

Federal Court



Cour fédérale

Date: 20101217

Docket: T-2029-10

Citation: 2010 FC 1286

Ottawa, Ontario, this 17th day of December 2010

Present: The Honourable Mr. Justice Pinard

BETWEEN:

RICHARD CONDO

Applicant

and

**THE ATTORNEY GENERAL
OF CANADA**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is seeking an order staying the conditions imposed upon him during his statutory release pending disposition of his underlying application for judicial review of the National Parole Board's decision imposing those conditions, which are:

- a curfew, at his own home, between 12 a.m. and 6 a.m.;
- a prohibition from entering any establishment whose primary purpose is the sale and consumption of alcohol; and
- an obligation to inform the supervisor of any meeting or contact he has with the opposite sex, except by chance.

[2] Assuming that there is a serious issue in this matter, the requested stay is denied on the grounds that the applicant has failed to show that he will suffer irreparable harm if the stay is not granted, and also that the balance of convenience lies in his favour (see *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311).

[3] In *Condo v. The Attorney General of Canada*, 2002 FCT 1135 (affirmed 2002 FCA 442), the consequence of the decision which Mr. Condo wanted stayed was that he was to be confined to his cell from 6:00 P.M. until 11:00 P.M. without possibility of participating in activities or using the telephone to call members of his family or friends. In the *Condo* decision before the Federal Court, Mr. Justice Pierre Blais wrote the following with respect to irreparable harm:

[16] Nevertheless, the cell will not be locked and the inmate will also have the possibility to talk with the other inmate in his cell.

[17] At this stage, the applicant has failed to convince me that such partial reduction of privileges constitutes a violation of section 7 of the *Charter*.

[18] As submitted by the respondent, I should consider the fact that in the event of the stay being denied, if the Court finds in the application for judicial review that the respondent has committed an error, the applicant will have the opportunity to claim damages for the partial loss of freedom during those twenty (20) hours.

[19] Therefore, the annoyances that the applicant will suffer from the application of the sanction are very minimal and do not amount to irreparable harm.

[4] I agree with the respondent that the same reasons apply *mutatis mutandis* in the present case. In fact, the applicant suffers even less a restriction of his liberty, as he will still have access to his family during the curfew. In any event, if it is ultimately found that his liberty right has been

violated, the applicant will have the opportunity to claim damages after his judicial review application, which will be adequate compensation (see also *Vancouver (City) v. Ward*, 2010 SCC 27, 321 D.L.R. (4th) 1).

[5] In so finding, I am well aware that Mr. Justice Nadon, for the Federal Court of Appeal, upheld Mr. Justice Blais' decision in *Condo, supra*, on the sole basis that the balance of convenience was found to be in favour of the respondent and that consequently, the issue of irreparable harm did not need to be addressed.

[6] With respect to the balance of convenience, the protection of society is the paramount consideration of the Board in the determination of any case pursuant to section 101 of the *Corrections and Conditional Release Act*. Pursuant to subsections 753.1(1), (3) and 753.2(1) of the *Criminal Code*, the Board has the responsibility to supervise the applicant, as a criminal Court was satisfied that there is a substantial risk that the applicant will reoffend and there is a reasonable possibility of eventual control of the risk in the community.

[7] Clearly, the mandate of the Board is in the public interest, which must prevail over the kind of annoyances suffered by the applicant. The Board also has a duty to take whatever measures are necessary to comply with the provisions of the *Corrections and Conditional Release Act*. I agree with the respondent that the stay of the Board's decision would directly affect the ability of the Board to fulfill its mandate. This would be contrary to the decisions in *Condo*, above, *Teale v. Canada (Attorney General)*, [2000] F.C.J. No. 1666 (T.D.) (QL), and *Plamondon v. Canada (Attorney General)*, [2001] F.C.J. No. 221 (T.D.) (QL).

[8] I am of the view, therefore, that the balance of convenience favours the respondent.

[9] Consequently, the applicant's motion is dismissed, with costs.

ORDER

The applicant's motion is dismissed, with costs.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-2029-10

STYLE OF CAUSE: RICHARD CONDO v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 9, 2010

REASONS FOR ORDER AND ORDER: Pinard J.

DATED: December 17, 2010

APPEARANCES:

Me Diane Condo FOR THE APPLICANT

Me Dominique Guimond
Me Véronique Forest FOR THE RESPONDENT

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