Federal Court  Cour fédérale

Date: 20221025

Docket: T-462-22

Citation: 2022 FC 1462

Toronto, Ontario, October 25, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

SAMANDA ROSE RITCH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[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] of a decision by the warden of the Nova Institution for Women [Nova] to schedule Ms. Ritch's security classification review on or near May 28, 2022 [Decision]. For the following reasons, I will dismiss the Application.

I. Background

[2] Section 30(1) of the CCRA requires Correctional Service Canada [CSC] to assign a security classification of minimum, medium, or maximum to each inmate in accordance with the *Corrections and Conditional Release Regulations*, SOR/92-620 [*Regulations*]. The CSC Commissioner's Directives [Directives] also provide guidelines for the security classification process.

[3] On December 14, 2019, Ms. Ritch was convicted of first-degree murder. On January 24, 2020, Ms. Ritch was sentenced to life – the minimum sentence for first-degree murder – with no eligibility of parole for 25 years.

[4] On January 31, 2020, prior to her arrival at Nova, a federal prison, CSC staff completed a Custody Rating Scale [CRS] for Ms. Ritch. The CRS is a tool that generates an initial score, which suggests a particular security classification. The CRS helps CSC with their assessment of an inmate's security classification, and guides CSC to decide where to house an inmate upon admission into a federal institution, before they receive a security classification.

[5] Ms. Ritch's CRS recommended a maximum security classification.

[6] On February 4, 2020, Ms. Ritch was transferred from the Central Nova Scotia Correctional Facility, a provincial jail, and placed in the maximum security unit at Nova upon her arrival. The Respondent argues that Ms. Ritch was placed in the maximum security unit as an unclassified offender pending her security classification. Ms. Ritch disagrees with the

Respondent and submits that she was placed in the maximum security unit because her security classification had been determined at that time to be maximum security.

[7] On April 20, 2020, CSC staff completed the assessment of Ms. Ritch's institutional adjustment, escape risk, and risk to public safety in case of an escape, known as the Assessment for Decision [A4D]. The A4D affirmed the CRS and recommended maximum security classification. On May 5, 2020, CSC staff completed a Correctional Plan for Ms. Ritch.

[8] On May 27, 2020, Ms. Ritch submitted to the Acting Warden of Nova [Warden] a written rebuttal to the A4D. On May 28, 2020, the Warden issued a written decision, classifying Ms. Ritch as a maximum security offender.

[9] On February 4, 2022, counsel for Ms. Ritch wrote to the Warden requesting that Ms. Ritch's security classification be reviewed, pursuant to Directive 710-6, which mandates that a security classification review must take place at least once every two years for an inmate who is assigned to a maximum or medium security classification.

[10] On February 21, 2022, the Warden informed counsel for Ms. Ritch of the Decision: Ms. Ritch's security classification review would take place on or near May 28, 2022, two years after the Warden issued a written decision, classifying Ms. Ritch as a maximum security offender.

[11] On March 3, 2022, Ms. Ritch filed for judicial review of the Decision.

[12] On May 27, 2022, CSC staff completed a review of Ms. Ritch's security classification and reclassified her to medium security.

II. Preliminary issues

[13] The Respondent has raised two preliminary issues before this Court, arguing the Application should be dismissed because (i) it is moot, and (ii) Ms. Ritch has not exhausted all her internal remedies.

A. *Is the Application moot?*

[14] In the two-step analysis for mootness, developed by the Supreme Court of Canada in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*], the Court must first determine whether the tangible and concrete dispute has disappeared and whether only a hypothetical or abstract question remains. Second, the Court must consider whether it should exercise its discretion to decide the merits of the case, despite the absence of a live tangible issue (*Borowski* at page 345).

[15] The Respondent argues there is no concrete dispute, because the relief sought by Ms. Ritch is moot. The Respondent contends this Court cannot grant an order in the nature of *mandamus* compelling the Warden of Nova to conduct a security classification review "immediately", because a security classification review was already conducted on May 27, 2022.

[16] Ms. Ritch strongly opposes any finding of mootness, arguing that security classification reviews will continue to affect her for the duration of her sentence. Any clarifications that this Court provides on the timeframe of security classification reviews will thus have a direct impact on her.

[17] In this case, I agree with the Respondent that the first step of the analysis is satisfied. Since a security classification review was conducted on May 27, 2022, only the hypothetical issue of whether the Decision was reasonable remains.

[18] In the second step of the analysis, the Court must consider three factors to decide whether it should exercise its discretion to hear the merits of the case: (i) whether the moot issue can be argued in a full adversarial system; (ii) judicial economy and whether it is worthwhile to allocate scarce judicial resources to resolve the moot issue; (iii) the effectiveness of judicial intervention and the role of the judiciary (*Borowski* at page 345; see also *Public Service Alliance of Canada v. Canada (Attorney General)*, 2021 FCA 90 at para 10).

[19] Ms. Ritch submits that this Court should exercise its discretion to decide the merits of the case, because the issues raised have important long-lasting ramifications on how CSC interprets and applies the security classification process.

[20] The Respondent argues that the Court should not exercise its discretion to rule on the merits of this Judicial Review, but concedes that the Court still has the benefit of an adversarial system to assist it in determining the issue of whether the Decision is reasonable.

[21] That being conceded, I nonetheless find that the Court need not rule on the merits of this Judicial Review, namely the date that Ms. Ritch's two-year security classification review should have taken place. This is because the remaining two factors – the effectiveness and economy of using judicial resources to intervene despite a moot issue – do not overcome the second preliminary issue, namely Ms. Ritch's failure to have exhausted her internal remedies within the institution.

B. *Has Ms. Ritch exhausted all her internal remedies?*

[22] The Respondent argues Ms. Ritch failed to exhaust her internal remedies because she did not file a grievance regarding the timing of her security classification review pursuant to sections 90 and 91 of the CCRA.

[23] Ms. Ritch, on the other hand, explains that she chose to bypass the internal grievance process because it is inadequate. She relies on *May v Ferndale Institution*, 2005 SCC 82 [*May*] to argue she could not reasonably expect a fair and impartial review of a prison authority's decision from another prison authority. She also relies on the Correctional Investigator's 2017-2018 Report to highlight the inadequacy of the CSC internal grievance system. Ms. Ritch points out that in the Report, the Correctional Investigator stated that "the internal inmate complaints and grievance system is broken, ineffective, dysfunctional, and in my opinion, likely beyond repair or salvage" (online: https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx).

[24] The Respondent argues that the Supreme Court's decision in *May* did not lead to the finding that the internal grievance process was inadequate as an alternative remedy to the courts.

[25] I agree with the Respondent that *May* does not stand for the propositions posited by Ms. Ritch, namely that she was able to properly bypass the grievance process in the circumstances, due to its alleged inadequacy. In *May*, the Court held that the CSC internal grievance process was not meant to constitute a complete statutory code sufficient to oust the superior court's jurisdiction to hear applications for *habeas corpus*.

[26] Turning to that grievance process, this Court has held on various occasions that the CSC internal grievance system is an adequate alternative remedy that must be exhausted before an applicant can seek judicial review, including very recently in *Blair v Canada (Attorney General)*, 2022 FC 957 at para 44 [*Blair*]. Associate Judge Duchesne's comments in *Blair* also provide insight into what constitutes exceptional circumstances that would warrant this Court to set aside the doctrine of exhaustion in the context of institutional grievances:

> [44] This Court's jurisprudence has generally held that the grievance process available through sections 90 and 91 of the CCRA is an adequate alternative remedy that must be exhausted prior to seeking judicial review (*Giesbrecht v Canada*, 1998 CanLII 7905 at para 14 ; *MacInnes v Mountain Institution*, 2014 FC 212 at para 17 ; *Nome v Canada (Attorney General)*, 2016 FC 187 at paras 21-22 ; *Nome v Canada (Attorney General)*, 2018 FC 1054 at para 7 ; *Thompson v Canada (Correctional Service)*, 2018 FC 40 at paras 14-17).
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> [45] The Court will intervene and will allow the grievance process to be bypassed where there are exceptional circumstances (*Rose v Canada (Attorney General)*, 2011 FC 1495 at para 35 ; *Nickerson v Canada (Correctional Service)*, 2019 FC 1136 at paras 15-16).
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> [46] Exceptional circumstances have been generally described as being, "cases of emergency, evident inadequacy in the procedure, or where physical or mental harm is caused to an inmate" (*Rose v Canada (Attorney General)*, 2011 FC 1495 at para 35 ; *Marleau v Canada (Attorney General)*, 2011 FC 1149 at para 34 ; *Gates v Canada (Attorney General)*, 2007 FC 1058 at para 26). This list of exceptional circumstances is not exhaustive. Very few

> circumstances qualify as "exceptional" and the threshold for exceptionality is high. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted (*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at para 33 [*CB Powell*]).

[27] Ms. Ritch submits that only this Court can resolve the issues raised in her Application about the timeframe of the security classification process, because the question raised requires statutory interpretation that goes beyond the scope of the internal grievance system.

[28] This argument is also insufficient to overcome the obligation to exhaust the statutory resources before turning to the Court. Indeed, the Federal Court of Appeal in *CB Powell*, as cited in *Blair* above, held that an important legal issue is not sufficient to qualify as an exceptional circumstance that would allow an applicant to bypass an adequate alternative remedy. Here, the issue raised falls squarely within the bailiwick of the CSC and the internal grievance process, and there is no reason why it should not have been raised first through that internal process. Indeed, to do otherwise would, frustrate the statutory framework outlined in that legislation.

[29] In short, the Applicant has not demonstrated that there are exceptional circumstances in her case that would justify this Court setting aside the principle of judicial non-interference to review Ms. Ritch's claim before it has gone through the CSC internal grievance process. I will therefore dismiss the Application because Ms. Ritch has not exhausted her internal remedies, and as a result, will not exercise the discretion of this Court to decide on the merits of the Judicial

Review, in spite of the mootness of the Application. I will thus decline to make a determination on the substantive question of whether the Warden's Decision was reasonable.

[30] Finally, I note that the Respondent, mindful of Ms. Ritch's incarceration and lack of meaningful income, has graciously declined any request for costs.

III. Conclusion

[31] For the reasons outlined above, I will dismiss the Application for judicial review, without costs.

JUDGMENT in T-462-22

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. No costs are awarded.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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