Federal Court  Cour fédérale

Date: 20100805

Docket: T-1997-09

Citation: 2010 FC 806

Ottawa, Ontario, August 5, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ROBERT LATIMER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Robert Latimer was convicted of second degree murder in relation to the death of his profoundly disabled daughter, Tracy. He now seeks judicial review of a decision of the Appeal Division of the National Parole Board confirming the refusal of his request for expanded leave privileges reducing the number of nights each week that he is required to return to a Community Release Facility (or "halfway house").

[2] The Appeal Division found that Mr. Latimer had not established the existence of "exceptional circumstances" justifying a reduction in his nightly reporting requirements, as contemplated by Chapter 4.1 of the National Parole Board's Policy Manual.

[3] Mr. Latimer submits that the Appeal Division erred in law in applying the "exceptional circumstances" test to his application. According to Mr. Latimer, there is no basis for such a test under the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (*CCRA*). He further submits that requiring an offender to establish the existence of exceptional circumstances is in fact inconsistent with the express mandatory provisions of the statute.

[4] For the reasons that follow, I find that Chapter 4.1 of the National Parole Board's Policy Manual unlawfully fetters the discretion of Board members as it relates to the reduction of offenders' nightly reporting requirements. Consequently, the application for judicial review will be allowed.

Background

[5] Following his conviction for second degree murder in 2001, Mr. Latimer was sentenced to life imprisonment, with eligibility for full parole after 10 years.

[6] The Appeal Division of the National Parole Board granted day parole to Mr. Latimer in February of 2008. He was released from prison in March of 2008 on conditions that included the

requirement that he live in a halfway house, that he continue with psychological counselling, and that he not have responsibility for any severely disabled individuals.

[7] Mr. Latimer initially lived in Ottawa after his release on day parole. However, in September of 2008, the Board altered the conditions of his release to allow for the transfer of his supervision to Victoria, British Columbia. Mr. Latimer had previously lived in Victoria, and had family ties in that city. The Board's decision allowed Mr. Latimer "to pursue a reintegration plan involving further vocational training to obtain certification as an electrician."

[8] The conditions of Mr. Latimer's day parole currently permit him to spend two nights a week at his apartment in Victoria, while spending the remaining five nights at a halfway house. This is known as a "two and five". Mr. Latimer has also been granted periodic extended leave privileges to allow him to visit his family in Saskatchewan.

[9] After 16 months in the community without incident, Mr. Latimer sought to be granted a "five and two". This would allow him to spend five nights each week at his apartment, and two nights a week at the halfway house. His application for a five and two was supported by the "Assessment for Decision" prepared by his Parole Supervisor. This assessment observed that Mr. Latimer's risk of re-offending had been judged to be "very low". The Parole Supervisor further noted that Mr. Latimer's request for a five and two was supported by the staff of the halfway house, and by Mr. Latimer's wife.

[10] It was further noted that at the time of the assessment, Mr. Latimer was maintaining gainful employment doing electrical work, and was engaged in an apprenticeship program. He was scheduled to start the classroom component of his electrician's program in October of 2009, when, in addition to attending classes, he would also continue to work part-time. In addition to his employment and vocational training, Mr. Latimer maintained responsibility for the management of the family farm in Saskatchewan.

[11] The Parole Supervisor also observed that Mr. Latimer had demonstrated commitment to pursuing his vocational goals, and had been compliant with the conditions of his release. The assessment noted that a five and two would assist Mr. Latimer by allowing him additional time to fulfill his responsibilities to his family, his farm and his vocational training. The additional time spent at his apartment would "further assist him to continue leading a productive and constructive lifestyle". In the view of Mr. Latimer's Parole Supervisor, not only would his risk remain manageable if he were granted a five and two, in addition, expanded leave would address the "particular and exceptional needs of this case".

[12] An addendum to the assessment advised that Mr. Latimer's request for a five and two was also supported by his psychologist.

[13] In August of 2009, the National Parole Board denied Mr. Latimer's application for a five and two. The Board found that while Mr. Latimer was successfully reintegrating into the

community and was abiding by his release conditions, his situation did not meet the test of "exceptional circumstances" set out in Chapter 4.1 of the National Parole Board's Policy Manual.

[14] The Board further observed that while Mr. Latimer's efforts were commendable, his long-distance responsibilities were "self-imposed", and that a regional transfer to be closer to his family would alleviate his concerns. The Board expressly declined to consider Mr. Latimer's submission that the "exceptional circumstances" test conflicted with other Board policies and with the provisions of the *Corrections and Conditional Release Act.*

[15] The Board's decision was subsequently affirmed by the Board's Appeal Division, which noted that Chapter 4.1 of the National Parole Board's Policy Manual provided that the Board "may reduce the nightly reporting requirement so the offender is not required to report for extended periods in exceptional circumstances, when all other options have been considered and judged inappropriate and only in order to meet the particular needs of the case". The Appeal Division observed that the Board "did not have the authority to disregard NPB policy on Expanded Leave Privileges, including the test of exceptional circumstances, which allows for a less restrictive measure than the residency condition for day parole that is prescribed in law."

[16] The Appeal Division held that the Board's conclusion that Mr. Latimer had not met the test of exceptional circumstances was "reasonable, well supported and consistent with the law and Board policy". The Appeal Division further found that Mr. Latimer could "choose less onerous ways to manage [his] day" and that his case was "not unlike other offenders who work hard to

successfully reintegrate [into] society after a lengthy incarceration." The Appeal Division also noted the Board's finding that Mr. Latimer enjoyed "expanded leave privileges beyond the norm for other offenders and that [Mr. Latimer had] been accommodated on several occasions when requesting further leave."

Issue

[17] Mr. Latimer initially characterized the issue on this application as being one of statutory interpretation. However, based upon his oral submissions, I understand the real issue to be whether the Board and the Appeal Division erred in law and fettered their discretion by applying a test of "exceptional circumstances" in assessing Mr. Latimer's request for an amendment to the conditions of his day parole.

Standard of Review

[18] The parties agree that decisions of the Appeal Division will generally be reviewed against the reasonableness standard. Citing *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 and *Latham v. Canada*, 2006 FC 284, 288 F.T.R. 37, the respondent says that this standard should apply in Mr. Latimer's case, submitting that the decision falls squarely within the Appeal Division's specialized area of expertise.

[19] Mr. Latimer submits that the standard of review on an issue of statutory interpretation by the National Parole Board is that of correctness: *Dixon v. Canada (Attorney General)*, 2008 FC 889, 331 F.T.R. 214 at para. 10.

[20] I agree with Mr. Latimer that the appropriate standard of review in this case is that of correctness. As discussed earlier, his arguments raise questions of procedural fairness and the unlawful fettering of discretion. The Federal Court of Appeal held in *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, 366 N.R. 301, that such matters are reviewable on the correctness standard: at para. 33.

The Legislative Scheme

[21] In order to put Mr. Latimer's arguments into context, it is first necessary to have an understanding of the legislative scheme governing decisions such as the one at issue in this case. The relevant statutory provisions are summarized below, and the full text of these provisions is attached as an appendix to this decision.

[22] The *Corrections and Conditional Release Act* and Regulations constitute the framework under which the National Parole Board makes its decisions. Section 3 of the *CCRA* identifies the purpose of the federal correctional system as being "to contribute to the maintenance of a just, peaceful and safe society by carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders" and to assist in "the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community".

[23] Among other responsibilities, the Board acts as an independent administrative tribunal to make determinations regarding day and full parole. Section 107 of the Act gives the Board exclusive jurisdiction and absolute discretion in this regard.

[24] Parole decisions are governed by section 102 of the *CCRA*. Two criteria are identified in this section governing the granting of parole. The Board may grant parole to an offender if it is of the opinion that "the offender will not, by re-offending, present an undue risk to society before the expiration according to law of the sentence the offender is serving". In addition, the Board must be satisfied that the release of the offender on parole "will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen".

[25] "Day parole" is defined by section 99 of the *CCRA* as "the authority granted to an offender by the 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 community-based residential facility … each night, unless otherwise authorized in writing*" [emphasis added]. The respondent describes these expanded leave privileges as "an intermediary level of liberty between normal day parole restrictions and full parole": respondent's memorandum of fact and law at para. 24.

[26] Day parole is a form of conditional release and is governed by the basic principles set out in section 100 and 101 of the Act: see *Cartier v. Canada (Attorney General)*, 2002 FCA 384, 300 N.R. 362, at para. 13.

[27] Section 100 of the *CCRA* identifies the purpose of conditional release as being "to contribute to the maintenance of a just, peaceful and safe 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 law-abiding citizens".

[28] Section 101 of the *CCRA* articulates the statutory principles guiding parole boards "in achieving the purpose of conditional release". It provides that the paramount consideration in the determination of any case is the protection of society: subsection 101(a). Another statutory principle guiding parole boards is that they are to make "the least restrictive determination consistent with the protection of society": subsection 101(d). Amongst other things, parole boards are directed to take all available information, including the reasons and recommendations of the sentencing judge, into account in considering whether conditional release is appropriate in a given case: subsection 101(b).

[29] The legislative scheme specifically contemplates the making of policies guiding parole boards. Subsection 101(e) of the *CCRA* authorizes boards, including the National Parole Board, to "adopt and be guided by appropriate policies" and directs that Board members are to "be provided with the training necessary to implement those policies".

[30] Section 151 of the Act authorizes the Executive Committee of the Board to adopt policies relating to reviews dealing with conditional release, detention and long-term supervision. Such

policies are to be promulgated after such consultation with Board members as the Executive Committee considers appropriate. Board members are directed by subsection 105(5) of the *CCRA* to "exercise their functions in accordance with policies adopted pursuant to subsection 151(2)".

The National Parole Board Policy Manual

[31] A Policy Manual has been adopted by the National Parole Board under the authority of section 151 of the *CCRA*. Chapter 7.2 of the Manual deals with "Residency and Day Parole Leave Privileges" and observes that the Board is responsible "for establishing the parameter of leave privileges to be associated with an approved day parole, or parole or statutory release that is subject to a residency condition". The Policy Manual goes on to note that the Board "entrusts to those who are responsible for the day-to-day supervision and care of these offenders, the manner in which the leave privileges will be implemented".

[32] Chapter 7.2 identifies what will "normally" be the maximum leave privileges which will be authorized by the Board. It observes that "the institutional head, the director of the residential facility or the CSC District Director, as the case may be and in conjunction with the parole supervisor, will determine how and when the Board authorized leave privileges are to be implemented".

[33] Factors to be considered in arriving at this determination include "the offender's progress in achieving the objectives of the release in relation to the correctional plan". The policy further noted that "[a]dditional leave privileges may not be granted unless approved in writing by the Board".

[34] For inmates such as Mr. Latimer living in community residential facilities, the policy provides that "[l]eave privileges may be granted in accordance with the basic rules and regulations of the community residential facility, unless the Board members have indicated specifically what those leave privileges are to be as part of the release plan…".

[35] The parties agree that in accordance with this section of the Manual, weekend passes may be authorized by the offender's parole supervisor or the head of the Community Release Facility. Mr. Latimer's two and five was evidently granted under this authority. However, any further reduction in his reporting requirements had to be approved in writing by the Board.

[36] Chapter 4.1 of the Policy Manual deals with "expanded periods of leave" and is the provision at the heart of this proceeding. It provides that the Board may reduce the nightly reporting requirements so the offender is not required to report for extended periods of time "*in exceptional circumstances*, when all other options have been considered and judged inappropriate, and only in order to meet the particular needs of the case" [emphasis added].

[37] The Manual goes on to state that "[t]he Board may consider expanded leave to be responsive to the needs of female, aboriginal, ethnic minority or special needs offenders". It is common ground that this latter provision does not apply to Mr. Latimer.

[38] It will be recalled that Mr. Latimer's request for a "five and two" was turned down on the basis that he had not demonstrated the existence of exceptional circumstances justifying the granting of such a measure.

Analysis

[39] It should be noted at the outset that while Mr. Latimer's application for judicial review technically relates to the decision of the Appeal Division of the National Parole Board, where, as here, the Appeal Division has affirmed the Board's decision, it is the duty of this Court to ensure that the Board's decision is lawful: see *Cartier*, above, at para. 10.

[40] In addressing this question, it is first necessary to examine the law relating to the status and use of guidelines such as the Policy Manual in issue in this case.

i) *The Legal Status of the National Parole Board's Policy Manual*

[41] As the Federal Court of Appeal observed in *Thamotharem*, above, guidelines may, in some circumstances, constitute delegated legislation having the full force of law ("hard law"). In such cases, the instrument in question cannot be characterized as an unlawful fetter on the tribunal members' exercise of discretion: see para. 65, and see *Bell Canada v. Canadian Telephone Association Employees*, 2003 SCC 36, [2003] 1 S.C.R. 884 at para 35.

[42] Although the Executive Committee of the National Parole Board is statutorily authorized to adopt policies relating to the granting of conditional release, including day parole, the Policy Manual in issue in this case cannot, in my view, be viewed as delegated legislation or "hard law".

[43] In coming to this conclusion, the National Parole Board's Policy Manual may be contrasted with the Guidelines issued by the Canadian Human Rights Commission that were in issue before the Supreme Court in the *Bell Canada* case. These Guidelines were found by the Supreme Court to be "akin to regulations": *Bell Canada* at para. 37.

[44] One factor influencing the Supreme Court's finding in *Bell Canada* that the Commission Guidelines amounted to "hard law" was the fact that, like regulations, the Commission's Guidelines were subject to the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, and had to be published in the *Canada Gazette*.

[45] Moreover, the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 expressly provided that Commission Guidelines were binding on members of the Canadian Human Rights Tribunal dealing with complaints of discrimination referred to it by the Commission. While subsection 105(5) of the *CCRA* does direct members to exercise their functions in accordance with Board policies, there is no provision in the Act expressly stating that the provisions of the National Parole Board's Policy Manual are binding on Board members.

[46] The Supreme Court was also influenced by the fact that the French text of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, empowered the Commission to set out its interpretation of the legislation "*par ordonnance*". According to the Supreme Court, this "leaves no doubt that the guidelines are a form of law": *Bell Canada* at para. 37, (emphasis in the original).

[47] In contrast, subsection 151(2) of the *CCRA* authorizes the Executive Committee of the National Parole Board to "adopt policies" (établit des directives") relating to reviews such as that in issue in this case. It is noteworthy that in *Thamotharem*, Justice Evans held that the use of the word "*directives*" in the French text of the *Immigration and Refugee Protection Act* suggested "a less legally authoritative instrument than '*ordonnance*'": at para. 71.

[48] Thus, the National Parole Board's Policy Manual is closer in nature to the Chairperson's Guidelines at issue in *Thamotharem* than it is to the Commission Guidelines at issue in *Bell Canada*. As a consequence, it is more properly characterized as a "soft law" instrument that does not have the full force of law.

[49] Before leaving this point, I would note that my conclusion regarding the legal status of the Board's Policy Manual is consistent with the decision of Justice Lemieux in *Sychuk v. Canada (Attorney General)*, 2009 FC 105, 340 F.T.R. 160 at para. 11.

ii) ***Is the Policy Manual an Unlawful Fetter on Board Members' Discretion?***

[50] The next question, then, is whether Chapter 4.1 of the Policy Manual is nevertheless an unlawful fetter on Board members' discretion. In my view, it is.

[51] While non-statutory guidelines or policy manuals designed to assist administrative tribunals in carrying out their mandates are appropriate, there are limits on the use that can be made of such instruments.

[52] In *Ainsley Financial Corporation et al. v. Ontario Securities Commission et al.* (1994), 21 O.R. (3d) 104, the Ontario Court of Appeal examined the limitations on non-statutory guidelines at paragraph 14 of its reasons, articulating the following principles:

> (1) a non-statutory instrument can have no effect in the face of contradictory statutory provision or regulation;
> (2) a non-statutory instrument cannot pre-empt the exercise of a regulator's discretion in a particular case;
> (3) a non-statutory instrument cannot impose mandatory requirements enforceable by sanction; that is, the regulator cannot issue de facto laws disguised as guidelines.

[53] Similarly, in *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback Publishing, 1998), Brown and Evans observe that a guideline will be invalid "if it is inconsistent with or in conflict with a statutory provision, or if it deals with a matter outside an agency's statutory authorization, whether or not it imposes duties enforceable in the courts: at para. 15:3283.

[54] I agree with the respondent that it is inarguably within the Board's discretion to determine when a deviation from the normal statutory reporting requirements will be warranted. That said, a policy stating that members may only reduce an offender's nightly reporting requirements "in exceptional circumstances", and then only when "all other options have been considered and judged inappropriate" is inconsistent with the statutory principles that Parliament has directed the National Parole Board to apply in relation to the granting of conditional release, including day parole.

[55] In particular, it is inconsistent with the principle that, in achieving the purpose of conditional release, parole boards are to make the least restrictive determination consistent with the protection of society: subsection 101(d).

[56] In accordance with subsection 99(1) of the *CCRA*, offenders on day parole must return to the institution in which they are housed each evening, *unless otherwise authorized in writing*. Discretion is thus conferred on the Board to authorize extended leave. The only condition imposed by section 99 of the Act is that there must be written authorization when the Board's discretion is exercised in the offender's favour in relation to the reporting requirement. That said, the Board's discretion to authorize extended periods of leave must nevertheless be exercised in a manner consistent with the principles articulated in the *CCRA*.

[57] Chapter 4.1 of the National Parole Board's Policy Manual is not consistent with the provisions of the *CCRA* governing day parole. This inconsistency is demonstrated by the facts of Mr. Latimer's case.

[58] The paramount consideration in the determination of any application for day parole is the protection of society: *CCRA*, subsection 101(a). Mr. Latimer has been determined to be at low risk of re-offending. There is nothing in the reasons of either the Board or the Appeal Division to suggest that the need to protect society played any role in the Board's decision to deny extended leave privileges. Indeed the Board itself noted that no concerns had been identified with respect to Mr. Latimer's behavior in the community.

[59] In this regard, it is also noteworthy that the Supreme Court of Canada itself recognized that "the sentencing principles of rehabilitation, specific deterrence and protection [were] not triggered for consideration" in Mr. Latimer's case: see *R. v. Latimer*, 2001 SCC 1, [2001] 1 S.C.R. 3 at para. 86. It will be recalled that, subsection 101(b) directs the Board take into consideration all available information relevant to the case, including the stated reasons and recommendations of the sentencing judge.

[60] Thus, although the evidence before the Board indicated that a reduction in Mr. Latimer's reporting requirements would not present any real risk to public safety or adversely affect the protection of society, this was not properly taken into account by the Board, as the Board was required by Chapter 4.1 of the Policy Manual to limit its consideration to whether or not Mr. Latimer had demonstrated the existence of "exceptional circumstances" justifying a loosening of the conditions of his day parole.

[61] Other relevant information before the Board included the positive recommendation in the "Assessment for Decision" carried out by Mr. Latimer's Parole Supervisor, along with the endorsement of the application by both his wife and his psychologist. While this information was referred to by the Board, it was only considered in assessing whether there were exceptional circumstances justifying a loosening of Mr. Latimer's reporting requirements, rather than in determining whether a five and two was the least restrictive measure consistent with the protection of society.

[62] In assessing whether Mr. Latimer had demonstrated the existence of exceptional circumstances justifying a five and two, the Appeal Division also had regard to the fact that he could "choose less onerous ways to manage [his] day" (a statement with which Mr. Latimer does not agree). Whether or not this is the case, it is irrelevant to the question of whether loosening the conditions of Mr. Latimer's day parole was consistent with the governing principles of the *CCRA*. So too is the Appeal Division's observation that Mr. Latimer already enjoyed "expanded leave privileges beyond the norm for other offenders and that [he had] been accommodated on several occasions when requesting further leave."

[63] Whether Mr. Latimer has enjoyed more or less liberty than other offenders is not the question. It is clear from the *CCRA* that in making the least restrictive determination, the Board has to carefully tailor the conditions of an offender's release having regard to all of the particular circumstances of the individual offender. How the leave privileges granted to Mr. Latimer compare

to those granted to other offenders is irrelevant. Moreover, as was noted in the Assessment for Decision, the circumstances of Mr. Latimer's index offence are indeed "unique".

[64] The "exceptional circumstances" test also ignores other statutorily-mandated principles. Thus no real consideration was given by the Board to whether a loosening of Mr. Latimer's reporting requirements after the successful completion of 16 months in the community would contribute to his reintegration into society (*CCRA* subsection 102(b)) or his rehabilitation (section 100).

[65] For these reasons, I am satisfied that Chapter 4.1 of the Board's Policy Manual has the effect of precluding Board members from imposing the least restrictive measures consistent with the protection of the public where the particular situation of an individual offender is not deemed to be "exceptional" by the Board.

[66] By limiting the ability of Board members to examine the individual merits of each case according to the relevant statutory principles identified in the *CCRA*, the Manual thus unlawfully fetters members' statutory discretion: see *Fahlman (guardian ad litem of) v. Community Living British Columbia*, 2007 BCCA 15, 154 A.C.W.S. (3d) 958 at paras. 43-56; *Gregson v. National Parole Board*, [1983] 1 F.C. 573.

[67] Before closing, there are two additional matters that require comment.

[68] The first is that in addition to its inconsistency with the provisions of the *CCRA*, there is also an element of arbitrariness to Chapter 4.1 of the Policy Manual. Counsel for the respondent submitted in argument that two and five passes "further prepare offenders for eventual full parole". However, no explanation was provided as to why a two and five may be both an appropriate intermediate step in light of the unexceptional personal circumstances of an offender and consistent with the day parole provisions of the *CCRA*, whereas a "three and four", or a "four and three", or a five and two could only appropriate in "exceptional circumstances, when all other options have been considered and judged inappropriate".

[69] The second point that requires comment is the respondent's argument that "[i]f public safety were the only consideration, it follows that all offenders that do not pose a risk to the public would be granted a 'six and one' parole arrangement, which constitutes the least restrictive measure of liberty without reaching full parole": respondent's memorandum of fact and law at para. 36.

[70] I do not accept this argument. As is clear from the above analysis, the *CCRA* identifies a series of principles to be applied by the Board in determining the appropriate conditions to be attached to the conditional release of offenders. In addition to public safety and the least restrictive determination considerations, Board members must also take the statutory purpose of day parole into account, including the reintegration and rehabilitation of offenders.

[71] That is, matters such as the nature, requirements and progress of the offender's individual rehabilitation plan and his or her track record of compliance are all part of the incremental, nuanced

approach to the discretionary decision-making process prescribed by the *CCRA* and precluded by Chapter 4.1 of the National Parole Board's Policy Manual.

Conclusion

[72] For these reasons, the application for judicial review is allowed, and the decision of the Appeal Division is set aside. The matter is remitted to the National Parole Board for re-determination in accordance with these reasons, without regard to the "exceptional circumstances" test set out in Chapter 4.1 of the Board's Policy Manual.

[73] I note that Mr. Latimer is eligible for full parole on December 8, 2010. Accordingly, I am directing the Board to proceed with its re-determination on an expedited basis so that in the event that a positive decision is made with respect to Mr. Latimer's application for reduced reporting requirements, it may be of some practical benefit to him.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, with costs.

2. The matter is remitted to a differently constituted panel of the National Parole Board for re-determination on an expedited basis in accordance with these reasons, without regard to the "exceptional circumstances" test set out in Chapter 4.1 of the Board's Policy Manual.

"Anne Mactavish"
Judge

APPENDIX

CORRECTIONS AND CONDITIONAL RELEASE ACT, S.C. 1992, C. 20

Purpose of correctional system
3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

(*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

But du système correctionnel
3. Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.

Definitions
99. (1) In this Part,

"day parole"
«*semi-liberté* »
"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, a community-based residential facility or a provincial correctional facility each night, unless otherwise authorized in writing;

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

«semi-liberté »
"*day parole*"
«semi-liberté » Régime de libération conditionnelle limitée accordé au délinquant, pendant qu'il purge sa peine, sous l'autorité de la Commission ou d'une commission provinciale en vue de le préparer à la libération conditionnelle totale ou à la libération d'office et dans le cadre duquel le délinquant réintègre l'établissement résidentiel communautaire, le pénitencier ou l'établissement correctionnel provincial chaque soir, à moins d'autorisation écrite contraire.

Purpose of conditional release
100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe 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 law-abiding citizens.

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

Principles guiding parole boards

101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

(*a*) that the protection of society be the paramount consideration in the determination of any case;

(*b*) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;

(*c*) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;

(*d*) that parole boards make the least restrictive determination consistent with the protection of society;

(*e*) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and

(*f*) that offenders be 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.

Principes

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

a) la protection de la société est le critère déterminant dans tous les cas;

b) elles doivent tenir compte de toute l'information pertinente disponible, notamment les motifs et les recommandations du juge qui a infligé la peine, les renseignements disponibles lors du procès ou de la détermination de la peine, ceux qui ont été obtenus des victimes et des délinquants, ainsi que les renseignements et évaluations fournis par les autorités correctionnelles;

c) elles accroissent leur efficacité et leur transparence par l'échange de renseignements utiles au moment opportun avec les autres éléments du système de justice pénale d'une part, et par la communication de leurs directives d'orientation générale et programmes tant aux délinquants et aux victimes qu'au public, d'autre part;

d) le règlement des cas doit, compte tenu de la protection de la société, être le moins restrictif possible;

e) 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;

f) 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.

Criteria for granting parole
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.

Critères
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.

Policies
105. (5) Members of the Board shall exercise their functions in accordance with policies adopted pursuant to subsection 151(2).

Directives d'orientation générale
105. (5) Les membres exercent leurs fonctions conformément aux directives d'orientation générale établies en application du paragraphe 151(2).

Jurisdiction of Board
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;

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

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

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

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,

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

(ii) a sentence for an indeterminate period, or

(ii) d'une durée indéterminée,

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

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

[…]

[…]

Decision on Appeal
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,

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

c) elle a contrevenu aux 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.

[…]

[…]

(4) The Appeal Division, on the completion of a review of a decision appealed from, may

(*a*) affirm the decision;

(*b*) affirm the decision but order a further review of the case by the Board on a date earlier than the date otherwise provided for the next review;

(*c*) order a new review of the case by the Board and order the continuation of the decision pending the review; or

(*d*) reverse, cancel or vary the decision.

Functions
151. (2) The Executive Committee
(*a*) shall, after such consultation with Board members as it considers appropriate, adopt policies relating to reviews under this Part;

(4) Au terme de la révision, la Section d'appel peut rendre l'une des décisions suivantes :

a) confirmer la décision visée par l'appel;

b) confirmer la décision visée par l'appel, mais ordonner un réexamen du cas avant la date normalement prévue pour le prochain examen;

c) ordonner un réexamen du cas et ordonner que la décision reste en vigueur malgré la tenue du nouvel examen;

d) infirmer ou modifier la décision visée par l'appel.

Attributions du Bureau
151. (2) Après avoir consulté les membres de la Commission de la façon qu'il estime indiquée, le Bureau établit des directives régissant les examens, réexamens ou révisions prévus à la présente partie et, à sa demande, conseille le président en ce qui touche les attributions que la présente loi et toute autre loi fédérale confèrent à la Commission ou à celui-ci; le Bureau peut également ordonner que le nombre de membres d'un comité chargé de l'examen ou du réexamen d'une catégorie de cas ou de la révision d'une décision soit supérieur au nombre réglementaire.

NATIONAL PAROLE BOARD POLICY MANUAL

4.1 Day parole

Expanded periods of leave
Before full parole eligibility, the Board may reduce the nightly reporting requirement so the offender is not required to report for extended periods in exceptional circumstances, when all other options have been considered and judged inappropriate, and only in order to meet the particular needs of the case. The Board may consider expanded leave to be responsive to the

4.1 Semi-Liberte

PÉRIODES DE SORTIE PROLONGÉES
Avant la date d'admissibilité à la libération conditionnelle totale, la Commission peut, dans des circonstances exceptionnelles et lorsque toutes les autres possibilités ont été étudiées et jugées inopportunes, assouplir la règle exigeant un retour à l'établissement tous les soirs, mais ce, uniquement pour répondre aux besoins particuliers du délinquant. En effet, les membres de la

needs of female, aboriginal, ethnic minority or special needs offenders.

The Board has greater flexibility after full parole eligibility date. Board members must consider whether day parole represents the least restrictive option to protect society.

7.2 Residency and day parole leave privileges

The Board is responsible for establishing the parameter of leave privileges to be associated with an approved day parole, or parole or statutory release that is subject to a residency condition. It entrusts to those who are responsible for the day-to-day supervision and care of these offenders, the manner in which the leave privileges will be implemented.

Normally, the maximum leave privileges that will be authorized by the Board are as outlined below. Board members will specify in their decision any case specific leave privileges other than these.

The institutional head, the director of the residential facility or the CSC District Director, as the case may be and in conjunction with the parole supervisor, will determine how and when the Board authorized leave privileges are to be implemented. The determination will take into consideration the offender's progress in achieving the objectives of the release in relation to the correctional plan. Additional leave privileges may not be granted unless approved in writing by the Board.

Weekday
Setting of time limits for return to a residence on a weekday is subject to the discretion of the superintendent of the community correctional

Commission peuvent envisager d'autoriser des sorties prolongées pour répondre aux besoins de certaines catégories de délinquants comme les femmes, les Autochtones et les membres de minorités visibles, ou d'autres délinquants présentant des besoins spéciaux.

7.2 Privilèges de sortie rattachés aux assignations à résidence et à la semi-liberté

Il appartient à la Commission d'établir les paramètres des privilèges de sortie rattachés à une semi-liberté, ou à une libération conditionnelle ou d'office assortie d'une assignation à résidence. Ces paramètres laissent le soin de déterminer les modalités d'application aux personnes chargées quotidiennement de s'occuper des délinquants en liberté et de les surveiller.

Normalement, les privilèges de sortie maximums autorisés par la Commission sont ceux qui sont décrits ci-après. Si les membres de la Commission désirent accorder des privilèges de sortie particuliers à un délinquant, ils doivent le préciser dans leur décision.

Selon le cas, c'est le directeur du pénitencier, le directeur de l'établissement résidentiel ou le directeur de district du SCC qui détermine, de concert avec le surveillant de liberté conditionnelle, quand et comment les privilèges de sortie autorisés par la Commission seront appliqués. Pour ce faire, il prend en considération les progrès accomplis par le délinquant dans la réalisation des objectifs de la liberté au regard du plan correctionnel. L'octroi de privilèges de sortie supplémentaires ne peut se faire sans l'approbation écrite de la Commission.

En Semaine
Le directeur du centre correctionnel communautaire, du centre résidentiel communautaire ou du district concerné du SCC

centre (CCC), the director of the community residential facility (CRF), or the responsible CSC District Director.

[…]

CSC Institutions

The District Director, Parole, in consultation with the institutional head, may implement the leave privileges within the context of the release plan approved by the Board and in relation to the general progress of the offender. As a maximum, one weekend may be granted each month; however, the first cannot be implemented until at least thirty days after the implementation of the release.

décide de l'heure à laquelle le détenu est tenu de rentrer un jour de semaine.

[…]

ÉTABLISSEMENTS DU SCC

Le directeur de district (libération conditionnelle) peut, en consultation avec le directeur d'établissement, accorder des privilèges de sortie dans le cadre du plan de libération conditionnelle approuvé par la Commission et selon les progrès réalisés par le délinquant dans l'ensemble. Une fin de semaine tout au plus peut être accordée par mois, et la première peut seulement être accordée trente jours après l'entrée en vigueur du programme de semi-liberté.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1997-09
STYLE OF CAUSE:	ROBERT LATIMER v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	July 26, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Mactavish J.
DATED:	August 5, 2010

APPEARANCES:

Jason Gratl	FOR THE APPLICANT
Susanne Pereira	FOR THE RESPONDENT

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