Date: 20070118

Docket: T-639-05

Citation: 2007 FC 52

Ottawa, Ontario, January 18, 2007

PRESENT: THE HONOURABLE MR. JUSTICE HARRINGTON

BETWEEN:

GAÉTAN PLANTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] In 1982, Gaétan Plante entered a restaurant bar and threatened the waitress at gunpoint. He was subsequently convicted of armed robbery and sentenced to a term of imprisonment of less than two years. He has been released a number of times since then and his sentence has been increased continually for new offences committed in 1983, 1991, 1992 and 1997. Mr. Plante submits that he should be on parole until his warrant expires June 3, 2007, but the National Parole Board (the Board) holds a different view.

[2] The present application for judicial review relates to his detention. It should be noted that inmates rarely serve out the entirety of their sentences, primarily because the Board can grant conditional release when it believes that the offender does not present an undue risk to society and that releasing him will contribute to the protection of society by facilitating his reintegration therein, as stated in section 102 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the Act).

[3] However, this is a case not of conditional, but rather of statutory release. In accordance with section 127 of the Act, an offender is entitled to be released after having served two thirds of his sentence. Nevertheless, under an exception provided in the Act, the Board may order that an inmate will remain in detention and serve his sentence in full. Mr. Plante is currently under such an order. He appealed this order unsuccessfully to the Appeal Division of the Board. In this case, he is seeking judicial review of the Appeal Division's decision dated December 11, 2003.

[4] The substance of Mr. Plante's application is that the Board did not have jurisdiction to order that he remain in detention on November 12, 2003 and that he did not have an opportunity to defend his case before the Board, including an opportunity to offer new evidence. Before addressing the facts and issues of this application, it would be useful to review the underlying principles of statutory release.

Offender's right to release

[5] When offenders are eligible for statutory release under the following provision of the Act, the Board does not have the same discretion as it does in the case of conditional release to decide whether or not to release them:

STATUTORY RELEASE Entitlement	LIBÉRATION D'OFFICE 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.

Statutory release is a right granted by statute upon a federal offender once he has served two thirds of his sentence, even if conditional release has never been granted to him in the past.

[6] In short, statutory release is a right, not a privilege. The only grounds warranting the Board's interference are the issuance of parole conditions, revocation of statutory release for non-compliance with imposed conditions, and issuance of a detention order where circumstances require it. Needless to say, it would hardly be desirable for a right of the nature of statutory release to be granted to offenders without regard to their criminal record or to their overall conduct upon release. The public interest is at stake. Therefore, a comprehensive system of exceptions is provided for in the Act under sections 129 *et seq*. Prior to the Act being passed, that is from 1985 to 1992,

these exceptions were provided for in sections 21.2 *et seq.* of the *Parole Act*, R.S.C. 1970, c. P-2 (the PA).

[7] The following excerpt of the Act is the crux of the present application for judicial review:

Detention during period of statutory release	Maintien en incarcération au cours de la période prévue pour la libération d'office
Review of cases by service	Examen de certains cas par le Service
129. (1) Before the statutory release date of an offender who is serving a sentence of two years or more that includes a sentence imposed for an offence set out in Schedule I or II or an offence set out in Schedule I or II that is punishable under section 130 of the *National Defence Act*, the Commissioner shall cause the offender's case to be reviewed by the Service.	129. (1) Le commissaire fait étudier par le Service, préalablement à la date prévue pour la libération d'office, le cas de tout délinquant dont la peine d'emprisonnement d'au moins deux ans comprend une peine infligée pour une infraction visée à l'annexe I ou II ou mentionnée à l'une ou l'autre de celles-ci et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*.
Referral of certain cases to Board	Renvoi à la Commission
(2) After the review of the case of an offender pursuant to subsection (1), and not later than six months before the statutory release date, the Service shall refer the case to the Board together with all the information that, in its opinion, is relevant to it, where the Service is of the opinion	(2) Au plus tard six mois avant la date prévue pour la libération d'office, le Service défère le cas à la Commission — et lui transmet tous les renseignements en sa possession et qui, à son avis, sont pertinents — s'il estime que :
	a) dans le cas où l'infraction commise

(*a*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, that	relève de l'annexe I :
(i) the commission of the offence caused the death of or serious harm to another person and there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law, or	(i) soit elle a causé la mort ou un dommage grave à une autre personne et il existe des motifs raisonnables de croire que le délinquant commettra, avant l'expiration légale de sa peine, une telle infraction,

[8] As in the case at bar, according to subparagraph 129(2)(a)(i) of the Act, before the Board can rule on the merits of keeping the offender in custody during the period normally provided for his statutory release, where one of his offences is listed in Schedule I of the Act, the Correctional Service of Canada (the CSC) must first form an opinion six months before the offender's statutory release date as to whether this scheduled offence "caused the death of or serious harm to another person" and, additionally, whether there are "reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law."

[9] Thus, it is only once the CSC has decided that the offender's case meets these statutory requirements can the Board review the case, and even then, only after determining whether the CSC's opinion that the matter ought to be referred to Board was appropriate and had a rational

basis. At that point, the Board can address the actual issue before it, namely, whether or not to order the detention of the offender, depending on whether or not it is satisfied that the offender will commit, before the expiration of his sentence according to law "an offence causing death or serious harm to another person." Paragraph 130(3)(a) of the Act states as follows:

Decision of Board	Ordonnance de la Commission
130(3) On completion of the review of the case of an offender referred to in subsection (1), the Board may order that the offender not be released from imprisonment before the expiration of the offender's sentence according to law, except as provided by subsection (5), where the Board is satisfied	130 (3) Au terme de l'examen, la Commission peut, par ordonnance, interdire la mise en liberté du délinquant avant l'expiration légale de sa peine autrement qu'en conformité avec le paragraphe (5) si elle est convaincue :
(*a*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, or for an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit an offence causing the death of or serious harm to another person or a sexual offence involving a child before the expiration of the offender's sentence according to law,	*a*) dans le cas où la peine d'emprisonnement comprend une peine infligée pour une infraction visée à l'annexe I, ou qui y est mentionnée et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*, que le délinquant commettra, s'il est mis en liberté avant l'expiration légale de sa peine, soit une infraction causant la mort ou un dommage grave à une autre personne, soit une infraction d'ordre sexuel à l'égard d'un enfant;

Origins of this application for judicial review

[10] Mr. Plante has been serving an aggregate sentence of 23 years, 11 months and 26 days since December 19, 1982. As a result of several amendments to the PA and its repeal following the passage of the Act in 1992, Mr. Plante has been eligible for statutory release under section 127 of the Act since April 24, 2002.

[11] However, under section 129 of the Act, if the offender is serving a sentence of imprisonment of two years or more that includes a sentence imposed for an offence specifically set out in the Act, before releasing the offender, the Commissioner must ensure that the CSC reviews the offender's case. Then, depending on the results of the investigation, the case may be referred to the Board for a ruling on the keeping in detention of the offender. The second referral procedure involves the CSC Commissioner referring the case to the Chairperson of the Board, but that was not the procedure followed in the case at bar.

[12] As mentioned above, Mr. Plante's case was referred to the Board pursuant to subparagraph 129(2)(a)(i) of the Act. While the applicant's initial sentence of imprisonment for armed robbery was less than two years, he was sentenced to additional terms over the course of his incarceration. Indeed, in accordance with subsection 139(1) of the Act, Mr. Plante is deemed to have been sentenced to one sentence commencing at the beginning of the first of the sentences to be served and ending on the expiration of the last of them to be served.

[13] In this case, if the CSC is of the opinion that the initial offence committed by the applicant in 1982 caused serious harm to another person and that it has reasonable grounds to believe that he will commit another such offence before the expiration of his sentence according to law, it must refer the case to the Board. The Act provides for other procedures for referring a case to the Board, but they are not relevant for the purposes of this application.

[14] Under section 130 of the Act, the Board was required to inform Mr. Plante that his case had been referred to it and review the case, making all such inquires in connection with that review as it deemed necessary. Until the Board had rendered its decision, Mr. Plante was not entitled to be released on statutory release, as stipulated in subsection 130(2) of the Act.

[15] When carrying out this review to determine whether to issue a detention order, the Board must consider all relevant factors, several of which are enumerated in subsection 132(1) of the Act, in order to assess the likelihood that the offender will commit, before the expiration of his sentence according to law, an offence causing the death of or serious harm to another person. In this case, the Board was satisfied that Mr. Plante, if released on statutory release, would commit an offence likely to cause serious harm to another person.

[16] In the case at bar, Mr. Plante, who has been representing himself right up to the hearing of the present application, brought to light a large number of facts and issues that proved irrelevant in view of the real nature of the case. Here are the facts that are definitely relevant.

[17] Mr. Plante was already granted statutory release in the past, which indicates that CSC officials were of the opinion at one time that Mr. Plante had not caused serious psychological harm to the waitress in the restaurant bar when he committed the robbery in April 1982.

[18] When reviewing Mr. Plante's case in the lead-up to his current statutory release date, the CSC officials changed their mind and found that Mr. Plante had in fact caused serious psychological harm to the waitress at the time of the events in 1982. It should be pointed out that, before referring Mr. Plante's case to the Board for review, the CSC did not interview Mr. Plante.

[19] On receiving the referral of Mr. Plante's case, the Regional Vice-Chairperson of the Board wrote the following memorandum to the attention of "File": [TRANSLATION] After reviewing all of the relevant information, I find that the referral was made in accordance with the Act." This was an *ex parte* decision in that Mr. Plante was not consulted during the process leading to the referral of his case by the CSC to the Board.

[20] To date, Mr. Plante has strenuously objected to the fact that his case was referred to the Board. He is of the view that the Board did not have jurisdiction to review his case as it did because the offence committed in the restaurant bar had not actually caused serious harm to another person, and as such, the referral was unlawful. Accordingly, for the purpose of demonstrating that no serious psychological harm had been caused, Mr. Plante hired a private detective to question the waitress about the impact the events of 1982 had on her. The Board's response to Mr. Plante was that it had no responsibility in connection with the legal requirement for the commission of an

offence causing serious harm. In the opinion of the Board, having determined that the CSC's referral was reasonable, the Board's role was then confined to reviewing Mr. Plante's case pursuant to subsection 130(3) of the Act. Subsequently, it did not have to determine in its review whether the sentence served by Mr. Plante included an offence that caused death or serious harm. This was repeated in a letter from the Board addressed to Mr. Plante reiterating the fact that it was the CSC's responsibility to determine whether serious harm had been caused at the time of the initial offence.

[21] Mr. Plante then challenged the CSC, again with the same objective, namely, to have the referral of his case to the Board reversed. The CSC refused, being of the opinion that the results of Mr. Plante's private investigation offered nothing new in terms of the harm suffered by the victim of the 1982 offence.

[22] Mr. Plante did not attend the Board hearing: [TRANSLATION] "You refused to participate in the hearing, but stated that it was not a refusal. […] The Board was informed that you did not request the services of an assistant and that no observer applied to attend the hearing."

[23] It is important to emphasize that the Board's decision to order detention is subject to review on an annual basis, but the issue raised by this application is not moot because Mr. Plante has clearly demonstrated his intention to initiate a court action against what he is alleging to be an unlawful detention. It is important to recall that, before bringing an action in damages against a decision of a federal board or tribunal, a party must first apply for judicial review of that decision (*Canada v. Grenier,* 2005 FCA 348).

Issues

[24] I wish to make it clear at the outset that this judicial review application does not concern the validity of the reasons given by the CSC, the Board or the Appeal Division of the Board with respect to the likelihood that Mr. Plante would cause the death of or serious harm to another person if he were released prior to the expiration of his sentence according to law. Regardless of the proper standard of judicial review to be applied such circumstances, the opinions to the effect that Mr. Plante would indeed commit such an offence in the future are reasonable.

[25] In my view, the relevant questions before me, and their answers, are as follows.

[26] Did the Board have jurisdiction to accept the CSC referral on the basis that the offender had caused serious psychological harm to the waitress? The answer is in the affirmative.

[27] Did Mr. Plante have the right to make representations to the Board and to offer new evidence to demonstrate that he had not caused serious psychological harm at the time of the 1982 events? The answer is in the affirmative.

[28] Was Mr. Plante afforded a reasonable opportunity to exercise that right? The answer is in the negative.

[29] If he had been afforded such an opportunity, would that have made a difference to the outcome of the case? The answer to that question is not obvious. As the rules of fundamental justice were breached in this case—even acknowledging that compliance therewith might not have changed anything—the application for judicial review must be allowed.

[30] What is the applicable standard of review? This application does not require any such determination, since it concerns the rules of natural justice: issues involving the rules of natural justice, and procedural fairness, for that matter, are reviewable on the basis of correctness (*Sweet v. Canada (Attorney General)*, 2005 FCA 51).

[31] As for the decisions of the Board's Appeal Division, however, the applicable standard is patent unreasonableness, unless the question raised is one of law, in which case the correctness standard would apply. I rely here on the analysis done by my colleague Madam Justice Tremblay-Lamer in *Costiuc v. Canada (Attorney General)*, [1999] F.C.J. no. 241 (QL) and on that of Mr. Justice Décary of the Federal Court of Appeal in *Cartier v. Canada (Attorney General)* (2002), 300 N.R. 362 :

> [6] The Appeal Division's function is to ensure that the NPB has complied with the Act and its policies and has observed the rules of natural justice and that its decisions are based on relevant and reliable information. It is only where its findings are manifestly unreasonable that the intervention of this Court is warranted.
>
> *Costiuc v. Canada (Attorney General)*, *supra*

> [9] I feel that, though awkwardly, Parliament in s. 147(5)(*a*) [of the Act] was only ensuring that the Appeal Division would at all times be guided

by the standard of reasonableness.

Cartier v. Canada (Attorney General), *supra*

Analysis

[32] Although the legislation concerning the issue of continued detention has been revisited and corrected somewhat since, I am of the view that the decision of the Honourable Associate Chief Justice Jerome (as he then was) in *Bradford v. Correctional Service of Canada* (1988), 24 F.T.R. 179, is still opposite. When Mr. Plante committed his initial offence, the provisions of the PA (now repealed and replaced by the Act) relating to the commission of serious harm used the phrase *tort considérable* instead of *dommage grave* in the French version. Then, as now, the CSC could not refer a case like this one to the Board unless it considered that the offence in question caused the death of or serious harm to another person.

[33] In *Bradford,* Jerome A.C.J. noted that there was no obligation for the CSC to discuss the referral of a case with the offender before proceeding, although such a practice is on occasion observed informally. In this case, there were no submissions made by Mr. Plante before his case was referred to the Board.

[1] The Board reasoned that its role with respect to the serious-harm issue was to determine whether the CSC's reasons in support of its assertion were rational. In *Bradford*, Jerome A.C.J. agreed that the Board could not exercise its jurisdiction without first having determined whether the CSC had a rational basis for its referral. I am of the view that the Board's decision to the effect that

the CSC had a rational basis for referring Mr. Plante's case because serious harm had been caused was reasonable.

[2] However, Jerome A.C.J. found that the offender should have the opportunity to make submissions on his own behalf, since the Board must consider the seriousness of the offence in question when conducting its detention review. The relevant factors in the Act are as follows:

Relevant factors in detention reviews	Facteurs − cas général
132. (1) For the purposes of the review and determination of the case of an offender pursuant to section 129, 130 or 131, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is relevant in determining the likelihood of the commission of an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law, including	132. (1) Le Service et le commissaire, dans le cadre des examens et renvois prévus à l'article 129, ainsi que la Commission, pour décider de l'ordonnance à rendre en vertu de l'article 130 ou 131, prennent en compte tous les facteurs utiles pour évaluer le risque que le délinquant commette, avant l'expiration légale de sa peine, une infraction de nature à causer la mort ou un dommage grave à une autre personne, notamment :
(*a*) a pattern of persistent violent behaviour established on the basis of any evidence, in particular,	*a*) un comportement violent persistant, attesté par divers éléments, en particulier :
(i) the number of offences committed by the offender causing physical or psychological harm,	(i) le nombre d'infractions antérieures ayant causé un dommage corporel ou moral,
(ii) the seriousness of the offence for which	(ii) la gravité de l'infraction pour

the sentence is being served,

(iii) reliable information demonstrating that the offender has had difficulties controlling violent or sexual impulses to the point of endangering the safety of any other person,

(iv) the use of a weapon in the commission of any offence by the offender,

(v) explicit threats of violence made by the offender,

(vi) behaviour of a brutal nature associated with the commission of any offence by the offender, and

(vii) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;

(*b*) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;

(*c*) reliable information compelling the conclusion

laquelle le délinquant purge une peine d'emprisonnement,

(iii) l'existence de renseignements sûrs établissant que le délinquant a eu des difficultés à maîtriser ses impulsions violentes ou sexuelles au point de mettre en danger la sécurité d'autrui,

(iv) l'utilisation d'armes lors de la perpétration des infractions,

(v) les menaces explicites de recours à la violence,

(vi) le degré de brutalité dans la perpétration des infractions,

(vii) un degré élevé d'indifférence quant aux conséquences de ses actes sur autrui;

b) les rapports de médecins, de psychiatres ou de psychologues indiquant que, par suite d'une maladie physique ou mentale ou de troubles mentaux, il présente un tel risque;

c) l'existence de renseignements sûrs

that the offender is planning to commit an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law; and	obligeant à conclure qu'il projette de commettre, avant l'expiration légale de sa peine, une infraction de nature à causer la mort ou un dommage grave à une autre personne;
(*d*) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.	*d*) l'existence de programmes de surveillance de nature à protéger suffisamment le public contre le risque que présenterait le délinquant jusqu'à l'expiration légale de sa peine.

Jerome A.C.J. added at paragraph 14 of *Bradford*, *supra*: "It is apparent from the above that the nature of the inmate's crime will be examined in detail during the course of a detention hearing. It is therefore entirely open to the inmate to make submissions on that subject and to challenge any characterization of the crime as serious or harm-causing." Furthermore, he wrote at paragraph 15 that the referral of a case by the CSC "[…] does not finally determine any matter relating to the rights of the inmate."

[36] In the instant case, the Board clearly stated prior to Mr. Plante's hearing that the issue of whether serious harm was caused to the waitress in 1982 was closed. The Board noted that it was not the proper forum for discussing the reasonableness of the referral and that, therefore, new evidence in that regard was irrelevant. The Board informed Mr. Plante, however, that it was up to the CSC to determine whether or not it was opportune, in light of the new information, to withdraw the referral; so Mr. Plante returned to the CSC, which refused to withdraw its referral.

[37] What troubles me is that I consider the decision of the CSC not to withdraw the referral on the basis of the submitted investigation findings to be reasonable. All that can be said in Mr. Plante's favour is that the results of his inquiries from 2002 indicate that, despite the fact that the waitress was traumatized for almost five years following the events of 1982, she is no longer traumatized now. That information, however, does not in any way conflict with the police report on the psychological trauma suffered by the waitress, considering, among other things, the fact that she had to quit her job as a result of the robbery committed against her. The investigations did not yield any new information likely to lead the CSC to modify its preliminary decision to refer Mr. Plante's case to the Board. One fact remains: the Board's review process allows it to carry out any inquiries it deems appropriate in the circumstances, and in accordance with section 147 of the Act, Mr. Plante was entitled to appeal the Board's decision:

Right of appeal	Droit d'appel
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,	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

(*d*) based its decision on erroneous or incomplete information; or	151(2) ou ne les a pas appliquées;
	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.

[38] As Mr. Justice Binnie wrote in paragraph 102 of *CUPE v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539:

> The content of procedural fairness goes to the manner in which the Minister went about making his decision, whereas the standard of review is applied to the end product of his deliberations.

[39] I find that Mr. Plante was given an opportunity to be heard by the decision-making body whose duty it was to rule on his detention, namely, the Board.

[40] As Mr. Justice Le Dain wrote in paragraph 23 of *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 :

> [(…)]I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[41] There are circumstances in which the Court will not grant relief even where the rules of natural justice have been infringed. The commercial law decision *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202 is an example of such a case: the Supreme Court held that the facts were exceptional and that, ultimately, no other decision could have been rendered in the circumstances. In fact, it was a case involving specific questions of law that could lead to one answer only. That is not the case here, since the question around the legal requirement for an offence causing serious physical or emotional harm is a mixed question of law and fact.

[42] In the case at bar, it was warranted for the Board to exercise its jurisdiction considering that there was a rational basis for the CSC's referral in that Mr. Plante had caused serious psychological harm to one of the victims of the 1982 events. When Mr. Plante wanted to make his submissions challenging the assertion that he had caused serious psychological harm and when he wanted to adduce new evidence in that regard, the Board, which has the authority to set its own procedure, was free to invite Mr. Plante to come before it and make his arguments in an attempt to dissuade the CSC from proceeding with the referral it had initiated. However, the Board demurred.

[43] As a result, what remedy did Mr. Plante have? Following *Bradford*, *supra,* rather than proceed by way of judicial review, the appropriate remedy was to make his arguments directly before the Board. It should be noted that the various decisions taken to date in this case all form part of the same decision-making process (*Condo v. Canada (Attorney General)*, 2004 FC 991). The Board is a specialized tribunal and, as such, was in a better position to assess Mr. Plante's defence.

As the Supreme Court held in *Nova Scotia (Workers' Compensation Board) v. Martin et al.*, [2003] 2 S.C.R. 504 at paragraph 56, it is desirable for courts to benefit from a full record established by a specialized tribunal.

[44] In closing, I will repeat that the initial offence of robbery is not the only offence for which Mr. Plante is currently serving a sentence of imprisonment. In the review that led it to rule as it did, the Board rightly considered some of Mr. Plante's other offences. Under subparagraph 129(2)(a)(i) of the Act, if the CSC had found that no serious harm resulted from the events of 1982, it would then have been necessary for it to consider the other offences committed by Mr. Plante to determine whether or not they caused the death of or serious harm to another person. This a criterion of the offence that must be met. And let us not forget as well that, pursuant to subsection 129(3) of the Act, the offender's case may be referred by the CSC Commissioner to the Board Chairperson regardless of whether or not the offence that was committed caused the death of or serious harm to another person.

[45] What needs to be remembered is that the referral process provided for in sections 129 *et seq.* of the Act, with respect to statutory release, is a system of exceptions directed by one single objective: the protection of the public.

ORDER

THE COURT ORDERS that the application for judicial review be allowed with costs. The matter is referred back to the National Parole Board for reconsideration on the basis of the reasons above. Any request for information and any consideration of any matter relating to the referral of cases shall be confined to the question of "the commission of an offence causing serious harm to another person."

"Sean Harrington"

Judge

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

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