

Mulcair, Thomas - Comté 1

From: Library Research
Sent: Tuesday, February 07, 2017 4:14 PM
To: Mulcair, Thomas - Député
Cc: Mulcair, Thomas - Comté 1
Subject: Library Research Project 351946: Questions 2-4 Re- excessive Incarceration/Justice Denied (related to John Bradley Atkinson case)



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Dear Mr. Mulcair:

Further to your request to the Library of Parliament, below is information regarding the case of John Bradley Atkinson. This follows emails that were sent to Mr. Graham Carpenter of your office and a phone conversation Mr. Carpenter had with my colleague, Sylvie Nugent. Please note that while this document provides legal information, its contents should not be construed as legal opinion or advice. The Office of the Law Clerk and Parliamentary Counsel of the House of Commons is available to provide legal advice to parliamentarians.

As implied by my colleague, the information available on the case of Mr. Atkinson is limited to what was published on his personal website. Despite having made attempts to validate these documents with the courts, we are not in a position to confirm whether the uploaded documents are authentic (e.g. the Reasons for Judgment (part 1 and part 2) in the case of *Her Majesty the Queen v. John Atkinson*, dated 2 March 2015).

1. The punishment for committing mischief that causes actual danger to life

According to section 430(2) of the Criminal Code:

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.

However, according to the Reasons for Judgment (part 2, p. 33), Mr. Atkinson was not found guilty on this count, as the judge explains that he had a "reasonable doubt about whether the act of committing mischief resulted in actual danger to the life of Ms. Campbell."

2. The mechanisms that exist to avoid and/or address the issue of excessive incarceration

In cases where an accused has been incarcerated until the end of the trial and the sentence imposed by the court is less than the time spent incarcerated, there do not appear to exist any formal mechanisms for compensation. This assumes that there has been no wrongdoing by a state agent, such as a false arrest or malicious prosecution. If there is an allegation of wrongdoing, then a civil action could be launched to seek compensation.

If it is claimed that the period of detention prior to conviction is excessively long, this could give rise to an application for a stay of proceedings. Such an application would be based on a claim that section 11(b) of the Canadian Charter of Rights and Freedoms has been violated. This section of the Charter guarantees the right to be tried within a reasonable time. As recognized by the Supreme Court in *R. v. Askov* (1990) and *R. v. Morin*, (1992), and more recently in *R. v. Jordan* (2016), one of the remedies for unreasonable delay can be a stay of proceedings, meaning that the legal proceedings against an accused are halted, without resolution of guilt or innocence. (For more details on this issue, see Maxime Charron-Tousignant, Unreasonable Delays in Criminal Trials: New Legal Framework, Hill Notes, Library of Parliament.)

A stay of proceedings can also be entered if there has been an abuse of process. In the case of *Toronto (City) v.*

C.U.P.E., Local 79, [2003] 3 S.C.R. 77, the Supreme Court stated that the doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute (para. 37). One recent example of this doctrine being applied to halt a prosecution concerned the Hells Angels in Quebec (following the SharQc police operation of 2009). In that case, the Quebec Superior Court declared that there was an abuse of proceedings related to late disclosure by the Crown of evidence gathered during other police operations (Berger c. R., 2015 QCCS 4666, para. 38).

In addition, under section 719 of the *Criminal Code*, in determining a sentence a court may take into account any time spent in custody by the convicted person as a result of the offence to a maximum of one and one-half days for each day spent in custody. This would not, however, address the situation where a person spent more time in pre-trial custody than the amount of time in the sentence eventually imposed. In such cases, the convicted person would simply be released forthwith.

3. The role of the Minister of Justice

The Minister of Justice plays a limited role after there has been a conviction. Sections 696.1 to 696.6 of the *Criminal Code* describe a process by which a convicted person may apply to the Minister of Justice for ministerial review of his or her case on the grounds that there has been a miscarriage of justice. Such an application can only be made once all the normal avenues of appeal have been exhausted. In its Conviction Review document, the Department of Justice states that an application for a conviction review must be based on new and significant information. Information will be considered new if the courts did not examine it during the trial or appeal or if the convicted person became aware of it after all court proceedings were over. Information is significant if: it is reasonably capable of belief; it is relevant to the issue of guilt; and it could have affected the verdict if it had been presented at trial.

If the information in the conviction review application satisfies the minister that there has likely been a miscarriage of justice, the minister can order a new trial or refer the case to the court of appeal of a province or territory to be dealt with as if it were an appeal. The minister may also refer one or more specific questions to the court of appeal for its opinion. If the minister is not satisfied that there has been a miscarriage of justice then the application will be refused. There is no appeal from the minister's decision. The minister is required to file an annual report with Parliament concerning applications for conviction review.

Should you require additional information on this subject, or material on any other topic, please do not hesitate to contact the Parliamentary Information and Research Service.


Yours sincerely,

Maxime Charron-Tousignant, Analyst
Legal Affairs and National Security Section
Parliamentary Information and Research Service
Library of Parliament

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Mulcair, Thomas - Comté 1

From: Nugent, Sylvie
Sent: Friday, February 03, 2017 9:25 AM
To: Mulcair, Thomas - Comté 1
Subject: FW: Follow-up question regarding request for information (John Bradley Atkinson)
Attachments: OrderForCourtTranscriptOntarioOCTOBER2016.docx

Hello again,

I've checked today's Daily Court Lists for Barrie (Ontario courts) and although there is no specific entry for "John B. Atkinson", I did find an entry for a "J.A.", in room 9:

Daily Court List Search Result (Ontario Court of Justice)**Criminal**

Party Name	Case Number	Short Title of Proceedings	Time	Room
A, J.	381199811070600	R. v J.A.	09:30 AM	9
ALLISON, JANE	3041100016110707	R. v ALLISON, JANE	09:30 AM	9

This is all I can confirm at this time.

Have a great weekend,
 Sylvie

From: Nugent, Sylvie
Sent: January 30, 2017 2:39 PM
To: Mulcair, Thomas - Comté 1
Subject: FW: Follow-up question regarding request for information (John Bradley Atkinson)

Hello Graham,

After we spoke on Friday, January 27th, I decided to try and obtain more information regarding the Ontario courts and their procedure for obtaining copies of court proceedings.

Below are the details I found:

- I called the Criminal section of the Ontario Courts for Barrie at 705-739-6111 and they were able to confirm the following (without a case number):
 - John Bradley Atkinson came into their court system on February 11th, 2011.
 - Apparently, under a request to appear, Atkinson was brought to the Bradford Satellite Court (satellite office for the Barrie Courthouse).
 - On March 2nd, 2015, Justice Meijers gave reasons for his judgment (Atkinson was convicted of certain charges) and this transcript included a 2-hour sentencing hearing (Atkinson was sentenced on the same day).
 - The transcript for this March 2015 judgment has already been created, therefore you can make a request for a copy at the reduced cost of 55 cents per page – there is no confirmation on how long this transcript might be, however, it was mentioned that for a 2-hour hearing, we should expect between 60-70 pages.

- To request a copy, you have to place an order using the attached order form (see Word document, or you can find the Transcript Order Form on the court website)
 - The Authorized Court Transcriptionist (ACT) for this case is Cathy Knelsen and her contact information is as follows:

ACT ID: 5270849443
CATHYTHEARTIST@SYMPATICO.CA
 Telephone: 705-792-8656
 Address: 10 Herrell,
 Barrie, ON L4N 6T5

She offers expedited service (within 24 hours, with an extra fee charged) or delivery (within 5 business days).
 - NOTE: The court website also provides helpful documents such as how to order a court transcript and step by step Instructions.
- In addition, the court file showed an upcoming **Status hearing re: counsel**, scheduled for February 3rd, 2017 in Courtroom no.9 (under Justice Meijers). This may be in regards to Atkinson being self-represented.
 - You may wish to consult the Daily Court Lists, for the municipality of Barrie, on February 3rd, for confirmation.
 NOTE: As you may still be away from the office, I will also make that verification for you and send you what I find next Friday.
- Finally, there appears to be a pending "dangerous offender" application in regards to Atkinson. No details yet on whether a hearing has been scheduled on this matter.
- For additional information regarding transcripts, you may be interested in the Court's FAQ.

As for information on Atkinson's arrest, there was nothing in the court file. Aside from contacting a police station (not certain which one), the court person suggested that the crown attorney's office may have these details. However, she was unsure if these offices would disclose the information. I tried calling the following contacts, with little success:

- Barrie Crown Attorney's Office, 705-739-6188 – they had no arrest details (no date or individual charges); they referred me to the Barrie Court Services, 705-739-6500 and suggested that if Atkinson had originally been arrested and brought to appear before the Bradford Satellite Court, the involved police station could be South Simcoe Police (705-436-2141) or the Nottawasaga OPP Detachment (705-434-1939).
- Barrie Court Services, 705-739-6500 – they did not have an original arrest date and could only confirm that the following charges are still pending against Atkinson:
 - communicate v.d.
 - operate disqualified
 - mischief under \$5000
 - assault with a weapon

NOTE: They were able to confirm that the Nottawasaga OPP Detachment was the police station of interest.
- Nottawasaga OPP Detachment, 705-434-1939 – unfortunately, they are not able to release any information regarding another person's arrest details; you will have to make a Freedom of Information request (only done in writing, by mail) and you will have to include a signed Authorization For Release of Personal Information Form to obtain details on behalf of someone else – there is also a \$5 application fee, payable to the Minister of Finance.

I hope these details are helpful. As I mentioned below and during our phone conversation, your additional questions (questions 2-4) have been sent along to one of the analysts in our Legal Affairs Division. Their response will be sent to you by your original deadline of February 8th.

Thank you,
Sylvie

From: Nugent, Sylvie
Sent: January 27, 2017 10:03 AM
To: Mulcair, Thomas - Comté 1
Subject: RE: Follow-up question regarding request for Information (John Bradley Atkinson)

Hello again Graham,

Since I'm not sure you would be checking your email while you are away from the office, I have gone ahead and forwarded your additional questions (questions 2-4) to an analyst at the Library.

He/she will respond to you by the deadline originally identified (i.e. end of day on February 8th, 2017).

Thank you,
Sylvie

From: Nugent, Sylvie
Sent: January 26, 2017 10:07 AM
To: Mulcair, Thomas - Comté 1
Subject: Follow-up question regarding request for information (John Bradley Atkinson)

Hello Graham,

After I called the office to speak to you this morning, your colleague suggested I try connecting with you by email.

I wanted to let you know that after searching various sources and databases, I could not find any corroborating information to confirm or deny any of the facts surrounding the John Bradley Atkinson case.

The only court documents I was able to find have been uploaded to John Bradley Atkinson's website. The Reasons for Judgment found on the website does confirm the following details:

- The trial took place over a period of 16 months (over several days)
- On March 2nd, 2015, Justice E. Meijers gave an oral judgment and convicted Atkinson of various charges (He's a judge for the Ontario Court of Justice, Central East Region).
- As to sentencing, if it's not done at the same time as the judgment (nothing was found in the court documents on the website), then there is a separate hearing and a decision is not usually published to provide the sentencing details.

To obtain any corroborating court documents, you would have to make a request to the Ontario Court of Justice directly. Unfortunately, the court documents found on the Atkinson website don't provide the case's court number; therefore, your request for documents would likely have to be made in person (you'd have to go in to obtain details like the court number before trying to obtain the case's other documents). The judgment from March 2015 was given in Barrie, Ontario: it is likely the in person request would have to be made in the Toronto region. Further details to obtain court transcript are available here.

Since I can't confirm or deny the facts, would you still like us to proceed with answering the additional questions you included in your original request?

1. What punishment does the crime "wilful endangerment of life" normally warrant?

2. What notion does justice delayed is justice denied? What mechanisms in the justice system exist to avoid and/or address the issue of excessive incarceration (i.e. incarceration exceeding the length of the actual punishment/or without being sentenced)?
3. What is the role of the Justice Minister in cases like this?

If so, I can forward these questions to one of the analysts in our Division.

I'm not certain if the original deadline of February 8th is sufficient for the analyst: is there any flexibility to the deadline? And if so, should the analyst contact you by email to negotiate it?

Thank you very much,
Sylvie Nugent

Senior Research Librarian | Bibliothécaire de recherche principale
Parliamentary Information and Research Service | Service d'information et de recherche parlementaires
Tel. | Tél. : 613-947-6795
Fax | Télécopieur: 613-992-1269
sylvie.nugent@parl.gc.ca
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