

Federal Court



Cour fédérale

**Date: 20181024**

**Docket: T-1327-17**

**Citation: 2018 FC 1073**

**Ottawa, Ontario, October 24, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**Wael Chamoun**

**Applicant**

**and**

**Attorney General of Canada**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Wael Chamoun (the “Applicant”) seeks judicial review of a decision of the Independent Chairperson (the “Chairperson”) of Warkworth Institution, made on May 9, 2017. In that decision, the Chairperson convicted the Applicant of the disciplinary offence of disobeying a justifiable order of a staff member, contrary to subsection 40(a) of the *Corrections and Conditional Release Act*, S.C. 1992, c.2 (the “Act”).

[2] The Applicant seeks the following relief;

1. An Order in the nature of *certiorari* quashing the decision of the Independent Chairperson; and
2. An Order directing the Respondent to provide a copy of a disciplinary court recording when requested by a retained solicitor; and,
3. An Order for costs of this application.

[3] The following facts are taken from the materials contained in the Certified Tribunal Record (the “CTR”), including the video recording of the events in question, and the affidavit of the Applicant filed in support of this application for judicial review. The CTR contains a transcript of the proceedings before the Chairperson.

[4] The Applicant is a 38 year old federal offender serving a five-year sentence at Warkworth Institution, following convictions for several charges of breaking and entering.

[5] On December 14, 2016, the Applicant went to the methadone clinic at the Visits and Correspondence (“V and C”) area at Warkworth Institution to obtain methadone. He says he had to sit in assigned seating for twenty minutes after receipt of the methadone while the authorities ensured that the drug was swallowed and not diverted for resale within the prison. The Applicant was wearing sunglasses and in possession of another pair when he attended the methadone clinic.

[6] The Applicant wore sunglasses due to light sensitivity that developed after he was injured in a car accident some years earlier.

[7] After the twenty minute period passed, the Applicant was permitted to leave the V and C area. He alleges that as he was leaving, a correctional officer (the "Officer") told him to give him his sunglasses. The Officer claims he needed to verify that the sunglasses were prescription since sunglasses are not permitted at the methadone clinic without an authorized prescription.

[8] The methadone nurse confirmed with the Officer that the pair of sunglasses worn by the Applicant were not authorized but the second pair, in his possession, was authorized.

[9] According to the Applicant, when the Officer told him to give him his sunglasses, he refused because he was concerned the Officer would break them or keep them. The Applicant submits that the Officer then assaulted him by trying to take the sunglasses from him. Despite the Officer's allegations that the Applicant slapped the Officer's hand away, the Applicant does not recall slapping the Officer's hand.

[10] The Inmate Offence Report and Notification of Charge describes the incident as follows:

This Officer gave several direct orders for [the Applicant] to hand over his sunglasses to which I/M refused all direct orders. When this Officer went to retrieve them [the Applicant] slapped this Officer [*sic*] hand.

[11] The Officer's Statement/Observation Report records the following:

On the above date and approximate time this officer did use physical handling to gain compliance of [the Applicant]. [The Applicant] was wearing sunglasses in the Meth Clinic down in V&C. When ordered to remove the sunglasses, [the Applicant] refused stating that he was allowed to wear them and they were prescription. When told to hand over a second pair of glasses that he had on his person, he too refused to hand them over. This second pair of glasses were taken and given to the methadone

nurse in which she confirmed that this second pair of glasses were in fact authorized and the pair he was wearing were not. Several more direct orders were given by the [the Officer] to remove the glasses and when [the Officer] tried to remove them, [the Applicant] did resist and slapped [the Officer]'s hand away. Physical handling was then used to gain control of [the Applicant].  
CM Notified.

[12] Two other officers also provided Statement/Observation Reports, the first of which echoes the Officer's description of the incident. The third officer's Statement/Observation Report, cited below, does not refer to the Applicant slapping the Officer's hand:

On the above date and approximate [the Applicant] was refusing to take off his sunglasses in V and C during methadone. [The Officer] gave him a direct order to hand over his glass case and remove his sunglasses so the nurse could check if they were prescription glasses. [The Applicant] was verbally defiant and would not take off his sunglasses. Sunglasses are not allowed in V and C during methadone. [The Officer] and COI Medill grabbed his arms and handcuffed him and took him to see the Correctional Manager. I held on to one arm as they handcuffed him.

[13] In March 2017, approximately three months after the incident, medical documentation was issued that addressed the Applicant's vision condition, known as photophobia; any bright light causes him discomfort and headaches. The Applicant was advised to wear his sunglasses at all times. Based on the CTR, on the day of the incident, the Applicant did not have a prescription for the sunglasses he wore to the V and C, but the other glasses that he had on his person were verified as prescription glasses.

[14] In April 2016, five months after the incident, the Applicant was notified by the Correctional Manager, that in future, he would be placed in the 2<sup>nd</sup> row during the methadone clinic:

As of 2017-04-14 you will be placed in the 2nd row in [V&C] during methadone parade. This will remain in effect until such time that you are no longer attending parade having to wear your sunglasses.

AS per SOP Para 9 in order to receive their dose, offenders must have their identification ready, not be wearing any outer clothing, wearing institutional clothing, no sunglasses or caps, not having in their possession any cups, containers, or pouches, and must not be intoxicated.

You have received medical permission to wear your sunglasses at all times. This is against the standing order and therefore for better observation this author has placed in the 2nd row.

[15] On June 20, 2016, the Applicant was charged with an offence pursuant to paragraph 40(a) of the Act.

[16] In the decision, the Chairperson found:

[...] I think the obvious thing to have done was to hand it over. He says he gets on with [the Officer]. If he was about to leave then there was no reason that they shouldn't have been handed right back but [the Officer] obviously thought that he was about to go into, about to go and do his methadone treatment. And he should've followed the course. He didn't have to go out, he could've waited inside. Outside away from the bright sun. I think the charge as made out, [...]

[17] The Applicant raises the following issues:

1. Did the evidence before the Chairperson establish that the Applicant disobeyed a justifiable order of a staff member in breach of section 40(a) of the CCRA?
2. Were the Chairperson's reasons satisfactory?

[18] In my view, the sole issue for determination is whether the Chairperson's finding that the Applicant disobeyed a justifiable order is reasonable.

[19] The decision of the Chairperson is reviewable on the standard of reasonableness; see the decision in *Boucher-Côté v. Canada (Attorney General)* (2014), 467 F.T.R. 119.

[20] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that the decision of an administrative decision maker be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that is defensible upon the law and the facts.

[21] The evidence before the Chairman consisted of the oral evidence of an Officer, a short video of the events in the V and C area, and the oral evidence of the Applicant. The task for the Court, in adjudicating the application for judicial review, is to determine if the decision under review meets the applicable standard of review, that is reasonableness. The Court is not to weigh the evidence but is certainly authorized to ask if there was evidence to support the decision.

[22] In the hearing before the Chairman, the Applicant admitted that he did not remove his sunglasses but submitted that the order to do so was not justifiable, since the methadone clinic was over.

[23] In my opinion, the Chairman's decision is not reasonable. The Chairman did not make a clear finding that the order was justifiable. It follows that the decision is not "justifiable, transparent and intelligible", as required by the test in *Dunsmuir, supra*.

[24] In the result, the application for judicial review is allowed, the decision of the Chairman is set aside and the matter is remitted to the Institutional Head upon condition that if the matter is redetermined, that such hearing proceed before a different Chairperson. The Applicant shall have his taxed costs.

**JUDGMENT in T-1327-17**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is allowed, the decision of the Chairman is set aside and the matter is remitted to the Institutional Head upon condition that if the matter is redetermined, that such hearing proceed before a different Chairperson. The Applicant shall have his taxed costs.

“E.Heneghan”

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Judge



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

**DOCKET:** T-1327-17

**STYLE OF CAUSE:** WAEL CHAMOUN v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 17, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** OCTOBER 24 2018

**APPEARANCES:**

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