Federal Court Cour fédérale

Date: 20150508

Docket: T-803-14

Citation: 2015 FC 612

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 8, 2015

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

ALAIN LAFERRIÈRE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The applicant is challenging the legality of a decision of the Parole Board of Canada [PBC] varying the conditions to which he is subject under a long-term supervision order.

II. Facts

[2] On December 20, 2007, the applicant was sentenced for violent offences, including some committed against his spouse. The applicant was sentenced to two years, three months and eighteen days in prison and was placed under community supervision for ten years. The applicant has served his prison sentence and has been under long-term supervision since April 1, 2010.

[3] During the long-term supervision period, the applicant is subject to special conditions imposed on him by the PBC. These conditions have been varied a few times, and, before the impugned decision, the applicant was subject to seven special conditions:

> [TRANSLATION]
>
> 1. Not to communicate, be it directly or indirectly, with the victim, . . . except with the express permission of his supervisor;
>
> 2. Follow the treatment prescribed by the psychiatrist;
>
> 3. Follow a program, undergo therapy or receive follow-up care with respect to his problem with violence;
>
> 4. Inform his supervisor of any new temporary or stable relationship with women and provide his supervisor with the contact information of these women;
>
> 5. Abstain from alcohol;
>
> 6. Abstain from all drugs, except prescribed or over-the-counter medication taken in accordance with manufacturer's recommendations;
>
> 7. Refrain from entering within a perimeter of 500 metres of where [his spouse] lives or of any other location where she may be.

[4] On February 28, 2014, the PBC rendered a decision cancelling certain conditions. Despite the requests from counsel for the applicant, the PBC did not hold a hearing. However, before making its decision, the PBC reviewed the written representations received from the applicant. After assessing his file, the PBC accepted the parole supervisor's recommendation that two of the conditions be removed, namely, the obligation to be treated by a psychiatrist and the prohibition to enter within a perimeter of 500 metres of his spouse's home or any other location where she might be; it maintained the other conditions however. This application for judicial review concerns this decision.

III. Issue and standard of review

[5] The applicant raises only one issue in the present matter: did the PBC breach procedural fairness by not holding a hearing before making its decision? In the alternative, the applicant seeks a declaratory judgment determining in which circumstances a hearing is required.

[6] Issues of procedural fairness are reviewable on a standard of correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

IV. Analysis

[7] When reviewing long-term supervision conditions, the PBC has the discretion to hold a hearing (subsection 140(2) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [Act]). The applicant submits that the PBC breached procedural fairness by not holding a hearing. The PBC did not respect the principles established in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]. The applicant notes that PBC

decisions with respect to long-term supervision are final and have serious consequences for offenders. Moreover, it is not unreasonable for the applicant to expect that the PBC hold a hearing at least once a year: this is what the PBC does for offenders subject to a detention order. Consequently, the PBC breached procedural fairness by not holding a hearing.

[8] The respondent submits that according to the factors set out in *Baker*, in the matter at bar, a hearing was not required because the proceeding before the PBC is neither judicial nor quasi-judicial, because the applicant did not have a legitimate expectation to a hearing, and because the PBC may elect to review a case by way of a hearing and has the expertise to choose its own procedure. This is the conclusion reached by this Court in *Sychuk v Canada (Attorney General)*, 2009 FC 105 at para 48 [*Sychuk*]. In addition, the applicant has already challenged the PBC's decision not to grant him a hearing on two occasions, by making applications for *habeas corpus* before the Quebec Superior Court; in both cases (and on appeal), the Superior Court found that the PBC had not breached procedural fairness (*Laferrière c Centre correctionnel communautaire Marcel-Caron*, 2010 QCCS 1677; *Laferrière c Commission des libérations conditionnelles du Canada*, 2013 QCCS 4228; *Laferrière c Commission des libérations conditionnelles du Canada*, 2013 QCCA 1081).

[9] According to the respondent, there was no factual basis for a hearing. The PBC had all the relevant information before it. Moreover, the applicant had not raised any specific facts to warrant the holding of a hearing, except for the fact that a hearing would allow the PBC to gain [TRANSLATION] "a better understanding of the case".

[10] I agree with the respondent. In accordance with the factors set out in *Baker*, this is not a situation where the PBC had to hold a hearing to respect procedural fairness. This was a review of the applicant's parole conditions the outcome of which does not have as great an impact as a detention order or the suspension of parole (see *Arlène Gallone c Le procureur général du Canada*, 2015 CF 608). As noted by the Supreme Court in *Baker*, "[t]he more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated" (at para 25). In the matter at bar, the written representations were an adequate substitute for a hearing since no particular reason or no serious issue of credibility was raised by the applicant, either of which could have shed a different light on the PBC's decision.

[11] Moreover, the applicant had no legitimate expectation that the PBC hold a hearing, and because the holding of a hearing is discretionary, the PBC was not obliged to hold a hearing at regular intervals. Also, the absence of reasons for the refusal to hold a hearing is not fatal to the decision in the particular circumstances of this case since the applicant did not raise any specific reason why a hearing should have been held and the PBC had all the required information before it. In accordance with *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Court may consider that the PBC could have given the fact that there was nothing to justify the holding of a hearing as a reason for its refusal. Consequently, the PBC did not breach procedural fairness by not holding a hearing.

[12] In the alternative, the applicant is seeking a declaratory judgment from the Court establishing clear, precise and predictable guidelines for the exercise of the PBC's discretion to hold an optional hearing. Without limiting the PBC's discretion, the Court is expected to declare that the PBC should hold at least one hearing every year and also stipulate in which conditions a hearing is required.

[13] According to the respondent, it would not be appropriate for this Court to issue a declaratory judgment since the PBC is already subject to principles of procedural fairness and the applicable case law. The Court should not make assumptions in the abstract to attempt to determine in which circumstances an offender could benefit from a hearing before the PBC.

[14] I agree. The application for declaratory relief does not meet the test set out in *Canada (Minister of Indian Affairs) v Daniels*, 2014 FCA 101, and *Solosky v Canada*, [1980] 1 SCR 821, since the judgment does not settle a real issue between the parties. The PBC exercises a discretionary power that is already subject to the principles of procedural fairness. It would not be appropriate for the Court in this case to attempt to impose exact guidelines regarding the PBC's discretion in the absence of hard facts or to limit the PBC's discretion by holding that a hearing must be held at certain intervals regardless of the specific circumstances of the case before the PBC.

[15] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-803-14
STYLE OF CAUSE:	ALAIN LAFERRIÈRE v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	APRIL 23, 2015
JUDGMENT AND REASONS BY:	TREMBLAY-LAMER J.
DATED:	MAY 8, 2015

APPEARANCES:

Erika Perron McLean	FOR THE APPLICANT
Erin Morgan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rita Magloé Francis Advocate Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT