

Federal Court



Cour fédérale

Date: 20150310

Docket: T-1493-14

Citation: 2015 FC 303

Ottawa, Ontario, March 10, 2015

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JAMES W. ROBERTSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application under section 18.1(4)(a) of the *Federal Courts Act*, RSC, 1985, c F-7 [the Act], for a judicial review of Correctional Service of Canada's [CSC] decision to impose a correctional plan on the Applicant, who is under a long-term supervision order [LTSO], on the basis that the CSC has acted without jurisdiction in attempting to impose a Correctional Plan on the Applicant while knowing it has no legal authority to do so.

[2] The Applicant submitted this application on the basis that the Respondents erred in law contrary to section 18.1(4)(c) of the Act, when it knew from a previous decision of this Court that it could only act pursuant to a designated proviso.

[3] The Applicant is further seeking an order prohibiting the CSC from imposing a correctional plan on him pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA] generally, and specifically sections 2.1, 4, 15.1, 99.1 and 134.1, and declaring he is not required to utilize the grievance procedure set out in the CCRA, when it is the CSC's authority that is being challenged.

[4] This application is dismissed for the following reasons.

I. Facts

[5] In September of 2003, the Applicant was sentenced to sixteen years of incarceration, reduced to five for time served, and a LTSO, appended to Count 1 of the Indictment, for various sexual offences.

[6] The Applicant's sentence ended January 19, 2010, and his ten year LTSO commenced that day. The LTSO will expire on October 9, 2022.

[7] On March 12, 2010, the Applicant left Canada without permission and resumed residency at his home in South Lake Tahoe, California, USA. He volunteered his address to the CSC; his destination was reported to the United States Border Protection Service [USBPS] upon crossing;

and the USBPS report was transmitted to the Canadian authorities upon crossing. In addition, his activities were monitored by the South Lake Tahoe Police Department for 18 months at the request of the Crown.

[8] After 18 months in the United States, Canada sought and obtained the Applicant's extradition. The CSC charged him with three breaches of section 753.3(1) of the *Criminal Code*, RSC, 1985, c C-46: leaving Canada without permission, failing to report to the long-term supervisor, and failing to give a change of address.

[9] On December 21, 2012, the Criminal Code allegations were dismissed without notice to the Applicant.

[10] While incarcerated for 90 days in Matsqui Institution in British Columbia in early 2013, an updated correctional plan was presented to the Applicant. The Applicant protested this plan and wrote directly to the Commissioner of the CSC in a letter dated March 4, 2013, with a follow up query dated April 22, 2013.

[11] A representative of the CSC from the communications department responded to the Applicant's above letters on May 14, 2013.

[12] The Applicant continued to express his disagreement with the CSC's imposition of a correctional plan during meetings with his supervisor, while complying with its requirements.

[13] A second updated correctional plan was issued on April 11, 2014 (dated April 2, 2014). The Applicant verbally protested this in a meeting with his supervisor on April 17, 2014.

[14] During a May 9, 2014, meeting with his supervisor, the Applicant tendered a letter taking issue with the CSC's perceived authority to issue a correctional plan.

[15] On May 13, 2014, the Applicant received an email in response to the May 9, 2014 letter, which acknowledged that the CSC is not authorized pursuant to section 15 of the CCRA, to issue correctional plans to offenders in his circumstances, but they are so authorized under section 4.

[16] The Applicant requested clarification of the CSC's position as stated in the May 13th email, in a letter dated May 21, 2014.

[17] The Applicant received an email response on June 5, 2014, which had an Offender Initial Grievance Presentation attached. He did not submit a grievance.

[18] The CSC sent a further email to the Applicant on June 16, 2014, which did not specifically address his letters of May 9 and 21. It maintained the general authority of the CSC to issue correctional plans.

[19] The Applicant commenced this application for judicial review on June 26, 2014.

[20] The decision under review is the decision by CSC to impose a correctional plan on the Applicant after his sentence had been completed, but before his LTSO had been completed.

II. Issues

[21] The issues in the present application are as follows:

- A. Is the application procedurally flawed, in that it was commenced out of time and the Applicant has not exhausted alternative remedies available to him?
- B. Does the Applicant's parole officer have the authority to impose a correctional plan on the Applicant pursuant to the CCRA? If so, under what authority?
- C. If the Applicant's parole officer has the authority to impose a correctional plan on him, was the Officer's impugned update to this plan reasonable?

III. Standard of Review

[22] The appropriate standard of review to apply to the first two issues is correctness.

Reasonableness is the applicable standard for the third issue (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 at para 26).

IV. Relevant Statutory

[23] The relevant statutory provisions being considered are attached as Appendix A.

V. Analysis

[24] The Applicant argues that section 2.1 of the CCRA clearly sets out other sections of the Act which apply to a person under a LTSO, and the list does not include section 15.1, which addresses correctional plans. In their letter dated May 13, 2014, the Respondents referred to

section 4(h) of the CCRA, as justification for imposing the contended correctional plan. The Applicant argues that this section is too general to be accepted as lawful authority for such an act.

[25] Moreover, the Applicant argues that in Part II of the CCRA, section 99.1, like section 2.1, lists sections of the CCRA which apply to offenders under LTSOs and nowhere in this section is there mention of correctional plans. Section 134.1 of the CCRA authorizes the Parole Board of Canada [PBC] to impose conditions listed under section 161.1 of the Regulations on persons subject to a LTSO, but does not mention correctional plans. Further, the PBC has not ordered a correctional plan be imposed on the Applicant.

[26] The Applicant states that this Court has found that where a section of the CCRA lists other sections which apply to offenders in particular circumstances, this list is to clarify that where it is unclear whether a section would apply to a certain type of offender. Other sections may still apply, but they must be clear by their individual wording that is the case (*McMurray v National Parole Board*, 2004 FC 462 at para 111 [*McMurray*]).

[27] Given that sections 2.1 and 99.1 list sections that would otherwise be ambiguous as to whether they apply to offenders with LTSOs, and that section 15.1 dealing with correctional plans is not clear in its own wording as to whether it applies to those under LTSOs, and it is not included in either list, the Applicant argues that it should not be interpreted to apply to the Applicant.

[28] With regard to the grievance procedure available to offenders, the Applicant argues that the CCRA makes it mandatory for the CSC to develop such a procedure, but does not make it mandatory for offenders to utilize it. While sections 90 and 91 of the CCRA are listed in section 2.1 and thus apply to the Applicant, he emphasizes that it would be inappropriate to require him to complain to the Commissioner about their own behaviour in imposing a correctional plan upon him.

[29] The Respondents has an affidavit from Marie Hagman to support the position that an offender must pursue a remedy in the grievance procedure before applying for judicial review. She refers to sections 90, 91 and 96(u) of the CCRA, and sections 74 to 82 of the Regulations for justification, but the Applicant again argues nowhere in these sections is the grievance process outlined as a mandatory first step for a complainant.

[30] The Respondents states that the ability to update correctional plans is consistent with a parole officer's authority to instruct long term offenders. Further, updating correctional plans is consistent with their discretion to provide instructions to assist offenders like the Applicant in meeting the conditions of their release and facilitate rehabilitation and reintegration. It is also consistent with the purpose of LTSOs; they are intended to "enhance the offender's social reintegration but without compromising the protection of society and the victims" (*Normandin v Canada*, 2005 FCA 345 at paras 15, 33-46 [*Normandin*]).

[31] The Respondents further argues that the Applicant's parole officer reasonably updated the Applicant's correctional plan in April of 2014. Her ability to do so is consistent with the

CSC's mandate and reflects the principles that must guide the CSC under the CCRA as outlined above. She reasonably exercised her authority in doing so.

A. *Is the application procedurally flawed?*

[32] The Applicant has clarified in his materials in response to the Respondents's motion to strike that it is the April 2014 update to his correctional plan that he seeks to have reviewed. This challenge to the decision is well outside of the allowable time period of thirty days, under section 18.1(2) of the Act.

[33] Moreover, even if this limitation period was found not to be operable, the Applicant should have exhausted the CSC grievance procedure before applying for review from this court. I therefore decline to exercise the jurisdiction of this Court on the basis the Applicant has failed to avail himself of an adequate alternative remedy. Absent exceptional circumstances, which is a high threshold to meet, the internal grievance procedure should have been employed (*Froom v Canada (Minister of Justice)*, 2004 FCA 352 at para 12; *McMaster v Canada (Attorney General)*, 2008 FC 647 at para 27; *Canada (Border Services Agency) v CB Powell Ltd*, 2010 FCA 61 at para 33).

[34] The CSC grievance procedure is mandated by sections 90 and 91 of the CCRA and exists to deal with complaints of offenders against CSC employees' actions and decisions. Section 2.1 of the CCRA explicitly makes it clear that it applies to offenders subject to LTSOs. While the Applicant admittedly voiced his disagreement with the application of a correctional plan, he never filed a grievance. Further, when a grievance form was provided to him by the CSC, he

continued to abstain from taking advantage of the appropriate procedural process (*Ewert v Canada (Attorney General)*, 2009 FC 971 at para 32).

[35] While I have decided that I should not exercise the Court's discretion to hear this matter, I have nevertheless considered the other issues raised by the Applicant.

B. *Does the Applicant's parole officer have the authority to impose a correctional plan pursuant to the CCRA? If so, under what authority?*

[36] The Applicant's correctional plan was lawfully created pursuant to the Regulations in place at the time of his incarceration. The CCRA authorizes such a plan under section 15.1 of the CCRA. While a section outlining the use of correctional plans is not listed under section 2.1 of the CCRA (which deals with LTSOs), it would be incorrect to interpret that section as exhaustively listing all conditions that an offender under an LTSO can be subject to.

[37] The Applicant incorrectly argues that no section of the CCRA or Regulations listed in section 2.1 includes mention of correctional plans. Sections 3 and 4 are explicitly listed as applying to those plans under LTSOs. As the Respondents points out, section 4(h) states that among other things, an offender (and it mentions LTSOs), is expected to obey rules and conditions governing LTSOs, "including by participating in programs designed to promote their rehabilitation and reintegration". Further, section 134.2(1) providing for the use of ongoing instructions to offenders subject to long-term supervision orders also applies in support of a broad and flexible discretionary authority to use correctional plans for such offenders under long-term supervision orders (*Normandin*, above, at paras 40-45).

[38] Finally, it would be inconsistent with the object and purpose of the CCRA, as well as its governing principles, to interpret it to include exhaustive lists of the tools available to the CSC in pursuit of those goals. The Applicant has been charged with offences for which he was sentenced. This sentence involved a LTSO, which is in operation until October 9, 2022. It is available to the CSC to determine how best to deal with the Applicant while he is still under their supervision, including implementation and use of updated correctional plans.

C. *Did the parole officer reasonably update the Applicant's correctional plan?*

[39] Determining whether the Applicant's parole officer acted reasonably in updating the Applicant's plan involves consideration of whether or not her decision is consistent with the purpose and principles governing the CSC, outlined in sections 3, 3.1 and 4 of the CCRA. I see no evidence presented by the Applicant that this update is contrary to these provisions. I further see no reason on the record to question the parole officer's decision.

[40] I find that the Officer reasonably exercised her authority.

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

"Michael D. Manson"

Judge

APPENDIX "A"

Federal Courts Act (R.S.C., 1985, c. F-7)

Application for judicial review

Grounds of review

18.1 (4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

Demande de contrôle judiciaire

Motifs

18.1 (4)

Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

f) a agi de toute autre façon contraire à la loi.

Corrections and Conditional Release Act (S.C. 1992, c. 20)

Application to persons subject to long-term supervision order

2.1 A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 3, 4, 23 to 27, 55 and 56,

Application aux personnes surveillées

2.1 La personne soumise à une ordonnance de surveillance de longue durée est assimilée à un délinquant pour l'application de la présente partie; les articles 3, 4, 23 à 27, 55 et 56, les paragraphes 57(2) et 66(3), les

subsections 57(2) and 66(3), sections 68, 69, 76, 77 and 79 to 82, paragraph 87(b) and sections 90 and 91 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.

Purpose and Principles

Purpose of correctional system

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Paramount consideration

3.1 The protection of society is the paramount consideration for the Service in the corrections process.

Principles that guide Service

4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(a) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and

articles 68, 69, 76, 77, 79 à 82, 87, 90 et 91 s'appliquent, avec les adaptations nécessaires, à cette personne et à la surveillance de celle-ci.

Objet et principes

But du système correctionnel

3. Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.

Critère prépondérant

3.1 La protection de la société est le critère prépondérant appliqué par le Service dans le cadre du processus correctionnel.

Principes de fonctionnement

4. Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants :

a) l'exécution de la peine tient compte de toute information pertinente dont le Service dispose, notamment les motifs et recommandations donnés par le juge qui l'a prononcée, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au

comments from the Parole Board of Canada and information obtained from victims, offenders and other components of the criminal justice system;

(b) the Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public;

(c) the Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act;

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

(e) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;

(f) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups;

(h) offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision

cours du procès ou de la détermination de la peine ou fournis par les victimes, les délinquants ou d'autres éléments du système de justice pénale, ainsi que les directives ou observations de la Commission des libérations conditionnelles du Canada en ce qui touche la libération;

b) il accroît son efficacité et sa transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale ainsi que par la communication de ses directives d'orientation générale et programmes correctionnels tant aux victimes et aux délinquants qu'au public;

c) il prend les mesures qui, compte tenu de la protection de la société, des agents et des délinquants, ne vont pas au-delà de ce qui est nécessaire et proportionnel aux objectifs de la présente loi;

d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;

e) il facilite la participation du public aux questions relatives à ses activités;

f) ses décisions doivent être claires et équitables, les délinquants ayant accès à des mécanismes efficaces de règlement de griefs;

g) ses directives d'orientation générale, programmes et pratiques respectent les différences ethniques, culturelles et linguistiques, ainsi qu'entre les sexes, et tiennent compte des besoins propres aux femmes, aux autochtones, aux personnes

and to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and

(i) staff members are properly selected and trained and are given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

Correctional Plans

Objectives for offender's behaviour

15.1 (1) The institutional head shall cause a correctional plan to be developed in consultation with the offender as soon as practicable after their reception in a penitentiary. The plan is to contain, among others, the following:

(a) the level of intervention in respect of the offender's needs; and

(b) objectives for

(i) the offender's behaviour, including

(A) to conduct themselves in a manner that

nécessitant des soins de santé mentale et à d'autres groupes;

h) il est attendu que les délinquants observent les règlements pénitentiaires et les conditions d'octroi des permissions de sortir, des placements à l'extérieur, des libérations conditionnelles ou d'office et des ordonnances de surveillance de longue durée et participent activement à la réalisation des objectifs énoncés dans leur plan correctionnel, notamment les programmes favorisant leur réadaptation et leur réinsertion sociale;

i) il veille au bon recrutement et à la bonne formation de ses agents, leur offre de bonnes conditions de travail dans un milieu exempt de pratiques portant atteinte à la dignité humaine, un plan de carrière avec la possibilité de se perfectionner ainsi que l'occasion de participer à l'élaboration des directives d'orientation générale et programmes correctionnels.

Plan correctionnel

Objectifs quant au comportement

15.1 (1) Le directeur du pénitencier veille à ce qu'un plan correctionnel soit élaboré avec le délinquant le plus tôt possible après son admission au pénitencier. Le plan comprend notamment les éléments suivants :

a) le niveau d'intervention à l'égard des besoins du délinquant;

b) les objectifs du délinquant en ce qui a trait à :

(i) son comportement, notamment se comporter de manière respectueuse envers

demonstrates respect for other persons and property,

(B) to obey penitentiary rules and respect the conditions governing their conditional release, if any,

(ii) their participation in programs, and

(iii) the meeting of their court-ordered obligations, including restitution to victims or child support.

Grievance procedure

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).

Access to grievance procedure

91. Every offender shall have complete access to the offender grievance procedure without negative consequences.

Regulations

96. The Governor in Council may make regulations

(u) prescribing an offender grievance procedure;

Application to persons subject to long-term supervision order

99.1 A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 100, 101, 109 to 111

les autres et les biens et observer les règlements pénitentiaires et les conditions d'octroi de sa libération conditionnelle, le cas échéant,

(ii) sa participation aux programmes,

(iii) l'exécution de ses obligations découlant d'ordonnances judiciaires, notamment à l'égard de la restitution aux victimes ou de leur dédommagement ou en matière d'aliments pour enfants.

Procédure de règlement

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.

Accès à la procédure de règlement des griefs

91. Tout délinquant doit, sans crainte de représailles, avoir libre accès à la procédure de règlement des griefs.

Règlements

96. Le gouverneur en conseil peut prendre des règlements :

u) fixant la procédure de règlement des griefs des délinquants;

Application aux personnes surveillées

99.1 La personne soumise à une ordonnance de surveillance de longue durée est assimilée à un délinquant pour l'application de la présente partie; les articles 100, 101, 109 à 111 et 140 à 145 s'appliquent, avec les

and 140 to 145 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.

Conditions for long-term supervision

134.1 (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations, with such modifications as the circumstances require.

Conditions set by Board

(2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

Duration of conditions

(3) A condition imposed under subsection (2) is valid for the period that the Board specifies.

Relief from conditions

(4) The Board may, in accordance with the regulations, at any time during the long-term supervision of an offender,

(a) in respect of conditions referred to in subsection (1), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or

(b) in respect of conditions imposed under subsection (2), remove or vary any such

adaptations nécessaires, à cette personne et à la surveillance de celle-ci.

Conditions de la surveillance de longue durée

Conditions

134.1 (1) Sous réserve du paragraphe (4), les conditions prévues par le paragraphe 161(1) du Règlement sur le système correctionnel et la mise en liberté sous condition s'appliquent, avec les adaptations nécessaires, au délinquant surveillé aux termes d'une ordonnance de surveillance de longue durée.

Conditions imposées par la Commission

(2) La Commission peut imposer au délinquant les conditions de surveillance qu'elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant.

Période de validité

(3) Les conditions imposées par la Commission en vertu du paragraphe (2) sont valables pendant la période qu'elle fixe.

Dispense ou modification des conditions

(4) La Commission peut, conformément aux règlements, soustraire le délinquant, au cours de la période de surveillance, à l'application de l'une ou l'autre des conditions visées au paragraphe (1), ou modifier ou annuler l'une de celles visées au paragraphe (2).

condition.

Corrections and Conditional Release Regulations (SOR/92-620)

Offender Grievance Procedure

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

Procédure de règlement de griefs des délinquants

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,

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

(b) if the institutional head or director is the subject of the grievance, to the Commissioner.

76. (1) The institutional head, director of the parole district or Commissioner, 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.

Previous Version

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

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) soit, si c'est le directeur du pénitencier ou le directeur de district des libérations conditionnelles qui est mis en cause, au commissaire.

76. (1) Le directeur du pénitencier, le directeur de district des libérations conditionnelles ou le commissaire, selon le cas, examine 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.

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) If an offender is not satisfied with a decision of the institutional head or director of the parole district respecting their grievance, they may appeal the decision to the Commissioner.

(2) [Repealed, SOR/2013-181, s. 3]

(3) The Commissioner shall give the offender a copy of his or her decision, including the reasons for the decision, as soon as feasible 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

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 conditionnelles, il peut en appeler au commissaire.

(2) [Abrogé, DORS/2013-181, art. 3]

(3) Le commissaire transmet 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

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 inmate grievance committee or outside review board; and

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

Criminal Code (R.S.C., 1985, c. C-46)

Breach of long-term supervision

753.3 (1) An offender who, without reasonable excuse, fails or refuses to comply with long-term supervision is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years.

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 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).

Défaut de se conformer à une surveillance de longue durée

753.3 (1) Le délinquant qui, sans excuse raisonnable, omet ou refuse de se conformer à la surveillance de longue durée à laquelle il est soumis est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1493-14

STYLE OF CAUSE: JAMES W. ROBERTSON V AGC

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 4, 2015

JUDGMENT AND REASONS: MANSON J.

DATED: MARCH 10, 2015

APPEARANCES:

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