Date: 20080522

Docket: T-1236-04

Citation: 2008 FC 647

Ottawa, Ontario, May 22, 2008

PRESENT: THE HONOURABLE MADAM JUSTICE DAWSON

BETWEEN:

GREGORY McMASTER

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Gregory McMaster, currently an inmate at the Fenbrook Institution, brings this application for judicial review of "a decision taken by the Correctional Service of Canada to maintain, as of the date of the filing of this Application, inaccurate file information." Mr. McMaster seeks a declaration that the Correctional Service of Canada "continues to record inaccurate information on the Applicant's files in breach of its statutory obligation to record only accurate, up-to-date and complete information pursuant to section 24 of the *Corrections and Conditional Release Act*, [S.C. 1992, c. 20 (Act)]." Mr. McMaster also seeks an order expunging inaccurate and misleading information from his files.

[2] This application is dismissed because Mr. McMaster has failed to exhaust the internal grievance procedure available to him.

Background Facts

[3] In 1978, Mr. McMaster was sentenced to life imprisonment in the State of Minnesota for the murder of a police officer. At the time of his arrest, Mr. McMaster admitted to killing three other people in Canada.

[4] In 1993, Mr. McMaster was transferred to Canada for prosecution. Mr. McMaster entered guilty pleas to one count of murder in the second degree and two counts of manslaughter. Mr. McMaster was sentenced to life imprisonment in respect of the murder charge and to time served plus one day concurrent in respect of the manslaughter charges. Mr. McMaster has been imprisoned in Canada since that time.

[5] On August 2, 2000, Mr. McMaster was transferred from Collins Bay Institution to Bath Institution.

[6] On December 4, 2001, Mr. McMaster was involuntarily removed from Bath Institution and placed in emergency segregation at Millhaven Institution.

[7] On December 10, 2001, Mr. McMaster was involuntarily transferred to Collins Bay Institution.

[8] On May 23, 2003, Mr. McMaster prepared a report wherein he documented a number of allegedly inaccurate entries in his corrections file made by staff at Bath Institution (“Complaint”). Mr. McMaster subsequently filed the Complaint with the Access to Information and Privacy Division of the Correctional Service of Canada ("Privacy Division"). On June 11, 2003, the Privacy Division referred the Complaint to Mr. McMaster’s parole officer, Ms. Annette Martin, for her action.

[9] On June 18, 2003, Ms. Martin informed Mr. McMaster that she had included a copy of the Complaint in his file so that “anyone who [perused] the Bath [Institution’s] reports [would] immediately see [his] concerns and take note of the updated information provided in [Collins Bay Institution’s] reports.” Ms. Martin also indicated to Mr. McMaster that she would include an electronic memorandum to file, noting his request for correction. Ms. Martin concluded by indicating that, if this was not sufficient, Mr. McMaster could seek recourse through “[his] solicitor or the grievance process.”

[10] On June 26, 2003, a parole officer at the Bath Institution, Ms. Susanne Kellerman, denied Mr. McMaster’s assertions of inaccurate information.

[11] Mr. McMaster did not attempt grieve the response provided by Ms. Kellerman to the Complaint.

[12] Mr. McMaster is eligible for parole in the United States, but does not wish to apply until misleading information in his Correctional Service of Canada files are removed.

Grievance Procedure

[13] Section 90 of the Act requires there to be an internal procedure to "fairly and expeditiously" resolve the grievances of offenders on matters within the jurisdiction of the Commissioner of Corrections. Section 90 (as well as sections 23, 24 and 25 of the Act) are set out in Appendix A to these reasons.

[14] The steps in the internal grievance process are set forth in the *Corrections and Conditional Release Regulations*, SOR/92-620 (Regulations). There are a number of levels to the inmate grievance procedure that generally may be described as follows:

- under section 74 of the Regulations, where an offender is dissatisfied with an action or a decision by a staff member, the offender may submit a written complaint to the supervisor of that staff member;

- under section 75 of the Regulations, where a supervisor refuses to review a complaint or where an offender is not satisfied with the decision of a supervisor, the offender may submit a written grievance to the institutional head;

- under section 77 of the Regulations, where the grievance is found to be within the jurisdiction of the Correctional Service of Canada, the institutional head may refer the grievance to an inmate grievance committee for review and recommendations (if such a committee exists);

- under section 79 of the Regulations, an offender may request that the institutional head refer the grievance to an outside review board for review and recommendations; and

- under section 80 of the Regulations, where an offender is not satisfied with a decision of the institutional head, the offender may appeal the decision to the head of the region and, if dissatisfied with that decision, the offender may appeal to the Commissioner.

[15] Subsection 74(3) of the Regulations requires that, generally, a grievance is to be dealt with as soon as practicable after an offender submits a complaint. The requirement for expeditious handling of grievances appears throughout sections 74 to 80 of the Regulations. Sections 74 to 82 of the Regulations are set out in Appendix B to these reasons.

[16] If dissatisfied with the final level decision, an inmate may apply to the Court for judicial review of that decision.

The Obligation to Insure that Information is Accurate

[17] Underpinning Mr. McMaster's submissions are sections 24 and subsection 25(1) of the Act.

[18] Subsection 24(1) of the Act requires that the Correctional Service of Canada take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up-to-date, and complete as possible.

[19] Subsection 24(2) of the Act allows for an offender to request that certain information contained in his or her file be corrected. Where such a request is refused, the Correctional Service of Canada is required to attach a notice to the information at issue, indicating that a request for correction was made and setting out the correction requested.

[20] The accuracy of information contained in an offender's file is important. One reason for this is that the Correctional Service of Canada is obligated under subsection 25(1) of the Act to provide the National Parole Board and related bodies with all information under its control that is relevant to release decision-making or to the supervision or surveillance of offenders.

[21] In *Tehrankari v. Canada (Correctional Service)*, [2000] F.C.J. No. 495 (QL), at paragraph 41, my colleague Mr. Justice Lemieux characterized Parliament's intent when enacting section 24 in the following terms:

> The signal given by Parliament in section 24, in the form of a statutory duty imposed on the Service, is that the "information banks" reflected in various reports maintained about offenders should contain the best information possible: exact, correct information without relevant omissions and data not burdened by past stereotyping or archaisms related to the offender. In Parliament's view, the quality of the information prescribed by section 24 leads to better decisions about an offender's incarceration and, in this manner, leads to the achievement of the purposes of the Act.

Consideration of the Application

[22] This application is said to be Mr. McMaster's "last best hope of undoing the damage that the recording of inaccurate and misleading information will to in future." Mr. McMaster argues that:

- he has made a demand on the Correctional Service of Canada to make corrections to his file material;
- despite his request for correction, inaccurate information remains in his files;
- the Correctional Service of Canada is under a statutory obligation to ensure that information that it uses is as accurate, up-to-date, and complete as possible;
- the Correctional Service of Canada has a duty to act fairly towards inmates under its control;
- untrue information is irrelevant and should not be included in materials used to carry out an inmate's sentence;
- a constitutional right enjoyed by all Canadians is the right not to be subjected to any cruel and unusual treatment, being treatment that would outrage standards of decency, and "[l]ittering an inmate's file with allegations and wrong information that has the effect of jeopardizing that inmate's chance of release would outrage standards of decency";
- this Court has exclusive jurisdiction to grant the requested declaratory relief;
- subsection 18.1(3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, allows the Court to order a federal tribunal to do anything it has unlawfully failed or refused to do; and
- he has no adequate, alternate remedy.

[23] It is a well-accepted principle of administrative law that the Court has the discretion to decline to exercise its judicial review jurisdiction if an adequate, alternate remedy exists. When considering whether to decline jurisdiction, the test is whether the alternate remedy is adequate, not

whether it is perfect. See: *Froom v. Canada (Minister of Justice)*, [2005] 2 F.C.R. 195 (C.A.) at paragraph 12, leave to appeal to the S.C.C. refused, 30686 (March 17, 2005).

[24] In *Giesbrecht v. Canada* (1998), 148 F.T.R. 81 (T.D.), Mr. Justice Rothstein (then of this Court) considered whether the grievance procedure provided under the Act was an adequate alternate remedy that ought to be exhausted before judicial review was sought under the *Federal Courts Act*. At paragraph 10 of his reasons, Justice Rothstein described the internal grievance procedure and compared it to judicial review. He wrote:

> On its face, the legislative scheme providing for grievances is an adequate alternative remedy to judicial review. Grievances are to be handled expeditiously and time limits are provided in the Commissioner's Directives. There is no suggestion that the process is costly. If anything it is less costly than judicial review and more simple and straightforward. Through the grievance procedure an inmate may appeal a decision on the merits and an appeal tribunal may substitute its decision for that of the tribunal appealed from. Judicial review does not deal with the merits and a favourable result to an inmate would simply return the matter for redetermination to the tribunal appealed from.

[25] Justice Rothstein concluded that the internal grievance procedure under the Act ought to be exhausted before seeking judicial review.

[26] The decision in *Giesbrecht* was subsequently adopted by the Federal Court of Appeal in C*ondo v. Canada (Attorney General)* (2003), 239 F.T.R. 158 (C.A.) at paragraph 5.

[27] I agree that, generally, the internal grievance procedure ought to be exhausted before an inmate seeks judicial review. Strong policy reasons favor this approach. That said, I also agree that where there are urgent, substantial matters and an evident inadequacy in the grievance procedure,

the Court may exercise its discretion to hear an application. See, for example, *Gates v. Canada (Attorney General)*, [2007] F.C.J. No. 1359 at paragraph 18 (QL).

[28] In the present case, counsel for Mr. McMaster argues that in *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, the Supreme Court of Canada effectively overruled the prior jurisprudence of this Court which held that there was a discretion in the Court to decline to exercise the Court's jurisdiction on judicial review when the internal grievance procedure was not exhausted. He also submits that the grievance procedure provides an inadequate remedy because it is too slow.

[29] In my view, counsel's reliance upon the *May* decision is misplaced. There, the issue was the availability of the remedy of *habeas corpus* from provincial superior courts when there was an existing right to seek judicial review in the Federal Court. The majority of the Supreme Court found that inmates may choose to challenge the legality of a decision affecting their residual liberty either in a provincial superior court by way of *habeas corpus* or in the Federal Court by way of judicial review. In so finding, the Supreme Court relied, at least in part, on the fact that historically, the writ of *habeas corpus* has never been a discretionary remedy. Unlike other prerogative relief, and declaratory relief, the writ of *habeas corpus* issues as of right. The *May* decision does not, in my view, alter the obligation of an inmate to pursue the internal grievance procedure before seeking discretionary declaratory relief on judicial review.

[30] Particular reliance was placed by Mr. McMaster upon the reference by the majority of the Supreme Court, at paragraph 60 of their reasons, to subsection 81(1) of the Regulations. Subsection 81(1) provides:

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.	81(1) Lorsque le délinquant décide de prendre un recours judiciaire concernant sa plainte ou son grief, en plus de présenter une plainte ou un grief selon la procédure prévue dans le présent règlement, l'examen de la plainte ou du grief conformément au présent règlement est suspendu jusqu'à ce qu'une décision ait été rendue dans le recours judiciaire ou que le détenu s'en désiste.

[31] Again, in my respectful view, neither subsection 81(1) itself, nor the reference to it by the majority the Supreme Court, assists Mr. McMaster.

[32] Subsection 81(1) operates to stay the grievance procedure while an inmate pursues an alternate remedy. That regulatory stay cannot operate to take away or limit the Court's discretion on judicial review. Similarly, the Supreme Court did nothing more than recognize that the existence of the grievance procedure did not preclude an inmate from pursuing a legal remedy. The Court did not alter existing jurisprudence concerning how a reviewing court would treat an application for judicial review where existing grievance procedures were not followed.

[33] I find support for this interpretation of subsection 81(1) in the *Giesbrecht* decision, cited above. There, Justice Rothstein wrote at paragraph 13:

> In the present case, it is the filing of the judicial review itself that precludes the grievance from proceeding by reason of subsection 81(1). However the judicial review is within the control of the Court, as contrasted with the Canadian Human Rights proceeding in Hutton over which the Court had no control. It would be anomalous if an applicant, by filing a judicial review application,

> could arrogate to himself the determination of whether the grievance process constituted an adequate alternative remedy. That is a decision for the Court. Judicial review is a discretionary remedy and the Court cannot be precluded from determining that an adequate alternative remedy exists simply because an applicant has filed a judicial review application. Subsection 81(1) of the Regulations is not intended to detract from the Court's discretion in this respect. It is simply a statutory stay of grievance procedures where another proceeding is commenced in order to avoid a multiplicity of concurrent proceedings involving the same matter. Subsection 81(1) does not act as a bar to the grievance proceeding should the Court find that procedure to be an adequate alternative remedy and thereby dismiss the judicial review. This argument of the applicant must therefore fail.

[34] I also find support for this interpretation of the *May* decision in the subsequent cases of this Court which have continued to state that an applicant must utilize the grievance procedure. See, for example, *Collin v. Canada (Attorney General)*, [2006] F.C.J. No. 729 (QL), and *Olah v. Canada (Attorney General)* (2006), 301 F.T.R. 274.

[35] As for the submission that the grievance procedure is too slow, the evidence before the Court indicates that Mr. McMaster's prior complaints regarding allegedly inaccurate information in his file were considered "expeditiously," as required by section 90 of the Act:

- Complaint No. V40A00004744 was received by the Correctional Service of Canada on February 19, 2002, and a response was provided by the Correctional Service of Canada on March 28, 2002.

- Complaint No. V40A00004803 was received by the Correctional Service of Canada on February 22, 2002, and a response was provided by the Correctional Service of Canada on March 27, 2002.

- Complaint No. V40A00005328 was received by the Correctional Service of Canada on March 28, 2002, and a response was provided by the Correctional Service of Canada on May 8, 2002.

- Complaint No. V40A00005415 was received by the Correctional Service of Canada on April 3, 2002, and a response was provided by the Correctional Service of Canada on April 30, 2002.

[36] For the following reasons, I have not been persuaded that the grievance procedure does not provide an adequate alternative remedy to judicial review.

[37] First, I endorse the comments of Justice Rothstein in *Giesbrecht* quoted above at paragraph 25.

[38] Second, as noted above, the evidence does not persuade me that the grievance process is too slow.

[39] Finally, this proceeding shows the advantages inherent in the grievance procedure. The record before me shows that the nub of Mr. McMaster's complaint is twofold. First, he says wrong information was recorded by Bath Institution that "the United States is interested in extraditing your

return to the United States to complete your American sentence for a murder conviction." This led to Mr. McMaster being identified as an escape risk. However, Bath Institution states that:

> 1. The information that the U.S. wanted to extradite the subject was the information given to Bath Institution at that time of the authoring of the report. Indeed, if that has changed, then that is what should be documented by the current Institution. I do not know this to be the case. Nonetheless, I must reiterate it was accurate information at the time of the transfer.

[40] Second, Mr. McMaster points to a number of references in the record where Collins Bay Institution expresses skepticism with respect to the accuracy of information recorded by officials at Bath Institution. For example, in May 2003, an Offender Security Level Referral Decision Sheet records the warden of Collins Bay Institution concurring with a recommendation of the Unit Management Board. The warden wrote:

> I concur with the UMB that the OSL should reflect Medium Security, with Institutional Adjustment, Escape Risk and Public Safety ratings of Low/Moderate/Moderate. In reviewing this case there are some serious inconsistencies with Preventive Security and CMT information provided by Bath Institution. Such behaviour was not identified at CBI prior to transfer to Bath and since his return.

[41] Having set out the nature of Mr. McMaster's concerns, one can see that those who would deal with grievances about these matters would have access to all of the documents, could interview the author of any document, and would be familiar with the context in which the issues arose. The Court has none of those advantages on an application for judicial review.

Conclusion and Costs

[42] For these reasons, the application for judicial review is dismissed because Mr. McMaster has not exhausted the internal grievance procedure.

[43] Counsel for the Attorney General advised that any of Mr. McMaster's existing grievances which were stayed by operation of subsection 81(1) of the Regulations can be pursued, and that extensions of time might be granted for any grievance not yet commenced. In view of the comments made by officials at Collins Bay Institution, discussed below, this might be an appropriate case for the granting of such an extension.

[44] The respondent seeks cost in the amount of $500.00. While the amount sought is very reasonable, I have concluded that this is an appropriate case for each party to bear their own costs. I reach this decision because it does appear that at least some wrong information is on Mr. McMaster's file. In this regard, a Casework Record Log records the following:

> Some of McMaster's issues were addressed in an updated CPPR 2002-06-04 and an Assessment for Decision 2002-06-24 in response to his application for an ETA, however not to his satisfaction as they did not speak to all of his concerns.
>
> A case conference was held on Thursday October 3, 2002, to address McMaster's continued concerns. In attendance at this meeting were Warden, A. Stevenson, Psychologist, D. Preston, A/Parole Officer J. Howie, A/Unit Manager, K. Hinch, Lifeline Liason, J. Leeman, Steve Orr of the John Howard Society and Mr. McMaster. Mr. McMaster further received a formal written reply to his complaint from Acting Unit Manager, K. Hinch outlining CBI's efforts to deal with his issues. (on CM file)
>
> […]
>
> Of note, Mr. McMaster won a grievance at CBI in regard to back pay he had requested (Complaint VA0A0004687) in relation to his period of segregation while awaiting involuntary transfer to CBI and the period of time he was not allowed to work while at CBI <u>due to the heightened escape risk concerns that came out of BI information that were since proven false</u>. [emphasis added]

[45] In that circumstance, I exercise my discretion not to award costs against Mr. McMaster.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed, without costs to any party.

"Eleanor R. Dawson"
Judge

APPENDIX A

Sections 23, 24, 25 and 90 of the *Corrections and Conditional Release Act* are as follows:

23(1) When a person is sentenced, committed or transferred to penitentiary, the Service shall take all reasonable steps to obtain, as soon as is practicable,	23(1) Le Service doit, dans les meilleurs délais après la condamnation ou le transfèrement d'une personne au pénitencier, prendre toutes mesures possibles pour obtenir :
(a) relevant information about the offence;	a) les renseignements pertinents concernant l'infraction en cause;
(b) relevant information about the person's personal history, including the person's social, economic, criminal and young-offender history;	b) les renseignements personnels pertinents, notamment les antécédents sociaux, économiques et criminels, y compris comme jeune contrevenant;
(c) any reasons and recommendations relating to the sentencing or committal that are given or made by	c) les motifs donnés par le tribunal ayant prononcé la condamnation, infligé la peine ou ordonné la détention — ou par le tribunal d'appel — en ce qui touche la peine ou la détention, ainsi que les recommandations afférentes en l'espèce;
(i) the court that convicts, sentences or commits the person, and	
(ii) any court that hears an appeal from the conviction, sentence or committal;	
(d) any reports relevant to the conviction, sentence or committal that are submitted to a court mentioned in subparagraph (c)(i) or (ii); and	d) les rapports remis au tribunal concernant la condamnation, la peine ou l'incarcération;
(e) any other information relevant to administering the	e) tous autres renseignements concernant l'exécution de la peine ou de la détention,

sentence or committal, including existing information from the victim, the victim impact statement and the transcript of any comments made by the sentencing judge regarding parole eligibility.

notamment les renseignements obtenus de la victime, la déclaration de la victime quant aux conséquences de l'infraction et la transcription des observations du juge qui a prononcé la peine relativement à l'admissibilité à la libération conditionnelle.

(2) Where access to the information obtained by the Service pursuant to subsection (1) is requested by the offender in writing, the offender shall be provided with access in the prescribed manner to such information as would be disclosed under the Privacy Act and the Access to Information Act.

(2) Le délinquant qui demande par écrit que les renseignements visés au paragraphe (1) lui soient communiqués a accès, conformément au règlement, aux renseignements qui, en vertu de la Loi sur la protection des renseignements personnels et de la Loi sur l'accès à l'information, lui seraient communiqués.

(3) No provision in the Privacy Act or the Access to Information Act shall operate so as to limit or prevent the Service from obtaining any information referred to in paragraphs (1)(a) to (e).

(3) Aucune disposition de la Loi sur la protection des renseignements personnels ou de la Loi sur l'accès à l'information n'a pour effet d'empêcher ou de limiter l'obtention par le Service des renseignements visés aux alinéas (1)a) à e).

24(1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

24(1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.

(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or

(2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que

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

le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.

25(1) The Service shall give, at the appropriate times, to the National Parole Board, provincial governments, provincial parole boards, police, and any body authorized by the Service to supervise offenders, all information under its control that is relevant to release decision-making or to the supervision or surveillance of offenders.

25(1) Aux moments opportuns, le Service est tenu de communiquer à la Commission nationale des libérations conditionnelles, aux gouvernements provinciaux, aux commissions provinciales de libération conditionnelle, à la police et à tout organisme agréé par le Service en matière de surveillance de délinquants les renseignements pertinents dont il dispose soit pour prendre la décision de les mettre en liberté soit pour leur surveillance.

(2) Before the release of an inmate on an unescorted temporary absence, parole or statutory release, the Service shall notify all police forces that have jurisdiction at the destination of the inmate if that destination is known.

(2) Le Service donne préavis des libérations conditionnelles ou d'office ou des permissions de sortir sans escorte à tous les services de police compétents au lieu où doivent se rendre les détenus en cause, s'il lui est connu.

(3) Where the Service has reasonable grounds to believe that an inmate who is about to be released by reason of the expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to the release and on a timely

(3) S'il a des motifs raisonnables de croire que le détenu en instance de libération du fait de l'expiration de sa peine constituera une menace pour une autre personne, le Service est tenu, en temps utile avant la libération du détenu, de

basis, take all reasonable steps to give the police all information under its control that is relevant to that perceived threat.

communiquer à la police les renseignements qu'il détient à cet égard.

[…]

[…]

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

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 commissaire.

APPENDIX B

Sections 74 to 82 of the *Corrections and Conditional Release Regulations* are as follows:

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.
(3) Subject to subsections (4) and (5), a supervisor shall review a complaint and give the offender a copy of the supervisor's decision as soon as practicable after the offender submits the complaint.	(3) Sous réserve des paragraphes (4) et (5), le supérieur doit examiner la plainte et fournir copie de sa décision au délinquant aussitôt que possible après que celui-ci a présenté sa plainte.
(4) A supervisor may refuse to review a complaint submitted pursuant to subsection (1) where, in the opinion of the supervisor, the complaint is frivolous or vexatious or is not made in good faith.	(4) Le supérieur peut refuser d'examiner une plainte présentée conformément au paragraphe (1) si, à son avis, la plainte est futile ou vexatoire ou n'est pas faite de bonne foi.
(5) Where a supervisor refuses	(5) Lorsque, conformément au

to review a complaint pursuant to subsection (4), the supervisor shall give the offender a copy of the supervisor's decision, including the reasons for the decision, as soon as practicable after the offender submits the complaint.

paragraphe (4), le supérieur refuse d'examiner une plainte, il doit fournir au délinquant une copie de sa décision motivée aussitôt que possible après que celui-ci a présenté sa plainte.

75 Where a supervisor refuses to review a complaint pursuant to subsection 74(4) or where an offender is not satisfied with the decision of a supervisor referred to in subsection 74(3), the offender may submit a written grievance, preferably in the form provided by the Service,
(a) to the institutional head or to the director of the parole district, as the case may be; or

(b) where the institutional head or director is the subject of the grievance, to the head of the region.

75 Lorsque, conformément au paragraphe 74(4), le supérieur refuse d'examiner la plainte ou que la décision visée au paragraphe 74(3) ne satisfait pas le délinquant, celui-ci peut présenter un grief, par écrit et de préférence sur une formule fournie par le Service :
a) soit au directeur du pénitencier ou au directeur de district des libérations conditionnelles, selon le cas;
b) soit, si c'est le directeur du pénitencier ou le directeur de district des libérations conditionnelles qui est mis en cause, au responsable de la région.

76(1) The institutional head, director of the parole district or head of the region, 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.
(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.

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

77(1) In the case of an inmate's grievance, where there is an inmate grievance committee in the penitentiary, the institutional head may refer the grievance to that committee.

(2) An inmate grievance committee shall submit its recommendations respecting an inmate's grievance to the institutional head as soon as practicable after the grievance is referred to the committee.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the inmate grievance committee.

78 The person who is reviewing a grievance pursuant to section 75 shall give the offender a copy of the person's decision as soon as practicable after the offender submits the grievance.

79(1) Where the institutional head makes a decision respecting an inmate's grievance, the inmate may request that the institutional head refer the inmate's grievance to an outside review board, and the institutional head shall refer the grievance to an outside review board.

(2) The outside review board shall submit its recommendations to the institutional head as soon as practicable after the grievance is referred to the board.

77(1) Dans le cas d'un grief présenté par le détenu, lorsqu'il existe un comité d'examen des griefs des détenus dans le pénitencier, le directeur du pénitencier peut transmettre le grief à ce comité.

(2) Le comité d'examen des griefs des détenus doit présenter au directeur ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) Le directeur du pénitencier doit remettre au détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité d'examen des griefs des détenus.

78 La personne qui examine un grief selon l'article 75 doit remettre copie de sa décision au délinquant aussitôt que possible après que le détenu a présenté le grief.

79(1) Lorsque le directeur du pénitencier rend une décision concernant le grief du détenu, celui-ci peut demander que le directeur transmette son grief à un comité externe d'examen des griefs, et le directeur doit accéder à cette demande.

(2) Le comité externe d'examen des griefs doit présenter au directeur du pénitencier ses recommandations au sujet du grief du détenu aussitôt que possible après en avoir été saisi.

(3) The institutional head shall give the inmate a copy of the institutional head's decision as soon as practicable after receiving the recommendations of the outside review board.

(3) Le directeur du pénitencier doit remettre au détenu une copie de sa décision aussitôt que possible après avoir reçu les recommandations du comité externe d'examen des griefs.

80(1) Where an offender is not satisfied with a decision of the institutional head or director of the parole district respecting the offender's grievance, the offender may appeal the decision to the head of the region.

(2) Where an offender is not satisfied with the decision of the head of the region respecting the offender's grievance, the offender may appeal the decision to the Commissioner.

(3) The head of the region or the Commissioner, as the case may be, shall give the offender a copy of the head of the region's or Commissioner's decision, including the reasons for the decision, as soon as practicable after the offender submits an appeal.

80(1) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le directeur du pénitencier ou par le directeur de district des libérations conditionnelles, il peut en appeler au responsable de la région.

(2) Lorsque le délinquant est insatisfait de la décision rendue au sujet de son grief par le responsable de la région, il peut en appeler au commissaire.

(3) Le responsable de la région ou le commissaire, selon le cas, doit transmettre au délinquant copie de sa décision motivée aussitôt que possible après que le délinquant a interjeté appel.

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.

81(1) Lorsque le délinquant décide de prendre un recours judiciaire concernant sa plainte ou son grief, en plus de présenter une plainte ou un grief selon la procédure prévue dans le présent règlement, l'examen de la plainte ou du grief conformément au présent règlement est suspendu jusqu'à ce qu'une décision ait été rendue dans le recours judiciaire ou que le détenu s'en désiste.

(2) Where the review of a complaint or grievance is deferred pursuant to subsection (1), the person who is reviewing the complaint or grievance shall give the offender written notice of the decision to defer the review.

(2) Lorsque l'examen de la plainte ou au grief est suspendu conformément au paragraphe (1), la personne chargée de cet examen doit en informer le délinquant par écrit.

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

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

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1236-04
STYLE OF CAUSE:	GREGORY McMASTER, Applicant and THE ATTORNEY GENERAL OF CANADA, Respondent
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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