Date: 20101022

Docket: T-32-10

Citation: 2010 FC 1040

Ottawa, Ontario, October 22, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MICHAEL AARON SPIDEL

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant is a self-represented litigant serving a life sentence at Ferndale Institution (Institution) in Mission, British Columbia. He seeks judicial review of a third level grievance decision dated December 16, 2009.

II. BACKGROUND

[2] Prior to this grievance, the Applicant filed 17 grievances covering a number of different subject matters. Extensions of time in which to respond were taken under the grievance procedure

on the grounds that the volume of complaints and the complexity of the issues raised required additional time in which to provide a proper response.

[3] The Applicant then took a third level grievance which is described:

> This grievance is concerning several lengthy delays I have been experiencing with Responses from the second level.

The body of the grievance complains in more detail about the delay in the grievance process and the fact that some of the second level grievances were not designated “high priority”.

[4] The third level decision (Decision) dismissed the grievance in large measure but did find that there was one incidence of delay, of two days, in responding to a particular grievance.

[5] The Notice of Application for Judicial Review does not identify with any precision what is being reviewed and merely recites the grounds in section 18.1 for (a), (b), (d) and (e) of the *Federal Courts Act*. It is clear, however, that the Decision was the target of the challenge.

[6] In the course of the filing of materials in this judicial review, the Applicant added in copious amounts of evidence that was not before the third level grievance decision maker. The evidence included affidavits of different individuals complaining of delays in the processing of their own grievances, and articles and other information including the Annual Reports of the Office of the Correctional Investigator.

The Respondent quite properly takes objection to the filing of materials not before the decision maker.

[7] At the judicial review hearing, it appeared that the Applicant's complaint is threefold: that the Institution used form letters to advise that an extension of time was being taken to respond to a grievance; that there was no justification for the extensions taken; and that the Institution was engaged in a systemic course of activity designed to frustrate the grievance process by using unjustified extensions of time.

[8] The issues before the Court are:

(a) Whether the Commissioner committed a reviewable error in rendering the Decision;

(b) Whether the Applicant's challenge to the CSC's grievance procedure in respect of extensions of time is within the proper scope of this application; and

(c) If so, whether the Applicant is entitled to the remedy sought.

[9] Rather than dealing with the objection to the additional evidence as a preliminary matter, the Court heard the Applicant's case and the full response.

III. ANALYSIS

A. *Impugned Decision*

[10] In respect of the Decision, the standard of review, as referred to in *Johnson v. Canada (Attorney General)*, 2008 FC 1357, is that of reasonableness because the issues are essentially findings of fact and mixed law and fact.

[11] The Applicant seeks a declaration that the current grievance procedure is not an adequate substitute for judicial review. This raises issues of natural justice and procedural fairness which, if relevant, would be assessed on the standard of correctness (*Bonamy v. Canada (Attorney General)*, 2010 FC 153).

[12] With respect to the Decision, the Applicant in the hearing indicated that he was not attacking this Decision but attacking the system; however, his Notice of Application was directed towards that Decision, and stated that the Decision is in error.

[13] The Applicant has failed to address the specifics of any error committed in respect of that Decision. Aside from arguing that the grievance process is systemically flawed and the Institution is taking liberties with the treatment of grievances, the Applicant has not pointed to any evidence that the extensions of time taken by the Commissioner on the grounds of volume of complaints and complexity of complaints is unjustified.

[14] On this ground alone this application should be dismissed. A judicial review of a decision is not a free-ranging attack on each and every aspect of the operation of the prison grievance system without some focus on the specific facts of the case.

B. *Grievance Procedure*

[15] The Applicant submitted a large body of evidence to allege that the internal CSC grievance procedure is inadequate. The additional evidence was also designed to address the deficiencies that Justice Mainville found in the *Bonamy* case and in a real sense to "boot strap" this judicial review by providing evidence not provided in the *Bonamy* case. A difficulty with the Applicant's approach is that all of this was done after the Decision was rendered.

[16] While there should generally be separate judicial reviews in respect of each decision, one judicial review can be submitted in respect of "a continuous course of conduct" or a "matter".

[17] The difficulty with the Applicant's position concerning the inadequacy of the grievance procedure is that there is no evidence that such an adequacy arose in his case. Indeed the internal grievance procedure appeared to function adequately and reasonably. The one area in which the grievance procedure fell short was in respect of the two-day delay which was addressed by the Institution.

[18] The Applicant says that his complaint is about more than merely the fact that extensions of time were taken, or that there were delays in giving notice of extensions of time, but rather that there

was no merit in claiming extensions of time. However, there is no evidence in this case that the extensions asserted in respect of the Applicant's grievances were not justified. To a large extent, the Applicant is seeking to raise, within the context of the Decision and the treatment of his own grievances which are not infirmed, a claim on behalf of himself and other inmates that the whole process of claiming extensions is being misused.

[19] This is not a proper case for the Court to consider the adequacy of the grievance process generally. The Applicant would appear to wish the Court to embark upon a review of systemic failures in the system. However, there is no adequate record upon which to make that determination, even if the Court was inclined to do so.

[20] In the absence of the Commissioner dealing with a complaint that takes up the issues which the Applicant attempted to have this Court decide, this Court should not embark upon that type of review without a decision by the Institution on those issues.

C. *Remedies*

[21] Since the Applicant has failed to establish that the Decision is legally infirmed and the Court is unprepared to embark on the review of systemic problems, the remedies sought are academic even if they were available – a point of considerable doubt.

IV. CONCLUSION

[22] This application for judicial review is dismissed.

[23] The Respondent has asked for costs in this matter and under the circumstances where the Applicant has failed to address the very Decision under attack, the Court is prepared to award the Respondent costs in the amount of $2,500 plus disbursements.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed with costs to the Respondent in the amount of $2,500 plus disbursements.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-32-10
STYLE OF CAUSE:	MICHAEL AARON SPIDEL and CANADA (ATTORNEY GENERAL)
PLACE OF HEARING:	Vancouver, British Columbia (by video-conference)
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REASONS FOR JUDGMENT AND JUDGMENT:	Phelan J.
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APPEARANCES:

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Ms. Sarah Stanton	FOR THE RESPONDENT

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