

CANADA / JUDGMENT

Imona-Russel v. Canada (Attorney General)

2026 FC 175

COURT

Federal Court

DECIDED

6 February 2026

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Imona-Russel v. Canada (Attorney General)

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Decision Content

Date: 20260206

Docket: T-2023-24

Citation: 2026 FC 175

Vancouver, British Columbia, February 6, 2026

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

DR. WILLIAM IMONA-RUSSEL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, a self-represented federal inmate, was charged with the disciplinary offence of failing or refusing to provide a urine sample when demanded, contrary to paragraph 40(l) of the Corrections and Conditional Release Act, SC 1992, c 20 [CCRA]. The Applicant pled not guilty, and a disciplinary trial was held before the Independent Chairperson [Chairperson] of the Warkworth Institution Disciplinary Court [Disciplinary Court].

[2] Only one issue was raised before the Chairperson — that the charge against the Applicant should be dismissed based on the five-week delay between the laying of the charge on December 21, 2023, and his first appearance before the Disciplinary Court on January 30, 2024. Relying on the Corrections and Conditional Release Regulations, SOR/92-620 [CCRR], Correctional Service Canada [CSC]’s “Commissioner’s Directive 580: Discipline of inmates” [CD 580], as well as subsection 11(b) of the Canadian Charter of Rights and Freedoms [Charter], Applicant’s then counsel argued that the five-week delay was unreasonable such that the charge must be dismissed.

[3] The Chairperson refused to dismiss the charge based on delay. The Applicant was found guilty of the offence, but the Chairperson reduced the fine based on mitigating factors. The Applicant seeks judicial review of this decision.

[4] I am allowing the application for judicial review because the Chairperson failed to assess the Applicant’s allegations about unreasonable delay in the relevant legislative context and did not consider the applicable jurisprudence nor the applicability of the Charter. Rather, the Chairperson simply dismissed the Applicant’s arguments out-of-hand, finding that, in the Chairperson’s own experience, it was “fairly frequent” that the initial hearing does not take place within 10 working days of the charge being laid, as set out in paragraph 30 of CD 580. This matter is remitted to another Independent Chairperson for redetermination.

II. Background A. The charge of refusing a urine sample [5] The Applicant is an inmate at Warkworth Institution, a medium-security facility in Ontario. On December 21, 2023, he was summoned for a random urinalysis testing, pursuant to paragraph 54(b) of the CCRA: Notification to Provide a Urine Sample, Respondent’s Record [RR] at 22.

[6] The Applicant alleges that while he was waiting in the collection area to provide the urine sample, another inmate jumped the queue and was accommodated ahead of him and other inmates. The Applicant left the collection area after this incident: Statement/Observation Report, RR at 24.

- [7] When the Collection Officer [Officer] was unable to locate the Applicant in the collection area, the Officer attended the unit where the Applicant resided. The Officer presented the Applicant with a Notice to Provide a Urine Sample. The Applicant stated that he was being tested in an illegal manner because another inmate went ahead of him: Statement/Observation Report, RR at 24.
- [8] The Applicant refused to provide a urine sample for testing. The Officer advised him of the consequences of refusing. The Applicant, however, maintained his refusal: Statement/Observation Report, RR at 24. As a result, the Officer determined that a charge of refusing to provide a urine sample was warranted under paragraph 40(l) of the CCRA. The Applicant was provided an Inmate Offence Report and Notification of Charge with a proposed first hearing date of December 31, 2023: Inmate Offence Report and Notification of Charge, RR at 21.
- [9] On December 27, 2023, the Applicant made a request to the Warden of Warkworth Institution to review the surveillance camera footage from the hallway outside the collection area. In response, the Warden stated that this matter would be dealt with at the Applicant's disciplinary hearing: Inmate's Request, RR at 25.
- B. The Disciplinary Court hearing [10] The Applicant's first appearance before the Disciplinary Court was held on January 30, 2024. The Applicant's trial was initially scheduled for April 2024 but was adjourned due to a civil action commenced by the Applicant against the Independent Chairperson of Warkworth Institution: Audio tape of the disciplinary hearing at 9:58/12:29.
- [11] On July 9, 2024, the Chairperson convened a hearing of the Applicant's disciplinary charge. There is no written transcript of the hearing, but an audio recording was made and filed as part of the Certified Tribunal Record [CTR]. According to this recording, the hearing only lasted approximately 12 minutes. The Applicant was represented by counsel at this hearing. The Chairperson rendered oral reasons.
- [12] As a preliminary matter, the Chairperson requested submissions from the Correctional Manager of Operations [CMO] representing Warkworth Institution about the Applicant's request for a review of the surveillance footage of the hallway outside the collection area. The CMO advised that there were no cameras within that hallway: Audio tape of the disciplinary hearing at 4:20/12:29. This is supported by an email in the CTR: Email dated December 28, 2023, RR at 26. Applicant's counsel did not ask any questions of the CMO or make any submissions on this issue.
- [13] After reading the Officer's Observation Report into the record, the Chairperson provided Applicant's counsel with an opportunity to ask questions of the Officer. Applicant's counsel indicated that they did not have any questions for the Officer.
- [14] The Chairperson provided the Applicant with an opportunity to testify but Applicant's counsel advised that the Applicant would not be called to testify.

- [15] Applicant's counsel made a single submission during the disciplinary hearing: that there was an unreasonable delay in the Applicant being called for his first appearance before the Disciplinary Court and that, because of that delay, the charge should be dismissed. Applicant's counsel argued that the five-week delay was procedurally unfair in light of section 28 of the CCRR, which provides that "a disciplinary offence hearing shall take place as soon as practicable," and that paragraph 30 of CD 580 "specifies a timeframe by stating the initial hearing will normally take place within 10 working days of the laying of charges": Audio tape of the disciplinary hearing at 6:15/12:29.
- [16] Applicant's counsel also argued that section 11(b) Charter considerations apply when setting a date for first appearance. He asserted that the delay prejudiced the disciplinary trial and that the Supreme Court's decision in *R v Jordan*, 2016 SCC 27 [Jordan] supported this position: Audio tape of the disciplinary hearing at 6:58/12:29.
- [17] The Chairperson asked Applicant's counsel whether he could provide any caselaw addressing paragraph 30 of CD 580. Counsel could not: Audio tape of the disciplinary hearing at 8:00/12:29. The Chairperson then stated that, in his experience, it was "fairly frequent" for an initial hearing not to occur within 10 working days of a charge being laid. He further observed that if a delay beyond 10 working days were sufficient to warrant dismissal of a charge, many charges would be "thrown out on a summary basis": Audio tape of the disciplinary hearing at 8:24/12:29.
- [18] In response, Applicant's counsel submitted that he appreciated that paragraph 30 provided that the initial hearing would "normally" take place within 10 working days, but he asked the Chairperson to consider that there was a five-week delay in this case, which he argued was in "far excess" of the contemplated timeframe: Audio tape of the disciplinary hearing at 8:54/12:29.
- [19] At this juncture, the CMO stated that there were so many serious disciplinary charges to be heard that they "would never be able to even reach 30 days for a first appearance": Audio tape of the disciplinary hearing at 9:09/12:29. The Chairperson asked the CMO to confirm whether the 10-day working day period in paragraph 30 of CD 580 was "unrealistic" for Warkworth Institution. The CMO responded that it would be impossible for any initial hearing to occur within 10 working days of laying a charge: Audio tape of the disciplinary hearing at 9:30/12:29. After this exchange, the Chairperson stated that he was "not prepared to dismiss the charge on the basis of a five-week delay": Audio tape of the disciplinary hearing at 10:32/12:29.
- [20] The Applicant was found guilty of failing or refusing to provide a urine sample when demanded pursuant to sections 54 or 55 of the CCRA, contrary to paragraph 40(l) of the CCRA. After considering the mitigating factors raised by Applicant's counsel, the Chairperson reduced the penalty to a \$10 fine imposed and a \$30 fine suspended for 30 days: Audio tape of the disciplinary hearing at 11:37/12:29.

III. Issues [21] The following issues require determination:

- A. The admissibility of the Applicant's affidavit evidence;
- B. The legal issues that are properly raised on the merits of this application;
- C. The applicable standard of review; and
- D. Whether the Chairperson erred in refusing to dismiss the Applicant's disciplinary charge for delay.

IV. Analysis A. Admissibility of the Applicant's affidavit evidence [22] Prior to the hearing, I requested that the parties be prepared to address the admissibility of the Applicant's affidavit evidence before me: Direction dated November 3, 2025. I also provided the parties with an opportunity to file written post-hearing submissions. The Applicant took issue with the Court raising the admissibility of his affidavit evidence, arguing that his affidavits had already been accepted for filing by the Court Registry. As I explained at the hearing, the acceptance of materials for filing by the Court Registry does not determine their admissibility, which remains a matter for the Court.

[23] Generally, evidence that was not before a decision-maker when they made their decision is not admissible before this Court on judicial review: *Andrews v Public Service Alliance of Canada*, 2022 FCA 159 at para 18; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [Access Copyright].

[24] While the list is not exhaustive, there are three exceptions to this general rule. New evidence may be admissible if it: (i) provides general background information; (ii) highlights the complete absence of evidence before the decision-maker below; or (iii) demonstrates procedural unfairness in the decision-making process: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13–25; *Access Copyright* at para 20.

[25] The Applicant filed two affidavits in support of his judicial review application. The first affidavit, sworn on August 20, 2024, was filed in accordance with Rule 306 of the Federal Courts Rules, SOR/98-106 [Rules]. There are no issues with the admissibility of this affidavit.

[26] The second affidavit, sworn by the Applicant on December 13, 2024, attaching 15 exhibits, is improperly included in his Application Record, as the Applicant did not seek leave to file this supplemental affidavit in accordance with Rule 312(a) of the Rules. I have nonetheless considered the admissibility of the evidence attached as exhibits.

[27] To the extent that the Applicant's December 2024 affidavit contains materials included in the CTR, the Applicant was not required to attach those materials to an affidavit: *Rémillard v Canada (National Revenue)*, 2022 FCA 63 at para 30. In accordance with Rule 309(2)(e.1) of the Rules, material in the CTR is properly included in an applicant's application record. Based on my review, Exhibits B, C, D, E, F and L of the Applicant's December 2024 affidavit are included in the CTR and thus could have simply been included in his Application Record.

In any event, these documents were included by the Respondent in their Record and were therefore before the Court.

- [28] The remaining exhibits attached to the Applicant's December 2024 affidavit were not before the Chairperson, and do not meet any of the exceptions regarding admissibility of new evidence on judicial review. Furthermore, Exhibits A, H, I, J, K and O of the December 2024 affidavit are communications between the Applicant and the Court Registry. These communications are not relevant to the Court's disposition of the application. Similarly, the Court's directions, orders, and motion record referred to in paragraphs 17–21 of the Applicant's affidavit (and included as tabs 5–9 of the Application Record) have no relevance for the adjudication of this judicial review application.
- [29] Exhibit G to the Applicant's December 2024 affidavit post-dates the underlying decision. It pertains to the Applicant's request for a transcript of his July 9, 2024 disciplinary hearing in addition to the audio recording. As discussed below, this matter is not properly before the Court on this application. Thus, this evidence is not admissible.
- [30] Exhibits M and N also post-date the Chairperson's decision and are not relevant to the sole issue of delay that is properly before this Court on judicial review. These exhibits are therefore not admissible.

B. Legal issues that are not properly before the Court on this application [31] The Applicant raised numerous issues, in his Memorandum of Argument and in oral submissions, that are not properly before the Court in this judicial review application.

- [32] Generally, arguments made for the first time on judicial review are not entertained if the issue could have been raised before the administrative decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–23; *Zoghbi v Air Canada*, 2024 FCA 123 at paras 26–27 [Zoghbi]; *Terra Reproductions Inc v Canada (Attorney General)*, 2023 FCA 214 at paras 6–7; *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 49; *Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 99. As articulated by Justice Stratas, the rationale is that “the legislation governing an administrative regime gives the administrative decision-maker, not reviewing courts, the power to decide all of the issues going to the merits of cases”: *Zoghbi* at para 27.
- [33] Here, the Applicant raises three new legal issues that were not raised before the Chairperson.
- [34] Two of these issues relate to the question of delay. First, on judicial review, the Applicant argues that the delay between the laying of the disciplinary charge in December 2023 and the disciplinary hearing being held in July 2024 was unreasonable and violated CD 580 and the Charter: Applicant's Memorandum at para 2(c). Second, the Applicant asserts that the delay in his case also violated section 7 of the Charter: Applicant's Memorandum at para 7(ii).

- [35] As stated above, the only issue raised before the Chairperson regarding delay was the time between the laying of the disciplinary charge and the initial hearing. Applicant's counsel argued that this five-week delay had a prejudicial impact on the hearing before the Chairperson. Counsel did not raise any issues regarding the time between the charge date and the disciplinary trial. Moreover, the only Charter provision referred to at the hearing was section 11(b).
- [36] The third new issue raised by the Applicant on judicial review relates to the legality of the disciplinary charge. He argues that the charge should have been dismissed for two reasons. First, the Applicant states that, although he initially refused to provide a urine sample, he then subsequently agreed to provide one within the two-hour window set out in subsection 66(1) of the CCRR. Second, he asserts that he had a valid reason for refusing to provide a urine sample — queue-jumping by other inmates: Applicant's Memorandum at paras 1(b)(i)–1(b)(ii). However, the Applicant did not raise these issues before the Chairperson. They are therefore improperly raised on this application for judicial review.
- [37] Furthermore, the Applicant raises issues with the filing of the CTR that are not properly before the Court at this juncture. First, he argues that the order allowing the Respondent's motion for an extension of time to file the CTR prejudiced him: Applicant's Memorandum at para 6. I note that Associate Judge Milczynski granted the Respondent's motion requesting an extension of time despite the Applicant's objection. If the Applicant was not satisfied with that order, he could have sought to appeal it in accordance with Rule 51 of the Rules.
- [38] The Applicant also argues that the CTR does not contain all the documents he requested in his Notice of Application: Applicant's Memorandum at para 4. Again, the Applicant had recourse. If he had issues with the contents of the CTR, he should have raised it earlier, in the context of a pre-hearing motion, not in his submissions on the judicial review application proper.
- [39] Moreover, the Applicant challenges the Respondent's failure to include the video surveillance footage of the collection area in the CTR. As set out in paragraph 12 above, this issue was addressed by the Chairperson at the disciplinary hearing. The Applicant did not take issue with the CMO's statement that there were no surveillance cameras in the hallway outside the collection area and cannot do so now.
- [40] For these reasons, I decline to entertain any of these new issues in this judicial review application.

C. The applicable standard of review [41] The only issue for determination on the merits of this application is whether the Chairperson erred in refusing to dismiss the Applicant's disciplinary charge based on the five-week delay between the charge being laid and his first appearance. The Respondent argues that the presumptive standard of review, reasonableness, applies to this issue.

- [42] Reasonableness is a robust form of review that considers whether an administrative decision is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12–13, 15, 99 [Vavilov]. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.
- [43] The Applicant did not make any submissions regarding standard of review, but he argued that the Chairperson’s decision refusing to dismiss his charge for delay amounted to an abuse of process. Abuse of process in administrative proceedings engages issues of procedural fairness: *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 38 [Abrametz]; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 105–107, 121 [Blencoe].
- [44] Where breaches of procedural fairness are alleged, no standard of review is applied, but the Court’s reviewing exercise is “best reflected on a correctness standard”: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]. When assessing whether procedural fairness was met, a reviewing court must ask whether the “procedure was fair having regard to all of the circumstances”: CPR at para 54.
- [45] There is a divergence in the Court’s jurisprudence concerning “whether the correctness standard applies in circumstances where the Court is reviewing an administrative decision-maker’s own analysis and conclusions as to whether a particular procedure was fair”: *Rodas Tejeda v Canada (Citizenship and Immigration)*, 2025 FC 215 at para 48 [Rodas Tejeda]. The question in *Rodas Tejeda* was whether the decision-maker erred in concluding that the delay in that case did not amount to an abuse of process.
- [46] After canvassing the Court’s jurisprudence, Justice Southcott declined to resolve the divergence in the jurisprudence. He found that, regardless of which standard was applied, the decision-maker had erred in their assessment of the delay: *Rodas Tejeda* at para 59. Justice Southcott certified a question in *Rodas Tejeda*, and an appeal was filed. While the certified question was not about the applicable standard of review, the parties did address that issue in their respective written submissions before the Federal Court of Appeal. The appeal was heard on December 17, 2025, and the matter is currently under reserve.
- [47] There is no need to await the Federal Court of Appeal’s decision in *Rodas Tejeda* before rendering this decision because I have determined that the Chairperson’s decision does not pass muster under either standard. The Chairperson’s failure to consider and assess the alleged delay was both procedurally unfair, and unreasonable.

D. The Chairperson's decision falls on either standard of review [48] As set out below, there is considerable overlap in the analysis of the Chairperson's decision, whether viewed under the lens of procedural fairness or reasonableness. In my view, the fundamental flaw is the Chairperson's lack of any assessment or analysis of the Applicant's allegations that the five-week delay prejudiced the fairness of his disciplinary trial.

- (1) The Chairperson's failure to assess the delay was procedurally unfair [49] It was incumbent on the Chairperson, as an administrative decision-maker, to assess the allegations of delay "as a corollary to their duty to act fairly": Abrametz at para 38. The Chairperson should have assessed the alleged delay in context, considering the relevant legislation and guidelines. Instead, the Chairperson summarily dismissed the Applicant's delay allegations without any analysis.

[50] The starting point of an assessment of an allegation of delay in the context of a disciplinary offence under the CCRA is section 28 of the CCRR which provides as follows:

Hearings of Disciplinary Offences

Auditions disciplinaires

[...]

[...]

28 A hearing of a disciplinary offence shall take place as soon as practicable but in any event not less than three working days after the inmate receives written notice of the disciplinary charge, unless the inmate consents to a shorter period.

28 L'audition disciplinaire doit être tenue dès que possible, mais jamais avant l'expiration d'un délai de trois jours ouvrables après la remise au détenu de l'avis d'accusation d'infraction disciplinaire, à moins que celui-ci ne consente à un délai plus bref.

[Emphasis added]

[Non souligné dans l'original]

- [51] This Court has accepted that, in the corrections context, the term "as soon as practicable" provides CSC's Commissioner with discretion to determine the timeframes, having regard to operational demands and the circumstances of each case: *Johnson v Canada (Correctional Service)*, 2014 FC 787 at para 84.

- [52] The Commissioner is authorized to issue Commissioner's Directives pursuant to sections 97 and 98 of the CCRA. The Supreme Court recently described these directives as "detailed rules for applying the CCRA" and "binding internal policies": *Dorsey v Canada (Attorney General)*, 2025 SCC 38 at para 9. CD 580 deals with the discipline of inmates and applies to Independent Chairpersons.

[53] Paragraph 30 of CD 580 is particularly relevant in this case as it sets out the timing of an inmate's initial hearing:

Timing of Hearings

Délais pour tenir les audiences

30. The initial hearing of serious and minor charges of a disciplinary offence will normally take place within 10 working days of laying of the charge.
30. L'audition initiale d'une accusation d'infraction disciplinaire grave ou mineure aura normalement lieu dans les 10 jours ouvrables suivant le dépôt de l'accusation.

[Emphasis added]

[Non souligné dans l'original]

- [54] As Justice Walker (then of this Court) held, the use of “the word ‘will’ used in CD 580 denotes the same imperative intention” as the use of the word “shall”: *Eakin v Canada* (Attorney General), 2019 FC 1639 at para 47 [Eakin FC], rev'd on other grounds 2022 FCA 112 [Eakin FCA]. In this vein, paragraph 30 requires that an inmate's initial hearing normally take place within 10 working days of the laying of the charge. The word “normally” is understood to mean “under normal or ordinary conditions”, “as a rule” or “ordinarily”: Oxford English Dictionary (online).
- [55] However, the Chairperson failed to consider the Applicant's allegations of delay within this context. Rather, the Chairperson's refusal to dismiss the charge for delay was based on the Chairperson's own personal experience. He stated that it was “fairly frequent” that an inmate's initial hearing does not occur within 10 working days of the laying of the charge. The Chairperson also considered the CMO's opinion that it was “unrealistic” for an inmate's first hearing to occur within 10 working days in Warkworth Institution.
- [56] In making his decision, the Chairperson disregarded the clear wording of paragraph 30 of CD 580. The Chairperson ought to have turned his mind to whether any case-specific factors justified a departure, in the Applicant's case, from the general rule that an inmate's initial hearing “will normally” take place within 10 working days of the charge being laid. While operational demands or other justifications may explain why an initial hearing does not occur within the “ordinary” 10-day period, the Chairperson should have examined these considerations rather than disposing of the claim of delay without any analysis.
- [57] The bottom line is that CD 580 is a binding CSC policy. If CSC staff find the 10-day timeframe unworkable, that is a matter they must take up with CSC management. In this regard, the Federal Court of Appeal's comment regarding another Independent Chairperson's treatment of the requirements of CD 580 is particularly apt: “Some may consider it inefficient or impractical to follow the requirements of the law, but that is no reason to disobey them routinely. The proper solution, if indeed they are inefficient or impractical, is to change

them”: Eakin FCA at para 51.

- [58] As it stands now, CD 580 requires that initial hearings “normally” be held within 10 working days of the charge being laid. The Chairperson thus erred in simply accepting the CMO’s opinion that it is “unrealistic” to hold initial hearings within this time frame. This conclusion effectively renders paragraph 30 of CD 580 meaningless.
- [59] I recognize that delay, in and of itself, does not constitute an abuse of process that warrants a stay of proceedings, or the dismissal of the charge, in this case: Abrametz at para 67; Blencoe at para 101. This is yet another element that the Chairperson should have assessed in considering the Applicant’s allegation of procedural unfairness based on delay.
- [60] Finally, the Chairperson also erred in not considering the Applicant’s submission that the delay engaged Charter considerations. Prior to the hearing, I drew the parties’ attention to the Supreme Court’s recent decision in *John Howard Society of Saskatchewan v Saskatchewan (Attorney General)*, 2025 SCC 6 [*John Howard Society of Saskatchewan*], which was released after the Chairperson’s decision. In that case, the Supreme Court concluded that section 11 of the Charter applies to Saskatchewan’s inmate disciplinary proceedings involving the adjudication of a major disciplinary offence: *John Howard Society of Saskatchewan* at paras 76–77. Whether and how that decision applies to the federal correctional regime is a significant determination that must be made based on a full evidentiary record and comprehensive legal submissions.
- [61] For these reasons, I find that the Chairperson’s outright dismissal of the Applicant’s allegations of delay was procedurally unfair.
- (2) The Chairperson’s decision is unreasonable [62] Under the more deferential standard of reasonableness, the Chairperson’s decision also falls short and must be set aside. In the context of the judicial review of corrections decisions, the standard must be applied “with some strictness and intensity”: Eakin FC at para 33, citing *Sharif v Canada (Attorney General)*, 2018 FCA 205 at paras 8, 12 [*Sharif*]. This is because of the potential consequences to an inmate, which may include “a fine that can take away most of the inmate’s prison income” or adversely affect an inmate’s parole: *Sharif* at para 9.
- [63] The reasonableness standard requires that “decision makers demonstrate that they have actually listened to the parties” [emphasis in original]: *Vavilov* at para 127. Despite the brevity of Applicant’s counsel’s oral submissions, the Chairperson was still required to engage with them. Instead, the Chairperson simply dismissed the Applicant’s allegations of delay, and his reliance on the provisions of the CCRR, CD 580, and the Charter, out of hand.
- [64] The Respondent argues that the Chairperson “reasonably disregarded” the Applicant’s submissions about the delay engaging subsection 11(b) of the Charter, “as there is no jurisprudence to support the Applicant’s argument that Charter considerations are engaged by CSC disciplinary proceedings”: Respondent’s Memorandum of Fact and Law at para 48. With respect, this argument is devoid of merit. A decision-maker’s duty to provide

responsive reasons is not contingent on a party citing jurisprudential support. Indeed, a party may advance a novel legal issue that has yet to be considered.

[65] Furthermore, under reasonableness review, the “governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority”: Vavilov at para 68. As explained in paragraphs 50–58 above, section 28 of the CCRR and paragraph 30 of CD 580 constitute the relevant legal constraints in this case. In addition, the jurisprudence on delay as an abuse of process necessarily informs the assessment of whether delay has prejudiced the fairness of a disciplinary hearing. However, the Chairperson failed to consider these relevant constraints and assess the Applicant’s allegations of delay in their proper legal context.

[66] For these reasons, the Chairperson’s decision is unreasonable and must be set aside.

(3) The appropriate remedy [67] Regardless of which standard of review is applied, the appropriate remedy is to quash the Chairperson’s decision and remit the matter to a new Independent Chairperson for redetermination. It is not the role of this Court, sitting in review, to step into the decision-maker’s shoes and make the decision the Chairperson ought to have made. On redetermination, the new Independent Chairperson must assess the Applicant’s allegations of delay considering the relevant legislative provisions, CD 580, and the jurisprudence.

E. Costs [68] The general principle is that the successful party is entitled to their costs. Self-represented litigants, however, are only entitled to “a moderate allowance for the time and effort devoted to preparing and presenting a case insofar as the successful self-represented litigant incurred an opportunity cost by foregoing remunerative activity”: *Yu v Canada (Attorney General)*, 2011 FCA 42 at para 37. There is no evidence that the Applicant forewent any remunerative activity to bring this application for judicial review.

[69] The Applicant is, however, entitled to recover any reasonable disbursements incurred: *Lin v Canada (Attorney General)*, 2025 FC 1663 at para 33. While he did not provide any evidence, the Court record indicates that the Applicant incurred a \$50 filing fee for his Notice of Application. Associate Judge Milczynski subsequently waived the \$50 fee associated with filing a Notice of Requisition for Hearing. On this basis, the Respondent shall reimburse the Applicant \$50 for his disbursements.

V. Conclusion [70] Based on the foregoing, the Chairperson’s dismissal of the Applicant’s allegations of delay without any analysis was both procedurally unfair and unreasonable. The matter is remitted to another Independent Chairperson for redetermination. On redetermination, the Applicant should be given the opportunity to make submissions concerning the application of the Supreme Court’s recent decision in *John Howard Society of Saskatchewan*, if he chooses to pursue his argument about the delay violating subsection 11(b) of the Charter.

JUDGMENT in T-2023-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted.

The decision of the Independent Chairperson of Warkworth Institution dated July 9, 2024, is set aside.

The matter is remitted to another Independent Chairperson for redetermination.

The Respondent shall pay costs in the amount \$50 to the Applicant.

“Anne M. Turley”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

t-2023-24

STYLE OF CAUSE:

DR. WILLIAM IMONA-RUSSEL v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING:

BY VIDEOCONFERENCE

DATE OF HEARING:

NOVEMBER 4, 2025

judgment and reasons:

TURLEY J.

DATED:

FEBRUARY 6, 2026

APPEARANCES:

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For The Applicant

ON HIS OWN BEHALF

Rahemah Siddiqui

For The Respondent

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