

Cour fédérale



Federal Court

**Date: 20120717**

**Docket: T-610-11**

**Citation: 2012 FC 894**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, July 17, 2012**

**PRESENT: The Honourable Justice Scott**

**BETWEEN:**

**STEVE HURDLE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] This is an application for judicial review submitted by Steve Hurdle (the applicant) pursuant to section 18.1 of the *Federal Courts Act*, RSC (1985), c F-7, regarding instructions given by his parole officer (his officer) Christine Lévesque on March 10, 2011, and other instructions indicating

he was to avoid certain places, refrain from certain activities and submit a weekly report of his purchases.

[2] For the following reasons, the Court dismisses the applicant's application for judicial review.

## **II. Facts**

[3] The applicant's long-term supervision order has been in force since July 9, 2007, and will end on March 29, 2015.

[4] The applicant currently resides at the Sherbrooke Community Correctional Centre [CCC], where he is under the supervision of his officer, Christine Lévesque.

[5] On March 10, 2011, his officer gave him a pass with a pre-established schedule of outings as she had done in the preceding weeks. On the pass is printed the following: [TRANSLATION] "has a special condition to note all movements. May go smoke 3x15 min after his curfew". The applicant agrees to respect the pre-established outings established by his agent and the related conditions.

[6] Moreover, the applicant is also challenging other decisions by his officer, alleging they constitute modifications to his long-term supervision order and submits the entries from the Offender Management System that concern him for the period of September 25, 2010, to March 28, 2011. The decisions are about submitting receipts weekly, attending a place of worship, playing badminton at the community centre and going to the movies.

[7] The respondent presents a preliminary motion to dismiss the application for judicial review, while presenting alternative arguments on the merits of the case.

### **III. Legislation**

[8] The relevant provisions of the *Corrections and Conditional Release Act*, SC, 1992, c 20 [the Act] and the *Corrections and Conditional Release Regulations*, SOR/92-620 [the Regulations], are reproduced in the appendix to these reasons.

### **IV. Issues**

1. *Is the application for judicial review admissible?*
2. *If so, are the officer's instructions reasonable?*

### **V. Position of the parties**

#### **A. Applicant's position**

[9] The applicant claims that the Correctional Service of Canada [CSC], through his officer, is imposing an overly restrictive confinement schedule at the Sherbrooke CCC, contrary to his long-term supervision order. He believes that subsection 134.1(2) of the Act is unequivocal regarding the exclusive jurisdiction of the National Parole Board (the Board) to impose supervision conditions.

On this, the applicant claims that the CSC is not respecting the long-term supervision order and is holding him at the Sherbrooke CCC on illegal grounds.

[10] He claims that the Board imposed only that he report in at 11:30 p.m. and that all the other restrictions imposed on him are in violation of subsection 134.1(2) of the Act.

[11] The applicant also claims that the Board withdrew the condition that he was to provide a financial report to his officer. However, despite this decision by the Board, his officer still required weekly submissions of his receipts; he associated this to producing a financial record.

[12] Finally, he claims that he is unable to get to his place of worship, go to the movies or play badminton. According to the applicant, his officer's instructions go against the long-term supervision order and, therefore, are in violation of sections 134.1 and 134.2 of the Act.

[13] In response to the respondent's motion to dismiss, the applicant claims that the Act does not impose an obligation to exhaust the complaint and grievance process before presenting a judicial review before the Court, particularly considering the strict restrictions that are imposed on him in violation of section 134.1 of the Act.

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

[14] The respondent claims that the application for judicial review is inadmissible because it is without merit, untimely and the administrative recourse has not been exhausted (see *Spidel v Canada (Attorney General)*, 2010 FC 1028 at paras 14 to 18 [*Spidel*]). He first makes a preliminary objection based on the inadmissibility of this application for judicial review. Under the terms of section 134.2 of the Act, the applicant's officer may impose certain instructions on him to ensure that the conditions of his release are respected. The respondent claims that if the applicant is not satisfied with the officer's instructions, he may file a grievance under sections 90, 91 and 96(u) of the Act and section 74 of the Regulations.

[15] The applicant also wishes to have his officer's instructions reviewed. The respondent feels that these instructions do not constitute decisions of a federal board, commission or other tribunal within the meaning of section 2 of the *Federal Courts Act*.

[16] Additionally, the respondent notes that subsection 18.1(2) of the *Federal Courts Act* states that an application for judicial review must be filed in the thirty days following the decision of the federal board, commission or other tribunal. As a result, all allegations in part B of the applicant's proposals are inadmissible. These allegations involve the production of receipts, attending a place of worship, and going to the movies as well as playing badminton at the community centre.

[17] If the Court finds that the applicant's application for judicial review is admissible, the respondent claims that the officer's instructions are reasonable in this case and the officer is entitled to impose them on the applicant under section 134.2 of the Act. These instructions are to prevent

violations of the conditions imposed and to protect Canadian society. For these reasons, the Court must dismiss the applicant's application for judicial review.

## **VI. Analysis**

### ***1. Is the applicant's application for judicial review admissible?***

[18] In the application for judicial review before the Court, the applicant seeks to have the officer's instructions overturned considering they are unreasonable and because he feels that only the Board has the power to revise his conditions pursuant to section 134.1, since they fall under the long-term supervision order.

[19] The respondent claims that the application for judicial review is inadmissible because the applicant did not exhaust the recourse provided by the internal complaint and grievance process and therefore advances a preliminary objection.

[20] The Court allows the respondent's preliminary objection and dismisses the applicant's application for judicial review for the following reasons.

[21] Pursuant to section 74 of the Regulations, the applicant must make "every effort...to resolve the matter informally" or "submit a written complaint, preferably in the form provided by the Service, to the supervisor of that staff member." According to the evidence on record, the applicant did not conform to this section of the Regulations.

[22] The agent responsible for the applicant adjusts the applicant's conditions for outings weekly. These adjustments according to the applicant's progress in his reintegration work are not, in the Court's opinion, an usurpation of the Board's power but a delegation intended under section 134.2 of the Act and the decisions made weekly are subject to the complaints and grievance procedure.

[23] In *Spidel, supra*, at paras 16-17, we learn that "there must be compelling or exceptional circumstances before the Court will exercise its discretion to trump the grievance process... The grievance process generally has been held to be adequate" (see *Giesbrecht v Canada* (1998), 148 FTR 81 (T.D.) and *Ewert v Canada (Attorney General)*, 2009 FC 971).

[24] Boivin J. wrote, in *Marleau v Canada (Attorney General)*, 2011 FC 1149, at paras 33 and 34:

[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 SCR 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".

[25] Regarding the exceptional circumstances that would allow for the complaints and grievances process to be bypassed, Martineau J. stated, in *Rose v Canada (Attorney General)*, 2011 FC 1495 at para 35:

[35] According to the jurisprudence, the Court's discretion with respect to hearing a judicial review where it is established that an adequate alternative remedy exists is subject to consideration of whether there are exceptional circumstances such as cases of emergency, evident inadequacy in the procedure, or where physical or mental harm is caused to an inmate (*Ewert v Canada (Attorney General)*, 2009 FC 971 at para 34 [*Ewert*]; *Spidel v Canada (Attorney General)*, 2010 FC 1028 at para 12; *Gates v Canada (Attorney General)*, 2007 FC 1058 at para 26 [*Gates*]).

[26] In this case, it is clear that the Court is not faced with an exceptional case that would warrant bypassing the complaints and grievance process set out in the Regulations. With no evidence to convince us that an exceptional circumstance exists to justify the intervention of the Court, we must decline (*McMaster v Canada (Attorney General)*, 2008 FC 647 ; *May v Ferndale Institution*, [2005] 3 SCR 809). "[T]he application for judicial review must be directed to the decision made at the last level of the internal procedure, not the decision that could be challenged through internal mechanisms." (see *Reda v Canada (Attorney General)*, 2012 FC 79 at para 29 [*Reda*]).

[27] Moreover, the evidence on file does not allow the Court to find that the complaints and grievances process is inadequate in this case.

[28] The applicant's application for judicial review is therefore dismissed, considering it is premature and the evidence on file does not allow us to conclude we have an exception in this case.



[29] Moreover, counsel for the applicant presented a last argument in response, that the complaints and grievance procedure did not apply in this case but only to Part II of the Act.

[30] Exceptionally, the Court allowed him to submit written notes in support of this claim, despite the lack of allegations on this subject in his memorandum. Counsel for the respondent replied within the agreed upon deadline.

[31] The applicant also claims that under sections 90 and 97 of the Act, a grievance is only possible for matters under the jurisdiction of the Commissioner regarding the management of the Correctional Service, as stated at section 4 of the Act and any other application of this part of the Act. Since sections 90 and 97 are an integral part of Part I of the Act, the applicant claims that only issues under Part I are subject to the complaints and grievance process. Since the application for judicial review is based on section 134.2, under Part II of the Act, the applicant feels that this means a grievance cannot be filed against a decision made under section 134.2 because these matters are not under the Commissioner's jurisdiction.

[32] The respondent claims that pursuant to sections 90 and 91 of the Act, an offender who feels aggrieved or treated in a manner inconsistent with the Act or the policies on issues that are under the jurisdiction of the Commissioner may make use of the complaint and grievance process to resolve the conflict. He also refers to paragraph 11 of Commissioner's Directive 081. Moreover, the respondent notes that sections 90 and 91 of the Act do not include any exclusions regarding its application to individuals covered by Part II of the Act. The

respondent feels that all offenders have access to the complaints and grievance process for issues under the jurisdiction of the Commissioner, and this includes long-term offenders.

[33] He also notes that section 2.1 of the Act clearly states that a long-term offender may make use of the complaints and grievance process as any other offender. According to the respondent, access to the complaints and grievance process is determined by the issue and not by the complainant's designation as a long-term offender. Section 134.1 requires that the long-term offender must respect the conditions prescribed by the National Parole Board of Canada.

[34] In his or her supervisory role, the SCC officer may give the offender instructions to prevent the violation of the conditions imposed or to protect society. The officer has powers granted on behalf of the Commissioner (see section 2, paragraph 5(d), and subsection 6(1) of the Act). Therefore, the supervision of long-term offenders is under the jurisdiction of the Commissioner. Moreover, many Commissioner's Directives make note of this supervisory jurisdiction (Commissioner's Directive CD 719: Long-Term Supervision Order). As a result, any conflict that arises between the officer and the offender is under the jurisdiction of the Commissioner and is resolved through the complaint and grievance process.

[35] This is why:

An offender being supervised in the community may submit a complaint or grievance to his/her Parole Officer or to the designated staff member within the parole office, community residential facility or Community Correctional Centre (see article 14 of Commissioner's Directive 081 on Offender Complaints and Grievances).

[36] Section 2 of the Regulations provides the following definition of the term "parole supervisor":

"parole supervisor"  
"parole supervisor" has the same meaning as in subsection 134(2) of the Act; (surveillant de liberté conditionnelle)

[37] Subsection 134(2) of the Act states that a "parole supervisor" means a staff member as defined in subsection 2(1), or a person entrusted by the Service with the guidance and supervision of an offender on parole, statutory release or unescorted temporary absence.

[38] The same definition applies for offenders who are under long-term supervision orders, in accordance with subsection 134.2(2).

[39] Since the parole officer includes an employee of the Service or a person entrusted by the Service with the guidance and supervision of an offender who is on parole, statutory release or unescorted temporary absence, the Commissioner may, under paragraph 5(d) of the Act, supervise the long-term supervision of offenders. Thus, the officers' decisions fall under the Commissioner's supervision powers.

[40] The complaints and grievance process is under sections 74 to 82 of the Regulations. In *Reda, supra*, at para 17, Madam Justice Bédard describes the complaint and grievance procedure as follows:

It is an administrative process composed of four levels. An offender who is dissatisfied with an action or a decision by a CSC employee must first submit a complaint to that employee's supervisor. Where the employee's supervisor refuses to review the complaint or where the offender is not satisfied with the supervisor's decision, the

offender may then submit a grievance. The grievance procedure consists of three levels, with the decision of the CSC Commissioner or his or her representative being the last level.

[41] Moreover, paragraphs 7 and 8 of the SCC guidelines 081-1: Offender Complaints and Grievances, state:

7. The four levels of the offender complaint and grievance process are:
  - a. **complaint** - submitted by the offender at the institution/district parole office and responded to by the supervisor of the staff member whose actions or decisions are called into question;
  - b. **first-level grievance** (institution/district parole office) - submitted to the Institutional Head for response;
  - c. **second-level grievance** (Regional Headquarters) - submitted to the Regional Deputy Commissioner for response; and
  - d. **third-level grievance** (National Headquarters) - submitted to the Commissioner for response.
  
8. Some grievances must be automatically initiated at higher levels than the complaint level, such as:
  - a. allegations of harassment, sexual harassment or discrimination - **first level**;  
NOTE: Grievances containing allegations of harassment, sexual harassment or discrimination against the Institutional Head must be initiated at the second level
  - b. submissions regarding intra-regional involuntary transfers - **second level**;
  - c. submissions concerning an appeal of a decision rendered on a claim against the Crown - **second level**
  - d. submissions regarding segregation placement decisions/24-hour reviews - **second level**;

- e. submissions regarding inter-regional transfers - **third level**; or
- f. submissions concerning transfers to/from the Special Handling Unit - **third level**.

[42] Although the SCC directives and guidelines are merely reference tools, they show us that there is a complaint and grievance process for long-term offenders.

[43] Moreover, the Act does not exclude Part II from the complaint and grievance process. On the contrary, the parole officer's decisions or instructions are subject to the supervisory powers pursuant to section 5 of the Act.

[44] The Court therefore dismisses the applicant's last argument because it is clear that the complaint and grievance process is not limited to Part II of the Act.

[45] The Court thereby finds that the doctrine of exhaustion must apply in this case and decides to exercise its discretion to not hear the application for judicial review against the decision (see *Harelkin v University of Regina*, [1979] 2 SCR 561; *Reda, supra*).

[46] Lastly, counsel both claim that the opposing party should be responsible for costs, should the decision be in their favour.

## **VII. Conclusion**

[47] The Court allows the respondent's motion to dismiss since the applicant must first exhaust the recourse provided at section 74 of the Regulations. Therefore, the applicant's application for judicial review is dismissed, with costs.

**ORDER**

**THE COURT DISMISSES** the applicant's application for judicial review, with costs.

"André F.J. Scott"

---

Judge

Certified true translation  
Elizabeth Tan, Translator

## APPENDIX

**Sections 2(1), 2.1, 4, 5, 6(1), 90, 91, 96(u), 97, 134, 134.1 and 134.2 of the *Corrections and Conditional Release Act*, SC 1992, c 20, state:**

2. (1) In this Part,

...

“*staff member*”

« agent »

“*staff member*” means an employee of the Service;

...

**2.1** A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 3, 4, 23 to 27, 55 and 56, subsections 57(2) and 66(3), sections 68, 69, 76, 77 and 79 to 82, paragraph 87(b) and sections 90 and 91 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.

**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

2. (1) Les définitions qui suivent s’appliquent à la présente partie.

[...]

« *agent* »

“staff member”

« *agent* » Employé du Service.

[...]

**2.1** La personne soumise à une ordonnance de surveillance de longue durée est assimilée à un délinquant pour l’application de la présente partie; les articles 3, 4, 23 à 27, 55 et 56, les paragraphes 57(2) et 66(3), les articles 68, 69, 76, 77, 79 à 82, 87, 90 et 91 s’appliquent, avec les adaptations nécessaires, à cette personne et à la surveillance de celle-ci.

**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



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 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 gender, ethnic, cultural and linguistic differences and be

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 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 respectent les différences ethniques, culturelles et linguistiques, ainsi

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,

(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.

**5.** There shall continue to be a correctional service in and for Canada,

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.

**5.** Est maintenu le Service correctionnel du Canada, auquel incombent les tâches

to be known as the Correctional Service of Canada, which shall be responsible for

(a) the care and custody of inmates;

(b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;

(c) the preparation of inmates for release;

(d) parole, statutory release supervision and long-term supervision of offenders; and

(e) maintaining a program of public education about the operations of the Service.

**6.** (1) The Governor in Council may appoint a person to be known as the Commissioner of Corrections who, under the direction of the Minister, has the control and management of the Service and all matters connected with the Service.

**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).

**91.** Every offender shall have complete access to the offender grievance procedure without negative consequences.

**96.** The Governor in Council may make

suivantes :

a) la prise en charge et la garde des détenus;

b) la mise sur pied de programmes contribuant à la réadaptation des délinquants et à leur réinsertion sociale;

c) la préparation des détenus à leur libération;

d) la supervision à l'égard des mises en liberté conditionnelle ou d'office et la surveillance de longue durée de délinquants;

e) la mise en oeuvre d'un programme d'éducation publique sur ses activités.

**6.** (1) Le gouverneur en conseil nomme le commissaire; celui-ci a, sous la direction du ministre, toute autorité sur le Service et tout ce qui s'y rattache.

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

**91.** Tout délinquant doit, sans crainte de représailles, avoir libre accès à la procédure de règlement des griefs.

**96.** Le gouverneur en conseil peut

regulations

...

(u) prescribing an offender grievance procedure;

**97.** Subject to this Part and the regulations, the Commissioner may make rules

(a) for the management of the Service;

(b) for the matters described in section 4; and

(c) generally for carrying out the purposes and provisions of this Part and the regulations.

**134.** (1) An offender who has been released on parole, statutory release or unescorted temporary absence shall comply with any instructions given by a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or the Commissioner, or given by the institutional head or by the offender's parole supervisor, respecting any conditions of parole, statutory release or unescorted temporary absence in order to prevent a breach of any condition or to protect society.

#### **Definition of "parole supervisor"**

(2) In this section, "parole supervisor" means

(a) a staff member as defined in subsection 2(1); or

(b) a person entrusted by the Service

prendre des règlements :

[...]

u) fixant la procédure de règlement des griefs des délinquants;

**97.** Sous réserve de la présente partie et de ses règlements, le commissaire peut établir des règles concernant :

a) la gestion du Service;

b) les questions énumérées à l'article 4;

c) toute autre mesure d'application de cette partie et des règlements.

**134.** (1) Le délinquant qui bénéficie d'une libération conditionnelle ou d'office ou d'une permission de sortir sans escorte doit observer les consignes que lui donne son surveillant de liberté conditionnelle, un membre de la Commission, le directeur du pénitencier ou la personne que le président ou le commissaire désigne nommément ou par indication de son poste en vue de prévenir la violation des conditions imposées ou de protéger la société.

#### **Définition de « surveillant de liberté conditionnelle »**

(2) Au présent article, « surveillant de liberté conditionnelle » s'entend d'un agent au sens du paragraphe 2(1) ou d'une personne chargée par le Service d'orienter et de surveiller le délinquant qui bénéficie d'une libération conditionnelle ou d'office ou d'une

with the guidance and supervision of an offender on parole, statutory release or unescorted temporary absence.

**134.1** (2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

**134.2** (1) An offender who is supervised pursuant to a long-term supervision order shall comply with any instructions given by a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or by the Commissioner, or given by the offender's parole supervisor, respecting any conditions of long-term supervision in order to prevent a breach of any condition or to protect society.

**Definition of "parole supervisor"**

(2) In this section, "parole supervisor" means

(a) a staff member as defined in subsection 2(1); or

(b) a person entrusted by the Service with the guidance and supervision of an offender who is required to be supervised by a long-term supervision order.

permission de sortir sans escorte.

**134.1** (2) La Commission peut imposer au délinquant les conditions de surveillance qu'elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant.

**134.2** (1) Le délinquant qui est surveillé aux termes d'une ordonnance de surveillance de longue durée doit observer les consignes que lui donne son surveillant de liberté conditionnelle, un membre de la Commission ou la personne que le président ou le commissaire désigne nommément ou par indication de son poste en vue de prévenir la violation des conditions imposées ou de protéger la société.

**Définition de « surveillant de liberté conditionnelle »**

(2) Au présent article, « surveillant de liberté conditionnelle » s'entend d'un agent au sens du paragraphe 2(1) ou d'une personne chargée par le Service d'orienter et de surveiller le délinquant soumis à une ordonnance de surveillance de longue durée.

**Sections 2, 74, 75, 76, 77, 78, 79, 80 81 and 82 of the *Corrections and Conditional Release Regulations*, SOR/92-620, state:**

2. In these Regulations,

...

*“parole supervisor”*

*“parole supervisor”* has the same meaning as in subsection 134(2) of the Act; (surveillant de liberté conditionnelle)

...

**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

2. Les définitions qui suivent s'appliquent au présent règlement.

[...]

*« surveillant de liberté conditionnelle »*

*« surveillant de liberté conditionnelle »* S'entend au sens du paragraphe 134(2) de la Loi. (parole supervisor)

[...]

**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

decision, including the reasons for the decision, as soon as practicable after the offender submits the complaint.

**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,

(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.

**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.

**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.

motivée aussitôt que possible après que celui-ci a présenté sa plainte.

**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 grief, par écrit et de préférence sur une formule fournie par le Service :

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) 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) 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) 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.

**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.

**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.

**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) 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.** 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) 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) 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) 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.

**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.

**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;

(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) 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.** 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) 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).

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).

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-610-11

**STYLE OF CAUSE:** STEVE HURDLE  
v  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 8, 2012

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

**DATED:** July 17, 2012

**APPEARANCES:**

Maxime Hébert Lafontaine FOR THE APPLICANT

Nicholas R. Banks FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Labelle, Boudrault, Côté & Associés FOR THE APPLICANT  
Montréal, Quebec

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