

Form 301  
Federal Courts Rules

Court File No. T-1767-23

# FEDERAL COURT

**BETWEEN:**

**WILLIAM A. JOHNSON,**

— and —

**THE ATTORNEY GENERAL OF CANADA,**

**Respondent**

FILED	FEDERAL COURT COUR FÉDÉRALE	DEPOSE
	AOUT 17 2023 AUG 17 2023	
	SCINTHURA SEERALADEVAN	
TORONTO		

Seal

APPLICATION UNDER s.18.1 of the Federal Courts Act

## NOTICE OF APPLICATION

### TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The applicant requests that this application be heard by videoconference between Ottawa Local Office of the Federal Court and Warkworth Institution.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any steps in the application or to be served with any documents in the application, you or a solicitor acting for you must forthwith prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant acts in person, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Chief Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

\_\_\_\_\_  
Date

Issued by \_\_\_\_\_  
Registry Officer

Address of local office Toronto Local Office  
180 Queen Street West,  
Suite 200  
Toronto, Ontario  
M5V 3L6

**TO: THE ATTORNEY GENERAL OF CANADA,**  
Respondent

Per: *Federal Courts Rules*, Rule 133

## APPLICATION

This is an application for judicial review in respect of a decision made by the Commissioner of Corrections as represented by Peter Linkletter (“Mr. Linkletter”), Special Advisor to the Commissioner, on the 19<sup>th</sup> day of May, 2023, and first received by the Applicant this 18<sup>th</sup> day of July, 2023.

By his decision, Mr. Linkletter upheld in part only, having denied most of the Applicant’s Final Level Grievance Presentation, Reference Number: V40R00050255 under ss.3, 4(f), 90 and 91 of the S.C. 1992 c. 20 as am., a.k.a. *Corrections and Conditional Release Act* (hereinafter “CCRA”) and ss.31(1)(a) and 33(1)(3) of the SOR/92-620 as am., a.k.a. *Corrections and Conditional Release Regulations* (hereinafter “CCRRs”), against the Respondent’s continued harassment and unlawful Institutional Charge in violation of the grounds open to the Correctional Service of Canada (hereinafter “CSC”), a creature of statute existing in and by the CCRA, PART I pursuant to s. 5 thereof, by which the Warkworth Institution (hereinafter “WI”) continues to harass the Applicant in retaliation for filing grievances against the conduct of CSC staff in violation of s.4(f), 90 and 91 of the CCRA.

Further, the Respondent is in default of the CCRA, Part I at ss. 4(f), 90 and 91, in disrespect of the Applicant’s grievance such that he is left without legal remedy at law save by the *Federal Courts Act*, R.S.C. 1985, c. F-7 as am., s. 18.1. The submitted evidence supports a repeated pattern to a dysfunctional grievance process with biases for the truth and facts before it.

**THE APPLICANT MAKES APPLICATION FOR:**

- 1.1 A writ of *Certiorari* pursuant to s. 18.(1), or an order in the nature, to quash or set aside all decisions, respectively, finding the Institutional Charge is unlawful or unreasonable in furtherance to the harassment on the grounds the Applicant refused to wear a mask not required, that the grievance responses failed to address relevant issues raised, failed to maintain requested evidence available for defence, the Institutional Charge and all supporting documents be removed from his file.
- 1.2 A declaration or an order in the nature, pursuant to s. 18.1(3) of the *Federal Courts Act* to declare the decision to charge the Applicant and find him guilty is invalid, thus finding the grievance decisions at each level invalid.
- 1.3 A writ of *mandamus*, or an order in the nature having failed to observe the procedure required by *Commissioner's Directives* 081, Offender Complaints and Grievances, dated 2014-01-13 (hereinafter "*CD*") in conjunction with the *GUIDELINES* 081-1, Offender Complaint and Grievance Process, dated 2014-01-13 (hereinafter "*GL*") failed to address relevant issues raised, refused to provide requested evidence, such harassment appears for the purpose to harass and humiliate the Applicant in front of his peers.
- 1.4 His expenses in bringing this application.

1.5 Such further and other relief as the Applicant may advise and as to This Honourable Court seems just.

**THE GROUNDS FOR THE APPLICATION ARE:**

2.1 That in accordance with s. 18.1(1) of the *Federal Courts Act*, the Applicant is the person directly affected by the decision in respect of which relief is sought. He is a Canadian citizen, now 64 years old, born June 4, 1959.

2.2 He is in the CSC's custody under the *CCRA*, Part I, at WI, a medium security institution under the control and management of the Commissioner of Corrections (hereinafter "Commissioner") in the province of Ontario.

2.3 Notwithstanding that he is in the CSC's custody, the Applicant remains possessed of residual liberty interests, rights and privileges, protected at common law by the *CCRA*, Part I as s. 4(d), namely:

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

(d) offenders retain the rights of all members of society, except those that are, as a consequence of the sentence,

2.4 By the *CCRA*, Part I at s. 39, the Parliament of Canada also imposed a plainly worded, **negative** injunction or statutory prohibition on the CSC, that the Respondent acted in violation of, namely:

39. Inmates **SHALL NOT** be disciplined otherwise than in accordance with sections 40 to 44 and the regulations.

[Applicant's emphasis]

**Institutional Charge**

2.5 Prior to the institutional charge, CSC staff and inmates received their covid-19 vaccination shots, allowing inmates and CSC staffs to stop wearing masks and allowed to socialize in large groups within WI.

2.6 By a document styled “Inmate Offense Report and Notification of Charge”, dated 22-06-22, by A. Goodfellow, the Applicant was Institutionally Charged contrary to s. 39 of the *CCRA*, as the charge was unjustified at that time as masked were not worn by CSC staff and inmates within WI.

2.7 The inmate charge sheet cites it warranted under paragraph 40(r) of the *CCRA*. This also fails, as there was no written Rule for wearing a mask at the time due to Covid-19 shots being received. Masks were voluntary.

40(r) wilfully **disobeys a written rule** governing the conduct of inmates;

[Applicant’s emphasis]

2.8 It was Correctional Manager Pitts (Hereinafter “CM”) ordered CSC staff to charge the Applicant for not wearing a mask while CSC staff and other inmates continued to not wear mask at this time, violating the Applicant’s rights under s. 15.(1) of the CANADIAN CHARTER OF RIGHTS AND FREEDOMS (hereinafter “Charter”) to equal protection under the law.

2.9 Further to 2.8 above, CM Pitts was harassing the Applicant for filing grievances against him and Unit 5 staff. The institutional charge is furtherance harassment by CM Pitts acting contrary to section 91 of the CCRA having negative consequences for using the grievance system.

2.10 CM Pitts ordered the Applicant to be institutionally charged and was both accuser and Judge at the Applicant's Minor Court hearing raises bias or apprehension of bias.

2.11 The Applicant was denied requested evidence "video surveillance" be preserved to confirm CSC staff and inmates were not wearing mask within WI. The video surveillance was not preserved in direct violation of s. 31(1)(a) of the *CCRRs* in conjunctions with CD081, par.4 to maintain video tapes and examine exhibits and documents to be considered in the taking of the decision.

**Minor Court Hearing**

2.12 The Applicant was denied natural justice and procedural fairness at his Minor Court hearing held on 2022-06-28 by CM Pitts being accuser and judge raising bias or apprehension of bias in direct violation of s.4(f) of the *CCRA*, s.15(1) of the *Charter*, and s.31(1)(a) of the *CCRRs*. The Applicant was denied requested video surveillance evidence to be preserved in violation of s. 31(1)(a) of the *CCRRs* as it states in part, "*examine exhibits and documents to be considered in the taking of the decision*".

2.13 At the Minor Court Hearing CM Pitts did not dispute Mr. Johnson's submissions at the hearing identifying repeated examples of bias and unreasonableness that includes:

- a) CSC staff and inmates are not wearing mask within WI at this time.
- b) You (CM Pitts) ordered CSC staff to charge me (Mr. Johnson) raises bias to hear this case;
- c) You (CM Pitts) were standing next to CSC staff and inmates not wearing masks and did not order them to wear masks;
- d) You (CM Pitts) continually harass me (Mr. Johnson), You (CM Pitts) are using this charge as another tactic to come against me (Mr. Johnson).
- e) If safety was your (CM Pitts) concern, you would have CSC staff and inmates wear a mask, that's why I (Mr. Johnson) requested the video surveillance be preserved showing masks are not being used.

2.14 CM Pitts ordered CSC staff to charge the applicant that they would not on their own become both accuser and Judge at his minor court hearing to find him guilty supports the applicant's clam the purpose was to harass him. The decision is bias leaving the Applicant to appeal the decision through the Inmate Grievance Process as prescribed under CD 081 in conjunction with GL 081-1.

**Grievance Process**

2.15 The Applicant presented a CSC Offender Initial Grievance Presentation, Reference No.V40R00050255, dated 2022-11-03. The Applicant raises the following: 1) the Institutional Charge was to harass the Applicant; 2) the Minor Court hearing was bias; 3) CM Pitts denied the Applicant access to the recording of the Minor Court hearing; 4) the Respondent failed to maintain requested Video Surveillance evidence. Applicant's rights were violated against ss. 4(d)(f), 39, 90 and 91 of the *CCRA* in conjunction with s.31(1)(a) of the *CCRRs*.

**Video Surveillance**

2.16 The Applicant attached two of his Inmate Requests to have the Video Surveillance preserved for a Grievance showing CSC staff and inmates are not wearing masks at that time. The Applicant submitted their failure to maintain the Video Surveillance or acknowledge masks are not being worn will show CSC willing to cover-up the truth. CSC failed to maintain Video Surveillance evidence. This is contrary to s.31(1)(a) of the *CCRRs* and CD 081, paragraph 4.

**CD081, par.4** The decision maker will ensure that any materials or documentation, including audio and video tapes, that are used in the analysis of a complaint or grievance are protected and available for review in the event of a subsequent submission by the grievor or where the grievor pursues an alternate legal remedy (such as judicial review of the final grievance decision).

**CCRRs s.31(1)(a)** The person who conducts a hearing of a disciplinary offence shall give the inmate who is charged a reasonable opportunity at the hearing to

- (a) question witnesses through the person conducting the hearing, introduce evidence, call witnesses on the inmate's behalf and examine exhibits and documents to be considered in the taking of the decision;

[Applicant's emphasis]

2.17 The Applicant's complaint against not receiving his requested Minor Court hearing recording was answered by CM Pitts that addresses issues not submitted in the Applicant's complaint and denied him access to the recording. This violated the Applicant's right's under ss. 4(f), 90 and 91 of the *CCRA* in conjunction with ss. 33(1) and (3) of the *CCRRs*.

*CCRRs* s.33 (1) The Service shall ensure that all hearings of disciplinary offences are recorded in such a manner as to make a full review of any hearing possible.

33(3) An inmate shall be given reasonable access to the record of the inmate's hearing.

[Applicant's emphasis]

2.18 In support of harassment by CM Pitt's, the Applicant provided his letter to the Commissioner against CM Pitts using harassment and threats to prevent his use of the grievance system contrary to s. 91 of the *CCRA*

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

2.19 The Applicant submitted the minor court recording would confirm he accused CM Pitts standing next to CSC staff without wearing a mask and inmates and did not order them to wear mask and because he order staff to charge the Applicant he is bias to hear this case.

### **Initial Grievance Response**

2.20 The response, dated 2022-12-15, by Dave Dunk, A/Warden only continued to provide inaccurate information and deny the Applicant to a fair grievance process, free from negative consequences required under ss. 4(f), 90, and 91 of the *CCRA*.

2.21 The Respondent, Mr. Dunk, is mandated under s. 3(a) of the *CCRRs* to know and respect his basic duty.

3 Every staff member shall

(a) be familiar with the Act, these Regulations and every written policy directive that relates to the staff member's duties;

2.22 The response by Mr. Dunk fails to appreciate the Applicant's letter to the Commissioner against CM Pitts threatening him for using the grievance process. Mr. Dunk states in part, "*non specific allegations that are not supported in fact*". This response is misleading as specific facts were provided sufficient to be creditable to investigate further as required under GL 081-1, Annex E, par.2, Step 4, requiring investigation into the allegations raised.

2.23 The Response by Mr. Dunk misrepresents the request for the Video Surveillance along with his legal obligations to maintain such evidence. First, the Applicant requested the video evidence to be maintained (preserved) for the grievance, not for possession as Mr. Dunk claims. Second, such evidence is required to be maintained under CD 081, paragraph 4, not as Mr. Dunk claims there is no requirement.

2.24 The Response by Mr. Dunk failed to acknowledge the fact CM Pitts demonstrated his disrespect for the Applicant's rights by having denied the Applicant his request for the recording of his Minor Court hearing in direct violation of his legal obligation under s.33(3) of the *CCRRs*.

2.25 The Response by Mr. Dunk is unreasonable having accepted the Applicant's requested for the Minor Court recording to be placed in his A&D priority that was required to be handed to him for review.

2.26 The Response by Mr. Dunk is unreasonable by claiming masks were required at that time when the evidence identifies this untrue and his refusal to preserve the Video Surveillance identifying this fact is admission of guilt and cover-up.

**Final Level Grievance Submissions**

2.27 The Applicant presented his Offender Final Level Grievance Presentation, Reference No.V40R00050255, dated 2023-01-16, challenging the previous levels along with the bias Minor Court hearing to evidence the Inmate Charge was to harass the Applicant and unlawful.

2.28 The Applicant provided additional evidence with his submissions in support of paragraph 2.27 above. The Final Level submissions with attached documents consist of thirty-seven (37) pages, including Appendixes "A" through "E".

**Harassment Link**

2.29 The Applicant in support to the link of harassment by CM Pitts attached at Appendixes "C" and "D" two separate grievances filed against CM Pitts protecting the subculture activity within Unit 5 with threats and intimidation tactics of removal from Unit 5 if he used the grievance

system. The Applicant mailed two letters of complaint against CM Pitts at Appendixes "A" and "B" to be allowed to use the grievance system. CM Pitts turned to harassment by unlawfully charging the Applicant.

2.30 The Applicant's mandated rights under s. 24(1) of the *CCRA* is violated by the unreasonable Institutional Charge and all reports to this charge placed on his file requiring all such information be removed.

24 (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses possible, is as accurate, up to date and complete as possible.

#### **Bias**

2.31 The Applicant in support provided a transcript of the Minor Court hearing as transcribed by the Applicant to show CM Pitts did not dispute the arguments presented at the hearing that: 1) CSC staff and inmates are not wearing mask, 2) he was the one that ordered staff to file the Institutional Charge that makes him bias to hear the case.

#### **CSC History of Abuse**

2.32 The Applicant presented as evidence the ongoing pattern of violations against CSC basic duties of conduct and the law.

2.33 The Applicant attached news clipping identifying CSC staff within WI involved in the drug trade by drugs found in the Warden's building.

2.34 The Applicant presented four known CSC staff have been caught trafficking contraband within WI.

2.35 The Applicant presented excerpts from the Commission of inquiry by The Honourable Louise Arbour into CSC's violations that in summary identified CSC as a "*deplorable defensive culture*" and that "*I believe there is Little hope the Rule of Law will implant itself within the correctional culture without assistance and control from Parliament and the courts.*"

2.36 The Applicant presented two of his Case Law of CSC unlawfully suspending him from his program assignments. The second suspension showed CSC's continued of disrespect for its home statue and This Court's first ruling such suspension unlawful.

2.37 The Applicant presented two additional case law of CSC decisions ruled unreasonable in support a bias and dysfunctional grievance process.

#### **Action Requested**

2.38 The Applicant requested that 1) CM Pitts be removed, 2) the Institutional charge and reports be removed from the Applicant's file.

#### **Final Level Response**

2.39 The Final Level Grievance Response, dated 2023-05-19 breached its basic duty to address or considered the relevant facts before it, instead, found unreasonable excuses to defend the continued harassment and unlawful charge from the lower level responses violating the Applicant's rights under ss. 4(f), 90 and 91 of the *CCRA*.

2.40 The Final Level Response was unreasonable by claiming written Rules were in place requiring mask be worn at that time having failed to identify or provide any copy of the written Rule to support their claims throughout the grievance process.

2.41 The Final Level Response failed to appreciate the fact the Video Surveillance evidence to verify the Applicant's claim was not preserved. The refusal to preserve the Video Surveillance identifying this fact is admission of guilt and cover-up to allow the harassment to continue and humiliate the Applicant in front of his peers.

2.42 Instead, the response justifies denying the video surveillance by misrepresenting its own *CD* policy claiming there is no requirement to retain the video surveillance recordings. This fails under *CD 081* dealing specifically with CSC grievances requiring such evidence preserved and available for review under *CD 081*, at par. 4.

***CD081, par.4*** The decision maker will ensure that any materials or documentation, including audio and video tapes, that are used in the analysis of a complaint or grievance are protected and available for review in the event of a subsequent submission by the grievor or where the grievor pursues an alternate legal remedy (such as judicial review of the final grievance decision).

2.43 The Final Level Response acknowledging CM Pitts provided inaccurate information in his response and the recording from the Minor Court hearing should have been provided. The Final Level Response failed to appreciate CM Pitts had already established he can't be trusted, violating the Applicant's rights under ss. 4(f), 90 and 91 of the *CCRA*.

2.44 The Final Level Response admits CM Pitts directed staff to charge the Applicant. This makes CM Pitts the charging officer and judge in the Applicant's Minor Court Hearing making the decision bias and void, without legal force.

2.45 The Final Level Response fails on the grounds the Respondent failed to sign the document or use a Stamp. The digital signature can be typed by anyone not authorized. Only the approved hand signature or authorized stamp is valid on government documents. The digital signature gives the impression the Applicants concerns are taken seriously and disrespectful.

2.46 In short, the Final Level decision handed the applicant is biased or raises a reasonable apprehension of bias, thereby rendering the Final Level decision void.

2.47 The applicant therefore brings application for judicial review.

2.48 For greater certainty to paragraphs 2.1 through 2.47 above:

(a) Mr. Motiuk and each of the CSC decision-makers under him acted *ultra vires* on the grounds allowed the CSC by or otherwise erred in law against ss. 3, 4(d)(f), 5, 24(1) 39, 40(r), 90 and 91 of the *CCRA* and ss. 3.(a), 31(1)(a) and 33(1)(3) of *CCRRs*;

(b) Mr. Motiuk and each of the CSC decision-makers under him erred against CD 081, GL 081-1;

(c) Their decision is perverse or capricious in that it is made without proper regard for the Applicant's material concerning the harassment of the Applicant by unlawfully charging him and the true facts of his case; and

2.49 Institutional bias is to be inferred or apprehended, whereby the applicant was denied natural justice or procedural fairness due and owed him under the *CCRA*, Part I at ss. 4(f) and 90.

2.50 Such further and other grounds as the applicant may advise and This Honourable Court may allow.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

3.1 The Affidavit of William A. Johnson sworn in support of this application, and his exhibits therein referred to.

3.2 The tribunal record referred to requested hereunder.

3.3 Any and all emails or reports relied on for the Institutional Charge and grievance proceeding is requested hereunder.

3.4 Any emails between the Applicant (William Johnson) and National Headquarters during the dates of February 10, 2020 to June 10, 2020.

3.5 Such further and other material as the Applicant may advise and This Honourable Court may permit.

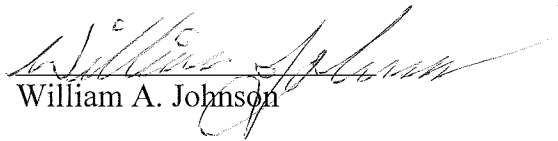
THE APPLICANT REQUESTS that the Commissioner and WI send a certified copy of the following material that is not in the possession of the applicant but is in their possession to the applicant and to the Registry with the set time allowed under Rule 318 of the Federal Courts Rules

4.2 The EXECUTIVE SUMMARY pertaining to the Applicant's Final Level Grievance, Reference Number: V40R00050255 dated 2023/05/19 together with all correspondence related thereto, including e-mails, memoranda, notes to file, etc.

4.4 Any and all Observation Reports or Emails that refer to the Institutional Charge and grievance process on this matter.

4.5 Any other material that the applicant may request pending the hearing or other final determination of this application.

Dated at Warkworth Institution, Canada, in Brighton Township, province of Ontario, this August 15<sup>th</sup>, 2023.

  
William A. Johnson

Address: Warkworth Institution  
15847 County Road 29  
Warkworth, Ontario  
KOK 3K0

Mailing: P.O. Box 760  
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KOL 1L0

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I HEREBY CERTIFY that the above document is a true copy of  
the original <sup>0</sup> issued out of / filed in the Court on the \_\_\_\_\_  
day of \_\_\_\_\_ AUG 17 2023 \_\_\_\_\_ A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ AUG 17 2023 \_\_\_\_\_ 20 \_\_\_\_\_

SCINTHURA SEERALADEVAN  
REGISTRY OFFICER  
AGENT DU GREFFE