

FEDERAL COURT

BETWEEN

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Aline Longin	
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DAVID RODNEY FLEGEL

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
(Rule 301)

TO THE RESPONDENT:

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

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 in Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documentation in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, 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 613-922-4238) 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.

Dated this 7th day of September 2023.

Issued by: Aline Longin
(Registry Officer)

Address of
Local office: 90 Sparks, Ottawa On

**TO: ATTORNEY GENERAL OF CANADA
DEPARTMENT OF JUSTICE
500-50 O'Connor Street
Ottawa, Ontario
K1A 0H8**

FEDERAL COURT

BETWEEN:

DAVID RODNEY FLEGEL

Applicant

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ATTORNEY GENERAL OF CANADA

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APPLICATION

This is an application for judicial review of a decision of the Warkworth Institution Disciplinary Court convicting the applicant of the disciplinary offence failing or refusing to provide a urine sample when demanded pursuant to section 54 or 55. Specifically, the decision of the Disciplinary Court rendered on or about April 18, 2023 convicting the applicant of the disciplinary charge.

The applicant makes application for:

1. An Order in the nature of *certiorari* quashing the decision of the disciplinary court; and
2. An Order for costs of this application.

The grounds for the application are:

1. That the applicant is an Indigenous 56-year-old federal offender serving a life sentence with a 13-year period of parole ineligibility at Warkworth Institution ("WI"), imposed upon his conviction for the December 24, 2000, murder of Mr. Tim Barrett.
2. That on August 25, 2022, while housed at Joyceville Institution (minimum security) the applicant was advised that there were two incidents of tobacco smell in the house he shares with other

offenders and that there were two indications by the drug detector dog in that house and that, as a result he was required to provide a urine sample. The applicant is aware that the tobacco smell allegedly came from the shower area and not from his room and he knows that the drug dog detected on another offender's room and not his room.

3. That the applicant was asked to provide that sample and he did ^{his} ~~my~~ best to provide it. He was advised by the Officer who made the demand that the amount he provided was not enough and that he would be charged with failing or refusing to provide a sample. He was charged under the *Corrections and Conditional Release Act* s.40(1) of refusing or failing to provide a urine sample.

4. That the applicant was transferred from Joyceville Institution (minimum-security) to Warkworth Institution (medium security) and on April 18, 2023, he stood trial on that charge. It was argued that the Urinalysis Collector lacked reasonable grounds to make the demand that the applicant provide the sample. It was argued that this was a search within meaning of s.8 of the *Charter* and that Parliament have taken great pains to put strict limitations on urinalysis. It was argued that this fact situation was the same as that in *Beaudoin v. William Head Institution*, 1997 CanLII 5866 (FC). That is, merely being in the presence of an odor of marijuana was not enough to demand a urine sample.

5. That at that trial it was specifically asked of the urine collector whether or not he had reasonable grounds to request that urine sample. That the officer collecting that urine sample acknowledged that he did not have reasonable grounds to collect the sample. The Officer acknowledged that he merely collects the sample and that he is not privy to reasonable grounds.

6. That as a lifer with 23 years in prison this type of charge has a very serious effect on the applicant's life. He has done his best to get to minimum-security and now he finds himself back in medium security. He was supported by his parole officer for an Escorted Temporary Absence (ETA) but as a result of this, and the involuntary transfer, he has lost that support. In his experience, it could easily take him another 5 years to get back to where he was. That is, in minimum-security and supported for an ETA.

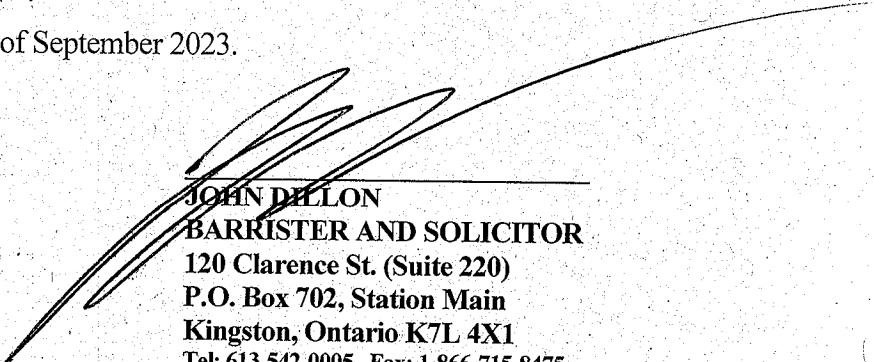
7. Such further and other grounds as Counsel may advise and This Honourable Court permit.

This application will be supported by the following material:

1. The affidavit of the applicant;
2. Such further and other material as counsel may advise and This Honourable Court may permit.

The applicant requests that the Correctional Service of Canada send a certified copy of the record to the Registry and to the solicitor for the applicant including a copy of the transcript of the hearing in question.

Dated at Kingston, Ontario, this 7th day of September 2023.



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COUNSEL FOR THE APPLICANT