

Federal Court



Cour fédérale

**Date: 20120117**

**Docket: T-572-11**

**Citation: 2012 FC 64**

**Ottawa, Ontario, January 17, 2012**

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

**BETWEEN:**

**ANTHONY ROBERT PAUL**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review of a decision of the Correctional Service of Canada [CSC], dated March 8, 2011, that imposed on Mr. Anthony Robert Paul (Mr. Paul), an involuntary transfer from the Ste-Anne-des-Plaines penitentiary to the Cowansville penitentiary, for the purpose of satisfying new security requirements, following a reclassification of his security level.

[2] The Court notes that the originating motion was confusing because the applicant was listed as Paul Anthony Robert when the applicant's name is in fact Mr. Anthony Robert Paul.

[3] For the foregoing reasons, the application for judicial review will be allowed.

## **II. Facts**

[4] Mr. Paul, a 43-year-old Métis, was an inmate at the Ste-Anne-des-Plaines minimum security penitentiary. In 1987, he was sentenced to thirty months imprisonment for robbery, assault, fraud, breaking and entering and failing to comply with the conditions of an undertaking. In 1989, he was once again convicted for several robberies committed while he was on day parole and was sentenced to seven years in prison. Since 1992, Mr. Paul has been serving a life sentence after having been found guilty of the second-degree murder of a fellow inmate. In 1994, an additional 60 days was added to his sentence after he was found to be in possession narcotics in a penal institution.

[5] Since the start of his sentence, the CSC noted that Mr. Paul's criminality was linked to his drug problem. Narcotics smuggling was one the significant circumstances surrounding the homicide committed by Mr. Paul, for which he is now serving a life sentence.

[6] In October 2008, he tested positive for tetrahydrocannabinol following a series of blood tests. In July 2009, Mr. Paul was subject to disciplinary action after attempting to smuggle tobacco into the prison.

[7] On January 9, 2011, an investigative report by the security service revealed to the CSC that Mr. Paul was apparently the organizer of a scheme involving a member of the staff at Ste-Anne-des-Plaines to smuggle tobacco into the institution. Mr. Paul also allegedly orchestrated two deliveries of cannabis for his own personal consumption.

### **III. Legislation**

[8] Sections 4 and 27 of the *Corrections and Conditional Release Act*, RS, 1992, c 20 as well as sections 11 and 12 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (the Regulations) are reproduced in the Appendix to these reasons.

### **IV. Issue and standard of review**

#### **A. Issue**

[9] There is only one issue in this application for judicial review:

- *In the present case, did the CSC breach its duty of procedural fairness to Mr. Paul?*

**B. Standard of review**

[10] Where an issue of procedural fairness arises, “the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43. In addition to Mr. Spidel’s common law procedural fairness rights, consideration must be given in this case to the procedural rights afforded to inmates through the relevant legislative provisions” (see *Spidel v Canada (Attorney General)*, 2011 FC 999 at para 30). The correctness standard applies in this case.

**V. Position of the parties****A. Mr. Paul’s position**

[11] Mr. Paul argues that the CSC erred in law and breached procedural fairness with regard to disclosure of information in the process that was followed in reaching its decision to involuntarily transfer him and raise his security classification. That decision, in his view, was made contrary to the requirements of the CSC’s enabling statute and its duty of procedural fairness.

[12] He claims that section 27 of the Act is unequivocal as to the CSC’s duty to disclose information to inmates. Under this section “[w]here an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the

offender, the person...that is to take the decision shall, ...give the offender a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information”.

[13] Given the Act and the Regulations, Mr. Paul argues that, in this case, he was entitled to all the information that was considered in the CSC’s taking of the decision. He further claims that the CSC did not rely on even one of the exceptions set out in subsection 27(3) of the Act to exempt itself from its duty to disclose to him all the information that was considered in the taking of its decision.

[14] Mr. Paul notes that *Demaria v Regional Classification Board*, [1987] 1 FC 74 [*Demaria*], applies in this case and reinforces his position that the CSC did not provide adequate reasons for its decision because no significant details were cited (see paragraph 18 of the applicant’s memorandum). He cites the Federal Court of Appeal when it remarked that “the appellant was reduced to a simple denial, by itself almost always less convincing than a positive affirmation, and futile speculation as to what the case against him really was” (see *Demaria* at para 9) and claims that this is what occurred in the present case.

[15] Mr. Paul also relies on the decision of the Supreme Court of Canada in *May v Ferndale Institution*, [2005] 3 SCR 809 [*May*], in which it established that “[a] duty of procedural fairness rests on every public authority making administrative decisions affecting the rights, privileges or interests of an individual” (para 94). Furthermore, “[i]n order to assure the fairness of decisions concerning prison inmates, s. 27(1) of the [Act] imposes an onerous disclosure obligation on CSC.

It requires that CSC give the offender, at a reasonable period before the decision is to be taken, all information to be considered in the taking of the decision or a summary of that information” (see *May* at para 95). The Supreme Court also indicated that Parliament “has specifically identified the circumstances in which CSC can refuse to disclose information” (see *May* at para 96). That decision sets out the parameters of the duty of fairness of CSC.

[16] Mr. Paul also notes that the Federal Court recently ruled on the National Parole Board’s duty to disclose protected reports provided by CSC in *Mymryk v Canada (Attorney General)*, 2010 FC 632 [*Mymryk*]. He argues that there are a number of similarities between *Mymryk* and the way his case was conducted.

[17] In fact, Mr. Paul claims he received no information to date other than the allegation that, on two occasions, he supposedly organized the smuggling of tobacco into the Sainte-Anne-des-Plaines institution, with the help of a CSC employee. He was not subject to any disciplinary action or any police investigation following these alleged events. Mr. Paul also maintains that he never received the preventive security investigation report or any precise details about the allegations made against him.

[18] He argues that he was unable to defend himself against the CSC’s allegations, which is a breach of the very principle of procedural fairness.

[19] In addition, he claims that the CSC failed to take into account his statements in response to his involuntary transfer. The CSC is also alleged to have disregarded the positive findings in the

report by Mr. Kingsley, the parole officer (Exhibit ARP-03, page 33 of the applicant's memorandum), as well as positive findings in the report by the escorting officer dated December 16, 2010 (Exhibit ARP-04, page 47 of the applicant's memorandum). The CSC is further alleged to have ignored the offender's pay review document (Exhibit ARP-07, page 58 of the applicant's memorandum).

[20] Mr. Paul also emphasizes the fact that he was never searched. Lastly, he claims that the parole officer completed his transfer assessment without even having received the preventive security report or the findings of the investigation.

[21] As well, he notes that the transfer measure used must be the least restrictive, pursuant to paragraph 4(d) of the Act. He argues that the respondent breached this duty because there were other, less restrictive alternatives he could have been subject to. Moreover, he complains that the respondent failed to explain how its involuntary transfer decision on March 8 was truly the least restrictive option. Thus, the transfer was unreasonable, contrary to the Act and a breach of procedural fairness.

## **B. Respondent's position**

[22] The respondent first points out that the content of section 27 of the Act reflects the importance Parliament attached to the CSC's duty to uphold the principles of procedural fairness when making decisions affecting inmates. It then noted that sections 11 and 12 of the Regulations

set out the terms and conditions that apply to the disclosure of information to inmates in cases of involuntary transfer.

[23] In this case, Mr. Paul received a copy of the documents prepared for his transfer within the time frames set out in the Act and its Regulations. The respondent noted that Mr. Paul had received the following documents: the "Involuntary Segregation Placement" (see page 51 of the applicant's record), the "Sharing of Information Fifth Working Day Review" (see page 56 of the applicant's record), the Offender's Segregated Status Institutional Review from January 13, 2011 (see page 61 of the applicant's record), the "Assessment for Decision" (see page 79 of the applicant's record), the "Security Reclassification Scale" (see page 97 of the applicant's record) and the "Notice of Involuntary Transfer Recommendation / Purpose: respond/reassess sec. req." (see page 101 of the applicant's record).

[24] The respondent acknowledged from the outset that the principles of procedural fairness apply to every public authority making an administrative decision which affects the rights or privileges of an individual (see *Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 38). However, the respondent asserts that the decision impugned in this application for judicial review must be placed in context.

[25] The respondent argues that the extent of the duty of procedural fairness must be tempered by taking into account the legislative context applicable to the decision maker. He argues that procedural fairness is not applied the same way in every case.

[26] The respondent maintains that one must be prudent when analyzing matters of procedural fairness in a prison setting. The Supreme Court stated that the courts should only intervene in instances of substantial injustice, given the very particular context of a prison setting, in order that the process of prison administration is not unduly burdened or obstructed (see *Cardinal v Kent Institution*, [1985] 2 SCR 643 at para 15).

[27] According to the respondent, the nature of the decisions calls for variances in the application of the principles procedural fairness. For example, the rights, privileges and interests referred to, and the rationale for decisions taken in cases of revocation of parole, disciplinary offences or transfers, will influence the extent of the duty of procedural fairness.

[28] In *Gallant v Canada (Deputy Commissioner, Correctional Service Canada)*, [1989] FCJ No 70 at para 28, Justice Marceau wrote:

... In the case of a decision aimed at imposing a sanction or a punishment for the commission of an offence, fairness dictates that the person charged be given all available particulars of the offence. Not so in the case of a decision to transfer made for the sake of the orderly and proper administration of the institution and based on a belief that the inmate should, because of concerns raised as to his behaviour, not remain where he is. In such a case, there would be no basis for requiring that the inmate be given as many particulars of all the wrong doings of which he may be suspected....

[29] The respondent argues that a decision by CSC to reclassify and transfer an inmate to a penitentiary with another level of supervision is an administrative decision made for the purpose of maintaining a safe and orderly institution. The authorities simply have to demonstrate that the information they have in their possession raises sufficiently substantial concerns to warrant a transfer.

[30] The respondent also notes that under section 27 of the Act, the disclosure of a summary of the information is sufficient to meet this legal requirement.

[31] The summary of information must be sufficiently detailed so as to permit the inmate to respond to the allegations of the CSC (see *Athwal v Ferndale Institution*, [2006] BCJ No 2083, 2006 BCSC 1386 at paras 32-51 [*Athwal*]).

[32] In the present case, the respondent claims that Mr. Paul received the relevant information. On December 16, 2010, the CSC informed him of his transfer to administrative segregation during the investigation into his involvement in tobacco smuggling (see the document: Involuntary Segregation Placement, at page 51 of the applicant's record).

[33] The respondent further notes that Mr. Paul also had a meeting with the authorities on December 21, 2010, in order to discuss the reasons why he was held in segregation (see the document: Sharing of information Fifth Working day Review, at page 56 of the applicant's record).

[34] In addition, at the hearing on January 13, 2011, before the Segregation Review Board, Mr. Paul denied any involvement in tobacco smuggling. However, he admitted to being an active smoker (see document: Offender's Segregated Status Institutional Review, at page 66 of the applicant's record).

[35] The respondent recalls that on February 11, 2011, Mr. Paul once again met with authorities following his placement in segregation. On March 4, 2011, Mr. Paul received the Notice of Involuntary Transfer Recommendation. The notice included the results of the investigation and CSC findings concerning the risk posed by tobacco smuggling within a minimum security institution.

[36] The respondent notes that a parole officer met with Mr. Paul about his transfer. However, he declined to make representations against that decision.

[37] The respondent argues that Mr. Paul was able to read the CSC's findings and that he had an opportunity to discuss them with various prison officials and make representations.

[38] The respondent asserts that Mr. Paul has not shown that he truly believes that his case was compromised due to a breach of procedural fairness. The respondent further argues that Mr. Paul did not raise the issue of a breach of procedural fairness at the earliest opportunity (*Hudon c Canada (Procureur Général)*, [2001] FCJ No 1836 [*Hudon*]).

[39] The respondent argues that the CSC's decision was reasonable because Mr. Paul had violated his supervision conditions on a number of occasions. The warden bases his or her decision on reports of an expert in risk management (see *Athwal* at para 49). Thus, the warden is not obliged to explain the reasons for which a less restrictive reason should apply. The respondent maintains that it is implicit that the resources at the Ste-Anne-des-Plaines institution are insufficient to provide proper supervision of Mr. Paul. According to these arguments, the application for judicial review must be dismissed.

## VI. Analysis

- *In the present case, did CSC meet its duty of procedural fairness to M. Paul?*

[40] Under section 27 of the Act, the person or body that is to take the decision must disclose all the information that was considered in the taking of the decision within a reasonable period, in order to allow the inmate to make submissions in opposition to the decision to proceed with his or her transfer.

[41] In addition, as the respondent noted in his memorandum, Mr. Paul received all of the relevant documents regarding his transfer from the Ste-Anne-des-Plaines institution to the Cowansville institution.

[42] At no time did Mr. Paul claim that he opposed the transfer. He instead mentioned that he did not want to make representations to refute the decision to proceed with his transfer to the Cowansville penitentiary.

[43] In its decision, the CSC writes that “you have received, on March 4, 2011, an Involuntary Transfer Notice, at which time you refused to acknowledge receipt of the document and refused to indicate if you wished to submit representations in this regard” (see the CSC’s decision, at page 7 of the applicant’s record). The CSC further adds that “a parole officer met with you in the segregation

area, at which time you indicated that you did not wish to submit a rebuttal pertaining to your transfer” (see the CSC’s decision, at page 7 of the applicant’s record).

[44] According to the respondent, Mr. Paul cannot argue that he was unable to make representations opposing the CSC’s decision because, on reading his statements, it was Mr. Paul himself who declined to make any representations.

[45] The Court believes that a distinction must be made between the case law cited by the respondent and the case at bar. In *Demaria*, the Federal Court of Appeal stated that the question “is to know whether the appellant was given adequate notice of what was being alleged against him and a fair opportunity to answer those allegations” (see *Demaria* at para 5). In this case, the institution refused, among other things, to provide the information to both the inmate and to the inmate’s counsel, on the pretext that information pertaining to security was confidential.

[46] The issue raised in this application for judicial review regards the adequacy of the information disclosed to Mr. Paul and his decision not to make representations in opposition to the transfer.

[47] The CSC notice was not sufficiently detailed so as to allow M. Paul to make submissions challenging the reasons behind the involuntary transfer decision. Contrary to what the respondent argues by referring us to *Gallant*, we are not faced with a case where “the failure to give proper notice to the inmate was not justified by any valid reason”, or for a reason set out in subsection

27(3) of the Act (see *Gallant* at para 10). The CSC would also have been required to seek an exemption from the Commissioner, pursuant to subsection (3) of section 27.

[48] The Court is of the view that there was a breach of procedural fairness because the CSC's notice was not sufficiently detailed. Thus, even if Mr. Paul had wanted to make submissions, the notice provided him with none of the details that would have allowed him to challenge the findings of the investigation. The *Demaria* decision is clear: a notice of transfer must be based on more than mere random suspicion about the inmate. The Court of Appeal writes, at paragraphs 8 and 9 of its decision:

[8] ... He is given no hint of what those grounds are. The allegations against him are devoid of every significant detail. When? Where? How? Whence came the poison? How was it obtained? For what purpose? How much? The allegation is said to be based on information obtained by the Millhaven staff and the Ontario Provincial Police. What information comes from which source? Is there an informer involved? If so, how much of the substance of his statement can be revealed while protecting his identity? Have the police pursued their enquiries? Have they made any arrests? The list of questions is almost endless.

[9] In the absence of anything more than the bald allegation that there were grounds to believe that he had brought in cyanide, the appellant was reduced to a simple denial, by itself almost always less convincing than a positive affirmation, and futile speculation as to what the case against him really was.

[49] This excerpt is unequivocal as to the contents of a notice of involuntary transfer. In this case, the Court has uncovered a major deficiency. Counsel for the respondent points out that subsection 27(1) allows for a summary to be provided. The Court agrees; however, this summary must also provide the inmate with details about the allegations levelled against him. In the present case, Mr. Paul is suspected of organizing a tobacco-smuggling ring at Ste-Anne-des-Plaines institution, with

the help of a staff member, except that no further details are provided; there is only a reference to two incidents, with no indication as to dates, places or circumstances. The Court could pose the same questions as in *Demaria*. Where? When? How? With which accomplice? Under what circumstances?

[50] The inadequacy of a notice may constitute, on certain occasions, a breach of the maxim *Audi Alterem Partem*, which is one of the cornerstones of natural justice and procedural fairness. Such is the case here.

[51] At the hearing, the respondent was insistent that there was no doubt that concerns about security explained why a summary was provided to Mr. Paul. If such were the case, subsection 27(3) provides a process that would have remedied the deficiency.

[52] Could Mr. Paul have validly waived his right to challenge the inadequacy of the notice? Contrary to what counsel for the respondent claims, the Court believes it would have been difficult for Mr. Paul to waive his right to challenge the transfer decision if he was unaware of the facts on which his alleged offences were based.

[53] As to the proposition that Mr. Paul had an obligation to raise the breach of procedural fairness at the earliest opportunity, the Court is aware of *Hudon*, but this principle cannot be applied in the present case because Mr. Paul never participated in the process which led to the impugned decision.

[54] Lastly, given our findings on the first issue, it is not necessary for the Court to consider Mr. Paul's alternative arguments concerning the Warden's duty to explain how his decision meets the criterion of the least restrictive measure.

## **VII. Conclusion**

[55] The Court allows the application for judicial review and refers the decision back to CSC for reconsideration, with costs.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that**

1. the application for judicial review is allowed; and
2. the Court refers the decision back to CSC for reconsideration.

With costs.

“André F.J. Scott”

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Judge

## APPENDIX

- Sections 4 and 27 of the *Corrections and Conditional Release Act*, SC 1992, c. 20, read as follows:

### Principles that guide the Service

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are

(a) that the protection of society be the paramount consideration in the corrections process;

(b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(c) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components

### Principes de fonctionnement

4. Le Service est guidé, dans l'exécution de ce mandat, par les principes qui suivent :

a) la protection de la société est le critère prépondérant lors de l'application du processus correctionnel;

b) l'exécution de la peine tient compte de toute information pertinente dont le Service dispose, notamment des motifs et recommandations donnés par le juge qui l'a prononcée, des renseignements obtenus au cours du procès ou dans la détermination de la peine ou fournis par les victimes et les délinquants, ainsi que des directives ou observations de la Commission nationale des libérations conditionnelles en ce qui touche la libération;

c) il accroît son efficacité et sa transparence par l'échange, au moment opportun, de renseignements utiles avec les autres éléments du système de justice pénale

of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims and the public;

*(d)* that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

*(e)* that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;

*(f)* that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

*(g)* that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

*(h)* that correctional policies, programs and practices respect

ainsi que par la communication de ses directives d'orientation générale et programmes correctionnels tant aux délinquants et aux victimes qu'au grand public;

*d)* les mesures nécessaires à la protection du public, des agents et des délinquants doivent être le moins restrictives possible;

*e)* le délinquant continue à jouir des droits et privilèges reconnus à tout citoyen, sauf de ceux dont la suppression ou restriction est une conséquence nécessaire de la peine qui lui est infligée;

*f)* il facilite la participation du public aux questions relatives à ses activités;

*g)* ses décisions doivent être claires et équitables, les délinquants ayant accès à des mécanismes efficaces de règlement de griefs;

*h)* ses directives d'orientation générale, programmes et méthodes

gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

(j) that staff members be properly selected and trained, and be given

(i) appropriate career development opportunities,

respectent les différences ethniques, culturelles et linguistiques, ainsi qu'entre les sexes, et tiennent compte des besoins propres aux femmes, aux autochtones et à d'autres groupes particuliers;

*i)* il est attendu que les délinquants observent les règlements pénitentiaires et les conditions d'octroi des permissions de sortir, des placements à l'extérieur et des libérations conditionnelles ou d'office et qu'ils participent aux programmes favorisant leur réadaptation et leur réinsertion sociale;

*j)* il veille au bon recrutement et à la bonne formation de ses agents, leur offre de bonnes conditions de travail dans un milieu exempt de pratiques portant atteinte à la dignité humaine, un plan de carrière avec la possibilité de se perfectionner ainsi que l'occasion de participer à l'élaboration des directives d'orientation générale et programmes correctionnels.

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

Information to be given to offenders

**27.** (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.

Idem

(2) Where an offender is entitled by this Part or the regulations to be given reasons for a decision taken by the Service about the offender, the person or body that takes the decision shall, subject to subsection (3), give the offender, forthwith

Communication de renseignements au délinquant

**27.** (1) Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

Idem

(2) Sous réserve du paragraphe (3), cette personne ou cet organisme doit, dès que sa décision est rendue, faire connaître au délinquant qui y a droit au titre de la présente partie ou des règlements les renseignements pris en compte dans la décision, ou un

after the decision is taken, all the information that was considered in the taking of the decision or a summary of that information.

sommaire de ceux-ci.

#### Exceptions

#### Exception

(3) Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize

(3) Sauf dans le cas des infractions disciplinaires, le commissaire peut autoriser, dans la mesure jugée strictement nécessaire toutefois, le refus de communiquer des renseignements au délinquant s'il a des motifs raisonnables de croire que cette communication mettrait en danger la sécurité d'une personne ou du pénitencier ou compromettrait la tenue d'une enquête licite.

(a) the safety of any person,

(b) the security of a penitentiary, or

(c) the conduct of any lawful investigation,

the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (a), (b) or (c).

#### Right to interpreter

#### Droit à l'interprète

(4) An offender who does not have an adequate understanding of at least

(4) Le délinquant qui ne comprend de façon satisfaisante aucune des deux

one of Canada's official languages is entitled to the assistance of an interpreter

langues officielles du Canada a droit à l'assistance d'un interprète pour toute audition prévue à la présente partie ou par ses règlements d'application et pour la compréhension des documents qui lui sont communiqués en vertu du présent article.

(a) at any hearing provided for by this Part or the regulations; and

(b) for the purposes of understanding materials provided to the offender pursuant to this section.

- Sections 11 and 12 of the *Corrections and Conditional Release Regulations*, SOR/92-620, read as follows:

**11.** An institutional head shall ensure that an inmate is informed in writing of the reasons for the placement of the inmate in a particular penitentiary and that the inmate is given an opportunity to make representations with respect thereto,

**11.** Le directeur du pénitencier doit veiller à ce que le détenu soit informé par écrit des motifs de sélection du pénitencier où il est incarcéré et qu'il ait la possibilité de présenter ses observations à ce sujet dans l'un des délais suivants :

(a) where the penitentiary placement process takes place in a provincial correctional facility, within two weeks after the initial placement of the inmate in a penitentiary; or

a) si le processus de placement pénitentiaire a lieu dans un établissement correctionnel provincial, dans les deux semaines qui suivent son incarcération initiale dans le pénitencier;

(b) where the penitentiary placement process takes place in a penitentiary, before the transfer of the inmate to the assigned penitentiary but after the initial reception process.

b) si le processus de placement pénitentiaire a lieu dans un pénitencier, avant son transfèrement au pénitencier désigné, mais après la période de réception initiale.

**12.** Before the transfer of an inmate pursuant to section 29 of the Act, other than a transfer at the request of the inmate, an institutional head or a staff member designated by the institutional head shall

**12.** Sauf dans le cas du transfèrement demandé par le détenu, le directeur du pénitencier ou l'agent désigné par lui doit, avant le transfèrement du détenu en application de l'article 29 de la Loi :

(a) give the inmate written notice of the proposed transfer, including the reasons for the proposed transfer and the proposed destination;

a) l'aviser par écrit du transfèrement projeté, des motifs de cette mesure et de la destination;

(b) after giving the inmate a reasonable opportunity to prepare representations with respect to the proposed transfer, meet with the inmate to explain the reasons for the proposed transfer and give the inmate an opportunity to make representations with respect to the proposed transfer in person or, if the inmate prefers, in writing;

b) après lui avoir donné la possibilité de préparer ses observations à ce sujet, le rencontrer pour lui expliquer les motifs du transfèrement projeté et lui donner la possibilité de présenter ses observations à ce sujet, en personne ou par écrit, au choix du détenu;

(c) forward the inmate's representations to the Commissioner or to a staff

c) transmettre les observations du détenu au commissaire ou à l'agent

member designated in accordance with paragraph 5(1)(b); and

désigné selon l'alinéa 5(1)*b*);

(*d*) give the inmate written notice of the final decision respecting the transfer, and the reasons for the decision,

*d*) l'aviser par écrit de la décision définitive prise au sujet du transfèrement et des motifs de celle-ci :

(i) at least two days before the transfer if the final decision is to transfer the inmate, unless the inmate consents to a shorter period; and

(i) au moins deux jours avant le transfèrement, sauf s'il consent à un délai plus bref lorsque la décision définitive est de le transférer

(ii) within five working days after the decision if the final decision is not to transfer the inmate.

(ii) dans les cinq jours ouvrables suivant la décision, lorsque la décision définitive est de ne pas le transférer.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-572-11

**STYLE OF CAUSE:** ANTHONY ROBERT PAUL  
v  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 1, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SCOTT J.

**DATED:** January 17, 2012

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