

Federal Court		Cour fédérale
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**Date: 20090929**

**Docket: T-266-07**

**Citation: 2009 FC 979**

**Toronto, Ontario, September 29, 2009**

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

**BETWEEN:**

**PETER COLLINS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review brought by Peter Collins, an inmate of a federal penitentiary now eligible for parole. He is a self-represented litigant without formal legal training and has prepared and argued his case without apparent legal assistance. In such circumstances the

Court is prepared to grant some procedural leniency but it cannot grant relief beyond that in respect it has jurisdiction to grant, nor grant relief in respect of matters that have already been redressed.

For the reasons that follow I find in the circumstances of this case that the application is dismissed without costs.

[2] In his Notice of Application filed in this proceeding the Applicant requests that the Court provide the following relief:

1. *The appeal be allowed;*
2. *The Decision of the Correctional Services of Canada Third Level Decision of January 8, 2007 be set aside, and*
3. *This Honourable Court direct the Correctional Services of Canada to prepare a comprehensive report for the Bath Federal Prison Psychology Department that contains the relevant and factual information that the CSC prevented the applicant from photocopying and sharing with the Prison Psychologist performing the required National Parole Board Risk assessment for a parole application.*
4. *This Honourable Court direct the Correctional Services of Canada to prepare a comprehensive report for the National Parole Board that contains the relevant and factual information that the CSC failed to allow the applicant to photocopy and share with the National Parole Board.*
5. *An order directing a comprehensive psychological risk assessment from a psychologist independent of the Correctional Services of Canada.*
6. *An order that the new psychological risk assessment includes a thorough analysis of the applicant's release plan and other supporting documentation that was not properly reviewed.*
7. *Any such other order as this honourable Court may permit.*

[3] In respect of the first request, this proceeding is not an appeal, it is an application, however that misnomer will be overlooked. As to the last request, for such other order, it cannot be construed as an open invitation to the Applicant or this Court to seek or make whatever different order that may seem expedient as the matter progresses or as argument arises, it is necessarily incidental to the other specific relief sought. Further, Rule 302 of the *Federal Courts Rules* requires that an application for judicial review shall be limited to a single order in respect of which relief is sought. On occasion, particularly with respect to a person in Mr. Collins' circumstances the Court permits relief in respect of more than one matter, however it is usually when the matters are closely related, it does not constitute an invitation to claim broad ranging relief in respect of multiple matters.

[4] At this point I turn to the Applicant's Memorandum in which at paragraph 140 he asked for the following Order:

*140. The Applicant therefore respectfully requests the following:*

- 1. An Order quashing the decision of the Correctional Services of Canada to prevent the Applicant from photocopying submissions to Federal Tribunals under the legal photocopying program.*
- 2. An Order requiring the Respondent to ensure all missing information is acquired and filed on the Applicant's files.*
- 3. An Order requiring the Respondent to correct erroneous information on the Applicant's files.*
- 4. An Order requiring the Respondent place all the Applicant's Release Plan information on his CSC files.*
- 5. An Order requiring the Respondent to resubmit the Applicant's case for Psychological Risk Assessment as soon*

*as the Applicant's file information has been corrected brought up to date.*

6. *An Order requiring the Respondent reschedule the Applicant's case to the National Parole Board for rehearing with CSC recommendations and assessments based upon complete files and a psychological risk assessment completed with all available information.*
7. *An Order requiring the Service re-conduct all case assessments and decisions made since April 20, 2006.*
8. *An Order requiring the Service to cease profiting from the legal photocopying program.*
9. *Costs associated with all aspects related to post, copying, legal material and community members providing services that should have been available.*
10. *Punitive costs in the amount of \$25,000.00.*
11. *Costs of this application.*

[5] The Memorandum of Argument cannot be used to expand upon the relief sought in the Notice of Application. Further, the request made at paragraphs 8 and 9 are beyond the jurisdiction of this Court on a judicial review application as well as being clearly outside the relief as sought in the original Notice of Application.

[6] The relief requested by the Applicant is most appropriately reviewed against the background of the facts of this case. The Applicant has been incarcerated in a federal penitentiary for a considerable period of time and recently has become eligible for parole. Prior to consideration as to parole by the Parole Board the Applicant was required to undergo psychological examination with a report to be prepared by the examiner and presented to the Board. The Applicant, in preparation for

his examination and subsequent submissions to the Board, prepared a large number of documents which he believed would be of assistance in support of his application for parole. Those documents were submitted to the person conducting the psychological examination, that person requested that the documents be left with him. The Applicant declined that request since he had no copies of the documents and did not wish to relinquish possession of his only set of the documents.

[7] The Applicant sought permission from the authorities in the institution in which he was incarcerated to copy the documents. That request was denied. The Applicant filed a grievance which went through three levels. At all three levels the grievance was declined on the basis that the materials which the Applicant sought to have copied did not constitute what the decision makers defined as “legal materials”. Further, it was determined on the first grievance that, even if the material were to be copied, there would be a charge of 15¢ per page, a charge that was later reduced to 5¢ per page. There is no evidence that the Applicant could not pay for the cost of photocopying at either charge per page, just that he believed that the charge was too high.

[8] It appears, however, from the evidence that both the person conducting the psychological assessment and subsequently the Board did have access to the documents. In his report the psychologist wrote:

*He presented a large binder which included his release plans as well as numerous letters, documents, certificates and pictures he said he plans to provide to the National Parole Board for his hearing ...*

*The large binder he presented with evidence of his many positive accomplishments seemed to include a comprehensive strategy for parole ... His initial plan for residency at the Keele CCC in Toronto*

*is apparently supported by considerable documentation in the binder.*

[9] Further, it is apparent that the Board also had the documents available to it a few days prior to the hearing of the application for parole as the Board's Review Officer stated in a letter to the Applicant dated July 7, 2006:

*As indicated to you in my letter dated June 20, 2006, this binder of information was received by the National Parole Board (Kingston office) on 13 June 2006, prior to your hearing, and was available to the Board Members involved with the review of your case prior to your hearing on 22 June 2006.*

[10] At the hearing the Applicant confirmed that the documents had been photocopied and copies given to the Board about three working days before the Board heard the matter. Thus the Board had the material prior to the hearing and during its deliberations afterward. Thus both the psychologist and the Board had access to the documents that the Applicant says they should have in arriving at their determinations.

[11] Turning to the complaint and grievance process, the Applicant submitted a complaint in writing with the institution dated April 25, 2006 that he was denied access to photocopy and that the charge of 15¢ per page was too high. The corrective action requested by the Applicant was:

***CORRECTIVE ACTION***

*Advise me in writing how information going before a Federal Tribunal (National Parole Board) and the decision makers (IPO, Psychologist) does not fall within the parameters of the legal material photocopying service?*

*Explain why the charge for photocopying is so high (15 cents per page)*

*Provide direction in writing to the records department and the inmate committee and myself exactly what papers constitute legal material.*

[12] The Inmate Grievance Committee provided a written response dated June 12, 2006 which addressed both issues. It stated:

*I have reviewed you (sic) complaint dated May 23, 2006 in which you complain that you were not allowed to photocopy personal documents you intended to share with a psychologist. You offer since this was to assist the psychologist in the completion of a risk assessment for a (sic) upcoming NPB review. You offer that since the NPB is part of the criminal justice system, the requirement for your photocopying to conform for legal purposes was met. You were interviewed by A/Unit Manager G. Gillis concerning your issues on June 6, 2006. I offer the following as a response.*

*Photocopying is provided to Bath Institution inmates to conform with paragraph 19 of CD 084, Inmates Access to Legal Assistance and the Police. This speaks to a very specific purpose and such purpose was not met in your specific set of circumstances. It is to provide documentation to a legal representative. As our Institutional Operating Procedures were complied with in regards to the decision that was taken, your grievance is denied. Although your grievance is denied, one of your stated corrective action requests was for an explanation regarding why the cost per page is \$.15. This was based on cost of paper, toner, administrative costs and labour costs. It should be noted that while in the community there is variance in costs for similar services, the cost passed on to each inmate continues to be in keeping with community standards.*

[13] The Applicant was not satisfied with this response and sought the same Corrective Action at the next grievance level together with a request for an apology and a list of examples of the impact of certain decisions. There appears to have been some administrative fumbling with the Applicant's request at first level however, ultimately a written response at the second level was provided, dated August 27, 2006. It referenced policies respecting charges for photocopying. The grievance was denied, stating, in part:

*It is believed that prior to the completion of the report on 2006-04-25, you had an opportunity to share and review the information you collected with Dr. Cheston. Furthermore, a week prior to your hearing before the National Parole Board, you requested that your Parole Officer at the time, photocopy your binder and share it with the NPB. It is believed that this was the same information you shared with the psychologist as it was letters of support and other inmate solicited documents of a similar nature.*

...

*You were advised that you could arrange to have your documentation photocopied in the community, returned and forwarded to the NPB or provide the documents to your assistant to forward on your behalf. As noted above in the psychologist's report you indicated that it was your intent to provide all of this information to the National Parole Board for your hearing.*

*Your file has been reviewed in its entirety and there is no indication either by you or the Grievance Coordinator that your complaint was intended to be processed as a sensitive complaint. However, the response from Mr. Edwards incorrectly refers to the complaint as being submitted as sensitive and rejected on this basis. It is believed that this was done in error and we apologize for this.*

*This grievance is denied.*

[14] Again there seems to have been administrative fumbling as this second level decision was not transmitted to the Applicant in a timely manner and was only provided following the Applicant's inquiries as to the status of the matter.

[15] The Applicant remained dissatisfied and proceeded to a third level grievance. A decision bearing a date of December 21, 2006 was made denying that third level grievance. This is the decision under review. The decision stated, in part:

*At each stage of this process, Mr. Collins has not provided any information detailing the exact nature of the material he wished to*



*have photocopied nor the amount of material. The only description is provided by the Psychologist in the report dated 2006-03-15. It states, "He presented a large binder which included his release plans as well as numerous letters, documents, certificates and pictures he said he plans to provide to the National Parole Board for his hearing. Mr. Collins explained that he was providing the NPB with all of these materials because his impression is that the file information which is available to the Parole Board would not likely include evidence of the many positive things he has accomplished during his incarceration." (Tab D)*

*Mr. Collins has not provided any new or additional information for consideration with the submission of his third-level grievance.*

*The references cited in the second-level response regarding the CCRA sections 23 and 25 are correct. Bath Institution's policies with regard to the requirement for providing photocopying for legal purposes are in compliance with CD 084.*

*The only description of the material Mr. Collins wanted to have photocopied was indirectly provided by the Psychologist, as described earlier. That description led this Analyst to conclude that the material Mr. Collins presented for photocopying does not meet the definition of legal materials, as stated in CD 084.*

*The determination of the cost for a photocopy was provided to Mr. Collins by Bath Institution in the first-level response.*

[16] Thus it appears that:

- The Psychologist who examined the Applicant had access to the documents in question
- The Parole Board considering the Applicant's case had photocopies of the documents available to it before the hearing and during its deliberations
- Explanations as to the cost of photocopying were provided to the Applicant

[17] Therefore, in respect of any relief that may properly be sought by the Applicant in this Court namely, provision of his documents to the Psychologist and the Parole Board and explanations to the cost of photocopying, those matters have already been addressed. There is nothing left for this Court to decide. In legal terms the matter is moot.

[18] Therefore, there is no longer a live controversy for the Court to address. The application is dismissed. The Respondent did not ask for costs and none will be given.

**JUDGMENT**

For the reasons provided:

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;
2. No order as to costs.

“Roger T. Hughes”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-266-07

**STYLE OF CAUSE:** PETER COLLINS v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 28, 2009

**REASONS FOR JUDGMENT AND JUDGMENT:** HUGHES J.

**DATED:** September 29, 2009

**APPEARANCES:**

Mr. Peter Collins FOR THE APPLICANT (SELF-REPRESENTED)

Mr. Derek Edwards FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENT