Federal Court  Cour fédérale

**Date: 20141119**

**Docket: T-881-14**

**Citation: 2014 FC 1096**

**Ottawa, Ontario, November 19, 2014**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**ROBBIE RICHARD ERASMO**

**Applicant**

**and**

**CANADA (ATTORNEY GENERAL)**

**Respondent**

## JUDGMENT AND REASONS

[1] This an application for judicial review of the Applicant's sentence calculation issued by a Sentence Manager on March 10, 2014, from Stony Mountain Institution in Manitoba, brought pursuant to section 18.1(4)(b) of the *Federal Courts Act*, RSC 1985, c F-7 [the Act]. The Applicant seeks the exclusion of the youth Community Supervision Order [CSO] of 36 months from his sentence calculation.

## I. Background

[2] The Applicant was born on February 4, 1992, and is currently twenty-two years old. He is at present an inmate at Stony Mountain Institution in Manitoba.

[3] The Applicant committed second degree murder on September 12, 2009, and was arrested on April 15, 2010 and charged as a youth.

[4] The Applicant committed a robbery on April 4, 2010, for which he was also arrested on April 15, 2010, and charged as an adult.

[5] The Applicant pled guilty on August 26, 2011 pursuant to the *Youth Criminal Justice Act*, SC 2002, c 1 [YCJA] to the charge of second degree murder. He received a seven year sentence consisting of four years of committal to custody and three years of CSO in Youth Court (pursuant to section 42(2)(q)(ii) of the YCJA).

[6] The Applicant pled guilty on February 24, 2014, in the Court of Queen's Bench to the charge of robbery and received a four year consecutive adult sentence. At the conclusion of the sentencing, the Applicant had approximately 1.5 years left of the custodial portion of his youth sentence.

[7] On March 10, 2014, the Applicant received a letter of calculation from the Correctional Service of Canada with respect to the totality of his youth sentence and adult sentence in terms of release dates. The certified copy of the specific calculations was dated March 12, 2014.

[8] Pursuant to section 743.5(1) of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*], since the Applicant received his adult sentence while still subject to the YCJA Sentence, the remainder of the YCJA sentence, including both the remaining custodial and CSO portions, was required to be dealt with as an adult sentence. As the Applicant was subject to two sentences, they were merged pursuant to section 139(1) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA], to be deemed one adult sentence. This process is triggered automatically by statute.

[9] At the time the Applicant received his adult sentence, he had approximately 4 years and 6 months remaining of his youth sentence (including CSO). Following the merger of his two sentences, the aggregate sentence became 8 years, 6 months and 2 days (expiring August 25, 2022). A table outlining the different types of conditional release and their eligibility date is set out below.

| Type of Conditional Release | Eligibility Date |
|---|---|
| Unescorted Temporary Absence | July 26, 2015 |
| Day Parole | June 25, 2016 |
| Full Parole | December 25, 2016 |
| Statutory Release | October 26, 2019 |

[10] The decision under review is the Applicant's sentence as calculated by the Correctional Service of Canada of a Sentence Manager from Stony Mountain Institution, integrating the

Applicant's sentence from a Youth Court charge of second degree murder with his adult sentence for robbery.

## II. Issue

[11] The issues in the present application are as follows:

A. Does section 743.5 of the *Criminal Code* violate sections 7 or 9 of the *Canadian Charter of Rights and Freedoms* [the Charter] by converting an existing youth sentence into an adult sentence of imprisonment, when that sentence is combined with a subsequent sentence of adult imprisonment;

B. Do sections 75, 196 and 197 of the *Safe Streets and Communities Act*, SC 2012, c 1 [SSCA] amending sections 2, 99(2)(b) and 119.2 of the CCRA violate sections 7, 9, or 11(i) of the Charter; and

C. If there is a Charter violation, does it constitute a reasonable limit prescribed by law, as can be demonstrably justified in a free and democratic society, pursuant to section 1 of the Charter.

## III. Standard of Review

[12] The appropriate approach to determine the issues of this case involves the constitutionality of the legislation involved in the Sentence Manager's decision. The standard of review issues of administrative law are not relevant to the case at bar. If the case had involved the review of an administrative decision based on the application and interpretation of the

Charter, the correctness standard would apply (*Multani v Commission Scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at paras 20-21).

## IV. Relevant legislation

[13] The relevant sections of the legislation in issue are attached as Appendix A.

## V. Analysis

[14] The Applicant seeks an order that his parole eligibility dates and statutory release date be recalculated so as to exclude the 3 year portion of his youth sentence to be served in the community [his CSO]. This is requested in one of two ways: (1) that the statutory scheme set out by section 743.5 of the *Criminal Code* in combination with section 139 of the CCRA be found in violation of the Charter, or in the alternative (2) by operation of section 140 of the YCJA a modification of the calculation be made excluding the 3 year CSO.

[15] Essentially, the Applicant's arguments centre on alleging Charter breaches that cannot be "saved" under section 1 of the Charter. However, for the reasons that follow, while there has been some change to the Applicant's sentence by operation of the merging scheme under the *Criminal Code* and the CCRA, those changes do not affect the essential character of his sentence, since its length is the same as his original sentence, and he benefits from the parole system available under the CCRA regime, which mitigate the effects of the different approach to conditional release under the YCJA.

[16] The Applicant's youth sentence was one single sentence of seven years, that was to be served in two forms, not two separate dispositions of four and three years respectively. Given that the Applicant's youth sentence should be considered a single sentence, its entirety is eligible to merge with his adult sentence, resulting in the correct calculation made by the Sentence Manager at Stony Mountain Institution. The Applicant incorrectly characterizes the calculation in suggesting that his sentence is lengthened by the merging provisions, when in fact it is the manner in which a portion of his sentence is to be served that has changed.

A. *Section 7 Charter Arguments*

[17] The Applicant submits that following the decision in *Charkaoui*, in order to engage section 7 of the Charter, one must prove first "that there has been or could be a deprivation of the right to life, liberty and security of the person, and second, that the deprivation was not or would not be in accordance with the principles of fundamental justice. If the claimant succeeds, the government bears the burden of justifying the deprivation under section 1". The principles of fundamental justice have been found to "include a guarantee of procedural fairness, having regard to the circumstances and consequences of the intrusion on life, liberty or security…" (*Charkaoui, Re*, [2007] 1 SCR 350 at paras 12 and 19 [*Charkaoui*]).

[18] The procedure under section 743.5(1) and (3)(a) by statutory fiat in operation with section 139(1) of the CCRA changes the Applicant's 3 year CSO into a sentence of imprisonment, without the ability to challenge the process' fairness in a hearing, thus infringing his section 7 right to liberty. Given the engagement of section 7 rights upon risk of incarceration (*Malmo-Levine*) and the acknowledgement of guarantees of procedural fairness (*Charkaoui*), the

Applicant submits that section 743.5 of the *Criminal Code* and 139 of the CCRA do not entail a fair judicial process (*R v Malmo-Levine*, [2003] 3 SCR 571 at para 89 [*Malmo-Levine*]; *Charkaoui* at paras 12, 19).

[19] The Applicant also states that the principles and purposes of sentencing under the YCJA are materially different than those under the *Criminal Code*, and that Parliament has distinctly recognized those offenders who commit crimes as youth are of diminished moral blameworthiness and deserve unique procedures, rights and protections. Sections 3 and 38 of the YCJA demonstrate the intention to promote rehabilitation and reintegration of young persons into society, and further mandate that any sentence imposed be the least restrictive available to capture the YCJA's purposes. Emphasis on rehabilitation and reintegration have been affirmed by the Supreme Court of Canada in *R v BWP*, [2006] 1 SCR 941 at para 4, when deciding that general deterrence was not a relevant factor in sentences under the YCJA.

[20] The incorporation of CSO portions of a youth sentence into the definition of "sentence" in the CCRA for the purposes of parole eligibility are inconsistent with the protection contained in section 83(2)(e) of the YCJA (that placements where young persons are treated as adults not disadvantage them respecting their eligibility for and conditions of release), as well as liberty interests enshrined in section 7 of the Charter.

[21] Accordingly, the Applicant argues that the effect of the *Criminal Code* in conjunction with the CCRA is to "violate the entire spirit, intention and purpose of the sentencing principles and unique provisions afforded to offenders being sentenced in accordance with the provisions of

the YCJA." It is further fundamentally unfair that someone in the Applicant's position lose the benefit of the CSO portion of his youth sentence due to a subsequent sentence to an adult term of imprisonment for an unrelated offence not committed while in custody or under supervision.

[22] The Applicant also points out that the Supreme Court has acknowledged the difference between custodial and non-custodial sentences, and the inapplicability of parole to an offender who is under a conditional sentence and not incarcerated. The provisions deem a non-incarceratory disposition of significant time under the YCJA as a deemed sentence of incarceration because of a subsequent adult sentence (*R v CMA*, [1996] 1 SCR 500; *R v Proulx*, [2000] 1 SCR 61 at paras 42-44).

[23] As such, the Applicant argues that the scheme in the legislation is overly broad to achieve its objectives triggering section 7 protection. Concerns regarding the Applicant's serious charge as a youth were addressed in sentencing. The idea that a subsequent and unrelated offence could collapse the disposition regarding his CSO without cause or fault is overbroad and not justifiable.

[24] The Respondent concedes that the Applicant's section 7 rights are engaged by the change in form of the Applicant's sentence. It is then necessary to proceed to step two of the process set out in *Charkaoui* at paras 12, 19: the Applicant must establish that this deprivation is not in accordance with the principles of fundamental justice.

[25] The process of merging youth and adult sentences under a single sentence managed under the adult CCRA regime is an automatic one, put into motion upon receiving an adult sentence

when someone is in the Applicant's situation. While the Applicant is correct that there is no hearing to challenge the fairness of the process, the process itself is a basic calculation based on sentences established in previous hearings, that themselves provided the Applicant with adequate notice of procedural fairness, as required by the principles of fundamental justice.

[26] The automatic operation of legislation does not involve any discretion and thus does not necessitate a hearing. Any challenge to such an operation is properly addressed through judicial review. In *Cooper v Canada (Attorney General)*, 2002 FCA 374 at para 8, and more recently in this Court, in *Capra v Canada (Attorney General)*, 2008 FC 1212 at paras 65-66, it was decided that the principles of fundamental justice are respected in an applicant's trial, conviction and sentencing. There is no remaining determination of "fault" required when the automatic operation of the legislation occurs; therefore, a "fault-based" hearing is not necessary. A change in sentence, regardless of whether it is unfavorable to an applicant, "is not, in itself, contrary to any principle of fundamental justice" (*Cunningham v Canada*, [1993] 2 SCR 143 at para 19).

[27] In legislating to create an automatic merging scheme for youth and adult sentences, under the YCJA and the *Criminal Code*, both regimes allow for a portion of a sentence to be spent in the community under supervision, as well as early release in some cases.

[28] With respect to the allegation of diminished moral blameworthiness of youth committing crimes, this principle was considered in the Applicant's sentencing for second degree murder in youth court. If the Applicant had been tried as an adult for this crime, his sentence would have been more onerous. While the youth sentence of seven years was initially intended to be served

in custody, as well as under community supervision, merging it with his subsequent adult sentence does not change its essential character, nor does it offend this principle.

[29] The Applicant argues that since the Supreme Court in *R v M*, [1996] 1 SCR 500 at paras 61-62 [*R v M*] recognized the difference between custodial and non-custodial sentences, and the scheme under the *Criminal Code* and the CCRA affect the total amount of the Applicant's time incarcerated, this change indicates a negative effect on his section 7 rights. However, while the Supreme Court acknowledged the difference between different forms of a sentence, the Court affirmed in *R v M*, that non-incarceratory portions of a sentence (referring to grants of parole) do not represent a reduction in the sentence, rather they are changes to the conditions under which a sentence is to be served. Since the sentence itself remains the same, this distinction between incarceratory and non-incarceratory conditions is not relevant.

[30] I do not agree that the scheme is overly broad to achieve the aims of the legislation. The legislators considered situations like that of the Applicant in establishing the scheme, and tailored it to apply.

B. *Section 9 Charter Arguments*

[31] The Applicant submits that the effect of the amended provisions in the CCRA combined with the *Criminal Code* are to increase the incarceration of an individual without due process in consideration of moral culpability attached to the process. In effect, this creates an absolute liability which offends the principles of fundamental justice, contrary to section 9 of the

Charter's protection against arbitrary detention or imprisonment (*Reference re Motor Vehicle Act (British Columbia) S 94(2),* [1985] 2 SCR 486 at paras 4-5).

[32] There is no increase of the Applicant's sentence itself. Further, the sentences received by the Applicant were assigned after due process had been afforded, and not as a result of absolute liability being assigned.

[33] As decided in *Charkaoui*, above, at para 89, arbitrary detention in the context of section 9 of the Charter must not have been made based on standards that are rationally connected to the purpose of the power of detention. Since Parliament specifically sought to tailor the scheme merging the Applicant's youth and adult sentences to situations such as his, the scheme is rationally tied to its purpose. The Applicant's section 9 rights were not infringed.

C. *Section 11(i) Charter Arguments*

[34] Further, the Applicant submits that given the timing of the Applicant's offenses and sentencing, as a result of amendments to the CCRA, his punishment has changed. For his second degree murder charge, both the incident and the sentencing took place before the amendments affecting his incarceration. For the robbery, the incident was before the amendments but his sentencing was after. The amendments have created a variation in punishment for which section 11(i) of the Charter is engaged.

[35] The Applicant's position is that punishment is to be given a liberal and purposive approach within the context of Charter rights. A substantial portion of the Applicant's youth

disposition was previously litigated as non-incarceratory and is now incarceratory by operation of the related statutes. The Applicant should therefore be given the benefit of the lesser punishment (*R v Rodgers*, [2006] 1 SCR 554 at paras 6-61).

[36] The Applicant submits that since his offenses and sentencing largely took place before the SSCA amendments to the CCRA came into effect, they should not be able to unfairly vary his punishment, as would be contrary to section 11(i) of the Charter. However, the timing of the amendments to the CCRA through the SSCA is not relevant here. Similar to the decision in *Van Buskirk*, the relevant and operative portions of legislation are section 734.5 of the *Criminal Code* and section 139 of the CCRA (distinguishing this case from *JP v Canada (Attorney General)*, 2009 FC 402). Since section 743.5 applied to the Applicant, it is unnecessary to consider the temporal effect of the amendments to the CCRA (*Van Buskirk v Canada (Solicitor General)*, 2012 FC 1463 at paras 48, 57-58).

[37] The Applicant's section 11(i) rights were not infringed.

D. *Section 1 Charter Arguments*

[38] Dealing with section 1 of the Charter, the Applicant states that since the Applicant has established a violation of his Charter rights, the onus shifts to the Respondent to justify its infringements under section 1. The Respondent must demonstrate first that the offending provisions address a pressing and substantial legislative objective, second a rational connection to that objective, third, minimal impairment to the right in question, and fourth, proportionality

between the effects of the violation and the objective of the legislation (*R v Oakes*, [1986] 1 SCR 103 at paras 73-75 [*Oakes*]).

[39] The Applicant concedes that punishing crime and the protection of society are always pressing and substantial concerns, passing the first step of the *Oakes* test.

[40] However, the Applicant argues that the rational connection stage cannot be established in the case at bar. A "well-crafted disposition provided for under the YCJA, with the Youth Court endorsing and imposing the disposition on one of the most serious offences in the *Criminal Code*", extinguished due to statutory amendments, could be seen to be rationally connected to the goal of punishing crime and protecting society. There is no process to ascribe fault to the Applicant as it is done by statutory fiat through a conversion process.

[41] The Applicant also argues that minimal impairment cannot be established, as the effect of the statutory scheme is to significantly increase sentences. The 3 year CSO is quickly converted to 3 years of incarceration for the Applicant by operation of the *Criminal Code*, the CCRA and the SSCA.

[42] The Applicant further states that the overbreadth of the scheme is again relevant at the minimal impairment stage since the Supreme Court of Canada found in *Heywood* that "overbroad legislation… would appear incapable of passing the minimal impairment branch of the section 1 analysis" (*R v Heywood*, [1994] 3 SCR 761 at para 71 [*Heywood*]).

[43] Given that the Applicant's section 7 rights are engaged by operation of the statutory scheme merging his youth and adult sentences, it is necessary to conduct a section 1 analysis. The central question under section 1 of the Charter is set out in *Canada (Attorney General) v Bedford*, [2013] 3 SCR 1101 at para 125:

> …whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal of the law in furthering the public interest. The question of justification on the basis of an overarching public goal is at the heart of section 1…

[44] While the impact of a law on an applicant is a significant factor in the Court's evaluation of a law under section 1 of the Charter, "the court's ultimate perspective is societal" (*Alberta v Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567 at para 69).

[45] The pressing and substantial goal of section 743.5 of the *Criminal Code* and section 139 of the CCRA is conceded by the Applicant. It is meant to avoid the issues that arise when one inmate is subject to two different regimes in serving sentences under the YCJA as well as the CCRA. The section is meant to bring uniformity, and clarity for inmates in how their sentences are calculated and governed. Considering the rational connection stage of the *Oakes* test, the Applicant's flawed characterization of his sentence as two distinct dispositions, the CSO portion having been extinguished by the merging scheme, is relevant. The section's objectives and application do the opposite of extinguishing a portion of his sentence; rather, they ensure the integrity of the entire seven year sentence is maintained and merged. To set aside the CSO portion of the Applicant's sentence would have the effect of allowing him to shorten his youth sentence as a benefit of being sentenced under the adult legislation. The objectives of the scheme are thus rationally connected to their goal (*Oakes*, above).

[46] In considering whether the scheme is minimally impairing, it is admittedly possible that the Applicant will spend some more time in custody before obtaining presumptive release. This is, however, a necessary incident to the new scheme. The Applicant will not spend three more years in custody due to the merging provisions, thanks to the conditional release provisions of the CCRA that now apply to his single, merged sentence. The Applicant's sentence is ultimately unchanged: it is merely the manner in which it is served that changes. The Applicant is required to serve those three years of his sentence, and they must be accounted for in any scheme. While the effects of merging his sentences together may be unfavorable, they are minimally impairing.

[47] It is unnecessary to conduct a full proportionality analysis since the legislation has met the above three stages of the *Oakes* test.

E. *Section 140 of the YCJA*

[48] Finally, the Applicant states that the YCJA contemplates specifically tailored sentences to each offender and that section 140 has been held to permit the court to modify the impact of section 743.5 of the *Criminal Code* on an offender when it is inconsistent with the YCJA (*R v B(T)*, 2005 ONCJ 104 at paras 10-12).

[49] Given the built in procedure for dealing with inconsistencies between the YCJA and the *Criminal Code*, it would appear as though there is no need to address the constitutional issues raised by section 743.5 and the CCRA by simply allowing the Court to exclude the 3 year CSO from the Parole Board of Canada's calculation, on the basis that it is inconsistent with the YCJA.

[50] While section 140 of the YCJA is important to keep in mind in any case involving a young offender, it is inappropriate to engage it in the case at bar. The *Criminal Code*, as it is applies to the Applicant, is not inconsistent with the YCJA. The Applicant was sentenced under the YCJA and the integrity of that sentence is maintained under the merging scheme. While it is a different approach to non-incarceratory portions of a sentence, the CCRA provides for a conditional release and parole system that mitigate the effects of the youth and adult sentences merging as a single adult sentence.

[51] The importance of section 140 of the YCJA should not be ignored, but it is unnecessary to engage its protections in this case.

**THIS COURT'S JUDGMENT is that**:

1. The Application is dismissed.

"Michael D. Manson"

Judge

APPENDIX A

*Youth Criminal Justice Act*, SC 2002, c 1

| | |
|---|---|
| Youth sentence<br>42 (2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the Criminal Code, the court shall impose a sanction set out in paragraph (q) or subparagraph (r)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:<br>(q) order the young person to serve a sentence not to exceed<br>(i) in the case of first degree murder, ten years comprised of<br>(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed six years from the date of committal, and<br>(B) a placement under conditional supervision to be served in the community in accordance with section 105, and<br>(ii) in the case of second degree murder, seven years comprised of<br>(A) a committal to custody, to be served continuously, for a period that must not, subject to subsection 104(1) (continuation of custody), exceed four years from the date of committal, and<br>(B) a placement under conditional supervision to be served in the community in accordance with section 105; | Peine spécifique<br>42 (2) Sous réserve des autres dispositions de la présente loi, dans le cas où il déclare un adolescent coupable d'une infraction et lui impose une peine spécifique, le tribunal lui impose l'une des sanctions ci-après en la combinant éventuellement avec une ou plusieurs autres compatibles entre elles; dans le cas où l'infraction est le meurtre au premier ou le meurtre au deuxième degré au sens de l'article 231 du Code criminel, le tribunal lui impose la sanction visée à l'alinéa q) ou aux sous-alinéas r)(ii) ou (iii) et, le cas échéant, toute autre sanction prévue au présent article qu'il estime indiquée :<br>q) l'imposition par ordonnance :<br>(i) dans le cas d'un meurtre au premier degré, d'une peine maximale de dix ans consistant, d'une part, en une mesure de placement sous garde, exécutée de façon continue, pour une période maximale de six ans à compter de sa mise à exécution, sous réserve du paragraphe 104(1) (prolongation de la garde), et, d'autre part, en la mise en liberté sous condition au sein de la collectivité conformément à l'article 105,<br>(ii) dans le cas d'un meurtre au deuxième degré, d'une peine maximale de sept ans consistant, d'une part, en une mesure de placement sous garde, exécutée de façon continue, pour une période maximale de quatre ans à compter de sa mise à exécution, sous réserve du paragraphe 104(1) (prolongation de la garde), et, d'autre part, en la mise en liberté sous condition au sein de la collectivité conformément à l'article 105; |
| Principles to be used<br>83 (2) In addition to the principles set out in section 3, the following principles are to be used in achieving that purpose:<br>(e) that placements of young persons where they are treated as adults not disadvantage them with respect to their eligibility for and | Principes<br>83 (2) Outre les principes énoncés à l'article 3, les principes suivants servent à la poursuite de ces objectifs :<br>e) le placement qui vise à traiter les adolescents comme des adultes ne doit pas les désavantager en ce qui concerne leur admissibilité à la |

| | |
|---|---|
| conditions of release. | libération et les conditions afférentes. |
| Application of Criminal Code<br>140. Except to the extent that it is inconsistent with or excluded by this Act, the provisions of the Criminal Code apply, with any modifications that the circumstances require, in respect of offences alleged to have been committed by young persons. | Application du Code criminel<br>140. Dans la mesure où elles ne sont pas incompatibles avec la présente loi ou écartées par celle-ci, les dispositions du Code criminel s'appliquent, avec les adaptations nécessaires, aux infractions imputées aux adolescents. |

*Criminal Code*, RSC, 1985, c C-46

| | |
|---|---|
| Transfer of jurisdiction when person already sentenced under Youth Criminal Justice Act<br>743.5 (1) If a young person or an adult is or has been sentenced to a term of imprisonment for an offence while subject to a disposition made under paragraph 20(1)(k) or (k.1) of the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, or a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) of the Youth Criminal Justice Act, the remaining portion of the disposition or youth sentence shall be dealt with, for all purposes under this Act or any other Act of Parliament, as if it had been a sentence imposed under this Act. | Transfert de compétence<br>743.5 (1) Lorsqu'un adolescent ou un adulte assujetti à une décision rendue au titre des alinéas 20(1)k) ou k.1) de la Loi sur les jeunes contrevenants, chapitre Y-1 des Lois révisées du Canada (1985), ou à une peine spécifique imposée en vertu des alinéas 42(2)n), o), q) ou r) de la Loi sur le système de justice pénale pour les adolescents est ou a été condamné à une peine d'emprisonnement pour une infraction, le reste de la décision prononcée ou de la peine spécifique imposée est purgée, pour l'application de la présente loi ou de toute autre loi fédérale, comme si elle avait été prononcée ou imposée au titre de la présente loi. |

*Corrections and Conditional Release Act*, SC 1992, c 20

| | |
|---|---|
| References to expiration of sentence<br>(2) For the purposes of this Part, a reference to the expiration according to law of the sentence of an offender shall be read as a reference to the day on which the sentence expires, without taking into account<br>(a) any period during which the offender could be entitled to statutory release;<br>(b) in the case of a youth sentence imposed under the Youth Criminal Justice Act, the portion to be served under supervision in the community subject to conditions under paragraph 42(2)(n) of that Act or under conditional supervision under paragraph 42(2)(o), (q) or (r) of that Act; or | Adolescent<br>99.2 Pour l'application de la présente partie, le point de départ de la peine imposée à un adolescent — au sens de la Loi sur le système de justice pénale pour les adolescents — soumis à une détention ou un ordre visés aux articles 89, 92 ou 93 de cette loi, est le jour où la peine devient exécutoire en conformité avec le paragraphe 42(12) de cette loi. |
| Youth sentence<br>119.2 For the purposes of sections 120 to 120.3, the eligibility for parole of a young | Peine spécifique<br>119.2 Pour l'application des articles 120 à 120.3, l'admissibilité à la libération |

| | |
|---|---|
| person in respect of whom a youth sentence is imposed under paragraph 42(2)(n), (o), (q) or (r) of the Youth Criminal Justice Act and who is transferred to a provincial correctional facility for adults or a penitentiary under section 89, 92 or 93 of that Act shall be determined on the basis of the total of the custody and supervision periods of the youth sentence. | conditionnelle de l'adolescent qui a reçu une des peines spécifiques prévues aux alinéas 42(2)n), o), q) ou r) de la Loi sur le système de justice pénale pour les adolescents et est transféré dans un établissement correctionnel provincial pour adultes ou dans un pénitencier au titre des articles 89, 92 ou 93 de cette loi est déterminée en fonction de la somme des périodes de garde et de surveillance de la peine spécifique. |

*Safe Streets and Communities Act*, SC 2012, c 1

| | |
|---|---|
| 75. The Act is amended by adding the following after section 119:<br>Definition of "sentence"<br>119.1 For the purposes of sections 119.2 to 120.3, and unless the context requires otherwise, "sentence" means a sentence that is not constituted under subsection 139(1).<br><br>Youth sentence<br>119.2 For the purposes of sections 120 to 120.3, the eligibility for parole of a young person in respect of whom a youth sentence is imposed under paragraph 42(2)(n), (o), (q) or (r) of the Youth Criminal Justice Act and who is transferred to a provincial correctional facility for adults or a penitentiary under section 89, 92 or 93 of that Act shall be determined on the basis of the total of the custody and supervision periods of the youth sentence. | 75. La même loi est modifiée par adjonction, après l'article 119, de ce qui suit :<br>Définition de « peine »<br>119.1 Pour l'application des articles 119.2 à 120.3, sauf indication contraire du contexte, « peine » s'entend de la peine qui n'est pas déterminée conformément au paragraphe 139(1).<br><br>Peine spécifique<br>119.2 Pour l'application des articles 120 à 120.3, l'admissibilité à la libération conditionnelle de l'adolescent qui a reçu une des peines spécifiques prévues aux alinéas 42(2)n), o), q) ou r) de la Loi sur le système de justice pénale pour les adolescents et est transféré dans un établissement correctionnel provincial pour adultes ou dans un pénitencier au titre des articles 89, 92 ou 93 de cette loi est déterminée en fonction de la somme des périodes de garde et de surveillance de la peine spécifique. |
| 196. The definition "sentence" in subsection 2(1) of the Corrections and Conditional Release Act is replaced by the following:<br>"sentence" means a sentence of imprisonment and includes<br>(a) a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the International Transfer of Offenders Act, and<br>(b) a youth sentence imposed under the Youth Criminal Justice Act consisting of a custodial portion and a portion to be served under | 196. La définition de « peine » ou « peine d'emprisonnement », au paragraphe 2(1) de la Loi sur le système correctionnel et la mise en liberté sous condition, est remplacée par ce qui suit :<br>« peine » ou « peine d'emprisonnement »<br>S'entend notamment :<br>a) d'une peine d'emprisonnement infligée par une entité étrangère à un Canadien qui a été transféré au Canada sous le régime de la Loi sur le transfèrement international des délinquants; |

| | |
|---|---|
| supervision in the community subject to conditions under paragraph 42(2)(n) of that Act or under conditional supervision under paragraph 42(2)(o), (q) or (r) of that Act; | b) d'une peine spécifique infligée en vertu de la Loi sur le système de justice pénale pour les adolescents, laquelle comprend la partie purgée sous garde et celle purgée sous surveillance au sein de la collectivité en application de l'alinéa 42(2)n) de cette loi ou en liberté sous condition en application des alinéas 42(2)o), q) ou r) de cette loi. |
| 197. Paragraphs 99(2)(a) and (b) of the Act are replaced by the following:<br>(a) any period during which the offender could be entitled to statutory release;<br>(b) in the case of a youth sentence imposed under the Youth Criminal Justice Act, the portion to be served under supervision in the community subject to conditions under paragraph 42(2)(n) of that Act or under conditional supervision under paragraph 42(2)(o), (q) or (r) of that Act; or<br>(c) any remission that stands to the credit of the offender on November 1, 1992. | 197. Le paragraphe 99(2) de la même loi est remplacé par ce qui suit :<br>Mention de l'expiration légale de la peine<br>(2) Pour l'application de la présente partie, la mention de l'expiration légale de la peine que purge un délinquant s'entend du jour d'expiration de la peine compte non tenu :<br>a) de la libération d'office à laquelle il pourrait avoir droit;<br>b) dans le cas d'une peine spécifique infligée en vertu de la Loi sur le système de justice pénale pour les adolescents, de la partie de la peine purgée sous surveillance au sein de la collectivité en application de l'alinéa 42(2)n) de cette loi ou en liberté sous condition en application des alinéas 42(2)o), q) ou r) de cette loi;<br>c) des réductions de peine à son actif en date du 1er novembre 1992. |

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-881-14 |
| **STYLE OF CAUSE:** | ROBBIE RICHARD ERASMO V CANADA (ATTORNEY GENERAL) |
| **PLACE OF HEARING:** | WINNIPEG, MANITOBA |
| **DATE OF HEARING:** | NOVEMBER 12, 2014 |
| **JUDGMENT AND REASONS:** | MANSON J. |
| **DATED:** | NOVEMBER 19, 2014 |

**APPEARANCES:**

| | |
|---|---|
| LEONARD J.W. TAILLEUR<br>MELISSA FERENS | FOR THE APPLICANT |
| SCOTT FARLINGER<br>ALEX MENTICOGLOU | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Leonard J.W. Tailleur<br>Regency Community Law Centre<br>Winnipeg, Manitoba | FOR THE APPLICANT |
| William F. Pentney<br>Deputy Attorney General of Canada<br>Winnipeg, Manitoba | FOR THE RESPONDENT |