

**Date: 20080905**

**Docket: T-270-08**

**Citation: 2008 FC 992**

**Ottawa, Ontario, September 5, 2008**

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

**BETWEEN:**

**PIERRE-PAUL POULIN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant (Mr. Poulin), representing himself, is asking for the judicial review of a third level grievance procedure decision by the Assistant Commissioner of the Correctional Service of Canada (the CSC). In this decision dated January 21, 2008, this grievance was allowed in part as follows:

- the staff of the Mission Institution (the Institution), where the applicant is serving a life sentence for four counts of murder in the first degree, should not have withheld the inmate's computer until it had been registered in the inmate's personal property record;

- the request for an extended warranty and for compensation for depreciation for the period during which the computer was being withheld is denied but the value of the computer will be that of the purchase cost on the inmate's personal property record in accordance with CSC policy;
- the request for reimbursement of the monthly payments for the purchase of the computer for the period that the computer was withheld is denied;
- further, the CSC will not pay for the installation of Intel Duo 2 Extreme X6800 or the video card for the inmate's computer;

[2] Contrary to CSC policy, which does not allow inmates to use computers, the CSC exceptionally allowed the applicant to use a computer because he is visually impaired, providing that the safety standards of the Institution were satisfied. Permission was granted before the applicant purchased it.

[3] This matter raises primarily just questions of fact, and calls into question the discretion exercised by the Assistant Commissioner of the CSC in making his decision on January 21, 2008. In a situation such as this, the standard of review is that of reasonableness (see *Dunsmuir v. New Brunswick* 2008 CSC 9, at paragraphs 51 and 53).

[4] Further, the applicant also raises a breach of the duty of procedural fairness. According to his version of the facts, the warden of the Institution was in a conflict of interest because, as he was

involved at the first level of the grievance procedure, he decided on the circumstances of his own decision: the decision to withhold the computer upon its delivery to the Institution. He added that he should have held a hearing in the context of examining the grievance. On the first point, the record indicates that the Institution warden was not involved in the decision to withhold the computer when it was delivered. On the second point, the right to a hearing is not a requirement for the purposes of the grievance procedure and the decision made on January 21, 2008, because the facts in the record do not justify such an obligation. It is not a matter of credibility requiring testimony, but rather of the application of a CSC directive and the exercise of the Assistant Commissioner's discretionary power (see *Canada (Attorney General) v. Flynn*, 2007 FCA 356, paragraph 15).

[5] During his submissions, the applicant told the Court that he was withdrawing his Charter argument based on section 15.

[6] The only issue for the purposes of resolving this litigation is: "is the decision of the Assistant Commissioner dated January 21, 2008, reasonable taking into account the facts of this matter?"

[7] The CSC withheld the computer when it was delivered despite the fact that certain CSC officers had authorized its purchase. The applicant filed a first grievance and he was successful in a decision at the third level dated July 27, 2007. Accordingly, the CSC recognized that the computer should not have been withheld, but that the computer had to be adapted so that it was safe for the purposes of the Institution. The CSC would assume the costs of these modifications. This decision was not the subject of an application for judicial review.

[8] The computer was withheld for nine months. Accordingly, the applicant filed a second grievance in which he asked to be compensated for the period that the computer had been withheld (reimbursement of depreciation, extension of warranty, reimbursement of the monthly purchase payments, etc...). In the decision of the Assistant Commissioner at the third level dated January 21, 2008, the large majority of claims were refused (see paragraph 1 of this decision).

[9] In this decision, the Assistant Commissioner was very brief, refusing the request for a warranty extension on the basis that such a request was not part of the grievance procedure. There was no explanation given on this point. The Court record clearly establishes that the applicant was simply requesting that the CSC assume the repairs for an additional warranty period from the time he took possession (see the grievance presentation form at the third level in the applicant's record, tab N, page 246, as well as the addendum to this same grievance at tab O, page 255). There were three months left on the manufacturer's warranty.

[10] The CSC recognized that it withheld the applicant's computer in error (CSC mistakenly withheld your computer from you and has acknowledged its mistake ... see decision dated January 21, 2008, page 1 at the third paragraph). Respondent's counsel argued that the applicant did not establish prejudice. However, the Court observes that the applicant did not use the computer for nine months of the warranty period and was unable to enjoy the use of his computer during this period, nor the benefits of the manufacturer's warranty if necessary.

[11] On this point, the Court cannot read into the decision the explanation for the refusal of such a request in view of the brief reasons. This is not reasonable when taking into account the facts and the admissions on which this matter is founded. The Supreme Court of Canada in *Dunsmuir v. New Brunswick* notes at paragraph 47: “[a] court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process.”

[12] There is perhaps a valid justification for this refusal, but the Court cannot assess it without being informed of the CSC’s reasons. According to the Federal Court of Appeal in *VIA Rail Canada Inc. v. National Transportation Agency and Jean Lemonde*, [2001] 2 F.C. 25 at paragraphs 17-19:

The duty to provide reasons is a salutary one. Reasons serve a number of beneficial purposes including that of focusing the decision maker on the relevant factors and evidence ...

Reasons also provide the parties with the assurance that their representations have been considered.

In addition, reasons allow the parties to effectuate any right of appeal or judicial review that they might have. They provide a basis for an assessment of possible grounds for appeal or review. They allow the appellate or reviewing body to determine whether the decision maker erred and thereby render him or her accountable to that body ...

[13] As for the refusal of the other requests (request for depreciation, reimbursement of payments for the purchase of the computer, etc ...), there are supporting reasons and the Commissioner used

his discretion. Even though the Court may have a different opinion, it must not intervene on this basis alone. The determination must be unreasonable to justify such an intervention.

[14] The matter will therefore be returned to the Assistant Commissioner for reassessment of his decision to refuse the request for a warranty extension, while taking into account the grievance procedure, the admission that the computer should not have been withheld, and the applicant not having use of the computer for nine months of the manufacturer's one-year warranty period.

[15] The applicant, representing himself, will be awarded costs limited to the amount of \$300.00, to cover the stationary and administration costs of the matter.

**JUDGMENT**

**THE COURT ORDERS AS FOLLOWS:**

- The application for judicial review is allowed in part.
- The decision of the Assistant Commissioner is set aside with respect to request for a warranty extension.
- The matter is referred to the Assistant Commissioner for reassessment of the warranty extension request in accordance with the remarks in this decision.
- Costs in the amount of \$300.00 are awarded to the applicant.

**“Simon Noël”**  
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**Judge**

Certified true translation

Kelley A. Harvey, BCL, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-270-08

**STYLE OF CAUSE: PIERRE-PAUL POULIN v. ATTORNEY GENERAL OF CANADA**

**PLACE OF HEARING:** Vancouver

**DATE OF HEARING:** August 26, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MR. JUSTICE SIMON NOËL

**DATE OF REASONS:** September 5, 2008

**APPEARANCES:**

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