Federal Court  Cour fédérale

Date: 20180119

Docket: T-841-17

Citation: 2018 FC 47

Ottawa, Ontario, January 19, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JEFF EWERT

Applicant

and

ATTORNEY GENERAL OF CANADA
(CORRECTIONAL SERVICE OF CANADA)

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Jeff Ewert, is an inmate presently incarcerated at La Macaza Institution [LMI] located some 170 kilometers north of Montreal, Quebec. He attacks a final decision made by the senior deputy commissioner [SDC] of the Correctional Service of Canada [CSC] denying his grievance related to the inter-regional transfer which took place in December 2014.

[2] The application is opposed by the Attorney General of Canada – the herein respondent – who defends the lawfulness and reasonableness of the impugned decision.

I *Transfer*

[3] On September 23, 2014, the applicant was administratively transferred from the LMI to the Pacific Institution to attend a Federal Court hearing. His transfer back to LMI was approved on December 10, 2014, and took place between December 17 and 19, 2014, as explained below.

[4] On December 17, 2014, the applicant left Abbotsford, British Columbia, by plane, along with other inmates at 8:30 (PST). Since the plane departed early, the applicant was not given his weekly injection for his Hepatitis Suppression therapy; he however received his oral medication prior to departure. During the flight, the applicant was secured in shackles and a body-belt, with his hands secured in handcuffs, which led to low mobility and difficulties eating and drinking. He was allowed to use the washroom every two hours, under direct observation of an officer, and in view of female flight attendants – a fact however disputed by CSC. The plane had planned stops in Edmonton, Saskatoon, Winnipeg, Trenton, and Montreal. However, the applicant's final destination, for that first day, was Trenton, Ontario, where he arrived at 19:28 (EST), approximately eight hours later. On the other hand, offenders in the Special Handling Unit [SHU] – who were on the same plane as the applicant – flew to Montreal that night. The applicant apparently asked to stay onboard, so he could continue to Montreal, but his claim was denied since he was not in the SHU. Upon arrival at Trenton, the applicant was driven to the Collins Bay Institution [CBI] located in Kingston, Ontario, where he was housed in the Segregation Unit for the night. He was strip-searched upon arrival at the unit. His request for

medication was denied as there was no nurse on duty. He could not exercise and take a shower. He was stripped-searched again when leaving the facilities.

[5] On December 18, 2014, the second day of the planned trip, the applicant left Kingston by plane. The flight stopped in Quebec, Moncton, Port-Cartier, with Montreal as the final destination. Detention conditions on this flight were similar to that described above. Upon his arrival in Montreal at 19:45 (EST), the applicant was taken to Ste-Anne-des-Plaines for the night.

[6] On December 19, 2014, the third day of the planned travel, the applicant finally arrived at LMI. Only then, did he receive his Hepatitis injection.

II *Grievance*

[7] On January 1, 2015, the applicant directly filed a grievance complaint at the third level, pursuant to section 80 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [CCRR], generally challenging various practices of the CSC during that December 2014 transfer. The corrective action requested was a written apology; to never be treated like that again; and to avoid suffering negative consequences from filing this grievance.

[8] In support of these claims, the applicant was essentially arguing that:

- The measures taken during his transfer were not necessary and proportionate to attain the objectives of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA];

- He was denied his statutory right to an hour of exercise;

- He was deprived of his liberty contrary to section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*];

- He was subject to two unreasonable strip searches, contrary to section 8 of the *Charter*; and

- He was arbitrarily detained for an unnecessary twelve hours or more, contrary to section 9 of the *Charter*.

[9] On March 31, 2017, the grievance was denied at the final level with respect to all claims made by the applicant.

III *Decision made by the senior deputy commissioner*

[10] The SDC concluded that the travel itinerary complied with CSC policy. The inter-regional transfer list and itinerary are established up to one year in advance, as per the *Guidelines on Inter-Regional Transfers by Air* (see Correctional Service of Canada, "Inter Regional Transfers by Air", Guidelines No 710-2-2 (Ottawa: CSC, 15 May 2017) [Guidelines]. Note that the file was actually based on the 2014 version of the Guidelines which were almost identical). The transfer was authorized by a warrant, and the overnight stay in CBI was scheduled prior to departure. It was actually required by the CSC Overnight Process, according to which all

offenders transferred to Quebec have to stop overnight in CBI. The CSC also had to maximize use of the aircraft and to ensure cost-effectiveness, which explains the itinerary.

[11] The SDC rejected the applicant's claim that he was arbitrarily detained in a body belt and shackles during the flights, since the equipment used was the mandatory restraint equipment for travel by air, as per the Guidelines. The SDC also found that the CSC staff complied with applicable policies during the flights. According to the Guidelines, an officer has to accompany the inmate to the washroom. Here, the applicant had the opportunity to use the washroom every two hours, while escorted. As for the issue of female flight attendants in proximity, the National Transfer Coordinator confirmed that the bathroom door is always only slightly opened to allow the officer to remain in constant sight of the inmate, and that the curtain separating between the washroom and the flight attendant area was closed.

[12] The SDC concluded that all requirements with respect to living conditions in the Segregation Unit of CBI were met. Even though the applicant was not on Segregation Status, the Administrative Segregation Handbook allows an offender to be housed in the Segregation Unit on a temporary basis during certain temporary or transitory situations such as inter-regional transfers (see Correctional Service of Canada, "Administrative Segregation Handbook for Staff" (Ottawa: CSC, June 2008) [Administrative Segregation Handbook]). The SDC also concluded that the applicant was not entitled to shower and exercise since he stayed in CBI for less than 24 hours. Moreover, the SDC noted that section 48 of the CCRA allowed the conduction of strip searches when inmates enter or leave a segregation area. The status in the institution does not impact this, according to Annex A of the Search Plan for Collins Bay Institution (see Certified

Tribunal Record at OLP 52 ff). A routine strip search upon arrival and departure from the CBI segregation area was therefore reasonable. Finally, the SDC found that the applicant received appropriate health care, as per paragraph 86(1)(a) of the CCRA. He could not get his injection prior to departure since nurses were not available. It was reasonable to give him the injection two days later, since receiving a late dose would have very little impact on the treatment. He was also given his oral medication prior to departure, and had it with him during the transfer.

IV *The present application*

[13] The applicant claims that various measures taken during his transfer and housing in segregation at the CBI, located in Kingston, Ontario, as well as the choice of itinerary itself, violated the CCRA, and sections 7, 8 and 9 of the *Charter*, or are otherwise unreasonable.

V *Standard of review*

[14] The applicant has not raised any procedural fairness issue which ought to be examined using the correctness standard. Moreover, there has been no Notice of Constitutional question. No question of law concerning the interpretation of the CCRA, the CCRR, or the scope of the rights protected by the *Charter* has been raised by the applicant.

[15] On the other hand, findings of fact and mixed fact and law made by the SDC are reviewable under the standard of reasonableness (see *Gallant v Canada (Attorney General)*, 2011 FC 537 at paras 14-15, citing *Bonamy v Canada (Attorney General)*, 2010 FC 153 at

paras 47-51). The CSC is also owed a high degree of deference due to its expertise in inmate and institution management (see *Kim v Canada (Attorney General)*, 2012 FC 870 at para 59).

[16] Accordingly, for the purpose of this judicial review, the issue is whether the SDC's decision to dismiss the applicant's final grievance is an acceptable outcome in light of the applicable principles and evidence on record. In this respect, this is not an appeal *de novo* and the Court should not substitute its opinion to that of the decision-maker.

VI Legal framework

[17] Before delving into an in-depth analysis of the parties' respective arguments, it is useful to lay out key statutory and regulatory provisions applicable to this case, as well as general principles where *Charter* violations are alleged.

A. *Fair and expedite process*

[18] Section 90 of the CCRA provides for the existence of a grievance procedure for fairly and expeditiously resolving offenders' grievances:

There shall be a procedure for <u>fairly and expeditiously</u> 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).	Est établie, conformément aux règlements d'application de l'alinéa 96u), une procédure de règlement <u>juste et expéditif</u> des griefs des délinquants sur des questions relevant du commissaire.
[Emphasis added.]	[Je souligne.]

[19] The specific grievance process is laid out in sections 74 to 82 of the CCRR. Subsection 74(1) of the CCRR specifies that a grievance arises when an offender is dissatisfied by an action or a decision of a staff member. The process normally has four stages, the ultimate one being the "third-level grievance" to the Commissioner, as per section 80 of the CCRR. Paragraph 2c of the Correctional Service of Canada, "Offender Complaint and Grievance Process", Guidelines GL-081-1 (Ottawa: CSC, 13 January 2014) nonetheless states that submissions regarding institutional transfers will automatically be submitted at the final grievance level.

[20] Section 12 of the Correctional Service of Canada, "Offender Complaints and Grievances", Commissioner's Directive No CD-081 (Ottawa: CSC, 13 January 2014) [Directive CD-081] provides guidance in terms of reasonable delays of treatment:

Decision makers will render a decision with regard to complaints and grievances in the following timeframes:	Les décideurs rendront une décision relativement aux plaintes et griefs dans les délais indiqués ci après.
[…]	[…]
Final Grievance	Grief final
High Priority – Within 60 working days of receipt by the National Grievance Coordinator	Prioritaire – Dans les 60 jours ouvrables suivant la réception du grief par le coordonnateur national des griefs
Routine Priority – Within 80 working days of receipt by the National Grievance Coordinator	Non prioritaire – Dans les 80 jours ouvrables suivant la réception du grief par le coordonnateur national des griefs

B. *Transfers*

[21] Section 29 of the CCRA empowers the Commissioner with the discretion to order such a transfer:

The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary to (a) another penitentiary in accordance with the regulations made under paragraph 96(d), subject to section 28; or	Le commissaire peut autoriser le transfèrement d'une personne condamnée ou transférée au pénitencier, soit à un autre pénitencier, conformément aux règlements pris en vertu de l'alinéa 96d), mais sous réserve de l'article 28,
[…]	[…]
[Emphasis added.]	[Je souligne.]

[22] This process is done in compliance with the CCRR. Among other things, section 16 of the CCRR provides that the transfer is made in accordance with a warrant:

Every transfer of an inmate made pursuant to section 29 of the Act shall be effected by a warrant to transfer signed by the Commissioner or by a staff member designated in accordance with paragraph 5(1)(b).	Tout transfèrement fait en application de l'article 29 de la Loi s'effectue au moyen d'un mandat de transfèrement signé par le commissaire ou par l'agent désigné selon l'alinéa 5(1)b).
[Emphasis added.]	[Je souligne.]

[23] Sections 2, 9, 12, 13, 35, 36 and 42 of the Guidelines provide explicit guidance to the CSC when conducting those transfers:

2. The Institutional Reintegration Operations	2. La Division des opérations de réinsertion sociale en

Division will:	établissement :
a. establish a tentative schedule of inter-regional flights one year in advance	a. établira un calendrier provisoire des vols interrégionaux un an à l'avance
b. work with the Regional Transfer Coordinators to plan and support the transfer by air itinerary for scheduled transfers and/or emergency transfers using chartered or commercial flights	b. collaborera avec les coordonnateurs régionaux des transfèrements pour planifier et soutenir l'itinéraire des transfèrements prévus et/ou des transfèrements d'urgence qui se font par vol nolisé ou vol commercial
c. develop the national inter-regional transfer list	c. dressera la liste nationale des transfèrements interrégionaux
[…]	[…]
9. The Director, Institutional Reintegration Operations, will: a. approve the itinerary for each inter-regional transfer and any subsequent deviation	9. Le directeur, Opérations de réinsertion sociale en établissement : a. approuvera l'itinéraire de chaque transfèrement interrégional et toute modification ultérieure
[…]	[…]
12. The Regional Transfer Coordinator will provide the National Transfer Coordinator with their respective inter-regional transfer list and advise of any requirements for a high-risk escort, special medical escort, dietary requirements or other special needs, 10 working days prior to the transfer.	12. Dix jours ouvrables avant le transfèrement, chaque coordonnateur régional des transfèrements remettra au coordonnateur national une liste de ses transfèrements interrégionaux et indiquera ceux qui présentent un risque élevé, des besoins médicaux spéciaux, des besoins alimentaires ou d'autres besoins particuliers nécessitant une escorte spéciale ou des soins particuliers.
13. The National Transfer Coordinator will: […] d.	13. Le coordonnateur national des transfèrements : […] d.

ensure arrangements are made when it is determined that a nurse is required onboard.

s'assurera que les dispositions nécessaires sont prises lorsqu'il faut un membre du personnel infirmier à bord de l'avion.

[…]

[…]

35. With the approval of the onboard Correctional Manager(s) and only under special circumstances will an inmate have his/her restraint equipment partially removed or additional restraint equipment added during the flight.

35. Le matériel de contrainte posé sur un détenu sera partiellement enlevé ou du matériel de contrainte supplémentaire sera ajouté pendant le vol avec l'approbation du ou des gestionnaires correctionnels à bord et uniquement dans des circonstances particulières.

36. When an inmate must use the washroom, an onboard escorting Correctional Officer/Primary Worker of the same sex as the inmate will remain in constant sight of the inmate, as outlined in CD 566-6 - Security Escorts. The respect and dignity of the inmate will be ensured as much as possible.

36. Lorsqu'un détenu doit se rendre aux toilettes, un agent accompagnateur (agent correctionnel ou intervenant de première ligne) du même sexe que le détenu l'accompagnera aux toilettes et le gardera constamment à vue, conformément à la DC 566-6 - Escortes de sécurité. Le respect et la dignité du détenu seront assurés dans toute la mesure du possible.

[…]

[…]

42. Notwithstanding the inmate's security level, the mandatory restraint equipment will include leg irons and waist chain with handcuffs.

42. Quelle que soit la cote de sécurité du détenu, le matériel de contrainte obligatoire comprendra des entraves et une chaîne à la taille avec menottes.

C. *Routine strip search*

[24] Paragraph 48(b) of the CCRA regulates strip searches of inmates when the inmate is notably entering or leaving a segregation area:

A staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion […] (b) when the inmate is entering or leaving a segregation area.	L'agent peut, sans soupçon précis, procéder à la fouille à nu d'un détenu de même sexe que lui soit dans les cas prévus par règlement où le détenu s'est trouvé dans un endroit où il aurait pu avoir accès à un objet interdit pouvant être dissimulé sur lui ou dans une des cavités de son corps, soit lorsqu'il arrive à une aire d'isolement préventif ou la quitte.
[Emphasis added.]	[Je souligne.]

D. *Respect of the inmate's dignity, medical needs, personal health and cleanliness*

[25] Paragraphs 3(a) and 4(c), (d) and (f) and sections 69, 70, 86 and 87 of the CCRA prescribe the following:

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 […]	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 ré- adaptation des délinquants et à leur

	réinsertion sociale à titre de citoyens respectueux des lois.
4 The principles that guide the Service in achieving the purpose referred to in section 3 are as follows […]	4 Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants :
(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;	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) 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;	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;
[…]	[…]
(f) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;	f) ses décisions doivent être claires et équitables, les délinquants ayant accès à des mécanismes efficaces de règlement de griefs;
[…]	[…]
69 No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.	69 Il est interdit de faire subir un traitement inhumain, cruel ou dégradant à un délinquant, d'y consentir ou d'encourager un tel traitement.
70 The Service shall take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates	70 Le Service prend toutes mesures utiles pour que le milieu de vie et de travail des détenus et les conditions de travail des agents soient sains,

and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity.	sécuritaires et exempts de pratiques portant atteinte à la dignité humaine.
[…]	[…]
86(1) The Service shall provide every inmate with (a) essential health care […]	86(1) Le Service veille à ce que chaque détenu reçoive les soins de santé essentiels et qu'il ait accès, dans la mesure du possible, aux soins qui peuvent faciliter sa réadaptation et sa réinsertion sociale. […]
87 The Service shall take into consideration an offender's state of health and health care needs (a) in all decisions affecting the offender, including decisions relating to placement, transfer, administrative segregation and disciplinary matters; and	87 Les décisions concernant un délinquant, notamment en ce qui touche son placement, son transfèrement, son isolement préventif ou toute question disciplinaire, ainsi que les mesures préparatoires à sa mise en liberté et sa surveillance durant celle-ci, doivent tenir compte de son état de santé et des soins qu'il requiert.
[Emphasis added.]	[Je souligne.]

[26] Subsection 83(2) of the CCRR also lays out required living conditions:

83(2) The Service shall take all reasonable steps to ensure the safety of every inmate and that every inmate is […]	83(2) Le Service doit prendre toutes les mesures utiles pour que la sécurité de chaque détenu soit garantie et que chaque détenu : […]
(c) provided with toilet articles and all other articles necessary	c) reçoive des articles de toilette et tous autres objets

for personal health and cleanliness; and	nécessaires à la propreté et à l'hygiène personnelles;
(d) given the opportunity to exercise for at least one hour every day outdoors, weather permitting, or indoors where the weather does not permit exercising outdoors.	d) ait la possibilité de faire au moins une heure d'exercice par jour, en plein air si le temps le permet ou, dans le cas contraire, à l'intérieur.
[Emphasis added.]	[Je souligne.]

E. *Charter rights*

[27] The applicant invokes sections 7, 8 and 9 of the *Charter* which read as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
8. Everyone has the right to be secure against unreasonable search or seizure.	8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.
9. Everyone has the right not to be arbitrarily detained or imprisoned.	9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

[28] It is well established that the *Charter* applies to administrative bodies exercising their delegated powers (see especially *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573 at 598-599, 33 DLR (4th) 174). Indeed, both the CSC in conducting the inmate's transfer, and the SDC in evaluating the related grievance had to act in compliance with the *Charter*, that is, by balancing

out its protected values with the objectives pursued by the statutory and regulatory regimes they are enforcing (see generally *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*]). Unlike what the applicant contends, the role of this Court on judicial review is not to evaluate whether or not the CSC violated the *Charter* in conducting the transfer, but rather whether the SDC gave it sufficient consideration when evaluating the grievance.

[29] At this point, the Court notes with respect to section 7 that being detained, held in a body belt and shackles, and being housed in segregation likely touches on the inmate's liberty interest. Security of the person has to do with one's physical and psychological integrity, which was also likely affected (see *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 55). In addition, as the Supreme Court expressed in *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paragraph 96, fundamental justice includes the basic values against arbitrariness, overbreadth, and gross disproportionality. Depending on the particular circumstances of each case, an itinerary that would disproportionately or arbitrarily affect the applicant's liberty and security of the person may infringe on his section 7 rights.

[30] The section 7 rights' claim made by the applicant is an issue that the administrative decision-maker – here the SDC – has the power to decide in the context of an inmate's grievance. This is true and well with respect to claims made by an inmate that there was an unreasonable search or seizure contrary to section 8 of the *Charter*, or that he has been arbitrarily detained or imprisoned contrary to section 9 of the *Charter*.

[31] Again, as expressed by the Supreme Court in *R v Golden*, 2001 SCC 83, [2001] 3 SCR 679 at p 728 [*Golden* cited to SCR], "strip searches are thus inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy". Of course, various considerations could justify those searches, while the penitentiary context necessary entails more surveillance (see *Weatherall v Canada (Attorney General)*, [1993] 2 SCR 872 at p 877, 105 DLR (4th) 210 [*Weatherall* cited to SCR]).

VII *Analysis*

[32] The analysis below will assess whether or not the SDC sufficiently considered the *Charter* values mentioned above in the treatment of the grievance. At the hearing before the Court, the applicant – who represents himself – also raised other issues which were never raised before the decision-maker or the Court. This is the case of the attack he makes against the policies themselves. These new arguments are improperly raised and will not be examined by the Court.

[33] I will now sequentially examine the parties' respective arguments on each issue discussed in their pleadings.

A. *The transfer itinerary*

[34] The applicant submits that his rights guaranteed under section 7 of the *Charter* were engaged and violated by CSC. It was arbitrary, unnecessary and overbroad (i.e. unreasonable) to

take him off the plane in Trenton, house him in segregation in CBI and then put him on another twelve hour flight to Montreal the next day, without any valid justification. All of this could have easily been avoided by leaving him on the plane, which was continuing straight to Montreal regardless and would have only taken twenty minutes. All the other measures he challenges stem from this initial unreasonable decision. The measures taken were not necessary to properly fulfil his transfer back to LMI: this objective could have easily been achieved otherwise, in a way that would minimize liberty and security infringements. The CSC did not do any of the balancing required between *Charter* values and the objectives of the law, as required by *Doré*. As such, there was a disproportionate impact on the guaranteed right (see *Naraine v Canada (Attorney General)*, 2015 FC 934 at para 26).

[35] The respondent replies that the applicant simply disagrees with the way his transfer was conducted, but does not demonstrate that it was unreasonable: the fact there was a faster way to reach his destination is irrelevant. The transfer was made in compliance with a warrant (see sections 29 of the CCRA and 16 of the CCRR), with which the CSC had the obligation to comply and had no discretion to modify. The transfer also had to fit the itineraries that were available and scheduled. Finally, the CSC overnight process of requiring all inmates coming from Western Canada to spend a night in CBI was reasonable and based on CSC's duty to ensure cost effectiveness of its services. The CSC generally had to consider the need to effectively manage his inmate population; ensure the protection of society; and the safety of inmates and staff. All in all, the respondent submits that the applicant is challenging discretionary policies outside the scope of judicial review (see *Maple Lodge Farms v Government of Canada*, [1982] 2 SCR 2, 137 DLR (3d) 558). On the *Charter* issue, the respondent notes that the restriction to the

applicant's liberty during the transfer was only trivial and temporary, and therefore was not sufficient to warrant constitutional protection, as per *Cunningham v Canada*, [1993] 2 SCR 143 at p 151.

[36] As the respondent rightfully points out, the transfer itinerary results from the exercise of discretionary power and hence deserve high deference. Yet, discretion cannot be completely immune from review (see generally *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193) [*Baker* cited to SCR]). Thus, the existence of warrant is in itself insufficient to end the matter. However, while I agree with the applicant that it may have been more convenient to allow all inmates scheduled to Ste-Anne-des-Plaines continue to Montréal SHU, the decision taken by CSC respects the policies in place, has not been taken for an improper purpose in bad faith, and is not clearly irrational or arbitrary.

[37] Indeed, when processing the grievance, the SDC actually consulted the National Transfer Coordinator, which informed him of the CSC Overnight Process (see CTR at OLP 25). This policy provides that inmates transferred from the Pacific region to Quebec and the Atlantic have to spend a night at the CBI, the only exceptions being female offenders and SHU offenders, categories in which the applicant does not belong. It was therefore not unreasonable for the SDC to conclude that the CSC was merely complying with its policies. Moreover, while administrative agencies have an obligation to consider *Charter* values in their decision-making process (see generally *Doré*) and the applicant had expressly raised this issue in his grievance form, the impugned decision has to be read and understood in a comprehensive manner in light of the evidence on record.

[38] While I may have come to a different result myself, I am satisfied that the SDC implicitly considered the values flowing from section 7 of the *Charter* and gave same proper weight.

B. *Arbitrary detention and the use of restraint equipment*

[39] The applicant recognizes that the use of restraint equipment is generally lawful. He nonetheless claims that maintaining him in tight restraint for twelve hours on the second flight constituted arbitrary detention in violation of section 9 of the *Charter*, since putting him on that flight was completely unnecessary and arbitrary. He also claims having suffered inhumane and degrading treatment through the use of that restraint equipment.

[40] The respondent replies that the use of restraint equipment does not amount to arbitrary detention since it applies to all inmates being transferred by plane for security reasons. There was no section 9 infringement as the applicant was lawfully detained by a competent authority pursuant to a statutory provision (see *R v Grant*, 2009 SCC 32 at para 54 [*Grant*]).

[41] I find that the SDC's decision in this respect was reasonable. By definition, detention is not arbitrary if it is authorized by a law that is not arbitrary (see *Grant* at para 54). In this case, the alleged detention was authorized by the transfer warrant, issued under the CCRR. The applicant never argued that the CCRR itself were arbitrary. As for the use of restraint equipment in itself, the SDC referred to the Guidelines, which specifically say at section 42 that "the mandatory restraint equipment will include leg irons and waist chain with handcuffs".

C. *Bathroom breaks and the violation of the applicant's dignity*

[42] The applicant submits that he received inhumane and degrading treatment during the bathroom breaks, as breaks only occurred every two hours and in plain view of all passengers and flight attendants.

[43] The respondent replies that the SDC's conclusion was reasonable: the applicant admitted being granted bathroom breaks every two hours. Plus, the presence of female attendants is contradicted by the evidence.

[44] I find that it was reasonable to deny the applicant's claim on this point. Indeed, the SDC considered the Guidelines which clearly stipulate that a CSC officer has to be in constant sight of the inmate when he is using the washroom (see section 36). As for the fact that the applicant may have been seen by the other passengers and the flight crew, there is contradicted evidence. The SDC was entitled to prefer the National Transfer Coordinator's version.

D. *Overnight stay in the Segregation Unit at CBI*

[45] With respect to his overnight stay in the Segregation Unit at CBI, the applicant claims the decision is unreasonable since there are only two types of segregation under the law: administrative or for punishment. He did not fit in any of these categories. More broadly, he also seems to argue that the segregation was an unnecessary and arbitrary consequence of the problematic itinerary taken.

[46] The respondent submits that the SDC's conclusion was reasonable as the Administrative Segregation Handbook for Staff allows housing of inmates in the Segregation Unit on a temporary basis.

[47] I fully agree with the respondent on this point.

E. *Deprival of the right to shower and exercise*

[48] The applicant submits that the deprival of the right to shower and exercise during his stay in the Segregation Unit at CBI was a violation of paragraph 83(2)d) of the CCRR, since the CSC had to take reasonable steps to ensure that the inmate is allowed one hour of exercise. That, and being denied showers, also constituted a violation of his personal dignity under section 70 of the CCRA. In this case, there is no justification whatsoever for the denial.

[49] The respondent replies that it was reasonable to conclude that no violation occurred because the applicant was housed at CBI for less than 24 hours.

[50] I find the SDC's decision on this issue is not unreasonable since the legislator only intended that the CSC took "reasonable steps", leaving it "a measure of discretion within the parameters of safe living conditions" (*McMaster v Canada*, 2009 FC 937 at para 28).

F. *Unreasonable strip searches*

[51] The applicant first submits that the provisions on searches when entering a segregation area can only apply to inmates with Segregation Status. The Administrative Segregation Handbook, on which is based the housing in Segregation areas of non-Segregation Status inmates, was written years after the CCRA provisions on searches entered into force. Therefore, paragraph 48(b) of the CCRA could not have intended to include non-Segregation Status inmates. In addition, the applicant claims that these searches infringed on his right to be secure from unreasonable search and seizure, as per section 8 of the *Charter*. Searches were not reasonably required because he did not have SHU status, and because he should not have been taken off the plane in the first place. Searches finally undermined his personal dignity protected by section 70 of the CCRA.

[52] The respondent replies that searches were done in accordance with paragraph 48(b) of the CCRA. They also complied with *Charter* requirements as they were appropriate and necessary to ensure the safety of inmates. They also met the three-step test from *Golden*: the searches were authorized by the CCRA (step 1) and they were reasonable to ensure the security of inmates and to ensure individuals do not conceal drugs or weapons (step 2) (see *Weatherall* at 877). Finally, the applicant never argued that searches were conducted unreasonably (step 3).

[53] The question this Court must answer on judicial review is not whether the strip searches were reasonable and violated the *Charter*, but rather whether the SDC's examination of the said searches was reasonable. Paragraph 48(b) of the CCRA provides for the discretionary power to search an inmate entering or exiting a segregation area. I must recognize that, despite the

applicant's "non-Segregation Status", the SDC could reasonably interpret this provision as applying to every inmate, not just those with Segregation Status, just from its plain wording. It would therefore be reasonable to conclude that the CSC had the discretion to conduct a strip search on the applicant. As the Supreme Court expressed in *Baker* at page 855, "discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the *Charter*". In the case at bar, I am satisfied that the three-step test in *Golden* has been met.

G. *Denial of medication*

[54] The applicant further submits there was no reasonable explanation for denying him medication. The Guidelines specify that the necessary arrangements have to be made when a nurse is required on board. He claims medication could have been given to him during the flight. He also claims that this denial of medication violated his dignity, and therefore contravened to section 70 of the CCRA.

[55] In turn, the respondent submits that the SDC's conclusion was reasonable. The applicant cannot dictate how his transfer is undertaken and when his medication should be given to him: his personal preference cannot trump the security of others. In this case, evidence on file revealed that he could not receive his medication prior to departure, and nothing indicates that there was medical personnel on flight who had access to his medication, nor is there evidence that the injection could actually have been made during the flight. The SDC consulted Clinical

Services and Public Health Branch, which determined that there was no significant impact from receiving a late dosage.

[56] I find that the SDC's decision to deny the applicant's grievance on the issue of denial of medication was reasonable. The CCRA does require that the CSC provide its inmates with essential health care and to take reasonable steps to provide healthful conditions (see paragraph 86(1)a)). In this case, the SDC consulted Clinical Services and Public Health Branch and relied on their conclusion that the applicant would not be affected by receiving a late dosage of his Hepatitis C medication. While I recognize the anxiety endured by the applicant from this disturbance, I do not believe this Court is well placed to conduct a better assessment than Clinical Services on what constituted essential health care. It was reasonable for the SDC to rely on their assessment.

H. *Unreasonable processing time*

[57] Finally, the applicant submits that the delay to obtain a response to his grievance was unreasonable and excessive, and thereby violated paragraph 4(f) and section 90 of the CCRA.

[58] The respondent submits that delays were not unreasonable. Delays can be influenced by many circumstances and relevant factors (see *Ewert v Canada (Attorney General)*, 2009 FC 971 at para 39). Here, the grievance required consultation of many entities. The applicant's allegations were taken seriously, and therefore needed to be fully assessed.

[59] I agree with the applicant that the delay to obtain a response to his grievance was unreasonable in the present circumstances. While the applicant was notified of the additional delays, Directive CD-081 does give indication on timeframes to respect when rendering grievance decisions. While I recognize that various actors had to be consulted – which slowed the process –, in the case of a high priority final grievance, still, the indicative time limit is sixty days after receipt. The applicant's grievance was received on January 12, 2015, and the response is dated March 31, 2017, that is over two years later. This is clearly beyond sixty days, and despite undue circumstances, I see no justification for this. However, the time delay did not have a determinative effect on the result which is overall an acceptable outcome.

VIII Conclusion

[60] All in all, the Court finds that the SDC's decision to deny the grievance was not unreasonable. The Court also finds that the delay for treatment of the grievance was unreasonable, but this did not have a determinative effect on the result which is overall an acceptable outcome. Accordingly, the application is dismissed.

[61] With respect to costs, I have considered all relevant circumstances, the undue delay in the treatment of the grievance, the nature of the issues raised by the applicant and the fact that he is an inmate who is self-represented. Despite the result, in the exercise of my discretion, I have decided not to allow costs to the respondent.

JUDGMENT in T-841-17

THIS COURT'S JUDGMENT is that the present application for judicial review is dismissed without costs.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-841-17
STYLE OF CAUSE:	JEFF EWERT v ATTORNEY GENERAL OF CANADA, (CORRECTIONAL SERVICE OF CANADA)
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	DECEMBER 18, 2017
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	JANUARY 19, 2018

APPEARANCES:

Jeff Ewert	FOR THE APPLICANT (ON HIS OWN BEHALF)
Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada	FOR THE RESPONDENT