

Federal Court



Cour fédérale

**Date: 20190228**

**Docket: T-1168-18**

**Citation: 2019 FC 245**

**Ottawa, Ontario, February 28, 2019**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**JASON LAUZON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Jason Lauzon [the “Applicant”], is an inmate under the custody of the Correctional Service of Canada [“CSC”]. The Applicant is serving his time at Bath Institution.

[2] On February 17, 2016, when the Applicant’s spouse visited him, the car that the Applicant’s spouse had traveled in was searched. During that search, a CSC officer activated a

security feature on the Applicant's spouse's phone, and a "selfie" was taken of the CSC officer. Upon viewing the selfie, the Applicant and his spouse felt that the selfie constituted clear and incontrovertible evidence that the CSC officer had attempted to unlawfully access the Applicant's spouse's cellphone.

[3] After some discussion with the institution related to the event, the Applicant, knowing his wife could not bring a grievance against the institution, chose to file a grievance about the incident himself.

[4] The final grievance was dismissed because the Applicant was found to not have standing to bring the grievance, and that his concerns were properly dealt with.

[5] This is an application for judicial review by the Applicant under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 ["FCA"] of the negative Final Grievance Response ["Decision"] made by the Special Advisor to the Commissioner of Correctional Service of Canada [the "SAC"] dated March 15, 2018.

## II. Background

[6] The Applicant and Tammy Truesdell ["Truesdell"] are in an intimate relationship, and refer to each other as "husband" and "wife", as will I in this decision.

[7] On February 17, 2016, at or around 9:00 am, Truesdell and a friend came to Bath Institution in the friend's vehicle. CSC staff informed them that as per protocol, the vehicle

would be searched by a drug dog and the dog's handler. Truesdell and her friend were instructed to leave their personal possessions inside the vehicle, including their cellphones, and to leave the vehicle while it was being searched. They did so, and Truesdell proceeded to spend the day with the Applicant.

[8] Later, at around 3:30 pm, Truesdell returned to the car. When she checked her phone she saw that she had received an email from the security feature application on her smartphone ["CM Security"].

[9] CM Security is a mobile application that informs users when there is an unauthorized usage of a mobile device. CM Security uses the front-facing camera on a cellphone to capture a picture of whoever incorrectly inputs the cellphone password twice.

[10] Truesdell received an email from CM Security at 9:23 am on the 17th, with the subject heading, "Someone tried to unlock your Hangouts". The email included a close-up photograph of the drug-detector-dog handler at Bath Institution who had searched her friend's car upon their arrival at the prison. She later found out it was a photo of Officer Gough, a CSC staff member.

[11] In order to activate the "Intruder Selfie" security feature on CM Security AppLock that would then be emailed to the user, the phone had to be activated by pressing the home button. Next, the Google Hangouts application icon had to be pressed followed by entering an incorrect four-digit password code twice. At that point, a photo would automatically be taken and emailed to the owner to show that someone had tried to snoop on the phone.

[12] Google Hangouts is a communication platform developed by Google that includes messaging, video chat, SMS and VOIP features. According to Truesdell, her account on Google Hangouts was “a record of my daily private and personal conversations with my family and friends”. Therefore, given its sensitive nature, she wanted her Hangouts securely protected.

[13] Truesdell informed the Applicant about the incident later that day. The Applicant and Truesdell felt that given that a user must have entered an incorrect password twice before the security feature triggers a photo being taken that there was incontrovertible proof that Officer Gough had, without Truesdell’s consent, valid reason, or legal authority, attempted to search Truesdell’s phone.

[14] The Applicant’s sworn evidence is that Truesdell and the Applicant discussed their options:

11... Ms. Truesdell and I agreed that I would take the lead in addressing the issue, because I had access to the Inmate Request and Inmate Grievance procedures, which might provide for some information and accountability. As a visitor, we understood that she was not able to use those procedures herself.

[15] This same understanding was echoed in Truesdell’s affidavit, where she noted that because she was a visitor, she could not use the grievance procedure in the institution.

[16] In late February 2016, the Applicant submitted an Inmate Request to the Assistant Warden of Operations [“AWO”] at Bath Institution, Mr. Tim Hamilton, asking why AWO Hamilton authorized and/or allowed staff under his supervision to search Truesdell’s phone without legal authorization.

[17] The Applicant met with AWO Hamilton and at the conclusion of the discussion, AWO Hamilton admitted he had told the Applicant should, “stay off the radar, and lay low”. The Applicant presented a slightly different version of what AWO Hamilton admitted to saying, and asserted that the comment represented a threat of reprisal for his complaint.

[18] On March 8, 2016, AWO Hamilton provided a written response. AWO Hamilton did not directly speak to the attempted search of the cellphone, but rather described the general processes that the correctional institution used, including noting that cellphones are placed in the glovebox on a search.

[19] As the Applicant was unsatisfied with the response of AWO Hamilton, the Applicant submitted an Initial Level Grievance to the Institutional Head [“IH”] of Bath Institution, Acting Warden Kathy Hinch [“AW Hinch”] against AWO Hamilton.

[20] The Initial Grievance was advanced on the grounds that the Applicant felt: that AWO Hamilton failed to provide an answer to the question of whether he authorized or permitted unlawful smartphone searches; that AWO Hamilton demonstrated a lack of interest in obtaining the evidence; that there was the implicit threat of reprisal; and that the explanation was implausible regarding devices being moved to the glovebox (given the functioning of the security feature).

[21] On May 23, 2016, Truesdell forwarded AW Hinch an email that included the photo of the officer that she had received from CM Security. As well, the email included information from

the company regarding how the security feature worked. The email explained that an incorrect password had to be entered twice before a photo of the intruder would be taken.

[22] AW Hinch interviewed the Applicant and Truesdell between May 21, 2016 and June 3, 2016. AW Hinch indicated that her staff members do not break the rules and that in her view the photo was taken inadvertently.

[23] The grievance was initially denied as it was not submitted within 30 days of the incident, but then it was agreed it would be heard outside the time period, and there was a resubmission.

[24] On June 3, 2016, AW Hinch denied the Applicant's Initial Level Grievance and stated:

- a. That Officer Gough noted that he only moved the phone in order to protect it, and in doing so must have touched the screen in a way that triggered the email notification. Officer Gough was adamant that he did not attempt to access the phone;
- b. Staff will be careful in the future when handling electronic devices;
- c. After AW Hinch talked to Truesdell and the Applicant that she was satisfied that the matter had been resolved. That the staff member was told that they have no legal authority to access contents of a visitor's cellphone.
- d. Given the above, AW Hinch was confident that there would be no similar reoccurrence in the future.

[25] Contrary to the decision, the Applicant did not think the matter was resolved, and was not satisfied with AW Hinch's response. The Applicant therefore submitted two Final Level Grievances.

[26] On July 13, 2016, the Applicant filed Grievance #V40R00028673 ["Grievance 1"] which accused the management of Bath Institution of blindly siding with their employees regardless of the proof.

[27] On October 10, 2016, the Applicant met again with AW Hinch to try and resolve the matter, bringing with him a printout from CM Security regarding the operation of the security program. AW Hinch and the Applicant did not resolve the matter. On October 26, 2016, the Applicant submitted an addendum which included the emails from CM Security, the officer's picture, a full explanation of how CM Security operates, and an offer to demonstrate how the security system works. An amended grievance was filed on October 26, 2016, in which the Applicant attached the email sent by Truesdell to AW Hinch, and alleged that AW Hinch and AWO Hamilton were complicit in covering up Officer Gough's conduct.

[28] On November 30, 2016, the Applicant filed Grievance #V40R00030652 ["Grievance 2"] which was directed at AW Hinch. Grievance 2 focused on how the conduct of AW Hinch was tantamount to denying the possibility of unethical and criminal behaviour by a member of the staff. The Applicant requested that AW Hinch be disciplined in accordance with CSC Policy and the Code of Ethics.

[29] On March 15, 2018, the SAC issued the Decision, which denied both of the Applicant's grievances. The Decision notes that Grievance 1 and Grievance 2 are combined and addressed in a single response, pursuant to paragraph 20 of the Commissioner's Directive 081, *Offenders Complaints and Grievances* ["CD-081"].

[30] After a recitation of the prior grievances, and the disposition of them, two critical findings are made by the SAC in denying the review:

- a. The SAC found that the Applicant (V40R00030652) did not have standing to grieve, given that the incident occurred in connection with a non-inmate's cellphone during a visit and finding that the Applicant had not suffered any restriction regarding visitors since. The SAC invited his wife to raise any questions or concerns with the IH if any further questions or concerns arise.
- b. With regards to the response of the IH to the allegations that a staff member was unethical (V40R00028673), and that the IH had then tried to cover up for the staff member, the SAC denied that portion of the grievance and found that the staff had appropriately responded to the Applicant's concern by:
  - i. Noting that the Applicant personally met with the IH and had the opportunity to fully raise his concerns;
  - ii. That the Applicant had been provided with detailed response about the search process of his visitor's vehicle in the initial level grievance; and
  - iii. That ample information was provided to the Applicant throughout the grievance process both formally and informally.



[31] This application is dismissed for the reasons that follow.

### III. Issues

[32] The issues are:

A. Was the SAC's decision on standing: a) reasonable and b) procedurally fair?

B. Was the delay unreasonable?

### IV. Standard of Review

[33] Findings of fact, or mixed fact and law, made in the course of the CSC offender grievance process, are reviewable on the standard of reasonableness. This Court has acknowledged in *Skinner v Canada (Attorney General)*, 2016 FC 57 at paragraph 21, that the CSC is owed a high degree of deference in grievance matters due to its expertise in inmate and institution management. On issues of procedural fairness, of course, as per *Dunsmuir v New Brunswick*, 2008 SCC 9, the standard of review is correctness.

### V. Preliminary Matters

[34] The Respondent sought to have a number of paragraphs (specifically: 7, 8, 9, 10, 12, 33, 47, 48, 49) of the Applicant's affidavit struck because these paragraphs put forward evidence that was not before the decision maker. The evidence within these paragraphs was related to how the attempted search of his wife's cellphone has affected the Applicant's relationship with his wife.

[35] The Applicant argues that the information contained in those paragraphs of his affidavit is background information. The Applicant submits that the paragraphs in question fit within the exception to the general rule, and that although this information was not before the decision maker, the paragraphs simply provide general information that is allowable.

[36] I find that the information in the impugned paragraphs is new evidence and is not general background evidence, as it is crafted in direct response to the arguments regarding whether the inmate had standing to bring forward an issue.

[37] Thus, the paragraphs introduce information not before the decision maker regarding the effect of the alleged attempted search on his relationship with his wife, which affords the Applicant a stronger argument to allege that he has standing to make a grievance on the basis of an alleged attempted search of a phone that did not belong to him.

[38] This is information that was within his control and available at the time of the grievances. The Applicant confirmed in his affidavit that he and his wife were conscious that they knew she could not bring a grievance.

[39] The jurisprudence is well established that subject to the exceptions laid out in the caselaw, of which none apply here, a court reviewing a decision will do so based only on the record that was before the decision maker.

[40] I will not give any weight to paragraphs 7, 8, 9, 10, 12, 33, 47, 48, and 49 of the Applicant's affidavit as that evidence was not before the decision maker.

[41] Nor will I consider or give any weight to paragraph 16 of Tammy Truesdell's affidavit as that was not before the decision maker and was information in existence and available before the final level grievance was filed. Although the Respondent did not specifically ask for the paragraph to be struck, the Court will strike the paragraph on its own accord as this evidence was not general background, and does not fit into any of the special exemption categories laid out in *Bernard v Canada (Revenue Agency)*, 2015 FCA 263.

VI. The Law

[42] Relevant provisions are attached in Annex A.

VII. Analysis

A. *Was the decision reasonable?*

(1) Standing

[43] I find that the SAC's decision in finding that the Applicant did not have standing to bring a grievance based on something that happened to his wife, who is not an inmate, is a reasonable one.

[44] Courts are often called upon to determine standing as a preliminary point. The question of standing- that of *locus standi*- is designed so that the Court can ensure that there is a sufficient connection between the impugned action and the litigating party (*Moresby Explorers Ltd. v Canada (Attorney General)*, 2006 FCA 144 at paragraph 17). It is a question in this case of whether the person has legal capacity to bring a grievance when the incident happened to someone that was not an inmate.

[45] Even at the initial early stages after the incident, both the Applicant and his wife indicated in their respective affidavits that they both knew that Truesdell could not bring a grievance because she is not an inmate. This demonstrates that both the Applicant and Truesdell were aware that standing was an issue.

[46] The Applicant has not offered any jurisprudence that supports the proposition that he is entitled to standing arising from an allegedly illicit search of his wife's cellphone. Rather, the

Applicant attempts to support his assertion by a reading of the *Corrections and Conditional Release Act*, SC 1992, c 20 [the “Act”], the *Corrections and Conditional Release Regulations*, SOR/92-620 [the “Regulations”], and the CD-081.

[47] The Applicant has since the incident been told that an officer cannot search the contents of his wife’s cellphone when she leaves it on instruction of a guard in the vehicle. The Applicant argues he is grieving how the institution responded to that illicit search, and how the lack of an adequate response directly impacted the Applicant, which is why the Applicant submits that he has standing.

[48] Grievance legislation is not designed so that visitors can address potential wrongdoings committed by the institution against visitors. Rather, the purpose of grievance legislation is, as per section 90 of the Act, to fairly and expeditiously resolve *offender’s* grievances. I find no indication in the legislation that there is authority by which visitors to correctional institutions can have their own searches dealt with by an inmate by way of the grievance process.

[49] The Act specifically describes the definition of “inmate” and “offender” in the definition section (section 2 of the Act). The Act further, at section 96(u), prescribes that the offenders’ grievance procedure may be further set out in the Regulations. The Regulations and CD-081 set out the procedure for making a grievance and provide how an inmate (offender) can bring a grievance related to themselves. The inmate, in the alternative, can bring a grievance on behalf of another inmate in the circumstance of multiple grievors (paragraphs 24-30 of CD-081). The Act is designed for expeditiously dealing with grievances that are affecting the Applicant directly.

Section 74(1) of the Regulations states, “Where an offender is dissatisfied with an action or a decision by a staff member, the offender may submit a written complaint, preferably in the form provided by the Service, to the supervisor of that staff member.”

[50] Indeed, the Regulations cannot be so bent out of shape as to permit a form of redress not directly allowed for in the Act. Even section 6(a) of CD-081, cited by the Applicant, makes clear how this is to be interpreted:

6. Grievors will: (a) use the complaint and grievance process in good faith as a means of redress when they believe that they have been treated unfairly by a staff member...

[51] The Applicant in his affidavit provides new evidence to provide support for his argument that this grievance had standing because of how it affected him. But as noted above at paragraphs 39 and 40, I will not give this evidence any weight as it was available at the time and not put before the decision maker. It must be remembered that the final grievance is a de novo matter, so the matter is looked at afresh at that level. The Applicant had the opportunity to file further evidence related to how it related to him but though he did choose to provide further information he did not provide evidence that gave him standing on these facts.

[52] The Applicant’s wife had possible forms of redress open to her, but the grievance system was not the correct avenue for her to seek redress, as she is not an inmate. Truesdell and the Applicant chose not to take such an approach, despite the clear language of section 81(1) of the Regulations:

81 (1) Where an offender decides to pursue a legal remedy for the offender’s complaint or grievance in addition to the complaint and grievance procedure referred to in these Regulations, the review of

the complaint or grievance pursuant to these Regulations shall be deferred until a decision on the alternate remedy is rendered or the offender decides to abandon the alternate remedy.

[53] The evidence is that the Applicant and his wife knew that his wife could not bring a grievance, but he and his wife made a conscious choice to have the Applicant initiate the grievance even though the incident occurred to her. There was no evidence put before the decision maker or argument related to why he thought he had the ability to bring a grievance related to an incident that did not happen to him.

[54] I do not wish to close the proverbial door on a hypothetical scenario where the treatment of a visitor could indeed directly affect an inmate. In such a hypothetical, there may be circumstances where an inmate may make a case for standing. In this case, however, there was no evidence filed to make such a case.

[55] The language here is clear. Grievers can use the grievance process if *they* have been treated unfairly by a staff member. The Applicant has not been treated unfairly by a staff member regarding the attempted search on his wife's cellphone. The onus is on the Applicant to demonstrate that the SAC's interpretation is unreasonable. I do not find that the onus has been discharged.

[56] I find the decision regarding standing to be reasonable.

(2) Procedural Fairness

[57] The Applicant argued that he should have been told that standing was an issue, and then allowed to give evidence regarding standing early into the grievance process, and that the lack of opportunity to do so was therefore procedurally unfair.

[58] I agree with the Respondent's reading of *Mills v Canada (Attorney General)*, 2013 FC 1209 [*Mills*], *Yu v Canada (Attorney General)*, 2012 FC 970 [*Yu*] and *Tyrrell v Canada (Attorney General)*, 2008 FC 42 [*Tyrrell*].

[59] *Mills* and *Yu* stand for the proposition that a grievor under the Act cannot:

- a. Expect the opportunity to receive reasons and/or an Executive Summary until after the decision is released (*Mills*); and
- b. Require the opportunity to refute one of the grounds on which the final level decision is made (*Yu*).

[60] I note that what is being sought in this case is factually distinct from the rulings in *Mills* where an Executive Summary before the Decision was rendered was sought. As well as in *Yu*, where the decision revolves around the offender's property. I find that the legal principles are still applicable on our facts.

[61] In *Yu*, Justice Simpson held that the matter was not a case that attracts a high level of procedural fairness. The Applicant is ostensibly grieving how the SAC determined the behaviour



of management. That is a fundamentally administrative decision and opposed to a disciplinary decision as set out below by Justice Simpson:

[37] In *Gallant v Canada (Deputy Commissioner, Correctional Services Canada)*, [1989] 3 FC 329 (CA), FCJ No 70, the Federal Court of Appeal drew a basic distinction between disciplinary and administrative decisions in the corrections context, noting that the former would tend to attract comparatively stronger participatory rights. Whereas administrative decisions in this context seek the “orderly and proper administration of the institution”, disciplinary decisions attempt to impose a sanction or punishment on an individual: *Poulin v Canada (Attorney General)*, 2008 FC 811 (CanLII), at para 27, citing *Gallant*, above. The nature of the Decision in the present case clearly falls into the administrative category and thereby attracts a level of procedural fairness at the lower end of the spectrum.

[62] Every appeal under the CSC grievance procedure is conducted *de novo* and cannot be strictly limited to the reasons raised in the first level grievance. As Justice Snider noted in *Tyrrell* at paragraph 38, “In other words, at each higher level of the grievance procedure, the decision maker may substitute its decision for that rendered by the decision maker below. Therefore, although technically an “appeal”, the nature of the grievance process allows each subsequent decision maker to approach a grievance as a *de novo* review and to hear new evidence”.

[63] The Applicant did file their submissions and they were considered but I do not find that there was a breach of natural justice that the decision maker did not then come back and ask for submissions on standing before rendering the decision at issue. Standing is an issue and the Applicant was aware his wife could not bring the grievance and should have included why he thought he had standing to do so.

[64] On the basis of the above, I agree with the Respondent that the SAC did not come to a procedurally unfair decision.

B. *Was the delay unreasonable?*

[65] The Applicant's counsel had in their written submissions argued that there was an unreasonable delay. However, as the Applicant's counsel reaffirmed in oral submissions, the Applicant does not propose that the delay represents a reviewable error. While the Applicant's counsel stated in oral argument that, "We would ask the court for a finding that the delay is unreasonable", the Applicant conceded that no remedy arises from the delay here. The Applicant rather argues that this unreasonable delay only speaks to potential costs that may be assessed against the Respondent, and in order that the Applicant can receive a simple acknowledgment that there was delay.

[66] I will not make a finding that the delay was unreasonable given that the evidentiary record does not bear out that finding. There is evidence that the matter proceeded through the necessary steps in an orderly fashion. Any delay would be considered as a factor in the determination of costs.

[67] Therefore, based on the above, I am dismissing this application.

[68] I want to note that I am highly sympathetic to the Applicant and his wife's outrage. Indeed, there is evidence that the Officer's photo was captured by an intruder detection

application on Truesdell's phone. There is also evidence in the record that indicates that an incorrect four-digit password code needs to be entered twice before the photo is taken.

[69] We have all inadvertently activated an application or initiated a telephone call on a cellphone, but the idea that two incorrect four-digit codes could be inputted simply by moving a phone into the glovebox is an unlikely explanation for what occurred. However, I am judicially reviewing this decision and my role is not to determine if the Officer committed an unlawful search. Therefore, I am not making that determination.

#### VIII. Costs

[70] At the commencement of the hearing, I asked if the parties had attempted to settle this matter, and they had.

[71] Both parties submitted a draft Bill of Costs. The Applicant sought inclusive lump sum costs in the amount of \$3,338.54 and the Respondent sought costs in the amount of \$3,220.00. The Applicant presented arguments that if he was unsuccessful, it would be a hardship for the Applicant to be assessed costs, as he is an inmate earning \$7.00 a day.

[72] Considering all the factors before me, including how long the grievance procedures took, the impecuniosity of the inmate and the facts in this case, I am awarding lump sum costs payable forthwith by the Applicant to the Respondent in an amount of \$50.00 given. These costs are inclusive of fees, disbursements, and taxes.

**JUDGMENT in T-1168-18**

**THIS COURT'S JUDGMENT is that:**

1. The Application is dismissed;
2. Costs are ordered payable to the Respondent by the Applicant forthwith in a lump sum of \$50.00 inclusive of fees, disbursements and taxes.

"Glennys L. McVeigh"

Judge

## ANNEX A

*Corrections and Conditional Release Act, SC 1992, c 20*

### **Institutional and Community Corrections**

### **Système correctionnel**

#### **Interpretation**

#### **Définitions**

#### **Definitions**

2 (1) Les définitions qui suivent s'appliquent à la présente partie.

2 (1) In this Part,

**détenu** Personne qui, selon le cas :

#### **inmate means**

(a) a person who is in a penitentiary pursuant to

a) se trouve dans un pénitencier par suite d'une condamnation, d'un ordre d'incarcération, d'un transfèrement ou encore d'une condition imposée par la Commission des libérations conditionnelles du Canada dans le cadre de la semi-liberté ou de la libération d'office;

(i) a sentence, committal or transfer to penitentiary, or

(ii) a condition imposed by the Parole Board of Canada in connection with day parole or statutory release, or

[...]

#### **offender means**

#### **délinquant**

(a) an inmate, or

Détenu ou personne qui se trouve à l'extérieur du pénitencier par suite d'une libération conditionnelle ou d'office, ou en vertu d'une entente visée au paragraphe 81(1) ou d'une ordonnance du tribunal.

(b) a person who, having been sentenced, committed or transferred to penitentiary, is outside penitentiary

(i) by reason of parole or statutory release,

(ii) pursuant to an agreement referred to in subsection 81(1), or

(iii) pursuant to a court order;

### **Grievance or Complaint Procedure**

### **Griefs ou plaintes**

#### **Grievance procedure**

#### **Procédure de règlement**

90 There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner, and the procedure shall

90 Est établie, conformément aux règlements d'application de l'alinéa 96u), une procédure de règlement juste et expéditif des griefs des délinquants sur des questions relevant du

operate in accordance with the regulations made under paragraph 96(u).

commissaire.

### **Regulations**

### **Règlements**

96 The Governor in Council may make regulations

96 Le gouverneur en conseil peut prendre des règlements :

[...]

[...]

(u) prescribing an offender grievance procedure;

u) fixant la procédure de règlement des griefs des délinquants;

## *Corrections and Conditional Release Regulations (SOR/92-620)*

### **Offender Grievance Procedure**

### **Procédure de règlement de griefs des délinquants**

74 (1) Where an offender is dissatisfied with an action or a decision by a staff member, the offender may submit a written complaint, preferably in the form provided by the Service, to the supervisor of that staff member.

74 (1) Lorsqu'il est insatisfait d'une action ou d'une décision de l'agent, le délinquant peut présenter une plainte au supérieur de cet agent, par écrit et de préférence sur une formule fournie par le Service.

(2) Where a complaint is submitted pursuant to subsection (1), every effort shall be made by staff members and the offender to resolve the matter informally through discussion.

(2) Les agents et le délinquant qui a présenté une plainte conformément au paragraphe (1) doivent prendre toutes les mesures utiles pour régler la question de façon informelle.

76 (1) The institutional head, director of the parole district or Commissioner, as the case may be, shall review a grievance to determine whether the subject-matter of the grievance falls within the jurisdiction of the Service.

76 (1) Le directeur du pénitencier, le directeur de district des libérations conditionnelles ou le commissaire, selon le cas, examine le grief afin de déterminer s'il relève de la compétence du Service.

(2) Where the subject-matter of a grievance does not fall within the jurisdiction of the Service, the person who is reviewing the grievance pursuant to subsection (1) shall advise the offender in writing and inform the offender of any other means of redress available.

(2) Lorsque le grief porte sur un sujet qui ne relève pas de la compétence du Service, la personne qui a examiné le grief conformément au paragraphe (1) doit en informer le délinquant par écrit et lui indiquer les autres recours possibles.

82 In reviewing an offender's complaint or grievance, the person reviewing the complaint

82 Lors de l'examen de la plainte ou du grief, la personne chargée de cet examen doit tenir

or grievance shall take into consideration

(a) any efforts made by staff members and the offender to resolve the complaint or grievance, and any recommendations resulting therefrom;

(b) any recommendations made by an inmate grievance committee or outside review board; and

(c) any decision made respecting an alternate remedy referred to in subsection 81(1).

compte :

a) des mesures prises par les agents et le délinquant pour régler la question sur laquelle porte la plainte ou le grief et des recommandations en découlant;

b) des recommandations faites par le comité d'examen des griefs des détenus et par le comité externe d'examen des griefs;

c) de toute décision rendue dans le recours judiciaire visé au paragraphe 81(1).

### *Offenders complaints and grievances Commissioner's directive*

#### **APPLICATION**

Applies to all staff and offenders engaged in the offender complaint and grievance process

#### **RESPONSIBILITIES**

6. Grievors will:

a. use the complaint and grievance process in good faith as a means of redress when they believe that they have been treated unfairly by a staff member, or in a manner that is not consistent with legislation or policy on matters within the jurisdiction of the Commissioner

b. make every effort to resolve matters that are part of a complaint or grievance informally through discussion or by using alternative dispute resolution mechanisms, where such mechanisms exist.

#### **DEFINITIONS**

Grievor: for the purpose of this directive, the offender who submits a complaint or

#### **CHAMP D'APPLICATION**

S'applique à tous les membres du personnel et à tous les délinquants qui prennent part au processus de règlement des plaintes et griefs des délinquants

#### **RESPONSABILITÉS**

6. Les plaignants :

a. utiliseront en toute bonne foi le processus de règlement des plaintes et griefs en vue d'obtenir une réparation lorsqu'ils estiment avoir été traités, par un membre du personnel, de façon injuste ou non conforme à la loi ou aux politiques relativement à des questions qui relèvent de la compétence du commissaire

b. n'épargneront aucun effort pour régler de façon informelle les questions qui relèvent d'une plainte et d'un grief au moyen de la discussion ou en recourant à des mécanismes substitutifs de règlement des différends, lorsque ces mécanismes existent.

#### **DÉFINITIONS**

Plaignant : pour les fins de la présente directive, délinquant qui présente une plainte

grievance at any level of the complaint and grievance process.

ou un grief à tout palier du processus de règlement des plaintes et griefs.



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

**DOCKET:** T-1168-18

**STYLE OF CAUSE:** JASON LAUZON v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 14, 2019

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** FEBRUARY 28, 2019

**APPEARANCES:**

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