Federal Court Cour fédérale

Date: 20181211

Docket: T-1733-16

Citation: 2018 FC 1242

Ottawa, Ontario, December 11, 2018

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SHAWN AMOS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Shawn Amos, the applicant, challenges the finding of guilt made by an Independent Chairperson, appointed pursuant to s. 24 of the Corrections and Conditional Release Regulations (SOR/92-620). The challenge takes the form of a judicial review application launched according to section 18 and 18.1 of the *Federal Courts Act* (RSC 1985, c. F-7).

[2] The applicant is a litigant in person. He is currently detained in a maximum security penitentiary. The incident for which he was found guilty occurred at the Donnacona Institution, a

maximum security penitentiary in the Province of Quebec, on July 29, 2016. He was found guilty, according to the Inmate Offence Report and Notification of Charge of August 1, 2016, of the disciplinary offence identified as follows: “Reported for a fight with Anderson”. We have to understand that the offence referred to is found in paragraph 40(h) of the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) [the *Act* or CCRA] :

Disciplinary offences	**Infractions disciplinaires**
40 An inmate commits a disciplinary offence who	**40** Est coupable d’une infraction disciplinaire le détenu qui :
…	[…]
(h) fights with, assaults or threatens to assault another person;	**h)** se livre ou menace de se livrer à des voies de fait ou prend part à un combat;
…	[…]

I. <u>The legal context</u>

[3] The disciplinary offence alleged against the applicant was designated in the Inmate Offence Report and Notification of Charge as “serious”. That designation carries a possible penalty of segregation from the other inmates. Such segregation implies obviously a further restriction on the residual freedom an inmate enjoys while imprisoned. Section 44 of the CCRA provides for the disciplinary sanctions which can be imposed on an inmate found guilty of disciplinary offences, including of course the offence created by paragraph 40 (h):

Disciplinary sanctions	**Sanctions disciplinaires**
44 (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with	**44 (1)** Le détenu déclaré coupable d’une infraction disciplinaire est,

the regulations made under paragraphs 96(i) and (j), to one or more of the following:	conformément aux règlements pris en vertu des alinéas 96i) et j), passible d'une ou de plusieurs des peines suivantes :
(a) a warning or reprimand;	**a)** avertissement ou réprimande;
(b) a loss of privileges;	**b)** perte de privilèges;
(c) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence;	**c)** ordre de restitution, notamment à l'égard de tout bien endommagé ou détruit du fait de la perpétration de l'infraction;
(d) a fine;	**d)** amende;
(e) performance of extra duties; and	**e)** travaux supplémentaires;
(f) in the case of a serious disciplinary offence, segregation from other inmates — with or without restrictions on visits with family, friends and other persons from outside the penitentiary — for a maximum of 30 days.	**f)** isolement — avec ou sans restriction à l'égard des visites de la famille, des amis ou d'autres personnes de l'extérieur du pénitencier — pour un maximum de trente jours, dans le cas d'une infraction disciplinaire grave.

[4] In order to find an inmate guilty, an Independent Chairperson must be satisfied beyond a reasonable doubt, the criminal law standard, of the commission of the disciplinary offence. The CCRA requires specifically that it be "based on evidence presented at the hearing" (ss. 43(3)). The Act also provides for disclosure, "a reasonable period before the decision is to be taken", of "all the information to be considered in the taking of the decision on a summary of that information" (ss. 27(1)).

[5] The CCRA delegates to the Regulations the procedure to be followed at a hearing held for the purpose of deciding the matter. Nonetheless, the Act deals with the issue of the presence of the inmate at the hearing:

Presence of inmate	**Présence du détenu**
43(2) A hearing mentioned in subsection (1) shall be conducted with the inmate present unless	**43(2)** L'audition a lieu en présence du détenu sauf dans les cas suivants :
(a) the inmate is voluntarily absent;	**a)** celui-ci décide de ne pas y assister;
(b) the person conducting the hearing believes on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or	**b)** la personne chargée de l'audition croit, pour des motifs raisonnables, que sa présence mettrait en danger la sécurité de quiconque y assiste;
(c) the inmate seriously disrupts the hearing.	**c)** celui-ci en perturbe gravement le déroulement.

[6] For our purpose, it will suffice to refer to a few provisions in the Regulations. First, section 25 provides for what at a minimum must be in the notice of disciplinary charge:

Notice of Disciplinary Charges	**Avis d'accusation d'infraction disciplinaire**
25 (1) Notice of a charge of a disciplinary offence shall	**25 (1)** L'avis d'accusation d'infraction disciplinaire doit contenir les renseignements suivants :
(a) describe the conduct that is the subject of the charge, including the time, date and place of the alleged disciplinary offence, and contain a summary of the evidence to be presented in support of the charge at the hearing; and	**a)** un énoncé de la conduite qui fait l'objet de l'accusation, y compris la date, l'heure et le lieu de l'infraction disciplinaire reprochée, et un résumé des éléments de preuve à l'appui de l'accusation qui seront présentés à l'audition;
(b) state the time, date and place of the hearing.	**b)** les date, heure et lieu de l'audition.

[My emphasis.]

I note in particular the requirement to describe the conduct and a summary of the evidence to be presented at the hearing.

[7] Second, the Regulations are precise as to the ability of an inmate to participate in the hearing. It is section 31 of the Regulations that finds application:

> **31 (1)** The person who conducts a hearing of a disciplinary offence shall give the inmate who is charged a reasonable opportunity at the hearing to
>
> **(a)** question witnesses through the person conducting the hearing, introduce evidence, call witnesses on the inmate's behalf and examine exhibits and documents to be considered in the taking of the decision; and
>
> **(b)** make submissions during all phases of the hearing, including submissions respecting the appropriate sanction.
>
> **31 (1)** Au cours de l'audition disciplinaire, la personne qui tient l'audition doit, dans des limites raisonnables, donner au détenu qui est accusé la possibilité :
>
> **a)** d'interroger des témoins par l'intermédiaire de la personne qui tient l'audition, de présenter des éléments de preuve, d'appeler des témoins en sa faveur et d'examiner les pièces et les documents qui vont être pris en considération pour arriver à la décision;
>
> **b)** de présenter ses observations durant chaque phase de l'audition, y compris quant à la peine qui s'impose.
>
> [My emphasis.]

[8] Finally, the disciplinary hearing must be "recorded in such a manner as to make a full review of any hearing possible" (ss. 33(1)), with the inmate being given reasonable access to the record of the hearing (ss. 33(3)).

II. The facts

[9] The incident on July 29, 2016 barely took 2 minutes from the opening of the doors of the range where the cells are located, at 8:17:45, to allow inmates to come out of the range to get their breakfast, to 8:19:50 when the doors were completely shut after the incident between Mr. Anderson and Mr. Amos, which began around 8:19:32.

[10] According to Mr. Amos, the encounter with Mr. Anderson had its genesis two days earlier. On July 27, 2016, he was waiting to gain access to the telephone that was being used by another inmate, Tyler Anderson. Because Mr. Anderson was taking longer than what is allowed, he was advised by the applicant that his time was up and there was a queue to be able to use the telephone. Following that exchange, another inmate by the name of Philipps was inciting inmate Anderson to take issue with the disrespectful incident involving the telephone. Words were exchanged which were, according to the applicant, threatening.

[11] The following day, the tension continued to mount. The verbal jousting continued. Mr. Amos contends that inmate Anderson threw boiling butter at his face. He was able to fend off the boiling liquid because he was wearing gloves and had a plate in his hands which blocked the liquid.

[12] At the disciplinary hearing, Mr. Amos testified that he spoke with guards about the incident (he gave the name of one Labrie). It seems that there is corroboration that, in fact, an incident involving the three inmates occurred on July 28 because two guards were positioned on

July 29 on a foot bridge overlooking the range where the cells of inmates Anderson and Philipps were located. Mr. Amos occupied a cell located in a different range that intersected with the range where Anderson and Philipps had their cells.

[13] The evidence at the hearing came from the two correctional officers who had taken position on the foot bridge. Only the evidence of one of the guards is available (recording and transcript). Was also submitted a video taken from a security camera looking down the range. Mr. Amos also gave his version of the incident.

[14] The evidence given by officer Godbout cannot be reconciled with what one can see on the security video. Part of the difficulty stems from the fact that the hearing was somewhat chaotic as the witness testified in French, with the institution's representative acting like a prosecutor and also as an improvised translator. The institution's representative also saw fit to correct testimonies and offer information to the Independent Chairperson.

[15] Mr. Godbout testified that Mr. Amos was waiting outside of the range; he saw inmates Philipps and Anderson coming out of the common area and going into the range. Mr. Amos moved and put on gloves as he was following the other two inmates. The doors were starting to close and he went after Mr. Anderson, giving him a kick. When asked what body part was hit, it seems that it was in the chest or torso area. Asked by the Independent Chairperson how Mr. Anderson reacted, the witness said that he came out of his cell and hit Mr. Amos to his face with his fist. The Institution's representative intervenes to correct Mr. Godbout: it is rather

Mr. Amos who hit Mr. Anderson, says the witness once the correction is made. He then says that inmate Philipps was running towards the incident.

[16] The Institution's representative intervened (he did intervene on numerous occasions) to explain where the foot bridge was located in comparison with Mr. Anderson's cell.

[17] Mr. Godbout does not know where Mr. Amos went after the incident because he kept watching inmates Anderson and Philipps as he released a certain quantity of gas which forced the inmates to move towards the back of the range, in the opposite direction of the doors of the range and where Mr. Anderson's cell was located.

[18] The account given by Mr. Godbout is not consistent with what can be seen in the security video. Mr. Anderson never went with Mr. Philipps to the common area. Mr. Philipps came back alone from the common area, having spent merely a few seconds there. Mr. Amos had emerged from that area before and was standing before the doors. Once Mr. Philipps passed him and went into the range, Mr. Amos followed him and was a few meters behind. As he reached Mr. Anderson's cell with Mr. Philipps well ahead of him, he seems to put on one or two gloves and enters Anderson's cell. The doors were not about to close. They did close as the gas was released, after the encounter was finished and Mr. Amos was able to escape the closing of doors.

[19] Perhaps because the applicant was charged with being involved in a fight, the Independent Chairperson questioned officer Godbout about Mr. Anderson's retaliation. It looked like the Independent Chairperson was attempting to establish whether there was an exchange of

blows. Mr. Godbout testified that inmate Anderson tried to hit the applicant. What follows is very much unclear as the English translation is inaccurate and the Independent Chairperson is pressing for a clear answer. That's when the witness speaks in terms of "punches" ("des coups de poing") thrown by Mr. Anderson. The video does not show any retaliation in the form of punches being thrown by inmate Anderson.

[20] Under a somewhat truncated cross-examination, the applicant (although counsel was present, the applicant acted as if self-represented) sought to establish that, contrary to the testimony of Mr. Godbout, Mr. Anderson never left his cell. The institution's representative assisted in correcting the testimony and testifying himself.

[21] It is somewhat surprising that Mr. Godbout did not have a better recollection of the event since he testified that he was located on the foot bridge to have "eyes on these three inmates" in view of the incident involving the three the day before.

[22] We also understand from the attempt at cross-examination that Mr. Amos tried to establish three possible defences. First, he was charged with having a fight with Mr. Anderson: there was no fight as the kick and the punch never connected with the body. The credibility of Mr. Godbout was critical to his defence, which might explain Mr. Amos' insistence on the details of the encounter. Second, Mr. Amos wanted to raise the defence of duress, as he referred directly to section 17 of the *Criminal Code* (*Criminal Code*, R.S.C., 1985, c. C-46). Third, if there was the incident the day before which, arguably constituted an assault (boiling butter), it is possible that self-defence could have been raised. That is certainly on the mind of the

Independent Chairperson as he refers to it. That is not the view of the institution's representative who intervened to claim that the events of the two days before did "not affect the accusation there" (transcript, p. 29 of 60).

[23] Since Mr. Godbout testified that Mr. Amos kicked Mr. Anderson in the chest, Mr. Amos conducted his cross-examination in order to establish what the vantage point was for Mr. Godbout to see inside the cell. Mr. Godbout testified that Mr. Anderson was in the frame of the cell door when Mr. Amos kicked him. That would have allowed him to witness the scene with some clarity. The security video will show that Mr. Amos went into the cell: Mr. Anderson was not in the door frame. Furthermore, the witness saw Mr. Amos waiting outside the range with his arms folded, as Mr. Philipps passed him by: that is not consistent with the security video. Is not consistent with the video either Mr. Godbout's testimony that Mr. Phillips came towards inmate Anderson's cell as the incident occurred, running with a t-shirt covering his mouth: rather, he turned around and walked somewhat briskly with a towel or t-shirt in his hands. The Independent Chairperson abruptly ended the cross-examination (transcript, p. 36 of 60).

[24] The purpose in describing in some details the examination of the only true witness of the incident that is available on this record is not to ascertain what took place. It is rather to show that Mr. Amos had his reasons to cross-examine Mr. Godbout. Moreover, he was not allowed to cross-examine fully; in fact, neither was his counsel whose role was negligible (transcript, p. 36 of 60).

[25] In view of Mr. Amos' testimony, which included the events which led to the July 29 encounter, there was certainly room for some explanation for him to provide, given the numerous discrepancies. To be sure, Mr. Amos' testimony left something to be desired. Thus, he testifies that he had his gloves on as he emerged from his range, about ten seconds after the doors opened at 8:17:45; the security video suggests otherwise. Similarly, his recounting of the minute and fifteen seconds during which Mr. Amos was in the common area, where Philipps and he had some more words, he claims, is less than likely. Although the security video is not clear, it suggests that Mr. Philipps did not utter words in the direction of Mr. Amos or Mr. Anderson while on camera when he comes back from the common area at around 8:19:21 and proceeds toward his cell at the back of the range. Mr. Amos testified that Mr. Philipps invited him to his cell and told Mr. Anderson, as he is passing by his cell: "Anderson, grab the thing" (transcript, p. 41 of 60).

[26] Mr. Amos stated that he never made contact with Mr. Anderson. I found it difficult to ascertain from the security video, although there is no doubt that a kick and a punch in the direction of inmate Anderson can be seen on the video.

[27] The institution's representative started his summing up immediately thereafter. He referred to an "Observation Report" dated July 29, 2016, less than two hours after the incident, from another guard "saying approximately the same thing" (transcript, p. 44 of 60). This is surprising. The account offered by the guard speaks of punches (coups de poing) given by Mr. Amos to inmate Anderson in his cell and more punches are thrown outside the cell. There was one kick and one punch. And it is unclear whether either one connected. This witness, who

produced the Observation Report who never testified, also indicated in his report that he enquired of inmates Anderson and Philipps (who is identified by the officer as being “directly implicated in the fight”, “aussi directement impliqué dans la bataille”) whether they were injured and he personally assessed there state of health (“j’ai personnellement vérifié l’état de santé”).

[28] It seems that the Independent Chairperson was somewhat unclear because he enquires about someone else being situated on the foot bridge. He is advised that there was a second guard, one by the name of “Keays”. I note that his name appears on the Inmate Offence Report and Notification of Charge, the document which purports to satisfy section 25 of the Regulations which requires that be given “a summary of the evidence to be presented in support of the charge at the hearing”. I further note that the author of the Observation Report does not even appear on that document. I understand that Mr. Keays testified on September 13, 2016, but his testimony is not available, contrary to section 33 of the Regulations. We now understand that Mr. Keays testified on September 13 and that there was some discussions about resorting to the security video. That part of the record is unavailable.

[29] The hearing resumed on September 15, 2016. From the transcript, it appears that there was a need to resort to the security video that emerged on September 13. On September 15, the institution’s representative suggests that the video be shown, but without inmate Amos present for security reasons. There was no elaboration on those reasons at the hearing.

[30] The institution’s representative commented throughout the viewing of the security video, providing his interpretation of the video and adding information. The representative suggests

strongly that there is a blow to the face. Indeed, he goes so far as to say, while Mr. Amos is still out of the room, that inmate Anderson had a swollen face and a bruise on his face (transcript, p. 52 of 60). Not only this is not in evidence, but this statement on the part of the representative contradicts the Observation Report of another officer, who did not testify, who claimed that there were many punches delivered by Amos in the cell and outside, and who personally assessed Anderson's state of health.

[31] From viewing the security video the Independent Chairperson concludes immediately that Mr. Amos lied. Without hearing from Mr. Amos, who has not seen the video and has not even been provided with a detailed description of what is seen in that video, the Independent Chairperson proceeds to find the applicant guilty of the charge laid against him (transcript, pp. 53, 54, 55 of 60).

[32] Mr. Amos was never able to make fulsome representations about the lack of physical contact and his defence that he presented as being the defence of duress. Elements that could support a defence of self-defence were cut short. In a word, the applicant was not allowed to make submissions, contrary to paragraph 31(1)(b) of the Regulations.

[33] As for the penalty, the institution's representative alluded to a prior incident of an assaultive nature which was never made into a disciplinary offence, only to say that he did not rely on that other incident, not before the Independent Chairperson, to suggest a penalty that is more severe than what is provided for in the "guidelines" (3 days without television in segregation).

[34] In the result, the Independent Chairperson stated that the applicant is "guilty of having assaulted another inmate" (transcript, p. 59 of 60), only to be corrected by the institution's representatives who stated "computer it is written having participated in the fight". Mr. Amos was sentenced to 5 days being segregated from the other inmates, without television, and a $35 fine suspended for a period of 90 days.

III. Arguments

[35] The application for judicial review was made on October 14, 2016. If the matter came before the Court more than two years later, it is largely because of the difficulties encountered by the applicant to complete the applicant's record. He left the Donnacona Institution shortly after the incident and he was kept in British Columbia. He has since been transferred again, this time to the Millhaven Institution in Ontario.

[36] The applicant, who is a litigant in person before this Court, offers a number of arguments in support of his application. I would summarize his arguments as being:

1. The offence of fighting with another person, at paragraph 40(h) of the Act, is void for vagueness. A notice of constitutional question was given and was filed on January 15, 2018. The applicant alleges vagueness but in the context of the offence preventing someone "from making fundamental personal choices in instances concerning self-preservation";

2. The tribunal was in violation of the principles of procedural fairness in failing to provide sufficient disclosure;

3. The tribunal did not hear all of the evidence and acted in a biased and capricious manner in breach of the duty to act fairly;

4. The tribunal acted in a manner contrary to provisions of the *Criminal Code* (sections 126, 423, 264, 34, 37 and 17). These provisions deal with:

    - disobeying a statute;
    - criminal harassment;
    - intimidation;
    - self-defence;
    - duress.

Section 37 was repealed in 2012 (2012, c. 9, s. 2).

[37] The following remedies are sought in the Notice of Application:

1. An order setting aside the verdict; an opportunity should be granted to make full answer and defence;

2. An order to produce the security videos for periods of time on July 27, 28 and 29, 2016, together with an opportunity to examine the said videos;

3. A declaration that paragraph 40(h) is void for vagueness.

[38] The applicant argued that there were reasonable grounds for the defences of duress and self-defence. In effect, the applicant relied on his version of the events. Furthermore, he claims that the Institution failed to provide a safe and secure environment.

[39] Supported by *May v Ferndale Institution*, 2005 SCC 82, [2005] 3 SCR 809 [*May*], the applicant contends that the disclosure obligation pursuant to section 27 of the Act has not been satisfied. He should have received witness’ statements, particulars on the charge against him and the surveillance video, or at least reasons for withholding evidence.

[40] In the view of the applicant, he was not given an opportunity to be heard by a fair and impartial decision maker. He particularized his complaint by claiming that he was deprived of his ability:

- to bring forward all facts and arguments relevant to his defences;
- to view the security video;
- to inspect the content of the security video;
- to present rebuttal evidence;
- to have disclosure of the evidence.

[41] In his Memorandum of Fact and Law, the applicant sought various remedies, some of which were not in the original application other than quashing the Independent Chairperson's decision and expunging the records of all references to the conviction of September 15, 2016; the applicant sought conclusions which are beyond the four corners of the matter squarely before the Court. They are:

- **ORDER** all CSC Penitentiaries make preliminary sharing of information mandatory with respect to all Major disciplinary hearing;
- **ORDER** CSC to make Violence Prevention Programs for all persons in maximum facilities an absolute priority;
- **ORDER** CSC put an end to all practices that facilitate inmate-to-inmate violence as a means of controlling the behaviour of the inmate population.

[42] For her part, the Attorney General contends that the two issues before the Independent Chairperson were whether the applicant took part in a fight and whether he acted in self-defence.

The decision was reasonable in finding the applicant guilty. Furthermore, the applicant was afforded procedural fairness.

[43] As for the arguments not raised at the hearing before the Independent Chairperson, they cannot be raised now: full disclosure, definition of “fights with”, viewing of security video, failure of Correctional Service Canada to provide safe and secure environment, paragraph 40(h) of the Act being unconstitutionally vague.

IV. Standard of review and analysis

[44] Decisions of Independent Chairpersons that involve questions of mixed fact and law deserve deference: they are reviewed on a standard of reasonableness (*L'Espérance v Canada (Attorney General)*, 2016 FCA 306 [*L'Espérance*]; *Chshukina v Canada (Attorney General)*, 2016 FC 662; *Akhlaghi v Canada (Attorney General)*, 2017 FC 912).The interpretation of a statute closely connected with the functions of a tribunal with which it is familiar attracts also the standard of reasonableness (*Democracy Watch v Canada (Attorney General)*, 2018 FCA 194). On the other hand, it will be the standard of review of correctness that will preside where the issue is that of procedural fairness (*Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79; *Charles v Canada (Attorney General)*, 2017 FC 435.

[45] In my view, the finding of guilty must be set aside and the decision quashed because of the numerous violations of the procedural fairness principles that apply in cases like this.

[46] The Attorney General conceded at the hearing of this case that the judicial review application ought to be granted "partially", on a without costs basis, on the limited ground that the disciplinary hearing was not fully recorded. The Court was advised that perhaps as much as half a day of hearings might be missing.

[47] The Attorney General was well advised to concede that the lack of a proper record was problematic. Accordingly, the judicial review application will be granted. However, she was also insistent that it was pointless to consider other possible violations of procedural fairness in view of the concession. She contended that counsel was present at the hearing, although the available transcript and the recording of the hearing show that counsel was, for all intents and purposes, silent throughout the hearing.

[48] It was somewhat surprising that the AG would adopt such position as her earlier attempt to have the matter disposed of on the same narrow basis was rebuffed by this Court. In an order dated April 3, 2018, my colleague Justice St-Louis dismissed a motion to partially grant the Application for Judicial Review on the same narrow ground presented at the hearing of this case. Of note is the following consideration:

> …
>
> **AND UPON CONSIDERING** the case law outlining that, in matters of public law, the minister's solicitor and counsel must give cogent justification for consent to quashing the decision (*Johnson v Canada (Minister of Citizenship and Immigration*), 2005 FC 1262 at para 14; *Douglas v Canada*, [1993] 1 FC 264, 12 CRR (2d) 284, 19 CHRRD/76 at para 18) and that <u>the Court "will not, in a public law matter, co-operate in what its own public record would reveal to be 'a-no-question-asked' disposition"</u> (*Kirubagaran v Canada (Minister of Citizenship & Immigration*, (1995), 31 Imm LR (2d) 35 (Fed TD) at para 7 [Kirubagaran];

…

[Bold in original and my emphasis.]

[49] It is that, on its face, the record available to the Court shows numerous violations of procedural fairness. Identifying those deficiencies might serve an educational purpose. A plain reading of the provisions of the Act and the Regulations confirms that the hearing was conducted in a way that did not conform to the legislation meant to ensure fairness. The applicant complains explicitly about the deficient disclosure and the manner in which the hearing was conducted.

[50] The respondent argues that it is too late to raise these kinds of issues as they should have been raised before the Independent Chairperson. Although the argument carries weight where a matter could have been raised before a tribunal but was not, for instance for strategic reasons, it remains that the superior court on judicial review has the discretion to consider an issue for the first time unless it would be inappropriate to do so. In *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, the Court recognized the discretion. It also indicated circumstances that should be considered by the reviewing court (paras 22 to 26).

[51] There is of course the ability to raise the issue before the tribunal. The inmate in this case at least was a vulnerable litigant. I have read the available transcript numerous times and listened to the recording. I have no doubt that there was not an ability to raise concerns at the hearing of September 13 and 15, 2016. Indeed when submissions were allowed they were significantly curtailed.

[52] I am conscious that Parliament has entrusted the determination of penitentiary discipline to an Independent Chairperson. However, matters of procedural fairness are reviewable on a correctness standard as it cannot be said that they relate to the tribunal's expertise. The Court is not denied the benefit of the expertise on the evidentiary record that would otherwise be required to consider adequately the issue.

[53] Courts might be reluctant to intervene, even on matters of procedural fairness, where the situation could have been corrected had the matter been raised before the tribunal. That is unfortunately not the case here. At any rate, as conceded by the respondent, the decision must be quashed. It is just a matter of identifying other deficiencies that should be remedied in the future.

[54] Because Mr. Amos was charged with a serious disciplinary offence, he was liable to have his residual freedom within a maximum security penitentiary further limited by segregation from other inmates with removal of the enjoyment of watching television (para 44(1)(f) of the Act).

[55] There is a duty of procedural fairness where a public body makes a decision which affects an individual's right, privilege or interest. This is not new and this is not new in penitentiaries (*Cardinal v Director of Kent Institution*, [1985] 2 SCR 643, 1985; *Martineau v Matsqui Institution*, [1980] 1 SCR 602). What is required in terms of procedural fairness, depending on a particular set of circumstances, will vary (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 22). The criteria that should be considered in making the determination of how extensive the procedural fairness requirements

are in a particular set of circumstances was helpfully summarized in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48, [2004] 2 SCR 650:

> 5 The content of the duty of fairness on a public body varies according to five factors: (1) the nature of the decision and the decision-making process employed by the public organ; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In my view and having regard to the facts and legislation in this appeal, these considerations require the Municipality to articulate reasons for refusing the Congregation's second and third rezoning applications.

[56] Here, it is clear that the importance of the decision for the applicant is significant since he was at risk of losing his residual liberty interest for a period of up to 30 days. Furthermore, the legislation requires that the inmate cannot be found guilty unless the decision maker is satisfied beyond a reasonable doubt, the highest requirement in our law (ss 43(3) of the Act). The finding of guilt must be based on the evidence presented at the hearing (ss 43(3) of the Act) to which the inmate must be present unless three exceptions exist (ss. 43(2) of the Act).

[57] The Act provides for what the Supreme Court of Canada has called an onerous disclosure obligation on the Correctional Service of Canada in *May* (supra, at paras 95 and 96):

> 95. In order to assure the fairness of decisions concerning prison inmates, s. 27(1) of the *CCRA* imposes an onerous disclosure obligation on CSC. It requires that CSC give the offender, at a reasonable period before the decision is to be taken, "<u>all the information to be considered in the taking of the decision or a summary of that information</u>".

> 96. The extensive scope of disclosure which is required under s. 27(1) is confirmed by the fact that Parliament has specifically identified the circumstances in which CSC can refuse to disclose information:
>
> **27…**.
>
> (3) Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize
>
> (*a*) the safety of any person,
>
> (*b*) the security of a penitentiary, or
>
> (*c*) the conduct of any lawful investigation,
>
> the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (*a*), (*b*) or (*c*).
>
> [Emphasis in original.]

Moreover, the Act delegates to the Regulations the procedure to be followed at a disciplinary hearing. Thus, the Regulations make it mandatory that the hearings be recorded to "make a full review of any hearing possible" (ss. 33(1) of the Regulations.

[58] It is not enough that the inmate can participate; he is also entitled to a decision. S. 32 of the Regulations provides:

32 (1) The person who conducts a hearing of a disciplinary offence shall render a decision as soon as practicable after conducting the hearing.	**32 (1)** La personne qui tient l'audition disciplinaire doit rendre sa décision aussitôt que possible après l'audition.
(2) The institutional head shall ensure that an inmate is given	**(2)** Aussitôt que possible après que la décision a été rendue, le

a copy of the decision of the hearing of the inmate's case as soon as practicable after the decision is rendered.	directeur du pénitencier doit veiller à ce que le détenu en reçoive copie.

Surely that must imply some articulation of the reasons to reach a verdict.

[59] In this case, it may be said that none of the statutory requirements received the attention they deserved. Procedural fairness was, at best, an afterthought as opposed to being at the forefront. First, a part of the hearing on September 13, 2016 has gone missing: a full review of the hearing is impossible as the testimony of witness Keays is unavailable as well as the discussion leading to the decision to view a security tape. The respondent has already acknowledged that the deficiency calls for granting the judicial review application. That piece of evidence (security video) that proved to be critical was presented while the applicant was absent. No substitute, like a detailed description of what appeared on the video, was offered. The Act is clear that the inmate's presence is mandatory. It speaks of a hearing that "shall be conducted with the inmate present" (s. 43). The *Interpretation Act* (R.S.C., 1985, c. I-21) provides that "(t)he expression "shall" is to be construed as imperative" (s. 11). The exceptions to the principle would have to be construed narrowly. More importantly the applicant never knew (indeed to this day) on what evidence he was found guilty. Assuming that there are valid security reasons for not allowing the inmate to know the span of security cameras, I cannot think of any reason why it would not be possible to describe in details the scene which lasts, from the opening of the doors to their closing, some two minutes. Thus, the evident discrepancies between the evidence of Mr. Godbout and the Observation Report of another guard, and what appeared on the screen, were never considered. While Mr. Amos was faulted for having testified that he wore his gloves

from 8:18 until 8:19:50, after the doors closed and after the incident, and not that he put them on as he reached inmate Anderson's cell as the video suggests, the significant discrepancies between the video and the evidence offered by the institution are not even considered. These discrepancies are not insignificant as the applicant is claiming that his kick and his blow never reached his victim. That had its importance because the applicant contended that there was not a fight with Anderson. The evidence is at best ambiguous: there appears to have been an assault, but was that a fight with an inmate?

[60] The onerous disclosure obligation was also not met. The only information given the inmate was the identity of three witnesses, two of whom eventually testified, together with the charge described as "Reported for fight with Anderson". If the Observation Report was disclosed to the applicant prior to the hearing, there is no evidence to that effect. If that was done, it is not documented and it is not indicated as having been disclosed to the inmate. As pointed out by the respondent at the hearing before the Court, it appears to be referenced by the institution's representative at the start of the first hearing, on August 9, when the representative says "(h)ere is the file. There's an observation report joined with the file". The Supreme Court in *May* was careful to limit the disclosure information because an inmate's transfer, as in that case, is an administrative matter that does not attract the *Stinchcombe* kind of disclosure; yet it emphasized the words of section 27 of the Act: "all the information to be considered in the taking of the decision or a summary of that information". Not only the disclosure fell considerably short but the surveillance video was neither disclosed ahead of time or its content described in any detail as it was used at the hearing while Mr. Amos was outside of the hearing room.

[61] The participation of the applicant was therefore significantly curtailed. This is not to suggest that an inmate can ramble on. But even when Mr. Amos was in the hearing room, he was not allowed to question the witness Godbout adequately (para 31(1)(a) of the Regulations) to establish that, from his vantage point, he could not have seen the kick given to Mr. Anderson by Mr. Amos because that took place largely inside Anderson's cell. Had he been allowed to, Mr. Amos may have wanted to explore further the punch he gave Mr. Anderson when he got out of his cell which, according to Mr. Amos, never connected with the target. There was a clear purpose to the questioning.

[62] The point of the matter is not to decide whether or not the kick and the punch met their target. It is rather that Mr. Amos was entitled to establish facts that could support his argument that his encounter did not constitute a fight with Anderson. There is no doubt that the encounter could not have constituted assault under the *Criminal Code* (s. 265) and at Common Law. But the applicant contended that what happened was not a fight, the offence for which he was charged. Whether that is a winning proposition or not is not an issue for this Court but rather for the decision maker. The chairperson would have had to decide if an assault and a fight with a person are one and the same according to an interpretation of para 44(h) of the Act. If they are not the same, what is the definition of a "fight with"? It is however a matter of procedural fairness to allow the inmate to make his case and establish the elements of his proposition.

[63] Given these violations of the statutory procedural requirements, the decision cannot stand. But there is more. The institution's representative constantly intervened in the proceedings to correct the testimony being given and present his own evidence, including that inmate

Anderson had a bruise on his face (and was swollen) despite information to the contrary in the Observation Report of another officer (who did not testify). Furthermore this sort of damaging information, which tends to contradict Mr. Amos' testimony as it confirms that the punch found its target, was offered while Mr. Amos was out of the hearing room. This is an unacceptable way of proceeding where the person is liable to have his freedom further reduced as was the case. What was probably the damning information, if one accepts the color commentary offered by the institution's representative with the assistance of a video that is inconsistent with the evidence of one witness (we do not know about the other one) and the Observation Report of another officer, was presented while the most important person, the person charged with a serious disciplinary offence, was absent.

[64] The decision maker never allowed for submissions before he launched into his decision, right after viewing the security video assisted by the commentary of the institution's representative. The decision had been made. Whether the encounter constituted the offence charged or the defences of self-defence and duress ought to be considered was never reached because the applicant was not allowed to argue his case.

[65] Finally, I could not find anywhere the consideration that must be given by the decision maker before imposing a sanction to several factors listed in section 34 of the Regulations. These include the degree of responsibility of the inmate (who argued self-preservation), the least restrictive measure appropriate in the circumstances, relevant aggravating and mitigating circumstances and sanctions imposed in like circumstances. Thus, the decision maker imposed a

sanction more severe than what the guidelines provide and did not consider more fully the circumstances of the case.

[66] Given the nature of the decision and the decision-making process employed, the nature of the statutory scheme, and the importance of the decision for the person concerned, these militate in favour of heightened procedural protection. The legislation already provides for significant procedural protection. The other violations of procedural fairness are consistent with the requirement for heightened procedural fairness. I refrain from commenting on the use of translation at the hearing that appears to be less than ideal (*Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50) given that the matter was neither raised nor fully argued. The needed flexibility of the disciplinary system in a penitentiary environment requires due consideration with the assistance of a fuller record.

[67] It follows that with a process that was very deficient, one of the major deficiencies having already been acknowledged by the respondent, there is no choice but to set aside the decision. That is sufficient to dispose of the judicial review application. Nevertheless, I believe it is worthwhile to comment on some aspects of the applicant's arguments.

[68] Mr. Amos has argued from the beginning that he should be acquitted because of his defence of duress. I am afraid the applicant's defence was never available to him as a matter of law. He invoked s. 17 of the *Criminal Code*. Part of that provision has been ruled to be unconstitutional (*R. v Ruzic,* 2001 SCC 24, [2001] 1 SCR 687). Nevertheless, the common law continues to apply and the defence exists in our law, but it is not consistent with the use the

applicant sought to make of it. In fact there was some confusion between duress and self-defence.

[69] The Supreme Court confirmed in *R. v Ryan*, 2013 SCC 3, [2013] 1 SCR 14 [*Ryan*] that there exists a fundamental difference between duress and self-defence: duress constitutes an excuse while self-defence is a justification. But more importantly for our purposes, duress is available where the offence was committed under compulsion of a threat made for the purpose of compelling the accused to commit it. An example of duress in an institution is *L'Espérance* (supra). In that case, the inmate was in possession of ingredients necessary for the production of illicit spirits under threat from other inmates. As the Court put it in *Ryan* "(d)uress is, and must remain, an applicable defence only in situation where the accused has been compelled to commit a specific offence under threats of death or bodily harm" The difference between duress and self-defence is illustrated in the following paragraph:

> [30] This is even clearer when one considers — as explained above — the fundamental distinctions between both defences. Not only is one a justification and the other an excuse, but they also serve to avoid punishing the accused in completely different situations. If, for example, the accused was threatened with death or bodily harm without any element of compulsion, his or her only remedy is self-defence. If, on the other hand, the accused was compelled to commit a specific unlawful act under threat of death or bodily harm, the available defence is duress. In a case where there was a threat without compulsion, the accused cannot rely on duress simply because he or she did not employ direct force and thus, was excluded from relying on the self-defence provisions of the *Code*. As Glanville Williams' latest editor, Dennis J. Baker, wrote about the availability of "pure" duress (as opposed to duress of circumstances, which is an entirely different defence): "On principle, the offence must be one expressly or impliedly ordered by the villain, the order being backed up by his threat. (Or the defendant must have believed that.) . . . As a matter of justice the defence should only be available where the defendant commits a

crime that he has been directly coerced to commit" (*Textbook of Criminal Law* (3rd ed. 2012), at paras. 25-037 and 25-039).

[My emphasis.]

The assault committed by Mr. Amos was not compelled by anyone other than him who felt compelled to do something for his self-preservation.

[70] The defence of self-defence has been re-written in the Criminal Code in 2012. It now reads:

Defence — use or threat of force **34 (1)** A person is not guilty of an offence if	**Défense — emploi ou menace d'emploi de la force** **34 (1)** N'est pas coupable d'une infraction la personne qui, à la fois :
(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person; **(b)** the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and	**a)** croit, pour des motifs raisonnables, que la force est employée contre elle ou une autre personne ou qu'on menace de l'employer contre elle ou une autre personne; **b)** commet l'acte constituant l'infraction dans le but de se défendre ou de se protéger — ou de défendre ou de protéger une autre personne — contre l'emploi ou la menace d'emploi de la force;
(c) the act committed is reasonable in the circumstances.	**c)** agit de façon raisonnable dans les circonstances.
Factors	**Facteurs**
(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person,	**(2)** Pour décider si la personne a agi de façon raisonnable dans les circonstances, le tribunal tient compte des faits pertinents dans la situation

the other parties and the act, including, but not limited to, the following factors:	personnelle de la personne et celle des autres parties, de même que des faits pertinents de l’acte, ce qui comprend notamment les facteurs suivants :
(a) the nature of the force or threat;	**a)** la nature de la force ou de la menace;
(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;	**b)** la mesure dans laquelle l’emploi de la force était imminent et l’existence d’autres moyens pour parer à son emploi éventuel;
(c) the person’s role in the incident;	**c)** le rôle joué par la personne lors de l’incident;
(d) whether any party to the incident used or threatened to use a weapon;	**d)** la question de savoir si les parties en cause ont utilisé ou menacé d’utiliser une arme;
(e) the size, age, gender and physical capabilities of the parties to the incident;	**e)** la taille, l’âge, le sexe et les capacités physiques des parties en cause;
(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;	**f)** la nature, la durée et l’historique des rapports entre les parties en cause, notamment tout emploi ou toute menace d’emploi de la force avant l’incident, ainsi que la nature de cette force ou de cette menace;
(f.1) any history of interaction or communication between the parties to the incident;	**f.1)** l’historique des interactions ou communications entre les parties en cause;
(g) the nature and proportionality of the person’s response to the use or threat of force; and	**g)** la nature et la proportionnalité de la réaction de la personne à l’emploi ou à la menace d’emploi de la force;
(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.	**h)** la question de savoir si la personne a agi en réaction à un emploi ou à une menace d’emploi de la force qu’elle savait légitime.

No defence	**Exception**
(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully. R.S., 1985, c. C-46, s. 34; 1992, c. 1, s. 60(F); 2012, c. 9, s. 2.	**(3)** Le paragraphe (1) ne s'applique pas si une personne emploie ou menace d'employer la force en vue d'accomplir un acte qu'elle a l'obligation ou l'autorisation légale d'accomplir pour l'exécution ou le contrôle d'application de la loi, sauf si l'auteur de l'acte constituant l'infraction croit, pour des motifs raisonnables, qu'elle n'agit pas de façon légitime. L.R. (1985), ch. C-46, art. 34; 1992, ch. 1, art. 60(F); 2012, ch. 9, art. 2.

[My emphasis.]

It is obviously the factors listed at subsection (2), and perhaps even more so the underlined factors, that could be relevant once facts have been established. In the context of a hearing before the Independent Chairperson, it would be for her to assess the facts to conclude whether or not there exists a reasonable doubt, not for a reviewing court. The decision maker must however allow for the evidence to be presented or elicited through cross-examination.

[71] The applicant challenged from the beginning his participation in a fight with another inmate. As I understand the argument, it takes two protagonists to have a fight with someone. What constitutes a fight under paragraph 40(h) is a matter for the Independent Chairperson: even if it is a question of law, the decision would be entitled to deference as decisions on questions of law within the expertise of the administrative tribunal are presumptively reviewable on a standard of reasonableness (*Sharif v Canada (Attorney General)*, 2018 FCA 205, at para 8 [*Sharif*]). It is clear in this case that the applicant contended that he did not participate in a fight,

the offence for which he was charged. It was the Chairperson's jurisdiction to address the issue: he did not. However, it is doubtful that the applicant had a solid argument that paragraph 40(h) of the Act is void for vagueness. The jurisprudence since *R. v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 [*Nova Scotia Pharmaceutical*] suggests strongly that the test devised in *Nova Scotia Pharmaceutical* would not be met.

[72] The doctrine of vagueness is one of the fundamental principles of justice required under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*]. If the right to life, liberty or security of the person is deprived by a law that is impermissibly vague, the constitutional argument would be established. The more difficult question is what constitutes a law that is impermissibly vague.

[73] In *Nova Scotia Pharmaceutical*, it was found that the threshold is relatively high. There are two rationales to the doctrine: fair notice to the citizen and limitation of enforcement discretion. The substantive aspect to fair notice is the understanding that some conduct is the subject of legal restrictions. It is not acceptable either that there be no limitation of enforcement discretion, that as long as a matter is prosecuted a conviction will ensue because the law is so imprecise that its scope becomes a function of the decision to enforce. The limitations to conduct are therefore decided by the enforcement officer, not by the legislation. We would not be governed any more by the rule of law but rather by the decision to enforce.

[74] However, it is not required that the language be so precise that it will predict the legal consequences in advance in whatever circumstances. In fact, "(l)anguage is not the exact tool some may think it is" (*Nova Scotia Pharmaceutical*, p. 639). What laws do is delineate permissible and impermissible areas, provide sufficient guidance for legal debate. It will be for litigants and judges, using the tools for interpretation of statutes, to give life to legislation. The Supreme Court wrote in *Nova Scotia Pharmaceutical*:

> Legal rules only provide a framework, a guide as to how one may behave, but certainty is only reached in instant cases, where law is actualized by a competent authority. In the meanwhile, conduct is guided by approximation. The process of approximation sometimes results in quite a narrow set of options, sometimes in a broader one. Legal dispositions therefore delineate a risk zone, and cannot hope to do more, unless they are directed at individual instances.
>
> By setting out the boundaries of permissible and non-permissible conduct, these norms give rise to legal debate. They bear substance, and they allow for a discussion as to their actualization. They therefore limit enforcement discretion by introducing boundaries, and they also sufficiently delineate an area of risk to allow for substantive notice to citizens.
>
> [pp. 638-639]

[75] Attempts made since 1992 to have provisions declared unconstitutional by reason of vagueness have been largely unsuccessful. Here are a few examples:

- "professional misconduct"
  Kopyto v Law Society of Upper Canada, (1993) 107 DLR (4th) 259

- "indecent performance"
  R. v Mara, (1996) 105 CCC (3d) 147

- "criminal harassment"
  R. v Krushel, (2000) 142 CCC (3d) 1

- "terrorist activity"
  United States of America v Nadarajah, (2009) 243 CCC (3d) 281

- "reasonable application of force"
  Canadian Foundation for Children, Youth and the Law v Canada (Attorney General), 2004 SCC 4, [2004] 1 SCR 76

- "breach of trust"
  R. c Lippé, (1996) 111 CCC (3d) 187

- "conduct to the prejudice of good order and discipline"
  R. v Lunn, (1993) 19 CRR 291

- "danger to the security of Canada"
  Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1, [2002] 1 SCR 3

[76] The vagueness argument was never raised before the Independent Chairperson. The respondent contends that the Chairperson had the jurisdiction to decide the constitutional issue (*Douglas/kwantlen Faculty Assn. v Douglas College*, [1990] 3 SCR 570). That may be, but that may not prevent the Court from entertaining the issue. However, even if there is such discretion, an issue the Court does not address, it would not be appropriate to deal with it without the benefit of the full argument from the parties and in view of the fact that it is not needed to reach the issue in order to dispose of the Judicial Review Application.

V. Conclusion

[77] This Judicial Review Application must be granted. The respondent conceded that it did not satisfy the requirement of section 33 of the Regulations that the disciplinary hearings be recorded. Furthermore, there were other violations of the procedural fairness principles, some of which are encapsulated in the legislation and regulations. In the end, the applicant was prevented from presenting full answer and defence, including whether he was involved in a fight with another person and whether two defences, duress and self-defence, had an air of reality such that they had to be considered by the decision maker. Given the conclusion reached by the Court on

procedural fairness, there is no need to reach and decide the argument that paragraph 40(h) of the Act under which the inmate was charged is void for vagueness.

[78] Given the respondent's concession that the application must be allowed, the Court sees no purpose in sending the matter back for a new determination (*Sharif*, supra, para 53). Mr. Amos has served the penalty imposed and a new determination on the merits appears pointless. A new hearing before a different Independent Chairperson will not cure the fact that a part of the record is missing.

[79] It follows that the decision of the Independent Chairperson on September 15, 2016 is quashed. As a result, the Correctional Service of Canada is ordered to withdraw the disciplinary offence for which Mr. Amos was found guilty in the case from its files. As well, all references, in files, to the offence must also be expunged.

[80] The applicant sought "all equitable costs". That has not been defined either in the applicant's Memorandum of Fact and Law or at the hearing before the Court. Nowadays, our Court has shown a willingness to award a moderate allowance for time and effort insofar as the litigant in person incurred an opportunity cost by foregoing some remunerative activity. I indicated at the hearing that I was inclined to conclude that further consideration of an opportunity cost was not appropriate in the case of an inmate. There was no attempt to argue otherwise. On the other hand, I see no reason why the applicant could not be compensated for the disbursements incurred in bringing his case to this Court. The applicant indicated that he was probably out of pocket by about $200. That appears to be a reasonable amount.

JUDGMENT in T-1733-16

THIS COURT'S JUDGMENT is that:

1. The judicial review application is allowed;
2. The decision of the Independent Chairperson of September 15, 2016 is set aside;
3. The Correctional Service of Canada is ordered to withdraw the disciplinary offence, allegedly committed on July 29, 2016, from its files, including the applicant's file;
4. The Correctional Service of Canada is ordered to expunge all references from its files to the conviction for a disciplinary offence allegedly committed by the applicant on July 29, 2016;
5. Costs in the amount of $200 go to the applicant.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1733-16
STYLE OF CAUSE:	SHAWN AMOS v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, BATH, ONTARIO AND MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 4, 2018
JUDGMENT AND REASONS:	ROY J.
DATED:	DECEMBER 11, 2018

APPEARANCES:

Shawn Amos	FOR THE APPLICANT (SELF-REPRESENTED)
Émilie Tremblay	FOR THE RESPONDENT

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