Federal Court  Cour fédérale

**Date: 20121102**

**Docket: T-1228-11**

**Citation: 2012 FC 1289**

**Ottawa, Ontario, November 2, 2012**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**SHAUN ROOTENBERG**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant seeks judicial review of the National Parole Board Appeal Division's (the "Appeal Division") confirmation of a parole revocation decision made by the National Parole Board (the "Board") pursuant to paragraph 107(1)(b) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*]. The Applicant essentially submits that both the Board and the Appeal Division misconstrued his parole condition and the evidence, and failed to provide adequate reasons for the decision to revoke his day parole. For the reasons that follow, I have come to the conclusion that the application ought to be dismissed.

**BACKGROUND**

[2] On May 29, 2005, the Applicant was sentenced to 3 years and 6 months imprisonment for three counts of fraud over $5,000 and two counts of failure to comply with recognizance. He was held in custody at the Beaver Creek minimum security institution in Gravenhurst, Ontario.

[3] As a first time offender serving a sentence for a non-violent crime, the Applicant's case was reviewed by the Board on October 20, 2009, for accelerated parole release pursuant to what was then section 126 (now repealed) of the *CCRA*. The Board decided he should be released on day parole subject to the following condition of release (the "employment condition"):

> You are not to be employed, paid or unpaid, in a position which provides you with access to the financial records of others or puts you in a position of knowledge, or responsibility, for the management of finances for any other person, business or charity.
>
> Applicant's Application Record, Tab 3, Exhibit "A", p 15.

[4] As a result, the Applicant was released on December 13, 2009, to the St. Leonard's House (Peel) on day parole.

[5] In February 2010, the Applicant accepted a job offer with a company named D-Bor without the approval of his parole officer. This company was in the business of recruiting athletes, connecting them with sports agents, offering them lucrative endorsement contracts, and advertising. After discussion with his employer, the Applicant's supervision team permitted him to continue his employment, with the understanding that the job was an information technology position. During the first supervision appointment, the Applicant informed his parole officer about the possibility of traveling for business. At the second supervision appointment, the Applicant revealed that he had

been negotiating with Apple for the supply of computers, iPods and iPads, but assured his parole officer that he had no involvement in financial transactions. Regardless, the parole officer raised concerns that the Applicant was in danger of stepping into the area of finances, contrary to his employment condition.

[6] Subsequently, the parole officer approved a business trip to London for the Applicant to meet a young golfer. This trip was approved on the premise that the Applicant was the only one available for this appointment and, as an avid golfer, would be able to assess the golfer's skills and future prospects with the company.

[7] A short while later, the Applicant requested another permit, this time for travel to Vancouver. Initially, the Applicant had planned to leave on April 12, 2010, and to return on April 14, 2010. These travel arrangements changed a number of times. Ultimately, his parole officer believed that the Applicant had decided to shorten his trip to Vancouver to depart on April 13, 2010, but had yet to approve the plan. While the travelling dates were still unresolved, the Applicant presented himself at the 21 Division Peel Regional Police in an attempt to switch his appointed reporting date and time from April 14, 2010 to April 15, 2010 to accommodate his travel plans. During the course of the conversation, the police officer came to believe that the Applicant had breached his employment condition and obtained access to and acquired knowledge of the financial information of another person, namely information about the golfer and his father. He further suspected that the Applicant's employer, Mr. Wells Davis, may have become a victim of fraud. The police opened an investigation.

[8] The investigation was inconclusive as the police were unable to contact the golfer or his father. After an interview with the Applicant's employer, the investigating officer was also satisfied that the employer had not been defrauded and, as such, no charges were laid against the Applicant. Nevertheless, the police found that Mr. Davis was not fully aware of the Applicant's criminal history and had entrusted the Applicant with the sole responsibility of running the company – apart from any actual financial transactions – as Mr. Davis had rather limited business acumen and was employed on a full-time basis elsewhere. On May 10, 2010, on the basis of the police investigation, the Applicant's area parole officer recommended that his parole be revoked.

[9] On July 28, 2010, the Board conducted a hearing and decided to revoke the Applicant's parole on the same day. The Board concluded:

> … there are significant discrepancies between your [the Applicant's] version of events and the information provided by your supervision team. After careful consideration of all of the file information and the interview with you today, the Board is satisfied that you not only breached your employment condition as outlined above, but also, you were deceptive and manipulative by providing a less than truthful description of the scope of your employment duties and your activities to your supervision team. The Board accepts your case management team's statements about the permission given for you to accept only an IT position with the company. Your assertion that your case management team was fully aware of your employment activities is not consistent with your parole officer's expressed concerns about your negotiations with Apple and her reservations about giving you permission to go to London to play golf with a prospective client of the company. Your criminal history involves convictions for fraud and failures to abide by release conditions. The deception evident in your interactions with your case management team is similar to the behaviour involved in your criminal activities. Having found that you breached your employment condition and were deceptive and manipulative with your case management team, the Board has concluded that risk is not manageable for community release. Therefore, your day parole is revoked. …

> Applicant's Application Record, Tab 3, Exhibit "D", Board Post Release Decision Sheet, p 130.

[10] On September 27, 2010, the Applicant appealed the Board's decision. On March 4, 2011, the Appeal Division considered the Applicant's appeal and affirmed the revocation decision.

**THE IMPUGNED DECISION**

[11] The Appeal Division first addressed the Applicant's argument that the Board acted unfairly as it disclosed only one day prior to the hearing, a copy of the police summary of the April 12, 2010 video-taped statement, and then refused to postpone the hearing to give him a sufficient opportunity to prepare, contrary to subsection 141(3) of the *CCRA*. The Appeal Division noted that the Board itself had received the police summary on the morning of the hearing and advised the Applicant accordingly. In those circumstances, the document was shared with the Applicant "as soon as practicable", as mandated by subsection 141(2) of the *CCRA*. As for the argument that the Applicant had not waived his right to receive information 15 days in advance of his hearing, the Appeal Division rejected it since subsection 141(3) refers back to subsection 141(1) and is limited to a situation where an offender has waived the sharing timeframe, which is not the Applicant's situation.

[12] Relying on the audio-recording of the hearing, the Appeal Division further remarked that neither the Applicant nor his counsel requested a postponement of the hearing. In fact, counsel for the Applicant specifically stated that it was not in the Applicant's interest to postpone the hearing. She simply suggested that the Board consider an adjournment at the end of the hearing to obtain the full text of the Applicant's video-taped statement to the police, which the Board declined to do.

[13] The Appeal Division summed up its decision with respect to the fairness of the hearing before the Board in the following paragraph of its reasons:

> In light of the above facts, the Appeal Division is satisfied that the Board acted fairly. You did not request a postponement. In fact, your legal assistant stated that you wished to proceed. She also suggested the option of an adjournment at the end of the hearing if the Board felt it was necessary in order to obtain further information. The audio-recording reveals that you were given a full opportunity to respond to the information contained in the Police Summary. You were well aware of the information and were able to place your video-taped statements in context. Moreover, after the Board had finished questioning you on the Police Summary, it confirmed with you that you had been given the opportunity to appropriately respond to the issues raised in that document. In our view, the Board respected the duty to act fairly.
>
> Applicant's Application Record, Tab 3, Exhibit "F", National Parole Board Appeal Division Decision, pp 144-145.

[14] The Appeal Division then dealt with the Applicant's contention that the Board had misunderstood and misinterpreted the exact nature of the employment condition, basing its decision on erroneous and incomplete information. In its decision, the Board had reformulated the employment condition as follows: "You are not to be employed, paid or unpaid, in a position which puts you in a position of knowledge of finances for any other person." According to the Applicant, this is considerably broader than the condition imposed upon him at the time of his release, according to which he was not to be employed in a position that would put him in a position of knowledge or responsibility for the management of finances for any other person, business or charity. The Appeal Division rejected that argument, and opined that the Board was fully aware of the nature of the Applicant's condition for release. In the Appeal Division's view, the incomplete reference by the Board to the employment-related special condition must be read in the context of

its previous finding that the Applicant had breached his condition of release by obtaining knowledge of the finances of the golfer and his father.

[15] Finally, the Appeal Division did not agree that the Board based its decision on information of questionable accuracy and reliability. The Appeal Division found that the Board had asked fair and pertinent questions regarding the Applicant's behaviour since his release on day parole, had further clarified the file information with his two Parole Officers, and had provided the Applicant with a full opportunity to respond to and rebut any file information that he believed was inaccurate or erroneous. In weighing the information gathered at the hearing, the Board decided to favour the Applicant's file information over his account of the events. This conclusion was open to the Board, according to the Appeal Division, and the Appeal Division was ultimately satisfied that the Board's decision was fair and reasonable.

**ISSUES**

[16] Counsel for the Applicant and for the Respondent disagree as to the relevant issues raised by this application for judicial review. Having carefully examined the record and the submissions of the parties, I am of the view that the following questions must be determined:

a) Is the application for judicial review moot and, if so, should this Court exercise its discretion to hear it nonetheless?

b) What is the applicable standard of review?

c) Is the decision of the Appeal Division reasonable?

d) Are the reasons provided by the Appeal Division sufficient?

**THE LEGISLATIVE FRAMEWORK**

[17] It is well established that parole is not a right but a privilege: see, for example, *Woodhouse v William Head Institution*, 2010 BCSC 754 at paras 44-47, rev'd on other grounds 2012 BCCA 45; *Aney v Canada (Attorney General)*, 2005 FC 182 at para 31 and *Coscia v Canada (Attorney General)*, 2005 FCA 132 at para 44. Pursuant to paragraph 107(1)(b) of the *CCRA*, the Board has "exclusive jurisdiction and absolute discretion" to terminate or to revoke the parole or statutory release of an offender.

[18] Section 100 of the *CCRA* sets out the purpose of conditional release, which is to contribute to the maintenance of a just, peaceful and safe society by means of decisions that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. The new section 100.1 specifies that the protection of society is to be the paramount consideration for the Board. Section 101, on the other hand, enumerates the principles that the Board is to take into consideration in its decision making:

> The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:
>
> > (*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 authorities;
> >
> > (*b*) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and

> through communication about their policies and programs to victims, offenders and the general public;
> (*c*) parole boards make decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;
> (*d*) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and
> (*e*) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

[19] Pursuant to subsection 135(1) of the *CCRA*, an offender's parole may be suspended when he or she "breaches a condition of parole" or when the designated person is "satisfied that it is necessary and reasonable to suspend the parole […] in order to prevent a breach of any condition thereof or to protect society […]."

[20] The Board then reviews the case and, within the period prescribed by the regulations, either cancels the suspension or terminates or revokes the parole. Subsection 135(5) of the *CCRA* sets out the options available to the Board as well as the applicable criteria:

> 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 the Board, at the offender's request, adjourns the hearing or a member of the Board or a person designated, by name or position, by the Chairperson postpones the review —
>
> > (*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) terminate the parole or statutory release if the undue risk is due to circumstances beyond the offender's control, and
> >
> > (ii) revoke it in any other case;

> (*b*) if the Board is not satisfied as in paragraph (*a*), cancel the suspension; and
>
> (*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.

**ANALYSIS**

[21] As a preliminary issue, the Respondent, the Attorney General of Canada, disputes the naming of the National Parole Board of Canada as a respondent in the Application Record. I agree with the Respondent that the Board should be removed as a respondent, pursuant to Rule 303 of the *Federal Courts Rules*. Rule 303(1)(a), in particular, indicates that "an applicant shall name as respondent every person directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought" [emphasis added]. Given that the Board is the tribunal that made the decisions in respect of which the Applicant is seeking judicial review, it is improperly named as respondent: *Gravel v Canada (Attorney General)*, 2011 FC 832 at para 5. While I note that the Notice of Application does not mention the Board as a respondent, for greater certainty, the style of cause shall be amended to remove the Board, thus making it clear that the Attorney General is the sole respondent in the present matter.

a) Is the application for judicial review moot and, if so, should this Court exercise its discretion to hear it nonetheless?

[22] The Respondent argues that this Court should not exercise its discretion to decide this application because the Applicant was released on day parole on August 19, 2011, and subsequently on statutory release on January 3, 2012, rendering the matter moot. I agree with the Respondent

that there is no remaining live issue, as the Applicant obtained the remedy he was seeking in this application, once released from detention.

[23] According to the Supreme Court of Canada in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at para 15, 57 DLR (4th) 231, a proceeding becomes moot when the case raises merely an abstract or hypothetical question; in other words, "when circumstances have changed so that there is no longer a live controversy between the parties that can be resolved by a decision in that proceeding" (*Shoulders v Canada (Attorney General)*, [1999] FCJ no 490 at para 6, 165 FTR 125).

[24] That being said, I am also of the view that the Court should exercise its discretion to decide the merits of this case, despite the absence of a live controversy. The Applicant's ground for judicial review goes beyond the issue of him being released and able to be gainfully employed. The Applicant argues that the Board and the Appeal Division misconstrued his employment condition, which resulted in an unlawful revocation of his parole.

[25] According to the Applicant, this alleged transgression of his parole condition will permanently remain part of his criminal record and may have negative consequences for him in the future. This Court accepted in *Cowdrey v Attorney General of Canada*, 2010 FC 171, that an institutional conviction could be used by Correctional Service Canada if the applicant were ever returned to federal custody. The Court thus accepted that the detriment of an institutional conviction to an applicant is not limited to his current sentence. Moreover, the Court has further accepted that such information could be shared with provincial police upon police request. In light

of those findings, this Court ought to exercise its discretion to review the decision that the Applicant failed to comply with his condition of release and constituted an unmanageable risk to the community even if it is moot. I note in passing that my colleague Justice Zinn came to the same conclusion in a similar situation: see *Cotterell v Attorney General of Canada*, 2012 FC 302 at paras 20-21.

b) What is the applicable standard of review?

[26] Subsection 147(1) of the *CCRA* sets out the grounds of appeal for a decision of the Board. Pursuant to that provision, the Appeal Division must be satisfied that the Board:

> a) failed to observe a principle of fundamental justice;
> b) made an error of law;
> c) breached or failed to apply a policy adopted pursuant to subsection 151(2);
> d) based its decision on erroneous or incomplete information; or
> e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.

[27] In reviewing the Board's decision, the Appeal Division may at its discretion (subsection 147(4) of *CCRA*):

> a) affirm the decision;
> b) affirm the decision but order a further review of the case by the Board on a date earlier than the date otherwise provided for the next review;
> c) order a new review of the case by the Board and order the continuation of the decision pending the review; or
> d) reverse, cancel or vary the decision.

[28] In *Cartier v Canada (Attorney General of Canada)*, 2002 FCA 384 [*Cartier*], the Federal Court of Appeal characterized the Appeal Division as a hybrid creature having both the characteristics of an appeal and reviewing tribunal. While the powers exercised by the Appeal

Division are closely associated with the jurisdiction of an appeal court, the grounds for appeal are more akin to those for judicial review. The Court also noted that paragraph 147(5)(a) of the *CCRA* is clearly indicative of Parliament's intention to limit interference with the Board's decision. That provision states as follows:

> The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that
>
> > (*a*) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and
> >
> > (*b*) a delay in releasing the offender from imprisonment would be unfair.

[29] To the extent that the Appeal Division has the power to affirm the Board's decision as well as to quash it, the same degree of deference should apply in both instances. As the Federal Court of Appeal said in *Cartier*:

> [9] If the applicable standard of review is that of reasonableness when the Appeal Division reverses the Board's decision, it seems unlikely that Parliament intended the standard to be different when the Appeal Division affirms it. I feel that, though awkwardly, Parliament in s. 147(5)(*a*) was only ensuring that the Appeal Division would at all times be guided by the standard of reasonableness.
>
> [10] The unaccustomed situation in which the Appeal Division finds itself means caution is necessary in applying the usual rules of administrative law. The judge in theory has an application for judicial review from the Appeal Division's decision before him, but when the latter has affirmed the Board's decision he is actually required ultimately to ensure that the Board's decision is lawful.

[30] As for matters relating to procedural fairness, it is by now well established that they must be reviewed on a standard of correctness. No deference is owed to the decision-maker in such cases,

and the only question to be decided is whether the procedure followed was fair: *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53; *Canadian Union of Public Employees v Ontario (Minister of Labour)*, [2003] 1 SCR 539, 2003 SCC 29 at paras 100-103.

c) Is the decision of the Appeal Division reasonable?

[31] The Applicant argues that the decision of the Appeal Division is unreasonable because it is based on erroneous and unreliable information. In fact, this allegation presupposes that the Appeal Division should have given greater weight to the Applicant's account of events than to the information contained in his file, including statements made by his parole officer. It should be noted, however, that the Applicant has historically resorted to deception and manipulation in order to garner funds from family, friends and acquaintances. This is not unimportant, considering that the Applicant disputes the Board and the Appeal Division's findings as based on erroneous and unreliable information entered into his file by parole and police officers, while claiming that his version of events, although unsubstantiated by documentary evidence, should have prevailed, with his day parole maintained.

[32] A plain reading of the Board's decision reveals that it considered all relevant, reliable and persuasive evidence before it. The Board sets out a number of factual findings upon which the revocation was constructed:

- The Applicant accepted a job offer without the approval of the parole officer;
- The supervision team permitted him to continue the employment on the understanding that the job was an IT position;

- At the second supervision appointment, upon learning that the Applicant had been negotiating the acquisition of computers in the course of his employment, the supervision team was concerned that the Applicant was "stepping over the line into financial issues" and was "cautioned about the need to strictly comply with the condition regarding employment";
- The Applicant acknowledged that the golfer's "future prospects were discussed and in the course of that conversation … there was some discussion of financial issues"; and
- The parole officer had "no idea that the company [the Applicant was] working for consisted of [himself and Mr. Davis], who is employed full-time elsewhere."

  Applicant's Application Record, Tab 3, Exhibit "D", Board Post Release Sheet, pp 129-130.

[33] Relying on these facts, the Board considered that it was inconceivable that the Applicant would be running a company without having knowledge of the clients' finances and came to the following conclusions:

- The Applicant placed himself in a position of having knowledge of another person's finances;
- There were significant discrepancies between the Applicant's version of events and his file information, and the Board chose to give greater weight to the latter;
- The Applicant not only breached the employment conditions but was also deceptive and manipulative by providing a less than truthful description of the scope of his employment duties and activities to his supervision team;

- The Applicant's assertion that his case management team was fully aware of his employment activities is not consistent with the concerns expressed by his parole officer regarding the Applicant's negotiations with Apple and his parole officer's reservations about giving him permission to go to London to play golf with a prospective client of the company; and
- The Applicant's behaviour on day parole is similar to his fraudulent criminal history and his poor supervision record.

[34] It is on the basis of all of this information and of all of these concerns that the Board exercised its discretion to revoke the Applicant's parole. Reviewing the Board's summary of the facts and its conclusions, the Appeal Division reminded the Applicant that its role "is not to reassess risk and substitute its discretion for that of the Board, unless the Board's decision is unreasonable and unsupported." Accordingly, the Appeal Division refused to alter the Board's decision, as its reasons were more than sufficient to support its conclusions.

[35] I am unable to conclude that the decisions of the Board and of the Appeal Division fall outside of the range of possible, acceptable and defensible outcomes. The Board and the Appeal Division chose to give more weight to the information provided by the Applicant's supervisory team than to the Applicant's own version of the events, and it was entitled to do so. The Court must show a high degree of deference to the Appeal Division, and ultimately ensure that the Board's decision is lawful. Counsel for the Applicant has failed to demonstrate that such is not the case here.

[36] The Applicant also challenged the Board and the Appeal Division's decisions on the grounds that they misconstrued his employment condition, attempting to frame the issue as a question of procedural fairness. According to the Applicant, it was procedurally unfair to misapprehend the employment condition and subsequently to find him in breach of the misapprehended condition.

[37] This argument is without merit. First of all, the interpretation of the employment condition is a mixed question of fact and law and ought not to be cast as an issue of procedural fairness in an attempt to benefit from a more stringent standard of review. Whether the Applicant breached that condition requires the ascertainment of the meaning of that clause in the Day Parole Certificate and the assessment of the facts as they relate to that condition when properly understood; such an exercise has nothing to do with the fairness of a process.

[38] The argument is also without merit from a substantive point of view. According to the Applicant, the employment condition comprised two parts: one prohibiting access to financial records and the other prohibiting knowledge or responsibility for the management of finances. He claims that the Appeal Division made the same mistake as the Board when it stated that the condition prohibited the Applicant from placing himself in the position of having knowledge of a person's finances. In the Applicant's view, both decisions collapse the two-part condition into one, interpreting the condition as a prohibition against the knowledge of or access to financial information.

[39] I agree with the Respondent that the Board and the Appeal Division could reasonably read the employment condition as a whole and interpret it as a prohibition to access or manage the finances of others rather than artificially segmenting it, as suggested by the Applicant. One should not lose sight of section 100.1 of the *CCRA*, pursuant to which one of the guiding principles of the Board in making decisions pertaining to conditional release is the protection of society. The Board was thus justified in taking heed of the impending risk to the community in assessing the Applicant's activities in light of his condition of release. The intent and purpose of the employment condition was clearly to prevent the Applicant from being in a position where he could take advantage of a person's financial information in order to commit fraud. In that context, the Board could reasonably be concerned about the Applicant serving in a position where he was essentially running a company geared towards recruiting young athletes, connecting them with sports agents, and offering them lucrative contracts and advertising. Considering the obvious financial ramifications of the Applicant's position, both as related to the company and to its clients, the Board was justified in not accepting the Applicant's statement that his position did not permit him to have knowledge of the clients' finances. In light of this evidence, the Appeal Division reasonably affirmed the Board's decision.

d) Are the reasons provided by the Appeal Division sufficient?

[40] Finally, counsel for the Applicant argued that the reasons of the Appeal Division are insufficient, as they fail to set out the findings of fact supporting the conclusion that the Applicant had access to financial records and/or that he had knowledge or responsibility for the management of finances. Once again, I am unable to subscribe to that argument.

[41] First of all, as I hope to have made clear in the previous section of these reasons, the reasons given by the Board and the Appeal Division are intelligible and provide adequate notice to the Applicant of the basis for the revocation of his day parole. They are substantial enough to allow the Applicant to determine whether to appeal or seek further review, and they provide more than ample information to enable a reviewing court to perform its function.

[42] More importantly, the Supreme Court of Canada has now made it clear that the sufficiency of reasons is not an independent ground of review: see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*]. The reasons must be read together with the outcome. As stated by the Court in *Newfoundland Nurses* , they "serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). Having already found that the decisions of both the Board and the Appeal Division are reasonable in terms of their outcome, I am equally of the view that they are reasonable with respect to the process of articulating the reasons underpinning the result. Indeed, it is impossible to dissociate the conclusion from the reasoning employed to reach it. The reasons allow the Court to understand why the Board and the Appeal Division made their decision and are sufficient to determine that the conclusion falls within the range of acceptable outcomes. As such, the criteria developed in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (at para 47) are met.

**CONCLUSION**

[43] In the result, I am satisfied that the decision of the Appeal Division to uphold the Board's decision was reasonable and that the Applicant was not denied procedural fairness. This application

is therefore dismissed. The Applicant being on legal aid and the matter arising from a detention decision, I will not award costs in this matter.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed. No costs are awarded.

"Yves de Montigny"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1228-11 |
| **STYLE OF CAUSE:** | SHAUN ROOTENBERG v THE ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | Toronto, ON |
| **DATE OF HEARING:** | May 28, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | de MONTIGNY J. |
| **DATED:** | November 2, 2012 |

**APPEARANCES:**

| | |
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| Susan Jane Bennett | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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