

Federal Court



Cour fédérale

Date: 20120807

Docket: T-1859-11

Citation: 2012 FC 970

Ottawa, Ontario, August 7, 2012

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ESMOND JACK YU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Esmond Jack Yu [the Applicant] brings this application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The decision at issue is a third level grievance decision dated September 29, 2011 in which Correctional Services of Canada [CSC] denied most of the Applicant's claim for compensation for alleged damage to his computer.

[2] The Applicant is self-represented and is an inmate at the Matsqui Institution, in Abbotsford, British Columbia [Matsqui]. The application was heard in Vancouver by video conference.

[3] On November 1, 2007, officers at Matsqui searched the Applicant's prison cell and found various unauthorized items including a cell phone concealed in his printer and a cell phone charger concealed in his computer tower/drive. The cell phone and its charger will be described as the "Contraband". The officers seized and searched all the computer's components including the tower/drive, the printer, the Sony E-100 15" monitor, the keyboard and the mouse [collectively the Computer].

[4] On December 10, 2007, Roylene McIntosh, Chief of Information Technology at Matsqui, reported finding prohibited and unauthorized software, drivers and other files on the Computer. Her investigation [the IT Search] and the officers' earlier physical search will be described together as the "Search". Ms. McIntosh recommended that the Computer be sent for reformatting at the Applicant's expense. It is not clear whether this was done. However, the Computer was placed in storage and it was decided that it would not be returned to the Applicant prior to his release.

[5] The Applicant was then involuntarily transferred from Matsqui to Kent, a maximum security institution. He was returned to Matsqui in 2008. It appears that the Computer was moved each time the Applicant was transferred.

[6] On October 18, 2010, the Applicant was permitted to view the Computer [the Inspection]. The Admissions and Discharge Officer present at the Inspection reported that the Applicant believed that the Computer RAM located on the side of the tower/drive was not working. The Applicant also noted that, although there was power, the screen on the monitor would not turn on.

During the Inspection, the monitor and the tower/drive were photographed and no cracks or dents were visible although some smudges and/or scratches were seen on the monitor [the Photographs].

[7] On November 5, 2010, the Respondent received the Applicant's claim for lost and damaged Computer components [the Claim]. He claimed:

- (i) \$30.00 to replace missing panels which had been on the exterior of the tower/drive;
- (ii) \$30.00 for labour to install the new panels;
- (iii) \$10.00 for a damaged RAM;
- (iv) \$100.00 for labour to reset the security feature on the monitor or \$315.00 for a replacement monitor.

[8] In the Claim, at page 24 of the Certified Record of November 29, 2011, the Applicant gave his view of the cause of the malfunctioning RAM and monitor screen. He also mentioned the replacement panels. He said:

[...]

As to the RAM situation, it is likely to have been damaged from shock because there is no protective material packed with the tower in 3 years under CSC control. Electronic only fries with it being plug-in; no electronic would seize to function when no current runs through it.

As to the monitor, I personally doubt that it is damaged. But since I will have to pay to get a certified technician to re-activity the (maybe) tripped security feature because CSC failed to follow the correct procedure on the official web-site; CSC is liable. I am seeking repairing cost (if you can provide the instruction to fix it) or the replacement cost.

As to the panels, if you do find the panel somewhere within CSC control, and you allow me to snap them back on, then it is "no harm no fault". If not, I am asking for replace cost.

[9] In the first level decision of December 29, 2010, the Applicant was allowed \$30.00 for the missing panels on the basis that they were present when the Computer was seized and had apparently been lost by CSC personnel. However, the Warden denied the balance of the Claim. His decision was upheld in a second level decision made by Assistant Deputy Commissioner [ADC] Roxy Mandziak on March 9, 2011.

[10] On April 4, 2011, the Applicant submitted his grievance to the third level. It was accompanied by a lengthy submission [the Submission] which shows that, in his view, his Computer was damaged because it was inadequately packaged when it was stored and moved.

[11] On September 29, 2011, Acting Senior Deputy Commissioner [ASDC] Ross Toller denied the third level grievance as it related to the labour cost for new panels, the RAM and the Monitor. He treated the 30.00 charge for missing panels as a claim that had been resolved because it had been accepted by the Warden [the Decision].

THE DECISION

[12] The ASDC noted the Applicant's allegations that the Computer had not been adequately packed and that CSC had failed to confirm that the Computer was in good working order before and after the transfers between Matsqui and Kent. However, he concluded that these allegations were irrelevant. The ASDC stated that the Applicant was found to have stored Contraband in the Computer and that the alleged damage was "consistent with damage that resulted from you tampering with the internal components." He added that such tampering "very reasonably led to the

computer and monitor subsequently not functioning properly” and that any damaged caused by tampering was the Applicant’s responsibility.

[13] In the alternative, the ASDC concluded that, if the Computer had been damaged during the Search that damage would be covered by Guideline 234-1, *Claims Administration Instructions* [the Guidelines]. In this regard, the relevant version of para 29 reads as follows:

When an offender's property concealing contraband or an unauthorized item was inadvertently damaged while the contraband or unauthorized item was being retrieved, the Service shall not be held liable for any damage caused to the property if the damage was necessary to remove the contraband or unauthorized item. However, compensation should be offered if property is damaged and no contraband or unauthorized item is found.

Lorsque des effets personnels d'un délinquant, dans lesquels un objet interdit ou non autorisé avait été dissimulé, ont été endommagés par inadvertance au moment où l'objet interdit ou non autorisé a été extrait, le Service ne doit pas être tenu responsable des dommages causés aux effets personnels s'il fallait endommager ces effets pour extraire l'objet interdit ou non autorisé. Cependant, une indemnité devrait être offerte si des effets ont été endommagés, mais qu'il n'y avait aucun objet interdit ou non autorisé.

[14] The ASDC treated all the Computer components as one item of property and concluded, based on para 29, that the Applicant should not be reimbursed for the damaged RAM or the monitor. The ASDC also noted that no further action was required in respect of the missing panels because this portion of the Claim had already been upheld. Finally, the labour charge for reinstalling the panels was not awarded because the Applicant had told a CSC officer that he could easily snap them on himself.

THE STANDARD OF REVIEW

[15] Findings of fact and mixed fact and law made in the CSC grievance process are reviewed on a reasonableness standard, see *Bonamy v Canada (Attorney General)*, 2010 FC 153, at paras 46 and 47.

[16] The parties agree, and I accept, that the standard of review on questions of procedural fairness is correctness.

THE ISSUES

[17] The Applicant raises two issues:

1. Did the Respondent breach the requirements of procedural fairness?
2. Was the Decision reasonable?

The Respondent raises a further issue:

3. Are the remedies the Applicant seeks appropriate?

Issue 1 Did the Respondent breach the requirements of procedural fairness?

The parties' positions

[18] The Respondent notes that although the Applicant challenges the adequacy of the reasons provided in the Decision as an issue of procedural fairness, the Supreme Court of Canada has recently established that the adequacy of reasons is not a standalone basis for challenging a decision. The reasons should be read together with the outcome of the case to determine whether the decision

falls within a range of possible outcomes: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paras 14 and 22.

[19] The Applicant says that the ASDC failed to explain the basis for his finding that the damage to the Computer components was consistent with damage caused by the Applicant tampering with the Computer's internal components. Specifically, the Applicant argues that the ASDC used terms such as "tampered with", "internal components" and "computer components" [the Terms] which were confusing and not properly defined.

[20] On the other hand, the Respondent says that the Applicant's Submission shows that he clearly understood the meaning of the Terms.

[21] The Applicant argues that he was not provided with a copy of the Executive Summary prepared by Kristen Sage [the Analyst], who investigated his grievance at the third level. For this reason, he had no opportunity to refute the suggestion that he might have caused the damage himself when he hid the Contraband in his Computer.

[22] Given that the subject matter of the grievance is a claim for a maximum of \$385.00 for damaged property, the Respondent argues that the requirement for procedural fairness is minimal and is satisfied if an inmate has the opportunity to file representations during the grievance process.

[23] The Respondent says that the Applicant's Submission was before the ASDC and that the Applicant was aware of the Guidelines on which the ASDC relied.

[24] The Applicant further alleges that Analyst was biased because she “took sides” and advocated for CSC’s position in the dispute. He argues that the Analyst failed to conduct a proper investigation and should have verified the credibility of the parties, gathered the relevant policies, and presented a neutral report to the ASDC. Instead, the Analyst edited out his arguments and submissions. For example, the Applicant says that he cited section 28 of the Guidelines in his Submission, but it is not mentioned in the Executive Summary. He also submits that the Executive Summary does not explain the reasons for rejecting his arguments.

[25] The Respondent says that a review of the Executive Summary indicates that the Analyst set out all arguments and evidence and used them to form a recommendation. Moreover, the Respondent says that the ASDC and not the Analyst was the decision maker and the ASDC considered all the evidence, including the Submission.

Issue 2 Was the Decision unreasonable?

The parties’ positions

[26] The Applicant submits that it was unreasonable for the ASDC to decide that no further action was required with respect to the missing panels. He argues that the ASDC failed to show that he had investigated or verified the labour costs and failed to acknowledge that a third party will charge a fee to install the new panels.

[27] The Respondent replies in two ways, saying: (i) it was reasonable for the ASDC to find that this issue had been addressed in a manner that brought closure to the issue; and (ii) it was not clear

from the Applicant's Submission that he required any labour costs associated with the panels. The Respondent notes that in his original Claim, the Applicant stated that, if the panels were found, he would "snap them back on". This suggests that he could also "snap on" new panels.

[28] The Respondent argues that the Applicant chose to expose his Computer to damage when he used it to conceal the Contraband and that any damage caused during the Search was his responsibility.

[29] With respect to the monitor and the RAM, the Respondent observes that all of the Applicant's Computer components were confiscated and had to be searched after the Contraband was found in the front of the tower/drive and in the printer. It was therefore reasonable for CSC to search the monitor and the entire tower/drive – including the RAM located on the side. As a result, any damage to the monitor or the RAM was the Applicant's responsibility even though no Contraband was found in those locations.

DISCUSSION

The Executive Summary

[30] At the hearing the Applicant referred for the first time to Mr. Justice Martineau's decision in *Lewis v Canada (Correctional Services)*, 2011 FC 1233. In that case, the applicant had alleged that the failure to provide him with the Executive Summary (also called the Assessment for Decision) breached the requirement for procedural fairness. The Executive Summary was prepared to deal

with a third level grievance of a decision related to his request for a transfer to another institution and a decision to increase his security level from low to medium.

[31] In *Lewis*, the applicant's third level grievance was disallowed largely because most of the issues raised at that level had not been raised earlier. The applicant said that, if he had seen the Executive Summary which expressed concern about the new issues, he could have explained why he had not raised them earlier.

[32] The Court in *Lewis* held that subsection 27(1) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [the Act] created an applicable statutory duty and that the Executive Summary should have been provided to the applicant. The subsection reads as follows:

27. (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.

27. (1) Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

[33] Since the Applicant referred to the *Lewis* case without prior notice, the Respondent was given an opportunity to make post-hearing submissions. Therein the Respondent noted that subsection 27(1) only applies when a decision is to be made "about an offender". That means that it applies in cases such as *Lewis* in which transfers or security levels are at issue.

[34] The Respondent says that in this case, the Decision is not about an offender. Rather, it is about his property. I accept this submission and its consequence which is that subsection 27(1) of the Act does not apply and that any right to see the Executive Summary must arise at common law.

[35] Accordingly, I am guided by the decision of the Federal Court of Appeal in *Sweet v Canada (Attorney General)*, 2005 FCA 51. Speaking about CSC, the Court said at paras 31 and 32:

Every public authority making an administrative decision that affects the rights, privileges or interests of an individual has a duty to comply with the rules of natural justice and to follow rules of procedural fairness (see *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 653). However, as L'Heureux-Dubé J. noted in *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case".

The content of the duty of fairness on a public body, such as the CSC, was sent out by L'Heureux-Dubé J. in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 and was recently summarized by McLachlin C.J. in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650 at paragraph 5. Accordingly, the content of the duty of fairness varies according to five factors: (1) the nature of the decision and the decision-making process employed; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body.

[36] In my view, this is not a case that attracts a high level of procedural fairness. The first and third factors articulated in *Baker* are relevant to this conclusion.

[37] In *Gallant v Canada (Deputy Commissioner, Correctional Services Canada)*, [1989] 3 FC 329 (CA), FCJ No 70, the Federal Court of Appeal drew a basic distinction between disciplinary

and administrative decisions in the corrections context, noting that the former would tend to attract comparatively stronger participatory rights. Whereas administrative decisions in this context seek the “orderly and proper administration of the institution”, disciplinary decisions attempt to impose a sanction or punishment on an individual: *Poulin v Canada (Attorney General)*, 2008 FC 811, at para 27, citing *Gallant*, above. The nature of the Decision in the present case clearly falls into the administrative category and thereby attracts a level of procedural fairness at the lower end of the spectrum.

[38] Moreover, the ASDC’s Decision proceeded from an inquisitorial or administrative-style investigation of the Applicant’s grievance, a process which will generally attract a lower level of fairness compared to one that is more adversarial: *Baker*, above, at para 23; *Poulin*, above, at para 28.

[39] As to the importance of the Decision to the Applicant, this is not a case in which the Decision has any bearing on his autonomy at the correctional facility, as in *Poulin* (see para 29). As a result of the Applicant’s concealment of the Contraband in his Computer, the Computer was seized and placed in storage until his release. The Applicant does not challenge the seizure of his Computer. At most, the Decision implicates the Applicant’s property rights in his Computer. Given the minimal value of the alleged damage, I find that the importance of the Decision to the Applicant also suggests that only a low level of procedural fairness is required.

[40] Given that the *Baker* factors indicate a minimal duty of fairness in this context, I conclude that the Respondent's failure to provide the Applicant with a copy of the Executive Summary did not breach the requirements of procedural fairness.

[41] I have also concluded that this is not a case in which the Applicant was prejudiced by not seeing the Executive Summary. The second level decision said "as you chose to expose your computer system to damage by your actions, you are responsible for the repair or replacement of the components". The Applicant says that he understood this finding to refer to the possibility that he might have caused electrical short circuits. He says this understanding is corroborated by fact that he addressed this possibility on the second half of page 2 of his Submission.

[42] In my view, if that was his understanding it was unreasonable. There is nothing in the language of the second level decision to suggest that it related only to electricity. Accordingly, I do not accept that the Applicant did not have an opportunity to deal with the issue of tampering because he did not see the Executive Summary.

[43] On the other hand, even if I assume that the Applicant did not know that the Decision would refer to the possibility that he caused the damage himself when he hid the Contraband in the Computer, the fact is that this conclusion was offered in the alternative. An equally probable conclusion was that the damage occurred during the Search. That conclusion and the Guideline on which it was based were sufficient, without more, to support the denial of the claim, and the Applicant was aware of this reasoning and the related Guideline.

[44] For these reasons, I have concluded that procedural fairness did not require CSC to give the Applicant a copy of the Executive Summary before the Decision was made.

The Reasons

[45] In my view, having read the Submission and having heard the Applicant's oral submissions on this application, it is clear that the Applicant is familiar with computers and the Terms. I am therefore not persuaded that he was unable to understand the Decision.

A Reasonable Apprehension of Bias

[46] I am also satisfied that the Analyst gave an unbiased and thorough report of the Applicant's position. She noted that, in the Applicant's view, his Computer had been improperly packed and not inspected. She also reviewed the steps taken to investigate the Applicant's claim and the evidence about the status of the Applicant's Computer in 2010. That evidence included the Photographs.

[47] The Applicant criticizes the Analyst for not mentioning his reliance on para 28 of the Guidelines and says this indicates bias. His Submission said the following about the Guidelines:

I respectfully urge you to assign an analyst
who...understands...GL234-1.

...please...study GL234- paragraph 26-28.

[48] Para 28 reads as follows:

Contraband and Unauthorized Items

28. A claim in respect of contraband or an unauthorized item, seized in accordance with the procedures indicated in sections 57 and 58 of the CCRR, must not be accepted unless the item was to be returned to the offender – or his or her representative – as provided for in section 59 of the CCRR. For instance, a claim may be accepted in the following circumstances:

- a. where the item was to be returned to the offender in accordance with subsection 59(3) of the CCRR and it remained under the Service's care;
- b. where the offender had arranged for disposal or safekeeping of the item outside the penitentiary in accordance with subsection 59(4) of the CCRR while the item is still under the Service's care; or
- c. where, in accordance with subsection 59(7) of the CCRR, the forfeiture of the item has been cancelled.

[49] There is nothing in the Submission that clearly sets out the Applicant's view of the relevance of para 28 of the Guidelines. The Submission seems to suggest that paras 26 to 28 mean that the fact that Contraband was involved and that his Computer therefore became unauthorized is not relevant. However, the Applicant's position was not made clear. In these circumstances and because the relevance of para 28 is not plain and obvious, I am not persuaded that the analyst's failure to refer to para 28 of the Guidelines creates a reasonable apprehension of bias.

[50] I should also note that the Applicant did not deal with para 28 in his Memorandum of Fact and Law for this judicial review except to say at para 14 "CSC may accept [allow] claim for loss or damages of contraband if CSC returns it to the inmate's possession or control." However, the relevance of this assertion to the Applicant's grievance was not clear to me since there is no evidence that the Computer or the Contraband were ever returned. I say this notwithstanding the

Applicant's unsubstantiated allegation at page 3 of his second level submission of January 31, 2011 that CSC did return the claimed items.

[51] During the grievance process, the Applicant complained about the extent of the investigation and now says that a failure to thoroughly investigate shows bias. He believes that section 84 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [the Regulations], which obliges CSC to take care to protect inmates' effects, entitles him to a report of the steps taken to protect his Computer. There is no reporting requirement in the Regulations. Nevertheless, after the Inspection he did receive a summary. It read:

In response to your request:

1. Your electronics that were seized have been photographed and have been placed on you're A&D file.
2. Your electronics have been inspected with a staff member from the IT department and yourself present on 2010-10-18. As noted, these items were seized after a cell phone was found in your printer and a charger was found in your computer drive.
3. It was documented in the Contraband log that Contraband seizure tag 459-17 was issued for the cell phone and contraband seizure tag 461 was issued for the electronic items.
4. As per the Grievance Response V80A00030900, the Deputy Warden in consultation with the Operations Management team made the determination not to return your computer to you until your release. The decision is supported and maintained by the current Management Team.
5. On 2010-10-18 you were present while an itemized list was generated of your electronic items. You were allowed to assist with the listing and inspecting. Once this was completed, you packed these items for storage.

6. Your request and this response has been filed on you're A&D file.

[52] The grievances filed at the second and third level show that the Applicant also believes that he is entitled to be satisfied as a result of an investigation that:

- The investigator looked at Sony's website;
- The officer who broke the seals on his monitor was questioned;
- The report of the IT Search was independently verified;
- Proper steps were taken to ensure the accuracy of all evidence;
- 10 statements listed at page 2 of his submission of January 13, 2011 were addressed and verified.
- Due attention had been paid to the Regulations, Commissioner's Directives and Guidelines. For ease of reference, those of concern to the Applicant are summarized here:

The Regulations

Section 3	The staff is to be familiar with its duties.
Subsection 24(1)	Inmate discipline.
Section 59	If items are seized, owners shall be notified.
Subsection 74(2)	Re efforts to resolve grievances informally through discussion
Section 84	Inmates' effects are to be protected from loss or damage.

Directives

566-12 Annex C	Personal Property of Inmates – section 8 says that unauthorized hardware and software may result in the permanent removal of inmate-owned computers and peripherals.
CD685-5	Deals with the management of seized items.
CD 081	Deals with offender complaints and grievances.

Guidelines

2341, paras 28 and 29

[53] The Applicant also describes his view of the shortfalls of the investigation at para 79 of his Memorandum of Fact and Law. There he says:

Yes, CSC never (a) interview Officer Conner to inquiry how he had conducted the search (i.e. asking questions like: Did he use a screwdriver to open the applicant's effects Did he unplug the power supply before exposing or touching the internal circuitry?), (b) interview the initial-claim-investigator to find out the basis of her findings, or (c) identify all the staff members who had handled the claimed item.

[54] In my view the Guidelines show that a detailed and comprehensive investigation is not required in cases of this kind. They provide in the section entitled "Claims Investigations" at para 2 that "The level of the Investigation shall be commensurate with the amount claimed or the amount that may be offered for the claims settlement." In addition, since the Photographs show no external damage consistent with the Computer being dropped or moved without care, they largely negate the Applicant's allegation that the Computer was harmed because it was not adequately packed. This reinforces my conclusion that a detailed investigation was not required.

[55] The Applicant also submits that CSC was obliged to interview him with a view to understanding his concerns according to subsection 74(2) of the Regulations and that a failure to do so shows that the investigation was inadequate. However, the subsection speaks of the resolution of a grievance – not its investigation. The section says:

74(2) Where a complaint is submitted pursuant to subsection (1), every effort shall be made by staff members and the offender to resolve the matter informally through discussion.

74(2) Les agents et le délinquant qui a présenté une plainte conformément au paragraphe (1) doivent prendre toutes les mesures utiles pour régler la question de façon informelle.

[56] In my view, since CSC is only obliged to make “every effort” and discussions are not mandatory, I interpret “every effort” to mean every reasonable effort. In this case, given the extensive documentation associated with this grievance and the Applicant’s allegations of breaches of policy by CSC staff, it was obvious that an informal settlement would not be possible

[57] In these circumstances, I am satisfied that it was reasonable for CSC not to hold discussions.

[58] In my view, the Applicant was seeking to control the extent of the investigation of his grievance. He has no such right and therefore was not entitled to receive decisions which dealt with all the points raised. It follows that an allegation of bias based on the Decision’s failure to address all his issues is without merit.

IS THE DECISION REASONABLE?

[59] In my view, the Decision discloses that it is impossible to know why the monitor and RAM do not work. The Decision speculates that, if the non-functioning is the result of damage, that damage was inflicted either by the Applicant when he concealed the Contraband or by CSC officers during the Search. The Decision shows that, in either event, CSC is not liable.

[60] The Applicant alleges that CSC has not met the onus of showing that it did not cause the failures to function. However, in my view, the Photographs, which establish that there is no physical damage consistent with a failure to adequately pack the Computer for moving and storage, are sufficient to meet the onus.

[61] In my view, in the absence of any significant physical damage, it was reasonable to reject the Applicant's allegations that CSC had failed to protect or had mishandled his Computer.

CONCLUSION

[62] In view of these conclusions, there is no need to consider the appropriateness of the remedies sought by the Applicant.

JUDGMENT

THIS COURT’S JUDGMENT is that this application for judicial review is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1859-11

STYLE OF CAUSE: Esmond Jack Yu v
Attorney General of Canada

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 26, 2012

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AND JUDGMENT:** SIMPSON J.

DATED: August 7, 2012

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