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	November 23, 2023 23 novembre 2023		
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Court File No.

FORM 301 – Rule 301

FEDERAL COURT

BETWEEN:

MITCHEL TIMOTHY NOME

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION pursuant to Section 18.1 of the *Federal Courts Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

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

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at a sitting of the Federal Court in Calgary, Alberta.

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

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATE: ____ November 2023

Issued By:

(Registry Office)

Address of Local office: Canadian Occidental Tower
635 Eighth Avenue S.W.
3rd Floor
Calgary, Alberta
T2P 3M3

TO: Mr. Peter Linkletter
Special Advisor to the Commissioner
Correctional Service of Canada
National Headquarters
340 Laurier Avenue West
Ottawa, ON K1A 0P9
Decision maker

Attorney General of Canada
Prairie Regional Office - Edmonton
Department of Justice Canada
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, Alberta
T5H 0E7
Respondent

APPLICATION

1. This is an application for judicial review of the decision of Mr. Peter Linkletter, Special Advisor to the Commissioner of Correctional Service of Canada designated by the Commissioner of the Correctional Service of Canada under s. 80.1 of the *Corrections and Conditional Release Regulations* (the "Special Advisor").
2. The decision was communicated to the Applicant on or about October 24, 2023.

The application relates to the following decision:

3. On October 24, 2023, the Special Advisor denied the Applicant's grievances numbered V50R00046335 and V50R00047517 regarding the decision to reassess his Offender Security Level from medium to maximum security via an Offender Final Grievance Response (the "Decision").

The Applicant makes application for:

4. An Order setting aside the decision of the Special Advisor in respect of the Applicant's Grievances numbered V50R00046335 and V50R00047517, and returning the matter to the Special Advisor to be dealt with in accordance with the reasons of this Honourable Court;
5. The costs of this Application;
6. Such other relief as may seem just.

The grounds for the application are:

1. The Applicant has been in the care of Correctional Service Canada (“CSC”) at all material times. The applicant is a designated Dangerous Offender currently serving an indeterminate sentence at the Edmonton Institution in Alberta and that has been the case at all material times.
2. On May 4, 2023, the Warden of Edmonton Institution re-assessed the Applicant’s security classification from medium to maximum security (the “Warden’s Decision”). The reasoning for that decision was that the Applicant was displaying behavioural issues including several incidents of uttering threats against officers, one incident of possessing a prison weapon, and two incidents of misusing the cell-call button. The Warden also noted that the Applicant improperly initiated a four-way call including his spouse, the Deputy Warden, and the Applicant’s lawyer. Lastly, the Warden noted that the Applicant shows a “persistent pattern of verbal violence” as evidenced by his threats as well as his consistent complaints and lawsuits.
3. The Applicant submitted a grievance of the Warden’s Decision.
4. Under the *Corrections and Conditional Release Regulations* s. 80.1, the Commissioner of CSC designated a Special Advisor to the Commissioner to preside over the Applicant’s grievance.
5. As of July 14, 2023, the Applicant was acquitted of all institutional charges of uttering threats and the other outstanding infractions on which the increase in his Offender Security Level was based.

6. The Special Advisor's decision to deny the Applicant's grievance was rendered on October 24, 2023.
7. The Special Advisor's decision was unreasonable. It was not based on an internally coherent and rational chain of analysis. Specifically, the Special Advisor's decision:
 - a. Unreasonably failed to consider that while the Applicant's index offences are violent, his criminal record is now extremely dated;
 - b. Unreasonably failed to consider relevant evidence, namely, evidence that the Applicant had been acquitted of related institutional charges; and
 - c. Unreasonably interpreted the Applicant's lawsuits and complaints as violent acts, which they are not.
8. The Special Advisor's decision also did not provide sufficient reasons explaining why the Applicant's extremely dated criminal record is still an accurate predictor of his current risk of violent behaviour, why his acquittals on related institutional charges were not considered, and why the Applicant's written and verbal complaints, as well as his lawsuits, are "violent". In this way, the Special Advisor's decision was also unfair and arbitrary.

Provisions Relied Upon:

9. The Applicant relies on the following statutory provisions and rules:

Corrections and Conditional Release Act sections 3-5, 28-30, 38-44, 90-91.2, 97-98

Corrections and Conditional Release Regulations sections 11-18, 24-41, 74-82

Commissioner's Directive 705-7: Security Classification and Penitentiary Placement

Commissioner's Directive 710-6: Review of Inmate Security Classification

Commissioner's Directive 081: Offender Complaints and Grievances
Guideline 081-1: Offender Complaint and Grievance Process

This application will be supported by the following material:

1. The certified record of proceedings provided by Correctional Service Canada in relation to this matter;
2. Affidavit of Mitchel Timothy Nome, to be filed; and
3. Written decision of the Special Advisor to the Commissioner.

The Applicant requests Correctional Service Canada to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of Correctional Service Canada to the Applicant and to the Registry:

1. The decision or written record of the act that is the subject of the originating application for judicial review;
2. The reasons given for the decision or act, if any;
3. The document starting the proceeding;
4. The evidence and exhibits filed with you, if any; and
5. Anything else in your possession relevant to the decision or act.

DATE: 23 November 2023


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