

**FEDERAL COURT OF APPEAL**

BETWEEN:

**ASHRAF BOUAB**

<b>FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE</b>	
<b>F</b>	<b>27-MAR-2024</b>
<b>I</b>	
<b>L</b>	Martin Vaillancourt
<b>E</b>	
<b>D</b>	
<b>OTTAWA, ON</b>	<b>-1-</b>

Appellant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

---

**NOTICE OF APPEAL**

---

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

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 Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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

**DATE:** 27-MAR-2024

**Issued By:** Martin Vaillancourt

(Registry Officer)

**Address of  
Local office:** Thomas D'Arcy McGee Building  
Federal Court of Appeal  
90 Sparks St  
Ottawa, ON K1A 0H9

**TO:** Mr. Andrew Newman  
Department of Justice Canada  
Civil Litigation Section  
50 O'Connor Street  
Suite 500  
Ottawa, Ontario  
K1A 0H8

Tel: 343-551-3006  
Fax: 613-954-1920

**Counsel for the Respondent  
Attorney General of Canada**

**TO:** Mr. Stephen Zap  
Independent Chairperson  
Disciplinary Court  
Warkworth Institution  
County Road #29  
P.O. Box 760  
Campellford, Ontario  
K0L 1L0

**Decision maker**

## **APPEAL**

**THE APPELLANT APPEALS** to the Federal Court of Appeal from the Judgment of the Honourable Madam Justice Turley dated 27 February 2024 in Docket No. T-325-23 by which the Federal Court dismissed the Appellant's Application for Judicial Review in respect of the 24 January 2023 decision of the Independent Chairperson of the Warkworth Institution Disciplinary Court (the "Chairperson") convicting the Appellant of the disciplinary offence of "fails or refuses to provide a urine sample when demanded pursuant to section 54 or 55", contrary to paragraph 40(l) of the *Corrections and Conditional Release Act (CCRA)* (the "Decision").

### **THE APPELLANT REQUESTS:**

- (1) That the appeal be allowed with costs in this Court and the Court below;
- (2) That the Judgment of the Federal Court be set aside;
- (3) An Order allowing the application for judicial review and quashing the 24 January 2023 Decision of the Chairperson;
- (4) An Order in the nature of mandamus directing the Independent Chairperson to dismiss the Appellant's disciplinary charge;
- (5) An Order that all references to the Appellant's charge and conviction be removed from the Appellant's correctional files and any fines collected by the Correctional Service be returned to the Appellant; and
- (6) Such other relief as may seem just.

**THE GROUNDS FOR THE APPEAL are as follows:**

The Federal Court erred in its application of the standard of review in finding that the Decision of the Chairperson was reasonable. The Decision was not reasonable, because:

- (1) The Chairperson made findings of fact that were legally incompatible with a finding of guilt beyond a reasonable doubt. Specifically, it was accepted by the Chairperson that the Appellant made genuine good faith efforts to provide a urine sample but was physically unable to do so;
- (2) The Decision lacked intelligibility and justification in relation to the facts and applicable law. The Decision does not sufficiently explain why the Chairperson is finding the Appellant guilty despite accepting the Appellant's exculpatory evidence, including that he "acted in good faith" and that his testimony "was not embellished in any fashion".

In particular, the Chairperson failed to apply the mandatory formula from *R. v. W.(D.)* when considering the exculpatory evidence presented by the Appellant. In order to make a reasonable finding of guilt, the Chairperson would have been required to first reject the Appellant's evidence that he was not physically able to provide a sample at the time of the demand and the Appellant's evidence that he would not have been able to provide a sample if he had remained at the collection area for the short amount of time remaining. The Chairperson would then have been required to consider if he was left with any reasonable doubt given his rejection of the Appellant's evidence. Finally, the Chairperson would

have then been required to consider if he was convinced beyond a reasonable doubt of the guilt of the accused on the basis of the evidence which he did accept; and

(3) Such further and other grounds as counsel may advise and this Honourable Court may permit.

The Federal Court further erred in its application of the reasonableness standard by making findings of fact that were not made by the Chairperson and relying heavily on inferences drawn from informal comments made by the Chairperson in response to a comment by the Appellant after the conclusion of the hearing, and which were not part of the Chairperson's decision.

Ultimately, the Federal Court impermissibly reformulated the Chairperson's Decision in a way that cast aside the Chairperson's own unreasonable chain of analysis (his misapprehension of the proper *actus reus* for this offence) in favor of the Court's own rationale for the result.

**PROVISIONS RELIED ON:**

The Appellant relies on the following statutory provisions and rules:

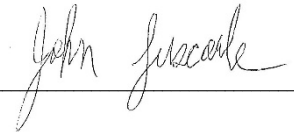
*Corrections and Conditional Release Act* sections 38-44, 54-56;

*Corrections and Conditional Release Regulations* sections 24-41, 60-71;

*Commissioner's Directive No. 566-10*: "Urinalysis Testing";

*Commissioner's Directive No. 580*: "Discipline of Inmates".

DATED: 27 MARCH 2024



---

**Counsel for the Appellant**

John Luscombe  
Queen's Prison Law Clinic  
Suite 500 – 303 Bagot St  
Kingston, ON, K7K 5W7  
Fax: 613-533-3172  
Email: [j.luscombe@queensu.ca](mailto:j.luscombe@queensu.ca)  
Tel.: 613-546-1171