

Federal Court



Cour fédérale

**Date: 20180515**

**Docket: T-944-17**

**Citation: 2018 FC 512**

**Ottawa, Ontario, May 15, 2018**

**PRESENT: Mr. Justice Grammond**

**BETWEEN:**

**BENJAMIN BOUCHARD**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Benjamin Bouchard was convicted of fighting under paragraph 40(h) of the *Corrections and Conditional Release Act*, RSC 1985 c F-7 [Act], by the Independent Chairperson of Warkworth Institution. He now seeks judicial review of that decision. He alleges that the process was unfair, as he did not have the opportunity to view a video recording of the altercation, he was not offered an opportunity to have the matter resolved informally and insufficient reasons were provided for his conviction. I am denying his application, because the

process was fair and complied with the applicable rules and the decision to convict him was reasonable.

I. Facts and Decision under Review

[2] Mr. Benjamin Bouchard, the Applicant, is incarcerated at the Warkworth Institution. On December 9, 2016, he was charged with fighting with another inmate in the gym washroom.

[3] The fight was caught on video surveillance and brought to the attention of correctional officers. While interviewing Mr. Bouchard about the incident, one officer noted that he had bruising under his left eye and an abrasion next to his right eye. Mr. Bouchard indicated that the injuries were from a hockey game. The other inmate involved in the altercation gave a statement to officers that it was a “play fight.” The officer noted that the other inmate had no marks on him and had no concern for his physical safety.

[4] Mr. Bouchard pleaded not guilty and the charge went to trial on February 28, 2017. The matter was heard by an independent chairperson [Chairperson] appointed under section 24 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [Regulations]. Mr. Bouchard was represented by duty counsel.

[5] The video of the incident was not played for the Chairperson. The contents of the video were relayed to the Chairperson through the testimony of Correctional Officer Bird, who had viewed the video, but not the incident.

[6] The transcript of the hearing indicates that Mr. Bouchard did not request to view the video footage nor did he contradict Officer Bird's description of the incident.

[7] The Chairperson found Mr. Bouchard guilty, stating in brief oral reasons that he rejected Mr. Bouchard's assertion that it was a play fight because he testified at the trial that he and the other inmate went into the washroom so that the correctional officers would not see the incident and get "the wrong idea." The Chairperson found that deliberately hiding from authorities "is not consistent with it simply being a normal play fight." Further, the Chairperson found that "play fights can appear to be serious fights and for all intents and purposes can, from an institutional point of view... appear to be serious and it is very difficult to tell the difference..."

[8] Mr. Bouchard brought an application for judicial review of the decision before the Federal Court.

## II. Analysis

[9] This Court reviews inmate disciplinary decisions on a standard of reasonableness (*Alix v Canada (Attorney General)*, 2014 FC 1051 at para 18). This means that I must ensure that the decision under review is based on a defensible interpretation of the applicable legal principles and a reasonable assessment of the evidence (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[10] Mr. Bouchard also raises questions of procedural fairness. In a recent case, the Federal Court of Appeal made clear that issues of procedural fairness are not decided according to any

standard of review (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 32-56 [*Canadian Pacific*]; see also *Khela v Mission Institution*, 2014 SCC 24 at para 79).

Whether the duty of procedural fairness has been fulfilled is “a legal question for the Court to answer” (*Canadian Pacific* at para 46).

[11] Mr. Bouchard argues that fairness required the video recording of the fight to be played before the Chairperson. The latter should not have accepted, as a substitute, a description of the incident from Officer Bird, who had viewed the video. Section 31 of the Regulations sets forth what is required at a disciplinary hearing. The inmate must be given a reasonable opportunity to “question witnesses through the person conducting the hearing, introduce evidence, call witnesses on the inmate’s behalf and examine exhibits and documents to be considered in the taking of the decision;” and “make submissions during all phases of the hearing, including submissions respecting the appropriate sanction.” While it may have been preferable to make the video available to Mr. Bouchard, I conclude that the failure to do so did not prevent Mr. Bouchard from understanding the case against him or making submissions. Moreover, his lawyer did not object to that way of proceeding at trial. It is well-known that allegations of procedural impropriety must be made at the earliest opportunity.

[12] Furthermore, viewing the video of the incident would not have changed the outcome of the Chairperson’s decision. Mr. Bouchard’s defence was that he was simply wrestling with the other inmate and that he had no intention to fight. The Chairperson, however, determined that even if Mr. Bouchard’s assertions are true, they do not negate the charge. For the Chairperson,

there is no difference, from an institutional standpoint, between play fights and serious fights. Thus, watching the video would not have changed the outcome of the case.

[13] Mr. Bouchard also argues that correctional staff failed to offer him the possibility of resolving the matter informally, as mandated by section 41(1) of the Act. Yet, by using the words “where possible,” Parliament has left the decision to deal with an incident through informal resolution or to proceed with a charge with correctional staff (*Laplante v Canada (Attorney General)*, 2003 FCA 244 at para 13). The Respondent filed the affidavit of Officer Bird to explain why informal resolution was not contemplated. While this affidavit was not before the Chairperson, it is admissible on judicial review to counter what is essentially an allegation of procedural impropriety. Officer Bird indicates that because both inmates were unwilling to take responsibility for their actions and because physical altercations are a serious concern, officers proceeded with a charge. I fail to see any reason to intervene in this exercise of discretion.

[14] Lastly, Mr. Bouchard argues that the reasons for the decision were not adequate and left him in doubt as to why he was convicted of the disciplinary offence of fighting. I disagree. The Chairperson gave brief oral reasons at the end of the hearing. His reasons need not be exhaustive, as long as the record allows the reviewing court to understand the basis of his decision, which is the case here (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 S.C.R. 708). In particular, the Chairperson’s statement to the effect that “I think the charge is made out” does not mean that the Chairperson did not require proof beyond a reasonable doubt, as required by section 43(3) of the Act.

[15] To summarize, the decision of the Chairperson was reasonable. The Chairperson reached that decision through a process that was fair and in compliance with the requirements of the Act and Regulations. Accordingly, the application for judicial review will be dismissed.

[16] At the hearing, counsel for both parties agreed that a sum of \$250 would be an appropriate award of costs.

**JUDGMENT**

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

1. The application for judicial review is dismissed;
2. The applicant is ordered to pay costs in the amount of \$250.

“Sébastien Grammond”

---

Judge

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

**DOCKET:** T-944-17

**STYLE OF CAUSE:** BENJAMIN BOUCHARD v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** MARCH 14, 2018

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** MAY 15, 2018

**APPEARANCES:**

John Dillon FOR THE APPLICANT

Jacob Pollice FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John Dillon FOR THE APPLICANT  
Barrister and Solicitor  
Kingston, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Ottawa, Ontario