

Federal Court



Cour fédérale

Date: 20170421

Docket: T-398-16

Citation: 2017 FC 394

Ottawa, Ontario, April 21, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JAMES THOMAS EAKIN

Applicant

and

**ATTORNEY GENERAL OF CANADA AND
THE PAROLE BOARD OF CANADA AND
CORRECTIONAL SERVICE OF CANADA**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. James Thomas Eakin, who represents himself in this application for judicial review, is an American citizen serving an indeterminate sentence having been convicted of sexual assault and robbery in 1995. He had been convicted of similar offences in 1991. The 1991 convictions were considered by the Ontario Court of Justice as part of the dangerous

offender application in 1995. The Minister of Citizenship and Immigration has also formed the opinion that Mr. Eakin constitutes a danger to the public in Canada and he will be deported upon the granting of conditional release.

[2] In July 2015 the Parole Board of Canada [PBC] denied Mr. Eakin both day and full parole. The PBC concluded that Mr. Eakin poses a moderate risk for re-offending sexually, has limited insight into his sexual offending and despite program completion he has not mitigated his risk in any substantial way. The PBC further noted that if released he would require intensive supervision and counselling or program opportunities that would be unavailable on deportation. The Appeal Division affirmed the decision of the PBC.

[3] In seeking judicial review of the Appeal Division's decision, Mr. Eakin argues that (1) in considering his criminal history, assessing his circumstances as a foreign offender and in determining the risk he poses to society his rights under sections 7, 11(h) and 12 of the *Canadian Charter of Rights and Freedoms* [*Charter*] were violated; (2) the process was procedurally unfair as the file information relating to his offences was inaccurate; and (3) the date identified by the PBC for his next legislated full parole review was incorrect, an issue that was not addressed by the Appeal Division. He seeks a declaration that his rights under the *Charter* have been breached and an order staying or terminating his sentence and deportation from Canada upon release.

II. Issues

[4] Having reviewed the parties written submissions and having heard their oral arguments, I have determined that the following four issues arise:

- A. Were Mr Eakin's rights under sections 7, 11(h) and 12 of the *Charter* violated?
- B. Did the PBC and Appeal Division unfairly rely on erroneous or inaccurate information?
- C. Was the decision to deny parole unreasonable?
- D. Did the Appeal Division err in failing to address the timing of Mr. Eakin's next legislated full parole review?

[5] For the reasons that follow I am satisfied that Mr. Eakin's *Charter* rights have not been violated, there was no breach of procedural fairness and the decision to deny parole was lawful and reasonable. However, I am of the opinion that the Appeal Division was required to consider and address Mr. Eakin's argument that the PBC had erred in determining the date of his next legislated full parole review. The failure of the Appeal Division to do so warrants the intervention of this Court on this specific ground. The application is granted in part.

III. Decision

A. *The PBC Decision*

[6] The PBC noted at the outset of its decision that it "...may grant parole if, in its opinion, [Mr. Eakin] will not, by re-offending, present an undue risk to society before the expiration according to law of the sentence [he is] serving and [his] release will contribute to the protection of society by facilitating [Mr. Eakin's] reintegration into society as a law-abiding citizen". The PBC then noted that Mr. Eakin is serving an indeterminate sentence as a dangerous offender and

that it was also required to determine if his sentence has been tailored to meet his specific needs. In the context of Mr. Eakin's specific needs the PBC noted that he was deportable to the United States if granted any form of release.

[7] The PBC reviewed Mr. Eakin's criminal history and the circumstances surrounding the 1995 convictions and the 1991 convictions that were considered in imposing an indeterminate sentence for the 1995 conviction. The PBC then considered various reports and plans noting clinician concerns in a number of areas. The PBC noted that Mr. Eakin had not made further gains in understanding his offence cycle and that he required further counselling or programming in order to mitigate the risk for future re-offending. The PBC acknowledged Mr. Eakin's insistence that certain file information was incorrect but noted that these factors were irrelevant. The PBC noted that the relevant issue was the sexual assault and the absence of an explanation for the behaviour.

[8] The PBC then noted that the most recent psychological risk assessment concludes an actuarial low to moderate risk for future sexual offending. However the PBC noted this same assessment identified a lack of insight and accountability that would need to be addressed before the assessor could support any form of conditional release. The PBC was unwilling to ignore or minimize the findings of this risk assessment.

[9] The PBC concluded that Mr. Eakin continues to pose a moderate risk for re-offending sexually and has very limited insight into his sexual offending. As result the PBC did not believe that he had mitigated his risk in a substantial way despite program completion. The PBC noted

that intensive supervision as well as counselling or programming opportunities would be required if released into the community and these would not be available in the event of deportation to another country. On these bases the PBC denied day parole and full parole.

B. *Appeal Division Decision*

[10] The Appeal Division identified its role and noted its jurisdiction to reassess the risk to re-offend and substitute its discretion where it finds that the PBC decision was unfounded and unsupported by the information available at the time the decision was made.

[11] The Appeal Division set out Mr. Eakin's grounds for appeal and addressed them. It ultimately concluded, relying on the actuarially assessed risk and the professional evidence indicating there was a requirement for Mr. Eakin to further address risk factors and develop insight into his sexual offending, that the PBC decision was reasonable and based on reliable and persuasive information. The Appeal Board affirmed the decision to deny day and full parole.

IV. Standard of Review

[12] In *Cartier v Canada (Attorney General)*, 2002 FCA 384 [*Cartier*], the Federal Court of Appeal addressed the role of this Court when reviewing a decision of the Appeal Board that affirms a decision of the PBC. Décaré JA, held that in such an instance this Court is required to ensure that the PBC's decision is lawful:

[10] The unaccustomed situation in which the Appeal Division finds itself means caution is necessary in applying the usual rules of administrative law. The judge in theory has an application for judicial review from the Appeal Division's decision before him,

but when the latter has affirmed the Board's decision he is actually required ultimately to ensure that the Board's decision is lawful.

[13] In *Aney v Canada (Attorney General)*, 2005 FC 182 [*Aney*], Justice Beaudry considered *Cartier* and stated at paragraph 29 "...the role of this Court, when the Appeal Division has affirmed the [PBC's] decision, is to first, analyse the decision of the [PBC] and determine its lawfulness, rather than that of the Appeal Division. If the Court concludes that the Board's decision is lawful, there is no need to review the Appeal Division's decision".

[14] The determination of an offender's right to conditional release is a question of mixed fact and law. The standard of review to be applied is reasonableness, the same standard Parliament has prescribed for the Appeal Division's review of a PBC decision (*Ye v Canada (Attorney General)*, 2016 FC 35 at paras 9 and 10 [*Ye*], citing *Aney* at para 30). This Court must determine whether the decision to deny the applicant's day and full parole falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law (*Ye* at para 10 and *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[15] In addressing the alleged breach of procedural fairness the Court must determine whether the duty to act fairly has been satisfied within the specific context of the matter before the Court (*Moreau-Bérubé v Nouveau Brunswick (Judicial Council)*, 2002 SCC 11 at paras 74 and 75). In addressing the alleged breach of procedural fairness the applicable standard of review is correctness (*Ye* at para 10).

V. Relevant Legislation

[16] Relevant extracts from the *Charter*, the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA] and the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] are reproduced at Appendix A for ease of reference.

VI. Analysis

A. *Were Mr. Eakin's rights under sections 7, 11(h) and 12 of the Charter violated?*

(1) Sections 7 and 11(h)

[17] Mr. Eakin's *Charter* submissions are, in part, linked to his submissions relating to the inaccurate information in Correctional Services Canada's [CSC] files. Specifically he submits that CSC documents relied on by the PBC indicate he is serving his current indeterminate sentence as punishment for both his 1991 convictions and his 1995 convictions. He points out that he was sentenced separately for the 1991 convictions, a sentence that has been fully served. He argues that CSC and the PBC have incorrectly indicated in their documents that the start date of his indeterminate sentence was October 28, 1991, the start date of his determinate sentence for the 1991 convictions. He submits that this error, coupled with what he characterizes as both convictions being equally considered in CSC reports, amounts to him being punished twice for the 1991 convictions contrary to sections 7 and 11(h) of the *Charter*. I disagree.

[18] The reports and documents Mr. Eakin points to as being in error or mischaracterizing the nature of his sentence are neither imposing a punishment under section 11(h) of the *Charter* nor

contrary to Mr. Eakin's rights under section 7 of the *Charter*. He is serving an indeterminate sentence that was imposed by the Ontario Court of Justice for the 1995 convictions. In imposing the indeterminate sentence the Court took note of the 1991 convictions and described them as being "[o]f greatest significance to this Court..." in the determination of the dangerous offender application (*R v Eakin*, [1995] OJ No 5026 at para 9 (Gen Div)). It is not unreasonable nor is it contrary to sections 7 and 11(h) of the *Charter* for CSC officials to have similarly attached great significance to the 1991 convictions in generating reports and rendering decisions relevant to Mr. Eakin's parole eligibility.

(2) Section 12

[19] The dangerous offender provisions of the *Criminal Code* have been found to be *Charter* compliant (*R v Lyons*, [1987] 2 SCR 309 at paras 9 and 108) and Mr. Eakin does not argue that the sentence, as imposed, was unconstitutional. Rather he argues that the manner in which the PBC has undertaken its duties has led to a violation of section 12 of the *Charter*. He relies on *Steele v Mountain Institution*, [1990] 2 SCR 1385 [*Steele*].

[20] In *Steele*, the Supreme Court of Canada held that section 12 may be violated where the PBC has unreasonably denied parole to an offender serving an indeterminate sentence. An unconstitutional denial of parole will only occur where the PBC "...errs in the execution of its vital duties of tailoring the indeterminate sentence to the circumstances of the offender" (*Steele* at para 83).

[21] The PBC is guided in the performance of its duties to tailor an indeterminate sentence by the CCRA, which sets out the purpose for conditional release and identifies considerations and principles relevant to conditional release decisions at sections 100, 100.1 and 101 (*Latham v Canada*, 2004 FC 1585 at para 21).

[22] Section 100.1 provides that the protection of society is the paramount consideration in the determination of all cases. Only where it is "...clear on the face of the record that the [PBC] has misapplied or disregarded those criteria over a period of years with the result that an offender remains incarcerated far beyond the time he or she should have been properly paroled, then the PBC's decision to keep the offender incarcerated may well violate s. 12" (*Steele* at para 67).

[23] In this case Mr. Eakin points to the outstanding deportation order, the PBC conclusion that he will be deported if granted parole, the conclusion that there is no opportunity to provide supervision, support, surveillance or counselling upon deportation, the PBC's interpretation of his risk assessment, and his completion of required programming to argue that the PBC has failed to tailor his indeterminate sentence to his circumstances. In advancing this argument he points to his last three parole hearings to demonstrate that the PBC's position has been maintained over the years.

[24] I am not persuaded by Mr. Eakin's argument. The PBC and the Appeal Division did not err in failing to tailor the sentence to his circumstances. It is evident in reviewing the decisions that the purpose of conditional release was recognized and the considerations and principles identified in the CCRA were weighed and addressed. In doing so, the PBC concluded that Mr.

Eakin posed a moderate risk of re-offending sexually, that he had limited insight into his sexual offending and that he had not mitigated his risk in any substantial way despite program completion. The conclusion of the Appeal Division's review of the PBC's decision stated:

Mr. Eakin, given the nature and severity of your offending, your actuarially assessed moderate risk for general and violent reoffending, professional opinion that you need to further address your risk factors and develop your insight into your sexual offending, psychological opinion that your case required a gradual reintegration process beginning with a transfer to a lower security institution, the lack of support of your CMT, and the lack of viable and realistic release plans, the Appeal Division concludes that the Board's decisions are reasonable and based on reliable and persuasive information.

[25] It was these factors that underpin the decision, not simply an inability to closely supervise or monitor Mr. Eakin if granted conditional release. I would also note the cited concerns relating to offence insight and risk factors are within the control of an offender.

[26] In concluding that there has been no section 12 breach, I am mindful of the words of Justice Cory in *Steele* where he states at paragraph 80:

It will only be on rare and unique occasions that a court will find a sentence so grossly disproportionate that it violates the provisions of s. 12 of the *Charter*. The test for determining whether a sentence is disproportionately long is very properly stringent and demanding. A lesser test would tend to trivialize the *Charter*.

B. *Was there a breach of procedural fairness?*

[27] The crux of Mr. Eakin's procedural fairness argument is his belief that the file material held by CSC contains numerous factual errors, some the result of alleged errors in the sentencing

reasons and others created by CSC staff. Specifically Mr. Eakin alleges the following breaches of procedural fairness:

- A. The refusal to consider all relevant and available information in the conduct of the risk assessment;
- B. The continuing use of erroneous information in the completion of risk assessments and the decision-making process;
- C. The adoption of the most negative interpretation of the evidence where there is conflicting evidence; and
- D. The presentation of untruthful information to the PBC by the parole officers at the hearings, those officers having refused to accept, act upon or otherwise redress erroneous file information.

[28] Mr. Eakin relies on subsection 24(1) and paragraph 101(a) of the CCRA to argue that the respondent had an obligation to maintain the accuracy of information and rely on accurate information in decision making. Subsection 24(1) of the CCRA requires CSC to take reasonable steps to ensure the currency, accuracy and completeness of offender information. Paragraph 101(a) in turn requires that the PBC or the Appeal Board “take into consideration all relevant available information...”.

[29] It is not the duty or responsibility of the PBC to correct or update file information in the course of carrying out duties under the CCRA. As noted by Justice Rouleau in *ASR v Canada (National Parole Board)*, 2002 FCT 741 at paragraph 21:

While the applicant is concerned that the record contained inaccuracies, the Board determined that the information is relevant and reliable. *It is not within its purview to look behind the documents that have been collected by CSC.* The applicant's objections should therefore be addressed to the CSC, not to the Board. For example, in *Tehrankari v. Canada (Correctional Service)* (2000), 2000 CanLII 15218 (FC), 188 F.T.R. 206, the Court intervened to correct inaccuracies in the file of an inmate at Kingston Penitentiary. In that case, however, the inmate initially filed a complaint pursuant to subsection 24(2) of the CCRA. When his complaint was dismissed, he applied the grievance procedure referred to in section 90 of the CCRA and further set out in sections 74 to 82 of the Corrections and Conditional Release Regulations, SOR/92-620. Still unsatisfied but having exhausted all of his internal remedies, he then finally brought his application for judicial review to the Court within the thirty days prescribed by the Federal Court Act, R.S.C. 1985, c. F-7, s. 18.1(2). Justice Lemieux was obviously persuaded by some of his arguments. *(Emphasis added)*

[30] In rendering its decision the Appeal Division has considered and addressed Mr. Eakin's concerns relating to the accuracy and completeness of the information on his file, pointing out that requests to correct file information may be made pursuant to subsection 24(2) of the CCRA.

[31] It is also apparent in reviewing the record that Mr. Eakin's concerns relating to the accuracy of information contained in the 1995 sentencing decision, assessment reports and other documents are not new. Mr. Eakin has previously sought to address alleged file errors via the grievance process and judicial review before this Court. That judicial review application arose in the context of a third and final level grievance decision where Mr. Eakin took issue with the accuracy of information relied on in determining that he was to be maintained as a medium

security offender (*Eakin v Canada (Attorney General)*, 2014 FC 959 (*Eakin FC*)). In that application Justice Catherine Kane noted that CSC is entitled to rely on the decisions of the Courts (*Eakin FC* at para 58). Justice Kane further noted that Mr. Eakin, having raised his concerns on several occasions has "...failed to pursue the proper process to seek to have the information on his file corrected ...he has not provided sufficient and complete information to allow CSC to follow-up" (*Eakin FC* at para 60).

[32] The PBC is required to consider relevant information, including the reasons and recommendations of the sentencing judge. The fact that Mr. Eakin takes issue with the accuracy of aspects of the file information before the PBC and Appeal Board does not render the process procedurally unfair. This is particularly true where the formal process provided by CSC to address concerns with the accuracy of information have not been pursued.

C. *Was the decision to deny parole unreasonable?*

[33] In rendering the negative decision the PBC and Appeal Board identified their respective roles including the requirement that there was an additional responsibility to determine whether Mr. Eakin's sentence has been tailored to his specific needs. Mr. Eakin's offence history was reviewed, as was the role of substance use in the commission of his offences. The views of his case management team were considered as they related to his reintegration potential and his program record was addressed. Mr. Eakin's evidence before the hearing, the input from his institutional parole officer and the contents of a number of professional assessments were all considered.

[34] In denying parole, the evidence was identified, analysed and relied upon to explain the conclusions reached. The Appeal Division weighed the severity of the offending, the actuarially assessed risk, the professional evidence indicating there was a need for Mr. Eakin to further address risk factors and develop insight into the offences committed, the need for a gradual reintegration process, the lack of support from the case management team and the absence of a viable and realistic release plan. The decision was justified, transparent and intelligible, and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

D. *Did the Appeal Division err in failing to address the timing of Mr. Eakin's next legislated full parole review*

[35] In the covering correspondence to the PBC decision sent to Mr. Eakin he was advised that his next legislated full parole review will occur in June 2020 subject to him advising the PBC in writing that he waives his right to this review.

[36] In his submissions to the Appeal Board Mr. Eakin took issue with the date established for his next full parole review. He submitted that changes to section 123 of the CCRA, which on judicial review there was no dispute this specifically meant subsection 123(5.01), a subsection that came into force in 2015, did not apply in his case. Subsection 123(5.01) provides for a maximum five year interval between parole hearings for violent offenders. Mr. Eakin argued that in his case subsection 761(1) of the *Criminal Code* is the operative legislative provision. That provision requires that a person serving an indeterminate sentence be granted a parole review not

later than every two years after the previous review. Mr. Eakin submitted this would place his next review in June 2017 rather than in June 2020.

[37] The Appeal Board did not address this issue. Mr. Eakin submits that the failure to do so was a reviewable error. I agree.

[38] In response to a request from the Court for further submissions on this point the parties have provided arguments relating to the interpretation of the relevant provisions. However, on judicial review it is not for the Court to address the issues placed before the decision-maker on a *de novo* basis, nor is it for the Court to presume what a tribunal might have determined had it addressed the issue in question. Rather a reviewing Court is required to assess whether the tribunal has committed a reviewable error or come to an unreasonable conclusion based on the facts before it and the law.

[39] As stated above, the balance of the Appeal Division's decision was reasonable. However, by not addressing Mr. Eakin's concern regarding the timing of his next mandatory parole hearing, the Appeal Division, in affirming the PBC's decision also affirmed the determination that Mr. Eakin's next mandatory parole hearing would be in June 2020, not in June 2017 as Mr. Eakin alleges. Without reasons from the Appeal Division on which date applies depending on the statutory regime chosen, the Court is not in a position to determine how the Appeal Division, or the PBC reached the conclusion that the next mandatory parole hearing would be in five years. It is true that a decision-maker's failure to address all arguments made or render an explicit finding on each constituent element of an argument or issue will not necessarily impugn the validity of

either the reasons or the result (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Indeed, both the PBC and the Appeal Board provided ample reasons for the balance of their findings. However, without reasons on the issue of timing, here the decision lacks the requisite, transparency, intelligibility and justification that would give the Court confidence that the final decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[40] Therefore, it was a reviewable error for the Appeal Board to fail to address the issue Mr. Eakin raised on the PBC's determination that the next mandatory parole hearing would be in five years. However the failure to address this issue of the timing of Mr. Eakin's next mandatory parole hearing does not impact upon or undermine the reasonableness of the other substantive determinations of the Appeal Board relating to the denial of parole discussed above. As a result the matter will be returned to the Appeal Board only for its consideration and determination of when the PBC will next be required to conduct a parole eligibility hearing.

VII. Conclusion

[41] The application is granted in part. In light of the mixed result there will be no award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted in part;
2. The matter is returned to the Parole Board of Canada Appeal Division to determine, in accordance with these Reasons, when the Parole Board of Canada is required to conduct Mr. Eakin's next legislated full parole review; and
3. No costs are awarded.

"Patrick Gleeson"

Judge

APPENDIX A

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* (UK), 1982, c 11:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

11. Any person charged with an offence has the right

11. Tout inculpé a le droit :

[...]

[...]

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again;

h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

Corrections and Conditional Release Act, SC 1992, c 20:

24 (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

24 (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.

(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2)

(2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets

believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.

99 (1) In this Part,

[...]

day parole means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release, the conditions of which require the offender to return to a penitentiary, community-based residential facility, provincial correctional facility or other location each night or at another specified interval; (semi-liberté)

full parole means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence; (libération conditionnelle totale)

100 The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe

peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.

99 (1) Les définitions qui suivent s'appliquent à la présente partie.

[...]

libération conditionnelle
Libération conditionnelle totale ou semi-liberté. (parole)
libération conditionnelle totale
Régime accordé sous l'autorité de la Commission ou d'une commission provinciale et permettant au délinquant qui en bénéficie d'être en liberté pendant qu'il purge sa peine.
(full parole)

100 La mise en liberté sous condition vise à contribuer au maintien d'une société juste, paisible et sûre en favorisant, par

society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as lawabiding citizens.

100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.

101 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:

(a) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;

(b) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal

la prise de décisions appropriées quant au moment et aux conditions de leur mise en liberté, la réadaptation et la réinsertion sociale des délinquants en tant que citoyens respectueux des lois.

100.1 Dans tous les cas, la protection de la société est le critère prépondérant appliqué par la Commission et les commissions provinciales.

101 La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes suivants :

a) elles doivent tenir compte de toute l'information pertinente dont elles disposent, notamment les motifs et les recommandations du juge qui a infligé la peine, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine et ceux qui ont été obtenus des victimes, des délinquants ou d'autres éléments du système de justice pénale, y compris les évaluations fournies par les autorités correctionnelles;

b) elles accroissent leur efficacité et leur transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale et par la

justice system and through communication about their policies and programs to victims, offenders and the general public;

(c) parole boards make decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;

(d) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and

(e) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

102 The Board or a provincial parole board may grant parole to an offender if, in its opinion,

(a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and

(b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

communication de leurs directives d'orientation générale et programmes tant aux victimes et aux délinquants qu'au grand public;

c) elles prennent les décisions qui, compte tenu de la protection de la société, ne vont pas au-delà de ce qui est nécessaire et proportionnel aux objectifs de la mise en liberté sous condition;

d) elles s'inspirent des directives d'orientation générale qui leur sont remises et leurs membres doivent recevoir la formation nécessaire à la mise en oeuvre de ces directives;

e) de manière à assurer l'équité et la clarté du processus, les autorités doivent donner aux délinquants les motifs des décisions, ainsi que tous autres renseignements pertinents, et la possibilité de les faire réviser.

102 La Commission et les commissions provinciales peuvent autoriser la libération conditionnelle si elles sont d'avis qu'une récidive du délinquant avant l'expiration légale de la peine qu'il purge ne présentera pas un risque inacceptable pour la société et que cette libération contribuera à la protection de celle-ci en favorisant sa réinsertion sociale en tant que citoyen respectueux des lois.

107 (1) Subject to this Act, the *Prisons and Reformatories Act*, the *International Transfer of Offenders Act*, the *National Defence Act*, the *Crimes Against Humanity and War Crimes Act* and the *Criminal Code*, the Board has exclusive jurisdiction and absolute discretion

(a) to grant parole to an offender;

(b) to terminate or to revoke the parole or statutory release of an offender, whether or not the offender is in custody under a warrant of apprehension issued as a result of the suspension of the parole or statutory release;

(c) to cancel a decision to grant parole to an offender, or to cancel the suspension, termination or revocation of the parole or statutory release of an offender;

(d) to review and to decide the case of an offender referred to it pursuant to section 129; and

(e) to authorize or to cancel a decision to authorize the unescorted temporary absence of an offender who is serving, in a penitentiary,

107 (1) Sous réserve de la présente loi, de la *Loi sur les prisons et les maisons de correction*, de la *Loi sur le transfèrement international des délinquants*, de la *Loi sur la défense nationale*, de la *Loi sur les crimes contre l'humanité et les crimes de guerre* et du *Code criminel*, la Commission a toute compétence et latitude pour :

a) accorder une libération conditionnelle;

b) mettre fin à la libération conditionnelle ou d'office, ou la révoquer que le délinquant soit ou non sous garde en exécution d'un mandat d'arrêt délivré à la suite de la suspension de sa libération conditionnelle ou d'office;

c) annuler l'octroi de la libération conditionnelle ou la suspension, la cessation ou la révocation de la libération conditionnelle ou d'office;

d) examiner les cas qui lui sont déférés en application de l'article 129 et rendre une décision à leur égard;

e) accorder une permission de sortir sans escorte, ou annuler la décision de l'accorder dans le cas du délinquant qui purge, dans un pénitencier, une peine d'emprisonnement, selon le cas :

(i) a life sentence imposed as a minimum punishment or commuted from a sentence of death,

(ii) a sentence for an indeterminate period, or

(iii) a sentence for an offence set out in Schedule I or II.

(i) à perpétuité comme peine minimale ou à la suite de commutation de la peine de mort,

(ii) d'une durée indéterminée,

(iii) pour une infraction mentionnée à l'annexe I ou II.

(2) The jurisdiction of the Board under subsection (1) extends to any offender sentenced to a sentence imposed under a provincial Act that is to be served in a penitentiary pursuant to section 743.1 of the *Criminal Code*, whether that sentence is to be served alone or concurrently with or consecutively to one or more other sentences imposed under an Act of Parliament or a provincial Act.

(2) La Commission est également compétente à l'égard des délinquants qui, en vertu de l'article 743.1 du *Code criminel*, sont condamnés à purger dans un pénitencier la peine qui leur a été infligée pour une infraction à une loi provinciale, que cette peine doive être purgée seule, en même temps qu'une autre peine infligée aux termes d'une loi fédérale ou provinciale, ou consécutivement à cette autre peine.

123 (1) The Board shall, within the period prescribed by the regulations and for the purpose of deciding whether to grant full parole, review the case of every offender who is serving a sentence of two years or more and who is not within the jurisdiction of a provincial parole board.

123 (1) La Commission examine, au cours de la période prévue par règlement, le dossier des délinquants qui purgent une peine d'emprisonnement de deux ans ou plus et qui ne relèvent pas d'une commission provinciale, en vue de décider s'il y a lieu de leur accorder la libération conditionnelle totale.

[...]

[...]

(5.01) Despite subsection (5), if the Board decides not to grant parole to an offender who has been convicted of an offence involving violence

(5.01) Malgré le paragraphe (5), lorsqu'elle refuse à l'issue de l'examen visé au paragraphe (1) ou à l'article 122, d'accorder la libération conditionnelle à un

for which the offender is serving a sentence of at least two years — or a sentence that includes a sentence of at least two years for an offence involving violence — following a review under subsection (1) or section 122, or if a review is not made by virtue of subsection (2), the Board shall conduct another review within five years after the later of the day on which the review took place or was scheduled to take place and thereafter within five years after that day until

délinquant condamné pour une infraction accompagnée de violence pour laquelle il purge une peine d'au moins deux ans ou à un délinquant purgeant une peine comprenant une peine d'au moins deux ans infligée pour une infraction accompagnée de violence, ou encore en l'absence de tout examen pour les raisons exposées au paragraphe (2), la Commission procède au réexamen dans les cinq ans qui suivent la date de la tenue de l'examen ou celle fixée pour cet examen, selon la plus éloignée de ces dates, et ainsi de suite, au cours de chaque période de cinq ans, jusqu'au premier en date des événements suivants :

(a) the offender is released on full parole or on statutory release;

a) la libération conditionnelle totale ou d'office;

(b) the offender's sentence expires; or

b) l'expiration de la peine;

(c) less than four months remain to be served before the offender's statutory release date.

c) le délinquant a moins de quatre mois à purger avant sa libération d'office.

147 (1) An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,

147 (1) Le délinquant visé par une décision de la Commission peut interjeter appel auprès de la Section d'appel pour l'un ou plusieurs des motifs suivants :

(a) failed to observe a principle of fundamental justice;

a) la Commission a violé un principe de justice fondamentale;

(b) made an error of law;

b) elle a commis une erreur de droit en rendant sa décision;

(c) breached or failed to

c) elle a contrevenu aux

apply a policy adopted pursuant to subsection 151(2);

directives établies aux termes du paragraphe 151(2) ou ne les a pas appliquées;

(d) based its decision on erroneous or incomplete information; or

d) elle a fondé sa décision sur des renseignements erronés ou incomplets;

(e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.

e) elle a agi sans compétence, outrepassé celle-ci ou omis de l'exercer.

[...]

[...]

(5) The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that

(5) Si sa décision entraîne la libération immédiate du délinquant, la Section d'appel doit être convaincue, à la fois, que :

(a) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and

a) la décision visée par l'appel ne pouvait raisonnablement être fondée en droit, en vertu d'une politique de la Commission ou sur les renseignements dont celle-ci disposait au moment de l'examen du cas;

(b) a delay in releasing the offender from imprisonment would be unfair.

b) le retard apporté à la libération du délinquant serait inéquitable.

Criminal Code, RSC 1985, c C-46:

761 (1) Subject to subsection (2), where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the Parole Board of Canada shall, as soon as possible after the expiration of seven years from the day on which that person

761 (1) Sous réserve du paragraphe (2), la Commission des libérations conditionnelles du Canada examine les antécédents et la situation des personnes mises sous garde en vertu d'une sentence de détention dans un pénitencier pour une période indéterminée

was taken into custody and not later than every two years after the previous review, review the condition, history and circumstances of that person for the purpose of determining whether he or she should be granted parole under Part II of the Corrections and Conditional Release Act and, if so, on what conditions.

dès l'expiration d'un délai de sept ans à compter du jour où ces personnes ont été mises sous garde et, par la suite, tous les deux ans au plus tard, afin d'établir s'il y a lieu de les libérer conformément à la partie II de la Loi sur le système correctionnel et la mise en liberté sous condition et, dans l'affirmative, à quelles conditions.

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: JAMES THOMAS EAKIN v ATTORNEY GENERAL OF CANADA AND THE PAROLE BOARD OF CANADA AND CORRECTIONAL SERVICE OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

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APPEARANCES:

James Thomas Eakin

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Derek Edwards

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENTS