Federal Court  Cour fédérale

Date: 20130619

Docket: T-1803-12

Citation: 2013 FC 687

Ottawa, Ontario, June 19, 2013

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MARC CHARBONNEAU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Marc Charbonneau (the applicant), is a federal inmate serving a sentence in Warkworth Institution for sexual assault and breach of probation. As part of his program assignment, the applicant works as a cook in the kitchen of the Institution where, until July 2011, he received a daily pay of $6.90 (level "A" pay). Payments made in relation to inmate program assignments are determined in accordance with the Commissioner's Directive 730 (the CD 730). The applicant's correctional plan requires him to participate in the National Substance Abuse Program - Moderate Intensity (NSAP Moderate). In June 2011, the applicant refused to participate in the NSAP

Moderate and consequently, his daily pay was reduced from level "A" to level "D" ($5.25/day), which is the pay level that corresponds to paragraph 17(d) of the CD 730.

[2] On August 13, 2011, the applicant filed a complaint against that decision. He alleged that the reduction of his pay level constituted a disciplinary sanction that did not comply with section 39 of the *Corrections and Conditional Release Act*, SC 1992, c 20 [the Act]. This provision prohibits imposing disciplinary sanctions on inmates other than in accordance with the parameters set forth in the inmates' disciplinary system established by sections 40 to 44 of the Act and by the regulations.

[3] The applicant's complaint was denied, and he filed a grievance against that decision. His grievance followed all of the steps of the inmates' internal grievance process, and was ultimately denied at the third level of the process by the Senior Deputy Commissioner of Correctional Service Canada (CSC).

[4] The applicant now challenges this decision by way of an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. As a remedy, he does not ask the Court to quash the Senior Deputy Commissioner's decision and send it back for re-determination. Rather, the applicant asks the Court to order, by way of a *mandamus*, the reinstatement of his daily pay at level "A". Also, he is seeking "[s]uch further and other relief as the applicant may advise and This Honourable Court deems just and appropriate."

[5] Upon request from the applicant, this application was decided on the basis of the parties' written submissions. For the following reasons, the application is dismissed.

I. Preliminary matter

[6] The respondent asserts that the application was wrongly brought against the Commissioner of Corrections and that, in accordance with subsection 303(1) of the *Federal Courts Rules*, SOR/98-106 and with the jurisprudence, it should have been brought against the Attorney General of Canada. I agree with the respondent's contention, and accordingly, the style of cause is amended to replace the actual respondent by the Attorney General of Canada.

II. The impugned decision

[7] Following the applicant refusal to participate in the NSAP Moderate, his daily pay was reduced from level "A" to level "D". The record does not indicate the basis on which the applicant's pay level was initially set at Level "A", but it clearly indicates that the decision to reduce his pay level was based on the CD 730. The Warkworth Institution Program Refusal Form read in part, as follows:

> On June 28, 2011, you indicated that you were not willing to participate in the NSAP Program as specified in your Correctional Plan.
>
> In accordance with Commissioner's Directive 730, you are restricted to level D pay, effective 11/07/15 until such time as you participate in this program.

[8] The Senior Deputy Commissioner denied the applicant's grievance, and reasoned that the decision to reduce his pay level was made in conformity with the CD 730. Her decision reads in part as follows:

> […]
>
> Mr. Charbonneau, you grieve the decision to place you at Level D pay on 2011-07-15, after you refused to participate in the National Moderate Intensity Substance Abuse Program (NSAP Moderate) identified in your Correctional Plan. You allege that this pay level reduction to level D was a form of a "disciplinary sanction" imposed on you which you believe is a contravention of section 39 of the *Correctional and Conditional Release Act*.
>
> […]
>
> On 2011-06-28, you refused to participate in the NSAP Moderate, at Warkworth Institution (WI). Your A4D, dated 2011-11-15, indicates that you were not compliant with the program requirements of your Correctional Plan, as you were required to complete the aforementioned program, but refused. This is also documented by the WI Program Refusal Form, which indicates that on 2011-06-28, you advised that you were not willing to participate in the NSAP. This form also indicated that in accordance with CD 730 (noted above), you would be restricted to Level D pay, effective 2011-07-15 (pay period (# 8), until you agreed to participate in the program. Your file information confirms that you were subsequently reduced to Level D pay on 2011-07-15 from Level A pay.
>
> As you have not completed the NSAP, you have not fulfilled all program assignments in your Correctional Plan. Paragraph 17(d) of CD 730 clearly states that an offender will receive Level D pay when an offender participates in a work assignment but refuses to participate in any other program assignment specified in the Correctional Plan. As you have been employed in the WI kitchen since 2010-05-15, but refused to participate in a program designated in your Correctional Plan, you were appropriately put on Level D pay, on 2011-07-15

III. Issues

[9] This application raises the following issues:

(1) Did the Senior Deputy Commissioner err in failing to substantially address the issue raised by the applicant in regard to section 39 of the Act?

(2) Did the Senior Deputy Officer err in rejecting the applicant's grievance?

(3) If the Senior Deputy Officer erred, is an order in the form of a *mandamus* ordering the applicant's pay level to be restored to level "A" an appropriate remedy?

IV. Positions of the parties

A. *The applicant's position*

[10] The applicant raises several arguments against the Senior Deputy Commissioner's decision.

[11] First, he argues that the Senior Deputy Commissioner failed to address the issue relating to his allegation that his pay reduction constituted a violation of section 39 of the Act, and the applicant relies on *Spidel v Canada (Attorney General)*, 2012 FC 958, 416 FTR 197, to contend that this failure constitutes a denial of procedural fairness.

[12] Second, with respect to the merits of the decision, the applicant's argument revolves around the conformity of the CD 730 with section 39 of the Act. He alleges that section 97 of the Act, which empowers the Commissioner to make rules, does not authorize him to make rules that violate the statutory prohibition imposed by section 39 of the Act. In the applicant's view, the decision to reduce his pay level was made as a consequence of his refusal to participate in a program, and thus, was imposed to punish him. Consequently, the decision was disciplinary in nature, and as it was not in accordance with the parameters set out in the Act with respect to the inmates' disciplinary system, it was made in violation of section 39 of the Act.

[13] Finally, the applicant submits that the decision to reduce his pay level unduly restricted his residual rights to liberty protected by section 7 of the *Canadian Charter of Rights and Freedoms* [the *Charter*], and that this restriction does not accord with the principles of fundamental justice.

[14] With respect to remedies, the applicant argues that the errors made by the Senior Deputy Commissioner are apparent on the face of the record, and accordingly, it justifies the Court to order, by way of a *mandamus*, the reinstatement of his pay to level "A".

B. *The respondent's position*

[15] The respondent submits that the application for a writ of *mandamus* should be dismissed as the CSC has no public duty to restore the applicant's pay to level "A". The respondent contends that the existence of a public duty to act is a prerequisite for the issuance of a writ of *mandamus*.

[16] The respondent also submits that payments made to inmates for their participation in program assignments are not regular wages, but rather, incentives to encourage them to participate in programs and to reach the goals specified in their correctional plans. As such, the CD 730 provides for a "pay structure" based on various criteria, including the inmates' participation in the programs identified in their correctional plans. The applicant's pay level was determined in accordance with the CD 730, and therefore, the reduction of his pay cannot be viewed as a disciplinary measure. Since the applicant refused to participate in the NSAP Moderate identified in his correctional plan, he was only entitled to a level "D" pay, which is payable to inmates who accept a work assignment, but refuse to participate in any other program assignment specified in their correctional plans.

V. Analysis

C. *Standard of review*

[17] The applicant submits that the Senior Deputy Commissioner's decision should be analyzed under the correctness standard of review as the errors she committed are errors of law. The respondent did not make any submission with respect to the applicable standard of review.

[18] I am of the view that the decision made by the Senior Deputy Commissioner involved questions of mixed facts and law. First, it involved the interpretation of section 39 of the Act and of the CD 730. Second, it also involved the application of the CD 730 to the specific circumstances of the applicant.

[19] Questions that involve intertwined factual issues and legal issues are usually reviewable under the reasonableness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] SCR 190) [*Dunsmuir*].

[20] With respect to the interpretation of the Act, in *Alberta (Information and Privacy Commissioner) v Alberta Teacher's Association*, 2011 SCC 61, [2011] 3 SCR 654, the Supreme Court called for a deferential approach when reviewing a tribunal's decision involving the interpretation of its home statute:

> **30** The narrow question in this case is: Did the inquiry automatically terminate as a result of the Commissioner extending the 90-day period only after the expiry of that period? This question involves the interpretation of s. 50(5) *PIPA*, a provision of the Commissioner's home statute. There is authority that "[d]eference will usually result where a tribunal is interpreting its

> own statute or statutes closely connected to its function, with which it will have particular familiarity" (*Dunsmuir*, at para. 54; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at para. 28, *per* Fish J.). This principle applies unless the interpretation of the home statute falls into one of the categories of questions to which the correctness standard continues to apply, i.e., "constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator's expertise, ... '[q]uestions regarding the jurisdictional lines between two or more competing specialized tribunals' [and] true questions of jurisdiction or vires" (*Canada (Canadian Human Rights Commission*) *v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 18, *per* LeBel and Cromwell JJ., citing *Dunsmuir*, at paras. 58, 60-61).

[21] With a view to the principles enunciated by the Supreme Court, I do not see why I should depart from the deferential standard of review in this case.

[22] In addition, the applicant's contention that the Senior Deputy Commissioner's decision failed to address the issue of whether the reduction of his pay level violated section 39 of the Act involves an issue relating to the adequacy of the Senior Deputy Commissioner's reasons. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*], the Supreme Court determined that the issue of adequacy of reasons was not a stand-alone issue, but rather an issue to be analyzed within the assessment of the reasonableness of a decision with a view to the record considered by the tribunal. Justice Abella, writing for the Court, expressed the following :

> **14** Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at ss.12: 5330 and 12: 5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the

> purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[23] In *Dunsmuir*, above, the Supreme Court enunciated the principles that should guide the Court reviewing the decision of an administrative tribunal under the reasonableness standard of review:

> **47** Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[24] In *Newfoundland and Labrador Nurses' Union*, above, the Supreme Court insisted on the importance for the Court not to substitute its own view to that of the tribunal:

> **17** The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.

VI. Discussion

(1) Did the Senior Deputy Commissioner err in failing to substantially address the issue raised by the applicant in regard to section 39 of the Act?

[25] The applicant contends that the Senior Deputy Commissioner failed to address the question of whether his pay level reduction constituted a disciplinary measure imposed in violation of section 39 of the Act. With respect, I disagree.

[26] In *Newfoundland and Labrador Nurses' Union*, above, the Supreme Court enunciated the following guiding principles with respect to the sufficiency of reasons issued by administrative tribunals :

> **16** Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[27] Keeping these principles in mind, I agree with the applicant that the Senior Deputy Commissioner did not expressly state that she determined that the reduction of the applicant's pay level did not constitute a disciplinary measure imposed in violation of section 39 of the Act. However, in my opinion, such a finding is implicit in the decision and it cannot be said that the Senior Deputy Commissioner failed to address the arguments advanced by the applicant.

[28] First, it is clear from the decision that the Senior Deputy Commissioner understood the applicant's argument. At the outset of her decision, she correctly stated the applicant's allegation: "You allege that this pay level reduction to level D was a form of a "disciplinary sanction" imposed on you which you believe is a contravention of section 39 of the *Correctional and Conditional Release Act*."

[29] Second, it is also clear from the decision, that the Senior Deputy Commissioner made the following findings: (1) the applicant refused to participate in the NSAP Moderate specified in his correctional plan; (2) the CD 730 provides that an inmate who participates in a work assignment but refuses to participate in any other program specified in his correctional plan is entitled to receive a level "D" pay rate; (3) the applicant's pay level was reduced as a result of his refusal to participate in the NSAP Moderate; and (4) the resultant pay level to which the applicant was entitled was set in accordance with paragraph 17(d) of the CD 730. In my opinion, these findings, viewed in light of the argument advanced by the applicant and clearly identified in the Senior Deputy Commissioner's decision, also involve the implicit finding that reducing the applicant's pay to the level to which he was entitled according to the CD 730 could not be viewed as a disciplinary measure. In other words, I understand the Senior Deputy Commissioner's decision as saying: Since the applicant's pay level was set in accordance with the CD 730, it cannot be viewed as a disciplinary measure.

(2) Did, the Senior Deputy Officer err in rejecting the applicant's grievance?

[30] Sections 38 to 44 of the Act set out a disciplinary regime that comes into play when inmates adopt inappropriate behaviours.

[31] Section 38 of the Act sets out as follows the purpose of the inmate disciplinary system:

Purpose of disciplinary system	Objet
38. The purpose of the disciplinary system established by sections 40 to 44 and the regulations is to encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates' rehabilitation and successful reintegration into the community.	**38.** Le régime disciplinaire établi par les articles 40 à 44 et les règlements vise à encourager chez les détenus un comportement favorisant l'ordre et la bonne marche du pénitencier, tout en contribuant à leur réadaptation et à leur réinsertion sociale.

[32] Section 39, on which the applicant relies, states that "inmates shall not be disciplined otherwise than in accordance with sections 40 to 44 and the regulations."

[33] Section 40 of the Act describes several disciplinary offences that relate to different forms of misconduct. It reads as follows:

Disciplinary offences	Infractions disciplinaires
40. An inmate commits a disciplinary offence who	**40.** Est coupable d'une infraction disciplinaire le détenu qui :
(*a*) disobeys a justifiable order of a staff member;	*a*) désobéit à l'ordre légitime d'un agent;
(*b*) is, without authorization, in an area prohibited to inmates;	*b*) se trouve, sans autorisation, dans un secteur dont l'accès lui est interdit;

(*c*) wilfully or recklessly damages or destroys property that is not the inmate's;

c) détruit ou endommage de manière délibérée ou irresponsable le bien d'autrui;

(*d*) commits theft;

d) commet un vol;

(*e*) is in possession of stolen property;

e) a en sa possession un bien volé;

(*f*) is disrespectful toward a person in a manner that is likely to provoke them to be violent or toward a staff member in a manner that could undermine their authority or the authority of staff members in general;

f) agit de manière irrespectueuse envers une personne au point de provoquer vraisemblablement chez elle une réaction violente ou envers un agent au point de compromettre son autorité ou celle des agents en général;

(*g*) is abusive toward a person or intimidates them by threats that violence or other injury will be done to, or punishment inflicted on, them;

g) agit de manière outrageante envers une personne ou intimide celle-ci par des menaces de violence ou d'un autre mal, ou de quelque peine, à sa personne;

(*h*) fights with, assaults or threatens to assault another person;

h) se livre ou menace de se livrer à des voies de fait ou prend part à un combat;

(*i*) is in possession of, or deals in, contraband;

i) est en possession d'un objet interdit ou en fait le trafic;

(*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;

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;

(*k*) takes an intoxicant into the inmate's body;

k) introduit dans son corps une substance intoxicante;

(*l*) fails or refuses to provide a urine sample when demanded pursuant to section 54 or 55;

l) refuse ou omet de fournir l'échantillon d'urine qui peut être exigé au titre des articles 54

	ou 55;
(*m*) creates or participates in (i) a disturbance, or (ii) any other activity that is likely to jeopardize the security of the penitentiary;	*m*) crée des troubles ou toute autre situation susceptible de mettre en danger la sécurité du pénitencier, ou y participe;
(*n*) does anything for the purpose of escaping or assisting another inmate to escape;	*n*) commet un acte dans l'intention de s'évader ou de faciliter une évasion;
(*o*) offers, gives or accepts a bribe or reward;	*o*) offre, donne ou accepte un pot-de-vin ou une récompense;
(*p*) without reasonable excuse, refuses to work or leaves work;	*p*) sans excuse valable, refuse de travailler ou s'absente de son travail;
(*q*) engages in gambling;	*q*) se livre au jeu ou aux paris;
(*r*) wilfully disobeys a written rule governing the conduct of inmates;	*r*) contrevient délibérément à une règle écrite régissant la conduite des détenus;
(r.1) knowingly makes a false claim for compensation from the Crown;	r.1) présente une réclamation pour dédommagement sachant qu'elle est fausse;
(r.2) throws a bodily substance towards another person; or	r.2) lance une substance corporelle vers une personne;
(*s*) attempts to do, or assists another person to do, anything referred to in paragraphs (a) to (r).	*s*) tente de commettre l'une des infractions mentionnées aux alinéas a) à r) ou participe à sa perpétration.

[34] Sections 41 to 43 of the Act, and sections 24 to 41 of the *Corrections and Conditional Release Regulations*, SOR/92-620, set out a disciplinary process, while section 44 lists the possible disciplinary sanctions that can be imposed on inmates found guilty of disciplinary offences:

Disciplinary sanctions	Sanctions disciplinaires
44. (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 96(i) and (j), to one or more of the following:	**44.** (1) Le détenu déclaré coupable d'une infraction disciplinaire est, conformément aux règlements pris en vertu des alinéas 96i) et j), passible d'une ou de plusieurs des peines suivantes :
(*a*) a warning or reprimand;	*a*) avertissement ou réprimande;
(*b*) a loss of privileges;	*b*) perte de privilèges;
(*c*) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence;	*c*) ordre de restitution, notamment à l'égard de tout bien endommagé ou détruit du fait de la perpétration de l'infraction;
(*d*) a fine;	*d*) amende;
(*e*) performance of extra duties; and	*e*) travaux supplémentaires;
(*f*) in the case of a serious disciplinary offence, segregation from other inmates — with or without restrictions on visits with family, friends and other persons from outside the penitentiary — for a maximum of 30 days.	*f*) isolement — avec ou sans restriction à l'égard des visites de la famille, des amis ou d'autres personnes de l'extérieur du pénitencier — pour un maximum de trente jours, dans le cas d'une infraction disciplinaire grave.

[35] It is clear that refusing to participate in a program specified in one's correctional plan is not a misconduct listed in the offences specified in section 40 of the Act, and that reducing the pay level of an inmate is not one of the possible disciplinary sanctions listed in section 44. The argument advanced by the applicant raises the question of whether the reduction of his pay level could be

viewed has having a disciplinary connotation, thus making this decision a disciplinary sanction imposed in contradiction with the disciplinary regime.

[36] In my view, this argument cannot succeed. As I stated earlier, the Senior Deputy Commissioner's decision implied that she had determined that because the reduction of the applicant's pay level was in conformity with the CD 730, it could not be viewed as a disciplinary measure. I find this conclusion reasonable when viewed in the context within which payments are made to inmates who participate in their program assignments.

[37] Section 15.1 of the Act provides that a correctional plan must be developed for each inmate. The correctional plan is a central feature in the rehabilitation of inmates. A correctional plan identifies, among other things, the level of intervention required by the specific needs of inmates and sets out objectives for their behaviour and participation in programs offered by the CSC. Section 15.1 reads as follows:

Objectives for offender's behaviour	Objectifs quant au comportement
15.1 (1) The institutional head shall cause a correctional plan to be developed in consultation with the offender as soon as practicable after their reception in a penitentiary. The plan is to contain, among others, the following:	**15.1** (1) Le directeur du pénitencier veille à ce qu'un plan correctionnel soit élaboré avec le délinquant le plus tôt possible après son admission au pénitencier. Le plan comprend notamment les éléments suivants :
(*a*) the level of intervention in respect of the offender's needs; and	*a*) le niveau d'intervention à l'égard des besoins du délinquant;
(*b*) objectives for	*b*) les objectifs du délinquant en ce qui a trait à :

(i) the offender's behaviour, including

(A) to conduct themselves in a manner that demonstrates respect for other persons and property,

(B) to obey penitentiary rules and respect the conditions governing their conditional release, if any,

(i) son comportement, notamment se comporter de manière respectueuse envers les autres et les biens et observer les règlements pénitentiaires et les conditions d'octroi de sa libération conditionnelle, le cas échéant,

(ii) their participation in programs, and

(ii) sa participation aux programmes,

(iii) the meeting of their court-ordered obligations, including restitution to victims or child support.

(iii) l'exécution de ses obligations découlant d'ordonnances judiciaires, notamment à l'égard de la restitution aux victimes ou de leur dédommagement ou en matière d'aliments pour enfants.

Maintenance of plan

(2) The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen.

Suivi

(2) Un suivi de ce plan est fait avec le délinquant afin de lui assurer les meilleurs programmes aux moments opportuns pendant l'exécution de sa peine dans le but de favoriser sa réhabilitation et de le préparer à sa réinsertion sociale à titre de citoyen respectueux des lois.

Progress towards meeting objectives

(3) In making decisions on program selection for — or the transfer or conditional release of — an inmate, the Service shall take into account the

Progrès du délinquant

(3) Dans le choix d'un programme pour le délinquant ou dans la prise de la décision de le transférer ou de le mettre en liberté sous condition, le

offender's progress towards meeting the objectives of their correctional plan.	Service doit tenir compte des progrès accomplis par le délinquant en vue de l'atteinte des objectifs de son plan.

[38] Section 76 of the Act specifically states that CSC must provide a range of programs that are designed "to address the needs of offenders and contribute to their successful reintegration into the community."

[39] Inmates are expected to participate actively in achieving the goals set out in their correctional plans. Paragraph 4(*h*) of the Act describes these expectations:

(*h*) offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision and to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and […]	*h*) il est attendu que les délinquants observent les règlements pénitentiaires et les conditions d'octroi des permissions de sortir, des placements à l'extérieur, des libérations conditionnelles ou d'office et des ordonnances de surveillance de longue durée et participent activement à la réalisation des objectifs énoncés dans leur plan correctionnel, notamment les programmes favorisant leur réadaptation et leur réinsertion sociale; […]

[40] Section 15.2 of the Act empowers the Commissioner to provide "offenders with incentives to encourage them to make progress towards meeting the objectives of their correctional plans."

[41] Section 78 adds that the Commissioner may authorize payments to offenders for the purpose of encouraging them to participate in the programs that are offered by CSC.

[42] Payments made to inmates who participate in program assignments are governed by the CD 730 which is entitled "Inmate Program Assignment and Payments."

[43] The CD 730 states its purpose as follows: "to encourage inmates to participate in programs identified in their correctional plans." Section 5 of the CD 730 specifies that the program assignments are based on recommendations contained in the inmates' correctional plans. A program assignment is defined at section 13 of the CD 730 as follows:

> For the purposes of this directive, a program assignment refers to any therapeutic intervention, work assignment, educational or training activity approved by the Program Board for which the inmate is paid.

[44] Inmates who participate in program assignments are entitled to receive payments in accordance with the parameters set forth in the CD 730. Sections 6 and 7 provide the following guidelines:

> 6. Program assessment for pay purposes shall be based on all available information concerning the inmate's participation in programs. The information shall be provided by the program supervisor, parole officer, unit staff and any other individuals responsible for the supervision of inmates.
>
> 7. Pay shall be reduced, or increases shall be refused, only for failure to meet the performance standard of a program to which an inmate has been assigned. […]

[45] Pursuant to section 12 of the CD 730, program assignments and pay levels are approved by a Program Board. Each pay level is governed by a specific set of criteria set out in section 17 of the CD 730. For the purpose of this case, only the criteria relating to pay levels "A" and "D" are relevant. The eligibility factors set forth for these pay levels are as follows:

> 17. Pay shall normally be based on the following daily rates:

a. Level A pay ($6.90) shall be awarded to inmates who:

(1) have been earning level B pay for at least the previous three months and have met the following performance standards in relation to all program assignments in their correctional plan:

i. no unauthorized absences;

ii. no unjustified late arrivals to, or early departure from, the program assignment;

iii. full and active participation in all aspects of the program assignment;

iv. completion of all requirements of the program assignment(s) to an excellent standard;

v. excellent interpersonal relationships, attitude, motivation, behaviour, effort and productivity.

…

d. Level D pay ($5.25) shall be awarded to inmates who:

(1) participate in a work assignment but refuse to participate in any other program assignment specified in their correctional plan, or in the absence of a correctional plan, refuse to participate in any other program assigned by the Board. This includes inmates who are appealing their sentence and/or conviction and refuse a program assignment for reasons relates to the appeal.

[46] Section 26 of the CD 730 prescribes that inmates' participation in program assignments are re-assessed by the Program Board on a regular basis:

> The Program Board shall review and assess the inmate's overall participation in the program assignment(s) at least once every three months and decide on the inmate's pay level. This interval may be extended by a period not exceeding one month for newly transferred inmates.

[47] When considering the above-cited provisions of the Act and of the CD 730, I am of the view that the CD 730, and more specifically the pay-structure that it creates, is in line with the objectives set out in sections 15.1 and 78 of the Act. Indeed, payments are made as incentives to encourage inmates to participate in their program assignments. The pay structure created by the CD 730 reflects the level of participation and the performance of inmates. Inmates who participate in all of their program assignments and meet the performance standards are entitled to a higher daily pay than inmates who refuse to participate in some of their program assignments. In my view, it is reasonable to conclude that determining the pay level which an inmate is entitled to considering his level of involvement in working towards the goals of his correctional plan does not have a disciplinary connotation. Rather, it is typical of a rewarding regime aimed at encouraging inmates to fully participate in their program assignments.

[48] Therefore, I find that it was reasonable for the Senior Deputy Commissioner to determine that reducing the applicant's pay to the level set out in paragraph 17(d) of the CD 730 did not amount to sanctioning him for misconduct. There is no doubt that the applicant refused to participate in the NSAP Moderate. The record is silent as to why he initially received a level "A" daily pay, but by participating in a work assignment while refusing to participate in any other program specified in his correctional plan, the applicant was simply not eligible for a level "A" pay. According to the pay structure provided in the CD 730, he was only eligible for a level "D" pay. Consequently, it was reasonable to determine that the reduction of the applicant's pay was merely an application of the CD 730 to his personal circumstances and his refusal to participate in the NSAP Moderate. The Senior Deputy Commissioner's decision falls "within a range of possible

outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above, at para 47) and the Court's intervention is not warranted.

[49] I am also of the view that the applicant has not established that his residual rights to liberty were restricted by CSC's decision to reduce his pay level. In this case, the CSC's decision does not involve any deprivation of the applicant's life, residual liberty or security. Rather, it involves his inmate income. Therefore there is no breach of section 7 of the *Charter*.

[50] For all of the above reasons, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs in favour of the respondent.

"Marie-Josée Bédard"

Judge