Federal Court  Cour fédérale

Date: 20141008

Docket: T-2049-13

Citation: 2014 FC 959

Ottawa, Ontario, October 8, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JAMES THOMAS EAKIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr Eakin, is serving an indeterminate sentence having been designated as a Dangerous Offender in 1995. He seeks judicial review under s.18.1 of the *Federal Courts Act*, RSC 1985, c F-7 of the third-level decision of the Assistant Commissioner of the Correctional Service of Canada [CSC] dated October 18, 2013 of his grievance (V4OR00012109). The Assistant Commissioner denied the grievance, finding that some aspects of the grievance had been finally dealt with in a separate and previous grievance (V40R00005631) and that the remaining aspects of the grievance, relating to Mr Eakin's security level classification, are in

accordance with section 18 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [*CCRR*] and are based on file information, including assessments, and were conducted in accordance with policy.

[2] For the reasons that follow, the application for judicial review is dismissed.

Background

[3] Mr Eakin is a federally incarcerated inmate at the Warkworth Medium Security Institution. He was convicted of aggravated sexual assault and robbery in 1991 and sentenced to six years imprisonment. In 1993, he was convicted of a sexual assault and robbery of another victim. The Crown applied to have Mr Eakin designated as a Dangerous Offender. In 1995, following a hearing, Mr Eakin was found to be a Dangerous Offender by Justice Hamilton of the Ontario Court of Justice (General Division), as it was then known. Justice Hamilton imposed an indeterminate sentence in lieu of a determinate sentence for the second conviction. The Ontario Court of Appeal upheld the conviction, the Dangerous Offender designation and the sentence.

Preliminary Issues

[4] As a preliminary issue, the Style of Cause is amended to remove the Commissioner of the Correctional Service of Canada and the Warkworth Institution as respondents and leaving the Attorney General of Canada as the only respondent.

[5] As a second and important preliminary issue, the applicant's record includes numerous references to the names of the two victims of sexual assault. The names of the victims are subject to a publication ban on their identity. I note that in the decision of the Ontario Court of Justice (General Division), as it was then known, that found Mr Eakin to be a Dangerous Offender, the victims were referred to by initials only to protect their identity. This practice should continue.

[6] To respect the publication ban and to guard against the disclosure of the identity of the victims in the material filed by the applicant in these proceedings, the applicant's record has been placed in a sealed envelope. These documents cannot be provided to anyone unless the names of the victims are deleted and only their initials are used. The applicant must respect this publication ban including in any possible future proceedings where he seeks to rely on the same or similar information.

The decision under review

[7] The grievance procedure to resolve inmate complaints regarding actions or decisions made by CSC staff members is set out in section 90 of the *Corrections and Conditional Release Act*, SC 1992, c 20 s 24(1), (2) [*CCRA*]. There are three levels in the grievance process (see Sections 74 to 82 of the *CCRR*. The offender's initial complaint is the "first-level grievance" which is addressed to the head of the institution. The "second-level grievance" elevates the complaint to the regional head. The "third-level grievance", is a final appeal to the Commissioner. The offender may apply to this Court for Judicial review of the third-level grievance when that process is final and all internal remedies have been exhausted.

[8] This application for judicial review is based on the third level decision, dated October 18, 2013, for Grievance V40R00012109. The decision of the Assistant Commissioner describes the grievance as follows:

> […] your third level grievance concerning the accuracy of information provided to the psychologist for the preparation of a Post Correctional Program Psychological (*sic*) Risk Assessment, and the subsequent decision to maintain you as a Medium security offender, has now been reviewed.

[9] With respect to the grievance regarding the use of inaccurate information, the decision refers to Mr Eakin's "numerous allegations that the information used in compiling the Post Program Psychiatric Risk Assessment was inaccurate and/or incomplete" and notes that that these allegations were the subject of a separate grievance.

[10] The third level decision also notes that the second level response had advised Mr Eakin that his concerns about the validity of the Post Program Psychiatric Risk Assessment had been addressed in the response to his other grievance, V40R00005631, the third level decision of which was rendered on January 21, 2013. The second level response noted that information provided by the Courts is beyond the authority of the CSC, but acknowledged that Mr Eakin continued to contest that information.

[11] The third level decision notes Mr Eakin's submission that the CSC should ensure that all information it relies on is accurate and his argument that he had given CSC the Court documents which conflict with CSC's information.

[12] The decision refers again to the third level decision of January 21, 2013 of the previous grievance (V40R00005631) which informed Mr Eakin that, while subsection 24(2) of the *CCRA* requires that CSC use accurate and up to date information, it also puts the responsibility on offenders to identify the information that they believe is inaccurate and that Commissioner's Directive [CD] 701 sets out the process to request file corrections. The January 21, 2013 decision also advised Mr Eakin that information received from the Courts is beyond the jurisdiction of the CSC and advised him to direct his concerns to the Court.

[13] Because the issue of the allegedly incorrect information was addressed in the decision of January 21, 2013 on V40R00005631, the current decision indicates that this aspect of the grievance is rejected in accordance with Guidelines [GL] 081-1, Offender Complaint and Grievance Process, Annex C which provides that a grievance may be rejected when, among other things, the issue being grieved is not under the jurisdiction of the Commissioner or the issue has been or is being addressed in a separate complaint or grievance.

[14] With respect to Mr Eakin's grievance of his security classification, the decision notes that the Security Reclassification Scale [SRS] is only one part of the assessment. The Post Program Psychiatric Risk Assessment conducted by Dr Hucker revealed concerns about Mr Eakin's risk of sexual and violent re-offending. Based on the assessed risk, he was given a Moderate Public Safety rating. That determination also acknowledged that Mr Eakin contested some aspects of the Risk Assessment.

[15] A specific rating was also provided in relation to Institutional Adjustment, Escape Risk and Public Safety which was Low. The decision notes that the Head of the Institution concurred with the recommendation of a Moderate Public Safety rating and a Low Institutional Adjustment, Escape Risk and Public Safety rating, but given the Moderate Public Safety rating, Mr Eakin was appropriately maintained as a Medium Security Offender in accordance with Section 18 of the *CCRR* and based on file information, including assessments.

[16] As a result, the grievance was denied.

[17] The second level response, dated June 2013, which is part of the Record, focuses on the grievance of the security level classification. It notes Mr Eakin's submissions about his actions and behaviour while incarcerated. It also notes that the main reason for Mr Eakin's dispute about his classification is his assertion that Dr Hucker's assessment is based on misinformation provided by the Court. The second level decision also refers to the January 21, 2013 decision on Mr Eakin's other grievance (V40R00005631) related specifically to Dr Hucker's assessment and which directed Mr Eakin to pursue his concerns about the information provided by the Court (i.e. the Ontario Court of Justice, General Division, as it was previously known) with the Federal Court of Canada.

[18] The second level decision notes that in one of the assessments done for the security classification, the Parole Officer noted that Mr Eakin contests aspects of Dr Hucker's assessment and asserts that it was based on erroneous file information regarding his index offences and that

Mr Eakin believes that this has led to an inaccurate assessment of his risk and level of accountability.

[19] The second level decision states "the psychiatric assessment, acknowledged to be the same one you believe is based on inaccurate information, is then discussed. In this report, the professional opinion presented by Dr Hucker was that your participation in the treatment has been hindered by your inability to accept the professional opinions and the implications these have for continued high risk of re-offence."

[20] The second level decision again acknowledges that Mr Eakin disputes the information relied upon by Dr Hucker but notes, "Mr Eakin, all the information considered by your Parole Officer's review of this factor is appropriate and consistent with what is required in policy. And, although you do not agree with the information relied upon [*sic*] Psychiatrist's assessment this does not change the fact that, at the time of the review, that information is consistent with your file information received from the courts."

The applicant's position

[21] Mr Eakin seeks a range of relief.

[22] First, Mr Eakin seeks an Order quashing the decision of the Assistant Commissioner which denied his third level grievance.

[23] Second, Mr Eakin now also seeks an Order directing CSC to correct information on his CSC file which he contends is inaccurate including: the proper start date of his indeterminate sentence as a Dangerous Offender, which he argues is the date of his arrest and not the date of the imposition of the sentence; that his indeterminate sentence is as a result of his Dangerous Offender designation in 1995 and was imposed for the second conviction only; and, his criminal record which includes robbery and break and enter convictions in 1999 and information regarding the concurrent sentences imposed.

[24] Third, Mr Eakin seeks an Order from this Court to correct what he submits are errors made by Justice Hamilton of the Ontario Court of Justice (General Division), as it was previously known, in 1995 at Mr Eakin's Dangerous Offender hearing and sentencing to reflect the testimony of the sexual assault victims, or alternatively an Order directing the appropriate Court to make that correction.

[25] Finally, Mr Eakin seeks an Order directing CSC to disregard all reports or psychiatric and other assessments based on this incorrect information and to consider only the corrected, accurate and relevant information, including the testimony of the sexual assault victims.

[26] With respect to the decision of the Assistant Commissioner, Mr Eakin's arguments focus on his assertions that CSC refuses to correct or acknowledge information on his file that he contends is not accurate. He argues that CSC continues to rely on erroneous information and that this has had an impact on his correctional plan and programming and will have an ongoing impact on the possibility for a lower security classification. He states that he has made several

requests over the years to CSC to correct his information and that he has raised this issue with his Parole Officer and with the Parole Board.

[27] Mr Eakin notes that the Psychiatric Risk Assessment conducted by Dr Hucker states that his account of his offences does not correspond with the victim's statements and concludes that he lacks insight and/or is being obstructive. Mr Eakin argues that his own account is accurate and that the information from the Court and the findings of fact at his dangerous offender hearing and sentencing are incorrect. Mr Eakin suggests that he would have to lie about the violent nature of the offences he committed in order for his account to reflect the information in his CSC file based on the Court documents.

[28] Mr Eakin argues that the decision of Justice Hamilton refers to the violent nature of both sexual assaults but that Justice Hamilton mistakenly mixed up the events and that the testimony of one of the victims does not describe that same level of violence. Mr Eakin points to an uncertified transcript of what appears to be a short excerpt of a police interview with one of the victims in support of his assertion.

The respondent's position

[29] The respondent notes that an applicant cannot raise new issues on judicial review which were not part of the grievance and which were not considered by the Assistant Commissioner. The applicant has raised three issues that were not part of his grievance: the start date of his sentence; his assertion that he is currently serving an indeterminate sentence for one conviction of sexual assault; and, his criminal record. The record before the Court does not address these

issues and there is no basis for the Court to determine the reasonableness of the Commissioner's decision with respect to these issues.

[30] The respondent submits that there is only one issue raised in the grievance which is now the subject of judicial review and this is about the accuracy of information in the decision of Justice Hamilton of the Ontario Court of Justice (General Division), as it was previously known, which found Mr Eakin to be a Dangerous Offender and imposed an indeterminate sentence.

[31] With respect to the applicant's assertions that the information on the Court file, specifically the findings of fact in his Dangerous Offender hearing and sentencing of June 21, 1995 regarding the nature and circumstances of the assaults on two complainants, the respondent notes that Mr Eakin appealed the decision to the Ontario Court of Appeal, which upheld the conviction and sentence and did not refer to any errors made with respect to findings of fact.

[32] The respondent submits that Mr Eakin's request to this Court to correct the record of the Ontario Court is beyond this Court's jurisdiction. Regardless of whether this is characterized as seeking to change Justice Hamilton's findings or the CSC file information, the respondent submits that this application for judicial review is a collateral attack on Justice Hamilton's decision.

[33] Although the applicant argues that he is challenging only the use by the CSC of that information in its own decision making, and that it is within this Court's jurisdiction to consider judicial review of CSC's reliance on the information in its files, in this case, Justice Hamilton's

decision is the source of the information relied on by CSC. Mr Eakin is asking this Court to declare that the findings of Justice Hamilton of the Ontario Court of Justice (General Division), as it was then known, were wrong.

[34] The respondent submits that Mr Eakin's attempts to argue that there are inconsistencies between the information provided by the victims of the two sexual assaults and Justice Hamilton's description of the level of violence used by Mr Eakin in the two sexual assaults which led to the Dangerous Offender finding should have been raised in his appeal to the Ontario Court of Appeal.

[35] The respondent submits that although section 24 of the *CCRA* requires CSC to take all reasonable steps to ensure that the information it uses about an offender is up to date, accurate and as complete as possible, CSC has no obligation to reinvestigate information obtained from reliable sources including the Courts. In this case, CSC had no obligation to verify the findings of fact of the trial judge (*Tehrankari v Canada (Attorney General*), 2012 FC 332, [2012] FCJ No 441 [*Tehrankari*] at paras 35-36).

[36] The respondent notes that Mr Eakin has been advised on several occasions that the proper process to correct the information he contends is inaccurate is to follow CD 701 and make a formal request to his Parole Officer. The Directive requires that CSC include a copy of the written request in the offender's case management file. The respondent further notes that in the event that a decision is made to change the information in the file, the changed information would be noted alongside the original information with the date of the change. The information

that Mr Eakin contends is inaccurate would not be expunged but would remain to provide the context for the decisions made on the basis of this information. The respondent does not agree that there is any inaccurate information in the file, only that this is the manner in which any inaccurate information would be addressed.

[37] With respect to Mr Eakin's submissions that he has made repeated requests to have his file information corrected, the respondent acknowledges that Mr Eakin has raised this issue with his Parole Officer and others, but submits that he has not pursued his request. Mr Eakin's requests are simple letters and file notations that mention alleged conflicts in the information, and were not formal requests.

[38] The respondent notes that Mr Eakin relies on short excerpts of interview notes to support his assertions. However, the record from Mr Eakin's two trials and his Dangerous Offender hearing and sentencing would be voluminous and the short excerpts do not provide the context or the complete story.

[39] The respondent submits that this is not a situation of CSC demanding form over content and relying on Mr Eakin's failure to submit the proper form to avoid the duty to follow up. Rather, Mr Eakin has not provided sufficient content to support his assertions and the decision of the Assistant Commissioner conveys that Mr Eakin has not provided a sufficient basis for CSC to explore these assertions.

[40] The respondent also points out that issues regarding convictions and sentencing are not grievable in the CSC institutional grievance process.

[41] The respondent submits, in response to Mr Eakin's concern that he will never be able to have his security classification reduced to minimum because he would have to lie to demonstrate insight into his past behaviour, that there is no entitlement to cascade down to a minimum security classification leading to possible release. Such a determination is based on several assessments.

[42] The respondent notes that protection of society is the paramount consideration for the Service in the corrections process, pursuant to section 3.1 of the *CCRA* and this is particularly so for risk assessments. Therefore, the decision to give more weight to the information in the CSC file than to the applicant's allegations is reasonable.

[43] In this case, the Assistant Commissioner's decision regarding the security classification was based on the information in the file, including Dr Hucker's psychiatric assessment that concluded Mr Eakin was at risk of sexual and violent reoffending. The decision reflects CSC's duty to protect the public and fits within the range of reasonable acceptable outcomes.

Standard of Review

[44] As noted in *Tehrankari*, decisions of the Commissioner of CSC of third level grievances which arise from an assessment of the facts or mixed facts and law are reviewed on the standard of reasonableness.

[45] At the oral hearing I explained that a judicial review is not an appeal and the role of the Court is not to reconsider or reweigh the evidence and reach a decision. Rather, the role of the Court is to determine whether the decision, in this case the decision of the Assistant Commissioner to deny Mr Eakin's grievance, is reasonable.

[46] The standard of reasonableness calls on the Court to determine whether the decision "falls within 'a range of possible, acceptable outcomes which are defensible in respect of the facts and law' (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome." (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]).

[47] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the Supreme Court of Canada elaborated on the requirements of *Dunsmuir* at para 14-16 and noted that the reasons are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" and that courts "may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome". The Court summed up their guidance in para 16:

> In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

The Assistant Commissioner's Decision is Reasonable

[48] This application for judicial review is only about the decision of the Assistant Commissioner that denied Mr Eakin's third level grievance.

[49] The additional issues Mr Eakin now raises and the additional relief he now seeks - namely, his allegations of inaccuracy in the information about the start date of his sentence, his criminal record, and that his indeterminate sentence as a dangerous offender is for only one sexual assault - are beyond the scope of this application for judicial review. These issues were not raised in his grievance.

[50] The decision of the Assistant Commissioner of the third level grievance, which is the subject of this application for judicial review, is in two parts. First the decision rejects Mr Eakin's grievance related to his complaints about the information relied upon by Dr Hucker. The decision reasonably concludes that this grievance was addressed in the third level and final response to a separate and previous grievance, V4OR00005631. As a result, it cannot be addressed in the current third level response to V4OR00012109. The decision clearly notes that because the issue of the allegedly incorrect information was addressed in the decision of January 21, 2013 on V40R00005631 this aspect of the grievance is rejected in accordance with Guidelines [GL] 081-1, Offender Complaint and Grievance Process, Annex C which provides that a grievance may be rejected when, among other things, the issue being grieved is not under the jurisdiction of the Commissioner or the issue has been or is being addressed in a separate complaint or grievance.

[51] The relevant parts of Annex C state:

> *A complaint/grievance may be rejected when:*
>
> *1.* ***The issue being grieved is not under the jurisdiction of the Commissioner****.*
>
> *The decision maker must inform the offender in writing that the subject is non-grievable and provide the appropriate information on the means of redress available based on the subject. Refer to Annex F for a list of non-grievable subject matters and the available alternative means of redress.*
>
> […]
>
> *5.* ***The issue is being, or has been, addressed in a separate complaint/grievance****.*
>
> *If, during the analysis of a complaint/grievance at any given level, it is established that the issue is being, or has been, addressed in a separate complaint/grievance, the complaint/grievance may be rejected. However, if a submission is going to be rejected on this basis, it must be clear that the issue was the same and was addressed in the separate complaint/grievance. The response should also clearly outline the reason(s) for rejecting the complaint/grievance as well as the reference number(s) of the submission that already addressed the issue.*

[52] The Assistant Commissioner reasonably found that the grievance related to Dr Hucker's psychiatric assessment had been dealt with and was not properly part of the current grievance – i.e., it had been finally determined at the third level grievance. Mr Eakin acknowledged that he had not sought judicial review of that decision, noting that this was because his computer had been taken away. Regardless of the reason, that decision is final and it addressed the same issue he now seeks to raise.

[53] Therefore, there is no error by the Assistant Commissioner in finding that Mr Eakin's complaint about his psychiatric assessment was not grievable and denying this aspect of the grievance.

[54] Although Mr Eakin re-characterizes the issue in this judicial review more broadly as CSC's reliance on misinformation from the Court, the very same issue was dealt with in the other grievance. That very same issue also underlies the second aspect of the decision. Mr Eakin's grievance of his security classification is directly related to his complaints about the alleged inaccurate information in the CSC file which is derived from the Court file and is also related to the issues addressed in the previous grievance (V40R00005631).

[55] The second aspect of the decision denies the grievance related to Mr Eakin's security classification as Medium. The classification decision is reasonable. Based on the *CCRR*, the assessments conducted and the file information considered, and the stated paramount consideration of the CSC in the corrections process as the protection of society, the decision falls within the range of reasonable outcomes.

[56] The CSC has responsibility under section 24 of the *CCRA* to ensure information is accurate and up to date. Section 24 provides:

> **24.** (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.
>
> (2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,

> *(a)* the offender may request the Service to correct that information; and
>
> *(b)* where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

[57] However, as noted by Justice Mosely in *Tehrankari*, CSC is entitled to rely on information from the Court:

> [35] Mr. Tehrankari is correct that s.24(1) of the CCRA does oblige CSC to "take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible." However, that does not mean that CSC must reinvestigate information obtained from reliable sources such as provincial ministries, police forces and the courts. The Offender Complaint and Grievance Procedures Manual indicates that matters under provincial jurisdiction, matters relating to convictions and sentencing by courts, matters relating to the administration of justice including courts and police forces, and matters relating to treatment by non CSC agencies are non-grievable within the institutional grievance process.

[58] Mr Eakin's claim that the findings of the Court are inconsistent with testimony of his victims does not make it so. CSC is entitled to rely on the decisions of the Ontario Court of Justice (General Division), as it was then known, which in 1991 convicted Mr Eakin of aggravated sexual assault and robbery, in 1993 convicted Mr Eakin of sexual assault and robbery, and in 1995 found Mr Eakin to be a Dangerous Offender and imposed an indeterminate sentence for his second conviction of sexual assault. CSC is also entitled to rely on the decision of the Ontario Court of Appeal in *R v Eakin* (2000), 132 OAC 164, 74 CRR (2d) 307, which upheld the Dangerous Offender designation and indeterminate sentence and stated at para 3, "In my view, there is no reason to interfere with any of the trial judge's findings or his conclusions."

[59] As I noted at the hearing, Mr Eakin may wish to review the decision of Justice Hamilton which found him to be a dangerous offender and imposed an indeterminate sentence (*R v Eakin (in the matter of a Dangerous Offender Application*), [1995] OJ No 5026). Although Mr Eakin takes the view that the judge mixed up the facts, Justice Hamilton clearly distinguished the two sexual assaults and described the violence associated with each one. Justice Hamilton also noted that Mr Eakin had been sentenced to six years for the first conviction and that the indeterminate sentence imposed following the Dangerous Offender finding was for the second conviction.

[60] With respect to the decision of CSC that Mr Eakin has failed to pursue the proper process to seek to have information on his record corrected, it is clear that Mr Eakin has raised his assertions on several occasions including with his Parole Officer. While he has not provided sufficient and complete information to permit CSC to follow up, if CSC is indeed required to follow up given that the allegations of misinformation relate to findings of the Court which CSC is entitled to rely on, it is clear from the responses of CSC at the second and third level on this grievance and on the greivance related to the contents of Dr Hucker's assessment (which is not the subject of this judicial review) that Mr Eakin's concerns about conflicts in the information regarding the level of violence associated with the two sexual assaults have been noted extensively. CSC is clearly aware of Mr Eakin's perspective.

[61] CSC has also advised Mr Eakin that a formal request for a correction of his file is required.

[62] CSC does not regard Mr Eakin's less formal complaints to constitute a request. Although Mr Eakin has been frustrated by this response given his belief that he has repeatedly raised his concerns, CSC's decision is not unreasonable given the lack of supporting information for these allegations of inaccuracy and given that CSC is entitled to rely on findings of the Courts.

[63] The respondent has acknowledged that Mr Eakin was misdirected by CSC regarding his complaints about what he believes to be inaccurate information provided by the Court. In the third level decision on the grievance related to Dr Hucker's assessment (V40R00005631, which is not the subject of this judicial review), Mr Eakin was told to direct his complaints to the Federal Court. This advice was repeated in the second level decision on the current grievance. The third level decision, which is the subject of judicial review, also indicates that Mr Eakin was previously advised where to direct his concerns (i.e., to the Federal Court). The information which Mr Eakin contests is the findings of Justice Hamilton of the Ontario Court of Justice (General Division), as it was then known. The Federal Court has no authority to inquire into or even to ask the Ontario Court to inquire into such assertions. As noted by the respondent, the time to contest these findings has passed. Moreover, the Ontario Court of Appeal upheld the decision noting there was no reason to interfere with any of the findings of the trial judge.

[64] However, Mr Eakin was clearly misdirected by CSC to bring his concerns to the Federal Court, so he cannot be faulted for doing so. No doubt this adds to his frustration, despite that his allegations may lack any foundation.

[65] In conclusion, the Assistant Commissioner's decision on the third level grievance review is clear, transparent, intelligible and justifiable in respect of the facts and the law. The reasons clearly convey why the Assistant Commissioner decided as she did. The decision is within the range of possible acceptable outcomes and is, therefore, reasonable. Accordingly, this application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. The applicant's record shall be sealed to protect the identity of the two victims of sexual assault.
3. The applicant shall not refer to the two victims of sexual assault by their name in any other applications or proceedings.
4. No costs are awarded.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2049-13
STYLE OF CAUSE:	JAMES THOMAS EAKIN v ATTORNEY GENERAL OF CANADA

HEARING HELD VIA VIDEOCONFERENCE ON SEPTEMBER 22, 2014
FROM TORONTO, ONTARIO AND CAMPBELLFORD, ONTARIO

JUDGMENT AND REASONS:	KANE J.
DATED:	OCTOBER 8, 2014

ORAL AND WRITTEN REPRESENTATIONS:

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Michael J. Sims	FOR THE RESPONDENT

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