Federal Court  Cour fédérale

Date: 20101220

Docket: T-973-09

Citation: 2010 FC 1312

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 20, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

RICHARD HARNOIS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of two decisions by the Director of the Correctional Service of Canada. The first decision, dated June 10, 2009, was to assign to the applicant the Correctional Service of Canada's institutional clinician. The second decision, dated June 11, 2009, was to cancel a visit by members of the applicant's family.

[2] In this application, the applicant is asking this Court to declare that he had a right to see his attending physician during his incarceration and that cancellation of the visit was unreasonable.

Facts

[3] The applicant has a number of medical conditions, including HIV/AIDS and Hepatitis C.

[4] On December 2, 2009, the applicant finished serving a sentence of three years and nine months for a series of robberies to which he pleaded guilty.

[5] He served most of his sentence at the La Macaza Institution where Dr. Jean Robert provided his care.

[6] On August 29, 2008, the applicant was given statutory release.

[7] Dr. Robert continued to treat the applicant during his release.

[8] On April 29, 2009, the applicant's statutory release was suspended by the Correctional Service of Canada (CSC). He was then reincarcerated at the Leclerc Institution in the Postsuspension Unit for breaching the conditions of his release.

[9] Leclerc Institution is a medium-security federal correctional institution located in Laval, Quebec. Leclerc Institution provides a number of programs, including living skills, substance abuse treatment, violent offender treatment and educational programs.

[10] When the applicant was reincarcerated he was receiving treatment for Hepatitis C under a payment authorization from the Régie de l'assurance maladie du Québec for an initial phase from September 8, 2008, to April 22, 2009, which was to be extended for a total of 48 to 72 weeks, in the circumstances.

[11] When the applicant arrived at Leclerc Institution on April 29, 2009, he was interviewed by a nurse, Johanne Gagnon, who checked the medication the applicant was taking while he was in the community.

[12] The institutional clinician at Leclerc Institution is Dr. Michel Breton, and on occasion Dr. Jacques Bélanger.

[13] On June 10, 2009, the applicant was taken to the Centre hospitalier Cité de la Santé in Laval for exploratory neurological testing. That decision was made by Dr. Michel Breton. It was based on the fact that the applicant seemed to be experiencing neurological complications with symptoms resembling Gilles de la Tourette Syndrome, but with an unknown medical diagnosis.

[14] There is a contractual agreement between the CSC and the Centre hospitalier Cité de la Santé in Laval to provide incarcerated inmates with a continuum of health care, when necessary. A secure room at the Centre hospitalier Cité de la Santé in Laval is therefore made available to the CSC in the event that inmates must remain in hospital, as was the case for the applicant.

[15] On June 11, 2009, while the applicant was a patient at the Centre hospitalier Cité de la Santé in Laval, he received permission for a visit from members of his family: Isabelle Harnois and Stéphane Deslandes. However, before the visit took place, Geneviève Thibault, Deputy Warden of Leclerc Institution, read an observation report written by a correctional officer who was doing surveillance of the secure room where the applicant was hospitalized. The report stated that the correctional officer heard the applicant on June 10, 2009, speaking with a member of his family on the telephone about having tobacco brought into the institution during the scheduled visit to the hospital.

[16] When she read the report, on the afternoon of June 11, 2009, Ms. Thibault cancelled the special visit on June 11, 2009, in view of the risk of tobacco (unauthorized item) being introduced that the visit presented.

[17] On July 8, 2009, the applicant was released as a result of a decision of the National Parole Board.

Relevant statutory provisions

[18] The relevant statutory provisions are set out in the Annex.

Issues

[19] In the opinion of the Court, the application for judicial review raises the following issues:

1. *Is the decision of the CSC dated June 10, 2009, and reiterated in the letter of June 11, 2009, providing that Dr. Jean Robert could not be the applicant's clinician during his incarceration at Leclerc Institution reasonable?*

2. *Does that decision violate the applicant's rights under sections 7, 12 and 15 of the Charter?*

3. *Is the decision of the CSC dated June 11, 2009, to cancel the special family visit reasonable or does it violate the principles of procedural fairness?*

4. *Does that decision violate the applicant's rights under sections 7, 12 and 15 of the Charter?*

Standard of review

[20] In this case, both decisions were made in a penitentiary context and the decision-maker has expertise in penitentiary management. The decision-maker must protect the inmate while having regard to a paramount consideration, the protection of society. The decision-maker must also comply with CSC directives. A decision to cancel an inmate's visit relates to the safety of inmates and visitors. In both cases, it is essentially a question of fact, and the applicable standard of review is reasonableness.

[21] In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9, at paragraph 47, the Supreme Court of Canada defined reasonableness as follows:

> [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. … 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.

[22] The decision-maker's decisions are essentially based on that person's expertise and involve a question of fact, or at most a question of mixed fact and law, and the applicable standard of review is therefore reasonableness. In these circumstances, the Court must show deference.

[23] With respect to the procedural fairness issues raised, it is now settled law that the applicable standard is correctness.

Analysis

(a) Section 302 of the *Federal Courts Rules*

[24] At the hearing before this Court, the respondent argued that the applicant's application for judicial review raises two issues rather than just one, and therefore violates Rule 302 of the *Federal Courts Rules*. Rule 302 reads as follows:

GENERAL	DISPOSITIONS GÉNÉRALES
…	[…]
Limited to single Order	Limites
302. Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.	**302.** Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[25] One of the appropriate remedies for failure to comply with Rule 302 would be for this Court to grant an extension of time to enable the applicant to file an application for judicial review *nunc pro tunc* in relation to another decision (*Pfeiffer v Canada (The Superintendent of Bankruptcy)*, 2004 FCA 192, [2004] FCJ No 902). However, after reviewing the record and hearing the parties, although the Court is of the opinion that the two decisions that are part of this application for judicial review are separate, they are nonetheless sufficiently related in the circumstances. Having regard to the facts in the record, they are sufficiently part of a continuum that this Court may hear them in a single judicial review proceeding.

> (b) *Is the decision of the CSC dated June 10, 2009, and reiterated in the letter of June 11, 2009, providing that Dr. Jean Robert could not be the applicant's clinician during his incarceration at Leclerc Institution reasonable?*

[26] It should be noted at the outset that paragraph 2(*c*) of the *Canada Health Act* provides that an inmate in a federal penitentiary is no longer covered by the public health care plan. Accordingly, the CSC takes on responsibility and has an obligation to provide every inmate with essential health

care and reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community (ss. 85 and 86 of the *Corrections and Conditional Release Act*).

[27] The CSC therefore acts as a sort of insurer and to some extent as a hospital. To provide inmates with health care, CSC penitentiaries have a health department. The CSC employs doctors who provide health care to inmates in penitentiaries. The doctors employed fall into two categories: those who are retained on contract as consultants and those who are hired as attending physicians to treat inmates in institutions (institutional clinician).

[28] Under Commissioner's Directive 800 concerning health services (CD 800), the institutional clinician is the physician responsible for prescribing treatment and medication for inmates. A consultant makes recommendations to the attending physician.

[29] It should also be noted that paragraph 4(*e*) of the *Corrections and Conditional Release Act* (CCRA) provides that inmates retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence. Accordingly, the courts have held that certain Charter rights of inmates are restricted because of incarceration, and this is the case, in particular, for the expectation of privacy (*Weatherhall v Canada (Attorney General)*, [1993] 2 SCR 872).

[30] In this case, the issue of health care in a penitentiary takes centre stage.

[31] When the applicant arrived at Leclerc Institution, he was interviewed by a nurse who assessed his health needs. She checked the medication the applicant had been taking while he was in the community. By checking prescriptions, the institution can make sure that the doses prescribed are appropriate. This procedure also ensures that doses are not being used to meet needs associated with drug addiction or for trafficking within the penitentiary (CD 800 and Affidavit of Martin Turcotte, Respondent's Record at page 216).

[32] Next, Dr. Michel Breton, the institutional clinician, prescribed a substitute for the applicant's medication in accordance with the CSC's pharmacological formulary. As the respondent explained at the hearing, the CSC's pharmacological formulary is a national formulary that contains a list of medications the CSC funds as part of the essential medical care provided to inmates. The respondent also correctly observed that the national pharmacology committee recommends following the prescriptions for medications included in that formulary (Affidavit of Martin Turcotte, Respondent's Record at pp. 216-217). Some of the doses prescribed to the applicant before he was incarcerated at Leclerc Institution are not included in the CSC's pharmacological formulary.

[33] The CSC has adopted guidelines for treating the hepatitis from which the applicant suffers. It appears that the guidelines are consistent with recognized Canadian standards in this area and the CSC expects the health professionals who provide these services to comply with the guidelines (Affidavit of Hélène Racicot, Respondent's Record at page 2).

[34] The applicant alleges that the institution refused to allow Dr. Jean Robert to provide care to him. The correspondence in the record actually confirms that there was no objection to Dr. Robert being given temporary privileges in order to provide the applicant with care, by contacting Dr. Breton, the institutional clinician, to discuss it and obtain the approval of the attending institutional clinician, in this case Dr. Breton (Respondent's Record at pp. 343, 348, 351 and 353 and the letters of June 19 and June 29, 2009, from Eric Lafrenière to Isabelle Turgeon). The Court is of the opinion that this procedure complied with the provisions in issue, and in particular with paragraph 4(*a*) and section 86 of the CCRA and CD 800. The evidence also shows that the CSC stopped using Dr. Robert's services because of failure to comply with the guidelines for treating viral hepatitis (Affidavit of Hélène Racicot, Applicant's Record at page 2).

[35] The applicant also argued that his treatment was interrupted by Dr. Breton while he was incarcerated. The Court is of the opinion that there is no evidence that the doses administered by Dr. Breton violated the standards of the profession, as argued by the applicant. The evidence in the record actually shows that Dr Breton and the physicians at the institution made consistent decisions and occasionally expressed doubts as to the applicant's medical complaints. For example, Dr. Breton stopped the Statex on the basis that the applicant seemed to be concealing his narcotic in his mouth. There were therefore doubts as to whether the applicant was using the medication to relieve the alleged pain or instead using it as contraband within the institution (Applicant's Record at pp. 16 and 18 and Affidavit of Martin Turcotte, Respondent's Record at page 217).

[36] Accordingly, the decision not to continue ribivarin-interferon treatment in the applicant's case, in light of the recommendations of a specialist consultant in that area, Dr. Marc-André Gagné, was reasonable (Affidavit of Dr. Michel Breton, Respondent's Record at page 220 and document entitled "Management of Chronic Hepatitis C: Consensus Guidelines," Respondent's Record at pp. 259, 265, 267, 268 and 270). In addition, the evidence shows unequivocally that the applicant accepted the decision to interrupt his treatment for Hepatitis C (Applicant's Record at page 197; s. 88 CCRA).

[37] In fact, there is nothing in the record to show that Dr. Breton's medical opinion was incorrect, unreasonable or not consistent with the standards recognized by medical practice, as the applicant attempted to show. Rather, it is apparent that Dr. Breton exercised his professional clinical judgment by ensuring that the applicant received essential care within the meaning of section 86 of the CCRA (*Powell v Canada (Attorney General),* 2004 FC 1304, [2004] FCJ No 1566). The Court therefore does not accept the applicant's allegation that the treatment was [TRANSLATION] "botched".

[38] In addition, the Court notes that the applicant filed no complaint or grievance (s. 90 of the CCRA; *Brian Raymond Stauffer v John Cosby*, T-1677-09, January 28, 2010, order of Prothonotary Roger F. Lafrenière).

[39] The applicant's arguments lead to a central argument: essentially, that an inmate is entitled to have access to a physician of his choice because there are no provisions in the CCRA or the *Corrections and Conditional Release Regulations* (Regulations) that restrict that right.

[40] The Court is of the opinion that if Parliament had intended to allow an inmate to have access to a physician of his of her choice, it would have clearly said so. In the circumstances, the analogies with provincial law proposed by the applicant have limits. In general, although there is a right to universal health care, that right is not an absolute right for the general public and there is nothing in the CCRA that suggests otherwise for inmates. The scheme put in place by Parliament through the CCRA, which applies to penitentiaries, confirms that the institutional clinician is in fact the guardian of the statutory mandate assigned to the CSC.

[41] In the circumstances, the Court concludes that the decision made by the institution, to have the applicant treated by the institutional clinician, Dr. Breton, is reasonable. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*).

[42] In view of the answer to question 1, it is not necessary for the Court to dispose of the second question.

(c) *Is the decision of the CSC dated June 11, 2009, to cancel the special family visit reasonable or does it violate the principles of procedural fairness?*

[43] The Court notes that while the applicant was incarcerated he was taken to the Centre hospitalier Cité de la Santé in Laval for assessment, to complete his file. At that time, neither Dr. Breton nor Dr. Robert seemed to know the source of the applicant's neurological problem (Respondent's Record at page 343).

[44] While he was at the Centre hospitalier Cité de la Santé in Laval, a visit was scheduled for June 11, 2009. Before the visit on June 11, 2009, was cancelled, it had been allowed on a special basis because the visitors were not on the visiting list.

[45] The applicant submits that the decision to cancel the visit is unreasonable and violates the principles of procedural fairness because it was made on the same day as the scheduled visit. The applicant further submits that he was informed of the decision to cancel the visit when his visitors had already left.

[46] The Court cannot agree with the applicant's arguments.

[47] First, the decision by Ms. Thibault to cancel the visit was based on the observation report by a correctional officer who heard the applicant in a telephone conversation with his potential visitors discussing the possibility of introducing unauthorized items, and specifically tobacco (Respondent's Record at page 208). She learned of that information on the afternoon of June 11, at about 2:45 p.m. That was when the decision to cancel the visit was made.

[48] The applicant submits that Ms Thibault had an obligation under section 91 of the Regulations to inform him promptly of the reasons for her decision and give him an opportunity to make representations with respect thereto. The applicant also submits that Ms. Thibault failed to comply with the Regulations because the applicant was informed of the decision at about 6:00 p.m., when his visitors had already left the hospital.

[49] Having regard to the circumstances and the context in which the decision to cancel the visit was made, the Court is of the opinion that, given the safety concerns, Ms. Thibault's decision is reasonable, for the following reasons:

- tobacco is an unauthorized item and is a subject of safety concerns, given the contraband problem in institutions (Directive 259);
- it is not possible to strip-search visitors and monitor inmates adequately in hospital, and possible exchanges between inmates and their visitors, as can be done in a penitentiary;
- it is not possible in this hospital to limit the visit to a window visit;
- there is no reason to doubt that operationally it was not possible at that precise time to post a correctional officer who would sit between the visitors and the applicant;
- Ms. Thibault had little time to manage the risk between the time when the correctional officer's report was communicated to her and the time of the visit.

[50] In light of the foregoing, the Court is also of the opinion that the facts in this case do not support the applicant's argument that there was a breach of procedural fairness.

[51] A few days later, after a reassessment of the risk was done, Ms. Thibault authorized a special family visit with the applicant. The visit took place on June 20, 2009.

[52] Accordingly, based on safety concerns and information relayed to her on the afternoon of June 11, 2009, and having regard to the fact that the visit was scheduled to take place in a hospital centre and not in a penitentiary, the Court concludes that Ms. Thibault's decision is reasonable, that it complies with the Regulations and Directive 770 concerning visiting and that it does not violate the principles of procedural fairness.

[53] In view of the answer to question 3, it is not necessary for the Court to dispose of question 4.

[54] For all these reasons, the Court dismisses the application for judicial review.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application be dismissed with costs.

"Richard Boivin"

Judge

Certified true translation
Susan Deichert, Reviser

ANNEX

Canada Health Act RS 1985, c C-6	*Loi canadienne sur la santé* LRC 1985, ch C-6
Definitions	Définitions
2. In this Act,	**2.** Les définitions qui suivent s'appliquent à la présente loi.
"insured person" « *assuré* »	« assuré » "*insured person*"
"insured person" means, in relation to a province, a resident of the province other than	« assuré » Habitant d'une province, à l'exception :
…	[…]
(*c*) a person serving a term of imprisonment in a penitentiary as defined in the *Penitentiary Act*, or	*c*) des personnes purgeant une peine d'emprisonnement dans un pénitencier, au sens de la Partie I de la *Loi sur le système correctionnel et la mise en liberté sous condition*;
…	[…]

Corrections and Conditional Release Act RSC 1992, c.20	*Loi sur le système correctionnel et la mise en liberté sous condition* LRC 1992, ch 20
PURPOSE	OBJET
Purpose of correctional system	But du système correctionnel
3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by (*a*) carrying out sentences imposed by courts	**3.** Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de

through the safe and humane custody and supervision of offenders; and (*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.	surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.
PRINCIPLES	PRINCIPES
Principles that guide the Service	Principes de fonctionnement
4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are	**4.** Le Service est guidé, dans l'exécution de ce mandat, par les principes qui suivent :
(*a*) that the protection of society be the paramount consideration in the corrections process; …	*a*) la protection de la société est le critère prépondérant lors de l'application du processus correctionnel; […]
(*d*) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders; (*e*) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence; …	*d*) les mesures nécessaires à la protection du public, des agents et des délinquants doivent être le moins restrictives possible; *e*) le délinquant continue à jouir des droits et privilèges reconnus à tout citoyen, sauf de ceux dont la suppression ou restriction est une conséquence nécessaire de la peine qui lui est infligée; […]
HEALTH CARE	SERVICES DE SANTÉ
Definitions	Définitions
85. In sections 86 and 87,	**85.** Les définitions qui suivent s'appliquent aux articles 86 et 87.
"health care"	« soins de santé »

« *soins de santé* »	"*health care*"
"health care" means medical care, dental care and mental health care, provided by registered health care professionals;	« soins de santé » Soins médicaux, dentaires et de santé mentale dispensés par des professionnels de la santé agréés.
"mental health care" « *soins de santé mentale* »	« soins de santé mentale » "*mental health care*"
"mental health care" means the care of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life;	« soins de santé mentale » Traitement des troubles de la pensée, de l'humeur, de la perception, de l'orientation ou de la mémoire qui altèrent considérablement le jugement, le comportement, le sens de la réalité ou l'aptitude à faire face aux exigences normales de la vie.
"treatment"« *Version anglaise seulement* » "treatment" means health care treatment.	
Obligations of Service	Obligation du Service
86. (1) The Service shall provide every inmate with	**86.** (1) Le Service veille à ce que chaque détenu reçoive les soins de santé essentiels et qu'il ait accès, dans la mesure du possible, aux soins qui peuvent faciliter sa réadaptation et sa réinsertion sociale.
(*a*) essential health care; and	
(*b*) reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community.	
Standards	Qualité des soins
(2) The provision of health care under subsection (1) shall conform to professionally accepted standards.	(2) La prestation des soins de santé doit satisfaire aux normes professionnelles reconnues.
Service to consider health factors	État de santé du délinquant
87. The Service shall take into consideration an offender's state of health and health care needs	**87.** Les décisions concernant un délinquant, notamment en ce qui touche son placement, son transfèrement, son isolement préventif ou toute question disciplinaire, ainsi que les mesures
(*a*) in all decisions affecting the offender,	

including decisions relating to placement, transfer, administrative segregation and disciplinary matters; and	préparatoires à sa mise en liberté et sa surveillance durant celle-ci, doivent tenir compte de son état de santé et des soins qu'il requiert.
(*b*) in the preparation of the offender for release and the supervision of the offender.	
When treatment permitted	Consentement et droit de refus
88. (1) Except as provided by subsection (5),	**88.** (1) Sous réserve du paragraphe (5), l'administration de tout traitement est subordonnée au consentement libre et éclairé du détenu, lequel peut refuser de le suivre ou de le poursuivre.
(*a*) treatment shall not be given to an inmate, or continued once started, unless the inmate voluntarily gives an informed consent thereto; and	
(*b*) an inmate has the right to refuse treatment or withdraw from treatment at any time.	
Meaning of "informed consent"	Consentement éclairé
(2) For the purpose of paragraph (1)(*a*), an inmate's consent to treatment is informed consent only if the inmate has been advised of, and has the capacity to understand,	(2) Pour l'application du paragraphe (1), il y a consentement éclairé lorsque le détenu a reçu les renseignements suivants et qu'il est en mesure de les comprendre :
(*a*) the likelihood and degree of improvement, remission, control or cure as a result of the treatment;	*a*) les chances et le taux de succès du traitement ou les chances de rémission;
(*b*) any significant risk, and the degree thereof, associated with the treatment;	*b*) les risques appréciables reliés au traitement et leur niveau;
(*c*) any reasonable alternatives to the treatment;	*c*) tout traitement de substitution convenable;
(*d*) the likely effects of refusing the treatment; and	*d*) les conséquences probables d'un refus de suivre le traitement;
(*e*) the inmate's right to refuse the treatment or withdraw from the treatment at any time.	*e*) son droit de refuser en tout temps de suivre ou de poursuivre le traitement.
Special case	Cas particulier

(3) For the purpose of paragraph (1)(*a*), an inmate's consent to treatment shall not be considered involuntary merely because the treatment is a requirement for a temporary absence, work release or parole.	(3) Pour l'application du paragraphe (1), le consentement du détenu n'est pas vicié du seul fait que le traitement est une condition imposée à une permission de sortir, à un placement à l'extérieur ou à une libération conditionnelle.
…	[…]
GRIEVANCE PROCEDURE	GRIEFS
Grievance procedure	Procédure de règlement
90. There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner, and the procedure shall operate in accordance with the regulations made under paragraph 96(*u*).	**90.** Est établie, conformément aux règlements d'application de l'alinéa 96*u*), une procédure de règlement juste et expéditif des griefs des délinquants sur des questions relevant du commissaire.
Access to grievance procedure	Accès à la procédure de règlement des griefs
91. Every offender shall have complete access to the offender grievance procedure without negative consequences.	**91.** Tout délinquant doit, sans crainte de représailles, avoir libre accès à la procédure de règlement des griefs.

Corrections and Conditional Release Regulations SC 1992, c 20	*Règlement sur le système correctionnel et la mise en liberté sous condition* LC 1992, ch 20
VISITS	VISITES
90. (1) Every inmate shall have a reasonable opportunity to meet with a visitor without a physical barrier to personal contact unless	**90.** (1) Tout détenu doit, dans des limites raisonnables, avoir la possibilité de recevoir des visiteurs dans un endroit exempt de séparation qui empêche les contacts physiques, à moins que :
(*a*) the institutional head or a staff member designated by the institutional head believes on reasonable grounds that the barrier is necessary for the security of the penitentiary or the safety	*a*) le directeur du pénitencier ou l'agent désigné par lui n'ait des motifs raisonnables de croire que la séparation est nécessaire pour la sécurité du pénitencier ou de quiconque;

of any person; and	
(*b*) no less restrictive measure is available.	*b*) il n'existe aucune solution moins restrictive.
(2) The institutional head or a staff member designated by the institutional head may, for the purpose of protecting the security of the penitentiary or the safety of any person, authorize the visual supervision of a visiting area by a staff member or a mechanical device, and the supervision shall be carried out in the least obtrusive manner necessary in the circumstances.	(2) Afin d'assurer la sécurité du pénitencier ou de quiconque, le directeur du pénitencier ou l'agent désigné par lui peut autoriser une surveillance du secteur des visites, par un agent ou avec des moyens techniques, et cette surveillance doit se faire de la façon la moins gênante possible dans les circonstances.
(3) The Service shall ensure that every inmate can meet with the inmate's legal counsel in private interview facilities.	(3) Le Service doit veiller à ce que chaque détenu puisse s'entretenir avec son avocat dans un local assurant à l'entrevue un caractère confidentiel.
91. (1) Subject to section 93, the institutional head or a staff member designated by the institutional head may authorize the refusal or suspension of a visit to an inmate where the institutional head or staff member believes on reasonable grounds	**91.** (1) Sous réserve de l'article 93, le directeur du pénitencier ou l'agent désigné par lui peut autoriser l'interdiction ou la suspension d'une visite au détenu lorsqu'il a des motifs raisonnables de croire :
(*a*) that, during the course of the visit, the inmate or visitor would (i) jeopardize the security of the penitentiary or the safety of any person, or (ii) plan or commit a criminal offence; and	*a*) d'une part, que le détenu ou le visiteur risque, au cours de la visite : (i) soit de compromettre la sécurité du pénitencier ou de quiconque, (ii) soit de préparer ou de commettre un acte criminel;
(*b*) that restrictions on the manner in which the visit takes place would not be adequate to control the risk.	*b*) d'autre part, que l'imposition de restrictions à la visite ne permettrait pas d'enrayer le risque.
(2) Where a refusal or suspension is authorized under subsection (1),	(2) Lorsque l'interdiction ou la suspension a été autorisée en vertu du paragraphe (1) :
(*a*) the refusal or suspension may continue for as long as the risk referred to in that subsection continues; and	*a*) elle reste en vigueur tant que subsiste le risque visé à ce paragraphe;

(*b*) the institutional head or staff member shall promptly inform the inmate and the visitor of the reasons for the refusal or suspension and shall give the inmate and the visitor an opportunity to make representations with respect thereto.	*b*) le directeur du pénitencier ou l'agent doit informer promptement le détenu et le visiteur des motifs de cette mesure et leur fournir la possibilité de présenter leurs observations à ce sujet.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-973-09
STYLE OF CAUSE:	RICHARD HARNOIS v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 30, 2010
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	December 20, 2010

APPREARANCES:

Isabelle Turgeon Simon Gruda	FOR THE APPLICANT
Michelle Lavergne Marc Ribeiro	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Grey Casgrain Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Minister and Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT