

Federal Court



Cour fédérale

**Date: 20110519**

**Docket: T-1392-10**

**Citation: 2011 FC 576**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, May 19, 2011**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**RICHARD TIMM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an application for judicial review filed by the applicant against a decision, dated July 30, 2010, made at the third level of the grievance procedure established under the *Corrections and Conditional Release Act*, SC 1992, c 20. For the reasons that follow, this application will be dismissed.

[2] On May 2, 2010, the applicant submitted a grievance to the third level of the grievance procedure (U30A00043089) for undue and abusive delays, harassment and multiple violations of the Commissioner's Directives CD 060 (Code of Discipline) and CD 081 (Offender Complaints and Grievances). In this grievance, the applicant objected, more specifically, to the delay in sending one of his previous harassment grievances to the second level and criticized the Warden of La Macaza Institution and the coordinator of complaints and grievances at that institution for their wilful laxness and, in the Warden's case, his abuse of power and authority, to the extent that he acted in violation of an order from his superior (the Senior Deputy Commissioner) directing him to ensure that grievances submitted by offenders to the second level be referred expeditiously to that level. In this grievance, the applicant set out 33 corrective measures and demanded that a complete, detailed, written response be provided for each of the requested measures.

[3] On May 3, 2010, the applicant submitted another grievance to the third level of the grievance process (U30A00043099), also for undue and abusive delays, harassment and multiple violations of the Commissioner's Directives CD 060 and CD 081. In this second grievance, the applicant objected to the delay at the second level in responding to the four previous harassment grievances and criticized the Quebec Region's Regional Deputy Commissioner for having failed to comply with the statutes, regulations and policies applying to her and with a direct order from her superior (the Senior Deputy Commissioner) directing her to ensure compliance with the timeframes prescribed in CD 081. This time, the applicant called for 64 corrective measures and requested a complete and detailed written response to each of his measures.

[4] On July 30, 2010, the Senior Deputy Commissioner, as the third level, handed down one decision dealing with the two grievances mentioned above. In this decision, the applicant's grievances were allowed in part, to the extent that it was found that the timeframes for the Correctional Service of Canada authorities concerned to refer the files or respond to the applicant's grievances were exceeded, therefore contravening the timeframes prescribed in Commissioner's Directive CD 081. However, the Senior Deputy Commissioner pointed to the letters of extension sent to the applicant, informing him of the reasons for the delays and setting out a new deadline, in accordance with paragraph 41 of CD 081. It was also noted that measures had been taken at the second level to improve the grievance receipt and referral system, such that no further measure was considered necessary to resolve that part of the grievance.

[5] The applicant first contended that the third-level decision breached the principles of natural justice and procedural fairness to the extent that the Senior Deputy Commissioner rendered one decision to deal with both of his grievances. It is true that his first grievance concerns the delay in referring his previous grievances to the second level, whereas the second grievance concerns the delay in responding to those same previous grievances. However, the fact remains that the two grievances dealt with by the Senior Deputy Commissioner in the decision under judicial review raised common issues and sought the same corrective measures. Furthermore, the Senior Deputy Commissioner dealt separately with the five grievances underlying the two grievances before him and provided a separate response to each allegation concerning the delay, at one stage or another in the procedure, in dealing with the grievances in issue. Therefore, the third-level decision-maker was correct in deciding both grievances in one decision. Doing so did not breach any of the principles of natural justice or procedural fairness.

[6] The applicant also criticized the Senior Deputy Commissioner for not having specifically answered each of his requests for corrective measures. Yet again, it is apparent simply from reading the requested corrective measures that they are redundant and repetitive in that they all seek a written acknowledgement from the Correctional Service of Canada stating that the timeframes prescribed in the Commissioner's Directives were not observed. However, it is clear from the Senior Deputy Commissioner's decision that he properly grasped the essence of the applicant's criticisms. He had total discretion to decide on the corrective measures that were appropriate in the circumstances and provided clear reasons to justify his refusal of the measures claimed by the applicant. Paragraph 37 of Directive CD 081 provides that the decision-maker will ensure that grievors are provided with complete responses "to all issues raised" in grievances. That is what was done here. Consequently, once again, I see no breach of procedural fairness or the principles of natural justice.

[7] The applicant also disputes the reasonableness of the decision, arguing that the delays in dealing with his grievances were overly long and that this is a recurring problem. Although the Court sympathizes with the frustration the applicant may be feeling, the Senior Deputy Commissioner's response cannot be called unreasonable. Regarding the delays in processing the files at La Macaza Institution, the Senior Deputy Commissioner ruled in favour of the applicant in concluding that these delays were unjustified. However, he indicated that steps had been taken so that grievances would be referred more quickly to the second level and that a system had been put in place to ensure that these measures would be respected. Given these developments, it was reasonable to find that no further measures were necessary to address the applicant's grievances.

[8] Regarding the timeframes before the applicant's grievances received a response at the second level, the Senior Deputy Commissioner also ruled in the applicant's favour in deciding that these timeframes were contrary to the language of paragraph 35 of CD 081. However, he refused to grant the applicant the corrective measures sought, emphasizing that letters of extension had been sent to the applicant in accordance with paragraph 41 of CD 081, informing him of the reasons for the delay and of the date by which he could expect to receive a response. Once again, the Court can understand the applicant's disappointment and his impatience to see his grievances dealt with by the competent authorities; that being said, it has not been shown that the Senior Deputy Commissioner's decision is unreasonable in the circumstances.

[9] Last, regarding the applicant's argument about harassment, the third level found that the applicant's allegations did not meet the definition of harassment as defined in CD 081. Paragraph 10 of this directive provides that harassment means, among other things, "any improper conduct by one or more employees . . . 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". The applicant did not flesh out his argument in this respect, and seemed to submit that the delays he felt he was subjected to constituted harassment because of their repetitive nature. However, there is no evidence before the Court that the delays the applicant complained of were directed at him personally and that the persons responsible for these delays knew or ought reasonably to have known that the applicant would be offended. It was reasonable for the Senior Deputy Commissioner to conclude that the applicant's allegations did not meet the definition of harassment set out at paragraph 10, as stated above, especially since this provision provides that

harassment comprises “any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat”. Without any evidence showing that the applicant was personally targeted and that the delays had the effect of humiliating or belittling him, this ground raised in support of his application for judicial review therefore must fail.

[10] For all of the above reasons, the application for judicial review is dismissed with costs.

**ORDER**

**THE COURT ORDERS that** the application for judicial review be dismissed with costs.

“Yves de Montigny”

Judge

Certified true translation  
Sarah Burns

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

**DOCKET:** T-1392-10

**STYLE OF CAUSE:** RICHARD TIMM  
v  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 5, 2011

**REASONS FOR ORDER  
AND ORDER:** de MONTIGNY J.

**DATED:** May 19, 2011

**APPEARANCES:**

Richard Timm	FOR THE APPLICANT (SELF-REPRESENTED)
Nicholas Banks	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Richard Timm La Macaza, Quebec	FOR THE APPLICANT (SELF-REPRESENTED)
Myles J. Kirvan, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT