

Recent Decisions

Dunbar v. Warden of Millhaven Institution (Ont. S. C.)

The Ontario Supreme Court dismissed a Habeas Corpus application in respect of the transfer of inmate Dunbar from Collins Bay to Millhaven on the grounds that the transfer notification was adequate. Informer information revealed that Dunbar had introduced weapons and explosives into the institution. The contraband was never found but the Court held this was not fatal to the transfer. Moreover, the Court was satisfied that the Correctional Service of Canada was justified in refusing to reveal any further information since it might have led to the identity of the informant. The failure to reveal such information did not infringe the *Charter* or breach the duty to act fairly

The Court further held that the fact that Dunbar was acquitted of contraband charges in Inmate Disciplinary Court did not mean that these facts could not be considered in the transfer decision. The standard of proof in disciplinary hearings is beyond a reasonable doubt but the standard of proof in a transfer is not this high.

Picton V. Edmonton Institution Disciplinary Court

(Federal Court - Trial Division) The failure to properly tape-record a disciplinary hearing is not, in and of itself, grounds to quash the finding of the Independent Chairperson. In order for the Court to review the decision there must be an allegation that the Chairperson committed a reviewable error or evidence of a denial of natural justice. The mere absence of a recording will not establish this.

In *Cunningham v. The Queen*, the inmate brought an application for Habeas Corpus seeking his release on Mandatory Supervision on the grounds that his case was referred less than six months before his Mandatory Supervision Date and not by reason of "information received within six months" of the said date.

Mr. Justice Smith of the Supreme Court of Ontario held that the words "information obtained found at section 15.3(3)(a)(ii) of the *Parole Act* must be made to refer to **new** information that is information not reasonably expected to have been within the knowledge of the Commissioner or of the Service he heads and represents. In this instance, his Lordship chose "not to second guess the Commissioner" and dismissed the application.

In *R v. Shubley*, an inmate in a provincial correctional institution was found guilty by the institution of having committed a "misconduct" and was consequently sentenced to five days in segregation on a special diet. Subsequently, the victim of the misconduct laid an information charging the accused with assault causing bodily harm, pursuant to the *Criminal Code*. The accused argued that the proceedings under the *Criminal Code* were barred by paragraph 12(h) of the *Canadian Charter of Rights and Freedoms* which provides in part that any person charged with an offence has the right, if finally found guilty and punished for the offence, not to be tried or punished for it again. The trial judge agreed and stayed the proceedings.

On appeal by the Crown, the Court of Appeal of Ontario allowed the appeal and set aside the stay of proceedings for the following reasons in particular: (a) The phrase "charged with an offence" restricts the

application of section 11 to criminal proceedings and proceedings giving rise to penal consequence;

(b) Disciplinary offences are not of a criminal nature. Further, though the penalties for having committed these offences are important in that they may involve the loss or withdrawal of privileges or the forfeiture of earned remission for the inmate, they nevertheless do not constitute true penal consequences.

Shubley appealed to the Supreme Court of Canada. The Court has not issued a decision in the matter as yet.

In *Stanford V. Harris*, the majority of the Divisional Court of Ontario held that inmate Larry Stanford should be given standing at the coroner's inquest into the death of Michael Zubresky, an inmate who committed suicide in the protective wing at Kingston Penitentiary last year. The Court noted that Mr. Stanford met the standing test of having a direct and substantial interest in the matter.

The Court's decision allowing standing to Mr. Stanford on behalf of all inmates in the protective custody wing including Clifford Olson, enables those inmates to introduce evidence and cross-examine other witnesses such as prison officials.