Federal Court  Cour fédérale

Date: 20160125

Docket: T-1944-14

Citation: 2016 FC 87

Ottawa, Ontario, January 25, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HAROLD SPRING

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Parole Board of Canada [PBC or Board] denying the applicant's request for a record suspension, formerly known as a pardon, pursuant to subsection 4.1(1) of the *Criminal Records Act*, RSC 1985, c C-47 [Act]. The application was denied on the basis that, pursuant to paragraph 4.1(1)(b) of the Act, granting a record suspension would bring the administration of justice into disrepute notwithstanding that it would also be a measurable benefit to the applicant and would sustain his rehabilitation.

[2] As a preliminary note, I will use the term record suspension as defined in subsection 2(1) of the Act, and will only make reference to the term pardon when I quote various documents, notwithstanding that the term pardon appears in the *Criminal Records Regulations* [Regulations] and several documents in the record for this matter.

I. Background

[3] The applicant, born on October 31, 1943, has four children and has been married to his second wife for sixteen (16) years. He was called to the Bar in Ontario in 1970 and practiced law for seventeen years as a corporate commercial lawyer. In 1987 the Law Society of Upper Canada disbarred the applicant as professional punishment for his involvement in activities that led to his criminal convictions.

[4] In January 1990 the applicant plead guilty to one count of uttering a forged document. The offence related to a fraudulent mortgage arranged by the applicant, as a lawyer. The applicant represented that he was arranging the mortgage on an apartment building but in reality did so on a parking lot thus defrauding the Guardian Trust Company. The applicant was sentenced to a suspended sentence and one year of probation.

[5] In February 1994 the applicant plead guilty to seven counts of fraud over $1,000 that related to transactions that occurred between 1985 and 1993. The charges involved four institutional complainants and three individual complainants. The applicant was sentenced to four years and six months imprisonment. The applicant received parole in August, 1995.

[6] The Applicant either paid restitution to, or otherwise settled with, all but two of the institutional complainants. The institutional complainants who did not receive any restitution suffered a collective loss of approximately $600,000. The respondent notes that the evidence in respect of the exact amounts of restitution paid is not entirely clear.

[7] Notwithstanding the applicant's convictions, which were known in the real estate field, the applicant has subsequently achieved significant success in the real estate business.

[8] In October, 2010 the applicant submitted an application for a record suspension with supporting materials. A Senior Record Suspension Officer [Officer] with the PBC verified the information provided with the application and prepared a summary that recommended the granting of the record suspension.

[9] In the summary the Officer found that granting the record suspension would: (1) create a measurable benefit for the applicant; (2) support the applicant's reintegration; and (3) not bring the administration of justice into disrepute. In reaching the conclusion that the granting of the record suspension would not bring the administration of justice into disrepute the Officer considered the gravity of the applicant's offences, noting they involved defrauding individuals and corporations of a total of 1 million dollars and that in two of the incidents the applicant used his position as a lawyer for personal gain. However, the Officer also notes that the applicant paid compensation to some of the victims and while there were four instances of major frauds between 1986 and 1991 the Officer notes that the applicant did not participate in a consistent series of frauds over this period.

II. Decision Under Review

[10] In September, 2013, PBC Member Doug Hummell advised the applicant that the PBC proposed to deny the applicant's record suspension application. The PBC advised that it was concerned that granting the record suspension would bring the administration of justice into disrepute due to the nature, gravity and duration of the applicant's offending, the circumstances surrounding the commission of the offences and information related to the criminal history pursuant to subsection 4.1(3) of the Act.

[11] The PBC considered the applicant's convictions, noting that they involved the applicant using his position of trust as a lawyer to defraud both individual and institutional clients of large sums of money well in excess of one million dollars: "Your betrayal of the solicitor-client relationship formed a pattern over many years. It involved a relatively large number of victims. You took advantage of the high regard afforded you in the community".

[12] The PBC also considered the factors in favour of granting a record suspension, noting that the applicant had not committed any offences since his last conviction and had flourished in the real estate business wherein his criminal record is known or easily discovered: "**You desire a pardon to remove the stigma attached to your record as it affects your personal and business life. The Board would find that you meet the criteria of good conduct, deriving a measurable benefit, and sustaining your successful rehabilitation into society**". [Emphasis added.]. The PBC then states:

> **What the Board struggles with is your pardon bringing the administration of justice into disrepute**. The public must be

> assured that the integrity and public confidence in the justice system is maintained. In this context, having regard to all the circumstances surrounding your offending, **the Board has credible concerns that granting a pardon would bring the administration of justice into disrepute.** [Emphasis added.].

[13] Mr. Hummell's letter does not detail the Board's credible concerns beyond making reference to factors that subsection 4.1(3) of the Act sets out for consideration by the PBC when determining whether the ordering of a record suspension would bring the administration of justice into disrepute. The applicant was provided with an opportunity to address the Board's concerns and he provided further representations through his legal counsel, including a number of letters of support from well-established members of the community.

[14] In May of 2014, and after having received the applicant's response to Mr. Hummell's proposal to deny the record suspension, Board Member Lubomyr Luciuk concurred with Mr. Hummell's decision denying the request for a record suspension: "Given the nature, gravity, and duration of your criminal offending, and the need to maintain public confidence in the integrity of the justice system, I conclude that granting a pardon in your case would likely bring the administration of justice into disrepute".

III. Relevant Legislation

[15] For ease of reference, the relevant provisions of the Act and the Regulations are reproduced in Appendix "A" at the end of this Judgment and Reasons.

IV. Issues

[16] The application raises the following issues:

1) What is the applicable standard of review of the PBC's interpretation of the concept of bringing the administration of justice into disrepute as set out in section 4.1 of the Act;

2) Did the PBC err in failing to consider mitigating factors when finding that granting a record suspension would bring the administration of justice into disrepute; and

3) Was the PBC's decision not to grant a record suspension otherwise reasonable?

V. Analysis

A. *Issue 1: What is the applicable standard of review?*

[17] The applicant notes that the Act was amended by Parliament shortly before the applicant's application for a record suspension was submitted to the PBC. Those amendments included changes to section 4.1 of the Act requiring the PBC to address a number of additional criteria when considering the granting of a record suspension where the offences for which the record suspension is being sought, were prosecuted by way of indictment. These additional criteria include the requirement, found at paragraph 4.1(1)(b) of the Act, that the PBC be satisfied that the granting of a record suspension would not bring the administration of justice into disrepute. The applicant notes that in light of the relevantly recent enactment of the amendments there is no jurisprudence establishing the appropriate standard of review to be

adopted in considering a decision of the PBC to deny a record suspension on the basis that it would bring the administration of justice into disrepute.

[18] The applicant, relying on *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 55 [*Dunsmuir*] takes the position that a correctness standard should be adopted as matters relating to the repute of the administration of justice engages a question of central importance to the legal system, which is a question of pure statutory interpretation outside the PBC's expertise. However, the applicant also submits that the Court should still quash the decision even if it applies the reasonableness standard of review.

[19] The respondent takes the position that an administrative decision-maker's interpretation of a statutory provision closely connected to its function and with which the decision-maker has particular familiarity attracts the reasonableness standard of review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654 at para 30 [*Alberta Teachers*]; *McLean v British Columbia (Securities Commission)*, [2013] 3 SCR 895 at para 21 [*McLean*]). The respondent argues that the concept of bringing the administration of justice into disrepute does not fall within the exception of a question of law that is of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.

[20] The respondent argues that the PBC has interpreted and applied the provisions of the Act to case-specific facts. The respondent goes on to note that although the term "bring the administration of justice into disrepute" exists in other legal contexts, the determination made by the PBC under paragraph 4.1(1)(b) of the Act does not have any effect outside the record

suspension context. The respondent submits that what constitutes a matter that would bring the administration of justice into disrepute in the record suspension context is a difficult and nuanced question which Parliament asked the PBC not the Courts to answer.

[21] I agree with the respondent. The jurisprudence establishes that where a decision of a specialized tribunal, interpreting and applying its enabling statute, is subject to judicial review there is a presumption that that standard of review is reasonableness (*Alberta Teachers* at paras 30, 34, 39; *McClean* at paras 21-22).

[22] The existence of a privative clause in relation to the administrative tribunals also gives a strong indication that a reasonableness standard of review should apply to questions of interpretation relating to the tribunal's enabling statute (*Dunsmuir* at para 52).

[23] However, the jurisprudence also recognizes that the presumption of deference can be rebutted. One such circumstance being where the interpretation engages a question of central importance to the legal system and is outside the specialized area of expertise of the specialized tribunal (*Dunsmuir* at para 55; *Alberta Teachers* at para 30; *McLean* at para 26). I am not satisfied that the presumption has been rebutted here.

[24] This Court has considered the standard of review to be applied where the interpretation of the undefined term “good conduct” found in paragraph 4.1(1)(a) and paragraph 7(b) of the Act. In these cases the Court has adopted and applied a reasonableness standard of review (*Jaser v Canada (Attorney General)*, 2015 FC 4 at paragraph 35, 119 WCB (2d) 506 [*Jaser*]; *Saini v*

Canada (Attorney General), 2014 FC 375 at paras 26-27, 454 FTR 254; *Foster v Canada (Attorney General)*, 2013 FC 306 at paras 18-19; *Conille v Canada (Attorney General)*, 2003 FCT 613 at para 14, 125 ACWS (3d) 997 (TD) [*Conille*]; *Yussuf v Canada (Attorney General)*, 2004 FC 907 at para 9, 62 WCB (2d) 250). The Court grounds this finding on the existence of the privative clause found at section 2.1 of the Act which states "The Board has exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension". As noted by Justice Keith Boswell in *Jaser* at paragraph 35, section 2.1 of the Act militates in favour of deference:

> [35] I disagree with the applicant's contention that the substance of the Board's decision should be reviewed on a correctness standard. To the extent that there is a question of what "good conduct" means, it is about interpreting the Act, which is a statute closely connected to the Board's function. Reasonableness is ordinarily presumed for such issues (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 30, 34, [2011] 3 SCR 654). I see no reason that this presumption should be rebutted, especially since section 2.1 of the Act gives to the Board the "exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension".

[25] The applicant acknowledges the presumption of deference but argues that the presumption should be rebutted here. The applicant argues that the term "bring the administration of justice into disrepute" raises issues of central importance to the legal system. The applicant submits that the repute of the administration of justice is of relevance across the entire legal system and the Courts, as the arbiters of the Constitution, are called upon to determine the proper considerations related to the repute of the administration of justice in adjudicating matters pursuant to subsection 24(2) of the *Charter*.

[26] I respectfully disagree. In *McClean* at paras 28-31, in the context of limitation periods, Justice Moldaver notes that while a concept may be of general importance, that does not in itself dictate the adoption of a correctness standard of review:

> [28] Here, the appellant's arguments in support of her contention that this case falls into the general question category fail for three reasons. **First, although I agree that limitation periods, as a conceptual matter, are generally of central importance to the fair administration of justice, it does not follow that the Commission's interpretation of this limitation period must be reviewed for its correctness**. [Emphasis added.]
>
> [29] Second, while it is true that reasonableness review in this context necessarily entails the possibility that other provincial and territorial securities commissions may arrive at different interpretations of their own statutory limitation periods, I cannot agree that such a result provides a basis for correctness review - and thus judicially mandated "consisten[cy] . . . across the country" (A.R.F., at para. 13). No one disputes that each of the provincial and territorial legislatures can enact entirely different limitation periods. Indeed, one of them has; see *Manitoba's Securities Act*, C.C.S.M., c. S50, s. 137 (providing an eight-year period, instead of the six-year norm). By the same token, it may be the case that provincial and territorial securities regulators come to differing (but nonetheless reasonable) interpretations of those limitation periods (though that has yet to occur). If there is a problem with such a hypothetical outcome, it is a function of our Constitution's federalist structure - not the administrative law standards of review.
>
> [30] Third, and most significantly, **the problem with the appellant's argument is her narrow view of the Commission's expertise.** [Emphasis added.] In particular, the appellant argues that limitation periods "are not in themselves part of substantive securities regulation, the area of the [Commission's] specialised expertise" (A.R.F., at para. 9). The argument presupposes a neat division between what one might call a "lawyer's question" and a "bureaucrat's question". The logic seems to be that because the meaning of "the events" in s. 159 cannot possibly require any great technical expertise - there is, after all, no specialized "bureaucratese" to interpret - why should the matter be left to the Commission?
>
> [31] While such a view may have carried some weight in the past, that is no longer the case. **The modern approach to judicial**

> **review recognizes that courts "may not be as well qualified as a given agency to provide interpretations of that agency's constitutive statute that make sense given the broad policy context within which that agency must work".** [Emphasis added.] (*National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324, at p. 1336, per Wilson J.; see also *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 92; *Mowat*, at para. 25).

[27] Repute of the administration of justice is, in my opinion, a context specific concept. The contextual nature of the concept within the framework of the Act is demonstrated by Parliament's choice to enumerate factors under subsection 4.1(3) which the PBC may consider when making a determination on the question of repute of the administration of justice. These factors, both in the Act and the Regulations all address considerations relating to the offence and the consequences of the offence for which a record suspension is being sought. These are issues clearly within the expertise of the PBC. I agree with the respondent's submission that what constitutes a matter that would bring the administration of justice into disrepute in the context of deciding whether to grant a record suspension is a difficult and nuanced question which Parliament asked the PBC not the Courts to answer.

[28] I am of the opinion that the reasonableness standard of review applies in regard to the PBCs interpretation of subsection 4.1 of the Act.

[29] With respect to reviewing the PBC's decision not to grant a record suspension, the reasonableness standard of review also applies (*Dunsmuir* at para 51).

B. *Issue 2 - Did the PBC err in failing to consider mitigating factors when finding that granting a record suspension would bring the administration of justice into disrepute?*

[30] The applicant argues that the PBC erred by failing to adopt an expansive approach to the interpretation of the concept "bring the administration of justice into disrepute". In doing so the applicant argues the PBC failed to consider mitigating factors relating to the applicant's good conduct and rehabilitation, focusing instead on the statutory and regulatory factors set out at subsection 4.1(3) of the Act. The failure to consider these positive factors when determining whether or not the grant of a record suspension would bring the administration of justice into disrepute is, in the applicant's submissions, inconsistent with the rehabilitative purpose of the Act and was a reviewable error.

[31] The applicant relies on Chief Justice McLachlin's decision in *R v Grant*, [2009] 2 SCR 353 at paras 68 - 70 [*Grant*] where the Chief Justice addresses the scope and meaning of the concept "bring the administration of justice into disrepute" within the context of subsection 24(2) of the *Charter*. *Grant* notes that repute of the administration of justice is a societal and forward looking concept that considers the view of a reasonable person apprised of all the relevant circumstances and values underlying the *Charter*.

[32] While I do not dispute the need for a broad, societal and forward looking approach to the interpretation of the repute of the administration of justice in the context of subsection 24(2) of the *Charter*, the term is not being considered in the *Charter* context in this application. As I noted earlier, how the term is interpreted is driven by context. This contextual approach to interpretation was recognized by Justice Major writing in dissent in *Mooring v Canada (National*

Parole Board), [1996] 1 SCR 75 at para 46 where the Court was addressing the question of whether the Parole Board was a Court of competent jurisdiction within the meaning of section 24 of the *Charter*: "The National Parole Board must then determine, under s. 24(2), whether the admission of the evidence in a parole granting or revocation hearing would bring the administration of justice into disrepute. **In the context of the National Parole Board, the administration of justice means the administration of the parole process**". [Emphasis added.]

[33] In considering repute to the administration of justice in this instance the PBC is not relying on principles that are relevant in a *Charter* context but rather is interpreting the term in the context of an application for a record suspension. Consideration of repute of the administration of justice is required by the legislation, and the legislation in turn identifies specific factors that the PBC **may** consider in deciding the question of repute of the administration of justice. The PBC is not prohibited from considering mitigating factors or identifying and considering aggravating factors beyond those identified in the Act and Regulations. The factors to be relied on, aggravating or attenuating, and the weight they are given are left to the discretion of the PBC.

[34] It is evident upon a review of Mr. Hummell's "Purpose to Deny Pardon" letter, that the PBC was aware of the positive aspects of the applicant's application and was alive to the balancing of these factors against the concerns it had in regard to repute of the administration of justice: "The Board would find that you meet the criteria of good conduct, deriving a measurable benefit, and sustaining your successful rehabilitation into society. What the Board struggles with

is your pardon bringing the administration of justice into disrepute". In my opinion the PBC did not ignore these positive factors.

[35] The granting of a records suspension is a highly discretionary decision that has been entrusted to the PBC by virtue of subsection 4.1(1) of the Act which states the Board "may" order a record suspension (*Saini* at para 26; *Conille* at para 14; *Therrien (Re)*, [2001] 2 SCR 3 at paras 113 and 115). I am not persuaded that the PBC committed a reviewable error in its identification of factors relevant to its analysis of whether or not the granting of a record suspension would bring the administration of justice into disrepute.

C. *Issue 3 - Was the PBC's decision not to grant a record suspension otherwise reasonable?*

[36] While I am satisfied that the PBC did not err in its interpretation of paragraph 4.1(1)(b) of the Act, I am of the opinion that the decision lacks transparency and intelligibility in concluding that granting the applicant a record suspension would bring the administration of justice into disrepute, thus rendering the decision unreasonable (*Dunsmuir* at para 47).

[37] Neither Mr. Hummel's "Propose to Deny Pardon" letter, nor Mr. Luciuk's decision letter provides any explanation in support of the PBC's conclusion that granting a record suspension would shock the public collective conscience and bring the administration of justice into disrepute.

[38] Instead Mr. Hummel's letter is limited to a review of the applicant's fraudulent conduct which led to the betraying of the community's trust at the time the offences were committed. The

PBC recognizes that a record suspension would provide a measurable benefit to the applicant and sustain the applicant's successful rehabilitation. It then expresses that it is concerned that the nature, gravity, duration of offending, circumstances surrounding the commission of the offences and the information relating to the criminal history is of such a nature that granting a record suspension would bring the administration of justice into disrepute. The concerns in this regard are described as "credible concerns", but there is no explanation or enumeration of those concerns.

[39] Similarly, while I am satisfied that the decision reflects that the PBC was aware of the positive aspects of the application and alive to the balancing of these factors against the aggravating factors of the application, the PBC does not explain how the factors relating to the applicant's offences outweighed the positive aspects of the application.

[40] Finally, while Mr. Luciuk's decision letter acknowledges the applicant's December, 2013 representations and attachments, there is no substantive consideration of this information in the letter. The failure of the PBC to explain why the relevant and directly contradictory evidence contained in the December 2013 representations did not allay the "credible concerns that granting a pardon would bring the administration of justice into disrepute" makes it easier to conclude that the decision is unreasonable.

[41] I hasten to note that the Supreme Court of Canada established that the inadequacies of an administrative decision-maker's reasons do not, in and of themselves, render a decision unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador*

(Treasury Board), [2011] 3 SCR 708 at para 14 [*Newfoundland Nurses*]). *Newfoundland Nurses* holds that a decision-maker need not address or explore in depth every argument or issue raised "that does not impugn the validity of either the reasons or the result under a reasonableness analysis" (*Newfoundland Nurses* at para 16). However the reasons must allow a reviewing court to understand why the decision-maker reached a particular decision and determine whether or not that decision is within the range of acceptable outcomes based on the facts and the law (*Newfoundland Nurses* at para 14; *Dunsmuir* at para 47). After carefully considering the record, the reasons of the PBC do not, in my view, meet this standard.

[42] The Court and the applicant have been left with a decision that denies the application for a record suspension but does not address why. One is left to speculate as to what the credible concerns of the PBC are and what, if anything, the applicant might do in the future to address those concerns. Those credible concerns do not relate to a subordinate issue or argument; rather they formed the crux of the PBC's decision to reject the application for a record suspension because granting a record suspension would bring the administration of justice into disrepute. Their absence impugns the validity of the reasons and the result (*Newfoundland Nurses* at para 16).

VI. Conclusion

[43] I am of the opinion the Board's decision lacks transparency and intelligibility and is unreasonable. The decision is quashed and returned for reconsideration by the PBC.

[44] Costs to the applicant.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted, the matter is remitted back to a differently constituted Board for redetermination. Costs to the applicant.

"Patrick Gleeson"

Judge

APPENDIX "A"

Criminal Records Act, RSC 1985, c C-47 some definitions from subsection 2(1), and sections 2.1, 4, and 4.1:

2. (1) In this Act, "Board" means the Parole Board of Canada; "record suspension" means a measure ordered by the Board under section 4.1;	**2. (1)** Les définitions qui suivent s'appliquent à la présente loi. "Commission " La Commission des libérations conditionnelles du Canada. " suspension du casier " Mesure ordonnée par la Commission en vertu de l'article 4.1.
[…]	[…]
2.1 The Board has exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension.	**2.1** La Commission a toute compétence et latitude pour ordonner, refuser ou révoquer la suspension du casier.
4. (1) A person is ineligible to apply for a record suspension until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:	**4. (1)** Nul n'est admissible à présenter une demande de suspension du casier avant que la période consécutive à l'expiration légale de la peine, notamment une peine d'emprisonnement, une période de probation ou le paiement d'une amende, énoncée ci-après ne soit écoulée
(a) 10 years, in the case of an offence that is prosecuted by indictment or is a service offence for which the offender was punished by a fine of more than five thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment	a) dix ans pour l'infraction qui a fait l'objet d'une poursuite par voie de mise en accusation ou qui est une infraction d'ordre militaire en cas de condamnation à une amende de plus de cinq mille dollars, à une peine de détention de plus de six mois, à la destitution du service de Sa Majesté, à l'emprisonnement de plus de

that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the National Defence Act; or

six mois ou à une peine plus lourde que l'emprisonnement pour moins de deux ans selon l'échelle des peines établie au paragraphe 139(1) de la Loi sur la défense nationale;

(b) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph (a).

b) cinq ans pour l'infraction qui est punissable sur déclaration de culpabilité par procédure sommaire ou qui est une infraction d'ordre militaire autre que celle visée à l'alinéa a).

4.1 (1) The Board may order that an applicant's record in respect of an offence be suspended if the Board is satisfied that

4.1 (1) La Commission peut ordonner que le casier judiciaire du demandeur soit suspendu à l'égard d'une infraction lorsqu'elle est convaincue :

(a) the applicant, during the applicable period referred to in subsection 4(1), has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

a) que le demandeur s'est bien conduit pendant la période applicable mentionnée au paragraphe 4(1) et qu'aucune condamnation, au titre d'une loi du Parlement, n'est intervenue pendant cette période;

(b) in the case of an offence referred to in paragraph 4(1)(a), ordering the record suspension at that time would provide a measurable benefit to the applicant, would sustain his or her rehabilitation in society as a law abiding citizen and would not bring the administration of justice into disrepute.

b) dans le cas d'une infraction visée à l'alinéa 4(1)a), que le fait d'ordonner à ce moment la suspension du casier apporterait au demandeur un bénéfice mesurable, soutiendrait sa réadaptation en tant que citoyen respectueux des lois au sein de la société et ne serait pas susceptible de déconsidérer l'administration de la justice

(2) In the case of an offence referred to in paragraph 4(1)(a), the applicant has the

(2) Dans le cas d'une infraction visée à l'alinéa 4(1)a), le demandeur a le fardeau de

onus of satisfying the Board that the record suspension would provide a measurable benefit to the applicant and would sustain his or her rehabilitation in society as a law-abiding citizen.	convaincre la Commission que la suspension du casier lui apporterait un bénéfice mesurable et soutiendrait sa réadaptation en tant que citoyen respectueux des lois au sein de la société.
(3) In determining whether ordering the record suspension would bring the administration of justice into disrepute, the Board may consider	**(3)** Afin de déterminer si le fait d'ordonner la suspension du casier serait susceptible de dé-considérer l'administration de la justice, la Commission peut tenir compte des critères suivants :
(a) the nature, gravity and duration of the offence;	a) la nature et la gravité de l'infraction ainsi que la durée de sa perpétration;
(b) the circumstances surrounding the commission of the offence;	b) les circonstances entourant la perpétration de l'infraction;
(c) information relating to the applicant's criminal history and, in the case of a service offence, to any service offence history of the applicant that is relevant to the application; and	c) les renseignements concernant les antécé- dents criminels du demandeur et, dans le cas d'une infraction d'ordre militaire, concernant ses antécédents à l'égard d'infractions d'ordre militaire qui sont pertinents au regard de la demande;
(d) any factor that is prescribed by regulation. .	d) tout critère prévu par règlement

Criminal Records Regulations, SOR/2000-303, paragraph 1.1(g):

1.1 For the purposes of paragraph 4.1(3)(d) of the Act, in determining whether granting a pardon to an applicant would bring the administration of justice into disrepute, the Board may	**1.1** Pour l'application de l'alinéa 4.1(3)d) de la Loi, la Commission, afin de déterminer si le fait d'octroyer la réhabilitation à un demandeur serait susceptible de dé- considérer

consider whether

[…]

(g) the offence constituted a fraudulent transaction relating to contracts and trade within the meaning of Part X of the Criminal Code, and any of the following apply:

(i) the value of the fraud committed exceeded one million dollars,

(ii) the offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market,

(iii) the offence involved a large number of victims,

(iv) in committing the offence, the applicant took advantage of the high regard in which the applicant was held in the community;

l'administration de la justice, peut tenir compte de ce qui suit:

[…]

g) l'infraction constitue une opération frauduleuse en matière de contrats et de commerce prévue à la partie X du Code Criminel et l'un des faits ci-après s'y applique

(i) la fraude commise a une valeur supérieure à un million de dollars,

(ii) l'infraction a nui - ou pouvait nuire - à la stabilité de l'économie canadienne, du système financier canadien ou des marchés financiers au Canada ou à la confiance des investisseurs dans un marché financier au Canada,

(iii) l'infraction a causé des dommages à un nombre élevé de victimes,

(iv) le demandeur a indûment tiré parti de la réputation dont il jouissait dans la collectivité;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1944-14
STYLE OF CAUSE:	HAROLD SPRING v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 13, 2015
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JANUARY 25, 2016

APPEARANCES:

Mr. Brian H. Greenspan Mr. Robin K. McKechney	FOR THE APPLICANT
Shain Widdifield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Greenspan Humphrey Lavine Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT