

**Date: 20090622**

**Docket: T-1227-08**

**Citation: 2009 FC 652**

**Ottawa, Ontario, June 22, 2009**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**JERROD BYARD**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Jerrod Byard applied for a transfer from a medium to a minimum security institution. The Correctional Service of Canada (CSC) turned him down primarily on the basis that he is still considered a “person of interest” in respect of an outstanding murder investigation dating back to 2005, when he was on parole. His parole was later revoked for involvement in drug trafficking.

[2] Mr. Byard argues that the CSC’s reliance on information obtained from the RCMP was unlawful. He asks me to overturn the CSC’s decision and order a reconsideration of his request for a transfer.

[3] I can find no basis for overturning the CSC's decision and must, therefore, dismiss this application for judicial review. Originally, Mr. Byard's submissions included allegations that his rights under s. 7 of the *Charter* were violated, as well as provisions of the *Privacy Act*, R.S.C. 1985, c. P-21. These arguments were not pressed at the hearing. Accordingly, the sole issue before me is whether the CSC's consideration of information provided by the RCMP was lawful.

I. Factual Background

[4] In 1998, Mr. Byard was convicted of murder. He was granted day parole in August 2005. In November 2005, Mr. Jody Elliott was murdered. Informants told police that Mr. Byard was present at the time of the killing but was not actively involved. In January 2006, Mr. Byard's parole was revoked after police searched his apartment and found evidence of drug trafficking.

[5] Police still view Mr. Byard as a person of interest in respect of the 2005 murder. Other persons have been charged, but have not yet been tried. Because of his alleged association with that crime, Mr. Byard's request for transfer to a minimum security institution was turned down, as were his efforts to grieve that decision.

[6] When questioned about the murder, Mr. Byard invoked his right to counsel and chose to remain silent. Originally, the CSC drew an adverse inference from Mr. Byard's conduct. However, at his third level grievance, the decision-maker concluded that the CSC had wrongly taken Mr. Byard's silence into account when it denied his request for a transfer.

I. Was the CSC's Conduct Lawful?

[7] Mr. Byard argues that the information relied on by the CSC does not fall within the factors that must be taken into account in determining an inmate's security classification according to s. 17 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (enactments cited are set out in Annex A). Further, he suggests that, by relying on the RCMP's information, the CSC has effectively fettered its discretion in relation to decisions about security classifications and delegated its responsibility to the RCMP.

[8] Section 17 of the Regulations states that the CSC must take into account the following factors, among others:

- any outstanding charges against the inmate;
- the inmate's performance and behaviour while under sentence;
- the inmate's social, criminal and, if available, young-offender history;
- the inmate's potential for violent behaviour; and
- the inmate's continued involvement in criminal activities.

[9] Mr. Byard maintains that, since he was never charged in relation to the 2005 murder, there are no outstanding charges against him and, therefore, that the CSC cannot take into account the fact that the RCMP still considers him a person of interest. However, it is clear that the RCMP's concerns fall within other factors that the CSC is required to consider, including behaviour while under sentence, criminal history, potential for violence and continued involvement in crime.

Further, I note that s. 17 sets out the factors that the CSC *must* consider. It does prevent the CSC from considering others that may be relevant.

[10] The CSC had a duty to “take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible” (s. 24(1) of the *Corrections and Conditional Release Act*, 1992 c. 20). In that sense, the CSC has a duty to include information about inmates that is relevant to decisions that have to be taken in the correctional setting. However, there will certainly come a point when information of the sort in issue here will become stale and of little value or relevance in making decisions about security classifications. As mentioned, the persons charged in relation to the 2005 murder have not yet come to trial. Once the evidence is in, both the RCMP and, in turn, the CSC are likely to have all the information they will ever acquire about Mr. Byard’s involvement or lack of involvement in that crime. If all that remains at that point is the lingering and vague suggestion that Mr. Byard is a person of interest, I would expect the CSC to give that information very little weight in assessing Mr. Byard’s security classification. Whether it might be relevant for other purposes is an open question (see: *Brown v. Canada (Attorney General)*, 2006 FC 463, at para. 36).

### III. Conclusion and Disposition

[11] In my view, the information relied on by the CSC falls within s. 17 of the Regulations. By relying on it, the CSC did not fetter its discretion or delegate its decision-making responsibility to the RCMP. The application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that :**

1. The application for judicial review is dismissed.

“James W. O’Reilly”

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Judge

## Annex "A"

*Corrections and Conditional Release Regulations, SOR/92-620*

## Security Classification

**17.** The Service shall take the following factors into consideration in determining the security classification to be assigned to an inmate pursuant to section 30 of the Act:

- (a) the seriousness of the offence committed by the inmate;
- (b) any outstanding charges against the inmate;
- (c) the inmate's performance and behaviour while under sentence;
- (d) the inmate's social, criminal and, if available, young-offender history and any dangerous offender designation under the *Criminal Code*;
- (e) any physical or mental illness or disorder suffered by the inmate;
- (f) the inmate's potential for violent behaviour; and
- (g) the inmate's continued involvement in criminal activities.

*Corrections and Conditional Release Act, 1992, c. 20*

## Accuracy, etc., of information

**24.** (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

*Règlement sur le système correctionnel et la mise en liberté sous condition, DORS/92-620*

## Cote de sécurité

**17.** Le Service détermine la cote de sécurité à assigner à chaque détenu conformément à l'article 30 de la Loi en tenant compte des facteurs suivants :

- a) la gravité de l'infraction commise par le détenu;
- b) toute accusation en instance contre lui;
- c) son rendement et sa conduite pendant qu'il purge sa peine;
- d) ses antécédents sociaux et criminels, y compris ses antécédents comme jeune contrevenant s'ils sont disponibles et le fait qu'il a été déclaré délinquant dangereux en application du *Code criminel*;
- e) toute maladie physique ou mentale ou tout trouble mental dont il souffre;
- f) sa propension à la violence;
- g) son implication continue dans des activités criminelles.

*Loi sur le système correctionnel et la mise en liberté sous condition, 1992, ch. 20*

## Exactitude des renseignements

**24.** (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.

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

**DOCKET:** T-1227-08

**STYLE OF CAUSE:** Byard v. A.G.C.

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** April 15, 2009

**REASONS FOR JUDGMENT:** O'REILLY J.

**DATED:** June 22, 2009

**APPEARANCES:**

Douglas C. King

FOR THE APPLICANT

Graham Stark

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

PIVOT EGAL LLP  
Vancouver, British Columbia

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT