laws. She stated:

> I have reviewed the notice and its predecessors and, based on my research and consultations, can advise that the CRTC Notice has no bearing on the copyright issues raised above. The CRTC Notice provides an exemption to Part II of the *Broadcasting Act*, which deals generally with the powers of the CRTC to regulate and supervise the Canadian broadcasting system. In summary, the exemption makes it unnecessary for a licence to be obtained from the CRTC to broadcast certain television programs in limited situations. However, the notice applies only to potential issues raised under the *Broadcasting Act* and does not resolve any possible violations under the *Copyright Act.* As discussed above, these latter issues must be addressed through appropriate licensing arrangements.

5. Heidi Wall also addressed operational considerations expressing the issue in these terms:

> In view of the fact that additional contracts would be required to address the copyright issues raised by the Inmate Committee's Proposal, I consulted with National Headquarters as to whether CSC would consider entering into similar agreements once again (contracts of this nature would require national approval). In summary, National Headquarters is not supportive of this approach mainly for the policy reasons that prompted CSC to end their previous agreements in 1998 – notably the high costs involved in maintaining such licences and the fact that cable/satellite services provide a broad range of programming, including movies, in a more cost-effective, flexible and operationally feasible manner at the current time.

The Supplementary records

[19] Both parties took advantage of the opportunity I provided to them to file supplementary records.

[20] Mr. Ewert filed the following:

1) The affidavit of Donald Rivoire, current Chairman of the Unit 2 Inmate Committee at Kent who deposed about discussions with senior management on the possibility of reopening the Shaw cable contract;

2) A supplementary memorandum of fact and law; and,

3) Additional authorities.

[21] Counsel for the Respondent filed the following:

1) The affidavit of Ruth Paterson, an administrative assistant at Kent. She deposed Mr. Ewert had not grieved the Warden's decision, dated February 27, 2009 denying the Proposal;

2) The affidavit of Linda Stade, Regional Chief (Pacific Region), Inmate Affairs at the CSC. She advised the Court Mr. Ewert would be granted an extension of time to file a second level grievance on the Warden's decision denying the Proposal if he did so within 20 days from the date of any order of the Federal Court dismissing his judicial review application on account of an adequate, alternative remedy;

3) Additional materials; and,

4) A supplementary memorandum of argument.

Analysis

(a) The Mootness issue

[22] I need not resolve this issue. Counsel for the CSC continued to press the point Elizabeth Van Allen's letter was not a decision and, if it was, it had been overtaken by Warden Knopf's decision to deny Unit 2's Proposal. I informed counsel for CSC, if such was the case, the interests of justice would dictate a remedy to this procedural objection which would be to permit, with such additional changes to the filed affidavits as may be required, an amendment to Mr. Ewert's judicial review application to enable the substitution of the May 14, 2008 purported decision with Warden Knopf's February 27, 2009 decision which denied the Proposal. Counsel for CSC agreed such amendments would cure the mootness issue subject to the available adequate alternative remedy argument.

(b) The adequate alternative remedy issue

(i) The legislation and the regulations

[23] I set out in an Annex to these reasons, section 90 of the *Corrections and Conditional Release Act* (CCRA) and sections 74 to 82 of the *Corrections and Conditional Release Regulations* (CCRR) which establish the grievance procedure mandated there under (the grievance procedure).

[24] In addition, the provisions of the CCRA and the CCRR on offender complaints have been supplemented by the Commissioner's Directive 081, put into place to support the resolution of offender complaints and grievances promptly and fairly. These Directives, amongst other matter, classifies grievances for priority treatment and attaches short time frames for treatment in accordance to priority.

(ii) Mr. Ewert's arguments

[25] Mr. Ewert advanced a number of arguments why the grievance procedure mandated by the CCRA and the CCRR did not provide an adequate alternative remedy to judicial review of the decision denying the Proposal. I summarize his arguments.

[26] First, he argued the Supreme Court of Canada in *May v. Ferndale Institution*, [2005] 3 S.C.R. 809 (*May v. Ferndale*) had already determined the inmate grievance system provided in the CCRA, the CCRR and the Commissioner's Directives not to be an adequate alternative remedy to judicial review.

[27] Second, he submits he has already exhausted the internal grievance process because, in effect, his March 8, 2008 letter to the Commissioner, responded to by Ms. Van Allen on May 14, 2008, was equivalent to a third level grievance complaint and the decision on it could be appealed to this Court by way of judicial review. He relies on *Markevich v. Canada*, [1999] 3 F.C. 28, at paragraphs 10 to 13.

[28] Third, he references Deputy Commissioner de Vink's 1998 memorandum to CSC wardens and executive directors in the Pacific Region labelled "No Renewal of Criterion Contract – No showing/renting/purchasing videos." Mr. Ewert argues a plain reading shows the rejection of the DVD Proposal was an issue of national CSC policy decided at the highest levels of the service. In his view, it is a foregone conclusion his grievance will fail because he would be appealing to the same people who made the national policy decision, citing *Caruana v. Canada (Attorney General)*, 2006 FC 1355, at paragraph 36.

[29] Fourth, the dominant issue separating the parties is a legal issue which has been decided against him. The Federal Court is a better place to decide such issue.

[30] Fifth, the grievance procedure is not apt or appropriate to challenge national policies. It does not provide an effective remedy. He cited the grievance at page 105 of his application record dealing with adding sports gloves to the CSC's National List of Personal Property. That grievance was upheld at third level on January 28, 2008 but corrective action has yet to be taken. He gave another example of the inadequacy of the grievance process in terms of delay. He referred to a case he was involved in which challenged CSC's use of certain risk assessment tools (see *Ewert v. Canada (Attorney General)*, 2007 FC 13). It took 5 years for his case to be processed through the inmate grievance system, citing *Caruana*, at paragraph 45.

Conclusions

[31] I cannot accept Mr. Ewert's submissions that the grievance procedure available to him does not provide him with an adequate alternative remedy. I do so for the following reasons which were substantially submitted to the Court by counsel for the Respondent.

[32] It has been well established by this Court and by the Federal Court of Appeal that through the CCRA and the CCRR, Parliament and the Governor-in-Council have established a comprehensive scheme to deal with grievance by inmates lodged in federal prisons and such grievance system constitutes an adequate alternative remedy to judicial review which would generally lead the Federal Court to decline its judicial review jurisdiction until inmates have

exhausted those procedures (see *Condo v. Canada (Attorney General)*, [2003] F.C.J. No. 310; *Giesbrecht v. Canada*, [1998] F.C.J. No. 621 (*Giesbrecht*); *Marek v. Canada (Attorney General)*, 2003 FCT 224; *Collin v. Canada (Attorney General)*, [2006] F.C.J. No. 729; *McMaster v. Canada (Attorney General)*, 2008 FC 647 (*McMaster*)). The alternative remedy need not be perfect; it must be adequate (see *Froom v. Canada (Minister of Justice*), 2004 FCA 352).

[33] Mr. Ewert argues *May v. Ferndale* has overtaken this jurisprudence. I do not agree and neither do my colleagues. In particular, I cite the analysis of my colleague Justice Dawson in *McMaster*, above at paragraphs 29 and 32:

> **29** In my view, counsel's reliance upon the *May* decision is misplaced. There, the issue was the availability of the remedy of *habeas corpus* from provincial superior courts when there was an existing right to seek judicial review in the Federal Court. The majority of the Supreme Court found that inmates may choose to challenge the legality of a decision affecting their residual liberty either in a provincial superior court by way of *habeas corpus* or in the Federal Court by way of judicial review. In so finding, the Supreme Court relied, at least in part, on the fact that historically, the writ of *habeas corpus* has never been a discretionary remedy. Unlike other prerogative relief, and declaratory relief, the writ of *habeas corpus* issues as of right. The *May* decision does not, in my view, alter the obligation of an inmate to pursue the internal grievance procedure before seeking discretionary declaratory relief on judicial review.
>
> […]
>
> **32** Subsection 81(1) operates to stay the grievance procedure while an inmate pursues an alternate remedy. That regulatory stay cannot operate to take away or limit the Court's discretion on judicial review. Similarly, the Supreme Court did nothing more than recognize that the existence of the grievance procedure did not preclude an inmate from pursuing a legal remedy. The Court did not alter existing jurisprudence concerning how a reviewing

> court would treat an application for judicial review where existing grievance procedures were not followed.

[34] That is not to say, that in certain circumstances, a judge of this Court may be persuaded not to decline judicial review jurisdiction: urgency and evident inadequacy in the grievance procedure.

[35] I cannot subscribe to Mr. Ewert's argument Ms. Van Allen's May 14, 2008 response was a decision on the merits of the DVD Proposal taken at the highest level at National Headquarters and, as such, it would be futile for him to engage the grievance procedure. The evidence before me establishes Ms. Van Allen had no authority to make decisions on grievances or complaints and was only reiterating the views expressed to her at Kent without the benefit of the Warden's February 2009 decision. There has yet to be a review of Warden Knopf's February decision denying the Proposal. Mr. Ewert suggests to me policies made by the Commissioner or national policies promulgated are not compatible to grievance review. In *May v. Ferndale*, at paragraph 63, the Supreme Court of Canada briefly touched on this point. In the case before me, I am not satisfied an open and impartial review of the denial of the Proposal will not be accorded to Mr. Ewert. Moreover, counsel for the Respondent, during the hearing, provided me with several examples where national policies have been the subject of grievance review. *Schaefler v. Canada (Solicitor General*), 2004 FC 517 (*Schaefler*) is an example and coincidently may have some relevance factually and legally to the issues in this case.

[36] I reflected on Mr. Ewert's argument the nature of the issue involved in his Proposal is purely a legal one. That is not so. As Heidi Wall pointed out in her recommendations to Warden Knopf, there are operational issues involved in the Proposal as there were in *Schaefler*. Both the legal issue

of copyright and the operational issues raised by Heidi Wall should be addressed together as a package in the grievance process. Mr. Ewert should be briefed on the concerns National Headquarters, which were mentioned by Heidi Wall, so that he may be in a position to adequately respond during the grievance process.

[37] I agree with counsel for the Respondent, the grievance process has many advantages as compared to judicial review. Justice Rothstein, then a member of this Court, mentioned some of the advantages in *Giesbrecht*, at paragraph 10:

> **10** On its face, the legislative scheme providing for grievances is an adequate alternative remedy to judicial review. Grievances are to be handled expeditiously and time limits are provided in the Commissioner's Directives. There is no suggestion that the process is costly. If anything it is less costly than judicial review and more simple and straightforward. Through the grievance procedure an inmate may appeal a decision on the merits and an appeal tribunal may substitute its decision for that of the tribunal appealed from. Judicial review does not deal with the merits and a favourable result to an inmate would simply return the matter for redetermination to the tribunal appealed from.

[38] I add that in this case, Mr. Ewert knows the legal basis for Ms. Wall’s conclusions on the DVD copyright issue; he can respond to those conclusions after seeking legal advice and he can put in additional information at each level of the grievance process. He can also research the basis of the provincial experience with DVDs in prisons deposed to by David Poirier.

[39] I touch on one last point, Mr. Ewert said the grievance process is slow and that would be the case in the review of the Proposal. He cites *Caruana*, at paragraphs 40 to 45. As pointed out by counsel for the Respondent whether the grievance system has been reasonably responsive from a

timing perspective depends on the facts and circumstances of each particular case. There may well be contributing factors complicating the decision making process. I agree with the Respondent, the CSC inmate system on the evidence before me cannot be found presumptively flawed on account of undue delay in processing grievances. In addition, he has yet to engage the grievance process on its denial by the Warden at Kent.

[40] In conclusion, this judicial review application is dismissed on the basis of the existence of an adequate alternative remedy, namely the prescribed Offender Grievance Procedure contained in the CCRA and the CCRR. No costs are awarded.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that this judicial review application is dismissed. No costs are awarded.

"François Lemieux"

_____

Judge

ANNEX

| | |
|---|---|
| *Corrections and Conditional Release Act* 1992, c. 20 | *Loi sur le système correctionnel et la mise en liberté sous condition* 1992, ch. 20 |
| Grievance procedure | Procédure de règlement |
| 90. There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner, and the procedure shall operate in accordance with the regulations made under paragraph 96(u). | 90. Est établie, conformément aux règlements d'application de l'alinéa 96u), une procédure de règlement juste et expéditif des griefs des délinquants sur des questions relevant du commissaire. |
| *Corrections and Conditional Release Regulations* (SOR/92-620) | *Règlement sur le système correctionnel et la mise en liberté sous condition* (DORS/92-620) |
| Offender Grievance Procedure | Procédure de règlement de griefs des délinquants |
| 74. (1) Where an offender is dissatisfied with an action or a decision by a staff member, the offender may submit a written complaint, preferably in the form provided by the Service, to the supervisor of that staff member | 74. (1) Lorsqu'il est insatisfait d'une action ou d'une décision de l'agent, le délinquant peut présenter une plainte au supérieur de cet agent, par écrit et de préférence sur une formule fournie par le Service. |
| (2) Where a complaint is submitted pursuant to subsection (1), every effort shall be made by staff members and the offender to resolve the matter informally through discussion. | (2) Les agents et le délinquant qui a présenté une plainte conformément au paragraphe (1) doivent prendre toutes les mesures utiles pour régler la question de façon informelle. |
| (3) Subject to subsections (4) and (5), a supervisor shall review a complaint and give the offender a copy of the supervisor's decision as soon as practicable after the offender submits the complaint. | (3) Sous réserve des paragraphes (4) et (5), le supérieur doit examiner la plainte et fournir copie de sa décision au délinquant aussitôt que possible après que celui-ci a présenté sa plainte. |
| (4) A supervisor may refuse to review a complaint submitted pursuant to | (4) Le supérieur peut refuser d'examiner une plainte présentée conformément au |

subsection (1) where, in the opinion of the supervisor, the complaint is frivolous or vexatious or is not made in good faith.

paragraphe (1) si, à son avis, la plainte est futile ou vexatoire ou n'est pas faite de bonne foi.

(5) Where a supervisor refuses to review a complaint pursuant to subsection (4), the supervisor shall give the offender a copy of the supervisor's decision, including the reasons for the decision, as soon as practicable after the offender submits the complaint.

(5) Lorsque, conformément au paragraphe (4), le supérieur refuse d'examiner une plainte, il doit fournir au délinquant une copie de sa décision motivée aussitôt que possible après que celui-ci a présenté sa plainte.

75. Where a supervisor refuses to review a complaint pursuant to subsection 74(4) or where an offender is not satisfied with the decision of a supervisor referred to in subsection 74(3), the offender may submit a written grievance, preferably in the form provided by the Service,

75. Lorsque, conformément au paragraphe 74(4), le supérieur refuse d'examiner la plainte ou que la décision visée au paragraphe 74(3) ne satisfait pas le délinquant, celui-ci peut présenter un grief, par écrit et de préférence sur une formule fournie par le Service :

(a) to the institutional head or to the director of the parole district, as the case may be; or

a) soit au directeur du pénitencier ou au directeur de district des libérations conditionnelles, selon le cas;

(b) where the institutional head or director is the subject of the grievance, to the head of the region.

b) soit, si c'est le directeur du pénitencier ou le directeur de district des libérations conditionnelles qui est mis en cause, au responsable de la région

76. (1) The institutional head, director of the parole district or head of the region, as the case may be, shall review a grievance to determine whether the subject-matter of the grievance falls within the jurisdiction of the Service.

76. (1) Le directeur du pénitencier, le directeur de district des libérations conditionnelles ou le responsable de la région, selon le cas, doit examiner le grief afin de déterminer s'il relève de la compétence du Service.

(2) Where the subject-matter of a grievance does not fall within the jurisdiction of the Service, the person who is reviewing the grievance pursuant to subsection (1) shall advise the offender in writing and inform the offender of any other means of redress available.

(2) Lorsque le grief porte sur un sujet qui ne relève pas de la compétence du Service, la personne qui a examiné le grief conformément au paragraphe (1) doit en informer le délinquant par écrit et lui indiquer les autres recours possibles.

77. (1) In the case of an inmate's grievance, where there is an inmate

77. (1) Dans le cas d'un grief présenté par le détenu, lorsqu'il existe un comité

grievance committee in the penitentiary, the institutional head may refer the grievance to that committee.

(2) An inmate grievance committee shall submit its recommendations respecting an inmate's grievance to the institutional head as soon as practicable after the grievance is referred to the committee.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the inmate grievance committee.

78. The person who is reviewing a grievance pursuant to section 75 shall give the offender a copy of the person's decision as soon as practicable after the offender submits the grievance.

79. (1) Where the institutional head makes a decision respecting an inmate's grievance, the inmate may request that the institutional head refer the inmate's grievance to an outside review board, and the institutional head shall refer the grievance to an outside review board.

(2) The outside review board shall submit its recommendations to the institutional head as soon as practicable after the grievance is referred to the board.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the outside review board.

80. (1) Where an offender is not satisfied with a decision of the institutional head or director of the parole district respecting the offender's grievance, the offender may

d'examen des griefs des détenus dans le pénitencier, le directeur du pénitencier peut transmettre le grief à ce comité.

(2) Le comité d'examen des griefs des détenus doit présenter au directeur ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) Le directeur du pénitencier doit remettre au détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité d'examen des griefs des détenus.

78. La personne qui examine un grief selon l'article 75 doit remettre copie de sa décision au délinquant aussitôt que possible après que le détenu a présenté le grief.

79. (1) Lorsque le directeur du pénitencier rend une décision concernant le grief du détenu, celui-ci peut demander que le directeur transmette son grief à un comité externe d'examen des griefs, et le directeur doit accéder à cette demande.

(2) Le comité externe d'examen des griefs doit présenter au directeur du pénitencier ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) Le directeur du pénitencier doit remettre au détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité externe d'examen des griefs.

80. (1) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le directeur du pénitencier ou par le directeur de district des libérations

appeal the decision to the head of the region.

(2) Where an offender is not satisfied with the decision of the head of the region respecting the offender's grievance, the offender may appeal the decision to the Commissioner.

(3) The head of the region or the Commissioner, as the case may be, shall give the offender a copy of the head of the region's or Commissioner's decision, including the reasons for the decision, as soon as practicable after the offender submits an appeal.

81. (1) Where an offender decides to pursue a legal remedy for the offender's complaint or grievance in addition to the complaint and grievance procedure referred to in these Regulations, the review of the complaint or grievance pursuant to these Regulations shall be deferred until a decision on the alternate remedy is rendered or the offender decides to abandon the alternate remedy.

(2) Where the review of a complaint or grievance is deferred pursuant to subsection (1), the person who is reviewing the complaint or grievance shall give the offender written notice of the decision to defer the review.

82. In reviewing an offender's complaint or grievance, the person reviewing the complaint or grievance shall take into consideration

(a) any efforts made by staff members and the offender to resolve the complaint or grievance, and any recommendations resulting therefrom;

(b) any recommendations made by an

conditionnelles, il peut en appeler au responsable de la région.

(2) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le responsable de la région, il peut en appeler au commissaire.

(3) Le responsable de la région ou le commissaire, selon le cas, doit transmettre au délinquant copie de sa décision motivée aussitôt que possible après que le délinquant a interjeté appel.

81. (1) Lorsque le délinquant décide de prendre un recours judiciaire concernant sa plainte ou son grief, en plus de présenter une plainte ou un grief selon la procédure prévue dans le présent règlement, l'examen de la plainte ou du grief conformément au présent règlement est suspendu jusqu'à ce qu'une décision ait été rendue dans le recours judiciaire ou que le détenu s'en désiste.

(2) Lorsque l'examen de la plainte ou au grief est suspendu conformément au paragraphe (1), la personne chargée de cet examen doit en informer le délinquant par écrit.

82. Lors de l'examen de la plainte ou du grief, la personne chargée de cet examen doit tenir compte :

a) des mesures prises par les agents et le délinquant pour régler la question sur laquelle porte la plainte ou le grief et des recommandations en découlant;

b) des recommandations faites par le

inmate grievance committee or outside review board; and

(c) any decision made respecting an alternate remedy referred to in subsection 81(1).

comité d'examen des griefs des détenus et par le comité externe d'examen des griefs;

c) de toute décision rendue dans le recours judiciaire visé au paragraphe 81(1).

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1266-08 |
| **STYLE OF CAUSE:** | JEFF EWERT v. THE ATTORNEY GENERAL OF CANADA et al |
| **PLACE OF HEARING:** | Heard via teleconference between Ottawa and Vancouver |
| **DATE OF HEARING:** | September 17, 2009 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Lemieux J. |
| **DATED:** | September 28, 2009 |

**APPEARANCES BY TELECONFERENCE:**

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|---|---|
| Jeff Ewert | FOR THE APPLICANT<br>(SELF REPRESENTED) |
| Liliane Bantourakis | FOR THE RESPONDENTS |

**SOLICITORS OF RECORD:**

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| Jeff Ewert<br>Agassiz, B.C. | FOR THE APPLICANT<br>(SELF REPRESENTED) |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENTS |