

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120417

**Dockets: A-306-11
A-234-11**

Citation: 2012 FCA 118

**CORAM: NOËL J.A.
TRUDEL J.A.
MAINVILLE J.A.**

A-306-11

BETWEEN:

ALBERT GAUDREAU

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

A-234-11

BETWEEN:

STEVE HURDLE

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on April 17, 2012.

Judgment delivered from the Bench at Montréal, Quebec, on April 17, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on April 17, 2012)

NOËL J.A.

[1] These are two appeals filed by Albert Gaudreau and Steve Hurdle (collectively, the appellants) against two decisions of the Federal Court, in which justices Bédard and Scott (the Federal Court judges) dismissed the appellants' applications for judicial review of the conditions for long-term supervision imposed by the National Parole Board of Canada (the Board) under section 134.1 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the Act).

[2] The appellants are represented by the same counsel, and the appeals were heard one after the other at the same hearing. These reasons deal with both appeals.

[3] In support of their appeals, the appellants advanced the same argument based on the duration of the conditions imposed on them. In their opinion, the conditions do not respect the requirements of subsection 134.1(3) of the Act since the Board failed to consider the duration of the conditions it imposed.

[4] The appellants also submit that the reasons for the Board's decisions were inadequate, and further raise certain arguments specific to their case.

[5] The decisions under appeal reject all of the preceding arguments, and we believe that these arguments should suffer the same fate under appeal essentially for the same reasons as provided by the Federal Court.

[6] The only issue that deserves further examination is the scope of subsection 134.1(3) of the Act. This provision obliges the Board to address the duration of conditions since, according to the provision's very wording, the conditions imposed by the Board are "valid for the period that the Board specifies". These words indicate, without any possible doubt, that the Board must consider the period of application of the conditions it imposes and determine the duration of that period. It should be noted that this is the appropriate conclusion to be drawn, regardless of the standard of review chosen to examine this aspect of the Board's decision. In other words, this interpretation is the correct one since an interpretation that would allow the Board to impose conditions without respecting this requirement would be unreasonable.

[7] The main argument made by counsel for the appellants to demonstrate that the Board failed in this duty is based on the pre-printed standard clause that appears on the decision sheet (NPB Post Release Decision Sheet) indicating that the imposed conditions:

[a]pply until the end of the release unless a fixed period of time is specified.

[8] According to counsel for the appellants, the very existence of this clause suggests that the Board imposed the conditions of long-term supervision without considering the duration for which these conditions should apply.

[9] The existence of such a clause clearly presents some dangers. It is not enough to insert a pre-printed standard clause in the decision template to demonstrate that the Board truly considered the duration of the conditions it imposed, as required by the Act.

[10] The appellants' argument could have carried some weight had it not been for the fact that, in both cases before us, one of the conditions imposed by the Board was subject to a shorter period than that stipulated in the standard clause. In these circumstances, it can only be concluded that the Board considered the duration and decided to apply the duration specified in the standard clause except in the case of these two exceptions. In our view, the Board's reasons, read as a whole, lead to the conclusion that the Board considered the duration of the conditions it imposed in both cases before us as it was required to do.

[11] The appeals will therefore be dismissed. Considering the seriousness of the question of law raised by the appellants and the clarification that emerges from the present reasons as to the Board's duty to consider the duration of the special conditions it sets under subsection 134.1(3) of the Act, there is no basis for ordering the appellants to pay the costs related to the appeals.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-306-11

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE BÉDARD OF THE
FEDERAL COURT DATED JULY 28, 2011, DOCKET T-2108-10.**

STYLE OF CAUSE: Albert Gaudreau and Attorney
General of Canada

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 17, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Trudel and Mainville JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

APPEARANCES:

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Nadia Golmier

FOR THE APPELLANT

Toni Abi Nasr

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Montréal, Quebec

FOR THE APPELLANT

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-234-11

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE SCOTT OF THE FEDERAL COURT DATED MAY 20, 2011, DOCKET T-1604-10.

STYLE OF CAUSE: Steve Hurdle and Attorney General of Canada

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 17, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Trudel and Mainville JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

APPEARANCES:

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