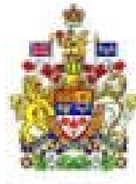
Federal Court of Appeal  Cour d'appel fédérale

Date: 20110302

Docket: A-44-09

Citation: 2011 FCA 76

CORAM: **DAWSON J.A.**
LAYDEN-STEVENSON J.A.
STRATAS J.A.

BETWEEN:

WILLIAM A. JOHNSON

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard by videoconference between Ottawa, Ontario and Campbellford, Ontario

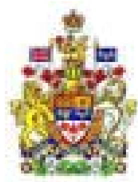
on February 25, 2011.

Judgment delivered at Ottawa, Ontario, on March 2, 2011.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: DAWSON J.A
STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

[1] The appellant (Mr. Johnson) is an inmate at Warkworth Institution (Warkworth). He filed four applications for judicial review with respect to related third-level grievance decisions of Correctional Service Canada (CSC). Justice Mosley, a judge of the Federal Court (the judge), heard the applications together and dismissed each of them: 2008 FC 1357. On this appeal, Mr. Johnson appeals from the Federal Court judgment in relation to three of the four applications. The Attorney General of Canada (the Crown) maintains that the appeal should be dismissed. I agree with the Crown regarding two of the applications, but disagree with respect to one of them.

Background

[2] Each of Mr. Johnson's grievances was multi-layered. However, the errors he alleges on the part of the judge in relation to the applications in issue are concise and narrow. To provide context, a brief summary of the factual background is required. However, only those facts relevant to the issues on appeal will be reviewed.

[3] Mr. Johnson has been at Warkworth since November, 1999. Within the institution, he works as a machine operator and is proficient in building and repairing electrical devices. On October 5, 2005, while Mr. Johnson was working, two CSC officers searched his cell. The officers concluded that a number of electrical devices and articles in the cell were likely unauthorized. They seized the items. Apparently, Mr. Johnson had previously been permitted to have such articles in his cell. Mr. Johnson asked one of the officers (also a member of his case management team) to return the items or to explain the seizure. According to Mr. Johnson, the officer dismissed his request and uttered a sexually inappropriate comment. Although Mr. Johnson asked his parole officer to arrange a meeting with the correctional supervisor to discuss the situation, he claims he was never afforded an opportunity to resolve the matter informally.

[4] Mr. Johnson was charged pursuant to paragraph 40(j) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the Act). That provision creates a disciplinary offence where, without prior authorization, an inmate is in possession of an item that is not authorized by a Commissioner's Directive or by a written order of the institutional head. The Chairperson of the Minor Disciplinary Offence Board (the board) upheld the charge and imposed a $15.00 fine. Mr. Johnson grieved that

determination primarily on the basis that there had been no attempt at informal resolution. When his grievance was denied at the third-level, he initiated an application for judicial review. I will refer to it as the disciplinary offence application.

[5] CSC officials later destroyed the seized items. Mr. Johnson filed an Inmate Request for Lost or Damaged Effects seeking compensation. CSC offered $65.00 compensation for some of the items and replacement of the others. Mr. Johnson found the offer insufficient and grieved, unsuccessfully. Again, he commenced an application for judicial review. I will refer to it as the destruction of property application.

[6] After the search and seizure of the items from his cell, Mr. Johnson was advised that he had exceeded his personal effects cell limit of $1500.00 and was asked to return an electric typewriter. Claiming that the typewriter was an approved educational item that qualified as an exemption from the $1500.00 personal effects cell limit, Mr. Johnson grieved. During the course of the grievance proceedings, the typewriter was seized as contraband and another grievance requesting the return of the typewriter (on the basis that it was an educational item) was launched. When he was unsuccessful, Mr. Johnson filed an application for judicial review. I will refer to it as the typewriter application.

The Judge's Decision

[7] The judge concluded that the issues raised questions of mixed fact and law, reviewable on a standard of reasonableness. He therefore considered whether the impugned decisions "fall within a

range of possible outcomes which are defensible in light of the facts and the law" in accordance with the teaching in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[8] In relation to the disciplinary offence application, the judge made a number of factual determinations. He found that informal resolution was not possible at the time of the search. The evidence regarding subsequent attempts at informal resolution was contradictory. The officers did not verify Mr. Johnson's Inmate Personal Property Record and did not take all reasonable steps to resolve the matter informally before issuing a disciplinary charge. Nonetheless, Mr. Johnson implicitly had admitted he had been in possession of some unauthorized items that were the subject of the seizure. The judge concluded that the third-level grievance decision upholding the charge and the fine was not unreasonable.

[9] Regarding the destruction of property application, the judge found the CSC offer of $65.00 monetary compensation for some of the items, coupled with the offer to replace the remainder with identical items, was not unreasonable. Further, the offer was in accordance with CSC policy.

[10] As for the typewriter application, the judge determined that Mr. Johnson was permitted to purchase a typewriter because his personal computer had been seized. However, the typewriter did not qualify as an educational item under CSC policy and Mr. Johnson failed to establish that CSC had agreed to exempt the typewriter from the personal effects cell limit as an educational item. Although the judge criticized the CSC "contraband" classification (finding "unauthorized item" to

be appropriate) regarding the typewriter, he nonetheless concluded that the denial of the grievance was reasonable.

The Standard of Review

[11] The role of an appellate court, on an appeal from a Federal Court judicial review application, is to determine whether the reviewing court identified the applicable standard of review and applied it correctly: *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226 at para. 43; *Telfer v. Canada* (*Revenue Agency*), 2009 FCA 23, [2009] D.T.C. 5046 at paras. 18-19. No deference is owing on matters of procedural fairness: *Canada* (*Citizenship and Immigration*) *v. Khosa*, [2009] 1 S.C.R. 339 at para. 43.

Preliminary Matter

[12] Mr. Johnson raises a concern that allegedly transcends all of the applications before this Court. He characterizes this concern as “improper considerations” and he lists a number of the judge’s comments which, in Mr. Johnson’s view, were not supported by the evidence.

[13] The basis of the concern arises from the judge’s ruling that the tribunal record had not been properly produced to Mr. Johnson or properly put before the court as an exhibit to a supporting affidavit. As a result, on each application, the judge struck the tribunal material included in the Crown’s submissions.

[14] Mr. Johnson is correct that certain factual statements in the judge's reasons for judgment appear to originate from the material that was struck from the record. The reference to a bomb threat, which ostensibly occurred some time before the search of Mr. Johnson's cell, is not contained in the record. Additionally, the quotation that appears at paragraph 60 of the judge's reasons (the statement of the observing officer) had been struck from the record. Consequently, neither of these references should have found their way into the judge's reasons.

[15] However, with the exception of the reference to the bomb threat and the second last sentence of the quotation – both of which the Crown conceded did not form part of the record –the various impugned statements are supported by the material that Mr. Johnson included in his record (appeal book, vol. II, p. 192, vol. III, pp. 326, 332, 341, 343, 370, 374, 407, 411).

[16] In any event, the statements to which Mr. Johnson takes exception merely provide context to the judge's reasons and do not materially affect his judgment. In short, they are irrelevant to the issues on appeal. Consequently, they do not affect this Court's review of the applications because they do not impact on the judge's identification or application of the relevant standards of review.

<u>The Statutory Provisions</u>

[17] The text of the statutory provisions referred to in these reasons is attached as Schedule "A".

The Disciplinary Offence Application

[18] The judge concluded that the dismissal of Mr. Johnson's grievance with respect to the disciplinary offence was reasonable. As noted earlier, Mr. Johnson successfully argued that CSC failed to take reasonable steps to informally resolve his purported possession of unauthorized items in accordance with subsection 41(1) of the Act, which requires CSC staff to "take all reasonable steps to resolve [a disciplinary offence issue] informally, where possible." Mr. Johnson does not take issue with that finding. Rather, he argues that the failure by CSC to adhere to subsection 41(1) was a condition precedent to the issuance of a disciplinary charge against him. Accordingly, he says the judge erred in upholding the resulting disciplinary charge.

[19] The disciplinary charge was issued on October 7, 2005 and a hearing was scheduled before the board on October 17, 2005. When Mr. Johnson raised his subsection 41(1) concerns, the board adjourned the hearing to consider the informal resolution attempts required by the Act. The disciplinary hearing was resumed on October 24, 2005 and the board affirmed the charge against Mr. Johnson.

[20] In *Laplante v. Canada* (*A.G.*), [2003] 4 F.C. 1118 at paras. 12, 13 (C.A.), this Court held that subsection 41(1) does not create a condition precedent to the board's jurisdiction to affirm a disciplinary charge. Rather, it grants to the board the power to take steps to satisfy itself that an attempt at informal resolution has been made, following which the board may proceed with its hearing. In this case, the board's decision is not contained in the record. However, the fact that the board may have concluded Mr. Johnson's subsection 41(1) rights had been respected, while the

judge concluded otherwise, does not mean the board acted without jurisdiction. Indeed, the judge specifically noted that subsection 41(2) of the Act permits CSC to issue a disciplinary charge against an inmate where an informal resolution is not achieved, depending on the seriousness of the alleged conduct and any aggravating or mitigating factors. In my view, subsection 41(1) does not constitute an absolute bar to the issuance of a disciplinary charge.

[21] Further, the judge interpreted the record and Mr. Johnson's statement that "most of his items were authorized" as an implicit admission that at least some of his possessions were not authorized. The judge's interpretation in this respect is supported by the second-level grievance response, which states: "although the attempt at informal resolution is not clearly evident, this does not negate the fact that some of the articles listed on the offence report were in fact unauthorized" (CSC response to second-level grievance, appeal book, vol. II, p. 192).

[22] In my view, the judge's inference was sound. Despite Mr. Johnson's insistence that he did not admit, at any time, that he was in possession of unauthorized items, it is clear that he maintained throughout that many of the unauthorized items were legally purchased and issued (my emphasis, appeal book, vol. II, p. 184).

[23] I have not overlooked Mr. Johnson's forceful oral argument that Commissioner's Directive 580 permits the discretionary conferral of a privilege. However, if the conferral of such a privilege with respect to the possession of what would otherwise be regarded as unauthorized items exists, it has not been established on this record. Notably, this submission does not appear in Mr. Johnson's

memorandum of fact and law nor does the judge refer to it in his reasons. The record shows that the thrust of Mr. Johnson's submissions in relation to this application turned on the issue of informal resolution.

[24] Given this Court's jurisprudence, the text of section 41 of the Act and Mr. Johnson's implicit admission, the judge did not err in concluding that Mr. Johnson's concerns were addressed throughout the CSC grievance process and that the decision with respect to the disciplinary offence was not unreasonable.

[25] Next, Mr. Johnson argues that his procedural rights were violated because he was not provided reasonable access to a recording of his disciplinary hearings. Section 33 of the *Corrections and Conditional Release Regulations*, S.O.R./92-620 (the Regulations) requires CSC to record all disciplinary offence hearings, to retain that record for at least two years after the decision is rendered and to provide inmates reasonable access to that recording. The judge considered this submission and concluded, because Mr. Johnson did not raise this as a concern until the hearing of the application for judicial review, he had waived any right to complain of a procedural irregularity or denial of natural justice. The judge's statement accords with the jurisprudence of this Court that a party who has waived a right to procedural fairness cannot subsequently challenge an administrative decision on the basis of a breach of that waived right: *Irving Shipbuilding Inc. v. Canada* (*A.G.*), [2010] 2 F.C.R. 488 at para. 48 (C.A.), leave to appeal refused, [2009] 3 S.C.R. vii.

[26] The judge's reasoning applies to Mr. Johnson's failure to request a recording at any time during the grievance process. However, as I understand his argument on this appeal, Mr. Johnson claims that the Crown's failure to produce the recording in the Federal Court proceeding warrants redress. His request for the recording was made pursuant to rules 317 and 318 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules). Rule 317 provides for the production of "material relevant to an application that is in the possession of a tribunal." I emphasize that the requested material must be relevant to the matter before the Court.

[27] Mr. Johnson contends that it was not possible for the judge to assess the matter relating to the application of subsection 41(1) of the Act in the absence of a transcript and audio recording of the disciplinary hearing. In my view, the judge's task was to review the third-level grievance decision. Since Mr. Johnson did not request the recording during the grievance process, it could not be relevant to the judge's judicial review of that process because such review is limited to the material that was before the grievance board.

The Typewriter Application

[28] Mr. Johnson's typewriter was removed (from his cell) to his storage area within the institution because its value caused him to be in violation of the total personal effects cell value limit of $1,500. He grieved on the basis that the typewriter was an educational item and therefore exempt from the usual cap on an inmate's personal property. His characterization of the typewriter was rejected. According to Mr. Johnson, the judge erred in concluding there was no evidence CSC had agreed the typewriter was issued as an educational supply.

[29] Mr. Johnson refers to various statements in his supporting affidavit and claims they demonstrate his typewriter was purchased from his savings account with CSC approval and it was issued to him despite that it put him over the $1500 personal property limit. Unfortunately for Mr. Johnson, the portions of the record upon which he relies to rebut the judge's conclusion do not constitute evidence demonstrating the existence of any agreement between Mr. Johnson and CSC. Although his references suggest that he may have understood the typewriter was an educational supply, there is no independent evidence to support his claim.

[30] Although the record supports Mr. Johnson's view regarding the types of purchases that can be made from an inmate's savings account, Commissioner's Directive 090 specifically provides that typewriters are to be included as an inmate's personal property. Mr. Johnson failed to establish CSC approved his typewriter as an educational supply. Consequently, the judge did not err in concluding that the third-level grievance decision was reasonable.

The Destruction of Property Application

[31] Mr. Johnson contends that the judge came to inconsistent determinations in dismissing this application. His submissions on this point relate to paragraphs 72, 74 and 76 of the judge's reasons. Mr. Johnson claims that the judge's reasons were inconsistent because, on the one hand, the judge refused to accept the proposition that the destruction of Mr. Johnson's property was illegal yet, on the other hand, he determined that CSC's actions did not meet the requirements of section 84 of the Regulations. Although I can understand Mr. Johnson's point, the judge clearly explained that he was not required to analyze whether the seizure and destruction of Mr. Johnson's property was

illegal because the focus of the application before him was whether the CSC corrective action in response to that destruction was reasonable. Actually, the judge's statement accords with Mr. Johnson's notice of application in this respect (which is also consistent with the requested relief on this appeal). The judge's comments do no more than provide a contextual backdrop for the judge's analysis and, in any event, do not materially affect the disposition of the application.

[32] Mr. Johnson also contends, given the conclusion in paragraph 76 of the reasons, the judge erred by failing to allow his application. Although I appreciate how Mr. Johnson may have misinterpreted the judge's statements, in my view, paragraph 76 serves to emphasize deficiencies in the CSC administrative processes and is consistent with the judge's comments in paragraph 103 of his reasons. The judge's recognition that "Mr. Johnson was entitled to a clear explanation of how the respondent proposed to provide redress" constitutes a criticism regarding the fact that Mr. Johnson did not receive such an explanation until after he had made an inmate request. There is no reviewable error in the judge's conclusion in this respect.

[33] However, that does not end the matter. At paragraph 75 of his reasons, the judge states:

> 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 substitution 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 or item(s). <u>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</u>. 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 (my emphasis).

[34] In fact, all of the seized items were not accounted for. The third-level grievance decision failed to address Mr. Johnson's CD Power Director. This item was listed on Mr. Johnson's Inmate Claim for Lost or Damaged Effects (appeal book, vol. III, p. 343). The third-level grievance decision of the Senior Deputy Commissioner, as amended (appeal book, vol. III, p. 407) refers to the BLKN UPS power cord. There is no reference to the CD Power Director. The latter item's significance is crucial because, without it, the BLKN UPS power cord does not function. As Mr. Johnson put it, the replaced power cord is "useless".

[35] At the hearing Crown counsel suggested the fact the BLKN UPS power cord was replaced "implicitly" means it was replaced with a functioning power cord. On its face, this supposition appears reasonable. However, on the record, in view of CSC's multiple transgressions with respect to its policies and guidelines, I have little faith that counsel's assumption is accurate. Because the third-level grievance did not address all of the items that had been claimed, it cannot be reasonable. The matter ought to have been returned to the decision-maker for redetermination. Consequently, I would allow the appeal in relation to this application.

Reasonable Apprehension of Bias

[36] Mr. Johnson also contends that the judge's errors give rise to a reasonable apprehension of bias against him. This allegation is said to apply to each of the applications and is based in whole or on any part of the judge's alleged errors or the transcript of the submissions before the judge (which is not contained in the record). The judge's reasons are detailed, comprehensive and reflective of the record and the submissions made to him. There is simply no basis advanced to support the

allegation of bias nor is there anything in the record that would lead a reasonable bystander, fully informed of the circumstances, to conclude that there were reasonable grounds to believe the judge was biased.

Conclusion

[37] I would allow the appeal in part. I would set aside the judgment relating to the destruction of property application, that is, the decision of the Senior Deputy Commissioner dated February 13, 2006, as amended. Making the decision that ought to have been made, I would allow the application for judicial review of the decision of the Senior Deputy Commissioner dated February 13, 2006, as amended, and remit the matter for reconsideration.

Costs

[38] The $200 costs award made by the judge in relation to the application for judicial review of the above-noted decision is set aside. Although Mr. Johnson was only partially successful on his appeal, his out-of-pocket expenses with respect to the preparation and duplication of the appeal book and memorandum of fact and law as well as service of the documents would not have been diminished had he appealed only in relation to the application in which he ultimately succeeded.

[39] In view of the flagrant disregard CSC displayed for its policies and guidelines, the delay in the hearing of the appeal precipitated by the Crown's failure to serve Mr. Johnson with its memorandum of fact and law and Mr. Johnson's success on his appeal of one of the applications, in the exercise of my discretion, I would award Mr. Johnson all of his disbursements. The parties

should be able to agree on the amount of the disbursements. Failing agreement, the disbursements should be assessed in accordance with Tariff B of the *Federal Courts Rules*.

"Carolyn Layden-Stevenson"
J.A.

"I agree.
Eleanor R. Dawson J.A."

"I agree
David Stratas J.A."

SCHEDULE "A" to the Reasons in A-44-09 dated March 2, 2011

***Corrections and Conditional Release Act*, S.C. 1992, c. 20**

40. An inmate commits a disciplinary offence who:
(*j*) without prior authorization, is in possession of, or deals in, an item that is not authorized by a Commissioner's Directive or by a written order of the institutional head;

…

41. (1) 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.

(2) 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.

***Loi sur le système correctionnel et la mise en liberté sous condition*, L.C. 1992, c. 20**

40. Est coupable d'une infraction disciplinaire le détenu qui:
j) sans autorisation préalable, a en sa possession un objet en violation des directives du commissaire ou de l'ordre écrit du directeur du pénitencier ou en fait le trafic;

[…]

41. (1) L'agent qui croit, pour des motifs raisonnables, qu'un détenu commet ou a commis une infraction disciplinaire doit, si les circonstances le permettent, prendre toutes les mesures utiles afin de régler la question de façon informelle.

(2) À défaut de règlement informel, le directeur
peut porter une accusation d'infraction disciplinaire mineure ou grave, selon la gravité de la faute et l'existence de circonstances atténuantes ou aggravantes.

***Corrections and Conditional Release Regulations*, S.O.R./92-620**

33. (1) The Service shall ensure that all hearings of disciplinary offences

***Règlement sur le système correctionnel et la mise en liberté sous condition*, D.O.R.S./92-620**

33. (1) Le Service doit veiller à ce que

are recorded in such a manner as to make a full review of any hearing possible.
(2) A record of a hearing shall be retained for a period of at least two years after the decision is rendered.
(3) An inmate shall be given reasonable access to the record of the inmate's hearing.

…

84. 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.

toutes les auditions disciplinaires soient enregistrées de manière qu'elles puissent faire l'objet d'une révision complète.
(2) Les enregistrements des auditions disciplinaires doivent être conservés pendant au moins deux ans après la date de la décision.
(3) Tout détenu doit avoir accès, dans des limites raisonnables, à l'enregistrement de son audition disciplinaire.

[…]

84. Le directeur du pénitencier doit prendre toutes les mesures utiles pour garantir que les effets personnels que le détenu est autorisé à apporter et à garder dans le pénitencier soient protégés contre la perte et les dommages.

***Federal Courts Rules*, S.O.R./98-106**

317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

(2) An applicant may include a request under subsection (1) in its notice of application.

(3) If an applicant does not include a request under subsection (1) in its

***Règles des Cours fédérales*, D.O.R.S./98-106**

317. (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu’elle n’a pas mais qui sont en la possession de l’office fédéral dont l’ordonnance fait l’objet de la demande, en signifiant à l’office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

(3) Si le demandeur n’inclut pas sa demande de transmission de

notice of application, the applicant shall serve the request on the other parties.

documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit
(*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.

318. (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :
a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;
b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-44-09
STYLE OF CAUSE:	Johnson v Attorney General of Canada
HEARD BY VIDEOCONFERENCE BETWEEN:	Ottawa, Ontario and Campbellford, Ontario
DATE OF HEARING:	February 25, 2011
REASONS FOR JUDGMENT BY:	LAYDEN-STEVENSON J.A.
CONCURRED IN BY:	DAWSON J.A. STRATAS J.A.
DATED:	March 2, 2011

APPEARANCES:

Mr. William A. Johnson	FOR THE APPELLANT (SELF-REPRESENTED)
Mr. Shain Widdifield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT