

Federal Court



Cour fédérale

**Date: 20150602**

**Docket: T-1820-14**

**Citation: 2015 FC 697**

**Montréal, Quebec, June 2, 2015**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**KINGSLEY BOATENG**

**Applicant**

**and**

**THE PAROLE BOARD OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Applicant seeks judicial review under subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7, of a decision rendered on July 25, 2014 by the Parole Board of Canada [Board] denying the Applicant's application for a criminal record suspension under Section 3 of the *Criminal Records Act*, RSC 1985, c C-47 [Act].

## II. Facts

[2] On May 17, 1993, the Applicant was convicted for assault causing bodily harm pursuant to paragraph 267(1)(b) of the *Criminal Code*. The Applicant was sentenced to ninety days in jail intermittently and probation for two years.

[3] On May 30, 2000, a pardon was granted to the Applicant.

[4] Between 2008 and 2010, the Applicant was charged with assault; failure or refusal to comply with a demand to provide a sample and impaired driving; uttering threats, criminal harassment and theft under \$5000; uttering forged documents, obstructing a peace officer and nine charges in respect of documents which bore counterfeit marks (including Quebec drivers' licenses and SIN cards); and theft under \$5000.

[5] As a result, the Applicant's pardon was revoked in March 2012.

[6] On October 15, 2012, the Applicant filed an application for a criminal record suspension, which was rejected by the Board on July 25, 2014.

## III. Impugned Decision

[7] In a letter dated July 25, 2014, the Board takes notice of the Board's proposition to refuse to order the suspension of the Applicant's record and that the Applicant was given an opportunity to respond to the Board's concerns.

[8] The Board considers the Applicant's written representations dated June 12, 2014, in respect of the charges laid against him between 2008 and 2009, and notes:

In your letter of June 2014, you admit having assaulted your spouse in April 2009, admit having broken the law when you were arrested for smelling of alcohol in May 2009, admit having threaten[ed] your ex-girlfriend to beat her up and taking her purse and her cellular in November 2009 and admit having forged documents obtained from the underground community and also admit stealing a poppy donation box belonging to the Canadian Legion.

Although you regret having committed these offences, the fact remains that you committed them.

While the Board takes good notes your honesty, it cannot condone your actions.

[9] In its analysis, the Board finds that the offences committed by the Applicant do not reflect those of "a law-abiding citizen who has good conduct" and that although the Applicant was either acquitted, received an absolute discharge, liberated or had the accusations withdrawn, he nonetheless admitted to having committed these crimes. The Board further notes that certain of the offences were violent in nature and that the Applicant admitted to frequenting "the underground community" (Board's Decision, Applicant's Record, at pp 7 and 8).

[10] The Board concludes that the Applicant fails to meet the criteria of good conduct under the Act:

The Board must first evaluate if you have been of good conduct since the crime committed in 1993. In view of your admission and the police reports and all the irrefutable evidence, considering the nature of some of your offences and the absence of any kind of treatment or therapy which could demonstrate to the Board that you have taken steps to modify your behaviour, the Board has no other choice but to endorse the previous decision of the Board and conclude that you have not been of good conduct since 1993, that

you therefore do not [meet] the criterion of good conduct of the *Act* and that your application for a suspension of your criminal record must therefore be denied.

(Board's Decision, Applicant's Record, at p 9)

#### IV. Legislative Provisions

[11] The legislative framework in respect of a criminal record suspension is set out in the Act:

##### **Jurisdiction of the Board**

**2.1** The Board has exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension.

##### **Effect of record suspension**

**2.3** A record suspension

(a) is evidence of the fact that

(i) the Board, after making inquiries, was satisfied that the applicant was of good conduct, and

(ii) the conviction in respect of which the record suspension is ordered should no longer reflect adversely on the applicant's character; and

(b) unless the record suspension is subsequently revoked or ceases to have effect, requires that the judicial record of the conviction be kept separate and apart from other criminal records and removes any disqualification or obligation to which the applicant is, by reason of the conviction, subject under any

##### **Attributions**

**2.1** La Commission a toute compétence et latitude pour ordonner, refuser ou révoquer la suspension du casier.

##### **Effet de la suspension du casier**

**2.3** La suspension du casier :

a) d'une part, établit la preuve des faits suivants :

(i) la Commission, après avoir mené les enquêtes, a été convaincue que le demandeur s'était bien conduit,

(ii) la condamnation en cause ne devrait plus ternir la réputation du demandeur;

b) d'autre part, sauf cas de révocation ultérieure ou de nullité, entraîne le classement du dossier ou du relevé de la condamnation à part des autres dossiers judiciaires et fait cesser toute incapacité ou obligation — autre que celles imposées au titre des articles 109, 110, 161, 259, 490.012, 490.019 ou 490.02901 du

Act of Parliament — other than section 109, 110, 161, 259, 490.012, 490.019 or 490.02901 of the Criminal Code, subsection 147.1(1) or section 227.01 or 227.06 of the National Defence Act or section 36.1 of the International Transfer of Offenders Act.

### **Application for record suspension**

3. (1) Subject to section 4, a person who has been convicted of an offence under an Act of Parliament may apply to the Board for a record suspension in respect of that offence, and a Canadian offender, within the meaning of the International Transfer of Offenders Act, who has been transferred to Canada under that Act may apply to the Board for a record suspension in respect of the offence of which he or she has been found guilty.

### **Record suspension**

4.1 (1) The Board may order that an applicant's record in respect of an offence be suspended if the Board is satisfied that

(a) the applicant, during the applicable period referred to in subsection 4(1), has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

Code criminel, du paragraphe 147.1(1) ou des articles 227.01 ou 227.06 de la Loi sur la défense nationale ou de l'article 36.1 de la Loi sur le transfèrement international des délinquants — que la condamnation pouvait entraîner en vertu d'une loi fédérale.

### **Demandes de suspension du casier**

3. (1) Sous réserve de l'article 4, toute personne condamnée pour une infraction à une loi fédérale peut présenter une demande de suspension du casier à la Commission à l'égard de cette infraction et un délinquant canadien — au sens de la Loi sur le transfèrement international des délinquants — transféré au Canada par application de cette loi peut présenter une demande de suspension du casier à la Commission à l'égard de l'infraction dont il a été déclaré coupable.

### **Suspension du casier**

4.1 (1) La Commission peut ordonner que le casier judiciaire du demandeur soit suspendu à l'égard d'une infraction lorsqu'elle est convaincue :

a) que le demandeur s'est bien conduit pendant la période applicable mentionnée au paragraphe 4(1) et qu'aucune condamnation, au titre d'une loi du Parlement, n'est intervenue pendant cette période;

(b) in the case of an offence referred to in paragraph 4(1)(a), ordering the record suspension at that time would provide a measurable benefit to the applicant, would sustain his or her rehabilitation in society as a law-abiding citizen and would not bring the administration of justice into disrepute.

**Onus on applicant**

(2) In the case of an offence referred to in paragraph 4(1)(a), the applicant has the onus of satisfying the Board that the record suspension would provide a measurable benefit to the applicant and would sustain his or her rehabilitation in society as a law-abiding citizen.

b) dans le cas d'une infraction visée à l'alinéa 4(1)a), que le fait d'ordonner à ce moment la suspension du casier apporterait au demandeur un bénéfice mesurable, soutiendrait sa réadaptation en tant que citoyen respectueux des lois au sein de la société et ne serait pas susceptible de déconsidérer l'administration de la justice.

**Fardeau du demandeur**

(2) Dans le cas d'une infraction visée à l'alinéa 4(1)a), le demandeur a le fardeau de convaincre la Commission que la suspension du casier lui apporterait un bénéfice mesurable et soutiendrait sa réadaptation en tant que citoyen respectueux des lois au sein de la société.

V. Issue

[12] The application for judicial review raises the following issue: Is the Board's refusal to order the suspension of the Applicant's criminal record reasonable?

VI. Analysis

[13] The applicable standard of review to the Board's decision, which entails the Board's appreciation of the facts underlying the Applicant's suspension record application and falls within the Board's exclusive jurisdiction, is that of reasonableness (*Foster v Canada (Attorney General)*, 2013 FC 306 at para 18).

[14] As such, judicial review of the Board's decision attracts considerable deference from this Court.

[15] Subsection 4.1(1) of the Act provides that the Board may order the suspension of an applicant's record if the Board is satisfied that an applicant has been of good conduct. The notion of "good conduct" is not clearly defined in the Act and turns on the Board's assessment of the particular fact of a case, and falls within the Board's expertise (*Saini v Canada (Attorney General)*, 2014 FC 375 at para 26; *Conille v Canada (Attorney General)*, [2003] FCJ 828 at para 22).

[16] Moreover, the onus rests on the Applicant to demonstrate the elements of the conjunctive test found in paragraphs 4.1(1)*a*) and *b*) of the Act.

[17] The Applicant argues that the Board erred in fact and in law by failing to properly consider the totality of the evidence before it, rendering the Board's decision unreasonable. In particular, the Applicant claims that the Board failed to consider the following evidence: the Applicant's attendance at a crime prevention rehabilitation program, the Applicant renewed relationship with the Christian faith and the Applicant's pursuit of higher education in the field of nursing.

[18] Upon careful review of the Board's decision, parties' submissions and the evidentiary record as a whole, the Court finds no basis upon which it may intervene. It was squarely within the Board's purview to weigh the relevant factors and to draw its conclusions in light of the

particular circumstances of the case (*M.Y. v Canada (Attorney General)*, 2014 FC 599 at paras 25-28 [*M.Y.*]).

[19] It is clear that the Board considered the evidence before it, including the Applicant's submissions dated June 12, 2014, in which the Applicant describes, among others, his initiatives in aiming to improve his behaviour.

[20] The Board also found that although none of the Applicant's charges between 2008 and 2010 resulted in convictions, the Applicant nonetheless admitted to having committed the offences. It was reasonable for the Board to consider the elements of violence in respect of the Applicant's behaviour between 2008 and 2010, and to conclude that such behaviour fails to meet the criteria of good conduct required by the Act.

[21] The Court emphasizes that the objectives of suppressing the negative consequences of a criminal record must be weighed against the safety of the public and to ensure that those who benefit from a pardon adopt behaviour that is consistent with a "law-abiding lifestyle" (*M.Y.*, above at para 28).

[22] In light of the foregoing, the Board's decision is reasonable and does not warrant the intervention of this Court.

## VII. Conclusion

[23] The application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed and the Board's decision is upheld, the whole with costs.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** T-1820-14

**STYLE OF CAUSE:** KINGSLEY BOATENG v THE PAROLE BOARD OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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**APPEARANCES:**

Idorenyin E. Amana

FOR THE APPLICANT

Marjolaine Breton

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Amana Law Office  
Barrister & Solicitor  
Cornwall, Ontario

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of  
Canada  
Montréal, Quebec

FOR THE RESPONDENT