

Federal Court



Cour fédérale

**Date: 20130709**

**Docket: T-828-09**

**Citation: 2013 FC 764**

**Toronto, Ontario, July 9, 2013**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**IMAD HERMIZ**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an appeal from an Order of Prothonotary Aalto dated March 19, 2013 made following a trial of a simplified action wherein it was determined that the Plaintiff was entitled to recover from the Defendant general damages in the amount of \$20,000.00, and costs. For the reasons that follow, I have determined that the appeal will be allowed and the action dismissed.

[2] The Plaintiff Hermiz had been imprisoned for manslaughter and was out on day parole. He had secured a job and was working. During this time, it was alleged that a person or persons visited the home of the wife of a man who had been incarcerated in the same living area (range) within the prison as the Plaintiff. This man still remained in prison. It is alleged that the wife was asked to smuggle a package containing drugs into the prison while visiting her husband. The wife refused and reported the incident to her husband who reported it to a Prison Intelligence Officer. That Officer advised a Parole Officer (Correctional Service Canada or CSC Officer) supervising the Plaintiff's parole of this incident. This Officer spoke by telephone to the wife who gave him a different version of the events, placing them several months earlier. This Officer, in consultation with his supervisor, revoked the Plaintiff's day parole. The Plaintiff was returned to prison. He lost his job. Two months later the matter was reviewed by the Parole Board of Canada and the Plaintiff's day parole was restored.

[3] The Prothonotary, in the decision under appeal, indexed as 2013 FC 288, determined that the Correctional Service Canada (CSC) officers handling this case involving the Plaintiff had the honest belief that they were acting in the best interests of society, and that there was no misfeasance by these CSC officers. However, he found that the Plaintiff was entitled to damages for false imprisonment and, in any event, was entitled to damages for negligence of investigation. He fixed damages at \$20,000.00. On this appeal liability is at issue but the quantum of damage, if liability is upheld, is not at issue.

[4] Plaintiff's (Respondent's) Counsel, at paragraph 8 of his Memorandum, accepted the statement of facts as set out at paragraphs 4 to 16 of the Defendant's (Appellant's) Memorandum filed on this appeal, but only as far as they go. These facts are:

4. *Mr. Hermiz was sentenced on March 7, 2007 for a conviction of manslaughter for stabbing a man at a hotel party. In provincial custody he incurred charges or convictions related to drugs.*

5. *On October 7, 2007, Mr. Hermiz was transferred to Fenbrook Medium Institution (FMI). On December 20, 2007, Mr. Hermiz was moved to a living area (a "range") of up to 9 inmates, one of whom was Jason Bolan.*

6. *On May 20, 2008, Mr. Hermiz was released on a conditional release known as "day parole" to St. Leonard's Peel Community Residential Facility (CRF) in Toronto and placed under the supervision of community parole officer Hamza Al-Baghdadi ("PO Al-Baghdadi").*

7. *On June 19, 2008, Jason Bolan met with FMI Security Intelligence Officer Holly Goldthorp (SIO Goldthorp) to discuss his wife visiting the institution on June 22, 2008. Mr. Bolan advised that he had been stabbed the previous day because he refused to assist in bringing drugs to FMI.*

8. *Mr. Bolan told SIO Goldthorp that Imad Hermiz had appeared on his wife's doorstep with a package for her to deliver to FMI. Mrs. Bolan had described the individual who appeared on her doorstep and Mr. Bolan recognised Mr. Hermiz from the description. Mr. Bolan also advised that Mr. Hermiz had been close to the individuals who had just assaulted him in relation to the same plot to import drugs.*

9. *SIO Goldthorp investigated the allegations and found that Mr. Bolan and Mr. Hermiz had lived on the same range together for six months immediately before Mr. Hermiz's release on parole. She discovered no basis for an ulterior motive, observed that Mr. Bolan appeared legitimately concerned for his wife's safety and that he was assuming a significant risk to his life by publicly informing on a fellow offender.*

10. *SIO Goldthorp called PO Al-Baghdadi the same day to advise of the information concerning Mr. Hermiz. Shortly thereafter she sent a report of the information she had received to PO Al-Baghdadi.*

11. *PO Al-Baghdadi telephoned Mrs. Bolan to discuss the allegations. Mrs. Bolan sounded nervous, uncomfortable, and unwilling to cooperate with the investigation into the incident. She indicated that it was dark and the three individuals who attended at her house were wearing heavy coats. She also indicated that the visit took place three months prior, contrary to the information provided by her husband. PO Al-Baghdadi found that Mrs. Bolan was being vague and that her behaviour was consistent with a witness recanting an earlier statement due to a fear of retaliation.*

12. *PO Al-Baghdadi held a case conference with his supervisor, parole officer supervisor Phil Schiller (“POS Schiller”) to determine whether this information created an increased risk to the community. Upon reviewing the plaintiff’s profile and the information received, a warrant of suspension of parole and apprehension was issued.*

13. *On June 23, 2008, PO Al-Baghdadi held a post-suspension interview with Mr. Hermiz. PO Al-Baghdadi found that the plaintiff was not credible. Furthermore, Mr. Hermiz admitted to being involved with drugs at FMI.*

14. *Later that day, PO Al-Baghdadi and POS Schiller held a second case conference to consider cancelling the suspension of Mr. Hermiz’s day parole. They decided to wait for further information which might require a second post-suspension interview. No new information was received and a transfer warrant moving Mr. Hermiz to Kingston Penitentiary Temporary Detention Unit was issued on July 4, 2008.*

15. *PO Al-Baghdadi requested that institutional parole officer Jennifer Leplant interview Mr. Hermiz at Kingston Penitentiary Temporary Detention Unit regarding his suspension. At that time Mr. Hermiz denied being involved with drugs at FMI, contrary to his statement to PO Al-Baghdadi.*

16. *A recommendation to revoke Mr. Hermiz’s day parole was prepared for the PBC (Parole Board of Canada) on July 11, 2008. An addendum to this recommendation was prepared on July 15, 2008. On September 9, 2008, the PBC cancelled the suspension of Mr. Hermiz’s day parole.*

[5] The factual findings of the Prothonotary are not seriously disputed. From the agreed facts recited above and the findings of the Prothonotary and the records in this case, the essential facts are these:

- Hermiz (the Plaintiff) was released from a federal prison while serving his sentence and placed in a halfway house on day parole.
- Hermiz secured a job as a labourer in a brass fittings establishment.
- A person who had been a range-mate of Hermiz, Bolan, was still in prison and was stabbed.
- Bolan was interviewed the day after the stabbing by a Security Intelligence Officer. He told the Officer that he feared for his wife's safety because she told him in a recent telephone conversation that she had been visited at home by certain persons who asked her to smuggle drugs into the prison when she was visiting her husband. She said that she refused. Bolan believed that the stabbing incident was related to the visit to his wife. Bolan told the Security Officer that, from the description given to him by his wife, one of the persons who visited her was Hermiz.
- The Security Officer reported this conversation to the Parole Officer supervising Hermiz' parole.

- The Parole Officer phoned Bolan's wife and questioned her about the visit. The wife appeared to be reluctant to talk; she said that the incident took place some three months earlier in the winter, that the persons were wearing coats and that she could not identify any of them.
- The Parole Officer formed the opinion that the wife was attempting to recant her earlier message given to her husband and that the earlier message was the true version.
- The Parole Officer met with his supervisor; they discussed the situation. They determined that Hermiz's day parole should be revoked, which it was.
- The Parole Officer met with Hermiz some three days later after he had been returned to prison. Hermiz denied that he had ever visited Bolan's wife or that he had asked her to smuggle drugs. Hermiz did admit, however, to consuming drugs while in prison.
- Hermiz remained in prison but initiated proceedings to reinstate his day parole.
- Some three months later, the Parole Board of Canada, as a result of the proceedings initiated by Hermiz, reinstated his day parole. The Board concluded:

*As a result the Board has decided that, in light of the absence of reliable and persuasive information regarding the allegations that led to your*

*suspension, risk for re-offence has not become undue and risk remains manageable in the community. As such, the suspension of your day parole release is cancelled.*

- Hermiz found another job with a different company and has been working satisfactorily.
- Hermiz initiated this action for damages alleging three grounds for damages, misfeasance of office, false imprisonment and negligence of investigation.
- The Prothonotary dismissed the claim for misfeasance but found liability for false imprisonment and negligence of investigation. He awarded damages of \$6,000.00 for false imprisonment and \$14,000.00 for negligence of investigation.

#### **THE PROTHONOTARY'S CONCLUSION AS TO THE FACTS**

[6] The Prothonotary concluded at paragraph 65 of his Reasons that the incident giving rise to the suspension of parole was based on an unsubstantiated allegation founded in hearsay that was not in any way corroborated.

[7] The shortcomings of the Parole Officers' investigations were set out at paragraphs 66 and 67 of the Prothonotary's Reasons:

*[66] The parole officers were faced with a situation in which allegations of wrongdoing by Mr. Hermiz were made. No real attempt was made to determine the accuracy of the allegations and particularly no attempt was made to consider reviewing the log book at the home where Mr. Hermiz was residing or consulting*

*with the staff regarding Mr. Hermiz's conduct. A review of the log book may have assisted in determining the veracity of Mr. Hermiz's denials of involvement. No steps were taken to obtain confirmation of Mr. Bolan's story until after the suspension was made.*

*[67] The parole officers had several options available to them. They could have had Mr. Hermiz confined to the home for a brief period while investigations were conducted. They also had an option under the CCRA, s. 135(3)(b), within 30 days to cancel the suspension as they did not obtain any concrete evidence of Mr. Hermiz's involvement in the incident with Mrs. Bolan.*

[8] The Prothonotary further enumerated what he perceived to be the shortcomings of the investigations at paragraph 78:

*[78] In the circumstances, as argued by Mr. Hermiz, she could have taken additional reasonable steps to ensure the information was accurate. Such steps might have included:*

- a. Telephoning Mrs. Bolan to determine if her version of events matched those of Mr. Bolan;*
- b. Checking the telephone log to verify when Mr. Bolan spoke to his wife;*
- c. Checking whether the descriptions of the individuals alleged to have visited Mrs. Bolan matched Mr. Hermiz;*
- d. Checking inmates to determine if one had a wound consistent with Mr. Bolan's story. The evidence at trial did not identify any inmate with a wound as described by Mr. Bolan (see Tab 37 of Joint Book of Documents); or,*
- e. Checking inconsistencies in Mr. Bolan's story regarding the place and time of the stabbing.*



[9] He concluded at paragraph 88 of his Reasons that the Officers were overzealous but not recklessly indifferent or wilfully blind:

*[88] Based on the evidence I am of the view that the CSC Officers were overzealous in their response to Mr. Bolan's story which resulted in causing harm to Mr. Hermiz. The officers could and should have taken additional steps as noted above to confirm the veracity of the allegations against Mr. Hermiz. However, they did not have an actual intention to harm Mr. Hermiz but knew such harm would be the result of their decision. They were not, on the basis of my assessment of their demeanour and evidence, recklessly indifferent or wilfully blind to Mr. Hermiz's circumstances. They had an honest belief that they were acting in the best interests of society and the protection of the public.*

[10] He repeated his findings as to overzealousness at paragraph 99:

*[99] Thus, the question is whether the CSC Officers exercised their discretion reasonably in all of the circumstances. As stated above, in my assessment of the evidence and the demeanour of the witnesses they were overzealous in their response to the uncorroborated story of Mr. Bolan and failed to take reasonable steps to inquire into and determine whether Mr. Hermiz was involved in the incident. There was no evidence that Mr. Hermiz had visited Mrs. Bolan and indeed the evidence appeared to exonerate Mr. Hermiz if the visit had occurred three months prior to Mr. Bolan being stabbed.*

[11] At paragraphs 106 and 107 he repeated this theme:

*[106] The evidence upon which the parole officers acted, as I have found, and as observed by the PBC, was neither reliable nor persuasive. Thus, as noted, the PBC decision is admissible and should be given some weight but is not finally determinative of the issues in this case.*

*[107] More could and should have been done before the precipitous act of suspending parole was taken. The parole officers were in a sufficiently proximate relationship to Mr. Hermiz. They failed to take steps which were easily available to them and therefore were negligent in the conduct of their duties. Malice is not required for this tort so the fact the parole officers believed they were acting to protect society does not answer their negligence. The various steps that could have been taken are noted above. Suffice it to say the parole officers' conduct did not meet the standard of reasonableness when all of the evidence is considered.*

## **ISSUES**

[12] Only the Crown has appealed from the Prothonotary's decision. In addition to a general assertion that the Prothonotary erred in fact and law, the Crown raises the following allegations of error:

- error in finding imprisonment was not justified;
- error in finding that Canada owed a duty of care to the Plaintiff; and
- error in identifying and applying the standard of care.

[13] At the hearing, the Crown argued that the essential determination to be made is whether the investigations conducted by the Parole Officers before revoking Hermiz' day parole fell short of the standard required in such circumstances.

**DUTY OF THE COURT ON AN APPEAL FROM A PROTHONOTARY WHO MADE A DETERMINATION FOLLOWING A TRIAL**

[14] It must be remembered that the Prothonotary has reviewed the evidence which comprises the Affidavits of Hermiz, the two Parole Officers, and the Security Intelligence Officers; and a number of documents introduced by agreement. Each of the affiants was cross-examined in Court before the Prothonotary.

[15] This is not an appeal of a determination of a motion. This is not a judicial review. Justice Mandamin has correctly identified the standard of review of a Prothonotary's decision in an action in *McMaster v Canada*, 2009 FC 937, at paragraphs 20 and 21:

*[20] The Prothonotary's decision in this case is a decision on the substantive merits of the action. It is, stated simply, a judgment rendered after a trial, albeit a simplified one. As such the decision is subject to the standard of review set out in Housen v. Nikolaisen, 2002 SCC 33.*

*[21] In Housen, Justice Iacobucci and Justice Major writing for the Supreme Court of Canada found with regard to an appeal of a trial judge's findings the standard of review on a question of law is correctness. On findings of fact, they stated, "...where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error." Housen at para 36. Finally, when the application of facts to that legal test is the subject of review, they held the more stringent standard of review applies. That is, when the question involves mixed fact and law, it should not be overturned absent palpable and overriding error.*

[16] There are no material facts in dispute. The question is, given these facts, whether the conduct of the investigation, or the lack thereof, by the Parole Officers gives rise to liability on

the part of the Crown. The Prothonotary concluded that it did. This is a question of law to be reviewed on the basis of correctness.

### **STANDARD OF CARE**

[17] Whether the issue is false imprisonment, where the critical issue is justification, or whether the issue is failure to investigate properly, the issue is whether the Parole Officers exercised the appropriate standard of care in the carrying out of their duties.

[18] The Prothonotary made a thorough review of a number of authorities dealing with the fact that a duty of care does exist between peace officers such as a policeman and a person under investigation. The leading authority is that of the Supreme Court in *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129, where it was held that, having regard to expert evidence at trial, the police, while not perfect in their investigations, the investigations did not fall below the expected standard at the time.

[19] In *Syl Apps Secure Treatment Centre v BD*, [2007] 3 SCR 83, the Supreme Court, in dealing with an appeal on a motion to strike, considered the balance between statutory duties of the Children's Aid Society in having a duty of care to the child and a duty of care to the child's family and determined there was no duty of care to the family.

[20] In *River Valley Poultry Farms Ltd v Canada (Attorney General)* (2009), 95 OR (3d) 1, the Ontario Court of Appeal held, based on an examination of the relevant statute, that the

Canada Food Inspection Agency did not owe a duty of care to a poultry farmer whose flock was destroyed.

[21] In *Turner v Halifax (Regional Municipality)* (2009), 274 NSR (2d) 304, the Trial Judge, on a motion for summary judgment, determined that a claim for negligence against the Crown for actions against a parole officer was a claim that had no real chance of success. This was based on two grounds. On the first, the Judge held that there was no duty of care owed by a Parole Officer and, in any event, the evidence failed to support a breach of that duty.

[22] The Nova Scotia Court of Appeal in *Turner* (2009), 283 NSR (2d) 239 declined to comment as to whether there was a duty of care and upheld the Trial Judge in holding that the evidence failed to demonstrate a basis for a claim.

[23] In *Tsoutsoulas v Canada (Attorney General)*, [2006] OTC 256, Justice Wright of the Ontario Superior Court of Justice held that Correctional Services Canada did not owe a duty of care to a person injured by a person out on parole and that, in any event, the Parole Officers acted reasonably.

[24] I agree with the finding by the Prothonotary, particularly based on the decision of the Supreme Court in *Hill*, supra, that a duty of care existed as between the Parole Officers and the parolee, Hermiz, in this case.

[25] The next determination is whether the Parole Officers were negligent in the exercise of their duty towards the Plaintiff. I note that in *Hill*, supra, the Court, at trial, received expert evidence as to the standards expected at the time of an investigating police officer. There is no such evidence here.

[26] In *Syl Apps* and *River Valley*, the Court arrived at its determination based on an examination of the relevant jurisprudence. In *Turner*, the Court proceeded upon an agreed statement of facts. In *Tsoutsoulas*, the Court made a simple finding of no negligence.

[27] In the present case, the Court must consider whether the Parole Officers were “overzealous” in revoking the Plaintiff’s day parole on conflicting evidence respecting the wife’s story given to her husband, clearly hearsay, and the story given to the Parole Officer, believed to be false by the Officer. The decision to revoke day parole was made by a senior Parole Officer in consultation with that Parole Officer, without first interviewing the Plaintiff. That interview took place three days later. The Officers did not change their decision that day parole was to remain revoked. Some three months later that decision was reversed by the Parole Board.

[28] The statutory scheme of the *Corrections and Conditional Release Act*, SC 1992 c 20 (CCRA) in force at the time, June 2008, must be examined. The purpose of the correctional system is set out in section 3:

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

*3. Le système correctionnel vise à contribuer au maintien d’une société juste, vivant en paix et en sécurité, d’une part,*

<i>society by</i>	<i>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</i>
<i>(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and</i>	<i>pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.</i>
<i>(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.</i>	

[29] Section 4(a) of that *Act* states that the protection of society is the paramount consideration, section 4(d) requires the least restrictive measures to be used, section 4(e) provides that offenders retain the rights and privileges of all members of society, except those necessarily removed and section 4(g) provides that decisions be made in a forthright and fair manner.

<i>4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:</i>	<i>4. Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants :</i>
<i>(a) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the Parole Board of Canada and information obtained from victims, offenders and other</i>	<i>a) l'exécution de la peine tient compte de toute information pertinente dont le Service dispose, notamment les motifs et recommandations donnés par le juge qui l'a prononcée, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine ou fournis par les victimes, les délinquants ou d'autres éléments du système de justice</i>

*components of the criminal justice system;*

...

*(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;*

*(e) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;*

...

*(g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups;*

*pénale, ainsi que les directives ou observations de la Commission des libérations conditionnelles du Canada en ce qui touche la libération;*

...

*d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;*

*e) il facilite la participation du public aux questions relatives à ses activités;*

...

*g) ses directives d'orientation générale, programmes et pratiques respectent les différences ethniques, culturelles et linguistiques, ainsi qu'entre les sexes, et tiennent compte des besoins propres aux femmes, aux autochtones, aux personnes nécessitant des soins de santé mentale et à d'autres groupes;*

[30] Section 24(1) requires that all reasonable steps be taken by the Service to ensure that the information it uses is as accurate, up to date and complete as possible:

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

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



[31] As stated by Justice Mosley in *Tehrankari v Canada (Attorney General)*, 2012 FC 332, at paragraph 24, “all reasonable steps” does not mean an exhaustive investigation.

[32] There is therefore a tension between what is expressed in sections 3 and 4 of the CCRA that is, a tension between a duty to the public and a duty to an offender. However, section 4(a) is clear, the duty to the public is paramount.

[33] The CCRA provides, in section 135, a process for the manner in which supervision of parole is conducted and a review of the suspension. I set out portions of that section:

*135 (1) A member of the Board or a person, designated by name or by position, by the Chairperson of the Board or by the Commissioner, when an offender breaches a condition of parole or statutory release or when the member or person is satisfied that it is necessary and reasonable to suspend the parole or statutory release in order to prevent a breach of any condition thereof or to protect society, may, by warrant:*

*(a) suspend the parole or statutory release;*

...

*(3) Subject to subsection (3.1), the person who signs a warrant under subsection (1) or any other person designated under that subsection shall, immediately after the*

*135 (1) En cas d'inobservation des conditions de la libération conditionnelle ou d'office ou lorsqu'il est convaincu qu'il est raisonnable et nécessaire de prendre cette mesure pour empêcher la violation de ces conditions ou pour protéger la société, un membre de la Commission ou la personne que le président ou le commissaire désigne nommément ou par indication de son poste peut, par mandat:*

*a) suspendre la libération conditionnelle ou d'office;*

...

*(3) Sous réserve du paragraphe (3.1), la personne qui a signé le mandat visé au paragraphe (1), ou toute autre personne désignée aux termes de ce paragraphe, doit, dès que le délinquant mentionné*

*recommitment of the offender, review the offender's case and*

*dans le mandat est réincarcéré, examiner son dossier et:*

*(a) where the offender is serving a sentence of less than two years, cancel the suspension or refer the case to the Board together with an assessment of the case, within fourteen days after the recommitment or such shorter period as the Board directs; or*

*a) dans le cas d'un délinquant qui purge une peine d'emprisonnement de moins de deux ans, dans les quatorze jours qui suivent si la Commission ne décide pas d'un délai plus court, annuler la suspension ou renvoyer le dossier devant la Commission, le renvoi étant accompagné d'une évaluation du cas;*

*(b) in any other case, within thirty days after the recommitment or such shorter period as the Board directs, cancel the suspension or refer the case to the Board together with an assessment of the case stating the conditions, if any, under which the offender could in that person's opinion reasonably be returned to parole or statutory release.*

*b) dans les autres cas, dans les trente jours qui suivent, si la Commission ne décide pas d'un délai plus court, annuler la suspension ou renvoyer le dossier devant la Commission, le renvoi étant accompagné d'une évaluation du cas et, s'il y a lieu, d'une liste des conditions qui, à son avis, permettraient au délinquant de bénéficier de nouveau de la libération conditionnelle ou d'office.*

...

...

*(4) The Board shall, on the referral to it of the case of an offender serving a sentence of less than two years, review the case and, within the period prescribed by the regulations, either cancel the suspension or terminate or revoke the parole.*

*(4) Une fois saisie du dossier d'un délinquant qui purge une peine de moins de deux ans, la Commission examine le cas et, dans le délai réglementaire, soit annule la suspension, soit révoque la libération ou y met fin.*

*(5) The Board shall, on the referral to it of the case of an offender who is serving a sentence of two years or more, review the case and — within the period prescribed by the regulations unless, at the offender's request, the review is adjourned by the Board or is postponed by a member of the*

*(5) Une fois saisie du dossier du délinquant qui purge une peine de deux ans ou plus, la Commission examine le dossier et, au cours de la*

<i>Board or by a person designated by the Chairperson by name or position —</i>	<i>période prévue par règlement, sauf si, à la demande du délinquant, elle lui accorde un ajournement ou un membre de la Commission ou la personne que le président désigne nommément ou par indication de son poste reporte l'examen:</i>
<i>(a) if the Board is satisfied that the offender will, by reoffending before the expiration of their sentence according to law, present an undue risk to society,</i>	<i>a) si elle est convaincue qu'une récidive de la part du délinquant avant l'expiration légale de la peine qu'il purge présentera un risque inacceptable pour la société:</i>
<i>(i) terminate the parole or statutory release if the undue risk is due to circumstances beyond the offender's control, and</i>	<i>(i) elle met fin à la libération lorsque le risque dépend de facteurs qui sont indépendants de la volonté du délinquant,</i>
<i>(ii) revoke it in any other case;</i>	<i>(ii) elle la révoque dans le cas contraire;</i>
<i>(b) if the Board is not satisfied as in paragraph (a), cancel the suspension; and</i>	<i>b) si elle n'a pas cette conviction, elle annule la suspension;</i>
<i>(c) if the offender is no longer eligible for parole or entitled to be released on statutory release, cancel the suspension or terminate or revoke the parole or statutory release.</i>	<i>c) si le délinquant n'est plus admissible à la libération conditionnelle ou n'a plus droit à la libération d'office, elle annule la suspension ou révoque la libération ou y met fin.</i>

[34] In effect, discretion, i.e. “may” is given by sub-section 137(1) to the Officer in revoking parole. That Officer must review the case (30 days) and the Board shall review the case (90 days). All of these reviews were conducted here.

[35] The Commissioner's Directive 715-3, in place at the time, provides in Sections 7 to 12 a procedure to be followed by a Parole Officer in changing conditions of parole (such as revoking) which includes holding a case conference with a supervisor and informing the offender. There is no requirement that the offender be informed before parole is revoked:

*7. Information collected from significant contacts will normally be gathered through an in-person interview.*

*8. The Parole Officer, Correctional Officer II/Primary Worker may, in consultation with the Manager, Assessment and Interventions/Correctional Manager: a. update or confirm the content of a previous Community Assessment normally through telephone contact, or b. request or complete a new Community Assessment*

*9. As part of the information gathering process, the decision to conduct a Canadian Police Information Centre (CPIC) check should be made on a case by case basis. When deemed necessary, the Parole Officer will obtain written consent from the community contact using the Consent CPIC Clearance Request (CSC/SCC 1279-01).*

*10. The contact will be informed of the purpose of the CPIC and that participation is voluntary. However, a refusal could impede the Parole Officer's ability to determine whether the contact is an appropriate support for the offender.*

*11. The completed Consent CPIC Clearance Request (CSC/SCC 1279-01) will be forwarded to the Security Intelligence Officer and/or police to verify whether the contact is known to police or identify the existence of a criminal record.*

*12. The existence of a criminal record does not eliminate the individual as a potential source of support. Additional factors need to be taken into consideration such as the nature, number, recency of convictions, and their degree of relevance to the offender's reintegration.*

[36] Given that where there is a tension in the CCRA between the duties to the public and the offender, the duty to the public is paramount. The CCRA and the Commissioner's Directive provide for procedures to be followed in the case of revoking a parole. Those procedures were followed here.

[37] The Parole Officer had to process the information given by the Security Intelligence Officer. That Officer's report classified the information received from Boland as to the visit his wife received as "Believed Reliable", which is consistent with Commissioner's Directive 568-2, section 20:

*20. The reliability standards and the codes to be used on the Security Intelligence Reports are as follows:*

***a. Unknown  
Reliability U/R or  
U/R/C***

*The Security Intelligence Officer is, at this time, unable to assess the reliability of the information received.*

***b. Doubtful Reliability  
D/R or D/R/C***

*Refers to information which is believed unlikely at the time, although the element of possibility is not excluded; the information has not*

*20. Les normes relatives à la fiabilité et les codes à utiliser dans le Rapport sur les renseignements de sécurité sont indiqués ci-après.*

***a. Fiabilité inconnue  
F/I ou F/I/C***

*L'agent de renseignements de sécurité est incapable, pour le moment, de déterminer la fiabilité du renseignement.*

***b. Fiabilité douteuse  
F/D ou F/D/C***

*Le renseignement semble douteux pour le moment, mais il pourrait tout de même être valable; il n'a pas été contredit hors de tout doute, n'est pas*

*been definitely contradicted nor is it totally illogical within itself or in total disagreement with the general body of intelligence on the same subject.*

**c. Believed Reliable  
B/R or B/R/C**

*Refers to information which gives every indication of being accurate, but which has not been confirmed; the information agrees somewhat with the general body of intelligence, is reasonable and consistent with other information on the same subject.*

**d. Completely Reliable  
C/R or C/R/C**

*Refers to information which is substantiated or confirmed by one or more independent sources; the information is logical and consistent with other corroborated information on the same subject.*

*entièrement illogique en soi ou n'est pas en entièrement illogique en soi ou n'est pas en contradiction totale avec l'ensemble des renseignements recueillis sur le même sujet.*

**c. Fiabilité apparente  
F/A ou F/A/C**

*Le renseignement semble vraiment exact, mais il n'a pas été confirmé; il est assez en accord avec l'ensemble des renseignements recueillis, est logique en soi et va dans le sens des autres données recueillies sur le même sujet.*

**d. Fiabilité totale F/T  
OU F/T/C**

*Les renseignements est appuyé ou confirmé par au moins une source indépendante; il est logique en soi et est en accord avec d'autres renseignements recueillis et corroborés sur le même sujet.*

[38] The Parole Officer did contact the wife, whose story as told to him was believed by that Officer to be evasive, and an attempt to recant the early story given to her husband.

[39] Hermiz was not interviewed at the time. There was no Policy Directive that he be interviewed before his day parole was revoked. When he was interviewed three days after the revocation he admitted to being part of the prison drug culture, but denied being a person who had visited the wife. He invited an inspection of the halfway house's log book to back up his story. Hermiz was not believed by the Officer, and the log book was believed by the Officer to be unreliable.

[40] Did this conduct fall below the standard of care? It is for the Plaintiff to establish that the Parole Officer's actions fell below the expected level. There is no expert evidence on this point. This is no case law except for *Turner*, supra, at the trial level only and that Court found that there was no duty of care let alone evidence to support lack of care.

[41] Here the Parole Officers followed the required procedure. A Review Board reviewed their decision within 90 days. That Board, while reversing their decision did not say that the Officers failed in exercising a proper level of care.

[42] I find that the Plaintiff has not established that the Parole Officer's actions fell below the expected standard of care. Therefore both the unlawful imprisonment and the negligence actions fail.

[43] I make a further finding in respect of causation as to damage. The Plaintiff bears the burden of proving that the damage claimed was caused by the acts of the Parole Officer. The Plaintiff was employed at the time that his parole was revoked, but there is no evidence as to what his employer did. Did the employer fire him, suspend him, temporarily suspend him, or what? There is no evidence as to what happened. We do know that Hermiz was hired by a different employer after his day parole was reinstated. An inference can be drawn that Hermiz would have remained with his first employer, but that is only an inference. Evidence should have been led by the Plaintiff as to causation; it was not.

[44] As to false imprisonment, Hermiz was imprisoned for three days (over a weekend) before he was interviewed and the decision to revoke day parole confirmed. No basis for damages has been established by the Plaintiff, it is conjecture.

[45] Therefore, I will allow the appeal, set aside the decision of the Prothonotary and dismiss the action.

[46] As to costs, Hermiz has asked for \$10,000.00 if successful; the Crown has asked for a like amount. I find that amount to be excessive in the circumstances and will award costs in the sum of \$1,000.00 to the Crown.



**JUDGMENT**

**FOR THE REASONS ABOVE:**

**THIS COURT ADJUDGES that:**

1. the appeal is allowed;
2. the Prothonotary's decision dated March 19, 2013 is set aside;
3. the action is dismissed; and
4. the Defendant is entitled to costs fixed at \$1,000.00.

"Roger T. Hughes"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-828-09

**STYLE OF CAUSE:** IMAD HERMIZ v HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 27, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HUGHES J.

**DATED:** July 9, 2013

**APPEARANCES:**

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Shain Widdifield FOR THE DEFENDANT

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