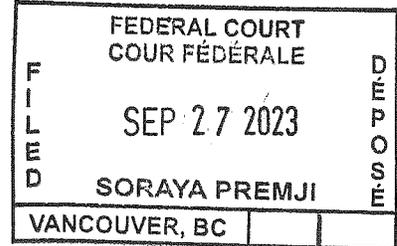


ID 1
JR

Court File No.: T-2076-23



FEDERAL COURT
(JUDICIAL REVIEW)

BETWEEN:

KEITH SCHELL

Applicant

AND

HIS MAJESTY THE KING

(Notice of Application)

Respondent

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the

Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant request that this application be heard at (place where Federal court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or the solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Court Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 21 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, Orders, including orders granting the relief, may be made against you, without any further notice to you, if you fail to file the response to the petition within the time for response.

SEP 27 2023

(date)

**ORIGINAL SIGNED BY
SORAYA PREMJI
A SIGNÉ L'ORIGINAL**

Issued by: _____
(Registry officer)

Address of Local Office: Federal Court
Vancouver Local Office
701 West Georgia Street 3rd Floor
V7Y 1B6
Fax: (604) 666-3232

TO: The Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900-840 Howe Street
Vancouver, BC.
V6Z 2S9
Telephone: 604-666-2061
Fax: 604-666-2760
Email: vancouvermailreception@justice.gc.ca

Application

This is an application for judicial review in respect of
The Correctional Service of Canada (CSC)

Date of decision March 23, 2023

Decision; Refusal to return items seized from Applicant cell during search

The Decision was communicated to the Applicant on April 14th, 2023

The grounds for the application are;

1. CSC erred in law in making its decision, whether or not the error appears on the face of the report;
2. CSC failed to observe principle of natural justice, procedural fairness or other procedures that it was required by law to observe
3. CSC failed to observe the Corrections and Conditional Release Regulations (CCRR)

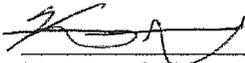
This application will be supported by the following material:

1. Written Representation, dated May 29th, 2023
2. Offender initial Grievance dated, December 01st, 2022
3. Offender Final Grievance dated, March 23rd, 2023
4. Inmate Charge #219905

The Applicant request The Correctional Service of Canada (CSC) to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the (CSC) to the applicant and to the Registry:

1. A copy of all other pertinent information including information derived from informant and sources.

September 27th, 2023.



(Signature of solicitor or applicant)

Keith Arnold Schell
Mission Institution
8751 Stave Lake Road
Po box 60
Mission BC.
V2V 4L8
Fax: (604) 820-5801.

BACKGROUND

[1] The central question in this judicial review application, pursuant to section 18.1 of the *Federal Court Act*, by Keith Arnold Schell (“the applicant”), an inmate in Mission Penitentiary, a medium security prison operated by the Correctional Service of Canada (“CSC” or “Service”), is the scope of the obligation contained in section 59 of the *Corrections and Conditional Release Regulations SOR/92-620* as it pertains to the decisions sought to be reviewed by Correctional Service of Canada (CSC) and their refusal to return seized items from the Plaintiff’s cell on Nov 05, 2020 after CSC withdraw the charges for these seized items.

[2] The decision sought to be reviewed was made by the commissioner of the CSC on March 23rd, 2023 at the final grievance level prescribed by section 59 of the *Corrections and Conditional Release Regulations SOR/92-620* and Commissioner’s Directive 568-5.

Part 1: ORDER(s) SOUGHT

The applicant seeks in this judicial review application for;

1. An writ of mandamus that CSC return all seized items, or
2. An writ of mandamus that CSC pay the value of the seized items
3. The cost of administering this judicial review and any further and/or other remedy as this honourable court deems necessary and appropriate.

Part 2: THE FACTS

1. The Minister of Public Safety and Emergency Preparedness and Canada is responsible for CSC.
2. CSC is governed by the *Corrections and Conditional Release Act, S.C. 1992, c. 20* (CCRR or the “Act”)
3. CSC is responsible for;
 - (a) The care and custody of inmates
 - (b) The provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;
 - (c) The preparation of inmates for release;
 - (d) Parole, statutory release supervision and long-term supervision of offenders; and
 - (e) Maintaining a program of public education about the operations of the Service, pursuant to section 5 of the CCRA.
4. On the morning of November 05th 2020 the Applicant Keith Arnold Schell was extracted and placed in a holding cell at Matsqui institution while staff search his cell 2N2.
5. During the search staff located and seized several contraband and unauthorized items from the Applicant’s cell 2N2.

6. Mr. Schell was involuntary transferred to Kent Institution as it is believed based on the items seized that Mr. Schell is heavily involved in the institutional drug subculture, was the intended receipt of a contraband shipment coming into the institution and compromised a staff member.
7. At Kent institution Mr. Schell was provided with the Assessment for Decision (A4D) for the reasons behind the involuntary transfer.
8. In the A4D it is stated that based on the items located and seized that it is alleged that the Applicant Mr. Schell is heavily involved in the drug subculture was actively involved in compromising a staff member and was the intended target for a contraband shipment coming into the institution.
9. On January 04th 2021 received serious charge for possession of unauthorized and contraband items seized from his cell 2N2.
10. On January 28th 2022 the Applicant received confirmation that the serious charge for items seized from the Applicant's cell had been withdrawn.
11. April 11th 2022 had yet to receive a response from the inmate request that the Applicant sent Matsqui Institution concerning the return of the seized items from his cell 2N2.
12. On April 11th 2022 the Applicant filed his Initial Grievance against Matsqui Institution for refusing to return seized items.
13. On August 10th 2022 the Applicant received the response for his Initial Grievance. The Respondent claims that since the contraband and unauthorized items were not placed on his personal property list and had the items smuggled into the institution without any authorization
14. On September 21st 2022 the Applicant filed his 3rd level Grievance
15. On April 12th 2023 the Applicant received the response for his 3rd level grievance
16. On May 23rd 2023 the Applicant file his notice of intent to file for judicial review.

THE COMPLAINT AND GRIEVANCE DECISIONS

(1) Dismissal of Initial Grievance

The Applicant argued that CSC reply is baseless, that there is nothing to support the claim that these items are not the Applicant's and that the applicant is not the rightful owner.

17. The Respondent erred when stating in their response claiming I am not the rightful owner because I never had my contraband items on my personal property card.

18. The Respondent erred when responding to the Initial Grievance dated July 15th, 2022 by claiming that even though the items were seized from the applicant's cell 2N2 on November 05th, 2020 they did not know who the rightful owner of the seized items is.

THE THIRD LEVEL GRIEVANCE

19. The Respondent erred when stating subsection 59(5) (A) and (C) apply in this situation.
20. The Respondent erred when stating “the fact that the items were found in your possession does not in and of itself make you their rightful owner”.
21. The Respondent erred when stating “it has been determined that all the items you requested to be allowed to send out are subject to forfeiture in accordance with subsection 59(5) of the CCRR.
22. The Respondent erred when claiming that “Moreover while “shatter” constitutes contraband of unverifiable ownership as well, it must be noted that its possession is also unlawful even outside the institution. According, it is subject to forfeiture pursuant to paragraph 59 (5)(c) of the CCRR.
23. The Respondent erred when responding to the Final Grievance dated March 23rd 2023 by claiming that they did not know who the rightful owner of the seized items removed from the Plaintiff cell 2N2 on November 05th 2020.
24. The Respondent erred when responding to the final Grievance claiming “Moreover, while “shatter” constitutes contraband of unverifiable ownership as well, it must be noted that its possession is also unlawful, even outside of the institution. Accordingly, it is subject to forfeiture pursuant to paragraph 59 (5) (c) of the CCRR.

Part 3: LEGAL BASIS

Section 59 of the Regulations reads:

- 59 (1) If an item is seized during a search conducted under any of sections 47 to 64 of the Act, the Service shall, as soon as practicable, notify the owner in writing, if the owner is known, of the seizure.
- (2) The Service may hold or transfer to the custody of the police or a court any item referred to in subsection (1) that is required as evidence in a disciplinary or criminal proceeding, until the disposition of the proceeding.
- (3) An item referred to in subsection (1) shall be returned to its owner where;
- (a) the item is not or is no longer required as evidence in a disciplinary or criminal proceeding;
- (b) the item has not been forfeited pursuant to subsection (5);

- (c) the item is within the control of the Service;
 - (d) the owner requests that the item be returned to the owner within 30 days after being notified of the seizure;
 - (e) possession of the item would be lawful; and
 - (f) in the case of an owner who is an inmate, possession of the item by the inmate would not constitute possession of contraband or an unauthorized item.
- (4) Subject to paragraph (5)(e), the institutional head or a staff member designated by the institutional head may order that the inmate be given a reasonable opportunity to make arrangements for the disposal or safe-keeping outside the penitentiary of an item referred to in subsection that would constitute contraband or an unauthorized item, where its possession outside the penitentiary would be lawful.
- (5) An item referred to in subsection (1) shall be forfeited to Her Majesty in right of Canada where
- (b) possession of the item would be unlawful;
 - (c) in the case of an owner who is an inmate, possession of the item by the inmate would constitute possession of contraband or an unauthorized item and the inmate has not arranged for the disposal or safe-keeping of the item outside the penitentiary after being given a reasonable opportunity to do so in accordance with subsection (4); or
- (8) Where the institutional head or staff member designated by the institutional head cancels a forfeiture pursuant to subsection (7), the institutional head or staff member may
- (d) order that the inmate be given a reasonable opportunity to make arrangements for the disposal or safekeeping of the item outside the penitentiary.

Part 4: MATERIAL TO BE RELIED ON

This application will be supported by the following material:

1. Written Representation, dated May 29th, 2023
2. Offender initial Grievance dated, December 01st, 2022
3. Offender Final Grievance dated, March 23rd, 2023
4. Inmate Charge #219905

September 26, 2023



(Signature of solicitor or Plaintiff)
Keith Arnold Schell

Mr. Keith Schell
Mission Institution
8751 Stave Lake Rd,
Po Box 60
Mission, BC
V2V 4L8
Fax: (604)-820-5801

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of SEP 27 2023 A.D. 20 _____

Dated this _____ day of OCT 04 2023 20 _____



**SORAYA PREMJI
REGISTRY OFFICER
AGENTE DU GREFFE**