Federal Court  Cour fédérale

Date: 20230127

Docket: T-582-21

Citation: 2023 FC 134

Ottawa, Ontario, January 27, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

TANZIRUL ALAM

Applicant

and

MATSQUI INSTITUTION
(CORRECTIONAL SERVICES CANADA) [NO.3]

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Tanzirul Alam appeals an Order of Prothonotary (now Associate Judge) Kathleen Ring, made in her capacity as Case Management Judge [CMJ]. The CMJ granted a motion by the Respondent Correctional Services Canada [CSC] to strike Mr. Alam's Notice of Application without leave to amend.

[2] The CMJ determined that the internal grievance process prescribed by the *Corrections and Conditional Release Act*, SC 1992, c 20, [CCRA] provided Mr. Alam with an adequate alternative remedy that he had yet to exhaust. She therefore concluded that his application for judicial review was bereft of any chance of success.

[3] In June 2017, Mr. Alam was found guilty of numerous offences and sentenced to 12 years' imprisonment, reduced to eight years and eight months due to pre-trial custody (*R v Alam*, 2020 ABCA 10 at paras 2-3). He is currently an inmate of Matsqui Institution, a medium security federal penitentiary in Abbotsford, British Columbia. He presented his appeal without the assistance of legal counsel.

[4] For the reasons that follow, the CMJ's decision to strike Mr. Alam's Notice of Application without leave to amend was procedurally fair, factually supported, and legally correct. The appeal is therefore dismissed.

II. Background

[5] According to the Notice of Application, Mr. Alam is a citizen of Bangladesh and his native language is Bengali. He has been an inmate of Matsqui Institution since December 2017.

[6] On October 25, 2020, Mr. Alam submitted a formal complaint that the Matsqui Institution's library did not have any books in the Bengali language. He asserted that the library's collection of books, which were mainly in English and French, did not reflect the linguistic

diversity of the inmates at Matsqui Institution. He argued that CSC was legally obliged to provide inmates with books in their native languages pursuant to the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

[7] On November 3, 2020, a CSC official named Shawna White rejected Mr. Alam's complaint, holding as follows:

> CSC does not have to provide library resources in all languages with the exception of English and French – Canada's two official languages. However, CSC makes a reasonable effort to have materials in the majority language of the population. As noted Matsqui's library has a number of books in various languages including Bengali as well [as] access to a regional collection.
>
> A review of the Fraser Regional Library (community) database indicates there are no books in Bengali only Punjabi and Hindi. As such CSC has met the community standards.
>
> That being said CSC attempts to meet the needs of the culturally diverse population. This can be actioned by submitting a request form to the Librarian who can check availability in the regional collection as well as canvassing other sites for books written in Bengali. There is no record of you submitting such a request. Lastly, based on demand, CSC/Matsqui Institution may consider purchasing a few books for the library in any given language.
>
> There is no requirement under the Canadian Charter of Rights and Freedoms for CSC/Matsqui Institution to provide all inmates with access to books/literature in their native language.

[8] On December 12, 2020, Mr. Alam filed an Offender Initial Grievance Presentation regarding the response to his complaint. He requested reversal of Ms. White's decision and a specific timeline for making Bengali books available to him.

[9] The Warden of Matsqui Institution responded to Mr. Alam's grievance on January 25, 2021. The Warden determined that the lack of availability of Bengali books was not discriminatory, and it was not possible to provide inmates with books in all languages due to funding constraints. The Warden nevertheless informed Mr. Alam that CSC Ethno-Cultural Services had purchased 10 Bengali books for inter-library loan, and concluded that no further action was necessary:

> While Matsqui itself does not have books in Bengali, based on your requests, Ethno cultural Services has purchased ten (10) books in Bengali for use amongst offenders in the Pacific Region. … Should you wish to borrow any of these materials, please submit an inmate request and we can ask for an inter-library loan.
>
> I conclude, based on the information I have reviewed, that the definition of discrimination has not been met. While CSC does have an obligation to treat all offenders equally, the inability to provide books in many languages is not a reflection of discrimination, only one of limited funding. … As indicated in this response, books have been purchased for the region in the requested language, Bengali. I find that no further action is required both in regards to the purchasing of books in Bengali or your allegations of discrimination.

[10] On February 4, 2021, Mr. Alam submitted an Inmate's Request for three Bengali books kept at Pacific Institution. On February 9, 2021, he borrowed one Bengali book in exchange for a law book titled *Federal Courts Practice 2019*.

[11] On April 6, 2021, Mr. Alam filed a Notice of Application for judicial review of the "impugned CSC actions and related grievance response":

> Accordingly, by way of this judicial review, the Applicant is challenging the impugned CSC actions and related grievance response under three (3) distinct grounds:
>
> (a) Under the principles of *Administrative Law*,
>
> (b) For the violation of various statutory provisions of *CCRA* and *CCRR*;
>
> (c) For violating applicant's *Charter* rights under ss. 2(a), (b); 7 and 15;

[12] On October 20, 2021, CSC brought a motion in writing for an Order dismissing or striking Mr. Alam's Notice of Application on the grounds that: (i) it was brought out of time, (ii) the grievance process had not been exhausted, and (iii) the primary issue raised was moot.

[13] On January 4, 2022, the CMJ granted CSC's motion and struck Mr. Alam's Notice of Application without leave to amend on the sole ground that he had yet to exhaust CSC's internal grievance process [CMJ Order].

III. The CMJ's Order and Reasons

[14] The CMJ permitted both parties to submit affidavit evidence because this was "relevant to the issue of whether an adequate alternative remedy exists and/or whether the application is moot" (CMJ Order at para 26). While affidavits are generally not admissible on motions to strike an application, the CMJ noted that they may be permitted when "the justifications for the general rule of inadmissibility are not undercut, and the exception is in the interests of justice" (citing *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 53).

[15] The CMJ held that an application for judicial review may be struck when a party proceeds before a court without having exhausted all adequate remedial recourses in the administrative process (citing *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 [*CB Powell*] at paras 30-31). It was not seriously disputed that Mr. Alam had further recourse within the CSC grievance process. He had not yet referred the second level grievance response for third level review by the Commissioner, as contemplated by s 80 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [CCRR].

[16] The CMJ concluded that the availability of a third level of grievance under the CCRR constituted an adequate and effective remedy. She rejected Mr. Alam's argument that the remedy was "excessively slow", because there was no "direct evidence" of the delay Mr. Alam might encounter in resolving his current grievance (citing *Fortin v Canada (Attorney General)*, 2021 FC 1061 [*Fortin*] at paras 43, 45 and *Xanthopoulos v Canada (Attorney General)*, 2020 FC 401 [*Xanthopoulos*] at para 21).

[17] The CMJ also rejected Mr. Alam's argument that the third level grievance was an ineffective remedy because the CSC Commissioner lacked jurisdiction to grant the remedies he sought under s 24(1) of the Charter. She held he was nevertheless obliged to exhaust the grievance process before seeking judicial review (citing *MacInnes v Mountain Institution*, 2014 FC 212 [*MacInnes*] at para 32 and *Veley v Warden of Fenbrook Institution*, 2004 FC 1571 [*Veley*] at para 24).

[18] Finally, the CMJ held there were no exceptional circumstances to justify Mr. Alam's failure to exhaust his available remedies within the CSC internal grievance process before proceeding before this Court (citing *CB Powell* at para 33). She therefore concluded that his Notice of Application was bereft of any possibility of success, and must be struck without leave to amend.

IV. Issues

[19] This appeal raises the following issues:

A. Is "new" or "fresh" evidence admissible on appeal?

B. Was the CMJ's decision procedurally fair?

C. Was the CMJ's decision factually supported and legally correct?

V. Analysis

A. *Is "new" or "fresh" evidence admissible on appeal?*

[20] Mr. Alam seeks to adduce what he describes as "new" and "fresh" evidence on appeal. The "new" evidence consists of affidavits sworn by Mr. Alam and another inmate recounting ongoing delays encountered at the third level of the CSC grievance process. Mr. Alam says this could not have been presented before the CMJ, because it did not exist at the time.

[21] The “fresh” evidence comprises a report published on June 16, 2021 by the Standing Senate Committee on Human Rights regarding the human rights of prisoners within correctional facilities [Senate Report]. Mr. Alam acknowledges that the Senate Report existed at the time of the CMJ’s decision, but he says prison inmates could not obtain it easily.

[22] New evidence is not generally admissible in a motion pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106 (*Charles Augustus Steen III v Dr Seuss Enterprises, LP*, 2017 FC 172 at para 16). Mr. Alam is presumably aware of this principle, because Justice Shirzad Ahmed recently refused his request to adduce new evidence on an appeal of a different Order made by the same CMJ in *Alam v Canada (Attorney General)*, 2022 FC 833 (at paras 25-27).

[23] New evidence may exceptionally be admitted on appeal where: (i) the evidence could not have been made available earlier; (ii) it will serve the interests of justice; (iii) it will assist the Court; and (iv) it will not seriously prejudice the other side (*Graham v Canada*, 2007 FC 210 at para 12). In *David Suzuki Foundation v Canada (Health)*, 2018 FC 379, Justice Catherine Kane declined to admit new evidence on appeal because it did not sufficiently change the factual basis for the Prothonotary’s decision and was not “practically conclusive of an issue on appeal” (at para 56):

> In summary, in applying the jurisprudence governing whether to admit new evidence on appeal, I find that, on one hand, the new evidence could not have been made available to the Prothonotary; the evidence is credible and relevant; and, the receipt of the evidence would not be contrary to the interests of justice. On the other hand, the new evidence would not be “practically conclusive of an issue on appeal” nor will the new evidence assist the Court in the sense of having an impact on the determination of the Appeal, because it does not sufficiently change the factual basis upon which the Prothonotary concluded, in determining whether to

> strike the Application for Judicial Review and in applying the governing jurisprudence, that two issues were debatable. Given that the admission of new evidence on Appeal is exceptional, applying all the considerations leads to the conclusion that the new evidence should not be admitted.

[24] Mr. Alam concedes that the additional evidence regarding his and another inmate's experiences of the CSC grievance process is qualitatively similar to the evidence he presented before the CMJ, and does not materially change the factual basis upon which her decision was made. In my view, the same may be said of the Senate Report. Neither the "new" evidence nor the "fresh" evidence amounts to direct evidence of "the handling of [Mr. Alam's] particular grievance at issue and whether it has been unduly delayed" (CMJ Order at para 43).

[25] I therefore conclude that there are insufficient exceptional circumstances to justify the acceptance of either the "new" or "fresh" evidence Mr. Alam seeks to adduce in support of his appeal.

B. *Was the CMJ's decision procedurally fair?*

[26] Questions of procedural fairness are subject to a reviewing exercise that is best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate question is whether the applicant knew the case to meet, and had a full and fair opportunity to respond (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

[27] Mr. Alam says the CMJ breached his right to procedural fairness by deciding CSC's motion in writing pursuant to Rule 369. He argues that the motion was too complex to be fairly disposed of without an oral hearing. In particular, he maintains that he was denied the opportunity to respond to some of the jurisprudence relied upon by the CMJ in her decision. He takes particular exception to the CMJ's reliance on *MacInnes* and *Veley*, neither of which were cited by the parties in their written submissions.

[28] The CMJ correctly identified the legal test as "whether, in all the circumstances of the given case, [the Court] can fairly dispose of the motion without the delay and additional expense of an oral hearing" (CMJ Order at para 17, citing *Jones v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 279 at para 12). I agree with CSC's submission at paragraph 45 of its Memorandum of Fact and Law:

> The Applicant objected to this motion proceeding in writing, but failed to provide reasons to justify his objection other than it was complex. The Applicant's arguments were simply not complex and, therefore, were well-suited to be dealt with by way of written representations. The Applicant did not justify the added time and expense of an oral hearing.

[29] A judicial officer is not obliged to give parties notice of the law. Parties are presumed to know the state of the law and to govern themselves accordingly (*Paszkowski v Canada (Attorney General)*, 2006 FC 198 at para 67). The Federal Court of Appeal has confirmed that the mere fact a judge refers to cases not cited by the parties is not, by itself, an error of law or a breach of procedural fairness (*Heron Bay Investments Ltd v Canada*, 2010 FCA 203 [*Heron Bay*] at para 22).

[30] It might be possible to demonstrate a breach of procedural fairness if the CMJ, in referring to jurisprudence not cited by the parties, introduced a principle of law that was not raised by either party expressly or by necessary implication, or took the case on a substantially new and different analytical path (*Heron Bay* at para 24). However, none of the authorities relied upon by the CMJ were used for this purpose.

[31] I therefore conclude that the CMJ's decision was procedurally fair.

C. *Was the CMJ's decision factually supported and legally correct?*

[32] A discretionary order of an Associate Judge is subject to review in accordance with the standards articulated by the Supreme Court of Canada in *Housen v Nikolaisen*, 2002 SCC 33 (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*] at para 2). Questions of law are reviewed against the standard of correctness, and findings of fact or mixed fact and law may be revisited only where there is palpable and overriding error (*Hospira* at paras 66, 79).

[33] The palpable and overriding error standard is highly deferential. "Palpable" means an obvious error, while an "overriding" error is one that affects the decision-maker's conclusion (*Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras 61-64).

[34] In the context of an appeal under Rule 51, "a case management judge is assumed to be very familiar with the particular circumstances and issues in a proceeding", and their "decisions

are afforded deference, especially on factually-suffused questions" (*Hughes v Canada (Human Rights Commission)*, 2020 FC 986 at para 67).

[35] The CMJ described the legal test for striking a Notice of Application on a preliminary motion as follows (CMJ Order at para 31):

> It is well-established that this Court has jurisdiction to strike a notice of application by virtue of its plenary jurisdiction to restrain the misuse or abuse of the Court's processes. However, the threshold for striking an application for judicial review is high. The Court will only strike out a notice of application where it is so clearly improper as to be bereft of any possibility of success. In other words, "there must be a 'show stopper' or a 'knockout punch' - an obvious, fatal flaw striking at the root of this Court's power to entertain the application": *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 FC 588 at page 600 (CA) [*David Bull*]; *JP Morgan* at paras 47 and 48.

[36] With respect to the availability of an adequate alternative remedy, the CMJ said the following (CMJ Order at para 37):

> In order to grant a preliminary motion to strike an application for judicial review on the basis of the availability of an adequate alternative remedy, the Court must be certain that: (i) there is recourse elsewhere (now or later); (ii) the recourse is adequate and effective; and (iii) the circumstances pleaded are not the sort of unusual or exceptional circumstances recognized by the case law or analogous thereto: *JP Morgan*, at para. 91.

[37] I disagree with Mr. Alam's assertion that it was sufficient for him to demonstrate the inadequacy of the CSC grievance process was at least "debatable". On the contrary, he was

required to demonstrate, on a balance of probabilities, that the grievance process was incapable of providing him with an adequate alternative remedy. He failed to do so.

[38] As I held in *Hudson v Canada*, 2022 FC 694 [*Hudson*], before determining whether to exercise any discretion to consider a proceeding, the Court must first be satisfied that an alternative grievance process is not available and would not provide any remedy (at para 90). Even at this preliminary stage, the onus is on the applicant to establish the Court's jurisdiction over the dispute (*Hudson* at para 91).

[39] As Prothonotary (now Associate Judge) Mireille Tabib explained in *Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*] at paragraph 33:

> Consequently, and as also suggested in *Lebrasseur v Canada*, 2007 FCA 330, at para 19, once it is established that a person has recourse to a statutory grievance scheme, it is up to the applicant, and not the respondent seeking to have the application dismissed as premature, to establish that the procedure is clearly not available. That is the necessary conclusion, since concluding otherwise and allowing access to the courts whenever the admissibility of a grievance is challenged would have the effect of bypassing the exhaustive scheme Parliament intended. It would amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure.

[40] Associate Judge Tabib's ruling in *Murphy* was very recently upheld by Justice Vanessa Rochester in *Murphy v Canada (Attorney General)*, 2023 FC 57.

[41] Mr. Alam argues that the CMJ gave insufficient weight to evidence that the CSC internal grievance process is excessively slow, particularly at the third level. He maintains that the affidavit evidence he submitted clearly established that his grievance was unlikely to be resolved expeditiously.

[42] The CMJ considered the evidence tendered by Mr. Alam and other inmates of the delays they encountered in the final determination of unrelated grievances. She cited *Fortin* and *Xanthopoulos* in support of her conclusion that "[t]he Court has rejected arguments of delay in the absence of direct evidence as to the timeliness of the process available for an applicant's particular circumstances" (CMJ Order at paras 41-42).

[43] The CMJ noted that Mr. Alam had received timely decisions at both the first and second levels of the CSC internal grievance process (CMJ Order at para 43):

> While others may have encountered delays in the determination of their grievances, the focus of the Court's inquiry on this motion is the handling of the Applicant's particular grievance at issue and whether it has been unduly delayed. The evidence before the Court is that, notwithstanding the COVID-19 pandemic, the Applicant received decisions on his grievance regarding lack of Bengali books in less than two months at the first level and again at the second level of the CSC internal grievance process. Accordingly, I simply cannot find that it has been demonstrated that the recourse offered to the Applicant by the CSC internal grievance process has been or will be unduly delayed and thus rendered ineffective.

[44] As he did before the CMJ, Mr. Alam relies on Justice Frederick Gibson's decision in *Caruana v Canada (Attorney General)*, 2006 FC 1355 [*Caruana*]. The CMJ distinguished this case as follows (CMJ Order at para 44):

> In *Caruana*, the applicant, an inmate at Bath Institution, grieved a decision relating to his security classification to the second level of the CSC grievance procedure. It took more than 8 months after the grievance was filed for the applicant to receive a decision. Rather than proceed onward to the third level of the grievance procedure, the applicant brought an application for judicial review. Given the direct evidence of delay, the Court held "it is not at all surprising that the Applicant chose to come to this Court rather than to pursue his grievance at the third level […]" (at para 42). In contrast, according to the Applicant's own evidence on this motion, the second level of the grievance process in this case took 44 days (not 8 months).

[45] Mr. Alam notes that it took approximately three months for him to receive the first and second level responses to his complaint, but he concedes this did not amount to unreasonable delay. Instead, he says he filed the Notice of Application in anticipation of the significantly greater delay he expected to encounter at the third grievance level to be decided by the CSC Commissioner.

[46] Justice Ann Marie McDonald rejected a similar argument in *Fortin* (at para 43):

> Although the expeditiousness of the alternative remedy is a factor this Court must weigh, arguments that the grievance process is time-consuming are not, on their own, sufficient. In a number of decisions, Courts have rejected arguments of delay in the absence of direct evidence that the grievance process is excessively slow (*Rose v Canada (Attorney General)*, 2011 FC 1495 at paras 28-30; Picard at paras 41-45; *Xanthopoulous v Canada (Attorney General)*, 2020 FC 401 at para 21, 24). In *Picard*, for example, the applicant relied on statistical evidence to argue that the RCMP internal appeal process would be excessively slow. However, the Court noted there was no evidence the applicant had made inquiries of the estimated timeline of his appeal (at para 41). Therefore, the Court held the evidence was insufficient to establish the RCMP appeal procedure was inadequate (at para 44).

[47] The same considerations arise here. Mr. Alam commenced his application in this Court without initiating the third level of the grievance process. Unlike the applicant in *Caruana*, he had not encountered excessive delays in the resolution of his grievance at the first or second levels.

[48] If Mr. Alam had pursued the third level of the CSC grievance process and encountered unreasonable delay, then it might eventually have been open to him to commence an application for judicial review, perhaps seeking an order in the nature of *mandamus*. However, at the point he filed the Notice of Application, his complaints about the process were purely speculative (*Fortin* at para 45). As Justice Richard Mosley held in *Moodie v Canada (National Defence)*, 2008 FC 1233, "[i]t is simply premature to assume that a remedy could not be provided through the administrative processes when the applicant has failed to take advantage of them" (at para 38, cited with approval in *Fortin* at para 45).

[49] Mr. Alam's Notice of Application included the following allegation:

> 33. In CSC institutions, law books/ legal materials/ case laws are characterized as "special loans". Inmates can only borrow one "special loan" at any given time. After CSC purchased ten (10) Bengali books, CSC characterized these Bengali books as "special loan" as if these books were "law books". Next, CSC subjected the Bengali books to the same rule of "one special loan at a time" …

[50] CSC describes this as the "Book Exchange Decision". With respect to the "Book Exchange Decision", the CMJ found there was "no evidence that [Mr. Alam] commenced the grievance process at all" (CMJ Order at para 39).

[51] Mr. Alam says he included the "Book Exchange Decision" in his Notice of Application only for context, and this was not an action or grievance response that he sought to challenge by way of judicial review. He maintains that the CMJ's finding that he never grieved the "Book Exchange Decision" was unwarranted and prejudicial.

[52] The CMJ described the 26-page Notice of Application as "not the model of clarity" (CMJ Order at para 10). Given that Mr. Alam purported to seek judicial review of "impugned CSC actions and related grievance response", it was open to the CMJ to conclude that the "Book Exchange Decision" fell within the scope of the matters under review, and to find that this decision had never been grieved. I am not persuaded this caused any prejudice to Mr. Alam. Now that he has clarified he never intended to seek judicial review of the "Book Exchange Decision" issue, it is unnecessary to consider it further.

[53] Finally, Mr. Alam argues that the CSC internal grievance process is inadequate because the CSC Commissioner is not a court of competent jurisdiction for the purpose of granting remedies under the Charter or pursuant to international law.

[54] The CMJ correctly dismissed this argument by applying this Court's binding authorities in *MacInnes* and *Veley*. In *Veley*, Justice Carolyn Layden-Stevenson observed as follows (at para 24):

> The involuntary transfer of an inmate has consistently been determined by the jurisprudence of this court to be an administrative decision: *Acorn v. Canada (Attorney General)* 2004 FC 1438 at para. 7. Moreover, an involuntary transfer has also been determined to be a decision that must be addressed by way of grievance and that process must be exhausted before an inmate

> seeks judicial review. While Mr. Veley may be correct – and I make no determination in this regard – that the Commissioner is not a court of competent jurisdiction for the purpose of granting a remedy under subsection 24(1) of the Charter, that, in my opinion, does not relieve Mr. Veley of his obligation to exhaust the grievance process.

[55] Justice Michel Shore's ruling in *MacInnes* is to similar effect (at para 32).

[56] I agree with the CMJ that a decision respecting an inmate's access to reading materials in a particular language is an administrative decision that must first be challenged by way of grievance. That process must ordinarily be exhausted before an inmate seeks judicial review.

[57] Mr. Alam seeks to distinguish *MacInnes* and *Veley* on the questionable ground that he is not in fact challenging the outcome of the second level consideration of his grievance; only the legal rationale for the decision. Mr. Alam obtained the Bengali books he was seeking. His remaining complaint is limited to CSC's refusal to recognize that inmates have a Charter right to reading materials in languages other than English and French. He also seeks declarations regarding his rights under international law.

[58] It is doubtful that Mr. Alam can grieve a decision-maker's reasons while taking no issue with the outcome of the decision. In this Court, it is well established that only a judgment, and not the reasons for that judgment, may be appealed (*Fournier v Canada (Attorney General)*, 2019 FCA 265 at para 28). In any event, this is a matter for the CSC Commissioner's consideration if and when Mr. Alam refers his grievance to the third and final level.

[59] The CMJ's conclusion respecting the absence of exceptional circumstances is beyond reproach (CMJ Order at paras 47-48):

> With respect to the third requirement, the Federal Court of Appeal held in *C.B. Powell*, *supra* at para. 33, that very few circumstances qualify as 'exceptional' and the threshold for exceptionality is high. …
>
> Having considered the applicable jurisprudence and the material before the Court, I am unable to find any exceptional circumstances of the nature identified by the Federal Court of Appeal that would justify the Applicant not first exhausting his available remedies within the CSC internal grievance process before coming to this Court.

[60] Mr. Alam has not demonstrated any errors in the CMJ's application of the applicable jurisprudence to the facts of his case, nor any palpable or overriding error in the CMJ's apprehension of the relevant facts.

VI. Conclusion

[61] The CMJ's decision to strike Mr. Alam's Notice of Application without leave to amend was procedurally fair, factually supported, and legally correct. The appeal is therefore dismissed.

[62] Both parties have sought costs. Mr. Alam suggested that if he were the successful party, then an appropriate award of costs would be the all-inclusive sum of $1,500, representing the costs of both this proceeding and the one before the CMJ. CSC did not specify a quantum of costs.

[63] Given Mr. Alam's position on costs, and the CMJ's previous costs award of $750, I exercise my discretion to award further costs to CSC in the all-inclusive sum of $750.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed.

2. Costs are awarded to the Respondent Correctional Services Canada in the all-inclusive sum of $750.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-582-21
STYLE OF CAUSE:	TANZIRUL ALAM v MATSQUI INSTITUTION (CORRECTIONAL SERVICES CANADA) [NO.3]
PLACE OF HEARING:	BY VIDEOCONFERNCE BETWEEN VANCOUVER, BRITISH COLUMBIA AND OTTAWA, ONTARIO
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