Federal Court of Appeal  Cour d'appel fédérale

Date: 20181113

Docket: A-419-17

Citation: 2018 FCA 205

CORAM: **STRATAS J.A.**
RENNIE J.A.
WOODS J.A.

BETWEEN:

ABUBAKAR SHARIF

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 22, 2018.

Judgment delivered at Ottawa, Ontario, on November 13, 2018.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: RENNIE J.A.
WOODS J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20181113

Docket: A-419-17

Citation: 2018 FCA 205

CORAM: **STRATAS J.A.**
RENNIE J.A.
WOODS J.A.

BETWEEN:

ABUBAKAR SHARIF

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

STRATAS J.A.

[1] Mr. Sharif appeals from the judgment dated November 27, 2017 of the Federal Court (*per* Boswell J.): 2017 FC 1069.

[2] The Federal Court dismissed Mr. Sharif's application for judicial review of the decision dated December 6, 2016 of the Chair of the Warkworth Institution Disciplinary Court. The Chair

convicted Mr. Sharif of the offence of "fight[ing] with, assault[ing] or threaten[ing] to assault another person" under paragraph 40(*h*) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20.

[3] For the reasons that follow, I would allow the appeal, set aside the judgment of the Federal Court, allow the judicial review, quash the conviction, and order the Chair to dismiss the charge.

A. The standard of review in this Court

[4] On appeal, our first task is to consider whether the Federal Court selected the proper standard of review. Then we must consider whether the Federal Court properly applied that standard of review. See *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47. As the Supreme Court put it in *Agraira* at para. 46, we are to step into the shoes of the Federal Court. In practice, this is *de novo* review: we redo completely the analysis the Federal Court did.

[5] Recently, the Supreme Court has announced that it is considering in three upcoming appeals whether changes to the law of substantive review of administrative decisions should be made. It might well wish to consider whether this sort of complete redo furthers judicial economy and the litigation policies expressed in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; for a different approach, see *R. v. Chief Constable of Greater Manchester Police & Anor*, [2018] UKSC 47.

B. Analysis

(1) The Federal Court's selection of reasonableness as the standard of review of the Chair's decision

[6] The Federal Court conducted reasonableness review of the Chair's decision. It found it reasonable.

[7] In this Court, the parties agree that the Federal Court properly chose reasonableness as the standard of review. We are not bound by the parties' agreement but must instead examine this issue ourselves: *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152.

[8] On this, I agree with the parties. At the core of the Chair's decision is his interpretation of paragraph 40(*h*) of the Act, a provision very much part of his "own statute…closely connected to [his] function, with which [he] will have particular familiarity." Presumptively, reasonableness is the standard of review. See *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 54.

[9] What does reasonableness mean? The parties accept that reasonableness can mean different things in different contexts. And both accept that the intensity of review under the reasonableness standard in a case like this should be relatively strict because of the potential consequences. These include the possibility of a fine that can take away most of the inmate's prison income, the imposition of extra prison tasks, and placement in administrative segregation:

Act, ss. 44(1). As well, the inmate's parole prospects can be adversely affected: *Taylor v Canada (Attorney General)*, 2004 FC 1536, 65 W.C.B. (2d) 693 at para. 9.

[10] The parties' position echoes the Supreme Court's frequent unanimous and majority statements that reasonableness "takes its colour from the context" and "must be assessed in the context of the particular type of decision-making involved and all relevant factors": see, *e.g.*, *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 at para. 18; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770 at paras. 22 and 73; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80 at para. 57; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458 at para. 74; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 S.C.R. 364 at para. 44; *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395 at para. 54. In other words, certain circumstances, considerations and factors affect the assessment of the acceptability and defensibility of administrative decisions in particular cases.

[11] Relying on some of these Supreme Court cases, this Court has noted that in circumstances where an administrative decision is important to the affected person, affects the liberty of the affected person, is a liability determination drawing upon legal standards rather than executive policy, or is constrained by narrowing statutory language, this Court may afford the administrative decision-maker a narrower margin of appreciation. In other words, review may be somewhat more intense: *Walchuk v. Canada (Justice)*, 2015 FCA 85 at para. 33; *Canada*

(Attorney General) v. Boogaard, 2015 FCA 150, 87 Admin. L.R. (5th) 175 at para. 49; *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006 at paras. 90-92.

[12] Thus, I agree with the parties' joint view that we should scrutinize the Chair's decision with some strictness, albeit under the reasonableness standard.

(2) Was the Chair's decision reasonable?

[13] The Federal Court held that the Chair's decision, including his interpretation of paragraph 40(*h*) of the Act, was reasonable. I disagree. The Chair's decision cannot stand. This is so even under a highly deferential approach to the Chair's decision.

[14] First, we are "to identify the precise issue before the administrative decision-maker and the decision-maker's legal power to decide it": *Boogaard* at para. 36. Here, because of the terse nature of the Chair's reasons for decision, we must also characterize exactly what he decided: *Canadian Copyright Licensing Agency (Access Copyright) v. Canada*, 2018 FCA 58 at paras. 36-42.

[15] Mr. Sharif was charged with the offence of "fight[ing] with, assault[ing] or threaten[ing] to assault another person" under paragraph 40(*h*) of the Act.

[16] The charge, as particularized, alleges that Mr. Sharif "was given several direct orders to enter [a] food line from the rear" but was "physically uncooperative," refused "direction" and bumped a corrections officer "several times with his chest."

[17] The Chair found that Mr. Sharif was "attempting to keep [his meal] tray out of the [corrections] [o]fficer's reach" and away "from the [o]fficer"—conduct that "invite[d] physical contact either by Mr. Sharif or by the [o]fficer." In total, these were the Chair's only factual findings on what Mr. Sharif did. On these factual findings, the Chair convicted Mr. Sharif under paragraph 40(*h*) of the Act.

[18] Paragraph 40(*h*) must be interpreted in accordance with statutory text, the context of paragraph 40(*h*) in the Act, and the purpose of the paragraph and the Act: *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559. The Chair did not follow this methodology.

[19] Indeed, the Chair did not explicitly analyze and interpret paragraph 40(*h*) of the Act at all. But, nevertheless, the Chair found that Mr. Sharif's conduct—keeping his meal tray out of the corrections officer's reach in a manner that invited physical contact—fell within the words of paragraph 40(*h*), namely "fight[ing] with, assault[ing] or threaten[ing] to assault" the corrections officer.

[20] From this, we must deduce that the Chair must have implicitly viewed “fight” or “assault” under paragraph 40(*h*) as capturing conduct of any sort whatsoever that could invite physical contact.

[21] This interpretation is way too broad. This interpretation:

- suggests that even purely passive, peaceful conduct, such as a sit-down strike, in some circumstances could constitute a “fight” or an “assault.” This stretches the meaning of “fight” or “assault” beyond its plain meaning.

- is neither required nor supported by the purpose of the prison disciplinary system set out in section 38 of the Act.

- is not justified by the French version of paragraph 40(*h*) of the Act. The words, “se livre ou menace de se livrer à des voies de fait ou prend part à un combat” connote some form of affirmative or active action or aggression, with physical consequence. This meaning is common to the French and English versions of paragraph 40(*h*) and, thus, must be accepted: see *Merck Frost Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 at para. 203; *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, [2002] 3 S.C.R. 269 at paras. 55-57 and authorities cited therein.

- differs from the reported cases concerning paragraph 40(*h*), all of which suggest the paragraph addresses acts of physical aggression: *Zanth v. Canada (Attorney General)*, 2004 FC 1113, 259 F.T.R. 28; *Young-Taillon v. Canada (Attorney General)*, 2016 FC 1158; *Lemoy v. Canada (Attorney General)*, 2009 FC 448; *Dutiaume v. Canada (Attorney General)*, 2008 FC 990.

- ascribes a breadth to paragraph 40(*h*) of the Act that would make many of the other paragraphs in section 40 redundant. If paragraph 40(*h*) is as sweeping as the Attorney General suggests, Parliament would not have had to enact the other paragraphs. They must be given independent meaning. They set out separate offences of disobeying a justifiable order of a staff member (para. 40(*a*)), being disrespectful to a person in a manner that is likely to provoke violence (para. 40(*f*)), and creating or participating in a disturbance or any other activity that is likely to jeopardize the security of the penitentiary (para. 40(*m*)).

[22] Consistent with the foregoing, the Attorney General conceded that an "application of force…is an essential element of an 'assault' for the purposes of paragraph 40(*h*)": see the agreement to narrow issues on review, filed in this Court.

[23] The Chair found that Mr. Sharif's conduct "invite[d] physical conduct either by Mr. Sharif or by the [o]fficer." This falls short of affirmative action or aggression with physical consequence. Mr. Sharif's conduct might have been harassing, annoying or puerile, it might have disobeyed a justified order of a staff member, it might have been disrespectful, and it might have

caused a disturbance—and some of these might be captured in whole or in part by other paragraphs of section 40. But his conduct was not "fight[ing] with, assault[ing] or threaten[ing] to assault another person" under paragraph 40(*h*).

[24] The Attorney General's memorandum of fact and law concedes that the facts as found by the Chair could not sustain a finding that Mr. Sharif assaulted anyone. But the Attorney General's memorandum repeatedly describes Mr. Sharif's conduct as "aggressive." The Attorney General appears to be inviting us to find "aggressive" conduct by Mr. Sharif and, if necessary, to supplement the reasons of the Chair.

[25] In considering this submission, we must first examine the Chair's reasons. The reasons do not contain a finding of aggressive conduct. The Chair found only that Mr. Sharif was "attempting to keep the [meal] tray out of the [o]fficer's reach."

[26] But the matter does not rest there. We are not to read the Chair's reasons literally and stop there. We must view his reasons in light of the record before him: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708. Doing this, I conclude that the Chair—the person designated by Parliament to be the fact-finder and the merits-decider in this matter—declined to find that Mr. Sharif's conduct was aggressive.

[27] Even if we were inclined to take a different view of the evidence on this point, we are not allowed to replace the Chair's factual findings with our own: *Delta Air Lines Inc. v. Lukács*,

2018 SCC 2, 416 D.L.R. (4th) 579; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654.

[28] To do so would be to try to speculate about what was in the Chair's mind or, worse, substitute our views for those of the Chair, something forbidden by *Delta* and antithetical to the demarcation of tasks between the administrative decision-maker as merits-decider and the Federal Courts as reviewing courts: *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 479 N.R. 189; and see discussion in *Bonnybrook Industrial Park Development Co. Ltd. v. Canada (National Revenue)*, 2018 FCA 136 at paras. 80-83 (dissenting reasons, but not opposed by the majority on this point). This demarcation is underscored by subsection 43(3) of the Act which explicitly gives the Chair, not us, the power to decide.

[29] This is sufficient to find that the conviction of Mr. Sharif is not reasonable and cannot stand. The facts as found by the Chair do not show that Mr. Sharif committed the offence under paragraph 40(*h*).

[30] However, it is appropriate in these circumstances that this Court go beyond what is minimally necessary to determine this matter and say a little more: see the discussion in *Defence Construction Canada v. Ucanu Manufacturing Corp.*, 2017 FCA 133, [2018] 2 F.C.R. 269 at paras. 38-41. This area of law governs the relationship between the pressing imperatives of the state and the fundamental rights of inmates detained by it—an area where legal norms are best defined clearly, not left to uncertainty, speculation and later litigation. It is also an area where

cases are often evasive of review because inmates do not often have the capability or means to litigate.

[31] I wish to add a few more comments on the adequacy of the Chair's reasons. At the hearing of this matter, I raised this issue with the parties.

[32] The reasons are deficient—so much so that a reviewing court cannot conduct reasonableness review of central aspects of the Chair's decision.

[33] Take, for example, the requirement that the offence be proven beyond a reasonable doubt: Act, subsection 43(3). This is a rigorous standard. In *Ayotte v. Canada (Attorney General)*, 2003 FCA 429, 240 D.L.R. (4th) 471 at para. 14, the Federal Court of Appeal confirmed that principles relating to the 'beyond a reasonable doubt' standard (including those in the Supreme Court decision of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 63 C.C.C. (3d) 397) apply to disciplinary proceedings under the Act: see also the rigorous approaches required by the Federal Court in *Boucher-Côté v. Canada (Attorney General)*, 2014 FC 1065 at para. 29 and *Campbell v Canada (Attorney General)*, 2017 FC 971 at paras. 15-18. In this case, the Chair held only that the offence was "made out," and said nothing more. We have no idea whether he was aware of the burden of proof and applied it.

[34] Further, ss. 34 and 38(1) of the *Corrections and Conditional Release Regulations*, SOR/92-620, set out a mandatory legislative recipe for the imposition of a sanction. The failure of an administrator to follow a mandatory legislative recipe renders an administrative decision

outside the range of acceptability and, thus, unreasonable: *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193, [2011] 4 F.C.R. 203.

[35] The Chair gave no reasons in support of the sanction, nor can any be discerned by resort to the record. I cannot tell whether the Chair followed this mandatory legislative recipe. I am not to assume that he did, nor can I trust that he did. Reviewing courts are to review, not to assume or trust: *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at para. 79; *Canada (Citizenship and Immigration) v. Tennant*, 2018 FCA 132 at para. 23; *Canada v. Kabul Farms Inc.*, 2016 FCA 143 at paras. 32-35; Paul A. Warchuk, "The Role of Administrative Reasons in Judicial Review: Adequacy and Reasonableness" (2016), 29 C.J.A.L.P. 87 at p. 113.

[36] A reviewing court that cannot review an administrative decision for reasonableness must quash the decision. See *Leahy v. Canada (Citizenship and Immigration)*, 2012 FCA 227, [2014] 1 F.C.R. 766; *Vavilov v. Canada (Citizenship and Immigration)*, 2017 FCA 132, 52 Imm. L.R. (4th) 1 at para. 39; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175 at para. 26; and cases cited in these authorities.

[37] In its foundational case of *Dunsmuir*, the Supreme Court spoke (at para. 47) of quashing an administrative decision if it does not have "transparency, justifiability and intelligibility." But it neither explained the concept nor defined these terms. Perhaps the problems I am discussing here are the sorts of thing it meant.

(3) Other submissions

[38] I wish to address three particular submissions made by the parties, one by Mr. Sharif and two by the Attorney General.

– I –

[39] Mr. Sharif submits that the Federal Court improperly relied upon certain witness statements that were not before the Chair. Mr. Sharif invokes the general rule that fresh evidence cannot be admitted in an application for judicial review: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297. He adds that subsection 43(3) of the Act requires that convictions can only be "based on the evidence presented at the hearing."

[40] The Federal Court did not improperly rely upon the witness statements. The witness statements were before the Chair. The certified record of the Chair was filed in the application for judicial review. That record contained the witness statements.

[41] An administrator's certified record, when filed, is evidence of what was before the administrator. Note that it must be filed in order for the review court to consider it: *Canadian Copyright Licensing Agency (Access Copyright) v. Alberta*, 2015 FCA 268, [2016] 3 F.C.R. 19.

[42] During the application for judicial review, an applicant may challenge the content of the certified record on the basis that one or more of the documents in the certified record were not actually before the administrator. In such a case, the reviewing court will have to make findings concerning what was actually before the administrator.

[43] Once an applicant has seen the certified record, the applicant may allege that certain documents were received in secret or without giving the applicant an opportunity to challenge them. In such a case, this procedural fairness concern would have to be adjudicated.

[44] However, in the case before us, Mr. Sharif has not challenged the content of the certified record. Nor has he raised any procedural fairness concern.

– II –

[45] In defending the Chair's conviction of Mr. Sharif under paragraph 40(*h*), the Attorney General repeatedly emphasized the Chair's description of the circumstances during the incident as "explosive."

[46] In considering this aspect of the Chair's decision, it is important to keep the *actus reus* elements of the offence separate from the *mens rea* elements.

[47] The *actus reus* of an offence is typically "defined in terms of the accused's conduct in certain circumstances": Don Stuart, *Canadian Criminal Law,* 7th ed. (Toronto: Carswell, 2014) at 83. But some offences define prohibited conduct without specifying circumstances.

[48] In speaking to the *actus reus* of the offence, paragraph 40(*h*) refers only to the conduct of the accused. It does not make any circumstances part of the offence. The "explosive" circumstances in this case have no bearing on whether the *actus reus* is made out.

– III –

[49] In her memorandum of fact and law, the Attorney General urged us to keep front of mind that "it is imperative for prisons to be able to maintain order through an efficient discipline system." In support of this, she cited to us certain observations in *Howard v. Stony Mountain Institution*, [1984] 2 F.C. 642, 19 D.L.R. (4th) 502 (C.A.). There, prisons were said to be "for the confinement of, for the most part, crime-hardened and anti-social men and women" in "an environment…sadly reminiscent of Hobbes' primitive state of nature…where human life was said to be solitary, poor, nasty, brutish and short," where there is "an atmosphere of discord and hatred" and "minor sparks can set off major conflagrations of the most incendiary sort." And any court that denies prison authorities the ability to "react effectively" in "immediate response" to "breaches of prison order" would be "rash" and "ill-informed."

[50] I do not look askance at the Attorney General for citing us these words. After all, they are part of the common law we must consider and in that common law we sometimes see judges

pronouncing personal policy views. And I do not take the Attorney General to be citing these words in support of the idea that legislative provisions, regardless of their terms, should be interpreted and applied to achieve an anti-inmate, pro-prison-order result. Nor do I take the Attorney General to be saying that anything goes in the prison context, so long as order is kept. But for the benefit of future cases, the words in *Howard* need to be met with other words.

[51] We are a court of law whose judges have sworn to obey the law in a democracy governed by the rule of law; we are not free agents putting our personal policies into law. We do not make statutory law; we interpret and apply the law made by Parliament. We look at Parliament's law to discern its real meaning; we do not look to our own policy preferences, our own worldviews, the opinions of the powerful, or the views of the public. We apply the real meaning of laws to the facts before us, neutrally and objectively, logically and dispassionately, without fear or favour, and come to a result; we do not skew the result to fit what we think is right or best, to advance values we prefer, or to meet the wishes and expectations of others. See *Williams v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at paras. 41-52; *Canada v. Cheema*, 2018 FCA 45 at paras. 77-80.

[52] In this case, acting in this way, I have reached a result that happens to be against what the prison authorities might want in this particular case. But this does not make me pro-inmate, anti-order or, for that matter, rash and ill-informed: my personal views do not enter into the matter. And if our elected representatives in Parliament believe that I have misunderstood the real meaning of their law or if they want to change it, our time-honoured constitutional arrangements supply ready recourse: they can amend the law to their liking.

(4) Remedy

[53] In circumstances such as these, the usual remedy is to quash the conviction and remit for redetermination on the merits. But judicial review remedies are discretionary: *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6; *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202; 111 D.L.R. (4th) 1.

[54] Mr. Sharif submits and the Attorney General fairly accepts that here no purpose would be served by a redetermination of the charge on its merits. I agree. And this is an accepted basis for declining to remit a matter to an administrator: *Maple Lodge Farms Ltd.*, above at paras. 48-55; *Robbins v. Canada (Attorney General)*, 2017 FCA 24 at paras. 16-19 and authorities cited therein. Further, on the facts as found by the Chair, a conviction under paragraph 40(*h*) is not possible.

[55] Nevertheless, the charge remains before the Chair and should not languish in limbo. Given that a conviction under paragraph 40(*h*) is not possible, the Chair has no option but to dismiss the charge. In such situations, *mandamus* lies: *Apotex v. Canada (Attorney General)*, [1994] 3 S.C.R. 1100, aff'g [1994] 1 F.C. 742 at pages 767-768 (C.A.); *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55; 444 N.R. 93 at para. 14. Thus, I order the Chair to dismiss the charge.

[56] From this, it follows that any consequences associated with the conviction, such as the collection of the fine and any entry on Mr. Sharif's prison record concerning the conviction, should be reversed.

C. Postscript

[57] I would like to compliment the parties for preparing and filing an agreement on issues. It was helpful. This practice is consistent with the new litigation culture all have been directed to follow: *Hryniak*, above. And short of a formal agreement on issues, unilateral concessions by any party that serve to narrow or clarify the issues in judicial review proceedings are always appreciated.

[58] I am grateful to both parties for their excellent submissions.

D. Proposed disposition

[59] For the foregoing reasons, I would allow the appeal with costs here and below, quash the judgment of the Federal Court, allow the application for judicial review, quash the decision of the Chair, and order him to dismiss the charge. I would also order that any consequences associated with the conviction, such as the collection of the fine and any entry on Mr. Sharif's prison record concerning the conviction, be reversed.

"David Stratas"
J.A.

"I agree
Donald J. Rennie J.A."

"I agree
Judith Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-419-17
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BOSWELL DATED NOVEMBER 27, 2017, NO. T-2230-16	
STYLE OF CAUSE:	ABUBAKAR SHARIF v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 22, 2018
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	RENNIE J.A. WOODS J.A.
DATED:	NOVEMBER 13, 2018

APPEARANCES:

Paul Quick	FOR THE APPELLANT
Eric O. Peterson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Queen's Prison Law Clinic Kingston, Ontario	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT