Federal Court  Cour fédérale

Date: 20181126

Docket: T-581-18

Citation: 2018 FC 1183

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, November 26, 2018

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

JEAN-SYLVAIN CHARTRAND

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Mr. Jean-Sylvain Chartrand is seeking judicial review of a decision, dated February 22, 2018, by the Parole Board of Canada's Appeal Division [Appeal Division], which affirmed a decision of the Parole Board of Canada [the Board].

[2] In short, the Appeal Division affirmed the Board's decision to impose certain conditions on Mr. Chartrand's statutory release, including that of being assigned residency. The applicant confirmed at the hearing that this was the only condition being challenged before this Court.

[3] As a remedy, Mr. Chartrand is asking that the Court allow his application, declare the Appeal Division's decision to be unreasonable, alter the conditions that were imposed on his statutory release, and withdraw the condition to reside at a specific place.

[4] For the reasons that follow, the Court will dismiss the application for judicial review. To summarize, the Court finds that (1) the decisions of the Appeal Division and the Board are reasonable; (2) the argument according to which the Appeal Division allegedly made erroneous findings based on inaccurate, incomplete and outdated information is not supported by the evidence in the record; (3) the fact that the Appeal Division failed to address three of the matters raised before it does not invalidate its decision; and (4) the Court is not convinced that a psychological risk assessment was needed in this case under section 5 of Policy 2.2 of the *Decision-Making Policy Manual for Board Members* [Policy Manual], that a new risk assessment under section 9 of the same Policy Manual was needed or, alternatively, that the Appeal Division relied on the 2015 psychological assessment to determine the risk posed by Mr. Chartrand.

II. BACKGROUND

[5] Since May 6, 2015, Mr. Chartrand has been serving his third federal sentence. His statutory release was scheduled for March 5, 2018, and was carried out under the conditions imposed by the Board. His warrant is set to expire on August 5, 2019.

[6] On October 5, 2017, in anticipation of his statutory release, the Correctional Service of Canada [the Service] supervisor signed an Assessment for Decision [A4D] and recommended that the Board impose a certain amount of conditions on Mr. Chartrand, among which was a residency condition and an obligation to report all friendships or intimate relationships with women.

[7] Thus, at pages 8 to 11 of the A4D, the supervisor set out the factors related to the residency condition, under section 5 of Policy 5.1 of the Policy Manual, and analyzed Mr. Chartrand's situation, where applicable, with respect to each of those factors.

[8] On January 8, 2018, the Board rendered its decision and imposed a number of conditions on Mr. Chartrand's statutory release, including reporting any intimate relationships with women and the residency condition. In that regard, the Board concluded that, in the absence of a residency condition, Mr. Chartrand would present an undue risk to society by committing, before the expiration of his sentence according to law, an offence set out in Schedule I or an offence under sections 467.11, 467.12 or 467.13 of the *Criminal Code* (subsection 133(4.1) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [the Act]).

[9] On January 19, 2018, in accordance with subsection 147(1) of the Act, Mr. Chartrand appealed the Board's decision before the Appeal Division and challenged the two conditions imposed on him, namely the obligation to report his intimate relationships with women and the residency condition. As a remedy, he requested that he be granted statutory release with the modifications to the conditions sought and that he not be subject to the residency condition.

[10] He argued that the Board committed an error of law by imposing a residency condition on him when the criteria for doing so had not been met, and that it considered erroneous and incomplete information, namely, that (1) he had not exhibited positive institutional behaviour; (2) he had two positive urine tests; (3) he associated with criminal peers; (4) he has a criminal history of domestic violence; (5) he filed for divorce after finding out that his ex-wife had become pregnant with another man's child; (6) he was verbally aggressive; and (7) he was stressed about dealing with the Direction de la protection de la jeunesse [Director of Youth Protection].

[11] On February 22, 2018, the Appeal Division dismissed Mr. Chartrand's appeal and affirmed the Board's decision. In essence, it determined that Mr. Chartrand had failed to raise grounds that would warrant it to intervene and found that the Board had weighed all of the factors in the record in a fair and equitable manner in accordance with the Act. The Appeal Division found the Board's decision to be reasonable and supported by relevant, reliable and persuasive information.

[12] It is this decision by the Appeal Division that is the subject of the present application for judicial review.

III. PARTIES' POSITIONS

A. *Applicant's Position*

[13] In support of his application, Mr. Chartrand filed a sworn affidavit on April 20, 2018, wherein he stated, among other things, that: 1) only one of his urine tests was positive; 2) he has no criminal history of domestic violence; 3) he has committed no acts of violence during his up-to-date sentence; and 4) he has been attending the Restorative Justice program, Alcoholics Anonymous meetings and 81 out of 90 sessions of the high intensity Multi-Target program. His affidavit was accompanied by seven exhibits, namely, the A4D, the Board's decision, his submissions before the Appeal Division, a Quebec Court decision, dated November 25, 2016, regarding visits by his children, the Appeal Division's decision, a psychological evaluation from March 3, 2017, and his certificate of statutory release.

[14] Mr. Chartrand argues that the Appeal Division erred because it (1) made erroneous findings based on information that was not accurate, up-to-date, or complete; (2) failed to address points raised in his submissions before the Appeal Division, namely that the Board considered erroneous information with respect to his alleged domestic violence, aggressive behaviour and association with criminal peers; and (3) relied on a psychological risk assessment from 2015 that was no longer valid.

(1) The Appeal Division made erroneous findings based on information that was not accurate, up-to-date or complete

[15] With respect to the erroneous findings, Mr. Chartrand points out that the Court must analyze the decisions by the Board and the Appeal Division in their entirety. He notes that the imposition of conditions pursuant to section 133 of the Act is reviewable on a reasonableness standard, but that the deference the Court must normally grant to the Board's expertise is not immutable or indisputable.

[16] Mr. Chartrand points out the legislative context imposed by the Act. He contends that section 24 of the Act provides that the Service is required to 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.

[17] Thus, Mr. Chartrand cites the criteria set out at section 5 of Policy 5.1 of the Policy Manual with regard to the imposition of a residency condition, and contends that erroneous or incomplete information was used in the assessment of a criterion or that none of the information allowed for such an assessment.

[18] Thus, citing examples of such erroneous information, Mr. Chartrand claims, *inter alia*, that:

- The argument to the effect that several offences against the person were of a violent nature was based on charges of domestic assault, when none of the charges had led to convictions;

- Information about his lack of openness towards his Case Management Team (CMT), his potential for being arrogant and/or becoming verbally aggressive was not detailed and was therefore not validated, confirmed, reliable or convincing;

- The decision of the Court of Quebec, dated November 25, 2016, imposed no specific conditions on Mr. Chartrand and he was permitted to have contact at any time and without supervision with his children, according to all agreements between him and the Direction de la protection de la jeunesse. The stress thus created was at the low end of the scale and it is incorrect to suggest that it could have been a source of violent behaviour;

- The Appeal Division assessed the risk of reoffending at moderate to high, while the Board referred to a moderate risk of violent recidivism;

- Information on the two positive urine tests was erroneous given that Mr. Chartrand objected to the result of the test from July 2017 and that since then, that charge had been dismissed; nevertheless, the Appeal Division cited the A4D word-for-word without correction;

- The finding that Mr. Chartrand would not be able to apply the progress he had made was based solely on his expulsion on two occasions from the high-intensity Multi-Target ICPM program, while the Appeal Division's decision contained no reference to the 92 sessions he had completed and only paid lip service to the other efforts he had made.

[19] Thus, Mr. Chartrand maintains that the Court should intervene because a review of all of the relevant information in the record leads to the conclusion that the Board and its Appeal Division failed to exercise their broad discretion in a reasonable, transparent or intelligible manner.

(2) The Appeal Division failed to address several of the grounds raised in his submissions before it

[20] With respect to the Appeal Division's failure to address some of the grounds of his appeal, Mr. Chartrand argues that it is first and foremost a matter of procedural fairness and that, as a result, a correctness standard of review applies.

[21] He contends that the Appeal Division breached procedural fairness by failing to address all of his grounds for appeal or respond to the matters raised, some of which were nonetheless central to the justification of the imposition of the residency condition, such as the absence of a history of domestic violence, alleged aggressive behaviours and association with criminal peers.

(3) The Appeal Division relied on a psychological risk assessment that was no longer valid

[22] Regarding the invalid psychological risk assessment, the applicant maintains that a correctness standard also applies, given that it is a matter of procedural fairness. He argues that section 7 of Policy 2.2 of the Policy Manual grants a validity period of two years for psychological risk assessments. Given that the Board relied on an assessment from July 2015 for imposing the residency condition, the Appeal Division breached its duty of procedural fairness by affirming the Board's decision and the Court should have the decision re-determined (*Demaria v Canada (Attorney General)*, 2017 FC 45 at para. 31).

[23] At the hearing, the applicant added that his case fell under section 5 of this chapter of the Policy Manual, that a new psychological risk assessment was required and that section 9 required the Board to obtain a new assessment.

B. *Respondent's Position*

[24] The respondent is relying on documents in the Certified Tribunal Record.

[25] The respondent argues that (1) the imposition of the residency condition was reasonable, as both the Board and Appeal Division decisions were reasonable; and (2) the applicant's arguments fail to show that the imposition of the residency condition was unreasonable and do not warrant the Court's intervention.

[26] First, the respondent asserts that the Board's decision to impose the residency condition to the applicant's statutory release was reasonable. Indeed, the Board reviewed all of the information in the applicant's record, then concluded that the condition should be imposed. The information supports the inferences made by the Board, therefore the decision was reasonable.

[27] Second, the respondent submits that the Appeal Division's decision affirming the Board's decision was also reasonable. The Appeal Division indicated its role, identified the grounds of appeal raised by the applicant and carefully reviewed the Board's decision.

[28] Lastly, the respondent argues that the applicant's arguments are unfounded and fail to show the residency condition to be unreasonable.

[29] First, in response to the applicant's claim that the Appeal Division considered inaccurate and incomplete evidence, the respondent pointed out that the Board must consider "all available information that is relevant to a case" (*Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 at para. 21 [*Mooring*]), even information about charges for which the applicant has been

acquitted (*Fernandez v Canada (Attorney General)*, 2011 FC 275 at para. 26 [*Fernandez*]; *Barrett v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1030 at paras. 32-33, 36 [*Barrett*]). In addition, the relevance of dealings with the Direction de la protection de la jeunesse should be considered in light of the applicant's overall record (*Migneault v Canada (Attorney General)*, 2004 FC 468 at para. 21). Furthermore, despite the discrepancy between the findings of the Appeal Division and the Board on the risk of reoffending, the fact remains that this risk was deemed to be at least "moderate". Moreover, both decisions acknowledged the efforts made by the applicant in various programs.

[30] Second, in response to the applicant's claim that the Appeal Division failed to review all of the grounds of his appeal, the respondent argues that the Appeal Division is presumed to have considered all of the available information and the fact that certain arguments were not addressed in its decision does not mean that it was unreasonable (*Ross v Canada (Attorney General)*, 2011 FC 829 at para. 26). Moreover, its role is limited to ensuring that the Board's decision was founded and based on information available to it at the time of the decision.

[31] Third, in response to the applicant's claim that the psychological risk assessment from 2015 breached procedural fairness, the respondent argues that only seven months had elapsed since the end of the assessment's validity period. The Appeal Division had also relied on a Correctional Plan from September 2017 and on the A4D from October 2017. Furthermore, contrary to what the applicant asserts, the residency condition had been imposed after having considered his record as a whole.

IV. ANALYSIS

A. *Issues*

[32] Given that Mr. Chartrand is not challenging the residency condition, the Court must determine whether it was reasonable for the Appeal Division to affirm the Board's decision that it was "satisfied that in the absence of such a condition the offender will present an undue risk to society by committing, before the expiration of their sentence according to law, an offence set out in Schedule I or an offence under section 467.11, 467.12 or 467.13 of the *Criminal Code*" (subsection 133(4.1) of the Act).

[33] In this context, the Court must determine whether Mr. Chartrand's arguments are founded and whether, as he has argued, the Appeal Division (1) made erroneous findings on the basis of information that was not accurate, up-to-date or complete; (2) failed to address several matters raised in his submissions before the Appeal Division; and (3) relied on a psychological risk assessment that was no longer valid.

B. *Legislative Environment*

[34] Sections 100 and 101 of the Act deal with the purpose and principles of conditional release, detention and long-term supervision. They state in part that the protection of society must be the paramount consideration in the determination of any case by the Board (section 100.1) and that the Board must consider all available relevant information (paragraph 101(*a*)). For the sake of brevity, the relevant provisions are appended to this judgment.

[35] Subsection 24(1) of the Act, for its part, provides that the Service is to 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.

[36] Statutory release is governed by sections 127 *et seq.* of the Act and the imposition of specific conditions and the residency requirement associated thereto are governed by subsections 133(3) and (4) to (4.4) of the Act. Thus, to impose a residency condition, the Board must be "satisfied that, in the absence of a such a condition, the offender will present an undue risk to society by committing, before the expiration of their sentence according to law, an offence set out in Schedule I or an offence under section 467.11, 467.12 or 467.13 of the *Criminal Code*" (subsection 133(4.1) of the Act).

[37] To assess such risk, section 5 of Policy 5.1 of the Policy Manual counsels Board members to weigh all relevant information to determine the risk and to consider, in particular, the following factors: (a) the potential for violent behaviour; (b) stressors/factors in the release environment which may be predictive of violent behaviour; (c) psychological information; (d) information concerning any attempts by the offender to reduce/mitigate the possibility of future violent behaviour; and (e) information that the offender is or will be participating in treatment and/or interventions appropriate to the prevention of violence and observable and measureable gains derived from them.

C. *Conclusions of the Appeal Division*

[38] The parties agree that questions of mixed fact and law are reviewable on a reasonableness standard. Moreover, when an Appeal Division's decision affirms the decision of the Board, the Court is required to ensure that the Board's decision is lawful (*Cartier v Canada (Attorney General)*, 2002 FCA 384 at para. 10).

[39] Thus, the Court will review whether the decisions were justified, transparent and intelligible and whether they fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 47 [*Dunsmuir*]).

[40] The courts have recognized that the Board and its Appeal Division have expertise in conditional release-related decisions and that, as a result, considerable deference should be given to their fact-finding and to their application of the governing statutes and regulations to those facts (*Fernandez* at para. 20).

[41] In short, the applicant has not convinced the Court that the Appeal Division's findings were based on information that was erroneous, inaccurate, out-of-date or incomplete. The Court has reviewed the allegations that Mr. Chartrand submitted in his memorandum and addressed certain concerns with the applicant at the hearing. It has concluded that:

- The Board's finding that a number of offences against the person were of a violent nature was not based on charges of domestic assault, but rather, on [TRANSLATION] "convictions for robberies, some of which were committed using a firearm, breaking and entering, thefts, failure to comply with undertakings, trafficking in narcotics and possession of a credit card" (Board's decision at page 4, paragraph 7);

- Additionally and in any event, the Board may consider charges that have been withdrawn (*Mooring* at para. 18; *Barrett* at paras. 32-33; *Fernandez* at para. 26);

- Information that Mr. Chartrand showed little openness toward his CMT, could be arrogant and/or become verbally aggressive can be found in the A4D (page 4, 2nd paragraph; page 9, 1st paragraph; page 10, 5th paragraph), in the Correctional Plan dated September 27, 2017 (page 7), in the progress report from July 5, 2017 (page 5) and in the progress report from October 4, 2017 (page 20);

- Counsel for the applicant confirmed to the Court that the parties were now in agreement about the children's visits. However, this agreement was not adduced, there is nothing to indicate that it was brought to the attention of the Board or its Appeal Division and its contents are not known. Thus, in light of the decision of the Court of Quebec dated November 25, 2016, it appears reasonable for the Board and its Appeal Division to have concluded that restrictions regarding Mr. Chartrand's wishes to see his children could have been a stress factor;

- The Appeal Division and the Board did not contradict each other with respect to the level of risk. Rather, they referred to different sources to place the risk level at moderate or moderate/high. The Board referred to the Statistical Information on Recidivism [SIR] scale, which found there to be a "moderate/high" risk of recidivism, and to the A4D, which assessed a "moderate" risk of "violent recidivism". The Appeal Division referred instead to the Correctional Plan from September 27, 2017, when it assessed the risk to be "between moderate and high".

- To be sure, the Court notes that the Board referred to the fact that Mr. Chartrand was guilty of having had two positive urine tests, that the Appeal Division cited the Board in that regard and that it would have been preferable for them to have used a different terminology. That said, the Appeal Division noted that the disciplinary court had not made a determination on the second offence report and counsel for the applicant confirmed that this information was accurate at the time the Appeal Division issued its decision. The poor choice of terminology in this context is not sufficient to render the decision unreasonable.

- The finding that Mr. Chartrand would not be able to apply the progress he had made was based on the observations of the CMT, which noted both his expulsions from the Multi-Target program as well as his having attended Alcoholics Anonymous meetings, the restorative justice program and psychological follow-ups (page 6, 1st paragraph of the decision; page 6, 8 and 11 of the A4D). In addition, contrary to Mr. Chartrand's claims and statement in his affidavit, he attended only 27 out of 92 sessions of the first ICPM high intensity program (page 7 of the Correctional Plan

> from September 27, 2017) and 78 of the 92 sessions of the second program (page 5 of the progress report from July 5, 2017).

[42] The evidence in the record does not support Mr. Chartrand's arguments and the Court cannot conclude that the Appeal Division made erroneous findings based on information that was not accurate, up-to-date and complete, as Mr. Chartrand maintains.

D. *Violation of Procedural Fairness by Failing to Address Grounds for Appeal*

[43] With regard to procedural fairness, the Court normally applies a standard of correctness. However, the Federal Court of Appeal recently addressed the manner in which to approach this issue in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] and *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 (at paras. 11 to 14). According to these decisions, the Court does not apply a standard of review to matters of procedural fairness: rather, it must ask itself whether a fair and just process was followed, focusing on the nature of the rights involved and the consequences for the affected parties (*Canadian Pacific* at para. 54). In this case, the distinction matters little, given that the intervention of the Court is not warranted, even on a standard of correctness.

[44] Indeed, Mr. Chartrand is seeking the intervention of the Court because the Appeal Division failed to address three points, which he described as grounds in his memorandum, to which he referred in the written submissions made to it. However, the Supreme Court confirmed that a "decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" and that "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the

conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16).

[45] In this case, the Court can understand the reasons for the decision, and the omission of the points referred to by the applicant is not fatal.

E. *Violation of Procedural Fairness by Relying on the 2015 Psychological Assessment*

[46] Lastly, section 2.2 of the Policy Manual deals with psychological risk assessments and psychiatric assessments required. Its purpose is to guide Board members with regard to their review of the assessments during the decision-making process.

[47] Section 5 of Policy 2.2 states that a risk assessment is required for temporary absence reviews, pre-release reviews for parole and detention reviews. Section 7 provides that psychological risk assessments are considered to be valid for a two-year period and section 9 provides for situations in which a new assessment is required.

[48] Mr. Chartrand argues that the Board and its Appeal Division based their risk assessment on the 2015 psychological risk assessment or on documents that cite it verbatim. This assessment would be invalid, given that it dated back to 2015 and the Appeal Division's decision would therefore be fatally flawed.

[49] At the hearing, the applicant's counsel added (1) that statutory release is covered by section 5 of Policy 2.2 of the Policy Manual, despite the fact that it is not mentioned in that section, and that a psychological risk assessment was therefore required in Mr. Chartrand's case; and (2) that a new psychological assessment ought to have been obtained in accordance with section 9.

[50] Unfortunately, the psychological assessment from 2015 is not in the Court record. The parties nonetheless confirmed that the only information in it that would be relevant to this case is that cited in the A4D, that is to say, that [TRANSLATION] "the level of violent recidivism is assessed at moderate in the short, medium and long term". The parties also confirmed the accuracy of this quote.

[51] The Court was not convinced that Policy 2.2 of the Policy Manual would apply here, given the wording in its section 5, or that a new assessment was required. Unfortunately, the applicant failed to adduce any decision in support of his late arguments in this regard.

[52] Moreover, it is clear that neither the Board, nor the Appeal Division based their risk assessment exclusively on the 2015 assessment.

[53] In fact, the Board referred to the SIR and added further relevant information in determining that the risk remained an issue (page 7, 5th paragraph of the Board's decision). The Appeal Division specifically mentioned that the 2015 assessment was more than two years old

and referred instead to the Correctional Plan dated September 27, 2017, in determining that the risk of reoffending was moderate to high.

[54] The evidence in the record does not support Mr. Chartrand's argument and the Court shall not intervene.

JUDGMENT in Docket T-581-18

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. Costs are awarded in favour of the respondent.

"Martine St-Louis"
Judge

Certified true translation
This 7th day of January, 2019.

Sebastian Desbarats, BA, Specialization in translation (French-English)

APPENDIX

***Corrections and Conditional Release Act* (SC 1992, c 20)**	***Loi sur le système correctionnel et la mise en liberté sous condition* (LC 1992, ch 20)**
Accuracy, etc., of information	**Exactitude des renseignements**
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.
Purpose of conditional release	**Objet**
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.	**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.
Paramount consideration	**Critère prépondérant**
100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.	**100.1** Dans tous les cas, la protection de la société est le critère prépondérant appliqué par la Commission et les commissions provinciales.
Principles guiding parole boards	**Principes**
101 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:	**101** La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes suivants :
(a) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional	**a)** elles doivent tenir compte de toute l'information pertinente dont elles disposent, notamment les motifs et les recommandations du juge qui a infligé la peine, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine et ceux qui ont été obtenus des victimes, des délinquants ou d'autres éléments du système de justice pénale,

authorities;

y compris les évaluations fournies par les autorités correctionnelles;

Statutory Release

Libération d'office

Entitlement

Droit du délinquant

127 (1) Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law.

127 (1) Sous réserve des autres dispositions de la présente loi, l'individu condamné ou transféré au pénitencier a le droit d'être mis en liberté à la date fixée conformément au présent article et de le demeurer jusqu'à l'expiration légale de sa peine.

Sentence for past offences

Date de libération d'office

(2) Subject to this section, the statutory release date of an offender sentenced before November 1, 1992 to imprisonment […]

(2) Sous réserve des autres dispositions du présent article, la date de libération d'office d'un individu condamné à une peine d'emprisonnement avant le 1er novembre 1992 […]

Sentence for future offences

Idem

(3) Subject to this section, the statutory release date of an offender sentenced on or after November 1, 1992 to imprisonment for one or more offences is the day on which the offender completes two thirds of the sentence.

(3) La date de libération d'office d'un individu condamné à une peine d'emprisonnement le 1er novembre 1992 ou par la suite est, sous réserve des autres dispositions du présent article, celle où il a purgé les deux tiers de sa peine.

Conditions of Release

Conditions de la mise en liberté

Conditions set by releasing authority

Conditions particulières

133 (3) The releasing authority may impose any conditions on the parole, statutory release or unescorted temporary absence of an offender that it considers reasonable and necessary in order to protect society and to facilitate the offender's successful reintegration into society. For greater certainty, the conditions may include any condition regarding the offender's use of drugs or alcohol, including in cases when that use has been identified as a risk factor in the offender's criminal behaviour.

133 (3) L'autorité compétente peut imposer au délinquant qui bénéficie d'une libération conditionnelle ou d'office ou d'une permission de sortir sans escorte les conditions qu'elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant. Il est entendu que les conditions peuvent porter sur la consommation de drogues ou d'alcool par le délinquant, notamment lorsqu'il a été établi qu'elle est un facteur de risque dans le comportement criminel du délinquant.

Residence requirement

(4) Where, in the opinion of the releasing authority, the circumstances of the case so justify, the releasing authority may require an offender, as a condition of parole or unescorted temporary absence, to reside in a community-based residential facility.

Assignation à résidence

(4) Si elle estime que les circonstances le justifient, l'autorité compétente peut ordonner que le délinquant, à titre de condition de sa libération conditionnelle ou d'une permission de sortir sans escorte, demeure dans un établissement résidentiel communautaire.

Residence requirement

(4.1) In order to facilitate the successful reintegration into society of an offender, the releasing authority may, as a condition of statutory release, require that the offender reside in a community-based residential facility or a psychiatric facility if the releasing authority is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by committing, before the expiration of their sentence according to law, an offence set out in Schedule I or an offence under section 467.11, 467.12 or 467.13 of the Criminal Code.

Assignation à résidence

(4.1) L'autorité compétente peut, pour faciliter la réinsertion sociale du délinquant, ordonner que celui-ci, à titre de condition de sa libération d'office, demeure dans un établissement résidentiel communautaire ou un établissement psychiatrique si elle est convaincue qu'à défaut de cette condition la perpétration par le délinquant de toute infraction visée à l'annexe I ou d'une infraction prévue aux articles 467.11, 467.12 ou 467.13 du Code criminel avant l'expiration légale de sa peine présentera un risque inacceptable pour la société.

Decision-Making Policy Manual for Board Members

2.2 Psychological and Psychiatric Assessments

5. A psychological risk assessment is required for:

a. temporary absences and pre-release parole reviews involving:

i. persistent violence, as demonstrated by three or more offences listed in Schedule I, irrespective of their mode of prosecution, where each conviction led to a custodial sentence of at least six months duration and where the offences occurred on different days;

Manuel des politiques décisionnelles à l'intention des commissaires

2.2 Évaluations psychologiques et psychiatriques

5. Une évaluation psychologique du risque est requise pour:

a. les examens sur les permissions de sortir et les examens prélibératoires de libération conditionnelle lorsqu'un des éléments suivants est présent :

i. violence persistante, dont témoignent trois condamnations ou plus pour des infractions inscrites à l'annexe I, peu importe leur mode de poursuite, qui ont chacune mené à une peine d'au moins six mois d'incarcération et qui ont été commises à des jours différents;

ii. gratuitous violence, as demonstrated by excessive violence beyond that which is "required" to meet an end, or evidence of sadistic behavior or torture;

ii. violence gratuite, dont témoigne le recours à une violence excessive compte tenu de la fin visée, ou signes de comportement sadique ou de torture;

iii. a sexual offence or sexually motivated offence; a history of a sexual offence or sexually motivated offence; an admission of guilt for a sexually motivated offence without conviction; or reliable information that the offender has committed an offence of a sexual nature, whether or not it has resulted in a conviction; and

iii. infraction sexuelle ou infraction commise pour des motifs sexuels; antécédents d'infraction sexuelle ou d'infraction commise pour des motifs sexuels; admission de culpabilité relativement à une infraction commise pour des motifs sexuels n'ayant pas donné lieu à une condamnation; renseignements fiables selon lesquels le délinquant a commis une infraction de nature sexuelle, qu'elle ait ou non donné lieu à une condamnation;

iv. an offender with an indeterminate or life sentence, other than a compassionate escorted temporary absence; and

iv. délinquant condamné à une peine d'une durée indéterminée ou à l'emprisonnement à perpétuité, sauf si l'examen porte sur une permission de sortir avec escorte pour des raisons de compassion.

b. all detention reviews, including initial, annual and biennial reviews and earlier reviews of detention orders.

b. tous les examens de maintien en incarcération, y compris les examens initiaux, les réexamens annuels et bisannuels et les réexamens anticipés des ordonnances de maintien en incarcération.

7. A psychological risk assessment is considered valid for a period of two years.

7. L'évaluation psychologique du risque est considérée comme valide pendant une période de deux ans.

9. A new assessment or an update will be required if the offender has engaged in institutional behaviour which has resulted in charges related to violent behaviour since the completion of the previous assessment.

9. Une nouvelle évaluation ou une mise à jour est nécessaire si le délinquant a eu un comportement en établissement qui a entraîné des accusations relatives à une conduite violente depuis l'évaluation précédente.

5.1 Statutory Release – Residency Condition

5.1 Libération d'office – Assignation à résidence

Decision-Making Criteria and Process

Critères et processus décisionnels

3. Pursuant to subsection Section 133subsection (4.1) of the CCRA, the Board may impose a residency condition in order to facilitate the offender's successful reintegration into society, where the Board is satisfied that in the absence of such a condition, the offender will present an undue risk to society by committing an offence listed in Schedule I or an offence under sections 467.11, 467.12 or 467.13 of the Criminal Code before the expiration of the offender's sentence according to law. The condition must remain in effect for only as long as the Board is satisfied that in the absence of such a condition, the offender will present an undue risk to society as described above.

3. En vertu du paragraphe 133(4.1) de la LSCMLC, la Commission peut imposer une assignation à résidence pour faciliter la réinsertion sociale du délinquant si elle est convaincue qu'à défaut de cette condition la perpétration par le délinquant de toute infraction visée à l'annexe I ou d'une infraction prévue aux articles 467.11, 467.12 ou 467.13 du Code criminel avant l'expiration légale de la peine, présentera un risque inacceptable pour la société. La condition ne doit demeurer en vigueur qu'aussi longtemps que la Commission est convaincue qu'à défaut de cette condition, le délinquant présentera un risque inacceptable pour la société tel que décrit ci-haut.

5. Board members will assess all relevant information to determine whether the offender will present an undue risk to society by committing an offence listed in Schedule I, before the expiration of the offender's sentence according to law, including the following factors:

5. Les commissaires évaluent tous les renseignements pertinents pour déterminer si la perpétration par le délinquant d'une infraction visée à l'annexe I avant l'expiration légale de sa peine présentera un risque inacceptable pour la société, notamment les facteurs suivants :

a. the offender's potential for violent behaviour, as established by:

a. la propension à la violence du délinquant, dont témoignent :

i. previous violent behaviour as documented in the offence history such as police reports, provincial records, young offender records accessible under the Youth Criminal Justice Act and documentation from any correctional authorities;

i. tout comportement violent antérieur consigné dans des documents faisant état des antécédents du délinquant en matière d'infractions, tels que les rapports de la police, les dossiers provinciaux, les dossiers de jeune contrevenant accessibles en vertu de la Loi sur le système de justice pénale pour les adolescents et la documentation provenant de toute autorité correctionnelle;

ii. the seriousness of previous offences;

ii. la gravité des infractions antérieures;

iii. information that the offender has difficulty controlling anger or impulsive behaviour;

iii. des renseignements montrant que le délinquant a de la difficulté à maîtriser sa colère ou son impulsivité;

iv. information concerning threats of violence;

v. the use of a weapon during the commission of an offence; or

vi. an attitude of indifference to the criminal behaviour and its impact on the victim(s).

iv. des renseignements signalant qu'il a proféré des menaces de violence;

v. l'utilisation d'une arme lors de la perpétration d'une infraction;

vi. l'indifférence du délinquant à l'égard de son comportement criminel et de ses répercussions sur la ou les victimes.

b. stressors/factors in the release environment which may be predictive of violent behaviour and the offender's needs in relation to these factors;

b. les agents de stress et autres facteurs auxquels le délinquant sera soumis une fois en liberté et qui pourraient être une source de comportement violent, et les besoins du délinquant par rapport à ces facteurs;

c. psychiatric or psychological information that a mental illness or disorder has the potential to lead to the commission of an offence involving violence;

c. les renseignements contenus dans les rapports psychiatriques ou psychologiques révélant l'existence d'une maladie mentale ou d'un déséquilibre mental qui pourrait donner lieu à la perpétration d'une infraction accompagnée de violence;

d. information concerning any attempts by the offender to reduce/mitigate the possibility of future violent behaviour; and

d. les renseignements concernant les efforts déployés par le délinquant pour atténuer les risques de comportement violent;

e. information that the offender is or will be participating in treatment and/or interventions appropriate to the prevention of violence and observable, and measureable gains derived from them.

e. les renseignements concernant le fait que le délinquant suit ou suivra un traitement et/ou un programme visant à prévenir la violence, et les changements observables et mesurables qui y sont attribuables.

FEDERAL COURT

SOLICITORS OF RECORD

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