Date: 20081212

Docket: T-1265-07
T-1315-07
T-1317-07
T-1318-07

Citation: 2008 FC 1357

Ottawa, Ontario, December 12, 2008

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

WILLIAM A. JOHNSON

and

THE ATTORNEY GENERAL OF CANADA

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Mr. William A. Johnson, is an inmate at Warkworth Institution ("WI"), a medium-security prison located in Campbellford, Ontario. These reasons for judgment address four applications for judicial review of actions by Correctional Service of Canada ("CSC") officials, filed by Mr. Johnson under section 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The four applications were joined at Mr. Johnson's request as the facts are connected and were heard

together. Mr. Johnson represented himself in these proceedings. Before turning to each application, I will first set out the sequence of events in the order in which they occurred.

Background

[2] Mr. Johnson is serving an indefinite sentence and has been a resident of the "Eighty Man Unit" ("EMU") at WI since November 10, 1999. His Case Management Team includes correctional officer Kevin Kunkel and a parole officer, Ms. Linda McKinley. Within the institution, Mr. Johnson is employed with CORCAN and is currently working as a machine operator.

[3] On October 6, 2005, Officer Kunkel and Officer Mike Carson, a "witnessing officer", carried out a search of Mr. Johnson's cell while he was at work. The officers located a number of electrical devices and articles in the cell including wires, a transformer, dials, electrical cord, copper tubes, cable wire, power bars, screws and bolts. Mr. Johnson is proficient in building and repairing electrical devices and had previously been allowed to have such articles in his cell. On this occasion it apparently caused some concern to the officers in light of a recent bomb threat in the institution.

[4] Officer Kunkel and Officer Carson concluded that the items were suspicious, likely unauthorized and potentially dangerous. As a result, these items were removed from Mr. Johnson's cell, tagged as contraband and sent to the Admissions and Discharge ("A&D") department at WI where they were apparently destroyed. Officer Kunkel and Officer Carson completed Officer's Statement/Observation Reports and Officer Kunkel filled out a Post Search Report.

[5] Mr. Johnson returned from work that day to find his cell in disarray and his personal property missing. He asked Officer Kunkel to return his belongings or to at least explain the seizure. The applicant alleges that Officer Kunkel dismissed his request and uttered a sexually inappropriate comment. Mr. Johnson asked his parole officer, Ms. McKinley, to convene a meeting with the Correctional Supervisor to discuss the situation. He claims he was never afforded an opportunity to resolve the matter informally. He also filed an *Inmate Request* to speak with the police to lay charges against the officers for having "stolen his property". He was told that his case was not a matter for investigation by the police and was advised to submit a request for the return of his property with the A&D department.

[6] An *Inmate Offence Report and Notification of Charge* ("Offence Report") for possessing unauthorized items in violation of paragraph 40(j) of the *Corrections and Conditional Release Act*, 1992, c. 20 ("CCRA") was issued to Mr. Johnson on October 7, 2005. A disciplinary hearing was held on October 17, 2005 before Mr. Steenburg, the Chairperson of the Minor Disciplinary Offence Board ("Board") appointed to the case. Mr. Steenburg adjourned the hearing to the following week in order to determine whether there had been any attempt at informal resolution, as CSC policy required, before a charge was issued. On October 24, 2008, Mr. Johnson's disciplinary hearing was re-convened. During the hearing, Mr. Steenburg read a statement that he had obtained from Officer Carson which purported to explain that Officer Kunkel had attempted informal resolution. It bears noting that this statement was made the day subsequent to Mr. Johnson's adjourned disciplinary hearing of October 17, 2005 and 11 days after the date of the charge.

[7] Mr. Steenburg upheld the charge under paragraph 40(j) of the CCRA and Mr. Johnson was fined $15.00 as a consequence. The applicant instituted a first level grievance on November 16th, 2005 to challenge Mr. Steenburg's decision. He also filed an *Inmate Request for Lost or Damaged Effects* on December 30, 2005 seeking compensation for the items that were seized from his cell on October 6, 2005 and subsequently destroyed. CSC has offered the applicant a settlement of $65.00 as compensation for some of the items and has offered to replace the others. The respondent has not provided an explanation as to why these items were destroyed.

[8] Following the search and seizure of his cell on October 6, 2005, Mr. Johnson was advised by the A&D department that he was over his cell effect limit of $1500.00 and was asked to return a *Brother 430* electric typewriter that he had in his possession since April of that year. Mr. Johnson instituted a grievance arguing that this typewriter had been purchased on the presumption that it was an approved educational item and thus exempt from the $1500.00 personal effects cell limit prescribed under paragraph 16 of Commissioner's Directive 090. On February 22, 2005, during his grievance proceedings, Mr. Johnson's typewriter was seized as "contraband". As a result, he filed another grievance requesting the return of his typewriter, claiming that it is an educational item exempt from his cell effect limit.

[9] A Post Search Report recounting the details of the seizure of the typewriter was never completed as required by CSC rules. For that reason, Mr. Johnson filed an *Inmate Request* asking for the completion of the said report. The respondent's reply to this request was in default for over a month. As a result, Mr. Johnson instituted another grievance.

Preliminary Issues

Contempt motions:

[10] These applications were set down for hearing at Belleville, Ontario on September 17, 2008. On September 11, 2008 Mr. Johnson filed a Notice of Motion on each application seeking directions pursuant to Rule 54 of the *Federal Courts Rules*, SOR/98-105 (the "Rules") and adjournment of the proceedings. Alternatively, the motions sought orders under Rule 467(3) and pursuant to subsection 24(1), paragraph 32(1)(a) and section 7 respectively of the *Canadian Charter of Rights and Freedoms, The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*"). In addition, Mr. Johnson requested dispensation from compliance with the Rules, pursuant to Rule 55, due to the circumstances of his confinement.

[11] By these motions Mr. Johnson wished to cite CSC and ten named CSC employees for contempt and to have the matter put over to a new date and time for a show cause hearing.

[12] The grounds for this unusual request, as set out in Mr. Johnson's motion record, are that he had been unable to complete a Book of Authorities for each application as he had been obstructed and denied access to legal materials by staff at WI. Specifically at issue was a WI policy which required that any request for legal materials be submitted on a "Warkworth Librarian Legal Case Law Request Form".

[13] This policy was adopted, according to Mr. Johnson's record, after an inmate in administrative segregation was found to have been in possession of legal materials that he was not authorized to possess. Mr. Johnson objects to having to obtain the approval of his parole officer and

the institution's security intelligence officer to have access to on-line legal materials and argues that it infringes his rights under the *Charter*. He filed another grievance over this issue and the first level decision, dated August 8, 2008, is included in his motion record along with his second level grievance from that decision.

[14] Mr. Johnson had earlier attempted to have the Court cite certain named institutional staff for contempt in relation to the same applications. In August 2007 Mr. Johnson had been granted leave by the Court to amend his Notices of Application and was granted extensions of time within which to file his Amended Notices. Mr. Johnson brought motions alleging that he was being prevented from complying within the extended time periods because of the seizure of a computer. In a ruling applicable to each of the applications, the case management Prothonotary dismissed the motions. Mr. Johnson appealed that decision.

[15] On January 29, 2008 Mr. Justice Hughes dismissed the appeal (2008 FC 119) imposing costs of $200.00 on the applicant. At paragraph 5 of his reasons Justice Hughes wrote:

> The request that persons not party [to] the action appear before a judge and hear proof and present a defence clearly reflects a misunderstanding that the Applicant, who is self-represented, has as to the Court process. A person who is not a party to an action can only be subject to such proceedings in the nature of contempt if that person has, in the course of the proceedings, conducted themselves in a manner as set out in Rule 466. Rule 466 (c) relied upon by the Applicant is a general provision which applies to conduct of an individual within the context of the proceeding. It does not apply to prior conduct that may be alleged as forming the basis of the cause of action. There is no evidence presented on the motion to show that the named individuals conducted themselves in any way that would come within Rule 466. The Prothonotary was correct in dismissing this request.

[16] Mr. Johnson appealed Justice Hughes' decision alleging bias or a reasonable apprehension of bias and errors of fact and law. As of the date of the hearing in Belleville, this appeal remained pending but was subsequently dismissed by the Federal Court of Appeal on October 1, 2008 (2008 FCA 290). Notwithstanding Justice Hughes' decision, Mr. Johnson again attempted to cite CSC staff for contempt in the motions served on the respondent on September 10, 2008, seven days before the hearing.

[17] The respondent did not file responding motion records but argued that legal materials were available to Mr. Johnson in the library at Warkworth and that there was no evidence that Mr. Johnson had ever filled out the form and had been denied access to the materials he required to present his applications. Mr. Johnson's oral reply was that the library collection is inadequate and the requirement to seek prior approval violates his *Charter* rights.

[18] The evidence filed in Mr. Johnson's record indicates that the policy was adopted on legal advice to deal with the potential misuse of Court information. The concern is that inmates may use legal materials to conduct research on each other for purposes not conducive to prison discipline and the safety of individuals.

[19] The obligation to file books of authorities is set out in Rule 70(1) (g). It was sufficient to grant Mr. Johnson the relief he requested under Rule 55 to dispense with compliance with that requirement.

[20] While I did not consider it necessary to decide the matter, in my view Mr. Johnson failed to lay a factual foundation to support his claim that his *Charter* rights were breached as a result of the adoption of this policy. The policy is not intended to prevent inmates, including Mr. Johnson, from having access to legal resources to seek remedies from the Courts nor is there any evidence that it has had that effect. The requirement that parole and security officers must first be consulted, absent any indication that it was being abused, would seem to be a reasonable measure to minimize the risk that inmates will use Court information for oblique and dangerous purposes. To invoke the *Charter* in these circumstances is to run the risk that it would be trivialized, as the Supreme Court of Canada cautioned in *MacKay v. Manitoba*, [1989] 2 S.C.R. 357.

[21] Mr. Johnson's application records contain extensive citations and block quotes from the judgments that he relies upon in his memoranda of argument. It appears from his records that he has had considerable access to legal resources. When asked how he was prejudiced by the adoption of the policy and whether he wished to refer to passages in judgments that were not highlighted in his written submissions, Mr. Johnson was unable to advise the Court of any specific difficulty that this had caused him.

[22] In dismissing the motions at the hearing, I noted that Mr. Johnson was aware of the change of institutional policy since March 2008 and had done nothing to bring his concerns to the attention of the Court until the eve of the hearing. I did not see that he would be prejudiced in presenting his arguments as he had reproduced the texts that he wished to rely upon in his written submissions. For reasons of judicial economy and the efficient use of Court resources I considered that it was not

appropriate to adjourn the matter. To require the personal attendance of WI officials was inappropriate for the reasons expressed by Justice Hughes, cited above.

Failure to Comply with Rule 318:

[23] Mr. Johnson next raised an objection to the respondent's record on application T-1265-07, which applied also to the applications in Court files T-1315-07 and T-1317-07. He argued that the respondent is in default of Rule 318(1) as certified copies of relevant materials were not produced as requested. He asked as a remedy that 18 pages of "tribunal materials" in the respondent's record be struck.

[24] In his Amended Notices of Application, filed on October 17, 2007, Mr. Johnson had requested certified copies of material not in his possession but said to be in the respondent's possession, including contraband seizure tags, Post Search Reports, Officer's Statements, Observation Reports and a transcript and audio recording of a hearing before the WI Minor Offence Disciplinary Board. In effect, while not so described, this was a request under Rule 317.

[25] On November 7, 2007 counsel for the respondent replied by letter that they had requisitioned certified copies of the seizure tags and made inquiries with respect to any available reports, a transcript or audio recording. There is no indication in the record that any of these materials were transmitted to the applicant or to the Court as Rule 317 provides. Nor, however, is there any indication in the Court files that the applicant raised this as a concern during his

communications with the case management Prothonotary, the Registry or counsel for the respondent prior to the hearing.

[26] There is a letter dated February 21, 2008, in which the applicant replied to correspondence from the respondent respecting his proposed time-table by asking that the Court direct that the respondent's record be confined to a memorandum of fact and law alone, the time for filing affidavits having passed. I take this, from the content of the letter, to have been an effort by the applicant to preclude the filing of documentary evidence by the respondent and not as a comment on the failure to respond to the Rule 317 requests. On March 26, 2008 the respondent filed its Application Records in the four files, each containing the same 18 pages of "tribunal material" without any supporting affidavit evidence.

[27] Rule 318 provides that within 20 days after service of a request under Rule 317, the tribunal shall transmit either (a) a certified copy of the requested material to the Registry and to the party making the request; or (b) where the material cannot be reproduced, the original material to the Registry. The documents form part of the record before the Court if included in the application record of either party: *Quebec Port Terminals Inc. v. Canada (Labour Relations Board*) (1993), 17 Admin. L.R. (2d) 16, 164 N.R. 60 (F.C.A.).

[28] Failure to comply with Rule 318 is normally not a reviewable error but may be dealt with by an order of the Court to produce the documents within a specified time and to extend the time for filing application records: *Malkine v. Canada (Minister of Citizenship and Immigration)* (1999), 3 Imm. L.R. (3d) 122, 177 F.T.R. 200 (T.D.). This assumes that the objection is raised in a timely

manner and not, as here, at the hearing. In these circumstances, I would not have been inclined to grant the remedy sought by the applicant absent the further complication that arose.

[29] Counsel for the respondent advised the Court at the hearing that their practice in judicial review applications arising from CSC grievance decisions, and followed in this instance, has been to include relevant documents in the respondent's record without tendering them as exhibits to affidavits.

[30] In a decision rendered on July 17, 2008, *Canada (Attorney General) v. Lacey*, 2008 FCA 242, the Federal Court of Appeal dismissed an application for an extension of time to file an applicant's record that contained a certified copy of a tribunal record, but no affidavit. The Court of Appeal held that the correct way to include the certified record in the applicant's record was to append it as an exhibit to an affidavit submitted by the applicant pursuant to Rules 306 and 309(2)(d). Similarly, it could be introduced by the respondent as an exhibit to an affidavit filed under Rules 307 and 310(2)(b).

[31] It is not necessary to append the entire record to a party's application record. Rather, only the documents upon which the applicant or the respondent, as the case may be, intends to rely on need to be included in the certified record. However, as the Court of Appeal confirms in *Lacey*, there is no authority for the tribunal material to be included in either party's records, as was done here, unless it forms part of a supporting affidavit.

[32] Counsel conceded, in light of *Lacey*, that their tribunal material was not properly before the Court and that, in any event, not all of the requested material had been provided. For example, a recording or transcript of the disciplinary hearing had not been found.

[33] The respondent requested an extension of time to file the requisite affidavit and exhibits. Counsel argued, among other things, that it would be prejudicial to Mr. Johnson if he were not able to refer to the documents. Mr. Johnson's view, in reply, was that the respondent's record material was incomplete and not helpful to his case. He wanted it struck and preferred to rely upon his own more extensive documentary record.

[34] Considering that the matter had already consumed a considerable amount of Court resources, that both parties were at fault in not addressing the problem earlier and that it did not appear that either party would be prejudiced by excluding the respondent's record, the respondent's request for an adjournment was denied and its tribunal material was struck from the record on each of the applications.

Standard of Review and Issues

[35] Since these applications were filed, the Supreme Court of Canada has ruled, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, that there are now only two standards of review: reasonableness and correctness. A detailed analysis of which standard to apply in a given case is not required if it has been determined in earlier jurisprudence: *Dutiaume v. Canada (Attorney General)*, 2008 FC 990 at paragraph 27.

[36] The standard of review for decisions made pursuant to hearings conducted under the *Corrections and Conditional Release Act* was addressed by the Federal Court of Appeal in *Sweet v. Canada (Attorney General)*, 2005 FCA 51; see also *Robinson v. Canada (Attorney General)*, 2006 FC 1064. In *Sweet*, Justice Malone found that the correctness standard applied to questions of law which include issues of procedural fairness, whereas the reasonableness standard would apply to the application of legal principles to fact and the standard of patent unreasonableness (now reasonableness) would apply to pure findings of fact. Paragraph 14 of Justice Malone's decision in *Sweet* is instructive:

> In assessing the standard of review for prisoners' grievance decisions, the Applications Judge adopted the analysis set out by Lemieux J. in Tehrankari v. Correctional Service of Canada (2000), 188 F.T.R. 206 (T.D.) at paragraph 44. After conducting a pragmatic and functional analysis, Lemieux J. concluded that a correctness standard would apply if the question involved the proper interpretation of the legislation, a standard of reasonableness simpliciter would apply if the question involved an application of the proper legal principles to the facts, and a patently unreasonable standard would apply to pure findings of fact.

[37] More recently in *Dutiaume*, above, the question of the appropriate standard of review in disciplinary cases under section 40 of the CCRA was discussed by Justice O'Keefe:

> This case involves decision making by a chairperson of a disciplinary court. It is well established in earlier jurisprudence that the principles and procedures which apply to these proceedings reflect its administrative nature which is neither judicial nor quasi-judicial in nature (*Hendrickson v. Kent Institution Disciplinary Court (Independent Chairperson)* (1990), 32 F.T.R. 296, quoted by Justice Kelen in *Forrest*, above at paragraph 16). This is not to suggest, however, that rules of natural justice and statutory provisions or regulations having the force of law to the contrary are not deserving of judicial discretion (*Forrest*, above).

> Therefore, the issue of the chairperson's failure to appreciate his duty to ensure informal resolution is reviewable on a standard of correctness as it is a question of procedural fairness. The chairpersons finding that the institution had considered informal resolution to the extent required by section 41 is a question of mixed fact and law and is reviewable on a standard of reasonableness. The applicant's submissions on the chairperson's credibility findings and the findings of fact related to the applicant's actions towards the alleged victim are reviewable on a standard of reasonableness.

[38] The following issues are raised by these applications:

a. Whether the CSC committed a reviewable error in charging the applicant under paragraph 40(j) of the CCRA and in upholding its decision at the disciplinary hearing and throughout the grievance process.

b. Whether the CSC properly compensated the applicant for the destruction of his items.

c. Whether CSC committed a reviewable error in seizing the applicant's typewriter as contraband.

d. Whether the CSC committed a reviewable error in failing to provide the applicant with a Post Search Report in a timely fashion.

[39] These questions are of mixed law and fact. Previous decisions of the Federal Court have accorded deference to findings of fact and of mixed law and fact: see for example *Ewonde v. Canada (Attorney General)*, 2005 FC 1688 at paragraphs 5-6. Therefore, the CSC's findings of fact and of mixed law and fact should be evaluated on a standard of reasonableness. In reviewing the impugned decisions against the reasonableness standard, the Court will consider whether these decisions under review fall within a range of possible acceptable outcomes which are defensible in light of the facts and the law (see *Dunsmuir* at paragraph 47).

APPLICATION T-1265-07: SEARCH AND SEIZURE

[40] Mr. Johnson seeks judicial review of the CSC's decision to charge him with a disciplinary offence under paragraph 40(j) of the CCRA and its failure to uphold his grievances, asserting there was no attempt at informal resolution and no evidence he had committed the offence presented at his disciplinary hearing. His grievances were taken to three levels with additional complaints added at each level.

[41] Mr. Johnson argues that the Offence Report charging him with an inmate offence under paragraph 40(j) of the CCRA was issued in violation of section 39 and subsection 41(1) of the CCRA since informal resolution had not been attempted. Moreover, the applicant submits that the respondent breached his rights under section 7 of the *Charter*.

[42] Mr. Johnson also contends that there was no evidence presented at his disciplinary hearing on which the Board could rely to find him guilty. None of the items in issue were present at the hearing and the applicant was not given an opportunity to read the statement provided by Officer Carson and relied on by the Board concerning Officer Kunkel's alleged attempt at informal resolution.

Grievance Process & Decision under Review

[43] As noted above, the Chair of the Offence Board, Mr. Steenburg, upheld the disciplinary charge made under paragraph 40(j) of the CCRA and issued to Mr. Johnson on October 7, 2005 by

Officers Kunkel and Carson. Mr. Johnson filed a first level grievance on November 10th, 2005 (received November 16th, 2005) to challenge the decision of the Board. He alleged that the Offence Report detailing the search and seizure was "false, misleading and illegal" and the officers failed to attempt informal resolution prior to charging him. He requested the removal of the Offence Report and Observation Report from his file and asked for a reimbursement of the $15.00 fine.

[44] The first level grievance was denied by A/Warden Bruce Somers. He stated that informal resolution is an ongoing process that does not necessarily take place at the time of the perceived offence. Mr. Somers explained that Mr. Steenburg had doubts as to whether an attempt at informal resolution had in fact occurred and adjourned the hearing to ascertain the facts. Mr. Somers determined that the hearing was conducted in a lawful manner. He came to this conclusion based on findings that Mr. Johnson had an opportunity to ask questions and present evidence at the hearing, all items listed on the Offence Report were discussed and Mr. Johnson admitted that some of the seized objects were unauthorized.

[45] Mr. Johnson filed a second level grievance requesting CSC to specify which of its policies allows for informal resolution to be an ongoing process and making a number of allegations about Mr. Somers and Officer Kunkel. The applicant further submitted that his attempts at retrieving his property were thwarted, that his property was illegally destroyed and that he was blocked from making a complaint to the police. In addition to the remedies sought in his first level grievance, Mr. Johnson requested the enforcement of Commissioner's Directive 060, the *Code of Discipline*. Specifically, he requested that an infraction be placed on the performance file of Mr. Somers.

[46] In the second level grievance response, Ms. Thérèse Leblanc, Assistant Deputy Commissioner of Operations, conceded that matters could have been resolved informally. She acknowledged that had the officers verified his Inmate Personal Property Record, they would have seen that most of the allegedly unauthorized items were in fact in his lawful possession and should have been returned to him. Ms. Leblanc confirmed that certain items were destroyed, but held that there was no basis to conclude that the seizure and destruction of the items were "illegal".

[47] Ms. Leblanc upheld the $15.00 disciplinary charge on the strength of Mr. Johnson's concession that he had at least one unauthorized item in his cell on October 6, 2005. As a corrective measure, Ms. Leblanc requested the Warden at WI to send out a memo reminding all staff of the importance of taking all reasonable steps to attempt informal resolution prior to issuing a disciplinary charge to an inmate. Unsatisfied, Mr. Johnson filed a third level grievance on February 24, 2006 wherein he alleged that CSC staff had illegally sub-delegated the power to sign CSC's grievance responses.

[48] Mr. Don Head, the Senior Deputy Commissioner, upheld the grievance in part. He agreed that Mr. Johnson should have been provided with an opportunity to speak with the police about his concerns. He noted that inmates who believe they are victims of a criminal act resulting from an action by a CSC employee have the right to access police in accordance with Commissioner's Directive 084, *Inmate's Access to Legal Assistance and the Police*. He acknowledged that Mr. Johnson had submitted an *Inmate Request* to contact the police and was wrongly told that it was not a matter for the OPP.

[49] The remainder of Mr. Johnson's grievance, however, was denied. With regard to Mr. Johnson's claim that there had been illegal sub-delegation, Mr. Head stated that there is a legally sanctioned framework for the delegation of power under paragraph 24(4) of the *Interpretation Act*, R.S., 1985, c. I-21. Mr. Head further explained that Mr. Johnson's grievance relating to the lack of informal resolution was addressed in the second level response and a memo was issued by the Warden as a corrective measure to remind all CSC staff of the importance of making an effort to attempt informal resolution where reasonable.

[50] Mr. Head also noted that Mr. Johnson's allegation about Mr. Kunkel's sexual remark had not been addressed in the first or second level responses. Here, Mr. Head found that it could not be concluded on a balance of probabilities that Mr. Kunkel made a sexually inappropriate comment to Mr. Johnson.

[51] Regarding the applicant's request for monetary compensation, Mr. Head explained that there is no policy or legislative basis for providing financial compensation to inmates in this circumstance. Lastly, Mr. Head mentioned Mr. Johnson's claim against the Crown for $768.07 as compensation for the items that were seized from his cell on October 6, 2005 and subsequently destroyed. Mr. Head held that his grievances in relation to that claim would be dealt with separately. Accordingly, no further action was required.

Analysis

[52] This application turns on whether CSC erred in upholding the decision to charge the applicant with a disciplinary offence under paragraph 40(j) of the CCRA through the CSC grievance proceedings. The decision under review is that at the final level.

[53] Section 41(1) of the CCRA provides that where a staff member believes on reasonable grounds that an inmate has committed or is committing a disciplinary offence, the staff member shall take all reasonable steps to resolve the matter informally, where possible. Subsection 41(2) of the CCRA stipulates that where an informal resolution is not achieved, the institutional head may, depending on the seriousness of the alleged conduct and any aggravating or mitigating factors, issue a charge of a minor disciplinary offence or a serious disciplinary offence.

[54] In the case at bar, Officer Kunkel and Officer Carson concluded that Mr. Johnson was in possession of unauthorized items and thus had committed or was committing a disciplinary offence. I can accept that the officers had reasonable grounds to believe that Mr. Johnson committed or was committing a disciplinary offence in light of the nature of the items in question, the fact that there had been a recent bomb threat, and the fact that Mr. Johnson is skilled in building and repairing electrical devices. Mr. Johnson was at work at the time of the seizure, therefore the officers could not resolve the matter informally on the morning of October 6th, 2005. I find it reasonable that the items were removed from his cell for security reasons and do not accept Mr. Johnson's allegation that this was some form of retaliatory action against him.

[55] Despite Mr. Johnson's efforts to pursue all possible avenues to retrieve his property, most of the items seized from his cell on October 6, 2005 were destroyed. The issues surrounding the destruction of his property will be addressed with respect to the T-1317-07 application.

[56] The evidence on record with respect to informal resolution is contradictory. Mr. Johnson asserts that informal resolution was not attempted by the officers. There is some evidence that Officer Kunkel spoke to the applicant and discussed the situation.

[57] In my view, the officers did not take all reasonable steps to resolve the matter informally prior to issuing a disciplinary charge. They failed to verify Mr. Johnson's Inmate Personal Property Record and did not discuss the matter with the inmate. Had they done so, they would have ascertained that most of the seized items were authorized to be in Mr. Johnson's possession. The respondent concedes that CSC failed to comply with its own policy regarding its obligations to take all reasonable steps to attempt informal resolution.

[58] Notwithstanding that conclusion, the record supports the Board's decision to uphold the disciplinary offence under paragraph 40(j) of the CCRA. It remains unclear which of the seized items was in fact unauthorized. The applicant contends that "most of his items were authorized". By necessary implication, Mr. Johnson had at least one unauthorized item in his cell on the day of the search and seizure. As a consequence, he was charged and fined according to policy.

[59] It is difficult to comment on the applicant's claim of a breach of procedural fairness without reference to a transcript of the disciplinary hearings. As discussed above, none was found upon

inquiry by the respondent's counsel. As Mr. Johnson did not raise this as a concern until the hearing of this application, I find that he has waived any right to complain of a procedural irregularity or denial of natural justice.

[60] In any event, Chairperson Steenburg acted reasonably in adjourning the hearing to determine whether or not the officers had attempted informal resolution. The statement obtained from the observing officer reads:

> On October 6, 2005 I observed officer CXII K. Kunkle speak with offender Johnson regarding the searching of his cell D-10. It was explained to him that during a security search an additionally monthly routine search was conducted. During this search it was explained that several unauthorized items were seized and removed. Offender understood our position and accepted the fact that this [sic] items removed could be considered unauthorized. Therefore, I [sic] offence report was written and offender Johnson was told this.

[61] Mr. Johnson was charged with a disciplinary offence under paragraph 40(j) for being in possession of an authorized item, which he has indirectly admitted to in his submissions. It was therefore not unreasonable for the applicant to be charged and fined $15.00 pursuant to Commissioner's Directive 580 – *Discipline of Inmates*.

[62] Mr. Johnson's concerns were addressed throughout the CSC grievance process, albeit not to his satisfaction. Corrective action was taken to ensure that staff at WI were reminded of the importance of attempting informal resolution prior to charging an inmate. Mr. Johnson was also assured in the third level grievance response that WI would ensure that when inmates request to contact the police, they are allowed to do so. The other complaints raised by the applicant are unfounded. For these reasons, this application is dismissed.

T-1317-07: DESCTRUCTION OF PROPERTY

[63] Mr. Johnson seeks judicial review of the CSC's decision to disallow his full claim for compensation for the destruction of the items that were seized from his cell on October 6, 2005.

Grievance Process & Decision under Review

[64] Mr. Johnson filed an *Inmate Claim for Lost or Damaged Effects* around December 30, 2005 listing 13 items that he alleged were seized from his cell on October 6, 2005 and subsequently destroyed:

a. BLKN UPS Power Bar ($114.99)
b. Game Civilization III ($77.86)
c. Univ AC Adapter ($22.59)
d. Power Bar Curtis 9 Outlet ($70.14)
e. Program Lost & Found/Power Quest ($102.47)
f. Clear Tape Pk 6 ($7.77)
g. 1 CD Pinnacle PCTV-PCTVPRO. Goes with my TV Tuner Card and makes the TV Card useless without the CD, thus replace everything ($132.25)
h. Power Bar X6 ($5.00)
i. TV Cable Wire and Spitter Box – Estimate Value ($10.00)
j. 1 CD Canon the world of photo quality 2. Goes with my printer and makes the printer useless without CD, thus replace everything ($200.00)
k. 1 CD Programs for Windows. Listed with 11 CD's Value at KP set on property sheet ($10.00)
l. 1 CD Power Director. Goes with BLKN UPS Power Bar listed above and makes it useless without CD
m. Pulser Tape Player Walkman. Value set st KP ($10.00)

Property records and receipts were attached to his claim to support his contention that he was in lawful possession of the items. He requested reimbursement in full for all 13 items. In addition, he

asked the respondent to deposit the reimbursement funds into his “current” account (as opposed to his savings account).

[65] On February 13, 2006 Mr. Johnson’s claim was upheld in part by Warden Monty Bourke. An investigation had revealed that most of the items that were seized from his cell on October 6, 2005 were destroyed in accordance with section 59 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (the “CCR Regulations”) notwithstanding the applicant’s efforts to retrieve the items that he legitimately owned within the 30-day prescribed limit. As compensation for some of the destroyed items, Mr. Johnson was offered a $65.00 settlement. An offer to replace some of the other items was made in accordance with CSC policy, namely Commissioner’s Directive 234 and 234-1.

[66] Unsatisfied, Mr. Johnson initiated a second level grievance claiming that four of the 13 items listed in his *Claim for Lost or Damaged Effects* were not accounted for in the respondent’s reply to his claim, namely the power bar “Curtis 9 Outlet”, one power bar “X6 Outlet”, one game “Civilization III”, and one program “Lost and Found/Power Request”. In the second level response, Ms. Therese Leblanc, the Assistant Deputy Commissioner of Regional Operations, conceded that most of the listed items should have never been seized in the first place as they were authorized to be in the applicant’s possession. She confirmed that many of the items that were seized from his cell on October 6, 2005 were destroyed before they could be returned. Ms. Leblanc explained that Mr. Johnson’s claim against the Crown was investigated and he was offered a fair settlement of $65.00. She held that his allegation that the seizure and destruction of his property constituted an illegal

action was unfounded. Lastly, Ms. Leblanc determined that most of the issues raised had already been addressed in previous grievances.

[67] Mr. Johnson instituted a third level grievance restating his claims. He argued that Ms. Leblanc failed to address Warden Bourke's oversight regarding the four items that were not addressed in the first level grievance response. In addition, he asked that Ms. Leblanc be prohibited from dealing with inmate grievances and that CSC staff be brought into line with the law.

[68] The applicant's third level grievance was upheld in part by Senior Deputy Commissioner Don Head. The latter agreed that Ms. Leblanc's second level reply did not adequately address the issues and erroneously referred to other grievances as having addressed the applicant's concerns. Mr. Head assured Mr. Johnson that appropriate action would be taken. The balance of his grievance was denied. With regard to Mr. Johnson's request that the financial compensation for the destroyed items be deposited into his current account, Mr. Head explained that CSC policy directs the manner in which compensation will occur and where it will be deposited (Commissioner's Directive 234, paragraphs 35 and 30 and Commissioner's Directive 860, paragraph 24). Regarding the items Mr. Johnson claims were never addressed in the first or second responses, Mr. Head restated that they had been addressed in previous responses. Mr. Head also denied the applicant's request for corrective action against Ms. Leblanc and held that his concerns had been addressed in previous grievances.

[69] Mr. Johnson sent an *Inmate Request* on July 17, 2006 to seek further clarification of the respondent's third level response. He maintained that four of the listed items had still not been

accounted for in the grievance responses and sought specifics as to where in the respondent's responses were all 13 items accounted for. In a response dated August 10, 2006, the Assistant Director of Offender Redress, Ms. Brigitte de Blois, explained that an amendment had been made to Warden Bourke's initial reply dated February 13, 2006, which included each of the 13 items listed in his initial claim. The operative portion of this amended response states:

> The Program Lost and Found / Power Quest was not noted as being removed from the cell nor was the Game Civilization III recorded as being removed. No compensation will be offered for these items. One BLKN UPS power cord is in A&D in your personal storage and the third power cord you are claiming was removed from your cell is recorded on your 514 as being destroyed December 5, 2000 with your initials noted beside the entry. There will be no compensation offered for the Powerbar X6 outlet you claim was removed from your cell during the search.

Analysis

[70] The issue here centers on whether the respondent erred in compensating the applicant for the destruction of his property and whether Mr. Johnson's rights were protected throughout the grievance process.

[71] Section 84 of the CCR Regulations provides that the institutional head shall take all reasonable steps to ensure that the effects of an inmate that are permitted to be taken into and kept in the penitentiary are protected from loss or damage. Mr. Johnson argues that the respondent breached its duty under section 84 by destroying items that were authorized to be in his possession. The respondent has conceded that many of the items seized from his cell on October 6, 2005 during a cell search were in fact authorized to be in his possession and were destroyed. As a result, Mr.

Johnson was offered a settlement of $65.00 for some items and an offer to replace some of the others in accordance with CSC policy.

[72] The rational behind the decision to destroy the items seized from Mr. Johnson's cell on October 6, 2005 remains unclear. The respondent contends that the items were destroyed in accordance with section 59 of the CCR Regulations. Upon my reading of that section, I do not see how the officers were justified in destroying the items. I am not, however, prepared to accept the applicant's proposition that the seizure and destruction of his property constituted an illegal action. The matter under review is not the reasonableness of the respondent's decision to destroy the items. The items in question have been destroyed. The focus of this review is on the reasonableness of the respondent's corrective action.

[73] The operative portion of the respondent's amended response to Mr. Johnson's claim for compensation reads as follows:

> (…) the following will be offered as compensation under the Claims Administration Act, policy guidelines governed by CD 234 and 234-1 of the policy. You will be offered a monitary [sic] amount of $65.00 to replace the AC adapter, clear tape, cable wire and splitter, program for windows and a walkman at their registered value on your 514 Property Record. CSC will offer to replace the following items as per CD 234 paragraph 35. One Belkin Surgemaster power bar 8 outlet, 1 TV Tuner Card and CD that will be placed into your stored effects and 1 canon printer.

[74] Paragraph 26 of Commissioner's Directive 234-1 provides that a claim against the Crown shall normally be accepted when the circumstances that gave rise to the claim indicate that CSC did not meet the requirements of section 84 of the CCR Regulations. This was the case here. CSC failed

to follow its own policies and as a result, Mr. Johnson's items were destroyed. Clearly, this does not meet the requirements of section 84.

[75] According to paragraph 35 of Commissioner's Directive 234, the CSC may, instead of offering monetary compensation, consider replacing the claimed effect with an identical one. Where an identical item is not available, an item of equivalent quality may be offered if the offender agrees, in writing, to accept the substitute item in lieu of money. The full cost to replace the effect(s) should not exceed the monetary settlement offer that would be made for the item(s). In the case at bar, the respondent has offered Mr. Johnson $65.00 as monetary compensation for some of the items and has offered to replace the others with identical ones. This, in my estimation, is not an unreasonable outcome. Mr. Johnson has been compensated according to policy (CD 234, CD 234-1 and CD 860) and all of the items that were seized from his cell on October 6th have been accounted for. No further action is required.

[76] Nevertheless, it is apparent that there are administrative deficiencies in the respondent's grievance process. The fact that four of Mr. Johnson's claimed items were addressed in an amended decision that was only made available to the applicant after he sent a post-grievance request is in my view problematic. Many of the items seized from his cell on October 6, 2005 and subsequently destroyed were authorized to be in his possession. At the least, Mr. Johnson was entitled to a clear explanation of how the respondent proposed to provide redress.

APPLICATION T-1315-07: SEIZURE OF THE TYPEWRITER

[77] The applicant seeks judicial review of CSC's decision to seize his electric typewriter as contraband and of the ensuing grievance process. The issue here is whether CSC committed a reviewable error in seizing the applicant's typewriter as contraband and whether the applicant was afforded all procedural fairness throughout the grievance process.

Grievance Process & Decision under Review

[78] Mr. Johnson purchased a *Brother EM-430* electric typewriter in April of 2005 from the Warkworth Literacy Council (WLC), an organized group through which inmates can purchase educational supplies. Following the search and seizure of his cell on October 6, 2005, the A&D department at WI advised Mr. Johnson that the typewriter put him over the $1500.00 cell effects limit and warned him that he "must hand in the typewriter or other items". In February 2006 the applicant met with Deputy Warden Somers and his Unit Manager, Mr. Banks, to discuss the matter. During this meeting, Mr. Johnson tried to explain that his typewriter had been approved as an "educational" item and that he purchased it on the assurance that it would not affect his $1500.00 cell effects limit prescribed under Commissioner's Directive 090, *Inmate Personal Property*. On February 22, 2006, Mr. Johnson's typewriter was seized as "contraband".

[79] Mr. Johnson filed a first level grievance on January 1st, 2006 in response to the respondent's allegation that he was over his cell effects limit and provided the following pieces of documentation to corroborate his position that his typewriter was an approved educational item and exempt from

his cell effect limit: a printout showing a withdrawal from his savings account, a copy of the *Inmate Trust Fund Bulk List*, a copy of the purchase order of the typewriter and a copy of his *Inmate Personal Property Record.*

[80] In a response letter dated February 23, 2006, A/Warden Chartrand explained to Mr. Johnson that there is no policy statement that allows his typewriter to be considered an educational exemption given that he was not enrolled in an educational course. The applicant was advised that he could keep the typewriter if he enrolled in an educational course, otherwise his typewriter would have to be placed with his stored effects. The following is an excerpt of the respondent's position:

> On February 14, 2005, you submitted an inmate request form to UM K. Banks indicating your choice not to obtain any school courses as you felt that AWCP had already approved the purchase of your typewriter and that CSC was breaching their legal obligation such as your original agreement to purchase your typewriter. **However, I have been advised that your typewriter approval was signed based on the fact that your computer was seized at the time and that you now have it back in your possession**. [Emphasis Added].
>
> **It should be noted that it is the responsibility of both the offender and signing authority to verify with A&D department to ensure that any purchases are not going to put the offender over his cell effects limit.** [Emphasis Added].
>
> In consulting with the A&D department staff, they have indicated that they **have requested from you on a few occasions to voluntarily return your typewriter to A&D or to decrease items** on your cell effects in order to make financial room for your typewriter to be maintained in your cell with respect to the $1500.00 cell effects limit. You have refused any informal resolution effects by CSC staff and have demanded that either you be allowed to keep your typewriter in your cell or be reimbursed for the cost of your typewriter in the sum of $792.75 of which both these options are against policy. [Emphasis Added].

[81] Unsatisfied, Mr. Johnson instituted a third level grievance. He restated his initial request for the return of his typewriter or, in the alternative, reimbursement for the typewriter plus interest. The applicant also alleged that CSC breached its statutory duty and was negligent in the administration

of sections 2, 4(g), 90 and 91 of the CCRA in regard to the delay and quality of the first and second level grievance responses. In addition, he claimed damages for the tardiness of the responses, the "false and misleading information" contained therein and the "illegal re-writing of policy".

[82] In a third level decision dated June 27, 2006, the respondent rejected the applicant's allegation that CSC staff violated the rule of law or abused their power as the applicant failed to identify any specific incidents. Regarding his claim that the responses were late, the respondent submitted that previous responses had addressed the issue and no further action was required. The following was decided with respect to the typewriter:

> The third level review did not find any documentation that supports [the applicant's] claim of being permitted to purchase the typewriter as an educational item. It is noted that, on being issued [the] typewriter, [the Applicant] signed [his] property record noting that it had been assigned an appropriate value. There is no indication on the property record that it was to have been considered educational in nature and would therefore, not have an impact on the $1,500.00 cell limit. (…) You have been advised of the steps you need to take in order to have the typewriter released to you for use in your cell.

[83] The applicant filed a post-grievance *Inmate Request*. Attached thereto were the same four documents that he tendered in support of his initial grievance to prove that his typewriter was purchased as an educational item. Mr. Johnson asked CSC to explain why, in their view, these documents do not substantiate his claim. He also sought confirmation that Ms. Leblanc was in compliance with CD 060. In her second level response, Ms. Leblanc had conceded that the previous decision was late, but denied that it had been done "wilfully or negligently". Mr. Johnson argued that nowhere in the policy is there a requirement that an act or omission be done "wilfully or negligently" for it to be considered illegal.

[84] CSC replied by restating that the documentation tendered by the applicant merely showed that the typewriter was purchased through the WLC and was duly valued and recorded on the applicant's property record; it does not indicate that he was permitted to purchase the typewriter as an educational item without any impact to his cell effects limit of $1500.00. Regarding the applicant's claim against Ms. Leblanc, CSC explained that the Senior Deputy Commissioner's signature on the third level grievance indicates that she was in compliance. A third level grievance response is considered to be the conclusion of the grievance process.

Analysis

[85] The applicant argues that his typewriter is an educational item and is therefore exempt from his $1500.00 personal property limit. The distinction as an "educational" item, the applicant submits, is critical. The expression "contraband" is defined under section 2(1) of the CCRA. An electrical typewriter does not meet that definition. But for this distinction, his typewriter would not have been issued to him in the first place. The applicant argues that by seizing his typewriter and qualifying it as "contraband", the respondent acted *ultra vires* of the CCRA.

[86] According to paragraph 12 of Commissioner's Directive 090 ("CD 090"), which has been replaced with Commissioner's Directive 566-12, *Personal Property of Inmates* since the seizure of the typewriter occurred, "inmates shall normally be allowed to retain personal property items in their cells which fall within the following categories, in accordance with the institutional personal property list (…) g) calculators, typewriters, batteries and battery chargers. Pursuant to paragraph 16 of CD 090, the combined dollar value of items listed in paragraph 12 shall not exceed $1500.00.

[87] Pursuant to paragraph 15 of CD 090, health care items (including medical bracelets), religious articles, educational textbooks or supplies, and arts and crafts raw materials should be allowed. Each item must be approved by a staff member at the Unit Manager level or above, following consultation with the head of the appropriate department. The value of these items is not included in the $1500.00 limit stated at paragraph 16 of CD 090.

[88] Further, paragraph 17 of CD 090 provides that the combined dollar value of authorized computer hardware, software and peripherals shall not exceed $2500.00. Thus, if an applicant is in possession of a computer, his or her allowable cell effect limit increases from $1500.00 to $2500.00.

[89] The applicant submits that he has always been under the assumption that he was authorized to purchase his typewriter because it was an educational item included under paragraph 15 of CD 090 and thus exempt from his $1500.00 limit. The respondent counters that Mr. Johnson has merely shown that the typewriter was purchased and recorded on his personal property list. CSC approved the purchase of Mr. Johnson's electric typewriter in April 2005 because his computer was seized. There is no evidence of an agreement indicating that the typewriter was issued as an educational supply and thereby falls under one of the exemptions under paragraph 15 of CD 090.

[90] Typewriters are listed under paragraph 12 of CD 090 as a personal property item allowable in the inmate's cell that counts toward their $1500.00 limit. As is indicated in paragraph 15, in order to qualify as an exemption to the $1500 cell effect limit, an item must be approved as such with a staff member at the Unit Manger level or above, following consultation with the head of the appropriate department. The applicant has tendered documents in an attempt to substantiate his

contention that his typewriter was purchased as an educational item. The evidence falls short, in my view, of supporting that argument.

[91] On the evidence, Mr. Johnson was allowed to purchase his typewriter in April 2005 because his cell effect limit at the time allowed him to do so. Inmates must be aware that their limit will fluctuate over time. Mr. Johnson purchased his typewriter in April 2005 and was advised that he was over his $1500.00 cell effects limit 7 months later. He was given the option to return the typewriter or other items of equal value or to enrol in an educational course so that his typewriter could fall under the exemption pursuant to paragraph 15 of CD 090. Mr. Johnson refused to do either arguing that he was pursuing religious studies on his own and that, in any event, his typewriter was purchased as an educational item.

[92] While I can accept that CSC acted reasonably in seizing the typewriter given that Mr. Johnson was over his cell effect limit, the typewriter was improperly characterized as “contraband” when it was seized. The CCRA defines “contraband” as follows:

"contraband" means

(*a*) an intoxicant,

(*b*) a weapon or a component thereof, ammunition for a weapon, and anything that is designed to kill, injure or disable a person or that is altered so as to be capable of killing, injuring or disabling a person, when possessed without prior authorization,

(*c*) an explosive or a bomb or a component thereof,

(*d*) currency over any applicable prescribed limit, when possessed without prior authorization, and

(*e*) **any item** not described in paragraphs (*a*) to (*d*) **that could jeopardize the security of a penitentiary or the safety of persons, when that item is possessed without prior authorization**; [Emphasis Added].

Paragraph 36 of CD 090 also addresses the issue of "contraband":

> During routine cell searches, staff shall pay attention to canteen and other personal items that are not on the inmate's personal property record or hobby craft permit. If an inmate has items in the cell that were not purchased legitimately or are in excess of prescribed limits, these items shall constitute unauthorized items (as distinct from contraband). Where unauthorized items, or items of contraband, are found, they may be seized and the inmate may be charged with a disciplinary infraction. Seized items of contraband must be disposed of in accordance with the Service's policies and procedures. [Emphasis Added].

[93] While determinations regarding the interpretation of what constitutes "contraband" are primarily questions of law, CSC employees are uniquely located to determine the risk to the institution that certain items may pose and their decisions on these matters are entitled to deference. On the facts of this case, however, I would not classify Mr. Johnson's typewriter as "contraband". In my estimation, Mr. Johnson's typewriter was an "unauthorized item" as it was an item in excess of his prescribed limit.

[94] The typewriter is also not an educational item in the case at bar. As a general principle, the onus of proving that personal property falls within an exception or exemption lay with the inmate. In *Poulin v. Canada (Attorney General)*, 2005 FC 1293 the Court reviewed a CD 090 exception for inmates who were authorized to have a computer and peripheral equipment as they were explicitly "grandfathered to allow authorization". *Poulin* set a high evidentiary standard for establishing an "acquired right" to personal property under CD 090 and distinguished between permission to acquire personal property and "grandfathering" specific classes of personal property as separate bases of acquired rights. In the case at bar, Mr. Johnson has tendered documents that merely prove the purchase of the item. This, in my view, does not satisfy the burden. Mr. Johnson has not persuaded me that his typewriter was purchased as an approved "educational item" and thus cannot

be exempt from his $1500.00 cell effect limit. In the result, I find it reasonable that the respondent denied his claim.

APPLICATION T-1318-07: NO POST SEARCH REPORT

[95] This is an application for judicial review of the conduct of Ms. Pauline McGee, WI's Acting Coordinator of Correctional Operations (A/CCO), in relation to her treatment of the applicant's complaint and CSC's failure to hold Ms. McGee and others accountable for violations of the CCRA and of CSC policy.

Decision under Review

[96] Following the seizure of his electric typewriter, Mr. Johnson filed an *Inmate Request* with Ms. McGee for a copy of a Post Search Report detailing the seizure. Ms. McGee's delay in responding to his request was significant. Consequently, the applicant filed a complaint against her which in turn was not replied to in a timely manner. His complaint was made against Ms. McGee for having failed to reply to his initial request for a Post Search Report. Ms. McGee replied to Mr. Johnson's initial request for a Post Search Report by letter dated May 11th, 2006. She explained that a review of the search log for February revealed that his cell had not been searched on the day alleged, but rather on February 27th and nothing was found or removed.

[97] Mr. Johnson filed a 1st level grievance on or about June 16, 2006 alleging that he had presented Ms. McGee with a seizure tag proving that his typewriter had been seized but she refused

to investigate this violation and denied his complaint. He restated his request for a Post Search Report and asked that action be taken against Ms. McGee and other WI staff for having failed to comply with the CCRA.

[98] His first level grievance was upheld. Warden Bourke confirmed that there in fact had been no Post Search Report following the seizure of his typewriter as required by Commissioner's Directive 566-9. He assured Mr. Johnson that corrective action would be taken and that he would be provided with a Post Search Report. However, the respondent did not follow through with its commitment.

[99] In turn, the applicant filed a second level grievance through which he reaffirmed his initial allegation that Ms. McGee was in violation of his inmate rights and alleged that he had been provided with "false information" in the respondent's first and second level grievance responses seeing as no corrective measure had been taken. Mr. Johnson had still not been provided with a copy of a Post Search Report. The applicant requested that CSC policy be enforced. In a second level grievance response, Mr. Johnson's grievance was upheld in part. Ms. Leblanc, who was seized with the second level grievance, ordered that a Post Search Report be completed and forwarded to the applicant. Furthermore, she directed that staff be reminded of the importance of completing this report.

[100] Mr. Johnson filed a third level grievance on November 13, 2006 alleging "contempt of the rule of law and inmates' rights" and "abuse of power" by CSC employees. Specifically, he alleged that Ms. McGee constantly ignores timeframes and denies complaints that should be upheld. In

support of his contention, he made reference to eight different complaints that he has submitted to Ms. McGee in the past in which he claims she failed to respond within proper time frames, did not comply with the procedures regarding searches and Post Search Reports and, in some cases, wrongfully denied the complaint. The applicant submitted that Ms. McGees's actions, or inactions, warranted an infraction as per Commissioner' Directive 060, *Code of Discipline*. Mr. Johnson claimed damages for the respondent's "breach of statutory duty and negligence".

[101] His grievance was denied by Acting Senior Deputy Commissioner, Mr. Don Demers, who found that many of the issues raised were irrelevant to the substantive issue of his initial claim, namely the lack of a Post Search Report following the seizure of his typewriter. Mr. Demers denied his grievance on the basis that either appropriate corrective actions had already been taken or that some of the issues raised were not relevant to the substantive issue of his claim. His response stated:

> (…) it is noted that the second level had upheld your submission in part and directed that the report now be written and you be provided with a copy of it. As the institution has (30) working days from receipt of the response to comply with the corrective as directed by the second level, you can expect to receive a copy of the report in the second week of December. At this point in time, the corrective action is not late and there is no basis for a complaint related to it.

Analysis

[102] Mr. Johnson's 1st level grievance was initiated because he was not provided with a copy of the Post Search Report detailing the seizure of his typewriter on February 22, 2006 as required under paragraph 18 of Commissioner's Directive 566-9. The ensuing grievances were filed because of delay and poor administration by the respondent. Mr. Johnson advised the Court during the

hearing that he received the Post Search Report about a month after he filed the second level grievance. His third level grievance relates almost entirely to his complaints about Ms. McGee's performance of her duties.

[103] In an application for judicial review arising from the CSC grievance process, it is not the Court's role to sanction CSC employees for administrative failures but to determine whether there have been reviewable errors in the final level decisions or breaches of procedural fairness. I can, however, note deficiencies or systemic problems. Here, the respondent failed to provide the applicant with a Post Search Report in a timely manner as required by policy and delayed in responding to his request for the said report. But these errors were addressed in the grievance process and I find no reviewable error or denial of natural justice that would justify the Court's intervention.

Conclusion

[104] Mr. Johnson's complaints about the seizure of his personal effects by WI officials and his subsequent treatment in the disciplinary process were, in part, justified. It is apparent from the institutional responses to his grievances that errors were made and that officials did not fully comply with CSC policies and regulations. Nonetheless, Mr. Johnson's complaints were ultimately addressed through the grievance process. The standard of review that I must apply does not require perfection, as Mr. Johnson appears to demand, but reasonableness. The events complained of occurred in a correctional setting where custodial officials are dealing with multiple offenders and the many problems that arise on a daily basis. Mistakes will be made. The questions for the Court to

determine are whether the applicant was denied procedural fairness and whether the final level grievance decisions were reasonable.

[105] I am satisfied that procedural fairness was respected and the third level grievance decisions fall within the range of defensible and acceptable outcomes required by the standard of review I must apply. Accordingly, each of these applications will be dismissed.

Costs

[106] Costs normally follow the outcome of the proceedings. The respondent's fees and disbursements amount to $5,239.53. It is unlikely that Mr. Johnson can pay that amount should the Court award costs to be assessed according to the tariff.

[107] As noted above, there were a number of failings in CSC's initial responses to Mr. Johnson's complaints. While his grievances were ultimately addressed, this is a factor that the Court may take into account in exercising its discretion to award costs.

[108] In the result, I think it appropriate to impose a fixed amount of $200.00 in costs for each application in addition to the $200.00 outstanding for a total of $1000.00 payable to the respondent.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that:

1. The applications in Court files T-1265-07, T-1315-07, T-1317-07, T-1318-07 are dismissed;
2. Costs are payable by the applicant to the respondent in the amount of $200.00 for each application in addition to the costs previously awarded; and
3. A copy of these Reasons for Judgment and Judgment shall be placed on each file.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1265-07 T-1315-07 T-1317-07 T-1318-07
STYLE OF CAUSE:	WILLIAM A. JOHNSON and THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Belleville, Ontario
DATE OF HEARING:	September 17, 2008
REASONS FOR JUDGMENT:	MOSLEY J.
DATED:	December 12, 2008

APPEARANCES:

William A. Johnson	FOR THE APPLICANT (Self-represented Applicant)
Karen Watt Shain Widdifield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

WILLIAM A. JOHNSON Warkworth Institution Campbellford, Ontario	FOR THE APPLICANT (Self-represented Applicant)
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT