

Federal Court



Cour fédérale

Date: 20120621

Docket: T-791-11

Citation: 2012 FC 801

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 21, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

GILLES OUELLETTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7, and the *Corrections and Conditional Release Act*, SC 1992, c 20 (CCRA), for review of a third level grievance decision of the Correctional Service of Canada (CSC) dated April 12, 2011, and bearing grievance number V30A00039794.

[2] For the reasons that follow, the Court finds that the third level grievance decision of the CSC is reasonable and that there was no breach of procedural fairness. Therefore, the application for judicial review will be dismissed.

Factual background

[3] The applicant is an inmate at the La Macaza Institution, a federal penitentiary located at La Macaza, Quebec. He is serving two life sentences for first degree murder.

[4] On September 8, 2009, La Macaza Institution introduced the “full employment program” (the program) to eliminate involuntary unemployment by creating jobs for all inmates.

[5] Before this program was introduced, the applicant was pursuing a university-level distance education program. However, since post-secondary education was not a focus of the applicant’s correctional plan and that it was not part of the program, the applicant was classified as being involuntarily unemployed.

[6] The Correctional Intervention Board for assignments to programs at La Macaza met with the applicant. The assignments available at that time were secondary education or a job in the kitchen. Given that the applicant had completed his secondary education and that post-secondary education was not available at the institution, a position in the kitchen was offered to him. The Committee explained to him that if he refused the offer of employment, he would be designated voluntarily unemployed and, like all others who are voluntarily unemployed, his freedom of movement would be limited to the door of his cell during inmate working hours.

[7] The applicant did not show up to his place of work. As a consequence, the applicant received a disciplinary offence report and was classified as voluntarily unemployed.

[8] The applicant filed a grievance directly with the second level, which was received on December 16, 2009, in which he alleged that he experienced harassment, discrimination, malfeasance, abuse of authority and breach of trust by the management of La Macaza Institution. The grievance was presented directly at the second level given that the warden of the institution was linked to the applicant's litigations.

[9] The applicant submitted a 15-page document detailing his grievance and 63 pages of additional materials appended to his grievance. On November 9, 2010, he added three additional pages of complaints and 55 pages of materials attached as an appendix. In his grievance, he asked that 13 corrective actions be taken on the management of the La Macaza Institution since the program's implementation.

[10] The CSC issued a response to the second level grievance on December 31, 2010. The applicant said he received the decision on January 5, 2011, 14 months after filing his grievance. The CSC found that the main dispute within the grievance showed that the applicant was dissatisfied with the new program. The CSC explained that the complaints mentioned in the grievance did not meet the definition of harassment or discrimination as specified in paragraphs 10 and 12 of the *Commissioner's Directive 081 (CD081), Offender Complaints and Grievances*.

[11] Therefore, the CSC decided to refuse the applicant's grievance. However, the CSC had invited the applicant to file a new grievance as to his disagreement with the way the program was being implemented, without referring to being a victim of harassment or discrimination. The CSC also noted that the applicant could file a complaint on the other complaints at the lowest level possible.

[12] However, the applicant did not submit a new complaint at the lowest level. Rather, the applicant continued with his grievance to the third level. In the third level grievance, the applicant complained about the time frame for responding to his second level grievance and asked for a clear and precise answer for the 13 corrective actions that he had brought to the second level. The CSC received the grievance at the third level on January 19, 2011.

[13] On April 12, 2011, the Assistant Commissioner (Policy) of the CSC, Ian McCowan, rendered the applicant's third level decision. The grievance was upheld in part.

[14] The applicant filed an application for judicial review before the Federal Court on May 6, 2011.

Decision under appeal

[15] In its third level decision, the CSC explained that the allegations of harassment by staff were thoroughly analyzed and that a specific process applied to processing this type of grievance.

[16] The CSC noted that these grievances are designated as a priority and the time frames to respond to these allegations are short. However, the decision specified that the other complaints raised by the applicant (regarding the application of the program) could not be analyzed on such a level of priority as those on harassment and discrimination. The third level concluded that the corrective action requests made by the applicant against the program should have been filed at the lowest level to be resolved in accordance with the complaints and grievances process for offenders in CD081. The third level refused the applicant's grievance on this point because the second level complied with the provisions of paragraphs 83, 84 and 86 of CD 081. The third level was satisfied with the conclusion of the second level on the applicant's allegations of harassment, which were determined to be without merit.

[17] However, the decision stated that the time frame for the second level to respond to the applicant's grievance had not been respected in accordance with paragraph 35 of CD 081. Therefore, the third level decided that this part of the grievance should be upheld. Nevertheless, the third level noted that the second level had complied with the provisions in paragraph 41 of CD 081 with respect to the duty to inform the offender in writing whether extending the delay is necessary. Thus, the third level recommended that this part of the grievance be dismissed.

[18] For the most part, the third level grievance was upheld. However, the CSC stated that corrective actions were not required since, in November 2010, the Regional Deputy Commissioner for the Quebec region had implemented measures to resolve the serious backlog of grievances.

Issue

[19] The Court finds that the relevant issue in this case is to determine whether the decision on the third level grievance was reasonable and whether there was a breach of procedural fairness.

Relevant legislation

[20] The relevant legislation is reproduced in Appendix A.

Standard of review

[21] According to *Spidel v Canada (Attorney General)*, 2011 FC 601, at para 8, [2011] FCJ 804, the standard of review is reasonableness since the Court reviews the findings of fact and the substance of the decision rendered by the third level grievance (*Wilson v Canada (Attorney General)*, 2012 FC 57 at para 19, [2012] FCJ No 69 (*Wilson*); *Bonamy v Canada (Attorney General)*, 2010 FC 153, at para 47, [2010] FCJ No 179; *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47, [2008] SCJ No 9 (*Dunsmuir*)). Therefore, the Court will concentrate on the justification, transparency and intelligibility within the decision-making process and will consider whether the “decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at para 47).

Position of the applicant

[22] In general, the applicant challenged the application of the program and criticizes the CSC for not having responded clearly and distinctly to the 13 corrective actions requested in his grievance V30A00039794 (Tribunal Record, pp 50-51). He stated that there was a breach of procedural fairness and criticizes the CSC for having violated numerous directives, rules,

regulations and laws of the correctional system. He submitted that he experienced drastic measures, illegitimate and unlawful solitary confinement, harassment and discrimination by the CSC.

[23] The applicant alleged that he is entitled to receive a complete response to his grievance under paragraph 37 of CD 081. The applicant also pointed out that, in light of the provisions of the *Offender Complaint and Grievance Procedures Manual* (the Manual) (Applicant's Record, tab 22, p 21), the CSC has a duty to prepare a clear, complete, precise and timely response that addresses all the points raised in a complainant's complaint or grievance, which it did not do in this case.

[24] The applicant explained that the program had been implemented and enforced by the warden of La Macaza Institution. Since the applicant was disputing the implementation of the program, in accordance with paragraph 32 of CD 081, his complaint had to be dealt with at the second level since he alleged being deprived of his freedom after being put in solitary confinement. Therefore, the applicant argued that the CSC erred in the second level decision and in the third level decision, by determining that the applicant had to go through the process again and start over at the lowest level. The applicant claimed that the CSC could not ask him to go through the process again and, therefore, he explained that he had no other choice than to go to the third level of the CSC grievance process.

[25] What is more, the applicant criticized the CSC for not responding to his grievances in the time frames required under CD 081. More specifically, the applicant stated that the CSC took 14 months at the second level to respond to his high priority grievance, although he could expect to receive a response within 15 business days following the filing of his grievance (CD 081,

paragraph 37). The applicant also argued that the time frames prescribed by the CSC's directives were not respected at the third level because it only received the response from the third level of the CSC on April 26, 2011. The applicant submitted that 18 months to wait for a response that he considers to be incomplete and illegitimate is an excessively slow time frame. He also submitted that the CSC could not extend the processing time under paragraph 41 of CD 081 since paragraph 58 of CD 081 stipulates that "[c]omplaints or grievances deemed high priority will be responded to within established time frames".

Position of the respondent

[26] The respondent submitted that procedural fairness was respected and that the CSC decision is reasonable.

[27] The respondent argued that the applicant is attempting to obtain determinations from the Federal Court without having exhausted all recourse open to him before the administrative decision-makers in the complaint and grievance process provided for all inmates. The respondent also submitted that the majority of the arguments in the applicant's judicial review application refer to determinations that the Court does not have the power to give. The respondent also submitted that several of the applicant's arguments were not submitted or processed by the third grievance level and, therefore, are inadmissible at this stage. With respect to time frames, the respondent reiterated that the third level agreed with the applicant by finding that the second level had not respected the time frame provided in paragraph 35 of the CD 081 and issued a corrective action.

Analysis

[28] After reading the record, hearing the parties and reviewing the evidence, the Court finds that the applicant was afforded procedural fairness during the grievance process. The Court notes that the applicant alleged a breach of procedural fairness since he was convicted in October 2009 for refusing the kitchen job although the program was implemented in January 2011 (Tribunal Record, p 140). Further, the Court cannot accept this argument since the evidence on file shows that the program had indeed begun in September 2009 (Tribunal Record, pp 56-57 and 215). Regarding delays associated with the process in the applicant's complaint, although these are unfortunate, the Court is of the view that the applicant had full access to the grievance process. The applicant has not satisfied this Court that there was a breach in the CSC's processing of the grievance. The applicant's applications were, in fact, processed (*Wilson*, above).

[29] The Court stated at the outset that the CCRA, the *Corrections and Conditional Release Regulations*, SOR/92-620 (the Regulations), and CD 081 regulate the grievance process in correctional matters. This process contains four levels: written complaints, first level grievances, second level grievances and third level grievances. In accordance with paragraph 30 of CD 081, grievors can apply for judicial review of the final decision with the Federal Court under subsection 18.1(2) of the *Federal Courts Act*.

[30] In this case, the applicant's grievance was designated as a priority under paragraph 84 of CD 081 because the applicant had written the following in his complaint: [TRANSLATION] "Subject: harassment/discrimination/malfeasance/abuse of authority/breach of trust" (Tribunal Record, p 36).

Since the applicant's grievance was against the management of La Macaza Institution, the grievance was heard directly at the second level in accordance with paragraph 27 of CD 081. Although the second level decision found that the applicant's allegations did not meet the definition of harassment and discrimination, the decision of the second level noted that, under paragraph 86 of CD 081, the applicant's other complaints had to be dealt with at the lowest level.

[31] However, the applicant chose to file his grievance at the third level and the third level confirmed the second level decision. The Court found that the third level decision was reasonable because the rule provided at paragraph 86 of CD 081 was correctly applied. In particular, paragraph 86 of CD 081 states:

86. If the Institutional Head determines that the allegations, if proven, would not constitute harassment, sexual harassment or discrimination, he/she must substantiate this finding in the first level grievance response. The Institutional Head may determine that the submission should be reviewed at the complaint level and the offender may submit a complaint.

(Emphasis added.)

[32] Contrary to the applicant's submission, the Court is of the opinion that, in the circumstances, the CSC is not obliged to provide a response for each of the allegations and for each corrective action submitted by the applicant (see *Timm v Canada (Attorney General)*, 2011 FC 576, at para 6, [2011] FCJ No 778). In this case, the third level decision is clear and reasons were provided to justify the refusal of the measures claimed by the applicant. In the circumstances, since the applicant's grievance related to the issues of harassment and discrimination as stated above in paragraph 30, the Court is satisfied that the third level responded to [TRANSLATION] "all the issues raised in his grievance".

[33] In light of the grievance settlement procedure, the Court accepts the respondent's argument that the applicant has not exhausted all recourse open to him before initiating his judicial review (see *Spidel v Canada (Attorney General)*, 2010 FC 1028, [2010] FCJ No 1292). On this point, case law has stated repeatedly that a complainant must follow and exhaust the CSC's internal grievance settlement process before seeking judicial review in the Federal Court (see *Marleau v Canada (Attorney General)*, 2011 FC 1149, [2011] FCJ No 1417; *Lewis v Canada (Correctional Service)*, 2011 FC 1233, at para 29, [2011] FCJ No 1517; *Condo v Canada (Attorney General)*, 2003 FCA 99, [2003] FCJ No 310; *Giesbrecht v Canada*, [1998] FCJ No 621, 148 FTR 81; *Collin v Canada (Attorney General)*, 2006 FC 544, [2006] FCJ No 729; *McMaster v Canada (Attorney General)*, 2008 FC 647, [2008] FCJ No 815; *Olah v Canada (Attorney General)*, 2006 FC 1245, [2006] FCJ No 1570). In fact, in this case, nothing prevents the applicant from expressing disagreement with the program by filing a grievance at the lowest level.

[34] Further, the Court does not have the power to grant several of the forms of relief requested by the applicant in his application for judicial review under paragraph 18.1(3) of the *Federal Courts Act*, specifically with respect to the majority of the requests included in paragraphs 57 to 73 of the Applicant's Memorandum (Applicant's Record, tab J, pp 14-18). Contrary to what the applicant wants, the Court cannot substitute itself for the third level grievance administrative decision-maker and render a decision on the corrective actions advanced by the applicant. On this point, the Court adopts the observations of Justice Frenette in *Ouellette v Canada (Attorney General)*, 2008 FC 559, at paras 27 and 28, [2008] FCJ No 701:

[27] The Court's jurisdiction in judicial review applications is limited to the powers set out in subsection 18.1(3) of the *Federal Courts Act*. The Court has the power to determine whether the decision-maker erred in fact or in law, and, if such is the case, to set aside the decision and to refer the issue back to

the federal board, commission or tribunal. In exceptional cases, the Court can give instructions as to the decision to render (*Rafuse v Canada*, 2002 FCA 31, [2002] FCJ No 91 (QL)), but this power is rarely exercised. This will be the case, for example, when the sole issue to be decided is a pure question of law which would dispose of the case, or in cases where the evidence on the record is so clearly conclusive that there is only one possible conclusion (*Simmonds v Canada (Minister of National Revenue – MNR)*, 2006 FC 130, [2006] FCJ No 184 (QL), at paragraph 38). In my opinion, these factors do not exist in this case.

[28] The judicial review mechanism enables the Court to verify the legality of the impugned decision, not to substitute its opinion for that of the original decision-maker.

[35] Having said that, the Court notes the delays referred to by the applicant in relation to processing his grievance and can understand his impatience and disappointment. The Court also finds that the CSC noted this, finding that the time frame provided in paragraph 35 of CD 081 had not been respected. The CSC noted that the applicant had been notified in writing that more time was necessary to respond in accordance with paragraph 41 of CD 081 and, therefore, the third level explained that this part of the grievance should be refused. The third level decision also explained that the Regional Deputy Commissioner for the Quebec region had implemented measures to resolve the serious backlog of grievances in November 2010. This explanation is reasonable and the Court can only note that it is unfortunate that the delays were related to processing grievances filed by inmates.

[36] Finally, the applicant seeks damages from the CSC and refers to *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585, (*TeleZone*), in support of his argument.

[37] The Court cannot award damages to the applicant because this case is an application for judicial review and not an action. In particular, the principle arising from *Telezone* was recently

repeated by Justice Martineau in *Rose v Canada* (Attorney General), 2011 FC 1495, at para 49, [2011] FCJ No 1821, in the following words: “[The *Telezone* cases] suggest that judicial review is no longer required as a preliminary step when a claim in damages is made against the federal Crown before a provincial superior court”.

[38] For all these reasons and, according to the standard of reasonableness, the Court will not intervene. The application for judicial review will therefore be dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.
2. Without costs.

“Richard Boivin”

Judge

Certified true translation

Catherine Jones, Translator

APPENDIX A

The following sections of the *Corrections and Conditional Release Act* are relevant:

GRIEVANCE PROCEDURE	GRIEFS
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.
REGULATIONS	RÈGLEMENTS
Regulations	Règlements
96. The Governor in Council may make regulations	96. Le gouverneur en conseil peut prendre des règlements :
...	[...]
(u) prescribing an offender grievance procedure;	u) fixant la procédure de règlement des griefs des délinquants;
...	[...]
(z.6) respecting the assignment to inmates of security classifications pursuant to section 30, which regulations must set out factors to be considered in determining the security classification of an inmate;	z.6) concernant l'attribution – aux termes de l'article 30 – d'une cote de sécurité au détenu ainsi que les critères de détermination de celle-ci;

The following sections of the *Corrections and Conditional Release Regulations* are relevant:

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.

(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.

(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.

(4) A supervisor may refuse to review a complaint submitted pursuant to subsection (1) where, in the opinion of the supervisor, the complaint is frivolous or vexatious or is not made in good faith.

(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.

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

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) 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) 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) Le supérieur peut refuser d'examiner une plainte présentée conformément au paragraphe (1) si, à son avis, la plainte est futile ou vexatoire ou n'est pas faite de bonne foi.

(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. 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) 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.

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.

(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.

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

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

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 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

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 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

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 inmate grievance committee or outside review board; and
- (c) any decision made respecting an alternate remedy referred to in subsection 81(1).

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 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).

The following sections of the *Commissioner's Directive* (CD) 081, Offender Complaints and Grievances, are relevant:

DEFINITIONS

10. Harassment: any improper conduct by one or more employees, offenders, visitors or volunteers, that is directed at and offensive to another person, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

12. Discrimination: when the griever believes that CSC staff actions, language or decisions were made in a discriminatory manner based on gender, race, ethnicity, language, sexual orientation, religion, age, marital status, or a physical or mental disability. The category includes staff behaviour that constitutes a violation of the offender's human rights or the *Canadian Charter of Rights and Freedoms*.

GENERAL PROCEDURES

Levels of the Complaint and Grievance Process

27. The complaint and grievance process includes four levels:

DÉFINITIONS

10. Harcèlement : tout comportement inapproprié de la part d'un ou de plusieurs employés, délinquants, visiteurs ou bénévoles à l'égard d'une autre personne, et dont l'auteur ou les auteurs savaient ou auraient raisonnablement dû savoir qu'il serait offensant ou préjudiciable. Le harcèlement comprend tout acte, propos ou exhibition répréhensible qui diminue, rabaisse, humilie ou embarrasse une personne, ou tout acte d'intimidation ou de menace. Il comprend également le harcèlement au sens de la *Loi canadienne sur les droits de la personne*.

12. Discrimination : des actes, des paroles ou des décisions du personnel du SCC qui incitent le délinquant à s'estimer victime de discrimination fondée soit sur le sexe, la race, l'ethnie, la langue, l'orientation sexuelle, la religion, l'âge, l'état civil ou une déficience mentale ou physique. Sont inclus les comportements du personnel qui enfreignent les droits de la personne ou la *Charte canadienne des droits et libertés*.

PROCÉDURE GÉNÉRALE

Paliers du processus de règlement des plaintes et griefs

27. Le processus de règlement des plaintes et griefs comprend quatre

written complaints, first level grievances, second level grievances and third level grievances. The initial submission will be at the complaint level unless otherwise indicated in this directive or unless the supervisor of the staff member in question is the Institutional Head, the Regional Deputy Commissioner or the Commissioner.

paliers : plaintes écrites, griefs au premier palier, griefs au deuxième palier et griefs au troisième palier. Une plainte doit être présentée d'abord au palier des plaintes, à moins d'indication contraire dans la présente directive ou à moins que le surveillant de l'employé visé dans la plainte soit le directeur de l'établissement, le sous-commissaire régional ou le commissaire.

30. Grievers who are not satisfied with the final decision of the complaint and grievance process may seek judicial review of this decision at the Federal Court within the time limit prescribed at subsection 18.1 (2) of the *Federal Courts Act*.

30. Le plaignant qui n'est pas satisfait de la décision finale rendue dans le cadre du processus de règlement des plaintes et griefs peut faire une demande de révision judiciaire de cette décision à la Cour fédérale dans les délais prescrits au paragraphe 18.1 (2) de la *Loi sur les Cours fédérales*.

Time frames

35. Decision-makers will respond to complaints and grievances in the following time frames:

Complaint, First Level and Second Level

- **High Priority** – Within fifteen (15) working days of receipt by the decision-maker.
- **Routine Priority** – Within twenty-five (25) working days of receipt by the decision-maker.

Third Level

- **High Priority** – Within sixty

Délais

35. Les décideurs doivent répondre aux plaintes et aux griefs dans les délais décrits ci-après.

Plaintes, griefs au premier et au deuxième paliers

- **Prioritaires** – Dans les quinze (15) jours ouvrables suivant la réception de la plainte ou du grief par le décideur.
- **Non prioritaires** – Dans les vingt-cinq (25) jours ouvrables suivant la réception de la plainte ou du grief par le décideur.

Griefs au troisième palier

- **Prioritaires** – Dans les

(60) working days of receipt by the decision-maker.

- **Routine Priority** – Within eighty (80) working days of receipt by the decision-maker.

soixante (60) jours ouvrables suivant la réception du grief par le décideur.

- **Non prioritaires** – Dans les quatre-vingts (80) jours ouvrables suivant la réception du grief par le décideur.

Responses

37. The decision-maker will ensure that grievors are provided with complete, written responses to all issues raised in complaints and grievances.

Extensions

41. If the Institutional Head, the Regional Deputy Commissioner or the Director of Offender Redress considers that more time is necessary to deal adequately with a complaint or grievance, the grievor must be informed in writing of the reasons for the delay and of the date by which he/she may expect to receive the response.

58. Complaints or grievances deemed high priority will be responded to within established time frames.

HARASSMENT, SEXUAL HARASSMENT AND DISCRIMINATION GRIEVANCES

83. An offender may submit a first level grievance where he/she believes that he/she is being subjected to harassment, sexual harassment or discrimination.

Réponses

37. Le décideur doit veiller à ce que le plaignant reçoive, par écrit, une réponse complète à toutes les questions soulevées dans sa plainte ou son grief.

Prolongation du délai de traitement

41. Si le directeur de l'établissement, le sous-commissaire régional ou le directeur des Recours des délinquants juge qu'il a besoin d'un délai plus long pour traiter adéquatement une plainte ou un grief, il doit informer le plaignant par écrit des raisons de la prolongation du délai et de la date à laquelle il peut s'attendre à recevoir une réponse.

58. Les plaintes et les griefs jugés prioritaires doivent être traités dans les délais établis.

GRIEFS RELATIFS AU HARCÈLEMENT, AU HARCÈLEMENT SEXUEL ET À LA DISCRIMINATION

83. Un délinquant qui croit être victime de harcèlement, de harcèlement sexuel ou de discrimination peut présenter un grief au premier palier.

Coding and Classification

84. When a complaint or grievance includes allegations of harassment, sexual harassment or discrimination, or any behaviour that could constitute harassment, sexual harassment or discrimination, it must be:

- a. deemed sensitive;
- b. designated as a high priority;
- c. entered as a first level grievance; and
- d. immediately brought to the attention of the Institutional Head in a sealed envelope for his/her review.

Determining the Validity of the Allegations

85. The Institutional Head must determine, within fifteen (15) working days from receipt, whether the allegations, if proven, would constitute harassment, sexual harassment or discrimination.

86. If the Institutional Head determines that the allegations, if proven, would not constitute harassment, sexual harassment or discrimination, he/she must substantiate this finding in the first level grievance response. The Institutional Head may determine

Assignment d'un code et détermination du niveau de priorité

84. Lorsqu'une plainte ou un grief contient des allégations de harcèlement, de harcèlement sexuel ou de discrimination, ou encore de tout comportement qui pourrait constituer du harcèlement, du harcèlement sexuel ou de la discrimination, il doit être :

- a. jugé de nature délicate;
- b. désigné prioritaire;
- c. considéré comme un grief au premier palier;
- d. acheminé immédiatement au directeur de l'établissement dans une enveloppe scellée, aux fins d'examen.

Détermination de la validité des allégations

85. Le directeur de l'établissement doit déterminer, dans les quinze (15) jours ouvrables suivant la réception de la plainte ou du grief, si les allégations, une fois fondées, constitueraient du harcèlement, du harcèlement sexuel ou de la discrimination.

86. Si le directeur de l'établissement détermine que les allégations, une fois fondées, ne constitueraient pas du harcèlement, du harcèlement sexuel ou de la discrimination, il doit étayer sa conclusion dans sa réponse au grief au premier palier. Il peut déterminer que la question devrait

that the submission should be reviewed at the complaint level and the offender may submit a complaint.

être examinée au palier des plaintes, et le délinquant peut alors présenter une plainte.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-791-11

STYLE OF CAUSE: Gilles Ouellette v AGC

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 24, 2012

REASONS FOR JUDGMENT: BOIVIN J.

DATED: June 21, 2012

APPEARANCES:

Gilles Ouellette

FOR THE APPLICANT
(SELF-REPRESENTED)

Nicholas Banks

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Minister and Attorney
General of Canada

FOR THE RESPONDENT