Federal Court  Cour fédérale

**Date: 20111012**

**Docket: T-1374-10**

**Citation: 2011 FC 1149**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, October 12, 2011**

**PRESENT: The Honourable Justice Mr. Boivin**

**BETWEEN:**

**STÉPHANE MARLEAU**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act* ("FCA"), RSC, 1985, c F-7, and the *Corrections and Conditional Release Act*, SC 1992, c 20 ("CCRA"), of certain decisions made by the Correctional Service of Canada ("CSC"). The applicant is hereby asking the Court to review his security classification and to transfer him to a minimum security institution close to his family.

Factual background

[2] The applicant is an inmate at the Port-Cartier Institution, a federal maximum security penitentiary in Port-Cartier, Quebec. He has been serving a prison sentence since being convicted of robbery and fraud.

[3] According to the provisions of the CCRA, a security classification is assigned to all offenders. On July 29, 2009, when the applicant was at the Warkworth Institution in Ontario, the CSC calculated the applicant's security classification using the Security Reclassification Scale. The result was 26 points. Although this result corresponds to a medium security classification, it also falls within the 5% discretionary range that justifies a maximum security classification.

[4] On August 21, 2009, the applicant's security classification was evaluated by his parole officer at the Warkworth Institution. The following classifications were recommended: a maximum classification for institutional adjustment, a medium classification for escape risk, a maximum classification for risk to public safety and a maximum classification for security level. These recommendations were approved by the warden of the Warkworth Institution.

[5] On August 26, 2009, the applicant filed a second level grievance with the CSC to challenge the decision on his security classification evaluation.

[6] On November 30, 2009, a second level grievance decision was issued, confirming the applicant's maximum security classification.

[7] On January 8, 2010, the applicant filed a third level grievance with the CSC.

[8] A few months after he filed his third level grievance, the applicant contacted the Office of the Correctional Investigator Canada to enquire about the status of his third level grievance.

[9] In a letter dated July 12, 2010, Sofia Gutierrez, an investigator with the Office of the Correctional Investigator (a distinct government branch from the CSC), wrote to the applicant to inform him that she had contacted the Offender Redress Division at National Headquarters to find out why it was taking so long to respond. Ms. Gutierrez wrote in her letter that there had been a policy breach in the processing of the applicant's grievance.

[10] In a letter dated August 19, 2010, the CSC's Offender Redress Division (National Headquarters) acknowledged receipt of the applicant's third level grievance and informed him that a response would be sent no later than December 13, 2010.

[11] During the week of August 20, 2010, the applicant filed an application for judicial review with the Federal Court. The application was received on August 25, 2010. The main goals of his application were a review of his maximum security classification and a transfer to a minimum security institution close to his family.

[12] On September 24, 2010, the applicant received a letter from the Executive Director and General Counsel of the Office of the Correctional Investigator, Ivan Zinger. In his letter, Mr. Zinger acknowledged the delay in responding to the applicant's grievance. He explained that

the applicant's situation was [TRANSLATION] "much too common and [that] delays in processing complaints and grievances by Canada's correctional system are a systemic problem".

[13] On October 8, 2010, the respondent wrote to the applicant to again explain that CSC would be deciding on his third level grievance before December 13, 2010.

[14] On December 10, 2010, the CSC issued a third level decision concerning the applicant's grievance. The applicant's grievance was allowed in part. The applicant received a copy of the decision on December 13, 2010.

[15] On December 21, 2010, the respondent wrote the applicant a letter, reminding him that the CSC had made a decision concerning his third level grievance and asking him to withdraw his application for judicial review before January 15, 2011. In that letter, the respondent informed the applicant that his application had become moot.

[16] Since the applicant's application for judicial review was not withdrawn, the respondent filed a motion to strike the notice of application on February 28, 2011. On March 22, 2011, Justice Martineau issued an order dismissing the respondent's motion to strike. Justice Martineau indicated that he was not satisfied that the application for judicial review had become completely academic, noting that a tangible and concrete dispute still seemed to exist.

[17] On April 27, 2011, the applicant's security classification was reduced to medium, and the applicant read this decision on May 2, 2011.

[18] On June 20, 2011, the applicant submitted a request to be transferred from the Port-Cartier Institution to the Archambault Institution. This request is currently being processed.

[19] The applicant did not file a new application for judicial review of the third level decision issued on December 10, 2010.

Issues

[20] Several issues have been raised. Essentially, the Court finds that the following questions are relevant in this case:

1. *Has the application for judicial review become moot or academic? If the answer to this question is no:*

2. *Is the application for judicial review interlocutory?*

3. Can the applicant use the present application for judicial review, which was filed on August 25, 2010, to challenge the second level grievance response issued on November 30, 2009 or the third level grievance response issued on December 10, 2010?

Relevant legislation

[21] The relevant legislation is reproduced in Appendix A.

Analysis

*1. Has the application for judicial review become moot or academic?*

[22] The applicant alleges that even though the respondent replied to his third level grievance on December 10, 2010, there is still an issue to be resolved (*Zarzour v Canada (Attorney General)*, [2000] FCJ No 103, 176 FTR 252). He submits that he waited 11 months for a

response and that the CSC grievance system does not work. The applicant also refers to Justice Martineau's order regarding the motion to strike dated March 22, 2011, in which the judge stated that a tangible and concrete issue remained to be resolved.

[23] The respondent cites *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231, and submits that the present application is moot since the CSC issued a response to the third level grievance on December 10, 2010. The respondent also argues that judicial review before the Federal Court is not the appropriate medium for settling all of the applicant's grievances.

[24] The Court points out that in *Borowski*, the Supreme Court of Canada developed the mootness doctrine. Essentially, the Supreme Court of Canada discussed the parameters of a practice that allows a court to decline to decide a case which raises merely a hypothetical or abstract question. A controversy must exist not only when the application for judicial review is instituted, but also at any other moment during the proceeding. Consequently, an issue can become moot if it is resolved as the result of events occurring during the course of the judicial review.

[25] The approach involves two steps. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case.

[26] At the second stage, three factors must be considered to determine whether the Court is able to exercise its discretion: (i) the existence of the adversarial system; (ii) judicial economy; and (iii) the need for courts to demonstrate some sensitivity to the effectiveness or efficacy of judicial intervention and to be aware of the judiciary's role in our political framework.

[27] After having read the applicant's application for judicial review and heard the parties, the Court is of the view that, in his application, the applicant is actually seeking a mandamus. In fact, the applicant's application is not concerned with any particular decision but rather with compelling National Headquarters to issue a decision regarding his third level grievance:

> [TRANSLATION]
> This is the purpose of my application for judicial review. I filed a third level grievance in January 2010 (Reference No.V40A00034617), which was given to the warden, Théresa Westfall, to challenge my security classification, which was 23.5 at the 2009-08-07 evaluation (sic) the score was 23.5; however, I never received a response. (Applicant's Record, p. 2)

[28] In light of the principles described, the Court finds that the applicant's application has become moot since the CSC issued a response to the applicant's third level grievance in December 2010, thus resolving the issue. The Court also finds that the applicant did not exhaust all internal remedies before filing his application for judicial review and that there are no exceptional circumstances (*C.B. Powell Ltd. v Canada (Border Services Agency)*, 2010 FCA 61, 400 NR 367). In that sense, the present application for judicial review is interlocutory.

[29] The Court also notes that at no point did the applicant amend his notice of application for judicial review or directly challenge the third level decision issued in December 2010. The Court furthermore notes that the applicant's classification was reduced to medium on April 27, 2011.

[30] The fact that the application is academic and moot is enough to dispose of the matter. The Court therefore does not have to deal with questions 2 and 3. The Court will deal nonetheless with certain questions discussed at the hearing in the hope that this will be useful for the parties.

[31] First, it should be noted that the CCRA, the *Corrections and Conditional Release Regulations* (the Regulations) and Commissioner's Directive No. 81, *Offender Complaints and Grievances* (CD 081) (Appendix A) introduce a comprehensive grievance process in the corrections system.

[32] Specifically, under section 27 of CD 081, the complaint and grievance process includes four levels: written complaints, first level grievances, second level grievances and third level grievances. Section 30 of CD 081 provides that grievers can apply for judicial review of the final decision with the Federal Court under subsection 18.1(2) of the *Federal Courts Act*.

[33] The Court also points out that the case law demonstrates that, in principle, a person can turn to the courts but only after having exhausted all possible remedies available in the administrative process. As a general rule, therefore, judicial review should not be allowed where an adequate alternative remedy exists (*Harelkin v University of Regina*, [1979] 2 SCR 561, 26 NR 364; *Giesbrecht v Canada*, [1998] FCJ No 621, 148 FTR 81; *Vaughan v Canada*, 2005 SCC 11, [2005] 1 RCS 146).

[34] The doctrine of exhaustion was recently clearly described by the Federal Court of Appeal in *C.B. Powell Ltd* (above). The Federal Court of Appeal reiterated that, to prevent fragmentation of the administrative process and piecemeal court proceedings, absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course and has finished. The Federal Court of Appeal also confirmed that very few circumstances qualify as "exceptional".

[35] In his application for judicial review, the applicant in fact admits that he did not exhaust the CSC grievance process because he wanted to obtain a response to his grievance. He alleges that the CSC took too much time to render a decision. At the hearing, the parties referred to *Caruana v Canada (Attorney General)*, 2006 FC 1355, [2006] FCJ No 1715, and *Marachelian v Canada (Attorney General)*, [2001] 1 FC 17, 187 FTR 238. In the Court's opinion, these decisions do not apply to the facts of the present matter, for the following reasons.

[36] In *Caruana*, the applicant had every reason to believe that, given the difficulties he had experienced at the second level of the grievance resolution procedure, it was likely that he would not receive a quick response at the third level. In that case, the applicant had received a decision at the second level. He had then applied for judicial review within the required timeframe, namely, within 30 days of the decision (subsection 18.1(2) of the *Federal Courts Act*). After hearing the case on its merits, the Court dismissed the application for judicial review. The facts raised in *Caruana* do not apply in the present matter because the second level decision was issued within a reasonable timeframe; the application for judicial does not concern the second

level decision; and the goal of the application filed by the applicant in the present case was to accelerate the third level decision.

[37] *Marachelian* involved an application for judicial review of a refusal to re-evaluate the classification of the inmate in question and to transfer him. In that case, the Court found that, in light of evidence indicating that the CSC had not acted independently and that other government agencies had dictated its decisions, the circumstances warranted an exception to the general rule that internal remedies should be exhausted beforehand. Consequently, the Court determined that the application for judicial review was appropriate. However, in the case at bar, the evidence does not demonstrate that the CSC was influenced by another agency and, consequently, did not act independently. The decision in *Marachelian* therefore does not apply in the present matter.

[38] The Court nonetheless observes that, in light of the record, and this despite there being some mitigating factors, the CSC did not comply with its own policy described in CD 081 in terms of its analysis and processing of the applicant's third level grievance (letter from Sofia Gutierrez, Investigator, Officer of the Correctional Investigator, July 12, 1010; letter from Ivan Zinger, Executive Director and General Counsel, Office of the Correctional Investigator, September 24, 2010).

[39] In sum, and in light of the foregoing, the Court finds that the applicant cannot use the present application for judicial review to challenge the response to the second level grievance dated November 30, 2009, or the response to the third level grievance dated December 10, 2010.

[40] The application for judicial review filed by the applicant is moot and academic. It will therefore be dismissed.

[41] Given the result, costs would normally follow the event and be awarded to the respondent. Even though this issue has become moot and academic, it once again highlights certain deficiencies in the processing of inmates' complaints. In these circumstances, the Court will exercise its discretion and make no order as to costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed, without costs.

"Richard Boivin"
Judge

Certified true translation
Johanna Kratz, Translator

## Appendix A

## Relevant Legislation

*Federal Courts Act*

| | |
|---|---|
| Time limitation | Délai de présentation |
| **18.1** (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days. | **18.1** (2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder. |

*Federal Courts Rules*, SOR/98-106 (Rules)

| | |
|---|---|
| Limited to single order | Limites |
| **302**. Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought. | **302**. Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée. |

*Corrections and Conditional Release Act*

| Security Classification | Cote de sécurité |
|---|---|
| Service to classify each inmate | Assignation |
| **30**. (1) The Service shall assign a security classification of maximum, medium or minimum to each inmate in accordance with the regulations made under paragraph 96(*z.6*). | **30**. (1) Le Service assigne une cote de sécurité selon les catégories dites maximale, moyenne et minimale à chaque détenu conformément aux règlements d'application de l'alinéa 96*z.6*). |
| Service to give reasons | Motifs |
| (2) The Service shall give each inmate | |

reasons, in writing, for assigning a particular security classification or for changing that classification.

(2) Le Service doit donner, par écrit, à chaque détenu les motifs à l'appui de l'assignation d'une cote de sécurité ou du changement de celle-ci.

Grievance procedure

Griefs

Grievance procedure
**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*).

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

Regulations
**96**. The Governor in Council may make regulations
…
(*u*) prescribing an offender grievance procedure;

…

(*z.6*) respecting the assignment to inmates of security classifications pursuant to section 30, which regulations must set out factors to be considered in determining the security classification of an inmate;
…

Règlements
**96**. Le gouverneur en conseil peut prendre des règlements :
[…]
*u*) fixant la procédure de règlement des griefs des délinquants;

[…]

*z.6*) concernant l'attribution — aux termes de l'article 30 — d'une cote de sécurité au détenu ainsi que les critères de détermination de celle-ci;
[…]

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

Security Classification

Cote de sécurité

**17**. The Service shall take the following factors into consideration in determining the security classification to be assigned to an inmate pursuant to section 30 of the Act:
(*a*) the seriousness of the offence committed by the inmate;
(*b*) any outstanding charges against the

**17**. Le Service détermine la cote de sécurité à assigner à chaque détenu conformément à l'article 30 de la Loi en tenant compte des facteurs suivants :

*a*) la gravité de l'infraction commise par le détenu;
*b*) toute accusation en instance contre

inmate;
(*c*) the inmate's performance and behaviour while under sentence;
(*d*) the inmate's social, criminal and, if available, young-offender history and any dangerous offender designation under the *Criminal Code*;

(*e*) any physical or mental illness or disorder suffered by the inmate;
(*f*) the inmate's potential for violent behaviour; and
(*g*) the inmate's continued involvement in criminal activities.

**18**. For the purposes of section 30 of the Act, an inmate shall be classified as
(*a*) maximum security where the inmate is assessed by the Service as

(i) presenting a high probability of escape and a high risk to the safety of the public in the event of escape, or
(ii) requiring a high degree of supervision and control within the penitentiary;

(*b*) medium security where the inmate is assessed by the Service as

(i) presenting a low to moderate probability of escape and a moderate risk to the safety of the public in the event of escape, or
(ii) requiring a moderate degree of supervision and control within the penitentiary; and

(*c*) minimum security where the inmate is assessed by the Service as
(i) presenting a low probability of escape and a low risk to the safety of the public in the event of escape, and
(ii) requiring a low degree of

lui;

*c*) son rendement et sa conduite pendant qu'il purge sa peine;
*d*) ses antécédents sociaux et criminels, y compris ses antécédents comme jeune contrevenant s'ils sont disponibles et le fait qu'il a été déclaré délinquant dangereux en application du *Code criminel*;
*e*) toute maladie physique ou mentale ou tout trouble mental dont il souffre;
*f*) sa propension à la violence;

*g*) son implication continue dans des activités criminelles.

**18**. Pour l'application de l'article 30 de la Loi, le détenu reçoit, selon le cas :
*a*) la cote de sécurité maximale, si l'évaluation du Service montre que le détenu :
(i) soit présente un risque élevé d'évasion et, en cas d'évasion, constituerait une grande menace pour la sécurité du public,
(ii) soit exige un degré élevé de surveillance et de contrôle à l'intérieur du pénitencier;
*b*) la cote de sécurité moyenne, si l'évaluation du Service montre que le détenu :
(i) soit présente un risque d'évasion de faible à moyen et, en cas d'évasion, constituerait une menace moyenne pour la sécurité du public,
(ii) soit exige un degré moyen de surveillance et de contrôle à l'intérieur du pénitencier;

*c*) la cote de sécurité minimale, si l'évaluation du Service montre que le détenu :
(i) soit présente un faible risque d'évasion et, en cas d'évasion,

supervision and control within the penitentiary.

constituerait une faible menace pour la sécurité du public,
(ii) soit exige un faible degré de surveillance et de contrôle à l'intérieur du pénitencier.

Offender Grievance Procedure

Procédure de règlement de griefs des délinquants

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

**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) 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) 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) 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) Lorsque, conformément au 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,

**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

(*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.

*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.

**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**. 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.

**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) 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.

(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.

**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) 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.

(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.

**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) 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).

Commissioner's Directive No. 81, *Offender Complaints and Grievances* (CD 081)

Levels of the Complaint and Grievance Process

27. The complaint and grievance process includes four levels: written complaints, first level grievances, second level grievances and third level grievances. The initial submission will be at the complaint

Paliers du processus de règlement des plaintes et griefs

27. Le processus de règlement des plaintes et griefs comprend quatre paliers : plaintes écrites, griefs au premier palier, griefs au deuxième palier et griefs au troisième palier. Une plainte doit être présentée

level unless otherwise indicated in this directive or unless the supervisor of the staff member in question is the Institutional Head, the Regional Deputy Commissioner or the Commissioner.

d'abord au palier des plaintes, à moins d'indication contraire dans la présente directive ou à moins que le surveillant de l'employé visé dans la plainte soit le directeur de l'établissement, le sous-commissaire régional ou le commissaire.

30. Grievers who are not satisfied with the final decision of the complaint and grievance process may seek judicial review of this decision at the Federal Court within the time limit prescribed at subsection 18.1 (2) of the *Federal Courts Act.*

30. Le plaignant qui n'est pas satisfait de la décision finale rendue dans le cadre du processus de règlement des plaintes et griefs peut faire une demande de révision judiciaire de cette décision à la Cour fédérale dans les délais prescrits au paragraphe 18.1 (2) de la *Loi sur les Cours fédérales*.

Timeframes

35. Decision-makers will respond to complaints and grievances in the following timeframes:

Délais

35. Les décideurs doivent répondre aux plaintes et aux griefs dans les délais décrits ci-après.

**Complaint, First Level and Second Level**

- **High Priority** - Within fifteen (15) working days of receipt by the decision-maker.
- **Routine Priority** - Within twenty-five (25) working days of receipt by the decision-maker.

**Third Level**

- **High Priority** - Within sixty (60) working days of receipt by the decision-maker.
- **Routine Priority** - Within eighty (80) working days of receipt by the decision-maker.

**Plaintes, griefs au premier et au deuxième paliers**

- **Prioritaires -** Dans les quinze (15) jours ouvrables suivant la réception de la plainte ou du grief par le décideur.
- **Non prioritaires -** Dans les vingt-cinq (25) jours ouvrables suivant la réception de la plainte ou du grief par le décideur.

**Griefs au troisième palier**

- **Prioritaires -** Dans les soixante (60) jours ouvrables suivant la réception du grief par le décideur.
- **Non prioritaires -** Dans les quatre-vingts (80) jours ouvrables suivant la réception du grief par le décideur.

**Extensions**

41. If the Institutional Head, the Regional Deputy Commissioner or the Director of Offender Redress considers that more time is necessary to deal adequately with a complaint or grievance, the griever must be informed in writing of the reasons for the delay and of the date by which he/she may expect to receive the response.

**Prolongation du délai de traitement**

41. Si le directeur de l'établissement, le sous-commissaire régional ou le directeur des Recours des délinquants juge qu'il a besoin d'un délai plus long pour traiter adéquatement une plainte ou un grief, il doit informer le plaignant par écrit des raisons de la prolongation du délai et de la date à laquelle il peut s'attendre à recevoir une réponse.

**Complaints to the Correctional Investigator**

79. Offenders may submit complaints to the Correctional Investigator even if the matter is the subject of a current or past complaint or grievance. The Correctional Investigator will decide how to deal with the complaint at his/her discretion, under Part III of the CCRA.

**Plaintes déposées devant l'enquêteur correctionnel**

79. Les délinquants peuvent déposer une plainte devant l'enquêteur correctionnel même s'il s'agit d'une question ayant déjà fait ou faisant présentement l'objet d'une plainte ou d'un grief. La façon de traiter la plainte est laissée à la discrétion de l'enquêteur correctionnel, conformément à la partie III de la LSCMLC.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1374-10 |
| **STYLE OF CAUSE:** | Stéphane Marleau v Attorney General of Canada |

**JUDICIAL REVIEW HEARD BY VIDEOCONFERENCE ON SEPTEMBER 12, 2011, BETWEEN OTTAWA, ONTARIO, AND PORT-CARTIER, QUEBEC**

| | |
|---|---|
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | BOIVIN J. |
| **DATED:** | October 12, 2011 |

**APPEARANCES:**

| | |
|---|---|
| Stéphane Marleau | FOR THE APPLICANT (REPRESENTING HIMSELF) |
| Talitha A. Nabbali | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Stéphane Marleau<br>Port-Cartier Institution<br>Port-Cartier, Quebec | FOR THE APPLICANT (REPRESENTING HIMSELF) |
| Myles J. Kirvan<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |